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Hunting and Gathering on the Legal Information Savannah

Susan Nevelow Mart,** Adam Litzler,*** and David Gunderman****

No, no . . . you are not thinking; you are just being logical.¹

This article asks, what is it like for novice researchers to research real-world legal problems using four platforms: Bloomberg Law, Fastcase, Lexis Advance, and Westlaw? The study findings produced some surprises, as well as some clear implications for teaching legal research.

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Introduction: The Human in the Information Chain

¶1 When researchers enter the world of the massive online legal research platform, they are entering a complex, constructed universe where user-interface design and an array of algorithms guide their experience. Those algorithms use a variety of natural language processing methods, deployed in huge vats of content, to provide useful results for researchers. Platform providers might use content mining, context relevancy importance, and user search histories to help refine results. These series of complex mathematic processes are often bundled as “machine learning.” Machine learning is not yet artificial intelligence. There is always some interference between a researcher’s information need as inputted and the output of the system. The researcher can’t see or understand the work that is going on in the back end, which makes understanding how to decrease that interference and improve results difficult.

¶2 The relationship between humans and their intellectual tools has often been discussed as a binary—either a great achievement or an impending doom—since writing emerged in the human toolkit. Online legal research platforms first appeared on the scene in the 1960s, and the preference for online research has gradually come to dominate researchers’ usage. The binary discussion—great achievement or impending
doom—has not diminished with the rise of massive online legal research platforms and their reliance on complex natural language processing.\textsuperscript{10} If we want to empower law students and attorneys to be in control of the process in complex legal platforms, instead of having them be the passive recipients of algorithmic results, we need to keep poking under the hood.

\textsuperscript{\textsection3} This article’s narrative shares what we found poking under the hood, using a small sample of 12 real-world research problems. Some findings will surprise no one. Researchers did not always find it easy to navigate to relevant sources. Researchers who were unable to find good secondary sources were not confident in their conclusions. More surprising was the finding that knowledge did not equal ease in finding results. One might expect that researchers, after completing a first search using one legal research platform, which helped them to define the parameters of the legal conclusion, would have an easier time doing the research in other legal research platforms. Not so. In 11 out of 12 problems, the time to complete the research in each of the subsequent platforms did not get much better with knowledge of the legal sources needed to come to a legal conclusion. It is heartening to know that even novice legal researchers continue to rely on expert secondary sources to guide their research and confirm their conclusions. Legal research platform providers need to embed more point-of-need navigation, to help researchers see how the user-interface is involved in and directing their research, for course correction. And legal research teachers need to explicitly teach students how to be thoughtful platform navigators.

Navigating the Connected World: Communication

\textsuperscript{\textsection4} We live and work in a connected environment where the interfaces we use to complete tasks have profoundly changed the way we process and evaluate information. In the world of the digital interface, how we solve our legal information needs has evolved since the earliest computer-assisted research platforms. Figure 1\textsuperscript{11} is an early representation of the online information-seeking flow where “the [human] subject was envisioned as a smooth space for the transfer of information between the inner and the outer worlds, between the registers of analysis and stimulus.”\textsuperscript{12}

\begin{footnotesize}
10. More nuanced views of achievement or doom have certainly been the subject of writing on the current state of AI-assisted programs. For a collection of current views, see Possible Minds: 25 Ways of Looking at AI (John Brockman ed., 2019). It is fair, however, to say that people tend to take sides.

11. Marcia J. Bates, The Design of Browsing and Berripicking Techniques for the Online Search Interface, 13 Online Rev. 407, 408 (1989). This chart, even then, did not illustrate the messiness of the research process. Marcia Bates knew that the search itself changes the search. Id. at 410.

\end{footnotesize}
Figure 1. Information Transfer

Figure 1 shows the space in the middle as the place where the match happens; that space is also the space for interference, as illustrated in figure 2, which represents the central noise that always interferes with the transmission of information to its destination.\(^\text{13}\)

Figure 2. Mathematical Theory of Communication

Communication theory posits that interference will always exist between the information source and the destination; for legal researchers, that interference is between the entry of a research request and the results obtained.\(^\text{14}\) Our everyday experience bears out the fact that language can be an imperfect carrier of meaning.\(^\text{15}\) When


\(^{14}\) Id.

\(^{15}\) The difficulties of clear communication between humans is an entire subject of its own. For an overview, see, e.g., Richard J. Lanigan, Information Theories, in Theories and Models of Communication 59, 73 (Paul Copley & Peter J. Schultz eds., 2013); see also Juri Lotman, The Sign Mechanism of Culture, 12 Semiotica 301, 302 (1974) (“Non-understanding, incomplete understanding, or misunderstanding are not side-products of the exchange of communication but its very essence.”). Jeanette Winterson, Gut Symmetries 163 (1997), puts it eloquently:

Grandmother and I sat face to face over the sepulchral plastic of the breakfast bar. Common and rare, to sit face to face like this. Common that people do, rare that they understand each other. Each speaks a private language and assumes it to be the lingua franca. Sometimes words dock and there is a cheer at port and cargo to unload and such relief that the voyage was worth it. “You understand
communicating with a computer, we are not even communicating in our native tongue. However, formulating a good query and understanding a little of the thinking behind the translation of a query into results can go a long way toward allowing the researcher to better control the search process and force good search results to the top.

7 Figures 1 and 2 do not capture the iterative nature of search. Figure 3 is one attempt of many to document the nuance and complexity of the search process. The figure also illustrates how many entry points there are for “interference” or “noise” to impact results.

Figure 3. Cognitive Information Cycles

8 The black box of legal research platforms is the mechanical site of the interference between the information source and the destination. The research process starts with a human, whose level of legal information literacy will impact the actual signal sent to the black box. Legal information literacy implicates issues of ambiguity in the law itself, and lack of legal information literacy will increase the interference in the system.


17. See, e.g., Dennis Kim-Prieto, The Road Not Yet Taken: How Law Student Information Literacy Standards Address Identified Issues in Legal Research Education and Training, 103 LAW LIBR. J. 605, 610–13, 2011 LAW LIBR. J. 37, ¶¶8–16, for a discussion of legal information literacy as a way to evaluate and train law students to create a plan and a recursive approach to problem solving that will enable them to interrogate the legal research platforms or other resources they will use to resolve legal problems.
9 Our understanding of information-seeking behavior has evolved since Bates’s early representation of the relationship between the information need and relevant documents, and a large literature builds on Bates’s perceptions of information transfer and the iterative and redundant nature of search. Elements of Bates’s chart (see fig. 1) still resonate. A need to bridge the gap between the information need and the results remains. That gap is dominated by the black box of algorithms. In the case of legal problem solving, when algorithms do their work and “compromise or adjudicate between mathematical and pragmatic modes of reason,”\(^\text{18}\) the human researcher always occupies the middle of the gap between the two modes. One way we negotiate this gap “between code and culture”\(^\text{19}\) is by interrogating the black box. Another way we negotiate the gap is to learn how to communicate with the computer in the language it demands.

10 From the beginning of online search, the imperatives of algorithmic search forced the researcher to think and process language in a new way, so that the computer could understand. Since natural language processing algorithms have come to play such a large part in online searching, it is easy to lose sight of the fact that a Boolean, or terms and connectors, search is an algorithm. It is just an algorithm created by the researcher and not by the platform provider. Boolean queries are certainly a different form of speech:

\[
\text{Defin! Mean! Interpret! Explain! Constru! Constitut! Typical! Entail! /5 [insert term]}^{20}
\]

Or,

\[\text{("FAIR DEBT COLLECTION PRACTICES ACT" FDCPA) /P BANKRUPTCY /P CONFLICT /P (TIME-BARRED "STATUTE OF LIMITATIONS" STALE) & DA(AFT 11/16/2016)}^{21}\]

11 Clearly, the legal researcher needs to think in a new way to translate human speech patterns to Boolean search logic.\(^\text{22}\) When performing that change in speech, the

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18. Finn, supra note 6, at 47.
19. Id.
21. This is the search suggested by Westlaw to update Resolution of Conflict Between Bankruptcy Code and Fair Debt Collection Practices Act Where Creditor Seeks to Recover on Time-Barred Debt, 20 A.L.R. Fed. 3d. Art. 5 (2017). Note that at this level of complexity, there are many options for processing the chained operators, and different platform providers’ algorithms will process them slightly differently, leading to disparities in search results. See E-mail from Tito Sierra, LexisNexis, Joe Bred, Bloomberg Law, Khalid Al-Kofahi, Thomson Reuters, and Ed Walters, Fastcase, to Susan Nevelow Mart (Aug. 21, 2019, 3:07 PM) (on file with author).
human algorithm creator is relying mostly on connectors\textsuperscript{23} and field limiters.\textsuperscript{24} The need to think clearly about what the researcher wants to achieve by a natural language search is a different form of translation: there are rules of “speech” in natural language for effective searching, including word order and number of search terms. Natural language or keyword searching tends to be somewhat reductionist. The researcher needs to think of the exact words or phrases that will retrieve a document that would help resolve the legal question, or part of it, and then enter them into the search box. In the background, the platform is using an array of tools, including Boolean logic, to translate those terms into credible results.\textsuperscript{25} Knowledge of how those tools work is helpful in creating a keyword search.\textsuperscript{26} As one example, algorithms differ in how they treat proximity—how close words in a document need to be to each other. Just knowing that and thinking about it when formulating a keyword search can help the researcher think through the problem.

\textsuperscript{23.} Common connectors are quotes to search for a phrase and proximity connectors, which include such search terms as AND, OR, NOT, \textit{w/}, \textit{p}, \textit{NEAR}. There are word variant symbols, such as * and ! Some platforms allow such connectors as “atleast,” so that a researcher can request results where each document has a term or phrase at least a specified number of times.

\textsuperscript{24.} Field limiters or segments are commands to limit the results of the search to a specified portion of the documents being searched. For example, when searching cases, the researcher may be able to limit the search to the synopsis of the case. When searching news articles, the researcher may be able to limit the search to the headline and the lead paragraph. These field limiters allow the researcher to take advantage of the metadata tags assigned to each document in a legal database. The depth and range of field limiters or segments vary from database to database.


\textsuperscript{26.} Id.; see also E-mail from Pablo Arredondo, Casetext, to Susan Nevelow Mart (Sept. 10, 2020, 16:10 MDT) (on file with author), providing a link for a new method of communication being deployed in Casetext’s Parallel Search, which allows the researcher to use a full sentence as a search query. Parallel Search uses Google’s BERT, or Bidirectional Encoder Representations from Transformers. See Wikipedia, BERT (language model), https://en.wikipedia.org/wiki/BERT\_{language\_model} [https://perma.cc/AM8T-P8FH] (indicating that BERT is a technique for natural language processing (NLP) pretraining developed by Google; BERT was created and published in 2018 by Jacob Devlin and his colleagues from Google). Even with the enhanced semantic variability this method allows, the researcher still needs to understand how to communicate with the algorithm. On September 15, 2020, I entered the search: An administrative search requires a 4th amendment warrant. The search was limited to the Northern District of California. None of the top 10 search results were about administrative searches, although all of them had semantic variants of the word choice in the search sentence. Finding these variants is certainly a major advance in search capability. Parallel Search does allow the use of quotes, and putting quotation marks around “administrative search” resulted in the top 10 documents being highly relevant. Quotes are, of course, a form of algorithmic communication that needs to be learned, and proper communication with Casetext’s algorithms dramatically improved the search results. Variations in sentence structure also changed search results. Lexis+ is also using BERT to improve Lexis Answers. Jean O’Grady, Lexis Rides the “Insight Wave”: Launches Lexis+ with New Look, Brief Analyzer, AI Search, Codes Compare and Loads of New Features, DEWEY B STRATEGIC (July 8, 2020), https://www.deweybstrategic.com/2020/07/lexis-rides-the-insight-wave-launches-lexis-with-new-look-brief-analyzer-ai-search-codes-compare-and-loads-of-new-features.html [https://perma.cc/9KKV-N69Y].
¶12 Here is one example of how different algorithms parse the same search. If a researcher is looking for cases about administrative searches and whether that kind of search requires a Fourth Amendment warrant, one search might be:

administrative search 4th amendment warrant requirement

Any attorney with even a limited amount of subject-matter expertise can articulate what the underlying legal issue requires: cases on administrative searches and whether the searches require a Fourth Amendment warrant. Natural language algorithms do not yet do as well. When putting the same query into the same reported case dataset in six different legal research platforms, the top results varied enormously, and not all the top results were relevant.27 Each of the algorithms had a different way of parsing the meaning of a human’s translation of a legal concept,28 and none of the algorithms was successful at turning that translation into 10 relevant documents.29 The study illustrated that variability in algorithmic implementation has an outsized impact in returning results.

¶13 Searching for cases in a case database is only one element in a researcher’s plan to solve a legal research problem. However, in the massive search interfaces legal platform providers offer for fulfilling a research need, interfaces and their intersections with algorithms can augment or impede access to the relevant information that will frame the solution to the legal research question: “Our literal and metaphorical footprints through real and virtual systems of information and exchange are used to shape the horizon ahead through tailored search results, recommendations, and other adaptive systems . . . .”30

¶14 What would it look like to interrogate the holistic research process in massive legal research platforms? This article starts the process of answering that question.

27. Mart, supra note 25, at 412–15, ¶¶ 45–48. Although the algorithms in use at the time of the study have changed, the general concept has not. For an example of differing search results and relevance in a search made on May 16, 2020, see appendix A, infra.

28. Mart, supra note 25, at 412–15, ¶¶ 45–48; see also Finn, supra note 6, at 138 (“the most effective aesthetic [for AI interfaces] is one of augmentation, complementing human intelligence with computational depth”).

29. Mart, supra note 25, at 412–15, ¶¶ 45–48; see also Gurari, supra note 5:

The reason [the algorithms] are so often wrong relates to a third consideration to keep in mind: there is no requirement that the machine learn features and associations that are intelligent, coherent, or what a person would look for. What these programs are designed to do is learn statistical correlations. That they may be incidental or bizarre is secondary.

Understanding how the algorithms reached a statistical result is complicated by the fact that “machine learning has a transparency problem. We usually don’t know which features these algorithms are learning. This is a major problem for high stakes fields like law and medicine.” Id. Overcoming this limitation is an area of research called “Explainable AI.” Gurari, supra note 5; see also FINN, supra note 6, at 138 (“When designing AI interfaces, the best thing to do is to complement human intelligence with computational depth.”).

30. FINN, supra note 6, at 50.
Hunting and Gathering: On the Road to a Methodology

Gathering Problems

¶15 The current literature analyzing search results has focused on individual processes in legal research platforms, such as the digest function,\textsuperscript{31} the citator function,\textsuperscript{32} how statutes are annotated,\textsuperscript{33} or how case law can be searched.\textsuperscript{34} Those individual search processes do not necessarily solve a legal problem; they provide some information on the way to a larger solution.\textsuperscript{35} One of the many difficulties of trying to compare actual problem solving in different legal research platforms is acquiring real legal research problems, complicated enough to require an iterative search process but not so complicated that the problem cannot be solved in a reasonable amount of time. These types of right-sized problems are often given to summer or new associates to solve. These problems represent actual, fact-based unknowns an attorney needs researched. These problems are manageable enough in scope to give to a novice researcher to research.

¶16 Since 2014, Colorado Law has had a Summer Employment Transition (SET) program. At the end of the first year, willing 1Ls are matched with local attorneys and given one of those short real-world assignments to research and write about in a short time.\textsuperscript{36} I have been collecting those anonymized problems for use in this analysis. I chose 12 of the problems for review in the study, looking for differences in subject matter and jurisdiction, and similarities in complexity.\textsuperscript{37}

¶17 This study is necessarily descriptive. No study this size could hope to do more than raise questions and leave the field open for further research. The study looks at the kind of human-computer translation needed to resolve a research need holistically, in one of the major legal research platforms that support legal problem solving across resources and subject areas. What does the modern research space look like as a whole? What does problem solving look like to a novice user in these platforms: Bloomberg, Fastcase, Lexis Advance, and Westlaw Edge? How would users be guided through the systems? When researchers specify a plan and implement it, those “moments of inclusion mask the many other decisions you are not invited to participate in.”\textsuperscript{38}

\textsuperscript{31} Susan Nevelow Mart, The Case for Curation: The Relevance of Digest and Citator Results in Westlaw and Lexis, 32 LEGAL REFERENCE SERVS. Q. 13, 14 (2013).

\textsuperscript{32} Id.


\textsuperscript{34} Mart, supra note 25; Callister, supra note 2.

\textsuperscript{35} Looking for a known item would be an exception; an individual search process might well answer the research question.

\textsuperscript{36} The length of the project has varied from year to year, but it generally takes a day and a half to two days. This allows time for the student and attorney to meet and confer about any issues that arise during the research and writing process.

\textsuperscript{37} See appendix C for the 12 problems the research assistants used, available at https://scholar.law.colorado.edu/research-data/12/.

\textsuperscript{38} FINN, supra note 6, at 110.
axiomatic that thinking through the problem, identifying appropriate resources to search, and formulating the search in a way that facilitates the algorithms are still the first steps for a successful search. Poor search taxonomy, even in a “natural language” environment, leads to bad results. Thinking is always the first step in the research process. Would the intersection of user-interface design and algorithmic processes in each platform help or hinder the researcher through the search process?

Hunting for Computable Search Processes

¶18 If the first hurdle in setting up a comparison of the problem-solving process in different platforms was finding the problems to solve, the next hurdle was setting up a computable process for comparison of search paths in platforms with different algorithms, search philosophies, content, and user interfaces. Research is an iterative, non-linear process, and the full scope of the search process is not easily quantifiable. Reducing the research process to a series of steps might amplify the “compromises and analogies of algorithmic approximations,” which “tend to efface everything they do not comprehend.”

¶19 After multiple attempts, the final choice was to code the search process as a series of access points. There are many first access points, such as putting keywords in the blank search bar, going directly to a secondary source, or locating a case or a statute mentioned in the research assignment. From the first place in each legal research platform that the research assistant navigated to, the coding followed a set process:

- Whether a search string was used (or opening a resource, such as a table of contents)
- Whether the search was natural language or terms and connectors
- The top 10 results (if more than 10)
- The relevance of the top 10 results
- The type of resource being searched
- The total number of results from the search
- The relevance of any sidebar material
- Whether another search string within that access point was needed
- Whether that search was terms and connectors or natural language
- The top 10 results for the second search within that access point
- The relevance of the top 10 results
- The total number of results from the search
- The relevance of any sidebar material
- And so on, until that access point was exhausted
- Repeating the coding process for each access point that was required to complete the research problem

40. See, e.g., Mart et al., *supra* note 3, at 14.
41. Finn, *supra* note 6, at 22.
• Whether the legal issue(s) was solved
• The time (minus the time to code) to complete the problem
• The total number of access points required to complete the problem
• Whether the search process was successful

20 The steps enumerated in the coding sheet, for quantitative analysis, are necessarily linear. We all know that research is not linear, and that each step informs and changes the next, revises the research query, and opens new vistas.42 To try to capture those nuances, research assistants were told, for information that did not fit into the coding, to add their thoughts generally about the process, using a recorder/transcription app or typing their thoughts directly into a Word document. The hope was that adding a narrative component would soften the abstraction imposed in the coding by having researchers add a narrative of their process.43

21 Each research assistant was given one or two problems to research. Each of the problems had to be researched in each of the four legal research platforms. To reduce the distortion that might arise if students started with the platforms they were most familiar with, a random number generator44 was used to generate 12 sets of randomly sequenced numbers from 1 to 4; that was the order platforms were to be searched for each of the 12 problems.

Hunting for Relevance

22 In order for the research assistants to determine whether a case or a section of a secondary source was relevant to their research, I had to define standards of relevance. Relevance is a hotly contested issue in law. The lawyers on opposing sides of an issue may determine relevance differently, and any two lawyers may have a different opinion of a case, particularly at the outer edges of relevance. I used a broad and expansive definition of relevance, informing the research assistants that they should think of the legal resources they found as being directly on point, possibly helpful, probably not relevant, or not at all relevant. As Stuart Sutton puts it, “[s]tated simply, a relevant case is one that plays some cognitive role in the structuring of a legal argument or the framing of legal advice.”45

43. This was less than successful. The research assistants tended to see the coding as primary, and their comments about the research process itself were brief and somewhat meta; the details of their thinking never made it into the narrative. See Appendix D, available at https://scholar.law.colorado.edu/research-data/14/, for a summary of the narrative comments. Having a human interlocutor watching the research process and prompting reflection is one way to solve the problem, but the time and cost involved in doing that were prohibitive.
¶23 When lawyers learn about an area of law and focus on specific facts for a specific research problem, they construct a matrix in their minds of resources where the facts are similar or not, the law is similar or not, and the outliers. 46 For experts, that matrix persists, and new facts or new rules and norms can be put into that matrix easily, for a quick analysis of the state of the law on a particular topic. 47 After learning about the mental model framework for determining relevancy, the research assistants were told to code legal resources in their result sets as follows:

1 = most relevant—would definitely go into my research pile

2 = probably relevant—would go in my secondary research pile because it might turn out to be helpful after further thinking or by analogy

3 = probably not relevant—can’t think of any way this might relate to my specific research problem

4 = not at all relevant—what is this case about per stirpes inheritance doing in the results of my research about the SEC?

¶24 The research assistants were asked to determine whether a specific resource would help define the contours of the legal issue. This type of research is “creative problem solving under conditions of uncertainty and complexity.” 48 The uncertainty and complexity exist in the indeterminacy of the law, in both its language and its application. 49 Since machine learning bypasses analogic reasoning in favor of statistical probability, 50 when we deploy searches that rely on machine learning in the legal corpus, the relevance of the results is not always optimal. 51

**Hunting for a Solution**

¶25 The aim of the research process was to locate enough relevant resources to reach a legal conclusion about each problem. There is not always a definite answer to a legal problem; the goal is to locate and analyze the relevant law and be able to make a reasoned response to the question being investigated. 52 There were 12 searches, each

46. Id.
47. Paul Callister, Thinking Like a Research Expert: Schemata for Teaching Complex Problem-Solving Skills, 28 LEGAL REFERENCE SERVS. Q. 31, 48 (2009); Sutton, supra note 45, at 196.
48. See, e.g., Karl Okamoto, Teaching Transactional Lawyering, 1 DREXEL L. REV. 69, 83 (2009) (“The essence of lawyering is ‘creative problem solving’ under conditions of uncertainty and complexity. This conception of lawyering as problem solving has become commonplace.”).
49. See generally David Lanius, Strategic Indeterminacy in the Law 2 (2019) (“And, most importantly, indeterminacy is ubiquitous in the law—even despite the principles of the rule of law and the common perception that the ‘fluidity’ of legal language is a curse.”).
50. Surden, supra note 4, at 93.
52. For ease of communication, we refer to problems being “solved,” even if the conclusion of the research process was more nuanced.
performed in 4 databases. For each of these 48 searches, the researchers chose to start in secondary sources. The ease or difficulty of finding relevant secondary sources was a theme in the researchers’ narratives. Failure to locate good secondary sources was frustrating for researchers. In two instances, the research assistant could not find specific resources within the platform that were needed to complete the research.²⁶

²⁶ Without support from secondary sources, the researchers were not comfortable with their conclusions or were unable to come to a legal conclusion; in this case, they coded the problems as “not solved.” In Bloomberg Law, the research assistants identified lack of secondary resources as an issue for Problems 2, 5, 8, 9, and 10. Problems 8, 10, and 11 were coded as “not solved.” In Fastcase, the researchers identified lack of secondary sources as an issue for Problems 4, 8, 11, and 12; Problems 4 and 8 were coded as “not solved.” In Lexis Advance, lack of state-specific resources was an issue for Problem 11. Problem 4 was coded as “not solved.” In Westlaw, Problem 12 was coded as “not solved.” (Table 1 summarizes these results.) Several researchers commented on the need for terms and connectors searching where there were not relevant secondary sources.

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Table 1. Solved—Lack of Secondary Sources—Not Solved

Once the problems were coded and the narratives reviewed, we analyzed the coding to determine the nature of any statistical correlations in the data.

53. When no secondary sources were found, two researchers did not code the failed search as the first entry point and the next search strategy as the second entry point. Those two searches were in Problem 5, Bloomberg Law, and Problem 12, Fastcase.

54. In two instances, resolution of the legal problem was not complete because the platform was missing specific materials necessary to complete the research. These two instances were in Fastcase, Problem 2 (IBLA decisions not in database), and Problem 9 (DOE regulations not in database). However, within the resources found for those two problems, the missing information was identified. The agency decisions and regulations were simple to locate on agency websites. Because all the information needed to resolve the legal issue was located within the database, we considered the problems solved.
Gathering Knowledge—Unpacking the Coding

27 To determine statistically whether there are any relationships in the data, we considered each attempt at solving a problem to be one experimental unit. The problem number, research platform, and order in which the research platforms were attempted were predetermined. The research assistants recorded the total time to reach a legal conclusion, the total number of access points needed to come to a legal conclusion, and the research details within each access point. After removing the instances where the problem was not solved, we are left with 40 problem attempts. We evaluated the effect of these categorical variables on the time to reach a legal conclusion, as well as the total number of access points used to complete the research using Analysis of Variance (ANOVA) models, which determine whether there is a statistically significant difference in a response variable in some set of categories. We considered these statistical questions:

- Does the research platform affect the time to complete a particular problem?
- Does the research platform affect the total number of access points used to complete a particular problem?
- Research assistants were asked to research each problem four times: once using each research platform. Regardless of the order of the platforms, does the number of previous attempts affect the total time to complete the problem?
- Does the first type of access point used to research a problem affect the time to complete a particular problem?
- Does the first type of access point used to research a problem affect the total number of access points used to complete a particular problem?

28 We considered the research platforms and their effects on the time to complete. The null hypothesis was that there is no significant difference in time to complete a problem in each research platform. Figure 4 shows the boxplot of the platform versus the time to complete in each platform. In the “time to complete” model, we obtain an F statistic of 0.14 for a p-value of 0.935. This means that, on average, there was no significant difference in the amount of time it took to research a problem in each of the research platforms.

56. Although the coding generated data about the research process within each access point, the sample size was not large enough to make any comparisons within access points. Data not included in appendices F and G are on file with the author.
Figure 4. Time to Complete by Platform

¶29 We then looked at each of the research platforms and their effects on the total number of access points used to reach a legal conclusion. Figure 5 shows the boxplot of research platform versus the total number of access points used. In the “total number of access points used” model, we obtain an F statistic of 1.015 for a p-value of 0.397. We fail to find statistical evidence that platform type statistically affects the total number of access points used among legal platforms.
30 The experiment was designed so that one research assistant solved the same problem in each of the four databases, and the order of the databases for each problem was randomly generated. We considered the possibility that a research assistant might be able to use the knowledge from previous attempts at coming to a legal conclusion on a given platform to come to the same legal conclusion more quickly on subsequent attempts on other platforms. In figure 6, we have the boxplot of these variables. We obtain an F statistic of 0.269 for a p-value of 0.847. Knowledge of the resolution of the legal problem did not really improve the amount of time it took to complete the same research in the second, third, or fourth legal research platform. Only Problem 9 was an outlier.
We also looked at the first access point type to see whether this affected either time to complete or the total number of access points used to solve. We categorized these first access points as:

“File Tree” (11 problem attempts);

“File Tree Search” (23 problem attempts); and

“Main Search Bar” (6 problem attempts).

For a File Tree access point, the research assistant navigated through the file structure of the research platform to the table of contents of a specific secondary source and opened relevant sections. For a File Tree Search, the research assistant navigated through the file structure to a potentially relevant database (such as “secondary sources” generally or with a subject-specific limitation) and then performed a terms and connectors or keyword search to locate potentially relevant material. For a Main Search Bar access point, the research assistant put a terms and connectors or keyword search in the main search bar and then used filters to limit the results to potentially relevant material.

In figure 7, we have side-by-side boxplots for first access point type versus time to complete, and first access point type versus the total number of access points used. In the “time to complete” model, we obtain an F statistic of 0.108 for a p-value of 0.898. The difference in means in the “time to complete by first access point” model is not statistically significant.
¶33 In the “access points to complete by first access point type” model, we obtain an F statistic of 3.228 for a p-value of 0.051, and in this model the p-value is just barely above the traditional threshold for statistical significance. The interpretation of this p-value is that we would expect this much of a difference in sample means for these sample sizes only 5.1 percent of the time if it were the case that queries beginning at these different types of access points were solved on average in the same amount of the total number of access points used. The 0.05 threshold is somewhat arbitrary, but this is much closer to a significant result than any of the other tests conducted in this investigation. A repeat of this study may provide more evidence for or against a relationship between these variables.

Figure 7. Time to Complete by First Access Point and Access Points to Complete by First Access Point Type

¶34 These results are from a small sample, and they could perhaps be strengthened in a future study with more research assistants and with replication. In particular, a larger sample size might help mitigate the effects of outliers, and a more equal balance of first access point types might resolve the indeterminate conclusion of our ANOVA.57

Gathering a Few Thoughts on Legal Research Pedagogy and User Interface Design

¶35 The study is based on investigating 12 real-world legal research problems, and the importance of correlations, or of the lack of correlations, is necessarily limited by the size of the study. The study suggests several important points that have implications for both legal research pedagogy and platform design. The study throws some doubt on the common perception of expert researchers that novice researchers just find a few cases and call their research complete.58 The research assistants were concerned about

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57. See Appendix H, infra, for an alternative way of viewing this statistical information.
58. But see Scott Moss, Bad Briefs, Bad Law, Bad Markets: Documenting the Poor Quality of Plaintiffs’ Briefs, Its Impact on the Law, and the Market Failure It Reflects, 63 EMORY L.J. 59 (2013) (focusing on poor
their own conclusions when they could not find relevant secondary sources to confirm their research conclusions.\textsuperscript{59} This certainly supports the importance of teaching students the value of secondary sources. The ease or difficulty of locating secondary sources is something legal research platform providers should further consider in interface design. If, because of licensing agreements or other market forces, there simply are no relevant subject-specific secondary sources, embedding help in accessing more general collections of secondary sources, such as law reviews or encyclopedias, would be helpful to novice researchers. There are so many databases of resources in the platforms investigated in this study that it is easy for researchers to get lost. Making sure that researchers are aware of options is a helpful step.

\textsuperscript{36} There are existing examples of help embedded in legal research platforms, such as the Must Include function in Lexis+ that highlights terms that are included in a search but missing from the results set, as figure 8 shows.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure8.png}
\caption{Must Include (Lexis+)}\textsuperscript{60}
\end{figure}

This kind of embedded help is a form of making algorithmic choices transparent. Must Include is the same algorithmic function as Search Within Results, but it expressly alerts researchers of the fact that terms are missing.\textsuperscript{61}

writing in a subset of employment law briefs, but implicating poor research in the process).

\textsuperscript{59} Table 1, supra, at 17.

\textsuperscript{60} Screen reprinted from Lexis+, accessed Dec. 16, 2020.

\textsuperscript{61} When I asked Lexis+ why early results in a result set did not have all the terms in my keyword search, a Lexis+ engineer answered that “there is a lot more that goes into ranking relevance than just the terms that are included. [He said] that terms are of course a big part of it, but we also look to things like frequency of the terms that do appear, how often the case is cited by others, times that the case has been engaged by others, etc.” E-mail from Lynn Pinnecamp, Sr. Acct. Exec., LexisNexis Legal & Professional, to Susan Nevelow Mart (July 20, 2020, 1:33 PM) (on file with the author).
¶37 Fastcase has made the filtering process transparent with guided pop-ups highlighting the navigation on the results page, as figure 9 shows.

![Figure 9. Fastcase](image)

The More button takes the researcher to the next in a series of pop-ups highlighting what is available from this results page.

¶38 Westlaw has highlighted the ability to limit case results by procedural posture with a pop-up, as shown in figure 10.

![Figure 10. Westlaw](image)

¶39 In Bloomberg Law, a pop-up highlights help with the difficult task of how to retrieve a docket by docket number, as figure 11 shows.

![Figure 11. Bloomberg Law](image)

¶40 Legal research platform providers need to continue adding embedded help that highlights next steps in the research process, both for algorithmic transparency and for direction to related and available resources within the platform. Reducing interference

caused by the complexity of the user interface design is a form of algorithmic accountability.

¶41 For legal research pedagogy, the study confirms that research courses should include the metacognitive skills necessary to approach new platforms. In my own courses, I teach students to take the time to reflect on the interface of the platform they are approaching for the first time. I suggest they ask questions like these:

- What resources or filtering elements is the platform provider highlighting in the F-shaped pattern on the main page? On internal pages?
- Are those the resources or filtering elements that the student is looking for?
- If not, what are the next steps?

This is another pedagogical example emphasizing that thinking is an important first step in formulating a research plan. To make sure that students internalize the process, so that they have the scaffolding necessary to apply this knowledge to new interfaces, this year I added a mapping exercise comparing different interfaces. A sample mapping exercise is available in appendix B. Although attorneys in law firms may balk at exercises, highlighting the mapping necessary to find typical resources for a practice group when offering training on a new interface may help cement the correct pathways. In subject-specific areas, legal research platform providers could consider adding specific pop-ups for training for typical search patterns within that subject area.

Conclusion

¶42 Communication with and within massive online legal research platforms is a complex matter, as there is always communicative interference between the humans who design the systems and the humans who use the systems. The study raises some interesting issues about how we communicate with and interrogate research universes.

¶43 The study highlights some of the difficulties novice researchers face when using a research interface for the first time. A novice might not be a law student or new associate. A novice could be anyone entering a new online research platform for the first time. As the platforms increase the number of databases and the number of documents in their systems, sophisticated, point-of-need navigation help becomes critical. Although each of the legal research platforms incorporates embedded help in its user interfaces, the study suggests that still more help is needed. For teaching legal research, the study suggests that it is important to teach law students to be thoughtful database navigators.

¶44 The study confirms that human expertise is still important to researchers. The researchers who did not locate relevant secondary sources were uneasy about the

66. Callister, supra note 39; Mart et al., supra note 3.
The comprehensiveness of their analysis. Simply researching primary law without guidance has never been the best way to grasp the complexities of a subject-specific legal domain. The legal profession has a rich body of subject-specific treatises, practice guides, and articles, drafted by experts. Experienced lawyers have complex mental models of a subject area, based on the toolkits they have assembled from their chosen secondary sources, relevant primary law, and current awareness tools. The sense-making of experts is not definitive, as the boundaries of the law are always being pushed in new directions. However, the sense-making of experts is grounding and gives researchers a solid basis for taking steps in new directions or answering novel legal issues. The study offers some support to legal research instructors, who have long emphasized the importance of secondary sources: the lessons have been heard.

### Appendix A: Comparison of Search Results

<table>
<thead>
<tr>
<th>Bloomberg</th>
<th>#</th>
<th>Fastcase</th>
<th>#</th>
<th>LexisAdvance</th>
<th>#</th>
<th>Westlaw</th>
<th>#</th>
</tr>
</thead>
</table>

¶45 This table shows the results of putting the same search in each of the four legal research platforms and limiting the search to the same pool of reported cases in the Northern District of California. White cases are unique and are not relevant. Between 20 and 40 percent of cases in the top 10 results are not relevant and are unique. The grey case is not relevant and occurs in two platforms. Light blue cases are relevant and unique. Between 10 and 30 percent of the cases are relevant and unique. Nearly 50 percent of the cases in the top 10 results are unique to each set of returned documents. Yellow cases are relevant and occur in two and, in one instance, three platforms. That means that under half of the cases turn up in more than one platform. Across all four platforms, the average for relevant results is 60 percent. The table illustrates that there is still variation in the uniqueness of cases, and the algorithms still return results that are not relevant in the top 10 results.

68. The searches were performed on May 15, 2020; the source case that generated the language of the search is Camara v. Municipal Court of City & County of San Francisco, 387 U.S. 523 (1967). The search was: administrative search 4th amendment warrant requirement. See Mart, supra note 25, app. B, https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1006&context=research-data [https://perma.cc/32XU-P4FT].

69. Relevance here is broadly defined as a case that helps construct a mental model of the contours of an area of the law. See Sutton, supra note 45, at 187.
Appendix B: Sample Research Assignment

Metacognition—Mapping the Research Universe by Comparisons

I use the following exercises for a class on basic administrative law resources. These types of exercises can also be used to compare massive legal resource platforms, to the same ends. Students find illuminating the task of listing the steps in limiting results in a case database search to a specific jurisdiction and type of case; there are so many pathways! Try asking students to limit the results of a search you give them to Southern District of New York reported cases, and then have students map the process in a few different research platforms. Eye opening!

First Comparison: Locating the Unified Agenda

In small groups or breakout rooms: You are looking for any upcoming meetings on the Disposal of Coal Combustion Residuals from Electric Utilities; Legacy Surface Impoundments (40 C.F.R. 257). [Of course, you should update this with something from a current Unified Agenda.]

Each of you choose one of the following websites to investigate:
- reginfo.gov
- regulations.gov
- govinfo.gov

Answer these questions, and be ready to share your results with the class.

- What was the first tab or link you clicked on? Where was it on the landing page?
- How many clicks did it take you to find the information you needed?
- How long did it take you to find the relevant information?
- On a scale of 1 to 5, with 5 being the easiest, how easy would you say it was to find the meeting information?

In class, poll the students: which was the easiest resource?
Then have a student from each breakout room share their screen, and follow the mapping on the website to their result, emphasizing the ease or difficulty of the interface.

Second Comparison: Finding a Proposed Regulation

You are looking for a proposed regulation titled “Strengthening the H-1B Nonimmigrant Visa Classification Program.” [Update as needed.]

Each of you choose one of the following websites to investigate:
- reginfo.gov
- regulations.gov
- federalregister.gov
- govinfo.gov
Answer these questions, and be ready to share your results with the class.

- What was the first tab or link you clicked on? Where was it on the landing page?
- How many clicks did it take you to find the information you needed?
- How long did it take you to find the relevant information?
- On a scale of 1 to 5, with 5 being the easiest, how easy would you say it was to find the proposed regulation?

Third Comparison: Finding a Final Rule

You are looking for the final rule titled “Exemption of certain cannabis plant material and products made from them, that contain tetrahydrocannabinols.” [Update as needed.]

Each of you choose one of the following websites to investigate:
- federalregister.gov
- govinfo.gov
- LII
- Agency websites

Answer these questions, and be ready to share your results with the class.

- What was the first tab or link you clicked on? Where was it on the landing page?
- How many clicks did it take you to find the information you needed?
- How long did it take you to find the relevant information?
- On a scale of 1 to 5, with 5 being the easiest, how easy would you say it was to find the final rule?

The polls emphasize that the same resource is not necessarily the best one for every search and answer the student complaint about so many resources being available that they don’t know how to choose one. The screen share illustrates the importance of user interface in the process of locating information and creates an awareness of what to look for when navigating new resources.
## Appendix H: An Alternate View of the Statistical Data

<table>
<thead>
<tr>
<th>Experiment Description</th>
<th>Total # of completed problems</th>
<th>P value for anova</th>
<th>File Tree Search</th>
<th>File Tree Search</th>
<th>Main Search Bar</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time to complete (hrs) by First access point type</td>
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<td>0.898</td>
<td>3.18</td>
<td>5.00</td>
<td>3.33</td>
</tr>
<tr>
<td>Access Points to complete by First access point type</td>
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<td>0.051</td>
<td>1.43</td>
<td>1.61</td>
<td>1.49</td>
</tr>
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</table>

<table>
<thead>
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<th>Experiment Description</th>
<th>Total # of completed problems</th>
<th>P value for anova</th>
<th>First database mean</th>
<th>Second database mean</th>
<th>Third database mean</th>
<th>Fourth database mean</th>
</tr>
</thead>
<tbody>
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<td>4.9</td>
<td>3.89</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Experiment Description</th>
<th>Total # of completed problems</th>
<th>P value for anova</th>
<th>Westlaw mean</th>
<th>Lexis mean</th>
<th>Bloomberg mean</th>
<th>Fastcase mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time to complete (hrs) by Platform</td>
<td>40</td>
<td>0.935</td>
<td>1.48</td>
<td>1.72</td>
<td>1.39</td>
<td>1.58</td>
</tr>
<tr>
<td>Access Points to complete by Platform</td>
<td>40</td>
<td>0.397</td>
<td>4.82</td>
<td>4.45</td>
<td>4.44</td>
<td>3.11</td>
</tr>
</tbody>
</table>

70. Appendixes C, D, E, F, and G are available online; see notes 37, 43, 44, and 55, supra.
A History of the West Nutshells*

Robert M. Jarvis**

No single source provides a detailed history of the West Nutshell Series. This is rather surprising, given that the books are routinely relied on by both law students and lawyers and have been cited in multiple court opinions. Accordingly, this article provides the first detailed look at the series' birth, evolution, and present status.

Introduction

¶1 There is no single source to which one can turn for a detailed history of the West Nutshell Series.¹ This is rather surprising, given that nutshells—the compact books on

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In the interest of full disclosure, this article was not prepared at the behest of either the Thomson-Reuters Corporation or West Academic Publishing. The latter's assistance in verifying certain factual matters regarding its operations is acknowledged with appreciation. The author also wishes to thank Professor Kent C. Olson (University of Virginia School of Law).

1. The best one can come up with is the brief summary that appears in Thomas A. Woxland & Patti J. Ogden, Landmarks in American Legal Publishing: An Exhibit Catalog 81–82 (1990) ("Some eighty years after the introduction of the hornbook, West again came to the aid of law students [with the] 'Nutshell Series,' [which was] launched in 1964 with Jurisdiction in a Nutshell by Albert Ehrenzweig and David Louisell, both noted authors and professors of law at Berkeley . . . . If . . . the measure of students' approval is sales, then the series has been a huge success, with over one hundred titles now published.")

In contrast, a great deal has been written about the West company. See, e.g., William W. Marvin,
various subjects that, although marketed as law school study aids, often serve as a starting point for research by even experienced lawyers—are ubiquitous. Accordingly, this article seeks to fill the gap.


2. In the 2007 movie American Gangster (Universal Pictures), for example, a copy of Legal Research in a Nutshell can be seen sitting on the desk of Detective Richard M. “Richie” Roberts (Russell Crowe) as he studies for the July 1970 New Jersey bar exam. (The scene appears 23 minutes into the movie; at 58 minutes into the movie, Roberts receives a letter dated August 12, 1970, advising him that he has passed the exam.) To avoid a possible claim of copyright infringement, the filmmakers slightly altered the cover. See Email from Professor Kent C. Olson, University of Virginia School of Law, to the author, Apr. 5, 2020, 11:45 AM (copy on file with the author) (explaining that “the movie’s use of white ‘in a nutshell’ letters inside a darker nutshell inside a white square box [does not] match any of the [book’s actual] editions. . . . ”).

In a 2011 novel, the following dialogue appears:

“Necessity is a defense to unlawful entry,” Jaycee says with a law school professor’s assurance.
“What?”
“In New York, an action taken out of necessity to protect life is a defense to the crime of unlawful entry, including criminal trespass,” Jaycee recites confidently.
“How do you know that?”
She digs into her backpack, takes out a copy of New York Criminal Law in a Nutshell, and drops it onto the table between them.

I know from David’s law school days that the Nutshell books—an endless series covering virtually every law school subject—are a distillation of the so-called black letter law regarding the titled subject. Law school students use the books to prepare for finals, which cover half a year, sometimes even a full year, of material in one grueling four-hour exam.

“Page one sixty-seven,” Jaycee says.

“You can’t plan an entire defense around one sentence in a Nutshell. You have no idea what you’re talking about.”

Neil Abramson, Unsaid 192–93 (2011). (West does not have a nutshell called New York Criminal Law. In fact, for many years it shied away from state-specific nutshells, and its only one was William R. Slomanson, California Civil Procedure in a Nutshell (1992; 5th ed. 2014). This policy now is being relaxed, and just recently the company published Robert M. Jarvis, Florida Constitutional Law in a Nutshell (2020)).

In a 2013 short story, a law professor is asked to prepare a new will for his aging father. Because his specialty is professional responsibility, he is uncertain how to proceed. By the end of the story, however, he has obtained a copy of Wills and Trusts in a Nutshell and is witnessed reading it while struggling with his ethics:

Ron sat on his couch with the Nutshell, and began research that, if he followed his father’s wishes, would result in his own disinheritance. Ron couldn’t help thinking, however, that his father would never read what was placed in front of him, and even if he did, Arthur wouldn’t understand it. Arthur would sign anything Ron told him to sign. That would involve active misrepresentation, however. But, the old will would remain valid until a new will was written. Ron could delay. He spent the rest of his day skimming the Nutshell, and involuntarily thinking through various hypotheticals to leave himself half, as well as the favorable tax treatment of a stepped-up basis in his father’s property.


3. For an article that traces the history of legal nutshells, but not West’s legal nutshells, see Alan
The Meaning of “In a Nutshell”

¶2 To put something “in a nutshell” is to state it “in the fewest possible words or ways.” It generally is agreed that the expression comes from the Roman philosopher Gaius Plinius Secundus, better known as Pliny the Elder (AD 23–79). In his 37-volume encyclopedia _Naturalis Historia_ (Natural History), Pliny noted: “Instances of acuteness of sight are to be found stated, which, indeed, exceed all belief. Cicero informs us . . . that the Iliad of Homer was written on a piece of parchment so small as to be enclosed in a nut-shell.”

¶3 In act 2, scene 2 of Shakespeare’s _Hamlet_ (1601), Hamlet laments: “O God, I could be bounded in a nutshell and count myself a king of infinite space—were it not that I have bad dreams.”

¶4 In John Fletcher’s 1640 play _The Night Walker, or The Little Thief_, a comedy about an arranged marriage, the thieving Tom Lurcher (who is teaching his trade to a boy named Snap, the title’s little thief) opines that a book about virtuous women would be a short one:

> A little book, very little book,
> Of good and godly women, a very little one,
> So little you may put it in a nutshell!

And in another reference, an 1803 review of the play _The Hero of the North_, a London theater critic reported: “The historical part of the plot every one [sic] knows. It lays in a nutshell.”

¶5 Judicial use of the phrase dates from 1779. In _Kempe v. Spence_, a British appellate decision, Chief Justice William de Grey summarized the parties’ positions by writing: “Walker, for the defendant, said, he came prepared to argue a question on the poor

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9. _Theatre, Drury-Lane_, Morn. Post (London), Feb. 21, 1803, at 3 (explaining that the play is about Gustav Vasa, who in 1521 led Sweden’s successful revolt against Danish rule).

laws, and did not expect to hear the case branched out into such variety of curious learning. That the merits lay in a nutshell.”

¶6 In the United States, the first such reference appeared in 1835. In *Hibshman v. Dulleban,* an action against an executor, Chief Justice John B. Gibson of the Pennsylvania Supreme Court remarked: “The law of the case, with its distinctions, has been compressed into the dimensions of a nutshell, by Chief Justice De Grey, in the Duchess of Kingston’s Case, 11 St. Tr. 261. . . .”

¶7 Lawyers now use the term almost without thinking. In a 2019 episode of the hit sitcom *Mom,* for example, law student Christy Plunkett (Anna Faris) has the following exchange with one of the attorneys in the law firm where she is clerking:

CHRISTY: Oh. Hey, hey, hey, Russell, do you have a minute?

RUSSELL: No.

CHRISTY: I was just reading through the brief.

RUSSELL: Well, your job is to copy it, not to read it.

CHRISTY: Yes, and they are almost done. But, but I was just wondering why you didn’t cite *Washington v. Shafer.*

RUSSELL: (sighs) That’s because that case is, um . . . What’s that case?

CHRISTY: Well, in a nutshell, the judge ruled prior criminal acts could be admissible if the similarity to the current case provides the jury with a clearer understanding of the evidence before them.

The First West Nutshell

¶8 The first West nutshell, called *Jurisdiction in a Nutshell—State and Federal,* was written by Professors Albert A. Ehrenzweig and David W. Louisell and debuted on April

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11. *Id.* at 734 (italics in original).
12. 4 Watts 183, 1835 WL 2809 (Pa. 1835).
13. *Id.* at 190, 1835 WL 2809, at *8.
15, 1964.15 True to its title, it was short—a mere 223 pages—and cost just $2.00.16 In a nod to its intended audience, the dedication read: “TO OUR STUDENTS[:]
Who, to
Face the Future, must Master the Present and the Past.”17

¶9 Ehrenzweig and Louisell were faculty members at the University of California—Berkeley: Ehrenzweig since 194818 and Louisell since 1956.19 While Ehrenzweig was an expert in conflicts of laws and jurisprudence,20 Louisell was an expert in civil procedure and evidence.21 In 1962, West had published Ehrenzweig’s 824-page treatise on the law of conflicts,22 which had earned excellent reviews.23 As such, the company was eager to have another manuscript from him.24

¶10 By 1964, both men held named chairs at Berkeley: Ehrenzweig was the Walter Perry Johnson Professor of Law25 and Louisell had succeeded Dean William L. Prosser as the Elizabeth Josselyn Boalt Professor of Law.26 Nevertheless, Ehrenzweig and Louisell had not worked together as coauthors,27 and it is not known how they came to


17. Ehrenzweig & Louisell, supra note 15, at iii (capitalization as per the original). Although nutshell dedications now run a wide gamut (e.g., colleagues, family, friends, mentors, and legal trailblazers), students remain a popular choice.
20. See Riesenfeld, supra note 18.
21. See Fleming, supra note 19.
23. Duke University law professor Brainerd Currie, for example, described the text as “the most learned and original treatise on the conflict of laws in English since Beale’s.” See Brainerd Currie, Book Review, 1964 Duke L.J. 424, 424 (reviewing Albert A. Ehrenzweig, A Treatise on the Conflict of Laws (1962)).
25. See Riesenfeld, supra note 18.
26. See Fleming, supra note 19.
27. See A Bibliography: The Published Works of Albert A. Ehrenzweig, 54 Calif. L. Rev. 1638 (1966),
collaborate on *Jurisdiction in a Nutshell*. Clearly, however, the project was a mere trifle to them. In his heartfelt tribute to Ehrenzweig, for example, Louisell made clear how close they were—both professionally and socially—but said nothing about their only joint work.28

¶11 Although some law professors readily welcomed the book,29 Ehrenzweig and Louisell worried that others would take a dimmer view. Thus, they included a defense of sorts in the book’s preface:

> We may then fairly be asked: Why a supplemental text? Is not any attempt at simplification akin to heresy, something like giving students shotguns with which to shoot sitting ducks—even drugging the ducks beforehand? For justification we plead the intricacy of the subject, the shortness of life and a possible mellowing—some would say softening—of our judgment. Many of us may now be prepared to believe that the diligent student who has ground his way through the cases in perplexity and wonder, perhaps has earned the right to know something of the perplexity and wonder of those who have gone before him—and what they have made of it all. As for the less than diligent student—neither this nor any other text will buoy him if he has not learned from the cases how to swim in the current.30

That Ehrenzweig and Louisell were breaking new ground in legal education can be seen from the book review penned by Boston College Law School Assistant Dean Francis J. Larkin of William L. Raby’s *The Income Tax and Business Decisions*.31 Although Raby’s book was written to help undergraduate business students understand the tax code, Larkin suggested that it would “be profitable for law students to read[,] either as a supplement to, or in conjunction with, a case book.”32 To buttress his argument, Larkin pointed to *Jurisdiction in a Nutshell* as “an indication that the use of this type of book in such a capacity would not be totally outside the mainstream of current academic legal thinking.”33

¶12 A different reviewer, writing in the *International and Comparative Law Quarterly*—an odd placement for a book review about a book on U.S. jurisdiction—took an entirely different tack and recommended *Jurisdiction in a Nutshell* to foreign lawyers who wanted to keep current on American law:


28. See David W. Louisell, [No title], 62 CALIF. L. REV. 1074 (1974). (This piece was one of the five memorials published by the California Law Review after Ehrenzweig’s death. *See supra* note 18.).

29. In November 1964, for example, Professor James W. Moore of Yale Law School, the country’s leading authority on federal court practice, cited it in a lengthy article about diversity jurisdiction. *See* James William Moore & Donald T. Weckstein, *Diversity Jurisdiction: Past, Present, and Future*, 43 TEX. L. REV. 1, 30 n.164 (1964).

30. EHRENZWEIG & LOUISELL, *supra* note 15, at v–vi. It has been said that this “statement serves as a justification for the whole concept of the Nutshell series.” *See* WOXLAND & OGDEN, *supra* note 1, at 81.


32. *Id.* at 143.

33. *Id.* at 143 n.2.
The authors of this little volume—whose title may be somewhat misleading as to the content and authority of their work—are well known. It has long been recognised that jurisdiction—in the broadest sense of that term—is at the heart of the problems of conflicts of law. Consequently, the English lawyer in particular will find this work of great value to provide him with a carefully chosen selection of authority and a guide to the trends in the American state and federal courts on the rules of conflicts of laws. It provides brief but sure-footed insights into the role of the United States Constitution (full faith and credit and inter-state commerce clause machinery for harmonisation), federal jurisdiction (the particular problems of diversity jurisdiction), and on such current developments as the new expanding reach of the principle of “presence,” “consent” and “doing business” for jurisdictional purposes as applied by American courts to corporations or other forms of business enterprise. The lawyer who is willing to read the cases referred to in this book along with the commentary which the book provides will be richly rewarded with a minimum of wasted effort in securing his bearings in the American system of conflicts of laws, and in achieving a good awareness of its possibilities and limitations.34

¶13 In advertising the book, it is obvious that West had little idea what to do with it. A large display ad on the outside back cover of the October 1964 issue of the Student Lawyer Journal, for example, proclaimed, “West's Famous Hornbook Series,” and then listed 28 titles, which were described as “Indispensable For—Class review; Collateral reading; Reference; Bar examination review; Quick orientation in practice.”35 Below these entries, under the bland headline, “Other West Law School Publications,” and with no accompanying explanation of any sort, was a hodgepodge of 11 titles, including “Black's Law Dictionary,” “Corbin on Contracts, One Vol. Stud. Ed.,” and “Ehrenzweig and Louisell's Jurisdiction in a Nutshell.”36

The Second West Nutshell

¶14 It is not known how the word “nutshell” came to be included in the title of Ehrenzweig and Louisell’s book.37 Two possibilities, however, hint at the answer.

35. 10 Stud. Law. J. (Oct. 1964) (outside back cover display ad) (capitalization as per the original).
36. Id.
37. Conversely, it is obvious that the title's awkward phrasing was Louisell's doing. Rather than being called State and Federal Jurisdiction in a Nutshell, as one would expect, the book was called Jurisdiction in a Nutshell—State and Federal. See supra text accompanying note 15. In 1962, Foundation Press (West's sister company) had published the first edition of Louisell's civil procedure casebook, which had the same awkward phrasing. See David W. Louisell & Geoffrey C. Hazard, Jr., Pleading and Procedure—State and Federal (1962).
¶15 In 1921, the venerable British publisher Sweet & Maxwell38 released Roman Law in a Nutshell: With a Selection of Questions Set at Bar Examinations,39 a 48-page book written by a London barrister named Marston de la Paz Garsia.40 Costing four shillings—the equivalent today of about $741—the book immediately proved popular.42 As a result, Garsia began to churn out nutshells on a host of subjects.43 By the time he died


39. See Marston Garsia, Roman Law in a Nutshell: With a Selection of Questions Set at Bar Examinations (1921). In announcing the book, the Law Times advised its readers: Mr. Marston Garsia, who has had much tutorial experience, has prepared a selection of questions set at Bar examinations and published them at the end of his capital résumé Roman Law in a Nutshell (Sweet and Maxwell Limited). It gives the student a substantial basis upon which he can subsequently build a more detailed knowledge with the help of the standard works[.]

Law Library, 151 Law Times (London) 419 (June 18, 1921).

40. Garsia (often incorrectly identified as “Garcia” in news reports) was born on July 17, 1891, in Weston-super-Mare (a seaside town in southwest England) and died on July 18, 1972, in London, one day after his 81st birthday. Garsia’s father was a wealthy doctor named Willoughby Marston de la Paz Garsia (1834–1909), who was from Kingston, Jamaica, while his mother was the much younger Minna Frances (née Williams) Garsia (1860–1935), who was born in Ahmadabad, India, where her father was serving as a lieutenant colonel in the British army. The pair married on May 24, 1884, and had two sons and two daughters: Marston (the oldest), Willoughby (1893–1968), Christina (1894–1964), and Freda (1900–1960). For a detailed history of the family, see Gavin John McWhirter, Willoughby Marston Garsia, The Genealogy of the McWhirter Family, Originally of South Ayrshire, Scotland, United Kingdom, and Associated Branches Including the Willis-Fleming Family, http://www.mcwhirterfamily.co.uk/?page_id=137 [https://perma.cc/ZL9H-TZ4C].

This same website advises that Garsia graduated from Oxford with a B.A. in 1912 and, after passing the bar exam, became a member of the Middle Temple in 1915. It also explains that as a child, Garsia had hoped to become an actor due to his ability to memorize scripts. In 1920, Garsia did manage to land the part of Fellows (the butler) in John Galsworthy’s play The Skin Game, which in 1921 was turned into a movie (with Garsia again playing Fellows). See The Skin Game, IMDb, https://www.imdb.com/title/tt0188202/?ref_=nm_ov_bio_lk1 [https://perma.cc/8LMI-3J3N] (explaining that the story is about a “rich woman [who] thwarts a pottery manufacturer’s plans by exposing his daughter-in-law’s past”).

41. This figure is derived by using the calculators at https://www.nationalarchives.gov.uk/currency-converter/#currency-result [https://perma.cc/L2AZ-EPHQ] (converting shillings to pounds) and https://www.xe.com/currencyconverter/convert/?Amount=1&From=GBP&To=USD [https://perma.cc/8GH8-YXPU] (converting pounds to dollars).

42. Many observers, however, viewed Garsia’s nutshells with a certain amount of suspicion: “The value to students of Mr. Marston Garsia’s ‘In a Nutshell’ series is not to be gainsaid. The ‘cram-book’ is always regarded with disfavour. It is, nevertheless, a very present aid in times of examination. And at such times what student, after all, is scrupulous over methods?” Books and Publications Received, 60 L.J. 843 (Oct. 10, 1925).

43. In all, Garsia produced 10 more nutshells: constitutional law (1922), criminal law (1922), admiralty (1923), real property (1923), employment law (1925), civil procedure (1927), wills (1927), bankruptcy
in 1972, Garsia’s nutshells had become so famous that the *Times of London* began his obituary by saying: “The name of Marston Garsia . . . will recall to some members of the Bar their student days and their recourse to his succession of ‘Nutshells’ which helped them to success in Bar Final examinations.”

¶16 Ehrenzweig, who originally was from Vienna, Austria, had briefly been a law professor at the University of Bristol before immigrating to the United States. As such, it is possible that while he lived in England, he had become acquainted with Garsia’s books and remembered them when the time came to name *Jurisdiction in a Nutshell*. 
That, at least, is what West believes. In a letter dated September 18, 1986, Roger F. Noreen, the vice president of West’s law school division, responded to an inquiry from Arthur Austin, a law professor at Case Western Reserve University, by saying: “We believe that he [Ehrenzweig] came up with the suggested title through his familiarity with succinct legal texts that were published in England and possibly other European countries as ‘Nutshells.’”

¶17 A second possibility is that Ehrenzweig and Louisell were influenced by Professor W. Barton Leach’s 1938 Harvard Law Review article “Perpetuities in a Nutshell.” Leach had joined the Harvard Law School faculty in 1931, and the first paragraph of his 1938 article describes Ehrenzweig and Louisell’s book to a T:

We school teachers have delighted to make a mystery of the Rule against Perpetuities. We love to tell the old, old story of its tangled history; we love to trace its development through English cases which deal with settlements of incredible complexity; we love to point the finger of scorn at the mistakes of courts on both sides of the Atlantic; and most of all we love to spin out our webs of theory on relatively obscure points. The result is a very highly elaborated field of the law—a great advantage to those who know their way around in it, but precious little help to the ordinary practitioner who has had no particular occasion to explore this terrain but who finds himself with a perpetuities problem to handle. Such a one needs a guide book to the law of perpetuities which will enable him to analyze his case and acquire a sound background without unreasonable expenditure of time and effort. This paper seeks to supply that need.

In the years following its publication, Leach’s article spawned a host of imitators, and


47. See W. Barton Leach, Perpetuities in a Nutshell, 51 Harv. L. Rev. 638 (1938).

One month before Leach published his article, John Willis, a law professor at Dalhousie Law School in Halifax, Nova Scotia, published an article titled “Statute Interpretation in a Nutshell.” See John Willis, Statute Interpretation in a Nutshell, 16 Can. B. Rev. 1 (1938). Willis (1907–97) did not explain in his article how he came by his title, and he did not call any of his many subsequent writings a nutshell. See R.C.B. Risk & Michael Taggart, The Published Work of John Willis, 55 U. Tor. L.J. 887 (2005). For a further look at Willis’s life, see In Memoriam: John Willis, 47 U. Tor. L.J. 301 (1997).

48. For a review of Leach’s life (1900–71), see W. Barton Leach, a Law Professor, N.Y. Times, Dec. 17, 1971, at 44 (explaining that Leach became the Story Professor of Law in 1950). See also In Memoriam: W. Barton Leach, 85 Harv. L. Rev. 717 (1972).

49. Leach, supra note 47, at 638 (footnote omitted).


¶18 Regardless of how Ehrenzweig and Louisell came up with the name, in 1965 Ehrenzweig, this time working alone, produced West’s second nutshell: *Conflicts in a Nutshell*, which he dedicated to Chief Justice Roger J. Traynor of the California Supreme Court. This was a much more ambitious work, nearly twice as long (396 pages) and almost twice the price ($3.50). Like its predecessor, however, it still was a one-off. Whereas *Jurisdiction in a Nutshell* had a beige cover, for example, *Conflicts in a Nutshell* had a light blue cover. And as before, it was consigned in West’s advertising to the category of “Other West Law School Publications,” with no explanation of its contents or purpose.

¶19 *Conflicts in a Nutshell* quickly garnered a glowing book review in the *California Law Review* authored by Judge Raymond R. Roberts of the Los Angeles County Superior Court. In it, Roberts marveled at how “Professor Ehrenzweig, in this compact companion to *Jurisdiction in a Nutshell,*” has taken “[a]ll of the[] major theories [of the law of conflicts and] not only condensed [them] into a nutshell, but also into a twelve page summary in the back of the book, condensing the ‘Nutshell in a Nutshell.’”

¶20 At the end of his review, Roberts summed up the book in words remarkably like the ones that would be used by nearly all future reviewers describing later West nutshells:

> The handbook is a happy compilation of theory and rules divided into traditional sections on “Persons,” “Contracts,” “Torts,” and “Property and Succession,” with an introductory discussion of “General Problems.” Leading text writers are cited by easily identifiable abbreviations, and the book has minimal but sufficient citation to other authority. Admittedly designed for students, it is nonetheless an education for everyone less knowledgeable than a professor, for it not only is easy to use, but quickly pinpoints problems that might arise and quite often are ignored by losing practitioners. The only apparent omission is reference to leading law review articles which may

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53. See *id.* at vii (explaining that the book was being dedicated to Traynor “on the occasion of the twenty-fifth anniversary of his tenure [on the court] . . . not only as a token of personal respect and affection, but as a tribute to one who has had a decisive share in the creation of the new conflicts law of this country”).
56. *Id.* A copy of the cover can be viewed at Books by Albert Armin Ehrenzweig, AMAZON, https://www.amazon.com/Albert-Armin-Ehrenzweig/e/B001HPE34G [https://perma.cc/dREP-AZ4K].
57. See, e.g., 11 STUD. LAW. J. (Apr. 1966) (outside back cover display ad).
59. *Id.* at 1109–10.
be helpful and are often more readily available in a small library than some of the text books.

Brevity in size and, to a certain extent, in treatment has necessitated some culling, especially
elements of the multitudinous problems the imaginative author could have suggested. . . .

Brinsley D. Inglis, a law professor at Victoria University in Wellington, New Zealand, who was friends with Ehrenzweig and Louisell, used the appearance of
Conflicts in a Nutshell to write a joint review of it and Jurisdiction in a Nutshell:

Both of these “Nutshells” are in fact miniature texts, and both are masterpieces of condensation.
The best tribute one can pay to works of this sort is to say that nothing of any importance has
been lost in the distillation process: indeed the process has given the whole subject a greatly
enhanced clarity and perspective. . . . There are, in the first place, no footnotes at all, and what
references there are are limited to those which are essential. Yet, in spite of this, as I have indi-
cated, the texts lack nothing in thoroughness, precision, and the scholarly approach one would
have expected of these two writers.

I know that both Professor Ehrenzweig and Professor Louisell far too modestly regard these
two books as an entirely minor feature of their output. I do not think this is in any way a correct
assessment of their value. The two “Nutshells” set a standard of scholarship which it would be
difficult to equal, and represent an important new departure in American legal writing. They are
much more than merely a handy aid to study for American students. In the context of American
law publishing, the production of these books was imaginative and courageous. That they have
been very successful is only one reason why everyone concerned should be congratulated on a
significant contribution to scholarship in a far from easy field.

The West Nutshell Series Begins

While 1964 marks the appearance of the first West nutshell, 1968 marks the
beginning of West’s Nutshell Series. In that year, the first nutshells not written or
cowritten by Ehrenzweig were released: Morris L. Cohen’s Legal Research in a Nutshell
and Oval A. Phipps’s Titles—The Calculus of Interests in a Nutshell. Cohen was the
director of the law library at the University of Pennsylvania, while Phipps was a law

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60. Id. at 1111.
62. By 1981, the phrase “Nutshell Series” had become so closely associated with West that the company trademarked it. See Typed Drawing—Word Mark—Nutshell Series, USPTO, http://tmssearch.uspto.gov [https://perma.cc/PJK3-K4QX] (using the search term “Nutshell Series”) (describing the mark as covering a “series of books and pamphlets providing succinct explanations of a variety of legal subjects,” noting that it was “first use[d in] 1968,” explaining that the “applicant disclaims the word ‘series’ apart from the mark as a whole without forgoing any common law rights,” and indicating that the mark has been registered since November 9, 1982, under registration number 1215788).
64. See Oval A. Phipps, Titles—The Calculus of Interests in a Nutshell (1968).
A HISTORY OF THE WEST NUTSHELLS

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Cohen's nutshell was 233 pages and cost $3.50; Phipps's nutshell was 277 pages and likewise cost $3.50.

In addition to Cohen's and Phipps's nutshells, 1968 saw the release of the second edition of Ehrenzweig and Louisell's Jurisdiction in a Nutshell, which now ran 315 pages (a 41 percent increase in size) and also cost $3.50. With four nutshells, West now had a “series.” Thus, rather than being merely “Other West Law School Publications,” West's advertising now described “West's Nutshell Series” as being:

- Designed for Law School course review.
- Unequaled for Bar Review purposes.
- All titles by outstanding authorities and recognized experts.

Enhanced advertising was not the only change, for the four books now also had a uniform look:

West's Nutshell Series was launched in 1964 with Jurisdiction in a Nutshell: State and Federal by Albert A. Ehrenzweig and David W. Louisell, both professors at the University of California, Berkeley. Ehrenzweig also published Conflicts in a Nutshell the following year. These early Nutshells were the same size as later volumes, but it took a few years for West to standardize the format. The cover of the first volume was beige, and the second a pale blue. Only with the 1968 appearance of [Morris L. Cohen's] Legal Research in a Nutshell and Oval A. Phipps's Titles

came to write his nutshell, see Olson, supra note 55. As Olson explains, Cohen dedicated his nutshell “to the long-suffering law students who may be introduced to legal research through these pages.” Id. at 66. In a 2007 interview, Cohen mixed up his dates and cited 1964 as the book's publication date: “My other project was writing Legal Research in a Nutshell, this little teaching text on legal research, which was first published in 1964.” See Bonnie Collier, Reflections: An Interview with Morris L. Cohen, 104 LAW LIBR. J. 149, 155, 2012 LAW LIBR. J. 15, ¶ 66.

66. For the details of Phipps's life (1909–75), see Oval A. Phipps Dies at 64, ST. LOUIS POST-DISPATCH, June 30, 1975, at 9B. In a tribute to Phipps, Missouri Court of Appeals Judge Joseph J. Simeone, who had been a longtime faculty colleague of Phipps, listed all of Phipps's writings in his piece's sole footnote but mentioned only Phipps' nutshell in the text:

His books and articles will be read, digested, and studied for years to come. His Titles in a Nutshell has been and will be the “bible” for students[,] not only at St. Louis University but throughout the country. Those who ponder that little book will not have the benefit of his personal touch explaining the doctrines embodied therein. But he will be there leaning over the shoulder of each one saying, "Don't you understand? . . . Hands of those who see that."


71. This language was featured prominently on the outside back cover of each nutshell. See, e.g., “MPTrading17,” eBay, https://perma.cc/G5WH-5W3K (eBay webpage displaying photographs of the spine and outside front and back covers of the second edition of Jurisdiction in a Nutshell) (hereinafter “E & L 1968 eBay”).
in a Nutshell was the series given a standard green cover with a line drawing of half of a walnut shell.[72]

Also on the outside front cover, in the lower right-hand corner, was the familiar West Key Number System key.[73]

**Growth of the West Nutshell Series**

¶25 West could not have picked a more auspicious time to launch the Nutshell Series, for law school enrollment was about to skyrocket due to the civil rights movement, the Vietnam War, and the women's liberation movement. In 1967, there were 136 law schools and 61,084 law students.[74] By 1977, there were 163 law schools and 113,080 law students (an 85 percent increase).[75] As one commentator noted:

Interest in going to law school had grown dramatically in the late 1960s, as students decided, probably using as a role model a handful of civil rights lawyers, that law was where the action was. Between 1968–69 and 1971–72 the number of persons taking the LSAT doubled from 60,000 to 120,000. The law school industry grew. It has been estimated that the income of law schools rose from $17 million in 1948 to $275 million in 1976.[76]

Just as the number of law students rose, so, too, did the number of law professors.[77] The result was that the market for law school products suddenly was enormous, and the skilled labor needed to supply it was in place.

¶26 At first, however, West moved slowly. Just how slowly can be seen from a 1969 parody in the *Journal of Legal Education* about a bewildered first-year law student named Blackie Stone III.[78] In “Torts in a Devil’s Nutshell,” the author (John K. “Ken” Vinson, a law professor at the University of Mississippi) made no mention of the fact—if he even knew it—that there now existed actual nutshells.[79] Perhaps, however, Vinson

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73. See “E & L 1968 eBay,” *supra* note 71. As has been explained elsewhere, see Davies, *supra* note 1, at 241–44, the West key has long been one of the company’s best-known logos.


75. *Id.*


77. In 1967, there were 2,264 full-time law professors in the country. By 1977, this number had grown to 3,875 (a 71 percent increase). See Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession,* 5 AM. B. FOUND. RES. J. 501, 505 (1980).


79. Instead, Vinson had Stone consult West’s well-known torts hornbook. See *id.* at 432 (“He looks to *Prosser on Torts* for a safe, sure path to The Law, but the Hornbook’s blacklettering contains no key to the lawyer’s magic.”).
was keeping up with the latest news from West and knew that it did not have a torts nutshell.\textsuperscript{80}

\textsuperscript{27} In 1970, West published its fifth nutshell: \textit{Evidence in a Nutshell} by Professor Paul F. Rothstein of Georgetown University.\textsuperscript{81} At 406 pages and costing $4.50,\textsuperscript{82} it represented West’s biggest and costliest nutshell to date. In describing it, the company advised:

This pocket-sized, paperbound book deals mainly with trial evidence and discusses the problems encountered by the litigating attorney at various stages of the trial. Areas considered are basic principles of evidence, burdens of proof and presumptions, hearsay, admissions and confessions, impeachment of witnesses and selected evidentiary privileges. Effective use is made of examples which aid the reader in understanding and remembering the principles discussed.\textsuperscript{83}

\textsuperscript{28} Following the release of \textit{Evidence in a Nutshell}, West aggressively began to look for nutshell authors.\textsuperscript{84} As a result, the dam soon burst, and by 1975 there were nutshells on numerous topics, including contracts,\textsuperscript{85} commercial paper,\textsuperscript{86} criminal law,\textsuperscript{87} estate


\textsuperscript{82.} \textit{See} Books Received, 4 Loy. L.A. L. Rev. 229, 230 (1971).

\textsuperscript{83.} \textit{Id.}

\textsuperscript{84.} This task fell largely to West’s traveling sales force:

Western State University College of Law of Orange County Assistant Dean of Students and Associate Professor John O’Connell . . . has written a textbook, “Remedies in a Nutshell,” scheduled for publication in March 1977, by West Publishing Co., St. Paul, Minnesota.

Approximately three dozen areas of law are covered in the publisher’s “Nutshell” series, which is designed primarily for law students.

In discussing the new book, O’Connell mentioned that he was approached by the publishing company’s representative, who was intrigued with O’Connell’s lecture notes.


\textsuperscript{85.} \textit{See} Gordon D. Schaber & Claude D. Rohwer, Contracts in a Nutshell (1975).


\textsuperscript{87.} \textit{See} Arnold H. Loewy, Criminal Law in a Nutshell (1975).
and gift taxation,88 local government law,89 real property,90 and the Uniform Commercial Code.91 There also were updated editions of Jurisdiction in a Nutshell92 and Conflicts in a Nutshell.93

¶29 Each of these nutshells bore the series’ new cover design, which had been adopted in 1973. Gone was the former uniform green cover with its simple line drawing of half a walnut shell and the West key logo. From now on, nutshell covers, with the word “nutshell” misspelled “nut shell,” would be “multicolor with an abstract pentagonal nutshell.”94

¶30 In addition to a new cover, 1973 saw the release of 20’s Inc. v. Nebraska Liquor Control Commission.95 In a case challenging the suspension of a bar’s liquor license for selling alcohol to a minor, the Nebraska Supreme Court wrote: “The interpretation which we here place upon the statute conforms to the most generally accepted standards of judicial review of administrative decisions. See, Administrative Law and


During this period, the Baltimore Sun newspaper ran a weekly column listing useful business books available at the city’s main library. McNulty’s nutshell soon was featured along with the following description: “Written for non-lawyers and law students, this introduction to federal gift and estate taxation presents clear, concise summaries of the law and succinct explanations of the estate and gift tax consequences of different kinds of transactions, dispositions, and situations.” Business Book Check List, Balt. Evening Sun, Jan. 15, 1975, at D15.


90. See Roger Bernhardt, Real Property in a Nutshell (1975).


The color of each book was chosen at random, except that successive editions of the same book could not have the same color. Although authors could request a specific color, almost none did. The same remains true today. See Telephone Interview with Austin M. “Mac” Soto, Senior Strategic Operations Editor—West Academic Publishing (Apr. 6, 2020) (hereinafter Soto Interview) (explaining that authors writing on health-related topics occasionally have asked for red covers).

When the company proposed a blue cover for Florida Constitutional Law in a Nutshell, see supra note 2, the author rejected the suggestion and instead asked for an orange cover:

In the meantime, however, I was wondering if we could change the color of the cover from Blue to Orange. Orange is the color most traditionally associated with Florida, so it would be a great choice for the cover.

If this change is possible, I’d like to request Pantone PMS 1655 C – it’s the same Orange that the [NFL’s] Miami Dolphins use.

Email from Professor Robert M. Jarvis to Laura A. Holle, Lead Publication Specialist—West Academic Publishing, Feb. 21, 2020, 4:16 PM (copy on file with the author).

95. 212 N.W.2d 344 (Neb. 1973).
Process in a Nutshell, Gellhorn, C. XII, p. 262.”

This marked the first judicial citing of a West nutshell.

96. Id. at 347. Had the court provided a full cite, it would have read: “Ernest Gellhorn, Administrative Law and Process in a Nutshell 262 (1972).”

During his long career, Gellhorn (1935–2005) was associated with six law schools, including three as dean: Arizona State University, Case Western Reserve University, and the University of Washington. See D. Daniel Sokol, Ernest Gellhorn Passes Away May 7, ANTITRUST & COMPETITION POLICY BLOG, May 10, 2005, https://lawprofessors.typepad.com/antitrustprof_blog/2005/05/ernest_gellhorn.html [https://perma.cc/S5MQ-DCXD]. In 1972, however, when he wrote the first edition of his nutshell, he still was unfamiliar enough to most readers that one book reviewer found it necessary to explain who he was:

The author is not the eminent Walter Gellhorn of Columbia who is one of the two or three leading authorities in the field of administrative law. The author is Ernest Gellhorn of the University of Virginia.

Mention of this is made not to draw invidious comparisons but merely to dispel inevitable confusion.


Users of Gellhorn’s book, however, did not care about Gellhorn’s identity. The only thing that mattered to them was that the book was good:

Before this last year I had taught administrative law [at the University of Georgia law school] twice and hated it both times. In my encounters with the subject, I used a conventional case book and case method.

The result was a federal disaster area. . . .

I therefore decided to adopt precisely the opposite extreme and to explore a single—and hopefully representative—administrative agency in detail. . . .

Despite these somewhat radical plans, I began the course in a fairly conservative manner by requiring students to read Ernest Gellhorn’s Administrative Law in a Nutshell during the first two weeks of class.

Though any nutshell is inherently suspicious, this turned out to be a fine teaching tool. Unlike so many other overviews, it does not sacrifice accuracy for brevity.


Botein’s decision to use a nutshell as an assigned text now occurs with some frequency. See, e.g., Steve Sheppard, Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall, 82 Iowa L. Rev. 547, 641 (1997) (“West Publishing produces a line of miniature treatises, known as ‘Nutshells,’ in so many courses, that they occasionally act as primary texts when few other materials are available.”).

97. To date, more than 125 reported cases have cited a West nutshell. (This figure is based on a Westlaw search conducted by the author on May 1, 2020.) The most-frequently cited nutshell is William C. Canby, Jr., American Indian Law in a Nutshell (1981; 7th ed. 2020). Canby was a law professor at Arizona State University when he agreed to write the first edition. While doing so, he was appointed to the U.S. Court of Appeals for the Ninth Circuit. In 1996, he took senior status. See Canby, William Cameron, Jr., Federal Judicial Center, https://www.fjc.gov/node/1378816 [https://perma.cc/43AB-5RZY].


Olson argues that Cohen’s legal research nutshell should be included and listed as the first nutshell cited by the Court. See Olson, supra note 55, at 66 (discussing Bounds v. Smith, 430 U.S. 817, 819 n.4 (1977)). In Bounds, a prisoner class action lawsuit claiming that North Carolina’s prison law libraries were constitutionally inadequate, the Court reproduced the list of the 20 books the state was willing to provide prisoners. As Olson mentions, Cohen’s nutshell appeared on the list as “Cohen: Legal Research.”
¶31 The most significant new title during this period was *Historical Introduction to Anglo-American Law in a Nutshell*, which appeared in 1973. Written by Frederick G. Kempin, Jr., a professor of legal studies at the University of Pennsylvania’s Wharton business school, it covered a subject (legal history) that few law schools taught. This point was noted by Harvey H. Chamberlin, a precocious law student at the University of Washington, in the opening paragraph of his review of Kempin’s book:

Legal history is a course which law schools like to include in their catalogues in order to sustain their claim to a place in the academic sun. In truth, however, legal history is only irregularly offered, and, is usually taught by a faculty member who regards it as secondary on his [list of] research priorities. There are simply not enough history questions on bar examinations to warrant most law schools in hiring a full-time legal historian. In short, the subject of legal history lives as a neglected stepchild of legal education.

A little later in his review, Chamberlin further mused:

Therefore, one must wonder if the inclusion of a book “about the history of Anglo-American law” in West's “Nutshell” series—primarily designed for course and bar examination review purposes [and] covering subjects that make up part of any law school’s core curriculum—foreshadows a change in law school curricula.

¶32 That West was willing to publish a nutshell about legal history, despite what must have been considerable doubts about its commercial viability, can be attributed to its corporate DNA. In contrast to his competitors, John B. West, the company's founder, strongly believed that legal publishers should cover every field of law, leaving it to their customers to separate the wheat from the chaff:

In defending his approach (which critics labeled the “blanket” or “waste basket” system due to its lack of discernment), John managed to capture in one sentence his entire publishing philosophy: “No policy of insurance is so satisfactory to the insured as the blanket policy; and that is the sort of policy we issue for the lawyer. . . .”

98. See Frederick G. Kempin, Jr., *Historical Introduction to Anglo-American Law in a Nutshell* (2d ed. 1973). As explained *id. at xvii*, the first edition had been published by Prentice-Hall in 1963 as *Legal History: Law and Social Change*.


100. *Id.* at 432 & n.5 (paragraphing and footnoting rearranged for improved readability). As matters turned out, change was in the air. See Joan Sidney Howland, *A History of Legal History Courses Offered in American Law Schools*, 53 Am. J. Legal Hist. 363, 378 (2013) (explaining that by the late 1970s, legal history was enjoying newfound popularity as law schools, eager to stand out from the crowd, sought to “develop[] innovative and intellectually stimulating curriculums that appealed to the needs and curiosities of both faculty and students”).

101. Jarvis, *West History*, *supra* note 1, at 9 n.61.
Soon, West was rolling out nutshells in areas far removed from the mainstream law school curriculum, including art law,102 environmental law,103 military law,104 and welfare law.105 It also published its first nutshells written by women.106

A 1985 book review of *The Law of the Sea in a Nutshell*107 began by noting: “[T]he Nutshell series by West Publishing Company . . . now includes some 90-plus titles by recognized scholars in their fields.”108 That the series had grown from two books in 1965 to more than 90 in the space of just 20 years indicates how committed West had become to the series and how eager law professors were to have a nutshell on their resums.109 Moreover, West’s editors constantly were on the lookout for emerging fields of law, resulting in the publication of nutshells on such subjects as AIDS law,110 elder law,111 and sports law.112

106. In 1978, Robert R. Wright and Susan Webber, both law professors at the University of Arkansas–Little Rock, coauthored *Land Use in a Nutshell*. In 1979, Professor Mary Kay Kane (University of California–Hastings) published *Civil Procedure in a Nutshell*. As explained supra note 103, Georgina B. Landman would have been the first woman nutshell author had she not given back her contract in 1976.
¶35 As intended, the main market for nutshells was law students. But because of their low cost, libraries across the country also snapped up copies. In the tiny town of Schuyler, Nebraska, for example, a 1987 newspaper article advised residents:


¶36 In 1992, West left St. Paul, Minnesota, where it had been headquartered since its founding in 1876, and moved to a new, larger facility located 12 miles away in Eagan, Minnesota. The following year, West took out a full-page ad on the inside front cover of the October 1993 issue of Student Lawyer magazine. The ad’s headline recommended: “When it seems like ‘Legal Impossibility’ refers more to your career than to a criminal defense . . . Rely on West’s Nutshell Series.” Then, under a photograph of the company’s criminal law nutshell (flanked by four more nutshells: civil procedure, contracts, corporations, and legal research), the ad continued:

Success in law school can seem unattainable when you get bogged down in details. But West’s Nutshell Series can help you achieve better results.

Nutshells carefully explain the legal principles so you’ll gain a solid understanding of the basics. Then you can add details at a more comfortable, organized paced. Written by eminent legal scholars, Nutshells will help you succeed.

Stop by the bookstore today and pick out the Nutshells you need.

Below this copy appeared the full list of West’s nutshells—a total of 105 titles, beginning with “Accounting & Law” and ending with “Workers’ Compensation & Employee Protection.”

113. For a further look at Schuyler, see, e.g., James Potter et al., A Case Study of the Impact of Population Influx on a Small Community in Nebraska, 14 GREAT PLAINS RSC. 219, 221 (2004) (explaining that “the city of Schuyler . . . [is an] east-central Nebraska city [that] is home to a little more than 4,000 residents. Of these, several hundred (estimates vary from a few hundred to as many as 800, or a 20% increase) were new residents in the second half of the 1990s”).


115. See Bill McAuliffe, West Becomes Past in St. Paul, Present and Future in Eagan, STAR TRIB. (Minneapolis), Mar. 25, 1992, at 1B (explaining that a lack of land in St. Paul forced the company to relocate).

116. 22 STUD. LAW. (Oct. 1993) (inside front cover display ad) (ellipses in original).

117. Id.

118. Id.
West Nutshells in the Early 21st Century

¶37 In 1996, West’s 200 shareholders sold the company to Toronto’s Thomson Corporation for $3.4 billion,\(^{119}\) and in 1997 West became known as the West Group.\(^{120}\) In the meantime, the number of nutshells continued to grow.

¶38 An April 1999 display ad on the inside front cover of Student Lawyer magazine, for example, depicted a man’s hand reaching into a knapsack and pulling out a copy of Criminal Law in a Nutshell. The copy above the photograph read:

> Get a grip on the law.

> A compact, softbound Nutshell offers you an easy, economical way to get a grip on a complex legal topic.

> Each Nutshell is written by a legal expert in the field—and explains the law to you in plain English.

> Nutshells are brought to you by West Group, the same publisher who brings you the Hornbook Series\(^\ast\), casebooks, Westlaw\(^\ast\) and Black’s Law Dictionary\(^\ast\).

> We’re proud of the role Nutshells have played in helping a generation of law students and attorneys understand the law.

> Look for Nutshells in your campus bookstore. Call 1-800-876-4457. Or visit the West Group Store at lawschool.westgroup.com.\(^{121}\)

Below the photograph was a list of the company’s 119 nutshells, together with two taglines. The first read: “There are more than 100 nutshells—to help you get a grip on more than 70 legal topics.”\(^{122}\) The second read: “Nutshells: The little books that give you the big picture.”\(^{123}\)

¶39 The ad’s inclusion of a website made it clear that West had moved into cyberspace, right along with the rest of legal education. Two years earlier, at the 1997 annual meeting of the American Association of Law Libraries in Baltimore, a heavily attended panel had been titled, “From Nutshells to Netscape: Covering the Basics Through Research Instruction Programs.”\(^{124}\)

¶40 In 2003, West published The Legal System of the People’s Republic of China in a Nutshell by Professor Daniel C.K. Chow of Ohio State University.\(^{125}\) Although all


\(^{120}\) See West Group History, FundingUniverse, http://www.fundinguniverse.com/company-histories/west-group-history/ [https://perma.cc/P3N4-P67R].

\(^{121}\) 27 STUD. LAW. (Apr. 1999) (inside front cover display ad) (bold in original).

\(^{122}\) Id.

\(^{123}\) Id. (italics in original).


nutshells are shaped by the personalities and experiences of their authors, Chow’s was particularly personal:

This book is based upon several years that I lived in the People’s Republic of China in the late 1990s when I took a leave of absence from my academic duties at the Ohio State University College of Law to serve as in-house counsel for a multi-national enterprise with substantial China operations and ambitious plans for expanding its China business. . . .

As a busy lawyer in an understaffed legal department, I had many different responsibilities and opportunities to meet with high-level officials of China’s many different governmental organs. . . . I also had many opportunities to learn about China’s illegal underground economy with its many dangerous and nefarious characters. My work in protecting the company’s intellectual property led me on investigations and raids of underground factories, markets, and warehouses dealing in pirated, counterfeit, and smuggled products. . . .

Outside of work, I benefited from many opportunities to learn about the life of China’s people and to interact with many associates, colleagues, and friends in social settings. . . . During my years in China, I had many frank discussions with Chinese from all walks of life about China’s problems and prospects and the complex relations between the United States and China. Not all of these discussions were amicable nor were all of my relationships harmonious, but I learned and benefited from them all. . . . These experiences form the basis for this volume.126

¶41 In a display ad in the November 2005 issue of Student Lawyer magazine touting its various product lines, next to a picture of Toxic Torts in a Nutshell, West reminded students that:

With over 130 titles, the Nutshell Series* is the most complete line of study aids available—chances are there is a Nutshell for whatever subject you are studying. Nutshells offer succinct summations of the law by the subject matter experts. Find the essential information that you need to excel on the final exam. Compact, portable, and easy to read, Nutshells are a must for every law student.127

¶42 In 2007, Thomson purchased England’s Reuters Group for $17.2 billion, resulting in the creation of the Thomson-Reuters Corporation. In describing the breathtaking deal, one reporter wrote:

In the information age, content may be king. But the real power lies in what you can do with it.

That would seem to be the underlying message in the announcement Tuesday of the Thomson Corporation’s approximately $17.2 billion acquisition of the Reuters Group, the global news and financial data service. The new company, which will be called Thomson-Reuters, will own 34 percent of the market for financial data, putting Thomson in direct competition with Bloomberg L.P., especially in selling data services, analytical and trading tools to Wall Street.

The deal also comes in the middle of an information revolution as easy distribution over the Internet has turned news and data into a commodity. Media companies, including newspapers, cable companies and financial publishers, are all struggling to turn their content into new services that their customers are willing to pay for.

126. Id. at v–vii.
127. Ace Your Final Exams—Prepare with Study Aids from West Law School, STUD. LAW., Nov. 2005, at 3 (bold in original).
Few companies have been as successful at that proposition as Thomson, which has transformed itself from a prosperous newspaper chain started in sleepy Timmins, Ontario, into a financial information powerhouse that[,] once the proposed deal is completed[,] will have combined revenue of almost $12 billion. . . .128

§43 One year later, the Great Recession of 2008 began, bringing with it major changes to law schools:

Between 1976 and 2000, law schools steadily enrolled between ~40,000 and ~44,000 new students each year. From 1976 to 1987, the average was 40,973. From 1988 to 2000, the average was 43,497—a little over 6% higher. But between 2000 and 2002, law schools increased first-year enrollment 11.2%. In subsequent years, enrollment steadily [crept] up, with minor ebbs and flows, until peaking in 2010 at 52,404. As law schools were pressured to become more transparent about job outcomes beginning in 2010, the media and prospective law students took notice of inflated enrollment, inadequate job prospects, and high prices—and enrollment dropped. After 1L enrollment peaked in 2010 at 52,404 new students, enrollment fell dramatically in each of the next three years. . . .129

§44 Even as the recession took its toll on law schools, new nutshells continued to appear including, for example, ones on animal law,130 bioethics law,131 and legal malpractice law.132 Moreover, in 2009 the series was given a face-lift when a new front cover design was introduced, the first since 1973.133 The geometric nutshell, which had dominated the cover for decades, now was reduced to a mere speck and superimposed on the words “West Nutshell Series,” which appeared, in a near-microscopic font, as an identifier running along the cover’s top left edge. The author’s name was moved from the center bottom to the upper right-hand corner. Most dramatically, the cover’s main feature now was three lines of lowercase type spread against a light-colored background that read: “in a nut shell.”134

§45 In 2012, the ambiguously named Gaming Law in a Nutshell debuted.135 The book’s advertising blurb136 made it clear that it was about gambling and not, as some

133. See Olson, supra note 55, at 66.
134. The cover’s misspelling of the word “nutshell” was a carryover from the 1973 redesign, which had introduced the mistake. See supra text accompanying note 94.
136. See https://books.google.com/books/about/Gaming_Law_in_a_Nutshell.html?id=YFg5LgEACAAJ [https://perma.cc/942C-R82F].
buyers presumably thought, video gaming, a subject that received its own nutshell in 2018.137

¶46 In the meantime, law school enrollments continued to plummet, and in 2013 Thomson-Reuters decided it was time to sell:

Thomson Reuters has officially gotten out of print publishing for law schools. On Friday, February 2nd, the publishing wing of the legal research giant was sold to Eureka Growth Capital, a private equity firm located in Philadelphia. It seems that paper publishing is not something that Thomson Reuters will be involved with in the future, at least for legal research. According to spokesman John Shaughnessy, “It’s a segment of the market that, longer-term, we didn’t see as within the core of our legal research offerings,” suggesting that Thomson Reuters will be focusing solely on electronic content in the near future.

Westlaw Next and other e-resources that Thomson Reuters provides will continue to be available to legal researchers. The publishing wing, which was sold for an undisclosed sum, will continue to publish various textbooks and study guides, but will now go under the name “West Academic Publishing.” Thomson’s legal business, of which the publishing [end] was only a small part, will continue with sales of software and online databases.138

West Academic Publishing

¶47 The switch from Thomson-Reuters to Eureka proved seamless for the Nutshell Series, and during the latter’s stewardship the number of nutshell titles continued to expand.139 In 2007, for example, West had 140 nutshells.140 Today, West Academic has 159 nutshells (a nearly 14 percent increase).141 To maintain this pace, it now prints between 20 and 40 nutshells a year.142

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137. See DAN D. NABEL & BILL CHANG, VIDEO GAME LAW IN A NUTSHELL (2018).

Because Eureka did not buy the West name, West Academic’s website (https://home.westacademic.com/ [https://perma.cc/JAS3-Z2VQ]) contains the following notice: “© 2020 LEG, Inc. d/b/a West Academic[,] West, West Academic Publishing, and West Academic are trademarks of West Publishing Corporation, used under license.” For a further discussion, see https://home.westacademic.com/legal -publisher [https://perma.cc/FXB5-MQJC]. (LEG, Inc. is the company Eureka set up to do the acquisition.)


141. See Soto Interview, supra note 94.
142. See Email from Austin M. “Mac” Soto, Senior Strategic Operations Editor—West Academic Publishing, to the author, Apr. 2, 2020, 12:06 PM (copy on file with the author). For a current listing of West
¶48 In addition to growing the series, West Academic has made two other changes. First, it has pushed further into e-book formats and has touted this fact in its advertising. Second, it has reworked the front cover. In particular, it has fixed the title so that “nutshell” again is one word; dropped the word “West” from the top left-hand corner’s identifier; moved the author’s name back to the bottom half; made the color background brighter and given it a feeling of motion by adding white “swooshes”; and placed West Academic’s name and logo (three book pages fluttering in the air) in the lower right-hand corner.

Academic’s nutshells, see http://store.westacademic.com/ (hereinafter Store).

143. In 2007, Amazon introduced Kindle. See Piotr Kowalczyk, A Fascinating History of Kindle Devices and Services, EBOOKFRIENDLY, Nov. 21, 2021, https://ebookfriendly.com/timeline-kindle-history/ (hereinafter Store). By 2010, five nutshells were on it:

Donald L. Boernberg, INTERNATIONAL TAXATION IN A NUTSHELL (8th ed. 2009)
David G. Epstein, BANKRUPTCY AND RELATED LAW IN A NUTSHELL (7th ed. 2005)
John S. Lowe, OIL AND GAS IN A NUTSHELL (5th ed. 2009)
David Weissbrodt & Laura Danielson, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL (5th ed. 2005)

See West Academic Publishing, LAW SCHOOL PUBLICATIONS 2010–2011 Catalog iv, https://www.yumpu.com/en/document/read/5255364/law-school-publications-sweet-maxwell (hereinafter Store). Today, all nutshells are available as e-books. In addition, they are included in the West Study Aids Subscription package (https://subscription.westacademic.com/ (launched 2013), which allows students at participating law schools to read West Academic’s books online for free. (Students at nonparticipating schools can purchase their own subscriptions at a cost of $15–$25 a month.)

144. A display ad on the outside back cover of the Winter 2020 issue of The National Jurist: The Magazine for Law Students, for example, was headlined, “West Academic Study Aids Collection.” Under this headline was a computer screen, an iPad screen, and a cell phone screen. On the computer screen was an image of Criminal Law in a Nutshell, while on the cell phone screen was an image of Accounting and Finance for Lawyers in a Nutshell. Underneath the three screens the copy read:

Trusted study materials for all your classes are waiting for you ONLINE, ANYTIME.
The West Academic Study Aids Collection is a comprehensive digital collection of over 500 titles that includes study aids, treatises, audio lectures, video courses, and newly added audiobooks. You will have 24/7 digital access to expertly authored content in over a dozen different series so you can find what works best for you, and you can study on the go with the West Academic Library App.

Learn more or take a FREE trial at store.westacademic.com/studyaidsub.

See 29 Nat’l Jurist (Winter 2020) (outside back cover display ad) (bold in original).

A look at the Nutshell Series’ four cover designs—the earliest version is in the upper left-hand corner, while the current version is in the lower right-hand corner (photograph by Michael Hopkins of Gerlinde Photography (www.gerlinde.com))

¶49 Like everything else, the price of a nutshell has increased over time. When the Nutshell Series debuted in 1968, nutshells were priced at $3.50, the equivalent today of $26.08. In 2020, all nutshells carry a price tag of $49.00. Of course, most current nutshells are twice the size of the 1968 nutshells, and the longest title in the series is nearly four times as long.

146. See supra text accompanying notes 67–70.
147. See Friedman, supra note 114.
148. See Store, supra note 142.
149. See id. (indicating that most current nutshells are between 400 and 600 pages).
50 In March 2020, COVID-19 forced many businesses across the United States, including many book publishers, to shut down. Although the pandemic also affected West Academic, not a single nutshell already in production was delayed.

Conclusion

51 The back cover of every nutshell now carries the following legend:

- A succinct exposition of the law to which a student or lawyer can turn for reliable guidance.
- All titles written by outstanding authorities and recognized experts.
- A compact format for convenient reference.

These statements, of course, are not much different from the ones that appeared on the back covers of the series’ first four nutshells in 1968.

52 What is most striking about the Nutshell Series—in addition to its breadth, longevity, and continued success—is how it unwittingly has served as a chronicle of the changes that have taken place in society over the past half century. In 1968, climate change, gay rights, and legal marijuana did not exist. Nor did Brexit. Nor did the

152. See Soto Interview, supra note 94.
153. Id.
154. In a 2004 law review article, Professor Thomas E. Baker (Florida International University) used this verbiage to introduce his piece:

The ubiquitous and popular West Nutshell Series promises to deliver in each and every volume “a succinct exposition of the law to which a student or lawyer can turn for reliable guidance” published in “a compact format for convenient reference.” That is the purpose and function of this article: to provide the intelligent novice a beginner’s guide to the considerable body of scholarly writings about the theory of American constitutional law.

155. See supra text accompanying note 71.
156. It is not true, however, that every possible topic is covered. For example, there never has been an aviation law nutshell, even though the subject has been taught in U.S. law schools since 1930. See Robert M. Jarvis, Carl Zollmann: Aviation Law Casebook Pioneer, 73 J. AIR L. & COM. 319, 338 (2008).
157. The use of the word “longevity” here is not limited to the series itself. Many individual titles also have demonstrated great staying power. Morris L. Cohen’s Legal Research in a Nutshell, for example, which first appeared in 1968, see supra note 63, has outlived him. See Kent C. Olson, LEGAL RESEARCH IN A NUTSHELL (13th ed. 2018); see also Interview with a Nutshell Author, MoreUs, May 2, 2016, http://library.law.virginia.edu/ajm-blog/2016/05/02/interview-with-a-nutshell-author/ [https://perma.cc/TVR3-Q4HL] (interview with Olson focusing on his role as Cohen’s successor).

Although no nutshell has gone through as many editions as Cohen’s nutshell, two come very close. See MINDY HERZFELD, INTERNATIONAL TAXATION IN A NUTSHELL (12th ed. 2020); THOMAS LEE HAZEN, SECURITIES REGULATION IN A NUTSHELL (11th ed. 2016).
158. In a recent poll, law students voted nutshells one of their top 10 favorite study aids. See Mike Stetz, BEST STUDY AIDS, “Back-to-School” 2018, NAT’L JURIST, at 20, 22.
internet, cybersecurity, or social media. Today, all do, and nutshells are available to help law students and lawyers master each one of them. 159

159. See Jay P. Kesan & Carol M. Hayes, Cybersecurity and Privacy Law in a Nutshell (2019); Michael L. Rustad, Global Internet Law in a Nutshell (4th ed. 2019); Ruth Colker, Sexual Orientation, Gender Identity, and the Law in a Nutshell (2017); Ralph H. Folsom, European Union Law—including Brexit in a Nutshell (9th ed. 2017); Ryan Garcia & Thaddeus Hoffmeister, Social Media Law in a Nutshell (2017); Mark K. Osbeck & Howard Bromberg, Marijuana Law in a Nutshell (2017); John R. Nolon & Patricia E. Salkin, Climate Change and Sustainable Development Law in a Nutshell (2011).
Applying Motivation Theory to Improve 1Ls’ Motivation, Self-Efficacy, and Skill Mastery*

Nathan A. Preuss**

This article discusses how understanding two motivation and learning theories—expectancy-value and attribution—can help instructors to improve first-year law students’ motivation, self-efficacy, and mastery of the knowledge and skills needed for success in law school as well as in their future careers.

Introduction

First-year law students (1Ls) typically face some of the biggest intellectual challenges of their academic careers. Law schools select applicants from an academically successful subset of undergraduate students, but not all of these students arrive on campus with the study skills, information literacy, emotional resiliency, or adaptive behaviors necessary to succeed in law school. The overall quantity and difficulty of the work, forced grading curves, and the many type-A personalities represent only some of the reasons that previously confident, successful students flounder as 1Ls. Faced with novel challenges for which their standard methods of preparation are inadequate, students may adopt maladaptive academic strategies that negatively affect their performance and even their longer-term professional success.

* © Nathan A. Preuss, 2022.
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¶2 In legal research classes specifically, 1Ls lack the contextual knowledge of doctrinal law, which must be further developed to adequately develop the research-writing-thinking-application knowledge and skill matrix that practicing attorneys need. First-year students also lack the practical experience to recognize the vital role of legal research in this profession’s knowledge and skill matrix. Law schools themselves sometimes contribute to this diminished perceived value of legal research. Although some law schools grade basic research course students, many others evaluate students using a pass-fail system. To the extent that law students act rationally, overworked students can hardly be blamed for making an ungraded course a lower priority than their graded doctrinal law or legal writing courses.

¶3 This article addresses how legal research instructors can intervene to improve 1Ls’ learning strategies, self-efficacy, and mastery goal orientation. It first discusses the two theoretical foundations—expectancy-value theory and attributional theory—that underlie its recommendations. After a review of the research literature, it then describes several intervention plans: first, a value-based intervention at the beginning of the first year of law school and, second, attributional retraining for students who have completed at least one semester and are at risk for developing maladaptive academic strategies after experiencing less than desirable academic outcomes.

Review of Theory

John Atkinson’s Achievement Motivation Theory

¶4 The early cognitive motivation theorist John William Atkinson influenced both expectancy-value theory and attribution theory. Diverging from behaviorists, Atkinson emphasized cognition and beliefs over behaviors, drives, needs, and habits.1 His model “combined needs, expectancies, and values.” In this context, behavior is “a multiplicative function of three major components: motives, probability of success, and incentive value.”2

¶5 Motives are learned, stable, and enduring dispositions or individual characteristics. Within one’s motivation are two achievement motives: the motive to approach success and the motive to avoid failure. The motive to approach success is a person’s hope or anticipation of success and the “capacity to experience pride in accomplishment.”3 On the other end of the spectrum, the motive to avoid failure relates to the fear of failure and an ability to feel shame and humiliation. The former leads people to participate in achievement tasks, while the latter encourages people to avoid them.4

2. Id. at 49.
4. SCHUNK et al., supra note 1, at 49.
Probability of success lies in individual actors’ perceptions or subjective beliefs about whether they can be successful. Incentive value means pride in one’s accomplishment. Easy tasks tend to inspire less pride, so generally they produce little incentive. Challenging tasks increase the chance of failure, thereby lowering the probability of success and the motivation to pursue that task. Tasks of intermediate difficulty tend to become the most highly motivating, but only for those with high approach-to-success and low avoidance-of-failure characteristics. Students with high failure avoidance and low in the approach to success will be more likely to choose easy tasks (low chance of failure) or challenging tasks (little expectation of success).

In Atkinson’s model, incentive value and probability of success inversely relate to task difficulty. By defining “incentive value as 1.0 minus the probability of success,” Atkinson makes the determination of success probability all-important while making value secondary. Expectancy-value theory, discussed next, is an attribution theory built on Atkinson’s theory, but it diverges on this point, highlighting the importance of subjective perceptions of value for individual motivation.

Expectancy-Value Theory

Eccles, Wigfield, and their collaborators are the most important scholars in the development of expectancy-value theory. This theory focuses on and demonstrates the role of “students’ expectancies for academic success and their perceived value for

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5. Id.
6. Id. at 50.
7. Id. at 51.
academic tasks.”9 Two elements—expectation of success and subjective task value—are the “most important predictors of achievement behavior” in this model.10

¶9 **Expectation of success** refers to how one judges one's capability to complete a task successfully. **Subjective task value** describes why one would or would not link their beliefs and interests to participating in a task.11 Imagine two students: the first, with a 4.0 GPA and a high LSAT score, applies to law school only because her lawyer-parents encourage her to go to law school. This student may have a high expectancy of her ability to complete law school successfully. However, if she hates her prelaw courses and dreams of stage acting instead of law practice, her subjective task values in the context of practicing law may not be well suited to that career choice. Should this student attend law school, she may have difficulty maintaining interest, engagement, and persistence in a demanding field in which she has no interest. The second potential law student, who has always dreamed of being a lawyer, barely passes his undergraduate classes and scores too low on the LSAT to attend even a fourth-tier law school. As a result, he may feel that he lacks the skills to succeed in law school, even though his subjective task value for attending law school is a strong match.

¶10 Expectations for success and subjective task values are developed over time by affective reactions and memories, goals, and self-schemas.12 One can have an affective reaction to completing a particular task once or several times, such that the perceived expectation going forward will be similar. For example, if a law student does well on all of her doctrinal law courses (i.e., contracts, property, and torts) but feels that she badly embarrassed herself during the mock appellate argument at the end of her legal writing course, she may avoid appellate or trial advocacy opportunities in favor of transactional law. This affective reaction could influence her perceived expectation for similar activities in the future or lower her subjective task value for oral advocacy roles for attorneys. **Goals** are “cognitive representations” of desired future outcomes that can be short or long term. Reaffirming students’ goals for attending law school and joining the legal profession when they have not met their short-term goal of getting the desired grade are essential elements in assisting students who have previously measured success as being at the top of their class. **Self-schemas** are constructs that individuals have about their own beliefs and self-concepts.13 For example, a law student is likely to have had a great deal of academic success overall before law school but may have struggled in one or several particular subjects. Therefore, the student could have a self-schema for overall academic ability that is very high, but a subject-specific self-schema about chemistry courses that is very low.

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10. *Id.*
11. *Id.* at 47.
12. *Id.* at 54.
13. *Id.*
Legal research instructors will benefit from the knowledge of how these concepts relate to and influence academic outcomes and whether students engage in adaptive or maladaptive scholarly/professional behavior on the road to professional mastery of subject matter knowledge and skills. Cognitive engagement, effort, persistence, and choice are a few of the outcomes associated with expectancies and self-perceptions of ability.\textsuperscript{14} Cognitive engagement refers to the mental involvement that students employ in the classroom or while studying. Not all strategies are equal. Eccles and Wigfield demonstrate that the strongest predictor of grades in mathematics and English among upper-elementary and middle-school students are their self-perceptions of ability and expectations for success.\textsuperscript{15}

Additionally, students with strong self-competence beliefs are more likely to engage in deeper processing of academic subject matter by engaging cognitive strategies (methods of processing information), and metacognitive strategies (methods of controlling cognition) such as planning, reviewing, and putting learned information in the student’s own words. These adaptive strategies are linked to self-perceptions of ability, and result in not just spending more time studying but using the time effectively.\textsuperscript{16}

Four components comprise subjective task value: (1) interest value, (2) attainment value, (3) utility value, and (4) relative cost.\textsuperscript{17} Interest value is the enjoyment or intrinsic interest felt in completing a task.\textsuperscript{18} Attainment value indicates the importance of doing well on tasks, especially those tied to a particular self-schema.\textsuperscript{19} Utility value is perceived as having high relevance for future goals.\textsuperscript{20} Relative cost, also called cost belief, is the perceived negative cost of engaging in a task.\textsuperscript{21}

Expectancy beliefs and academic achievement are positively correlated. While values and achievement are positively correlated, they are much more strongly correlated to choice behaviors, such as the choice to take additional courses on a subject in the future.\textsuperscript{22} Both sides of this theory, expectancy beliefs and subjective task value, have clear implications for law students generally, and for their perception of, performance in, and tying professional goal setting to their basic legal research course.

\begin{itemize}
\item 14. \textit{Id.} at 55.
\item 16. \textit{Id.} at 52–53 (fig. 2.1 & tbl. 2.1).
\item 17. \textit{Id.} at 52–53 (fig. 2.1 & tbl. 2.1).
\item 18. Eccles, \textit{Subjective Task Value}, supra note 8, at 105.
\item 19. Wigfield & Eccles, \textit{Achievement Task Values}, supra note 8, at 276–77.
\item 20. \textit{Id.} at 64.
\item 21. \textit{Id.} at 290.
\item 22. \textit{Id.} at 65.
\end{itemize}
Attributional Theory

¶15 Bernard Weiner, along with a handful of colleagues, is the most influential attribution theorist with regard to educational settings. Two assumptions underlie attribution theory. The first is that people are motivated to master themselves and their environment. “The second assumption is that people are naïve scientists, trying to understand their environments and, in particular, the causal determinants of their behaviors and the behaviors of others.”

¶16 Figure 1 from Weiner’s article on his professional life and development of attributional theory illustrates the entire attribution process for human motivation. The seven headings in the top row label the stages of this process. These categories are:

- Outcome
- Outcome-dependent affect
- Causal antecedents
- Causal ascriptions
- Causal dimensions
- Psychological consequences
- Behavioral consequences

With these stages in mind, let us consider two hypothetical students who aspire to attend law school. Walter is a college junior who has just received a low score on the LSAT. His outcome-dependent affect will be unhappiness and frustration. He will search for a cause for this outcome. Walter has typically put in long hours reading and rereading material for classes, often getting grades that were lower than he hoped to earn. He spent much time studying for the LSAT. His friend, with whom he studied, got a high score. This information pattern leads Walter to believe that he may lack the aptitude to do better on the LSAT in the future or to succeed in law school. “Aptitude is an internal, stable, uncontrollable cause, so there is a lowering of self-esteem, low expectancy of future success, hopelessness, and helplessness, and shame and humiliation. Low expectancy (hopelessness) accompanied by these negative affects promotes the decision” for Walter to give up on getting into law school.

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24. SCHUNK et al., supra note 1, at 82.
25. Weiner, Development, supra note 23, at 34.
26. Id. at 33.
Now consider Angelica, who also received a disappointing result on the LSAT. She is unhappy with the result, but she knows that she has been successful at taking tests in the past and recalls that she decided to attend a party on the night before the exam. She feels her result was due to not trying hard enough. “This internal, unstable, and controllable cause lowers personal regard but also gives rise to the maintenance of expectancy, hope, guilt, and regret, all of which are positive motivators. Hence motivation increases and she tries harder in the future.”

The two outcomes described above lead the actors to ascribe an attribution; however, not every outcome triggers an attribution. The theory does not predict that students will make an attribution for every event that happens to them. There are many occasions when attributions are not necessary, and students’ motivations are more a function of their self-efficacy and value beliefs for the task. However, if the situation is a novel one for students, the probability increases that they will make attributions for their performance.

Attributions are the perceived causes of outcomes. “I have never worked so hard to prepare for a test. I earned that A.” “I worked really hard on that book report. I only got a C because the teacher doesn’t like me.” “I didn’t get a C because I procrastinated. I get mostly As, and I never crack a book until the night before the final. I got a C because I broke up with my girlfriend the week of the final.” “I normally get As in math. This C on the midterm just means I need to work that much harder to bring up my grade. I know I can do it.” All of these examples show the perceptions of the actor. They may or may not reveal some or all of the actual causality for the respective outcomes. The instructor in each course would also have a perception of why those students earned those outcomes. Teachers are no less fallible than their students when it comes to the potential for inaccurate perceptions. Whether the perceptions are accurate or not, the perceived causes of outcomes have a remarkable impact on how we chart a course to try to control our environment. These perceptions shape our expectancy beliefs.

A student's causal attribution for an academic hardship consists of three dimensions: 

- **locus** (whether the cause is internal to the student or an environmental cause),
- **stability** of the cause over time, and
- **controllability** of the cause. All three dimensions can independently and collectively influence expectancy beliefs, emotions, and motivated behaviors. An internal locus would include effort or ability. An external locus might be the difficulty of an exam (e.g., for the student, whereas the teacher has internal control over the difficulty of exams she creates). Internal attributions are more conducive to having a sense that one can do something to improve academic outcomes in the future. Other theorists combine locus and control, which they describe as the **locus of control**. In social cognitive theory, Bandura calls this internal control “agency.”

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27. *Id.*
that students have over what they study and the type and content of their assessments, the higher their motivation will be.\(^{30}\)

\(^{21}\) In Weiner’s separation of locus and control, the control dimension is measured on a continuum from stable to unstable. Ability and effort are both internal, but ability is relatively stable over time, whereas effort is unstable. Students who attribute failures to unstable causes, like effort, are much more likely to have a sense of self-efficacy because they can make a change in behavior. Examples from external loci would include task difficulty (stable) and luck (unstable).\(^{31}\)

\(^{22}\) The controllability dimension, as defined by Weiner, does not require that the actor making the attribution control the action leading to the outcome; the action needs merely to be controllable. For example, a stable, external, controllable achievement attribution could include instructor bias or favoritism. A controllable, unstable achievement attribution could include help studying for a test with friends.\(^{32}\) Even if someone can control external controllable attributes, the adaptive student is well served by learning to attribute outcomes to internal controllable achievement attributes.

\(^{23}\) In attribution theory, linking attributions to one’s expectancy beliefs is the key to whether one develops adaptive strategies, strengthens self-efficacy, and tends to engage in in-depth cognitive study. Weiner has demonstrated that the stability dimension, in particular, closely relates to expectancies for success.\(^{33}\) His expectancy principle and its three corollaries can be summarized as follows: The perceived stability of causality of an event influences one’s expectations for success thereafter. Corollary 1: Stable attributions lead to more certain expectations for future outcomes. Corollary 2: Unstable attributions lead to uncertain expectations for future outcomes. Corollary 3: Events related to stable causes yield greater certainty than those related to unstable ones.\(^{35}\)

**Review of the Research Literature**

\(^{24}\) Motivation scholars have created numerous applied techniques to assess behaviors and perceptions and, most importantly, simple interventions that can help at-risk students become better learners and more successful students. Law students, because they are preparing for a demanding profession, have much to gain by learning how to

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30. Albert Bandura, Self-Efficacy: The Exercise of Control (1997). While not a theoretical focus of this article, social cognitive theory (along with other theories, like self-regulation) has a crossover that might interest the reader.
32. Schunk et al., supra note 1, at 101 (fig. 3.3).
33. Weiner, Attributional Theory, supra note 23, at 84.
34. Id. at 114–15.
35. Id. at 84.
learn for long-term professional mastery, as opposed to learning just to pass a test and then move on with life.

Utility-value interventions arise from expectancy-value theory. The contention by Eccles et al. is that expectations of success and the extent to which a task or topic is valued are the “most proximal predictors of achievement and achievement-related choices (e.g., which courses to take, how hard to study for an exam).” The students who are most at risk academically have low expectations of success and see little value in what they are learning. While first-semester, first-year law students probably expect to succeed academically based on their prior experience, they may struggle to see the importance of the subject matter and its vital connection to accomplishing their underlying professional goals. As the name implies, utility-value interventions target students’ perceived utility value for a course’s subject matter by either having an instructor tell the students about the importance or, more effectively, having students recognize the importance themselves. In their article on using targeted interventions in higher education, Harackiewicz and Priniski write,

The course-specific task value interventions tested to date have been self-generated utility-value interventions. In a prototypical self-generated utility-value intervention, students complete a series of course writing assignments in which they choose a topic covered in the current unit of the course and either discuss the relevance and utility value of the topic (the intervention condition) or summarize the topic (the control condition). This intervention provides students opportunities to make real connections between what they are learning and things that they care about, fostering perceptions of value as well as engagement with the course content.

High school science students were the subject of the first field tests of utility-value interventions. The intervention helped students identified as having low success expectancy improve their grades and increase their interest in science generally. Two late-semester interventions in an introductory college psychology course had similar results. Students who performed poorly on the first exam in the semester showed increased utility value, interest in psychology, and interest in majoring in psychology. In another psychology course, the utility-value intervention raised final exam scores across the board, but it had the most significant impact on the grades of those who had the worst scores initially and were in at-risk groups (e.g. poor-performing men). Utility-value

37. Id.
38. Id.
39. Id. at 418.
Interventions integrate well into coursework for immediate results; these form part of the synthesized intervention plan discussed in the next section.

Interventions that derive from attribution theory are generally called *attribution retraining*. Their goal is to shift students who exhibit maladaptive attribution styles to adopt adaptive attribution styles.43

An adaptive attributional style involves attributing the causes of success to stable, controllable and internal factors (such as ability) and those of failure to unstable, controllable and external factors (such as effort). Research has shown that students who hold these attributional styles have more confidence in their academic progress and work harder towards reaching their goals . . . . In contrast, effective learning is hindered when individuals attribute success to external, unstable and uncontrollable factors (such as luck) and failure to internal, stable and uncontrollable factors (such as lack of ability). Such a maladaptive attributional style has been linked to students holding pessimistic views about their future success and withdrawal of effort on tasks they perceive to be difficult . . . .44

While these interventions succeed in the classroom with breakout groups of at-risk students, studies show that all students can learn from these interventions so that class-wide interventions can be beneficial.45

Another effective intervention is to give regular verbal feedback linking past achievements with effort, which increases motivation, self-efficacy, and skill acquisition, better than linking [students'] future achievements with effort . . . or not providing effort feedback. For effort feedback to be effecting, students must believe that it is credible; that is, students realistically must work hard to succeed. This suggests that effort feedback may be especially influential during the early stages of skill learning when more effort typically is required to succeed.46

Instructors must give accurate feedback to students, who are likely to perceive inaccurate feedback as noncredible, even if the instructor’s intention is to encourage. Therefore it would be better to find out how much effort the student believes he put into the assignment for which he earned a lower than the desired grade. Then the teacher could honestly say, “This was not your best work, but given that you have done better on other assignments, and that you feel you did not give 100% effort on this project, you have every reason to be confident that you can master this material and do better on the next project.” If, however, the student has worked very hard but was unsatisfied with the result, identifying knowledge and skill gaps, as opposed to lack-of-ability attributions, will encourage adaptive attributional associations. Further, if a teacher realizes from the


45. Id. at 83.

46. SCHUNK, supra note 1, at 116.
overall performance of the students on a particular assessment that the assignment was too easy for the students, the teacher should refrain from falsely associating the results with effort.

**Synthesized Intervention Plan**

¶28 Familiarity with data-based understanding of cognitive processes and the psychological theoretical constructs that inform the process and behavior of learning creates better teachers and students. There are straightforward interventions or teaching strategies that any legal research instructor can employ. Identifying the students who are most at risk can be problematic for several reasons, including lack of knowledge and skill on the part of the instructor and the possibility of stigma for identified law students in a highly competitive academic environment. In my class, I integrate several tests and assessments that inform students about adaptive assessment styles, and I structure the timing and style of formative assessments to encourage effective study methods and enhance self-efficacy.

**Examples of Interventions**

¶29 Some examples of interventions include:

- Week one written assignment asking students to share their professional aspirations in the practice of law.
  - What inspired you to attend law school?
  - Imagine yourself practicing the law in your dream job. Describe a rewarding day due to obtaining an excellent result for your client. Be as detailed as possible.
  - What role do you imagine legal research plays in the day-to-day life of a new attorney? On what do you base this perception?
  - Have you ever experienced failure in your personal life or in academics? You need not share the details, but answer the following questions about how you felt about that failure:
    - A series of attributional styles will be modeled, with a 1–5 scale, 1=not at all true and 5=true.
    - My midterm grade is less than I hoped for, so I won’t bother working so hard for this class.
    - I got all As in high school, so I was surprised when I did so poorly in my first semester of college. I talked about it with my student adviser; she asked me about some of my study habits in high school, and recommended that tutoring at the math lab and the writing center could help me learn skills to be more effective with my study time.
    - My lowest grade during my 1L year was in contracts, so I guess I won’t consider transactional law.
¶30 The responses to these questions help me better understand students’ prior attribution styles, how they perceive the value of legal research, and their professional goals. To the extent possible, I create assessment options from which students can select (e.g., alternative assignments to choose from based on legal topic). In-class activities, homework, quizzes, project hypotheticals, etc. should reflect varied practice settings, gradually increased realism, having upper-level law students and new attorneys physically or virtually visit the class to discuss legal research in practice and, time permitting, to offer some instruction on study and test-taking methods that are specific to law school.

**Expected Outcome**

¶31 The goal in using research-based interventions like these is to improve the performance and engagement for the bottom performers in my class. Increased interest across the board would be incredible, but the self-efficacy and intrinsic motivation of students at or near the top of their class in law school means that those students will take care of themselves. Making sure that any student who graduates from our law school can become professionally competent and have a mastery-goal orientation is much more important than making incremental improvements with the top of the class.

**Conclusion**

¶32 Applying research-based motivation theories to the experiences of first-year law students can help correct students’ maladaptive learning strategies, which may hinder their progress and success not only in law school but later during their professional careers. Expectancy-value theory and attribution theory are two such theories. Both suggest possible interventions that legal research instructors and others can develop to better support students.

¶33 More than ever, law schools owe it to the students who matriculate to set them up for success, which includes the competencies needed to obtain professional employment and to meet the standards of the profession. Legal research and writing are the first practical skill sets that law students acquire on their way to practicing law. These two subjects are vital parts of making that dream of helping a client obtain an excellent result a reality.
Keeping Up with New Legal Titles*

Compiled by Susan Azyndar** and Susan David deMaine***

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The release of *Kennedy's Avenger* intrigued me, as it presents events that occurred in the space now occupied by the law school where I work. In the summer of 2019, UNT Dallas College of Law expanded into the Dallas Old Municipal Building, Dallas’s former city hall, which served as police headquarters in 1963. The top two floors were the city jail, as well. After his arrest, this was where Lee Harvey Oswald was jailed and interrogated on charges of assassinating President John F. Kennedy and shooting a police officer. While the rest of the city jail was demolished during renovations in preparation for the law school, the three-cell block where Oswald was detained is preserved. As fate would have it, this is the same block of cells where Oswald’s own killer was held after his arrest. I was eager to read about the history of this space.

Dan Abrams and David Fisher deftly describe the events that unfolded in 1963. Two days after JFK’s assassination, Jack Ruby—Jacob Rubenstein, to use his real name—casually strolled down the car ramp into the underground garage in the annex attached to the Old Municipal Building. A crowd had gathered to watch as Lee Harvey Oswald was escorted out of the Old Municipal Building for transfer to the county prison in an armored car, which was idling at the top of the ramp. Suddenly, as captured on live television, Ruby stepped forward, pressed a handgun into Oswald’s stomach, and shot Oswald. Police officers quickly restrained Ruby, but there was no hope that Oswald could be saved.

For Ruby, a criminal trial in Texas courts followed, along with an array of other complex legal proceedings. To name just one, the Warren Commission would soon begin its investigation, including examining allegations that Oswald and Ruby were part of a conspiracy.

The authors spend the bulk of the book recounting the story of Ruby’s trial with probably too many small details for some readers, but these extraordinary details about
the people who participated in the trial enliven the narrative. Besides Ruby, portrayed as a minor mob figure, other participants merit attention. One example is Melvin Belli, Ruby’s defense counsel, a colorful character in his own right. While he sought to protect Ruby with an elaborate argument of temporary insanity, Belli did so without the Texas twang that a Dallas judge and jury would be comfortable hearing.

Kennedy’s Avenger fits into the true crime genre with its focus on the character of Ruby and his criminal trial. This book is a popular read, so it lacks the substance an academic audience might expect. The authors do not footnote any of the facts or assertions in the text. The bibliography is less than two pages and includes only 22 entries. A large majority of the sources are secondary, but they do list the major newspapers of Texas at that time, which likely helped make the book informative. This is not a title for the serious student of the Kennedy assassination and the surrounding circumstances. For the casual reader, however, it succeeds in providing an open, honest attempt at capturing a snapshot of Jack Ruby and the hectic days of his trial and appeals. Recommended for academic law libraries with a popular works collection.


Reviewed by Eric C. Berg

In Fandom and the Law: A Guide to Fan Fiction, Art, Film & Cosplay, Marc H. Greenberg weaves his passion for fandom with his expertise as a professor and practitioner of intellectual property and entertainment law into a compelling survey of the constellation of legal issues arising from modern fan culture, or fandom.

The book begins with an overview of the sociology of fandom, introducing the uninitiated to a new vocabulary. There is fan fiction, consisting of stories written by fans about fictional characters; fan art, fan-created visual media depicting fictional characters; fan film, amateur video created by fans inspired by a work of fiction; and cosplay, the activity of dressing up as a fictional character. And then there are the acafans—academics who study fan culture and are themselves fans, such as Henry Jenkins, a professor at University of Southern California who is credited with coining the term.

The bulk of this book is dedicated to the area of intellectual property law primarily implicated by fan fiction: copyright law. Newcomers to copyright law will find that Greenberg provides an easily understandable primer on the foundations of U.S. copyright law, as told through the lens of fandom. The various types of fan-created works all derive from works of popular fiction. In other words, most fan-created works are derivative works under U.S. copyright law. The rights of a copyright owner include the exclusive right to create derivative works—and to prevent others from creating them. However, the public retains the right to certain uses of copyrighted works under the

doctrine of fair use, a topic near and dear to the hearts of law librarians. Under the transformative use doctrine, many fan-created works may be considered fair use. One of Greenberg's refrains is the tension between the right of the author of an original work to control its copyright versus the right of fans to express themselves by creating derivative works that arguably offer some creative value of their own.

¶9 Greenberg emphasizes the significant discretion that copyright holders have in enforcing their intellectual property rights against fan creators. A copyright infringement suit against a fan creator could generate bad publicity for the copyright holder and risk alienating a fan base. The desire to engage with fans rather than sue them is one practical reason Greenberg posits relatively few infringement lawsuits are filed against fan creators.

¶10 Greenberg addresses issues specific to certain types of fan-created works, some moving beyond the world of copyright. Cosplay, he notes, tends to raise a less significant copyright concern due to the ephemeral nature of wearing a costume, the high cost of litigation and, again, the risk of bad publicity. Conventions have created guidelines, however, to address inappropriate conduct, particularly nonconsensual touching and assault against cosplayers. The book also briefly touches on issues of trademark law, right of publicity law, and obscenity law that have the potential to impact fan-created works.

¶11 Greenberg attempts to appeal to multiple audiences, including law students, practitioners, acafans, and fan creators. Writing for such a broad spectrum of readers is a challenge for any author. Fortunately, Greenberg's clear and direct prose is accessible to nonlawyers and informative to generalists and IP experts alike. However, the book's accessibility does suffer slightly from the inclusion of some overly lengthy excerpts from statutes and terms of service, whose technical language may be more difficult for nonlawyers to interpret and could have been more selectively edited or paraphrased. I would be a bad Trekkie if I did not offer one final and extremely pedantic point of criticism: at one point (p.199), the book refers to Mr. Spock as “Dr. Spock,” confusing the Vulcan with the well-known pediatrician. However, Greenberg’s passion for fandom as a self-proclaimed acafan makes this book a joy to read.

¶12 This book is highly recommended for academic law libraries, particularly those with a focus on intellectual property titles. Professors of intellectual property and media law may even consider adopting it for an upper-level seminar. Midsized to large law firms and boutique IP firms will also find this book useful, as it includes many practical tips for counseling and litigation strategy.


Reviewed by Cynthia Condit*

¶13 In *The Book of Trespass: Crossing the Lines That Divide Us*, Nick Hayes has written a thought-provoking polemic about the inequities of land ownership in England.

* © Cynthia Condit, 2022. Head of Faculty and Access Services, Director of Fellows Program, Daniel F. Cracchiolo Law Library, University of Arizona College of Law, Tucson, Arizona.
He traces the centuries-in-the-making evolution of the law of trespass and the concept of property that has left 92 percent of the land and 97 percent of the waterways in England closed to public use. For comparative purposes, this is roughly equivalent to restricting public access in the United States to only the state of Alabama.²

¶ 14 Hayes, a passionate advocate for land reform and conservation, argues that the current English framework of land ownership is an “illusion that property works for everyone” (pp. 364–65). The core of social inequality, according to Hayes, lies in the governance of the land by a select few, which reflects the values of only a miniscule minority of England’s citizens. Greater access to, and better use of, the land, he contends, would benefit everyone.

¶ 15 Chapter by chapter, each named for a creature, Hayes documents an intentional trespass onto a property, provides the history of the property, and reflects on the laws of enclosure and their impact on the “right to roam” in that context. The chapter entitled “Sheep,” for instance, examines the boundaries of public space in relationship to church and religion. “Spider” addresses the persistent erosion of women’s property rights and autonomy after William the Conqueror enshrined the primacy of the first-born male. In “Cockroach,” Hayes considers national border boundaries and recounts his experience at the Calais Jungle, a migrant and refugee camp.

¶ 16 The topics covered are myriad and wide-ranging—fox hunting, legislation, Gypsies and vagabonds, witches, protestors, peerage and grouse hunting, migrants, militarization of borders, nationalism, the Commons, hidden ownership, the cult of exclusion, and truths hiding in plain sight, to name a few. Yet the book works as a cohesive whole. Each topic flows deftly into the next, in an easy narrative voice bordering on storytelling. You can imagine yourself sitting around one of the campfires Hayes has built, listening to him bring the history, events, and people to life. The language is vivid and descriptive. For some it might border on excessive, but it paints an effective picture of the beauty and allure of the land.

¶ 17 Occasionally, however, the book gets a bit bogged down. Like the author’s illicit travels throughout the English countryside, this reading journey is more of a meander than a race to the finish line. The final two chapters (“Toad” and “Stag”), for example, focus on the English waterways and are not as fully fleshed out as prior chapters. The book may have been better served without them, perhaps leaving waterways for another book. Moreover, although Hayes acknowledges that there may be downsides to opening up the land, he does not expand on them, although he notes that with rights also comes responsibility.

¶ 18 If you are a logophile, you’ll enjoy how Hayes digs into the roots and origins of words and phrases. For example, I learned that when someone “crossed the line” (having strayed beyond the limits of acceptable action), their deeds (or words) were deemed to be “beyond the pale,” the old Saxon word for fence (p. 18).

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² Based on total acreage of the United States, Alabama contains approximately 8 percent of the total U.S. acreage. This calculation does not reflect waterways, however.
¶19 Fun stuff to look forward to: the book is interspersed with several woodcut prints created by the author and a “can you see the cat” puzzle at the end. Additionally, be on the lookout for a little secret that Hayes discloses that quite neatly ties things together. More practically, the book also includes a comprehensive list of resources, notes, and an index.

¶20 *The Book of Trespass* is both engaging and enraging. It will likely raise strong emotions, propel interesting debate, and raise questions. You may even find that you see fences and walls in a totally different light. I recommend this title for the academic law library where it could be used in any number of law classes, from property to environmental law to immigration law, to spark lively discussion. An enjoyable and informative read for everyone.


Reviewed by Amy A. Wharton*

¶21 In publishing *Introduction to Law Librarianship*, editors Zanada Joyner and Cas Laskowski team up with a group of knowledgeable and insightful authors to weaken a barrier to entry into the field of law librarianship: a born-digital textbook on law librarianship is now freely available to anyone on the planet with internet access. In its foreword, Teresa M. Miguel-Stearns underscores the significance of this achievement: “This textbook will allow us to reach beyond our borders to support the growth of the profession around the world” (p.xvii).³

¶22 Though its status as the first open access e-textbook on law librarianship is enough to qualify *Introduction to Law Librarianship* as groundbreaking, novelty infuses every feature of this ambitious work. As an e-textbook, it employs pedagogical devices that distinguish educational materials from other readings. Each chapter opens with a bulleted list of “Key Concepts.” Further in, one or more “Concept in Action” boxes present story narratives that help students personalize how a concept might play out in a real-life situation. Each chapter closes with a “Dive Deeper” box that offers a brief bibliography of additional readings.

¶23 The book is arranged in five parts. The first, “Universal Topics,” includes several chapters on topics not covered in previous textbooks on law librarianship. For example, Susan David deMaine’s chapter on accessibility introduces the concept of universal design for “those who think deeply about access and abilities” (p.20). “Critical Legal Studies,” by Jennifer Allison, offers suggestions for applying critical principles to law librarianship to eliminate “aspects of the library that reflect and further marginalization and oppression” (p.34). Paul J. McLaughlin’s “Advocating for the Law Library Profession,” Brian R. Huffman’s “Access to Justice,” and a forthcoming chapter on

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3. The e-book offers a PDF download version, which includes page numbers.
“Diversity and Inclusion” cover topics that were once atypical finds in a textbook on law librarianship. The contemporary approach to these topics makes this book useful not just for graduate students but also for practicing law librarians at all experience levels.

¶24 The second, third, and fourth parts of the textbook cover the three types of law libraries: academic, government/public, and private. These parts mostly describe the nuts-and-bolts aspects of law librarianship, sprinkled with modern concerns such as developing cultural competency and citation counts for faculty. The final part, “Navigating a Career in Law Librarianship,” provides practical advice on career development. Readers may find Babak Zarin’s chapter on “Balance, Burn-out, and Mental Health” somewhat unexpected here. While much attention has been paid to the mental health of attorneys, Zarin spotlights the fact that law librarians are subject to similar stresses. More important, he offers concrete suggestions for coping with these realities.

¶25 The authors of Introduction to Law Librarianship represent diversity across an array of dimensions. Its writers come from a range of backgrounds and hail from all types of libraries. While some authors are quite experienced, many are just a few years out of graduate school. Less experienced librarians often coauthor chapters with those with long career histories. Synergies seem to have emerged from the blending of fresh perspectives and long-range views. The result is a textbook that informs well on practices and principles, both traditional and new.

¶26 All of this appears to be in keeping with the editors’ vision. In a 2020 interview with AALL Spectrum, coeditor Casandra Laskowski described the editors’ vision for a novel project, an Open Educational Resource (OER) textbook for law librarianship:

We want the textbook to provide a comprehensive starting point for newer members . . . . We are committed to giving space to a diverse set of authors so that new librarians can find themselves in the book in addition to relevant knowledge. And we also want to address difficult topics early, so that newer law librarians are prepared for the different situations they might face.4

Joyner and Laskowski have launched a project that fulfills this vision. That newer members of the profession contributed heavily to this informative and practical work bodes well for the future of the law library profession.

¶27 Introduction to Law Librarianship in its current form is a praiseworthy textbook, yet it remains a work in progress, which may pose some practical challenges for its use as a textbook. As of this writing, chapter 2 is still forthcoming, and the editors have issued a standing invitation for new contributors, meaning there is more content to anticipate. However, no guidance is given on how additions, deletions, and revisions will be handled. Will changes be made ad hoc and, if so, will individual chapters indicate when they were last updated? Will the revision process instead keep changes in development and incorporate them as a batch in each new release? Especially

important, will the readings a professor selects for class over the summer be changed by the time students read them in the fall?

¶28 My hope is that changes can be made as the need arises, though they will need to be documented for readers. A few changes in both the text and the platform would be welcome. Some meaningless errors in the text, such as repeated words and stray bits of HTML code, detract somewhat from the quality of the work. I am also hopeful that biographical entries for the authors will be added soon, in part to more fully reflect the diversity of authorship described above. The Presswork platform is reader-friendly, but it supports only basic searching, and the book lacks an index to compensate. A PDF version is also available to download. Still, as it stands, *Introduction to Law Librarianship* is already a remarkable achievement. Like its readers, it has the capacity to improve with employment and time. Highly recommended for all law libraries.


Reviewed by Judy K. Davis

¶29 The first aspect of *Law and Economics in Jane Austen* that captured my attention was its unusual title. While I don't consider myself a Jane Austen expert, I know that a typical Austen novel centers around love, relationships, and women pursuing marriage—such as Emma, the meddling matchmaker, or Elizabeth Bennet, a young woman intent on marrying for love despite her family's plans to the contrary. So where do law and economics come in? The answer, it turns out, is practically everywhere.

¶30 Although on the surface Austen's writing may appear to revolve primarily around romance, it is actually much more sophisticated, frequently exploring links between love and money. In fact, the goal of this book, as stated by authors Lynne Marie Kohm, associate at Epsilon Economics, and Kathleen E. Akers, professor at Regent University School of Law, is to prompt intelligent readers to no longer think of Austen as merely a romance novelist. The book achieves that and much more. In fact, for readers wanting a primer on law and economics, or for those who may have considered the topic too dry, *Law and Economics in Jane Austen* offers a fresh and entertaining introduction to the field embedded in an easy-to-read narrative.

¶31 Despite its relative brevity, this book covers much ground. It is divided into six chapters, along with an introduction, a conclusion, a bibliography, an index, and a table of cases and codes cited. The introduction outlines what the authors hope to accomplish and provides a brief summary of each of Austen's six completed novels, a useful refresher. Chapter 1 continues by explaining the concepts of "love, law, and economics according to Jane" (p.7). Here, the authors provide a brief background on economics with relation to areas like estates in land and marriage proposals, recurrent themes in Austen's work. The role of law is introduced in this chapter as well, with particular

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attention to the part family law plays in Austen's writing. Examples taken from Austen's characters and stories illustrate the relevant concepts.

¶32 The following substantive chapters address specific facets of law and economics. For example, chapter 2, “The Dating Game,” explains the economics of information and the social rules of how men and women connect. We learn that seeking money from relationships was very common in Austen's time, or at least was more openly discussed than it is now. Meanwhile, chapter 3, “Sex and Money,” examines the legal and economic repercussions of sexual intimacy. Using examples from Pride and Prejudice and Sense and Sensibility, the authors explore sex and money in the context of supply and demand, including such concepts as transaction costs, opportunity costs, and even discount rates. In a candid analysis, this chapter explains how sex and money form the core of most relationships in Austen's work and beyond.

¶33 The remaining chapters address marriage and marriage economics, closing with a chapter on children that explores topics such as parental rights, inheritance, and illegitimacy. The authors draw parallels between the children in Austen's novels and modern-day children, and the legal and economic issues they face.

¶34 Although significant parts of their book focus on current legal and economic issues, such as the modern state of family law, estate law, and even online dating, Kohm and Akers succeed in introducing readers to law and economics from Austen's time. A more robust treatment of Austen's work, especially her magnificent characters, would round out this book even more. Finally, the four-page index is detailed for its size, a welcome addition for those readers searching for attention to particular law and economics concepts or Austen works. Recommended for academic law libraries.


Reviewed by Emma Wood*

¶35 Megan Lotts, Art Librarian at Rutgers University, teaches workshops and builds collections to engage students and faculty. Lotts focuses her research on play and makerspaces, and she derives the content of her first book from her experience designing, implementing, and assessing inventive programs and events at her institution. As she writes in the preface, the audience for this work is anyone looking for new, low-cost, high-impact ways to reinvigorate their libraries. The book does not cover how to advance creativity from a systemic perspective for libraries in general. Rather, it is an experiential guide with examples of innovative programs and events at individual institutions.

¶36 Advancing a Culture of Creativity in Libraries is a concise volume divided into two parts: “Creative Library Culture” and “Ideas in Action.” The chapters therein detail the philosophical and practical aspects of channeling creativity into library initiatives. Creativity can seem a daunting and elusive topic for those who do not view themselves

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as particularly imaginative, but Lotts alleviates those doubts early in the book, assuring readers that innovation has a unique manifestation in everyone. Lotts elaborates on the process and elements of creativity in a methodical way that encourages readers to harness creativity—described as “not a superpower” (p.3) but a skill—by making unusual connections and incorporating the tenets of play many of us have not exercised since childhood.

¶37 Part 1 provides a conceptual foundation for getting started and presents a practical framework for creativity in terms of physical space and time management, as well as building teams and community partnerships. The author incorporates pragmatic concerns, like workflow and budget, while balancing less salient topics such as the connection between creativity and morale. Lotts describes failure as a way to grow and recalibrate, an opportunity to accommodate new developments and ideas. The importance of planning and assessing projects is emphasized, and readers will appreciate the assessment form and creativity worksheet included as exhibits A and B.

¶38 Part 2 provides specific examples of creativity at work in libraries. The author primarily describes her own efforts at Rutgers, such as the “Lego Playing Station,” button-making, zines, and art exhibition spaces. Another example comes from the Madison Public Library in Wisconsin, where a space called “The Bubbler” promotes a “maker mindset” by providing room for unique events, exhibits, and community collaboration. Lotts also highlights distinctive faculty writing retreats hosted by the Earl Swem Library at William & Mary in Virginia. Each brief chapter in part 2 opens with a description of an event or a program and concludes with a discussion of the endeavor’s outcomes.

¶39 Advancing a Culture of Creativity in Libraries was written during the COVID-19 pandemic, and the author incorporates ways the crisis disrupted library events and services, a dilemma to which all librarians can relate. When physical collections became inaccessible and in-person gatherings restricted, programming and engagement grew more challenging, calling for a creative approach. Still, the author found ways to circumvent the obstacles, with offerings such as Urban Sketchnoting, a form of drawing from direct observation with results shared virtually.

¶40 While the particulars of each enterprise included in the book may not apply to every library setting, as they are largely artistic and derived from playfulness, the principles of creativity that Lotts underscores will resonate with any audience. With the guidance outlined in part 1, librarians can consider derivatives of the model activities from part 2. Readers should expect to move through this work quickly because of the succinct length, but also due to the clear tone and anecdotal style. This book is recommended as a starting place for librarians who seek to offer more engaging programs.
In *Promises to Keep*, Donald G. Neiman argues that race is and always has been central to public opinion, political debate, and constitutional interpretation in America. Thirty years after publication of the first edition, this second edition does much more than merely add material to bring the book up to the Trump era. Chapters have been revised to reflect recent scholarship and sources not readily available to Neiman in 1991.

The book is divided into eight sections, each covering a distinct era in American history. Drawing on scholarship, historic documents, and court opinions, Neiman traces the path toward equality in America. His research makes clear the path is not a straight one, each victory followed by a series of defeats.

Not only has the path not been a straight line, the means to achieve equality has not been straightforward either. As Neiman documents, the fight shifted back and forth from federal to state action over the years. In the 19th century, for example, the antislavery factions suffered a series of defeats in both the federal legislative and judicial arenas, most notably with the Kansas-Nebraska Act and the *Dred Scott* decision. Abolitionists took to state courts and legislatures to combat segregation and other laws disadvantaging free Blacks. After the passage of the Civil Rights Act of 1875, the fight for equality shifted back to the federal level. In the 20th and 21st centuries, a combination of federal and state actions challenged discriminatory laws and policies.

The definition of equality has also shifted over time. Quoting from letters and speeches of political activists, Neiman makes clear that prior to the Civil War, the equality sought was legal equality. In many states, both North and South, Blacks could neither bring suit against nor testify against whites. Their ability to hold property or enter into contracts was severely limited. The aim of abolitionist politicians was to end slavery and extend to Blacks the legal rights of citizenship. However, the franchise was still to be limited to property-holding white men. Only with the passage of the Fifteenth Amendment after the Civil War was the franchise extended to Black male citizens.

In the early to mid-20th century, the path to equality shifted to the courts. Analyzing court decisions and the papers of the NAACP, Neiman details how that organization co-opted the language of *Plessy v. Ferguson*: the NAACP argued for true equality in facilities established for Blacks, aiming to make maintaining dual systems so expensive states would be forced to integrate. This chipping away at the notion of “separate but equal” finally resulted in the decision in *Brown v. Board of Education* that segregation was “inherently unequal.”

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¶46 While Neiman recognizes the gains made by proponents for true equality in the 20th and 21st centuries, he also provides evidence of renewed efforts to nullify those gains. State legislatures, under the guise of preventing voter fraud, have passed laws that disproportionately affect the ability of Blacks and People of Color to vote. Federal courts have made it harder to pass laws, regulations, or policies promoting affirmative action. Taking a page from the NAACP playbook, courts have begun to redefine civil rights remedies. From *Bakke* to *Shelby County*, the Supreme Court has held that remedies should focus on actual, present discrimination, not a history of discriminatory actions.6

¶47 Aside from being extremely well researched, this book is extremely well written. Neiman has avoided the dense prose common to many academic books. *Promises to Keep* is accessible and easily understood by a reader with only a passing familiarity with constitutional history. A minor flaw in this book is a stylistic choice on the part of the author. At the beginning of each section, Neiman begins with a summary of events of that era. The rest of the section then discusses these topics in greater detail. Because this can create a sense of déjà vu on the part of the reader, it may feel initially off-putting. This book is an important read for anyone interested in the topic of systemic racism and how our legal system has supported it over the centuries. It deserves a place in any library with collections featuring either the history of the civil rights movement or constitutional history.


Reviewed by Sara Gras∗

¶48 As a longtime podcast fan, my consumption has grown along with the ever-increasing library of choices. If you are also a podcast enthusiast who follows news about the law, enjoys a juicy legal scandal, or values high-quality legal journalism, and you are not already listening to Law360’s *Pro Say* podcast, go straight to whichever platform you use and subscribe today. *Pro Say*’s hosts, Amber McKinney and Alex Lawson (joined until very recently by the insightful Bill Donahue), strike the perfect balance of legal news and culture in this weekly show. Their collective knowledge and journalistic approach meld to deliver a fast-paced, constantly varied, and always engaging 30 or so minutes that leave me feeling both better informed and pleasantly amused. While only McKinney was a practicing attorney prior to becoming a journalist, Lawson is a seasoned legal reporter who demonstrates his expertise on a wide variety of issues.

¶49 Each show begins with a legal news highlights segment, followed by a deep dive into a larger story, usually in partnership with a Law360 reporter as the guest. The episodes typically conclude with a quirky story, usually involving lawyers or judges. Episode 218, for example, features a Texas lawyer who was arrested while walking the

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beaches of Galveston in a Michael Myers costume, complete with mask and prop knife; and the concluding story in Episode 211 discusses a legal argument against a COVID-19 eviction ban based on the Third Amendment—that’s the one that deals with quartering soldiers, for those rusty on constitutional amendments. These episodes are perfect for inspiring fact patterns for teaching and training, staying abreast of big legal news stories, and enjoying a chuckle at some of the more humorous aspects of the profession.

¶50 The show’s hosts draw out and expound on the details of current events a legally savvy listener wants to know about in a manner distinct from more mainstream news sources. For example, when Britney Spears’s fight against her conservatorship made headlines in summer 2021, Pro Say took the opportunity in Episode 209 to dig deeper into the practice of guardianship with reporter Cara Bayles, who had written a story on the topic for Law360. Bayles explained this widely used but opaque practice of probate courts in a highly accessible way, providing general statistics on its prevalence and illustrating its effects on individuals by highlighting the personal story of one person she had interviewed for her story. Regardless of the subject matter, McKinney and Lawson have a special aptitude for asking the very questions that float through my head as the details of a story unfold. In Episode 207’s coverage of Bill Cosby’s release from prison when his conviction was overturned, McKinney insightfully pointed out how unjust this outcome probably seemed to most laypeople and asked her cohost to comment on the implications of this holding for similar cases. Lawson then discussed the unique procedural matters at issue, while fleshing out the potential impact of the court’s position on implied grants of immunity on other criminal cases.

¶51 Not all content focuses on matters of current legal import. In a more jocular vein, the Pro Say team presented a series of bonus episodes this summer in the form of the Pro Say Movie Club. Over the course of several episodes, the hosts watched and discussed a series of law-themed movies, including Legally Blonde, The Devil’s Advocate, My Cousin Vinny, and Loving, to name some of my favorites. While the hosts discuss the plots, acting, writing, and directing of each film generally, they also spend a significant amount of time discussing the legal aspects of each movie. Specifically, they focus on what the films got right and wrong about the practice of law. The group, which still included Donahue, had some brilliant and hilarious insights. Not only were they very enjoyable, they also inspired me to go back and rewatch many of the movies with my attention trained on elements discussed in the episode. The transformation of Reese Witherspoon’s character in Legally Blonde from sorority girl to law school star pupil teaches the value of bringing your lived experience to the practice of law and demonstrates how the profession can benefit from attorneys who break the lawyer archetype. And My Cousin Vinny provides some great illustrations of skillful cross-examination and witness impeachment amid all the humor. If you have some time on the train or in your car, the Movie Club episodes are timeless and worth the listen.

¶52 While I may not have the silver tongue of Elle Woods or Vincent Gambini, I hope I accomplished my goal of inspiring you to check out the Pro Say podcast. Although the news that Bill Donahue was leaving Law360 and the podcast initially
filled me with concern that I would lose the most enjoyable 30 minutes of my commute each week, Amber McKinney and Alex Lawson continue to produce excellent episodes with great content and high energy.


Reviewed by Jane P. Bahnson*

¶53 Reading a volume of essays on governmental responses to COVID-19 written in May 2020, one might hope to stumble on tidbits of unvarnished news, uncensored by subsequent turns of events, that might help fill in the gaps and explain how a small outbreak in a lesser-known city in China rapidly infected the worldwide population and killed millions of people. COVID-19 in Asia offers few surprises, but it does fill in exhaustive facts well beyond what was commonly known at the time. Each chapter is replete with detailed descriptions of government policies and their chronological implementation, the impact of these policies on populations, and the authority governments invoked to contain an unprecedented threat. This book is a welcome archive, documenting governmental reactions across Asia to the early spread of a pandemic unparalleled in our lifetime.

¶54 COVID-19 in Asia consists of a series of essays in which 61 researchers with varying fields of expertise, such as law, public health, political science, computer science, and linguistics, describe legal and political responses to the COVID-19 pandemic across Asia, with many chapters focusing on individual countries. While some chapters cloak governmental actions in forgiving, and even laudatory, portrayals, others offer unflinching criticism. The initial essays report almost uniformly strict governmental crackdowns to contain the virus in the earliest days, the legal mechanisms for which were largely put in place almost two decades earlier due to the 2003 SARS epidemic. Constant handwashing, mask wearing, taking of temperatures, and social isolation were already familiar responses to outbreaks in many parts of Asia, so those public health restrictions that drew pushback in the West were met with little resistance. The authors also document communication crackdowns, oppressive restrictions, indifference toward the needs of disadvantaged communities, and political opportunism, all of which hindered the effectiveness of the response and otherwise caused hardship. For example, critical passages describe the efforts of the Chinese government to stop the early flow of information about the virus, which “squander[ed] valuable time” (p.9) and led to continued uncertainty as to precisely when the pandemic started. In India, COVID-19 gave the central government “a singular opportunity to reinforce the authoritarian populist, majoritarian nationalism and centralizing tendencies” (p.186), as it moved to federalize restrictions with little consideration of the impact on marginalized populations. An early nationwide crackdown on public transportation

disproportionately hit India’s informal workers and migrants, many of whom were forced to walk hundreds of kilometers to reach their homes and who were sometimes beaten along the way by police enforcing the “no movement” mandate.

¶55 If individual chapters are dense and sometimes tedious, it is because they are packed with detailed legal and psychosocial analyses, supported with heavy citation. This is not light reading. Chapters address the impacts of COVID-19 on aviation, business supply chains, and religion, and the authors offer case studies to describe the steps governments did and should take to keep important industries functioning. These sections offer some interesting accounts, particularly in the chapter addressing the role of religion in containing COVID-19. For example, in Bhutan, religious officials equated physical distancing with the practice of mindfulness in Buddhism; and in Indonesia, one municipality invoked the supernatural in its efforts to control the virus by sending out young persons dressed as ghosts to scare people into staying home.

¶56 Despite the book’s careful coverage of these early events, it omits any thorough discussion of preliminary attempts by international health experts to investigate the source of the virus. The introduction chronicles the many lethal viruses that have arisen from animals in the region and assumes that COVID-19 likely had a similar origin. However, by the spring of 2020, doubts about COVID-19’s source had already surfaced, and scientists were complaining about the limited cooperation with international investigators. One suspected source of the early spread of the virus, a wet food market, was shuttered and sanitized by the Chinese government on January 1, 2020, just one day after China formally notified the World Health Organization (WHO) of the outbreak, thereby preventing direct foreign access to a critical source of forensic evidence. Also omitted is any mention of the questions raised about the work of the Wuhan Institute of Virology. Speculation continues to this day as to the origin of the virus, and a detailed timeline of when and what physical access to evidence was given or denied to WHO and other international experts would help answer important questions, and perhaps raise more.

¶57 COVID-19 in Asia is likely one of many publications we will see in coming years on the worldwide response to this pandemic, but it is unlikely many others will be as thoroughly annotated—reason enough to add it to a library collection. Although the reading can be slow going, researchers studying the response of Asian countries to this pandemic in search of primary sources will be mining this volume for years to come. Recommended for academic law libraries, particularly those with a focus on health law or the law of Asia.


Reviewed by Matthew Neely*

¶58 Noah Shusterman’s *Armed Citizens: The Road from Ancient Rome to the Second Amendment* attempts to define what the framers of the Bill of Rights meant by a
“militia” when they drafted the first clause of the Second Amendment. Shusterman’s definition relies on tracing the intellectual history of militias from the Roman Republic to the passage of the Second Amendment.

¶59 Armed Citizens’ greatest strength is also its greatest weakness: Shusterman shows his brilliance in the way he marshals 10 historical events—11, if you count the epilogue—to illustrate the evolution of thought about militias. Each chapter analyzes a historical event to illustrate one part of the historical and intellectual underpinnings of the Second Amendment. The author briefly describes the historical context of each event, the event itself and, finally, how each event impacted the progression of thought concerning militias. Each chapter builds on the previous chapter, yet each chapter can easily be appreciated on its own as well, offering a good introduction to the role of the militia in particular historical moments. However, the relative brevity of each chapter—average length is 15 to 20 pages per event—forces leaps in the argument. Shusterman, constrained by his concise summaries, often oversimplifies complex events in an attempt to position militias as the primary focus. This tendency can cause consternation in historically minded readers.

¶60 Several of Shusterman’s chosen events have tenuous connections to the drafting of the Second Amendment. For example, in the chapter on Machiavelli, the author admits the drafters of the Constitution and Second Amendment rarely cite Machiavelli’s works discussing militias. The author later attempts to bolster Machiavelli’s influence on the drafters by pointing out that other writers copied many of Machiavelli’s ideas but downplayed his influence. Shusterman presumes that the similarity of ideas shared by Machiavelli and the drafters indicates a reliance on Machiavelli without explicit reference. However, Shusterman never makes a detailed argument or provides citations to that effect. Shusterman’s lack of a persuasive link is likely due to his popular audience and the work’s brevity. Had Shusterman written a longer, more academic work, perhaps he would have provided more detailed arguments.

¶61 Despite these unconvincing leaps in assertions, the book remains an interesting and informative read. Three main themes consistently arise throughout the text. First, as countries develop and expand, they move toward a standing army to replace or heavily supplement the militia. Second, the citizens of that country then believe, rightly or wrongly, that a standing army will trample on their rights and that a lack of militia training will lead to a less moral citizenry and weaker society. To illustrate, the historic authors cited believed that a citizen militia would fight more bravely to defend homes and liberties than mercenaries or professional soldiers. Finally, these same citizens have few qualms about using the same militia to further the subjugation of others, for example, African-American slaves and Native Americans.

¶62 Academic libraries and personal libraries of attorneys interested in history would find Armed Citizens a good addition as a popular work. Academic libraries should consider this book an excellent general introduction to the topic, with extensive

endnotes providing a starting point for more in-depth research. Law firm and government libraries will likely find this text adds little value to their collections unless they specialize in Second Amendment law.
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