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**BoK Domains Key**

- **P-L**: Professionalism + Leadership At Every Level
- **R-A**: Research + Analysis
- **IM**: Information Management
- **T-T**: Teaching + Training
- **M-O**: Marketing + Outreach
- **M-B**: Management + Business Acumen
The Short and Troubled History of the Printed State Administrative Codes and Why They Should Be Preserved*

Kurt X. Metzmeier**

This article makes a case for the historical importance of early state administrative codes and urges that law libraries preserve them for future researchers of state administrative law and policy.

Implications for Practice

1. Printed state administrative codes are being replaced by online-only codes, which has implications for preservation of older printed codes.
2. As states convert their administrative codes to digital versions, they are not typically digitizing backfiles.
3. These superseded codes are valuable for both practical litigation of events that happened in the recent past and as sources of legal history.
4. The collection of state administrative publications has been locally focused; as a result, these publications are not heavily represented in national library collections, which makes their preservation more important.
5. All these factors make the preservation of these materials critical. Law libraries are the best and most natural steward of these endangered legal resources.

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Introduction

¶1 In 2019, as I was researching the early history of administrative law publication, the Kentucky Legislative Research Commission announced that it was ending its print version of the Kentucky Administrative Regulations. In 2020, Thomson Reuters followed suit, alerting subscribers that it would no longer publish the Indiana Administrative Code in print. These two announcements caused me to realize something bigger: that the short history of printed state administrative codes was ending before lawyers and law librarians had begun to realize their utility for researching the history of American law. Moreover, they were ending before law librarians, as a profession, had begun to discuss the comprehensive preservation of these core legal documents before they were inadvertently weeded out of existence.

¶2 With more and more states moving their codes of regulations to online-only versions,¹ we might soon see the end to a type of legal publication, the printed code of regulations, that is relatively new. Indeed, the whole era of state regulatory publications

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¹ My 2022 survey of the holdings of state administrative codes in the leading law libraries of that state found only 20 state codes are still published in print. It appears that many states have, like Kentucky and Indiana, eliminated or suspended print publication since 2018.
in print might end without ever being seriously considered as a topic of scholarly comment. This is because while state practitioners of administrative law might be relatively expert users of their own state’s regulatory publications, they are often ignorant about administrative laws in the other states. And yet, despite this scholarly neglect, state regulations are laws that touch American citizens most closely. They regulate everything from the cleanliness of restaurants to the operations of local barbers and salons. Americans who hunt or fish are licensed and regulated by a state agency that sets the rules and enforces them through its agents, game wardens.2 In my state, the Kentucky Derby regularly highlights the administrative activities of track officials of the Kentucky Horse Racing Commission (KHRC). Regulatory issues with Derby winners have arisen with frequency in recent years. In the KHRC’s motion to dismiss the lawsuit contesting the disqualification of Maximum Security from the 2019 Kentucky Derby, lawyers attached pamphlet versions of the Rules of Racing from 1959 and 1960 to prove that the rule it was asserting had “for almost 60 years” been part of the state racing regulations.3

¶3 Most law librarians, too, are familiar with the regulatory materials for only their state or a few adjacent states. Moreover, administrative law in the law school curriculum has focused traditionally on federal administrative law, and scholars in administrative law rarely reference state regulations in published research except as they intersect with federal law. Also, at a time when federal administrative legal history is drawing more academic interest4 (and will likely build steam with HeinOnline’s new database of documents related to the Administrative Procedure Act of 1946),5 legal historians are only now beginning to extend their research into state regulatory law.6 U.S. historians outside the legal academy are increasingly examining many state regulatory subjects such

2. Game wardens are featured on reality shows like Animal Planet’s North Woods Law, which followed the activities of game wardens from Maine (2012–2016) and later New Hampshire (2016–). The show’s popularity spawned spinoffs, Lone State Law (2016–), Louisiana Law (2022–), and Yellowstone Wardens (2023–).
4. Emily S. Bremer has probed the 27 case studies of federal administrative agencies undertaken as part of the Attorney General’s Committee on Administrative Procedure (which President Franklin D. Roosevelt created in the wake of his 1940 veto of the Walter-Logan bill) to find the roots of administrative adjudication and rulemaking. Emily S. Bremer, The Rediscovered Stages of Agency Adjudication, 99 Wash. U. L. Rev. 377 (2021); Emily S. Bremer, The Undemocratic Roots of Agency Rulemaking, 108 Cornell L. Rev. 69 (2022). The report is a key touchstone in federal administrative history because it added impetus to the eventual passage of the Administrative Procedure Act in 1946. Att’y Gen.’s Comm. on Admin. Proc., Final Rep., S. Doc. No. 76-186 (1940), and S. Doc. No. 77-10 (1941).
5. The Bremer-Kovacs Collection: Historic Documents Related to the Administrative Procedure Act of 1946, is a special collection in HeinOnline that includes the report of the Attorney General’s Committee on Administrative Procedure, which met in 1940–1941 and analyzed 27 administrative agencies, a full legislative history of the APA and its predecessors, transcripts of hearings by the ABA Section of Administrative Law, and other relevant documents. See also Emily S. Bremer & Kathryn E. Kovacs, Introduction to the Bremer-Kovacs Collection: Historic Documents Related to the Administrative Procedure Act of 1946 (HeinOnline 2021), 2022 Minn. L. Rev. Headnotes 2018, https://minnesotalawreview.org/wp-content/uploads/2022/02/Bremer-Kovacs_Final.pdf [https://perma.cc/P2UG-NMEZ].
as public health, conservation and the environment, the history of professions, and how those issues intersect with race, class, and gender. But they often do so without easy access to state administrative publications or the backgrounds or dispositions to fully explore the legal complexities.7

¶4 As these paper resources go out of print, law libraries should be taking a greater interest in collecting and preserving them for future researchers of state administrative law and policy. Even now, law library collections ignore a whole class of nineteenth and early twentieth-century regulatory materials published in ephemeral pamphlets and old agency annual reports.8 In fact, it is not clear whether any type of library is preserving these resources—\textit{which could be anywhere from medical libraries}10 \textit{to university libraries to local history collections in public libraries and historical societies. But even the early state administrative codes are imperfectly preserved (especially early loose-leaf publications whose old regulations disappeared in the filing process), and I fear that as dusty, superseded books on law library shelves, disconnected from current online materials, state administrative codes will be weeded from all but those libraries dedicated to preserving them. As the situation now stands, this whole class of legal materials could well be unavailable for future researchers unless efforts are made to systematically collect, preserve, and, perhaps, digitize them.}

¶5 This article is designed to start this discussion by showing why these materials should be preserved, outlining the landscape of state administrative publication and its history, and showing how and why each law library should think about the materials in their custody and those that donors and vendors may offer them. It begins with a brief discussion of the roots of administrative law in the states and the publications that those first steps in state regulation produced. Next it discusses the efforts of reformers in the 1940s and 1950s to bring all the disparate state regulations together in one administrative code. The article then moves to how, following the model of federal regulatory publications, states established a model form of regulatory publication that included a register or gazette of new regulations and a state administrative code organized by agency or subject that brought together all permanent and general regulations. The article concludes by noting how the inevitable rise of internet-based resources has led to the cancellation of print versions, thus highlighting the need for preservation of these documents for posterity.

7. \textit{See infra} notes 192–201 for some sense of this scholarship.
8. I have collected several dozen examples of pamphlets, broadsides, and flyers for an upcoming piece on the role of the pamphlet in early state administrative publishing.
9. As a former archivist, I believe some state archives may have preserved some of these records interleaved among the unprocessed and lightly processed papers of administrative agencies and departments, but this cannot be fully determined by publicly accessible cataloging. Moreover, that is a method of research that few legal researchers are trained to undertake.
10. In my library system (an urban university that has had a medical school and law school for over a 100 years), the old annual reports of the state board of health are held in the medical library, not in the law library. Interestingly, the Kentucky room of the main public library also has a collection.
Origins of Regulation in the States and Early Administrative Publications

Defining “Administrative Regulations”

¶6 Before reviewing the history of the origins of the publication history of administrative regulations, we need to define “administrative regulations.” For the purposes of this article, an administrative regulation is a written legal rule promulgated by an administrative agency. An administrative agency, in turn, is created by the legislature and given the task of writing regulations to effectuate the legislative purpose of certain statutes. Such agencies are generally considered to belong to the executive branch, but, for constitutional reasons, administrative regulations cannot go beyond the powers granted to them by the legislature. Indeed, any regulation can be negated by a new statute.

¶7 Like many principles of administrative law, this definition seems self-evident to lawyers trained since the second half of the twentieth century. But lawyers practicing during other periods would have understood the term differently. In the early United States, “regulation” could have been used for any legal control measure, from a statute to a provision in a state charter. The definition we now use evolved after the Great Depression, when the modern administrative state began to form.

Short History of Regulation in America

Early Legislatures and the Influence of Parliamentary Supremacy

¶8 Despite no formal doctrine of parliamentary supremacy, early American governments depended heavily on the creativity of legislatures to govern without incurring the costs of a permanent government. Colonial legislatures had wrested power away from royal executives heading into the revolution, and early state constitutions “chose not to wipe [this history] clean and instead preserved” the government structures that privileged legislative power. The idea that there would be a separation of powers between legislative, executive, and judicial branches was a later development. Early governors were delegated few duties, and even when they acquired more constitutional powers, legislatures were loathe, on fiscal grounds, to give them duties that would require new salaried officials.

11. Statutes that specifically request an agency to write regulations, called enabling statutes, give that agency the power to create rules.
14. Id. at 19, 39. As Peter S. Onuf notes, the state legislatures emerged from the American Revolution with their “authority enhanced by their new aura of constitutional authority,” which was bolstered by “independence [that] was grounded in popular elections.” Peter S. Onuf, The Origins and Early Development of State Legislatures, in 1 Encyclopedia of the American Legislative System 189–90 (Joel H. Silbey ed., 1994); see also Percival Squire, The Evolution of American Legislatures: Colonies, Territories and States 1619–2009 (2012), for a fuller discussion of the central role of legislatures in early America.
15. Squire & Hamm, supra note 13.
16. Rogan Kersh, Suzanne B. Mettler, Grant D. Reeher & Jeffrey M. Stonecash, “More a Distinction
County and City Governments as Regulators

The early state legislatures could and did regulate by statute, but they needed enforcers. Their first impulse was to delegate enforcement duties to existing local authorities at the county level, such as justices of the peace. Individually or collectively, as quasi-executive bodies typically called county courts or fiscal courts, these officials were responsible for carrying out regulatory legislation. County officials regulated the weights and measures at markets, assured food purity, and managed public health emergencies. “Poor laws” gave them the task of administering state laws ameliorating (and controlling) the lives of the poor. Because so many of these cases came before local magistrates, researchers can probe the practical aspect of this early era of regulatory history by looking at the state “justices of the peace manuals” created by legal publishers to assist these often nonlawyer citizens appointed to adjudicate cases. One such manual noted:

among these subjects are included all matters of county police, the superintendence of public roads, great and small; ferries, bridges, streets and alleys, public buildings, court-houses, prisons, hospitals, reformatories, school-houses, poor-houses, and pest-houses. The county court has, either collectively, or within the individual jurisdiction of its members, the control of lunatics, the primary adjudication of questions of lunacy, the support and maintenance of pauper lunatics and other paupers, and the regulation and discipline of tramps and vagrants.

in Words than Things”: The Evolution of Separated Powers in the American States, 4 ROGER WILLIAMS U. L. REV. 5, 14–19, 25–26 (1998). While the courts found their feet early, the authors date development of executive power to the early twentieth century.


18. NOVAK, supra note 6, at 3–6.

19. For the degree to which county governments administered these laws, see Emil McKee Sunley, THE KENTUCKY POOR LAW 1972–1936 (1942). Legislative act after act directed county courts to administer these laws.

20. Almost every state has its own “Hening’s Virginia Justice” (more formally WILLIAM WALLER HENING, THE VIRGINIA JUSTICE: COMPRISING THE OFFICE AND AUTHORITY OF A JUSTICE OF THE PEACE, IN THE COMMONWEALTH OF VIRGINIA (1825)). While early justices’ guides were based on English precedents, nineteenth century editions referenced state legislative mandates. In an era before judicial training sessions and bench books, these manuals taught these officials how to do their jobs. For example, SAMUEL FREEMAN, MASSACHUSETTS JUSTICE (3d ed. 1810), instructed magistrates on how to carry the state legislatures acts on read sales, gambling, street peddlers, alcohol sales, poor laws, and preventing the spread of smallpox. Larry M. Boyer, The Justice of the Peace in England and America from 1506 to 1776: A Bibliographic History, 34 Q. J. Libr. Cong. 315 (1977); see also John A. Conley, Doing It by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America, 6 AM. J. LEGAL HIST. 257 (1985).

§10 An early Kentucky meat inspection statement from 1804 is typical of these legislative mandates. It directed that “county courts of the several counties, herein mentioned, shall appoint a fit and proper person as an inspector of salted beef and pork intended for exportation.” The statute set weights for barrels, mandated those barrels be free of “necks . . . heads and shanks,” and sets brands like “Mess Beef,” “Prime Beef,” “Mess Pork,” and “Prime Pork” (apparently leaving the grading to the inspector’s discretion). The inspector would be paid for “every barrel so inspected and packed, and for packing and branding each barrel and giving a certificate thereof, the sum of twenty-five cents,” subject to the jurisdiction of the county court’s determination that the inspector discharged these duties without “envy, favour, or affection.”

§11 In addition to relying on county officials, legislatures also used their power to charter cities to broadly delegate regulatory duties to these governing bodies. The 1837 Illinois statute chartering the city of Chicago is a famous example. In 34 clauses it directed the city to restrict gaming, regulate alcohol sales, compel businesses to ensure against “unwholesome, nauseous” premises, regulate slaughterhouses and the storage of dangerous materials, prevent pollution by tanneries, regulate cemeteries, oversee carriage and transportation on city streets, and regulate the weighing and selling of hay, wood, and “pickled and other fish,” among other duties. Increasingly, these charters were supplemented with ordinances promulgated by city governments and collected in printed collections. Indeed, while modern American lawyers imagine that the early nineteenth century was relatively free of regulations of trade and commerce, local bodies and cities exerted tight control over the local markets where most Americans bought and sold their produce, meats, and timber. This can be documented because some of the earliest legal publications printed in the United States were codes of ordinances of cities, with cities like New York and Charleston already using printed codes at the time of the Constitutional Convention.

23. Id.
24. Id. Beef inspection laws regularly made it into justice of the peace guides; e.g., Jacob Swigert, Kentucky Justice 36–38 (3d ed. 1838); John C. Herndon, A Guide to Justices, Clerks, Sheriffs, &c 43–44 (1846). And this was not just a Kentucky phenomenon; under the “Inspection of Beef &C” header, the New Hampshire guide summarized the 1802 statute regulating beef and pork and provided a “Form of the Information” for the prosecution of the law and a “Form of the Warrant” for the seizure of illegally imported meats. New Hampshire Justice of the Peace 126–27 (1824)
25. An Act to Incorporate the City of Chicago, 1837, quoted in Novak, supra note 6, at 3–6.
26. Typically, these sets began with collections of the city’s charters, and then the ordinances that those cities passed to handle their regulatory duties.
27. New York City (1719; a second code was published in 1763 before regular editions began in 1793); Albany, N.Y. (1773); and Charleston, S.C. (1784). Other early codes include those of Philadelphia (1790); Baltimore (1797); Trenton, N.J. (1799); New Orleans (1808); Richmond, Va. (1808); Natchez, Miss. (1822); and Cincinnati (1829).
Chartered Corporations

¶12 With the rise of the railroad and more complex banking transactions occurring across county lines and far beyond city borders, these mechanisms began to come up short. The legislatures then began to draw on a mechanism like the one they used to devolve power to cities: the charted corporation. Arising in English common law (an early borrowing from Roman law),28 early corporations were artificial entities with specific purposes like chartered municipalities and trade guilds (which were given a monopoly in a specific business area).29 Most relevant, colleges, hospitals and charitable societies were chartered as corporations.30 As part of their prescribed powers, these corporations often were given regulatory powers.31 In the words of William Blackstone, they could become “little republics”:

To shew the advantages of these incorporations, let us consider the case of a college. . . . If this were a mere voluntary assembly, the individuals which compose it might indeed read, pray, study, and perform scholastic exercises together, so long as they could agree to do so; but they could neither frame, nor receive any laws or rules of their conduct; none, at least, which would have any binding force, for want of a coercive power to create a sufficient obligation. . . . But when they are consolidated and united into a corporation, they and their successors are then considered as one person in law: as one person, they have one will, which is collected from the sense of the majority of the individuals: this one will may establish rules and orders for the regulation of the whole, which are a sort of municipal law of this little republic; or rules and statutes may be prescribed to it at its creation, which are then in the place of natural laws.32

¶13 These chartered corporations only superficially resemble modern corporations, and the legislature could, as Blackstone notes, prescribe regulations in the charters it enacted or leave them to the new entity.33 Besides setting basic rules of passenger behavior, corporations created to build toll roads, bridges, and railroads had little need for regulatory power.34

29. Id. at 108. Later, the British government outsourced its colonial activities by establishing the East India Company (1600) and, closer to home, the Hudson Bay Company in North America (1692). See also David Ciepley, Beyond Public and Private: Toward a Political Theory of the Corporation, 107 Am. Pol. Sci. Rev. 139, 141–42 (2013).
30. Williston, supra note 28, at 108–10, 113–16. Indeed, it was a charitable institution that was the subject of the seminal English case of corporations, Case of Sutton’s Hospital (1612), in 1 Selected Writings of Sir Edward Coke 347–77 (Steve Sheppard ed., 2005).
31. Ciepley, supra note 29, at 141–42.
33. During the nineteenth century, the U.S. Supreme Court developed a theory, however, that when the legislature created a corporation without restrictions in that charter, it was contractually bound to stay out of its affairs permanently. Kent Newmyer, Justice Joseph Story, the Charles River Bridge Case and the Crisis of Republicanism, 17 Am. J. Legal Hist. 233 (1973); R. Kent Newmyer, Justice Joseph Story’s Doctrine of “Public and Private Corporations” and the Rise of the American Business Corporation, 25 DuPaul L. Rev. 825 (1976).
34. They were (and still are) often delegated the state power of eminent domain.
However, this was not the case with the colleges, orphanages, poorhouses, asylums, and institutes for the care and education of the blind, deaf, and differently abled, all which needed rules and procedures to manage the persons under their care. Run by boards of trustees, they needed to hire directors and other staff to fulfill their missions and to propagate regulations for the behavior of inmates and staff. Frequently their charters required that the institution report back to the legislature regularly, typically in an annual report, and these publications often reported these regulations. These reports frequently were published in the house or senate reports of the state legislature or in a special series of legislative documents. Sometimes these reports, or the rules within them, were also published in pamphlet form—and even as broadsides, as the *Rules and Regulations of the Salem Alms* were:

(5). Such of the paupers as are capable of any work should be furnished with it and should receive a suitable compensation. . . .

(7). A due sense of religion should be carefully inculcated, as the greatest comfort under temporal afflictions; and for this purpose, a few pious books might be furnished, divine service performed in the house as often as may be convenient and such of the paupers are capable, encouraged in reading to the others.

(8). Spirituous and strong liquor should be absolutely interdicted unless when given by the advice of a physician. . . ."

**Toward a Modern Administrative System**

**Boards and Commissions**

After the Civil War and into the twentieth century, the complexity of an increasingly national economy and the rapid changes wrought by the Industrial Revolution moved states to create institutions more like the ones we can recognize as parts of a modern administrative system. When most meat, poultry, and agricultural products were sold at local market days, weight and purity regulations could be handled by cities and county governments. Those same bodies were also competent to handle public health when diseases traveled at the speed of a horse-drawn carriage. At the same time, when state-chartered charitable organizations began to feed the poor, house orphans, and educate the differently abled, states could efficiently use those mechanisms. But as

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38. *Rules and Regulations of the Salem Alms House* (1816), in Rockman, *supra* note 35, at 102–05. This is not the only broadside I have found in my research; I have acquired broadsheet versions of the regulations for barbers for two states. From looking at old photos of barbershops, I believe they were meant to be posted in the business premise next to the proprietor’s license.
steam power and finance capitalism took hold in the post–Civil War era, these systems became less effective. Cattle arriving from out of state challenged the effectiveness of local meat regulations; meat from refrigerator cars originating hundreds of miles away broke them. National railroad companies could not be reined in with charter provisions. State legislatures needed to create state institutions to meet these challenges. They needed to operate under the aegis of the state governments, employing police powers statewide. These entities needed the power to truly regulate by enforcing laws and using their expertise to write regulatory procedures.

¶16 However, state legislatures still could not imagine executive branch departments housed in the state capital employing permanent employees, so they first looked to the model of the boards of trustees they had used to run asylums and colleges and created new institutions to take on this regulatory work: state boards and commissions. Despite the form they took, the new boards and commissions were fundamentally different. They were agencies of the state administered by staff appointed by public officials. They administered state laws and began to write regulations, starting with procedural rules and later substantive ones. While some of the earliest state boards were set up to promote agriculture and disseminate information about the modern scientific methods of farming and animal husbandry, they usually had no regulatory function. State boards of education similarly operated as informational clearinghouses (although some did distribute state educational statutes with annotations and circumscribed guidance). The first state agencies with true regulatory functions were state boards of health, railroad commissions, and, in some states, hunting and fishing commissions. They set rates, issued licenses, inspected goods traveling through the state, declared quarantines, and wrote both procedural and substantive regulations. And they published these regulations, sparking the beginning of print regulations as an area of legal publication.

¶17 Some of the more prominent and politically controversial bodies were the state railroad commissions, which attempted to prevent rate discrimination on freight carriage through their states. Throughout the nineteenth century, railroad companies had bedeviled state legislators. Before the Civil War, chartered corporations created to build and maintain local lines squandered shareholders’ money and went bankrupt, leaving local investors broke and cities without access to markets. The safety of both railroad workers and passengers was largely unregulated. Meanwhile, better financed railroads bought up smaller railroads, concentrating power to set carriage prices. After the war, railroad monopolies set freight rates at will and used their market power to discriminate


40. That is unless the established department acquires additional duties, like the Kentucky Department of Agriculture, Labor and Statistics had in the early twentieth century, leading it to release a pamphlet of Labor Laws of Kentucky Pertaining to Labor Inspectors, Working Women & Child Labor (1918).


42. This is a repeated theme in **Little Kingdoms**, supra note 17, at 101–23.
in favor of companies with which they were financially allied.\footnote{Thomas D. Clark, *The People, William Goebel, and the Kentucky Railroads*, 5 J. S. Hist. 34 (1939). One example of discrimination was the alleged alliance between the L&N Railroad and the Standard Oil Company that gave that oil shipper an advantage over competitors. Collusion between railroads and preferred customers were often cemented by interlocking boards of directors. Ida Tarbell, *The History of the Standard Oil Company* 70–103 (1904); William G. Roy, *Interlocking Directorates and the Corporate Revolution*, 7 Soc. Sci. Hist. 143 (1983).}

Farmers’ groups pushed state legislatures to regulate rates so they could afford to ship their produce to markets.\footnote{James F. Doster, *Trade Centers and Railroad Rates in Alabama, 1873–1885: The Cases of Greenville, Montgomery, and Opelika*, 18 J. S. Hist. 169 (1952).}

Legislators began to create railroad commissions (or a single commissioner) to oversee the intrastate activities of these companies, giving them varying degrees of regulatory powers. (In many cases, the office of commissioner was enshrined in state constitutions as an elected official.) By 1888, railroad commissions were operating in 23 states.\footnote{Abstract of Laws of Other States Creating Railroad Commissions, Showing Their Powers and Duties, in Ninth Report of the Railroad Commission of Kentucky for 1888, at 274–87 (1889) [hereinafter Abstract].}

Almost all had a duty to inspect tracks and railroads for safety. Many were empowered to inspect financial records of railroads to assure they were solvent. However, state legislatures differed on how much power they wanted to give commissions to fulfill these duties. Some commissions were given subpoena powers to force compliance and enforce laws; others could only report their findings to the state attorney general or local law enforcement entities.\footnote{Only California, Kansas, Massachusetts, Minnesota, and Ohio appeared to have subpoena power. Some, like New York, were directed to report “facts of noncompliance” to the attorney general. Id. at 282–83.}

The most powerful railroad commissions could set rates railroads could charge for freight and passenger carriage and enforce them; others could counter discriminatory rate setting, while the least powerful had no jurisdiction over rates.\footnote{California, Georgia, Maine, Michigan, New Hampshire, South Carolina, and Tennessee had some power to set either rates or maximum rates. Id. at 274–87.}

Almost all states required railroad overseers to issue an annual report to the governor or legislature.\footnote{Id.}

¶18 public health was another area of interest to postwar reformers. Because of the threat that smallpox and yellow fever epidemics posed, city and county boards of health had been established since the colonial period. Early in American history, charters of port cities like New Orleans and Boston were granted the power to quarantine and seize contaminated property, and pamphlets of these quarantine rules are among the earliest regulatory publications.\footnote{Titles recently advertised on eBay include *Quarantine Regulations, Port of Providence* [R.I.] (1844); *Quarantine Regulations, Port of Wilmington, N.C.* (1879). These take the form of regulations in other ports around the world. *General Regulations: To Be Observed by All Persons Performing Quarantine in the Lazetto of Malta* (1840), https://www.um.edu.mt/library/oar/bitstream/123456789/102333/1/JPSM3(3)A2.pdf [https://perma.cc/TT4Q-UDNX].}

In the new American Republic, major cities quickly established boards of health: New York in 1796, followed by Baltimore (1798), Boston (1799), Charleston (1815), Philadelphia (1818), and New Orleans (1818), to
The mass movements of soldiers during the Civil War had provided medical professionals hard-learned lessons about public health on a larger scale.\textsuperscript{50} Returning to civilian life, doctors saw local boards averse to hard decisions and experienced the effects of poor communications during epidemic outbreaks of disease.\textsuperscript{51} State boards of health were seen as ways to coordinate local efforts, collect health statistics, and promote modern science on hygiene and public sanitation.\textsuperscript{52} By 1874, eight states—California, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, and Virginia—had established state boards of health.\textsuperscript{53} Twenty-years later, 40 states had done so.\textsuperscript{54} However, the powers of these early bodies varied widely. Some could establish regulations for public health statewide from the start; others coordinated local activities at first before acquiring stronger powers later in the early twentieth century.\textsuperscript{55} 

\textsuperscript{¶}19 Kentucky offers a typical example. After the Civil War, the Kentucky state medical society began to push for reforms to state healthcare by focusing on a state board of health to supplement those organizations in the cities.\textsuperscript{57} In 1876, the legislature created a new state board of health, but the new entity had little power besides that of collecting information.\textsuperscript{58} However, in 1878, Dr. Luke P. Blackburn, a national expert on yellow fever outbreaks and their mitigation, declared his candidacy for governor in the 1879 election, making public health one of his primary issues.\textsuperscript{59} This galvanized the state legislature to strengthen the board’s powers.\textsuperscript{60} The new act gave the board broad power to initiate investigations of disease outbreaks and “adopt and enforce such rules as they deem proper,” to do whatever necessary to establish quarantines in areas of disease outbreaks, including the creation of pesthouses.\textsuperscript{61} The law directed the board to work with local officials to inspect all transportation through the state and required “all


\textsuperscript{53} Kramer, supra note 50, at 526.

\textsuperscript{54} Conference of Boards of Public Health held at New York, May 21 and 22, 1874, 6 J. Soc. Sci. 210 (1874).


\textsuperscript{56} Id. at 35–55.

\textsuperscript{57} Schiavone, supra note 52, at 22–23, 25.

\textsuperscript{58} 1876 Ky. Acts. ch. 494.

\textsuperscript{59} Schiavone, supra note 52, at 25. During the Civil War, Blackburn, a Confederate supporter, was accused of plotting biological warfare from his exile in Canada by planning to have his agents smuggle the clothing of yellow fever patients from Bermuda into northern ports. (Medical science would not conclusively determine that yellow fever was spread by the aedes aegypti mosquito until 1901.) He was tried and acquitted by a Toronto court and allowed to return to Kentucky, where he was elected governor. Nancy Disher Baird, Luke Pryor Blackburn: Physician, Governor, Reformer (1979); see also History of Yellow Fever in the U.S., Am. Soc’y for Microbiology (May 17, 2021), https://asm.org/Articles/2021/May/History-of-Yellow-Fever-in-the-U-S [https://perma.cc/6W9G-GR38].

\textsuperscript{60} Schiavone, supra note 52, at 37.

\textsuperscript{61} 1879 Ky. Acts 121.
companies or individuals, operating or controlling railroads, steamboats, coaches, public and private conveyances, and steamers plying the Ohio River or its tributaries, in this state shall obey the rules and regulations when made and published by the State Board of Health.” Any of these entities who refused to obey the board’s regulations could be charged with having committed a crime, and the courts were asked to take notice and prosecute these offenses. Like most of these boards of health, the Kentucky board produced annual reports that would eventually include legal materials.

While farmers were concerned with railroad rates and doctors with public health, no state agency affected more ordinary people than the early commissions that regulated fishing and hunting. Early Americans tended to hunt and fish not only for sport but also to supplement their diets in subsistence economies. However, as the twentieth century dawned, hunting and fishing increasingly became the domain of two competing forces: sportsmen and game hunters. Moreover, as conservation promoting recreational hunters began to make their hobby a lucrative tourism industry, state legislatures began to tilt toward the regulation of hunting and fishing. The classic example is how wealthy New England hunter-conservationists began to lobby for hunting regulations in Maine to protect stocks that had been depleted by local hunters harvesting game for the Boston meat markets. Although Maine had a game law since 1830, it was not widely enforced. In 1883, well-organized sportsmen—conservationists, including Teddy Roosevelt among their ranks—succeeded in passing a strong game law limiting moose, caribou, and deer kills, along with a commission to enforce it. This set up a long battle between game wardens and market hunters that took on an element of class warfare with backwoods hunters portrayed like Robin Hood. This is one area where researching state regulations is so exciting. Historians have created a rich literature discussing this conflict—some even carrying the discussion into racial bias in application of hunting rules in the Jim Crow South.

New England was not the only region seeking regulatory solutions to support conservation (and tourism). An editorial in the Louisville Courier-Journal in 1912 pled for a strong fish and game law in Kentucky. Noting that the “federal government is to distribute a few millions of walleyed pike minnows in the streams of Eastern Kentucky,” the piece argued that “[i]t will be of little avail to stock the rivers with walleyed pike unless something can be done to curtail the activities of the wall-eyed dynamiter and the wild-eyed seiner.” Describing how the dynamiting and bulk netting of fish had destroyed Kentucky stock, the piece proposed that “the state should adopt a modern

62. Id.
63. Id.
64. 1876 Ky. Acts 59, § 5.
66. Id. at 66–67, 284.
67. Id. at 139–48, 159–60.
system of Fish and Game laws with the state warden and a sufficient number of assistants to enforce them.\textsuperscript{70} That year, the state legislature used its traditional powers to charter corporations, with “perpetual succession with power to make and use a corporate seal,” to create a fish and game commission.\textsuperscript{71} Despite its form, it was a government agency. The governor appointed the members and charged the agency with “enforcing the laws of this State involving the protection, preservation, and propagation of all game birds [and] game animals.” That included the power to seize illegally caught fish and game and to seize “all dogs, guns, seines, nets, boats, lights, or other instrumentalities unlawfully used” in commission of prohibited acts.\textsuperscript{72} The new body also was empowered to “appoint and remove at pleasure a sufficient number of game wardens, whose jurisdiction shall be co-extensive with the State” as well as office workers needed to carry out the commission’s work.\textsuperscript{73}

\textsuperscript{¶}22 Similarly interesting histories can be found for other boards and commissions such as horse racing commissions,\textsuperscript{74} professional licensing boards, public utility commissions,\textsuperscript{75} boxing authorities,\textsuperscript{76} and commissions regulating legal gambling.\textsuperscript{77}

\textit{Pre-Code State Regulations from Boards, Commissions, and Departments}

\textsuperscript{¶}23 These new boards, commissions, and departments used a variety of methods to publish their regulations, procedural rules, rate decisions, and guidance documents. The two primary methods of publication were annual reports and pamphlets, although bulletins and broadsheets were occasionally used. But many agencies issued no publications, meaning these materials were available only on file in the agency’s office.

\textsuperscript{¶}24 Early boards and commissions were typically required to give an account of their activities in an annual report. This was a holdover from the practice by legislatures of requiring chartered corporations to periodically report on their activities. These reports were a convenient mechanism for these new agencies to release rules of procedure and guidance. The bulk of such annual reports was a recap of agency activities, various statistical reports, and various policy documents or studies. But increasingly these reports included rules of procedures, regulations, reprints of relevant statutes, and occasionally summaries of relevant court decisions.

\textsuperscript{¶}25 Bulletins were usually issued by state agencies to advise interested parties about scientific information, useful examples of policy choices from other states, and relevant technical news. Perhaps occasionally, they would publish new regulations.\textsuperscript{78} Agriculture

\textsuperscript{70.} Id.
\textsuperscript{71.} 1912 Ky. Acts. ch. 35, § 1.
\textsuperscript{72.} Id. § 4.
\textsuperscript{73.} Id. § 6.
\textsuperscript{74.} John O. Humphreys, Racing Law 1–12, 72–92 (1963).
\textsuperscript{75.} Samuel Mermin, Jurisprudence and Statecraft: The Wisconsin Development Authority and Its Implications (1963).
\textsuperscript{77.} Robert D. Faiss, Gaming Regulation and Gaming Law in Nevada (2008).
\textsuperscript{78.} In one case, the Kentucky Board of Health published a bulletin in hardback that appears to have
departments, for example, would dispense advice to farmers based on new science, while state boards of health would send out warnings of advancing epidemics to doctors and local health officials. Published more frequently than annual reports, these documents are very ephemeral and less likely to be collected individually by libraries. Some, however, were bound by libraries as serials. It is also quite likely that much of the more important material was reprinted in the annual reports.

¶26 The most interesting pre-code regulatory publications are pamphlets. They are found in every state in a wide variety of sizes including standard half-sheet pamphlets, pocket-sized booklets, and trifold flyers. The pamphlet was the preferred format for issuing regulations to the general public, but some publications, like explosives regulations for use by miners and farmers, could fit in a workman's pocket. Others, like hunting and fishing regulations, evolved from the staid booklets, to a variety of formats, many of which included stylish graphic art, informative charts and maps, and other design features. While these publications were ephemeral and not widely collected by libraries (especially law libraries), they were published in great enough quantities that they survived and can be widely found on online auction sites, particularly those with collector communities like hunting enthusiasts.

¶27 While these formats made up the bulk of regulatory publications before the administrative codes, a few other formats were used. In some cases, rules and regulations were available only through mimeographed copies available for pick-up in agency offices. Occasionally “desk books” and “manuals” were printed, which compiled generally useful materials like phone directories with state laws and regulations for the use of practitioners. For example, such a manual of laws and regulations for teachers, school

been published in enough quantity to survive in the used book market. This was no doubt done because this bulletin, the ninth issue of volume 8, contained The Public Health Manual, a compendium of health laws, rules and regulations, court decisions, and medical laws. 8 Bull. State Bd. Health Ky. (1919).

79. In addition, I have found very few in bookstores and online auction sites, and the ones I have discovered are useful issues of department of agriculture bulletins (likely retained by a farmer for its topic).

80. For example, an incomplete collection of issues of the monthly Bulletin of the Virginia Department of Agriculture and Immigration can be found at the Virginia Tech Library.

81. As late as 1965, more than a dozen states still used the pamphlet as its primary form of regulatory publication. Morris L. Cohen, Publication of State Administrative Regulations—Reform in Slow Motion, 14 Buff. L. Rev. 410, 423–26 (1965).

82. I own a variety of such publications in all sizes, colors, and formats in a personal collection I have assembled for an upcoming publication. A 1943 survey of Kansas documents found a variety of “different sizes” with “a mark lack of uniformity” of style and form. Edwin O. Stene, Filing and Publication of Administrative Regulation x (1943).

83. The Laws Governing the Mining of Coal and Drilling of Oil and Gas Wells Thru Seams of Coal in the State of Kentucky (1934).

84. Game and Fish Laws and Authority Governing Regulations (1948).

85. Seven years later, Kentucky fishing regulations were two-color and sported a cartoon. Kentucky Fishery Regulations (1955). By the time that the 1976 and 1977 Indiana Fishing Regulations were released by the Indiana Division of Fish and Wildlife, they came in bright oranges and purples.

86. While somewhat obsessively collecting examples for this project on eBay during 2020's lockdown, I found many specialized collectors and resellers who dealt exclusively in hunting and fishing memorabilia.

87. Stene, supra note 82.
principals, and school boards was published in Kentucky. As mentioned earlier, some regulations were compiled in broadsides and posters meant to be placed at businesses and workplaces. Barbers were issued versions of their regulations to put in their shops to show their interest in a clean and safe business. And even today, some states require state labor laws and regulations to be placed prominently in the workplace, traditionally near the timeclock or employee entrance.

Researching Pre-Administrative Code Regulations: A Summary

Finding regulatory material in the pre-code era was challenging to the lawyers of that era, and it is no less difficult for historians and legal scholars today. The materials were scattered through reports and pamphlets held by different types of libraries and were, with rare exceptions, collected only in the states where they were most relevant. As digital databases began to be compiled, these documents did not always fit the subject era of the products or were no longer in the collections of the libraries that partnered with database producers.

There is one key resource in regulatory law that has been well represented in digital databases: statutes. As all regulations ultimately derive their power from the authority of enabling legislation, this is always a starting point for researchers. Moreover, early regulatory legislation took on the burden of providing most of the substantive law administered by the bodies to which it delegated enforcement duties. Many law schools have collections of annual legislative enactments and compiled statutory codes for their states. Moreover, most academic researchers have access to HeinOnline’s Session Laws and State Statutes databases, which provide, respectively, session laws for all 50 states and public domain statutory codes. HeinOnline also provides a data library of state attorneys’ general opinions, which (in some states) may serve as administrative guidance.

88. KY. DEP’T OF EDUC., supra note 41.
89. The Board of Examiners Regulations for Bar Shops and Barber Schools (1974) issued by Connecticut was 18in x 12in and came with a signed seal of inspection. Indiana’s Laws and Regulations Governing Sanitary Conditions for Barber Shops, Barber Schools of Colleges of Indiana was half that size but warned, “This card must be posted in a conspicuous place.” My copy is undated, but the regulations comport with the Board of Barber Examiners, Rules, and Regulations of 1947, cited in 816 IND. ADMIN. CODE 1-1-2 to 1-1-14 (1984).
90. An entire industry has arisen to provide these state labor law posters; however, most states will issue their own for free. For example, the Kansas Department of Labor has all the required posters (in both English and Spanish) available for download at https://www.dol.ks.gov/laws/download-posters [https://perma.cc/SXS7-66KQ].
91. As a result, HeinOnline and LLMC Digital, which cater to law libraries, have few of these materials. By simply being sufficiently old American imprints, some are captured in academic library–marketed databases like Readex’s Early American Imprints, Series 1, Evans (1639–1800), and Early American Imprints, Series II, Shaw-Shoemaker (1801–1819).
92. HeinOnline’s Session Laws Library is a popular add-on to the core database and includes the State Statutes archive.
93. The database is also widely subscribed to by law libraries.
Similar state statutory materials may be found in Gale’s Making of Modern Law Primary Sources, 1620–1926.94

¶30 Finding broad, multistate collections of justice-of-peace manuals and city ordinances that document early American regulatory practice is far more challenging. Manuals for justices of the peace have traditionally been collected by law libraries, but, for whatever reason, city ordinances have not universally been collected in the same way. Both, however, can be found in the local history collections of public libraries, as well as the rare book or special collections of universities. Online and multistate research is more problematic. There are no comprehensive 50 state databases of these materials, although Gale’s Making of Modern Law Primary Sources, 1620–1926, which has both justices’ manuals and city ordinances, is the closest.95 Older city ordinances can be found in Readex Early American Imprints,96 Gilder Lehrman American History, 1493–1945, and other historical databases.97 Public domain resources such as Google, HathiTrust, and the Internet Archive also have ordinances and justices’ manuals, in similarly noncomprehensive collections.

¶31 For the annual reports of chartered corporations, research is even more challenging. Researchers within a state should consult state legislative records and probably seek expert assistance from the state library or archives to access these reports.98 If you are lucky enough to be in a state covered by Adelaide R. Hasse’s excellent Index of Economic Material in the Documents of the States of the United States (1908–1919) series, check either the “legislature” heading or a topic heading like “mining.”99 Broader research is considerably more challenging. Researchers can start with guides like R.R. Bowker’s State Publications, 1899–1908,100 although that publication captured only a small selection of state materials. The Library of Congress’s Exchange and Gift Division published a similarly uneven Monthly Checklist of State Publications for the decades 1910–1994, based on the publications that state governments donated to Congress.101 However, bibliographic tools can only take you so far; the actual materials are largely

94. Because this database has significant overlap with more widely subscribed databases like HeinOnline’s State Session Laws, it is not available in as many law libraries.
98. Susan L. Dow, State Document Checklists: A Historical Bibliography (2d ed. 2000), is the best print guide to state bibliographies of legislative and other government materials. However, many states have a documents librarian at their state library who can also be a valuable resource.
99. Hasse was able to complete guides to 13 states: California, Delaware, Illinois, Kentucky, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont.
100. Published in four volumes: v. 1, New England states, 1899; v. 2, North central states, 1902; v. 3, Western states and territories, 1905; and v. 4, Southern states, 1908.
undigitized and unavailable outside the state library and the libraries of older state universities and colleges.

¶32 The annual reports of early boards and commissions might also be listed in Hasse, Bowker's State Publications, and the Monthly Checklist, but they also could be cataloged as individual items, as monographs, or as serials. For this reason, searching WorldCat and local catalogs for the agency's name as an author-creator should be part of the research process. The official version of the agency name should be found in the enabling legislation of the board or commission. Early government publications are notoriously haphazard in the bibliographical niceties; researchers should expect numerous title variations and not be surprised by serials cataloged as monographs. Full online collections are rare, but there are several examples of single annual reports found on public domain sites.

¶33 Researching pamphlets can take a similar path. WorldCat and local discovery tool searches can find existing versions in libraries and bibliographic information to databases. Print collections are very dispersed, and individual titles are as likely to be found at a public library as a law library. Online, HathiTrust and the Internet Archive are as reliable a resource as any commercial databases. Even if you are not in the market to buy pamphlets, eBay is a pretty good discovery tool to find what materials exist.

¶34 This eclectic mix of resources makes for a challenging research project, but if legal scholars (or the reference librarians assisting them) are diligent (and lucky), they can reconstruct the textual history of a regulatory regime. So, researchers of the regulation of meat could trace the state statutes on beef and pork distribution, and then check state justice-of-peace manuals and the ordinances of leading cities for more procedural detail. Next, they should look for state agencies regulating food purity and see whether those agencies released annual reports. By searching an agency’s name as a creator on WorldCat, HathiTrust, and the Internet Archive, researchers can occasionally find early regulatory pamphlets.

The Long and Winding Path to State Administrative Codes

The Model of Federal Regulatory Publication

Early Federal Regulatory Publication

¶35 The publication of federal regulations is a later development in the history of American legal publishing, and it started in a haphazard manner in the early twentieth century as the United States emerged as a modern industrial power with all the concerns that involved. Early presidents used executive orders to take actions of a limited administrative nature, such as managing the public lands; creating Indian reservations, 102. Researchers should be wary that early cataloguers would occasionally modify agency names to versions more uniform from state to state.

military, naval, and lighthouse installations; establishing customs houses, and managing natural resources.104 Later, the executive order was employed to manage the civil service.105 By law, these presidential documents were lodged with the U.S. Secretary of State.106 National regulation of food and drug safety,107 which began in the Theodore Roosevelt administration, required more regulatory guidance, as would the administration of the new 1913 national income tax.108 The new agencies released regulatory materials in pamphlet form;109 others followed the precedent of railroad regulators and released them as appendices to required annual reports to Congress.110 Tax regulators were more active, releasing regular circulars that soon after were republished in the commercial loose-leaf reporters that would be the focus of tax law research until the last days of the century when they began to be replatformed as proprietary databases.111 During the first World War, the Wilson administration used emergency powers to reorganize the domestic economy to support the war effort, necessitating several written executive orders and directives. The powerful Committee on Public Information112 created a gazette called the Official Bulletin to publish these regulations, with some wartime propaganda.113 However, the latter role unnerved members of Congress, and as soon as the war ended, they killed off the Official Bulletin.114

105. After he signed the Pendleton Civil Service Reform Act into law in 1883, 22 Stat. 403, ch. 27, President Chester A. Arthur moved swiftly to implement it with a series of executive orders to set up the new Civil Service Commission. A May 7 order adopted Civil Services Rules I–XXII; later orders revised them, and several new orders throughout 1884 and 1885 added to and amended these rules, substantively as well as procedurally. List and Index of Presidential Executive Orders, supra note 104, at 104–19.
106. To Provide for the Safe Keeping of the Acts, Records, and Seal of the United States, and for Other Purposes, 1 Stat. 68 (1789). The Secretary of State was fully relieved of these duties in current Federal Housekeeping Statute, Pub. L. No. 89-554 (1966) (codified at 5 U.S.C. § 301 (2023)).
108. The Commerce Clearing House (CCH) was founded in 1913—that same year—with its Standard Federal Tax Reporter specifically designed for this new administrative practice area.
110. Typical is the Interstate Commerce Commission (ICC), which released 108 volumes of its Annual Report from 1887 to 1994. Typical of the early volumes is the first volume, which included regulatory information in the main text and as appendices, including dockets and summaries of cases (apps. A and B), letter rulings on questions of law and procedure (app. C), rules of procedure in cases before the commission (app. D), and circulars to carriers (app. E).
111. The CCH Standard Federal Tax Reporter was joined by publications of the Bureau of National Affairs in 1929 and Pike & Fischer in 1930.
112. Known as the Creel Committee for its powerful leader, George Creel, the Committee on Public Information waged war against pacifists, including some in Congress, and was blamed for setting off America’s first Red Scare. Regin Schmidt, Red Scare: FBI and the Origins of Anticommunism in the United States, 1919–1943, at 136–37 (2000).
114. Id. at 446.
Origins of the Federal Register

¶36 It took the stock market crash of 1929 and the ensuing New Deal for the United States to develop permanent publications to collect the many regulations that were promulgated, amended, repealed, and replaced as the administration of Franklin Roosevelt and his brain trust attempted various programs to restart the U.S. economy. These regulatory actions, which included a surge of executive orders and circulars from the new agencies, overwhelmed the ability of even the most active DC law firm librarians to collect these documents. This caused confusion among lawyers trying to sort out their clients’ affairs in this active time, and this uncertainty came to a head when regulatory disputes entered the courts, which had trouble figuring out which executive order or directive governed the disputes before them.115 As it developed, even the U.S. Department of State, charged in its 1797 enabling act with “safe-keeping of the Acts, Records, and Seal of the United States,”116 struggled to collect accurate copies.117

¶37 This drew the attention of the orderly mind and reforming impulses of Associate Justice Louis D. Brandeis of the U.S. Supreme Court. He, along with friends in government and at Harvard Law School, began to envision a solution.118 As his friend, confidant, and unofficial fixer Felix Frankfurter later said, “I suppose no person is ultimately more responsible for the intellectual impetus that gave rise to the Federal Register Act than Mr. Justice Brandeis.”119 Famously interested in transparency in government and suspicious of big institutions, Brandeis was concerned that in the rush to reform the U.S. economy, the FDR administration and newly created New Deal agencies were issuing executive orders and directives without adequately providing for their retention and access. This meant that citizens and regulated industries often were unclear on the law binding them.

¶38 Brandeis’s efforts were highlighted by an exchange in oral arguments regarding two joined cases, Amazon Petroleum Corp. v. Ryan and Panama Refining Co. v. Ryan.120 The oil companies were challenging the National Industrial Recovery Act (NIRA). As the lawyers for the companies were preparing their petitions for certiorari, they discovered errors in the official executive order that ultimately had to be resolved with the issuance of another executive order. In the oral argument, Justice Brandeis sharply questioned Harold M. Stephens, the assistant attorney general in the antitrust division...

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115. Finding early executive orders was a challenge long after they began to be collected in the third volume of the Code of Federal Regulations in 1938. When Clifford L. Lord of the Historical Records Society of New York City begin to collect and index these records, he found that “some compilations of orders have been published on such special topics as Indian reservations, the Panama Canal, the PWA, Veterans Regulations”; many others had never appeared in print. Presidential Executive Orders, 1862–1938, supra note 104, at vii.


118. Id. at 363–66.

119. Id. at 359, quoting a 1935 letter from Frankfurter to Cecil T. Carr.

120. Panama Refining Co. v. Ryan, 293 U.S. 398 (1935).
who was arguing the case on behalf of the government. Brandeis asked, “Who promulgates these orders and codes that have the force of laws?” 121 Stephens replied that they were “promulgated by the president and I assume they are on record at the State Department.” Brandeis followed up: “Is there any official or general publication of these executive orders?”—knowing the answer was no—and later queried whether there was “any way by which one can find out what is in these executive orders when they are issued?” 122 Stephens offered that “it would be difficult, but it is possible to get certified copies of the executive orders and codes from the NIRA.” Unbeknownst to Stephens, he had been set up. 123 Brandeis was using the oral argument to push for an official register of executive documents. At the same time, Frankfurter, then a law professor at Harvard Law School, had pushed a junior Harvard professor, Erwin N. Griswold, to write a law review article to coincide with this exchange for the purpose of prodding Congress into passing a law requiring the publication of federal executive orders and agency regulations. That article was published in the Harvard Law Review in 1934 and, combined with the press comment on the Amazon Petroleum and Panama Refining oral arguments, had the effect that Brandeis desired: promoting legislative action on regulatory publication. 124

¶39 The next year, Congress passed the Federal Register Act of 1935. 125 The statute required that the national archivist take custody of all presidential proclamations, executive orders, and other documents with legal effect, and provided for the publication of a Federal Register. Section 5 mandated:

There shall be published in the Federal Register (1) all presidential proclamations and executive orders, except as such shall have no general applicability and legal effect or are effective only against federal agencies or person in their capacity as officers agents or employees thereof; (2) such documents or classes of documents that the president as the president shall determine from time to time have general applicability and legal effect; and (3) such documents or classes of documents as may be required so to be published by act of Congress. 126

¶40 Recalling the fears engendered by the propagandistic Official Bulletin, the law cautioned “in no case shall comments or news items of any character whatsoever be authorized to be published in the Federal Register.” 127

The Code of Federal Regulations

¶41 The Federal Register Act originally envisioned a comprehensive codification of all existing regulations to be published around the time of first publication of the

121. Feinberg, supra note 117, at 365.
122. Id.
123. Id. at 363–66.
126. Id.
127. Id.
Federal Register, but the law was amended in 1937 to give the government more time and require a codification of all regulations every five years. In 1938, the Code of Federal Regulations was published in 17 volumes. A nine-volume cumulative supplement was issued in 1943, and annual multivolume supplements followed annually with increasing frequency. By 1967, the Office of the Federal Register began publishing yearly editions. The role of publication of federal regulations was incorporated into the Administrative Procedure Act (APA), which required publication of proposed and final texts of regulations.

Uniform State Administrative Lawmaking and Publication

¶42 Brandeis was not the only one concerned with the mechanics of the new administrative state. Lawmakers, independent scholars, and bar associations found themselves debating the new machinery. The issue of publication, as both a practical issue and a matter of fairness, was regularly raised. Citizens, after all, needed to know how to find the regulations they must abide by. A 1943 survey by the Kansas Legislative Council showed a problem all states faced. It sent researchers out to state agencies with the task of finding regulations. The assembled file of materials was “a miscellaneous collection of bulletins, pamphlets, mimeographed booklets, newspaper clippings, and typed and mimeographed documents of different sizes,” the report noted. There was a “marked lack of uniformity in the style in which the regulations are couched, and in the form in which they are issued.” Some had “the language of legislative acts; others are written . . . [like] parental advice.” The result was a lack of clarity that made “it difficult for the reader to determine the force or intent of a regulation.”

¶43 In 1937, the American Bar Association (ABA) created a committee on administrative agencies and tribunals that would eventually take up the issue. Its activities started a push that on the federal level would lead to the 1946 APA. One of the integral players was E. Blythe Stason, dean of the University of Michigan Law School. He...
was a working member of the U.S. Attorney General’s Committee on Administrative Procedure (whose 1940 and 1941 reports played a critical role promoting passage of a federal administrative procedure law). 139

¶ 44 When the APA turned its attention to state administrative procedure, 140 Stason had a leading role. As early as 1938, the ABA had been looking at state administrative law, but in 1939 it proposed the creation of a draft administrative process act, the implementation being referred to the House of Delegates in 1940. 141 As the ABA was then deeply involved in lobbying for the federal APA, the drafting of a model act briefly languished, but the work was eventually referred to the National Conference of Commissioners on Uniform State Laws (NCCUSL) on which Stason served as a commissioner. 142 Stason was later recalled to have been “an assiduous participant in the deliberations” and “largely instrumental in the formulation and publication of the model statute,” which was promulgated in 1946. 143 By 1962, an estimated “sixteen states [had] adopted significant portions of the Model Act,” and many others were influenced by it. 144

¶ 45 One of the important features of the 1946 model act was its promotion of open publication of administrative regulations. While the state model act was influenced by scholarly comment, the laws of a few leading states, and the influential 1942 report by Robert M. Benjamin on New York state administrative law, 145 it went further in advising publication of regulations than many reformers had, including Benjamin. 146 “One of the major contributions of the Model Act . . . is in the area of rulemaking,” wrote one scholar. “It provides a uniform procedure for the adoption of rules that assures notice to interested parties with an adequate opportunity to present conflicting viewpoints and

139. While introducing his tentative draft of the then Uniform Act on Administrative Agencies, Stason noted that the work of the U.S. Attorney General’s Committee on Administrative Procedure “furnished a lot of material, a number of good ideas” that he incorporated into his draft. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS FORTY-NINTH ANNUAL CONFERENCE, Uniform Act on Administrative Agencies 1, 2 (1939).

140. While interested in state administrative law, the ABA Committee on Administrative Law noted in 1933 that it deliberately “restricted its studies to federal administrative tribunals, at least for the present” and generally that was the ABA’s focus through 1946. Report of the Special Committee on Administrative Law, 57 Annual Report of the American Bar Association 539, 539 fn. 1 (1933).

141. Prefatory Note, supra note 137, at 197–98.


146. While the Benjamin report had recommended that regulations be available in “limited and less expensive departmental publications,” from its earliest drafts the model act called for a published register of new regulations and printed compilations of all agency regulations in force. The draft Uniform Administrative Procedure Act that was presented to the NCCUSL Fifty-Second Annual Conference in 1942 had language establishing lodgment with the secretary of state (or other state agency), publication of new regulations in a regularly published register, and the publication of compilation of acts in force by agencies. The language was tinkered with in later conferences but survived into the final model act.
with provision for filing, indexing, compiling, publishing, and keeping current the publication of rules.\textsuperscript{147}

\section*{46} Section four of the Model State Administrative Procedure Act was explicit:

\section*{4. Publication of Rules}

(1) The Secretary of State shall, as soon as practicable after the effective date of this act, compile, index, and publish all rules adopted by each agency and remaining in effect. Compilations shall be supplemented or revised as often as necessary [and at least once every two years].

(2) The Secretary of State shall publish a [monthly] bulletin in which he shall set forth the text of all rules filed during the preceding [month] excluding rules in effect upon the adoption of this act.

(3) The Secretary of State may in his discretion omit from the bulletin or the compilation rules the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if such rules are made available in printed or processed form on application to the adopting agency, and if the bulletin or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(4) Bulletins and compilations shall be made available upon request to [officials of this state] free of charge, and to other persons at a price fixed by the Secretary of State to cover publication and mailing costs.\textsuperscript{148}

\section*{47} The model act leaned heavily into the mechanisms that were working in the federal system: registers or bulletins like the \textit{Federal Register} for new regulations and notice of proposed regulations and well-indexed comprehensive compilations like the \textit{Code of Federal Regulation}. However, the drafters of the act—knowing how cost-conscious legislatures could be—did not want to scare away potential adopters of the model act by requiring “unduly cumbersome, expensive, or otherwise inexpedient” publication standards.\textsuperscript{149} Nevertheless, the drafters clearly believed printed state administrative registers and codes were the gold standard.

\section*{48} The drafters envisioned that the state secretaries of state would oversee publication, although they indicated that other options were possible. Some state legislatures would eventually create new agencies to task with this duty.\textsuperscript{150} “There are certain functions under the Model Act which have to be performed either by an existing agency or department or by a new agency,” one commentator noted. “The principal function involved is the publication and compilation of rules and proposed rules.”\textsuperscript{151}

\begin{footnotes}
\item[147] Harold S. Bloomenthal, \textit{The Revised Model State Administrative Procedure Act—Reform or Retrogression?}, 1963 DUKE L. REV 593, 599.
\item[148] \textit{Model State Administrative Procedure Act}, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1946).
\item[149] Bloomenthal, supra note 147, at 602–03.
\item[150] One commentator on the model act, Harold Bloomenthal, noted that the state of Kentucky “place[d] these functions in its legislative research commission.” \textit{Id}.
\item[151] \textit{Id.} at 603.
\end{footnotes}
Early State Administrative Codes

Wisconsin

¶49 Even before the approval of the final draft of the Model Administrative Procedure Act, some reform-minded states were considering its provisions. In 1939, the Wisconsin legislature passed a law calling for the collection of all “procedural rules and standing orders and regulations which have the force of law” to be published as a supplement to the Wisconsin statutes. The resulting work, called the Wisconsin Red Book, was published first in 1940. The regulations were listed by agency with limited indexing. However, as NCCUSL worked through versions of the model law, Wisconsin began work to adopt a revised version of an early 1942 draft by Stason, which the state legislature enacted in 1943. The legislation was concerned largely with other parts of the model act, but it adopted the publication provision (which survived unchanged in the final version of the model act). While that law was largely met by the existence of the Red Book, Wisconsin was not completely satisfied with an annual supplement; in 1955, the legislature passed legislation to create a loose-leaf updated Wisconsin Administrative Code, which was to be regularly updated and indexed.

California

¶50 On the West Coast, California was also instituting new regulatory publications. As early as 1938, the state bar association had been calling for reforms to state administrative law. Largely concerned with the judicial review of administrative decisions, California’s bar committee on administrative agencies and tribunals was nonetheless interested in the publication of the rules of procedure of state boards and commissions. In its 1939 report, the committee called for “adoption by administrative agencies of rules and regulations affecting the conduct of business and the conduct of proceedings before those agencies.” In 1941, the state legislature enabled the creation of a California Administrative Code, creating a codification board charged with the “purpose of assembling, codifying, and publishing the tremendous, unorganized mass of administrative rules and regulations.” The law envisioned that after the code was compiled, it would be regularly updated by the California Administrative Register. In 1943, the legislature fully funded the publication, and by 1947, the California Administrative

152. 1939 Wis. Sess. Laws 688.
157. [Cal.] State Bar J., at 49.
158. 1941 Cal. Stat. 2087. The board was to consist of the secretary of state, finance director, and legislative counsel.
159. Id. 1941 Cal. Stat. 2087.
160. Bureau Regulations May Be Available, Sacramento Bee, Apr. 21, 1943.
Code had grown to “some 23 titles” and was, in the eyes of some, “virtually complete at the present time.” However, the legislature was concerned that it was not as widely distributed as it could be and wanted to ensure that the system was easier for lawyers and libraries to purchase. A new law ordered distribution of the California Administrative Code and Register to every county clerk’s office along with “copies of any changes in rules within 10 days of the receipt of such changes.” The county clerks were charged with maintaining the code and register sets as well as an “up-to-date file of current changes.” Having completed its work, the codification board was abolished, and its remaining duties were transferred to the Division of Administrative Procedure, which had been created in 1945 to assist it. In 1987, the California Administrative Code was renamed the California Code of Regulations.

**Indiana**

¶51 In 1941, Indiana University Law Professor Frank E. Horack Jr., published the Indiana Administrative Code for the Bobbs-Merrill Publishing Company. Horack, Indiana’s NCCUSL commissioner, created the unofficial two-volume loose-leaf to fill a gap caused by the lack of a uniform publishing practice by Indiana administrative agencies. The “pioneering” work was the first time in the history that any state’s regulations had been published along with annotations to the authorizing statutes, applicable judicial decisions, and interpretive opinions of the attorney general.

¶52 Horack was later instrumental in the passage of Indiana’s first legislation on administrative publication in 1943 and 1945. The 1943 act required that any new administrative rules be filed with and approved by the state attorney general. The 1945 act voided any rules not adopted under its terms or the 1943 act and required the secretary of state to compile and publish all rules in effect by 1946 (as well as publish an accumulative supplement each year after). Unfortunately, while its apparent promise led to

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163. Id. at 2655.
164. The new code was to be updated in the California Regulatory Code Supplement. The Register was renamed the California Regulatory Notice Register. The California Code of Regulations is published in loose-leaf binders. A UCLA Law Library guide indicates that “most” state law libraries own microfiche and a “few print copies” of administrative materials and that UCLA has microfiche of historical California codes and registers from 1945 to 2002 when online versions were created. California Administrative Law, Finding Historical Text of Regulations, UCLA L. Libr. (Sept. 22, 2022), https://libguides.law.ucla.edu/caladminlaw/history [https://perma.cc/V2KT-9XAG].
the discontinuing of Horack’s Indiana Administrative Code, the 1945 act failed to create uniformity in agency publication practices. In 1967, the secretary of state collaborated with Bobbs-Merrill to create the unofficial compilation of rules entitled *Burn’s Administrative Rules and Regulations Annotated*. The work was roughly organized on the same line as *Burn’s Indiana Statutes Annotated*. However, because this publication was not official, Indiana agencies continued to organize, number, and publish regulations as they saw fit.

¶53 In 1977, the Indiana legislature finally took charge by passing a law requiring an official compilation that was to contain the full text of all Indiana rules and regulations in effect on December 31, 1978. The new set, entitled the *Indiana Administrative Code*, was to be updated annually and supplemented with a monthly *Indiana Register*, which was designed for use as an advance sheet supplement. The 1977 law also mandated the methods of organizing, numbering, and indexing of existing and new regulations. The first set was published in 1979. The current online code, which debuted in 2007, is still organized under these principles.

**Kentucky**

¶54 Kentucky evolved its administrative code several times from minimal alignment with the model code to a more robust system of code and register by the 1970s. The intellectual history of Kentucky’s codification of its regulations started with an entirely different effort: the thorough revision, reorganization, and rational recodification of the state’s statutes, which had not been revised since 1894. In 1936, the Kentucky General Assembly created a statutes revision committee charged with thoroughly revising and reorganizing Kentucky’s laws. The committee devised basic principles of the process, set up an office, and hired an experienced director, Robert K. Cullen, to oversee the herculean process. The final *Kentucky Revised Statutes* was adopted in 1942.

¶55 Fresh from this reform, the legislature passed legislation to regularize the promulgation and publication of state regulations. Not surprisingly, the industrious Cullen was named head of the state codification board. In September 1942, Cullen voided regulations that had not been filed with the secretary of state as mandated. World War II slowed the work of the board, but a one-volume *Kentucky Administrative Code*
was finished in 1946. A second edition was released as *Kentucky Administrative Code 2d* in 1951.\textsuperscript{178}

\*56 The legislature was not satisfied with five-year updates, and a 1952 act revised the law, leading to the publication of the *Kentucky Administrative Regulations Service* in 1953.\textsuperscript{179} It was a loose-leaf service with regular updates. By 1962, it had grown to four volumes.\textsuperscript{180}

\*57 In 1975, the *Kentucky Administrative Regulations* (KAR) replaced the loose-leaf service.\textsuperscript{181} It was soft-bound and was to be replaced each year with a new set.\textsuperscript{182} The law also created an *Administrative Register of Kentucky*, a monthly gazette of proposed regulations, notices of hearings, and final regulations to update the KAR and provide due process to persons and groups wanting to oppose or alter new regulations.\textsuperscript{183}

**Slow Growth into the Internet Era**

\*58 Despite the promising activities by states like Wisconsin, California, Indiana, and Kentucky, and a few other states in the 1940s and 1950s, the creation of state administrative codes was slow and painful in others. A survey by Morris L. Cohen in 1965 found that only 14 states published administrative codes.\textsuperscript{184} Loose-leaf sets accounted for eight of these codes; the rest were bound volumes with supplements.\textsuperscript{185} Interestingly, 13 states still published their regulations in pamphlets, most issued separately by agencies on schedules Cohen designated as “irregular.”\textsuperscript{186}

\textsuperscript{178} The 1951 volume appears to have been updated with eccentrically sized updates sent to owners, because one of the law library’s copies has such slips pasted in various places. Something similar is surmised for the 1946 edition; it has penciled-in notes referencing changes that the owner must have learned of somewhere.


\textsuperscript{180} *Administrative Procedures Law in Kentucky*, LRC Rsch. Rep. No. 12, at 5–6 (1962). The University of Louisville Law Library has two sets. The first is a complete five-volume set that terminated at the end of 1974. This is very likely the complete version that was replaced by the bound, annual KAR the next year. The law library also has a four-volume set that its owner stopped updating in 1971 and later donated to the law library.


\textsuperscript{182} The suspension of the print KAR is still “temporary” according to the official compiler, although 2020, 2021, and 2022 editions were never published. An unofficial version of the KAR is available online.

\textsuperscript{183} The *Register* is still published in print and online. See *Administrative Register of Kentucky*, Ky. Legis. Rsch. Comm’n, https://legislature.ky.gov/Law/kar/Pages/Registers.aspx [https://perma.cc/8QW3-75EQ].


\textsuperscript{186} Id. Alabama, Arizona, Colorado, Hawaii, Illinois, Louisiana, Maine, Mississippi, New Hampshire, New Jersey, Ohio, Pennsylvania, and Rhode Island.
¶59 Significant progress occurred in the early 1970s. By 1979, “thirty-eight of the fifty states” had “published codes or are preparing to do so.” 187 A decade later, “40 states and the District of Columbia” had compilations of administrative regulations “more or less resembling [the] CFR.” 188 But only just before the creation of the World Wide Web in 1994 did most of the states have an administrative code. (Even then, Arkansas, Delaware, and Mississippi had no codes, and Nebraska, Nevada, and North Dakota had no registers.) 189 Then, slowly but inevitably, the pressure to put these codes online began—a development that would lead just as certainly to the end of many printed state codes.

The Case for Collection, Preservation, and Eventual Digitization of State Administration Codes (and Registers)

Why We Should Preserve State Materials

¶60 As the era of print codes and registers nears an end, law libraries should take on the responsibility of preserving these valuable sources of law until they can be digitized in permanent online repositories—if for no other reason than there is no other institution that will do so. It is essential because these resources may document current legal controversies, assist scholars to determine the history of areas subject to state regulation, and preserve the legal history of state administrative practices and policies. Ultimately, we should do this because it is what law libraries do.

¶61 Even though these codes date back to the 1970s and earlier, they still can be sources of law for some current controversies. Every time a state pension law issue arises, the vested rights under that pension could derive from the regulation governing an event that occurred decades before. Determining fault for environmental damage might require determining regulatory duties imposed by an old regulation that may or may not have grandfathered certain obligations, depending on the exact language of that clause. Until the persons and corporations affected by an old print administrative code have passed out of existence, those regulations could still be the law despite what the current code says. 190 Moreover, as we have seen in the recent Kentucky Derby cases, these older codes can be leaned on as evidence of the solid foundations of current regulatory regimes.

¶62 Moreover, the topics and the issues covered by state regulations are increasingly drawing the interest of historians who are exploring the intersections between class, race, and gender in the exercise of police powers in the states. Books and articles in


189. BNA, Directory of State Administrative Codes and Registers (2d ed. 1995). This was the last edition of this guide.

recent years have explored the history of the regulation of railroads, public health, hunting and wildlife conservation, food purity and drug safety, commercial fishing, mining, public utilities, and gaming.


A few legal scholars have begun to explore the sociolegal history of regulations. A recent law review explored how hunting laws enforced echoes of the slave codes in the Jim Crow South. In addition, as legal historians begin to examine in detail the development of federal administrative law, and modern students of federal regulations continue to explore and revise interpretive doctrines like Chevron deference and major question, others will begin to examine these issues at the state level where they will find that these issues have played out differently in many of the 50 states and the District of Columbia. At some point, legal scholars will go beyond studying judicial decisions and scholarly comment, and dig deeper into the history and texts of the regulations themselves that are documented in these print codes and registers.

Of course, preserving legal documents is already something law libraries, especially academic law libraries, do. As case law and treatises migrate to online services, preserving and providing access to rare legal materials becomes a more important part of a law library’s print collection missions. While a 1946 administrative code volume may not seem like a rare book, like an early copy of Blackstone’s Commentaries, it is scarce and almost irreplaceable. They never were issued in great numbers and usually were purchased in numbers only in the states that issued them. Most law firms never attempted to retain old copies, and those that did weeded them out as law firm libraries dropped print in the 1990s or discarded surplus copies after mergers. The law libraries that have retained them should realize they are retaining a piece of history. Moreover, preservation is the first step. Things that are not preserved cannot be digitized in the future.

The State of Administrative Publication Collection in U.S. Libraries

Preserving what we own is the one thing law libraries can do; taking advantage of opportunities to collect other state administrative materials is another. The key phrase is “taking advantage of opportunities.” This article is not calling for expensive purchasing plans to collect the administrative materials on all 50 states or even their
own state. In most cases, large purchases of these materials are not possible. But if they show up as a possible law firm donation or from a library seeking to deaccession them, a law library should seize the opportunity to preserve them.

§66 However, some of these materials might be in a tenuous place in a library system, long ago collected for purposes that are no longer part of that institution’s mission. Consider two examples from my own institution. The first concerns railroad regulations. Although the University of Louisville has had a law school since 1848, as well as a law library, that law library did not collect annual reports of the Kentucky Railroad Commission. Nonetheless it did acquire a partial collection of these reports when the L&N Railroad law department was disbanded after a merger and donated its significant collection of transportation law materials to the library.204 Even then these annual reports were not recognized as containing regulatory materials and spent decades uncataloged on shelves in special collections. Shortly before starting this project, I first noticed that several collections of rules, procedures, and regulations were included in these books as appendices or chapters. At any point in these books’ prior lives, a law librarian could have unwittingly weeded them as interesting but not essentially legal materials.

§67 Another example involves the medical library of the University of Louisville. As many such institutions no doubt did, the library kept annual reports of the state public health commission in its collections. However, for the last two decades, the trend of libraries associated with medical and healthcare campuses has been to build online collections and then discard print collections as not central to the institutions’ overall mission. Luckily, the University of Louisville’s medical library recognizes a mission to preserve the history of medical institutions in the state and thus has preserved these public health publications.

§68 The medical library example highlights that most pre–administrative code regulatory materials are likely not found in law libraries but in collections of university libraries and sister institutions like agricultural department libraries, education school libraries, science libraries, and other special libraries interested in the subjects of the regulations—and none specifically interested in the legal implications of the publications. So, when contemplating the administrative publication histories of their states, all law libraries need to consider these other institutions and perhaps be ready to accept transfers from them.

§69 One place that a law library can go to at least find a fraction of the pamphlet history of state administrative law is eBay, which often has dozens of state agency pamphlets in their paper ephemera and rare books offerings. I have collected several for this project as an individual, but it is an unusual way to build a library collection. Prices vary widely, with some items wildly overpriced. In some cases, the materials intersect with certain historical “fandoms,” like communities that collect all things related to early

railroads. This niche area of collecting perhaps is not fruitful for individual law libraries—at least for items not from their own states.205

Considerations for Digitalization

¶70 The goal of preserving state administrative codes registers and pre-code administrative materials would be to have them available for nondestructive digitization at some point. For researchers, both historians and legal scholars, the best result would be a durable platform that provides access and search capability for regulatory materials across the many states, districts, and territories of the United States. At present, there is no mechanism for such a platform to be created as a public domain website. Moreover, publishers like HeinOnline, Gale, and Readex would be daunted by such an endeavor, particularly since the rarity of the materials makes it impossible to use the more inexpensive destructive digitization that might make such a project commercially viable.206

¶71 Regarding administrative codes and registers, some modest digital access to older regulatory materials has been taking place by public entities like states and private enterprises like Thomson Reuters (Westlaw), Lexis, and Fastcase (which inherited some databases from its merger with Casemaker). Most of these collections are simply providing access to “born-digital” backfiles, but some involve digitizing of print. For example, in Kentucky, the Legislative Research Commission, which is the official publisher of regulatory material, recently digitized the state register back to its origin.207 Indeed, states might be the only entity that can undertake destructive digitization simply because they often have surplus copies.

¶72 Copies of annual reports of boards of commissions, as well as pamphlets, might be the subject of minor digitization projects by individual law libraries. Finding reliable places to provide access to digitized materials can be challenging but is not impossible. The software used for content management and institutional repositories might be employed, although in many cases software has problems dealing with these text-based resources, especially when making the text searchable in any fashion recognizable to legal researchers.208 One option could be to partner with the Internet Archive or HathiTrust, which allows digitized materials from the physical collections to be placed in its online library.209 For example, the State Library and Archives of Florida has con-
tributed more than 2,000 scanned documents to its collection on the Internet Archive, including most of the annual reports of the Florida State Racing Commission and the Railroad Commission.²¹⁰ If enough law libraries from enough states digitize existing materials and place them on one of these national digital libraries, they could collectively become a useful resource for historians and legal scholars attempting to study regulations across states. They also are built to be permanent, which, in my experience, is not always the case with the internet platforms that university IT departments provide to academic units and libraries.

Conclusion

73 The history of U.S. administrative regulations tells the history of ordinary American lives. From the purity of the food they eat to opportunities to enjoy the natural resources of their states, Americans benefit from these regulations. And yet these materials are largely unused by historians and legal scholars studying the very areas that these regulations cover. Collection, preservation, digitization, and knowledgeable legal reference could be the key to unlocking these resources. However, just as interest in researching the subjects of these materials increases, so too does the risk of losing them. As the print series of these primary source materials go out of publication, librarians need to make sure these resources are not forgotten and are preserved for when technology can be inexpensively digitized in a nondestructive manner and placed on durable platforms that can be searched by modern researchers. Law libraries are the best stewards of these materials.

We Take Judicial Notice:
Non-English Terms in Modern U.S. Case Law*

Lee Little**

In light of growing linguistic pluralism in the United States, courts increasingly grapple with terms from languages other than English. This article investigates the usage of non-English terms in U.S. case opinions since the end of World War II.

Implications for Practice

1. The United States’ linguistic diversity means non-English terms, some with legal significance, appear in judicial opinions.
2. In the absence of clear and agreed-upon meanings, courts will consult external sources such as dictionaries or, more rarely, translators to discern correct translations.
3. When choosing between multiple translations offered by parties, courts will choose the translation that is most persuasive, meaning that the text is methodically and accurately translated and subsequently double-checked by a native speaker with some knowledge of the subject matter.

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Introduction

¶1 Federal Rule of Evidence 201 allows for judicial notice of adjudicative facts. According to that rule, courts are allowed to notice facts that are “not subject to reasonable dispute because [they are] generally known within the trial court’s territorial jurisdiction; or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” For example, courts could notice facts such as known historical events or birth or death dates from public records. The Supreme Court of the United States in Brown v. Piper adopted the following principle regarding judicial notice:

Facts of universal notoriety need not be proved. . . . Among the things of which judicial notice is taken are the law of nations; the general customs and usages of merchants; the notary’s seal; things which must happen according to the laws of nature; the coincidences of the days of the week with those of the month; the meaning of words in the vernacular language; the customary abbreviations of Christian names; the accession of the Chief Magistrate to office, and his leaving it. In this country, such notice is taken of the appointment of members of the cabinet, the election and resignations of senators, and of the appointment of marshals and sheriffs, but not of their deputies. The courts of the United States take judicial notice of the ports and waters of the United States where the tide ebbs and flows, of the boundaries of the several States and judicial districts, and of the laws and jurisprudence of the several States in which they exercise jurisdiction. Courts will take notice of whatever is generally known within the limits of their jurisdiction; and, if the judge’s memory is at fault, he may refresh it by resorting to any means for that purpose which he may deem safe and proper. This extends to such matters [sic] of science as are involved in the cases brought before him.3

¶2 Likewise, judges may take judicial notice of legally significant non-English words that are used by the parties, even when they are not commonly used outside that litigation.4 This mechanism allows the court to quickly establish and convey its

1. Fed. R. Evid. 201.
2. Id. 201(b).
understanding of how those phrases are used. However, parties may challenge translations or introduce expert testimony with differing interpretations; the finder of fact is then tasked with choosing the “correct” translation.

§3 Linguistic diversity in the United States has expanded greatly in the decades since World War II. There are more speakers of non-English languages in the country now than ever before, with nearly 60 million people speaking some non-English language at home. Accordingly, speakers of non-English languages regularly interact with government actors and legal processes; examples of the first category include law enforcement officers, court officials, and tax assessors, and in the second contracts and divorces. As the growing language-diverse populace encounters the U.S. judicial system, judges will likely take judicial notice of the meaning of foreign phrases on a more regular basis.

Census Data About Non-English Speakers

§4 The U.S. Census Bureau has collected data regarding spoken languages since the 1890 decennial census. Analysis of the data from 1980 through present indicates a substantial increase in the number and relative percentage of non-English speakers in the country. The Census Bureau’s yearly American Community Survey inquires whether any household member speaks a language other than English at home and, if yes, which other language is spoken and how well the individual speaks English. It is important to note that speakers of non-English languages may also speak English.

§5 The total number of non-English speakers in America nearly tripled in the 41-year period following 1980, while the proportion of non-English speakers relative to the total population doubled. In 1980, 187.2 million (89%) Americans over the age of five spoke only English at home, while 23.1 million (11%) Americans over the age of five spoke a language other than English at home. In 2019, 241 million (78%) Americans over the age of five spoke only English at home, while 67.8 million (22%) Americans over the age of five spoke a language other than English at home.

§6 Today, the United States remains a vibrant patchwork of spoken and signed languages representing the numerous subcultures that comprise American culture. The Census Bureau’s 2020 American Community Survey indicated that the following non-English languages were the 10 most spoken among Americans over the age of five, in order from most speakers: Spanish (41,757,391), Chinese (3,494,544), Tagalog (1,763,585),

8. Id. at 143.
11. See Rumbaut & Massey, supra note 7.
Vietnamese (1,570,526), Arabic (1,260,437), French (1,171,775), Korean (1,075,247), Russian (941,454), Haitian (924,817), and German (895,309). Speakers of these languages total 54.8 million Americans, or 16.3 percent of all Americans, and 75 percent of those people speak a language other than English at home. Because of this large and diverse segment of the American population, some courts have implemented improved language access policies for non-English speakers, and the appearance of non-English words and phrases in American primary legal sources have ballooned during the same period.

Mead and Method: A Research Strategy for Examining 40 Years of Non-English Terms Cases

¶7 A trademark dispute between luxury brands offers an interesting starting place for a 40-year analysis of non-English terms in modern case law because it underscores the breadth of litigants, natures of suits, and linguistic claims U.S. courts now analyze. Mead Data Central, Inc. v. Toyota Motor Sales USA was decided by the Second Circuit in 1989. Turning on interpretation of § 368-d of New York’s General Business Law, the court resolved a trademark dispute between Toyota Motor Corporation, the manufacturer of the then-new Lexus automobile brand, and Mead Data Central, the owner of Lexis computerized legal research systems. Mead Data Central sought an injunction against Toyota for infringement of the Lexis trademark, which it had held since 1972. Toyota, through its use of the Lexus mark, Mead claimed, was too verbally and audibly similar to Lexis and therefore diluted Mead’s mark. The court resolved the situation by examining the public’s understanding of Lexus and Lexis:

The possibility that someday LEXUS may become a famous mark in the mind of the general public has little relevance in the instant dilution analysis since it is quite apparent that the general public associates nothing with LEXIS. On the other hand, the recognized sophistication of attorneys, the principal users of the service, has substantial relevance. See Sally Gee, Inc. v. Myra Hogan, Inc., supra, 699 F.2d at 626. Because of this knowledgeable sophistication, it is unlikely that, even in the market where Mead principally operates, there will be any significant amount of blurring between the LEXIS and LEXUS marks.

¶8 The Mead court began with a discussion of the etymology of the term lexis. Greek and Latin are identified as the languages of origin, though lexis was later “incorporated bodily into the English”—a common origin story for many English terms, particularly those used in the legal field. While Mead is among the population of non-English cases decided by the courts in the past 40 years, it also demonstrates a methodological decision point: should a researcher include cases regarding English-lexicon words of Greek and Latin origin? The answer is no.

13. 875 F.2d 1026 (2d Cir. 1989).
14. Id. at 1031, 1032.
¶9 A full investigation into legal and popular-language words of Greek and Latin origin would quickly outnumber those of newer vintage. Linguist Aristides Konstantinidis has traced nearly 25 percent of English words to Greek origins. Accordingly, Greek and Latin were omitted from this article but are ripe for investigation in a future article.

¶10 Instead, the following search string of non-Greek (ancient) and non-Latin languages prevalently spoken in the United States today was used to search Westlaw:

\[\text{(german OR french OR spanish OR portuguese OR hindi OR mandarin OR chinese OR indonesian OR afrikaans OR arabic OR italian OR russian OR creole OR patois OR irish OR mongolian OR japanese OR korean OR vietnamese OR lao OR dutch OR danish OR greek OR serbian OR slavic) /5 language}\]

Then two filters were applied:

1) Date: all dates after 1/1/1945; and
2) Search within results: (phrase OR adage OR metaphor OR saying OR means OR clause) /10 language

¶11 This search process garnered 467 results. All cases were then reviewed for relevancy and manually filtered to omit Latin and ancient Greek and other hits outside the scope described above. The final results set included 311 cases, which were reviewed and tagged to note case name, reporter citation, jurisdiction, year, case type, language, and the opinion excerpt that included mention of the language. The full list of analyzed cases is available in an appendix.¹⁵

¶12 The Westlaw key number 382Tk1053 (Trademarks; Foreign or obscure words or letters) provided a wealth of cases involving trademark infringement and registration; many of the cases present in the key number digest were also present in the keyword search results set.

**Broad Trends**

¶13 The results of this study suggest that the number of cases involving non-English-language disputes has grown significantly since 1945. If trends continue, the number of cases involving non-English terms is likely to rise.¹⁶ Figure 1 shows the number of cases containing non-English phrases per decade. Figure 2 shows the number of cases by language. Before moving to the results, an additional methodological note is needed: for the purposes of this discussion, the word “term” denotes both singular words and multiword phrases.


¹⁶. Despite the overall growth in the number of non-English-language disputes, the number of cases returned for each language does not reflect the proportion of speakers of that language in the general populace. Spanish leads both the number of speakers and number of cases, but the remaining number of cases per language do not map onto the number of speakers. The high number of French cases is likely the result of the vestiges of Anglo-Norman French that have long been utilized in American Legal English, as discussed below. Otherwise, there does not appear to be any correlation between the number of American speakers of a non-English language and the number of cases returned in this study.
Climbing Babel: Making Sense of Language Trends in the Dataset

§14 Five languages retrieved only one result: Danish, Hungarian, Indonesian, Mohegan, and Yiddish. Of these, only the cases involving Hungarian and Mohegan turned on the interpretation of the terms from that language. Nine languages retrieved between two and 11 results: Chinese (two cases, irrespective of variety or dialect), Jamaican Patois (two cases), Portuguese (two cases), Greek (four cases), Korean (five cases), Vietnamese (five cases), Japanese (five cases), Russian (seven cases), and German (eleven cases). Of these, at least one case involving each turned on the interpretation of terms from that language. Arabic and Italian returned 14 and 20 cases respectively.

§15 French returned 93 cases. Before turning to a substantive discussion of cases involving French words, it is worth noting that the largest number of French cases—22—involved the term *cy pres*. As defined in *Morris v. EA Morris Charitable Foundation*,17 *cy pres* derives from the Anglo-Norman French phrase *cy pres comme possible* and is used largely in trusts cases, wherein the concept “allows a court, in the event that the ‘purpose set forth in a charitable trust becomes impossible, illegal or impracticable’ to redirect the bequest to ‘a purpose as near as possible to that originally selected’ by the settlor of the trust.”18 While an important phrase in U.S. jurisprudence, *cy pres* serves a similar function to the many Latin or ancient Greek terms that pepper case opinions and therefore does not warrant further discussion. Perhaps surprisingly, other than the cases involving treaty interpretation, there are no broad themes or trends involving French terms across the results set. Even in Louisiana and Maine, the two states with a rich history of French-speaking communities where cases involving French terms would be most likely to occur, only four total cases were returned; of these, two arise from disputes over property in Louisiana.19

§16 Spanish provided the most results of the dataset, with 136 cases. That Spanish had the largest number in the dataset flows logically from the fact that Spanish-speaking Americans are the largest group of non-English speakers in the country by a factor of 10. This comes with the unfortunate side effect of having Spanish as the dominant language in the dataset involving criminal cases. Given that Spanish speakers comprise the largest group of non-English speakers in the country and that Hispanic communities are overpoliced,20 this status should come as no surprise.21

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18. Id. at 416.
19. See generally Kelieher v. Gravois, 26 So. 2d 304 (La. Ct. App. 1946); Yokum v. 615 Bourbon St., 977 So. 2d 859 (La. 2008).
21. This is not to imply, however, that Spanish speakers are more prone to criminalized activity, simply that the proportion of Spanish speakers relative to the population as a whole, combined with increased interaction with police, results in the language appearing more often in criminal case opinions than any other non-English language.
¶17 Of particular interest are cases from Puerto Rican courts. As noted in Hatfield-Bermudez v. Aldanondo-Rivera, the rulings of Puerto Rican commonwealth courts are written exclusively in Spanish and often go untranslated into English. Though the Civil Code theoretically allows for both Spanish and English, with discrepancies between language versions being settled by the original written language of the statute, the Puerto Rican Rules of Civil Procedure dictate that all “pleadings, motions, and other papers shall be written in Spanish.” Westlaw contains the full set of official Spanish opinions of Puerto Rico Supreme Court and appellate courts with more limited holdings of official English translations. In this regard, the approach taken in In re Empresas Omajede Inc. is instructive. Writing in English, the court successfully anticipated translation issues that could arise from relevant contract provisions written in Spanish: “In order to avoid unnecessary litigation regarding translation, the court will include in footnotes the applicable contract provisions in the Spanish language for ready reference.” This unusual and underutilized step in the cases analyzed could serve the interests of judicial economy as a time-saving mechanism. Beyond these broad trends, a number of modern court practices emerged by case type.

Analyzing Usage: Making Sense of Case Type Trends in the Dataset

¶18 Regardless of the language involved, there were several broad case types that accounted for the largest number of cases. Various subcategories of criminal and intellectual property cases comprise the two largest broad categories. As the subsequent analysis of individual case results reveals, this stems from the fact that these two broad categories are the most common ways for legal persons to interact with the judicial system in the context of interpretation of words.

Criminal

¶19 Criminal cases constituted the largest single grouping in the dataset, with 86 results. Of these, 68 involved Spanish terms, eight Italian, three each of French and Russian, two Arabic, and one each of Danish and Jamaican Patois, though not all the cases involved the non-English terms in a legally significant way. The cases break into two general categories: procedural and substantive.

Procedural Issues

¶20 Sometimes, courts must determine the validity and adequacy of the actions and speech of law enforcement officers when interacting with speakers of non-English
languages. This commonly arises in cases involving warnings during law enforcement searches of a defendant's property or from *Miranda v. Arizona*, where law enforcement officers will read from preprinted cards and/or spontaneously translate English versions of the *Miranda* warnings to Spanish-speaking defendants and use improper or deficient translations. For example, in *United States v. Leiva*, Leiva, a monolingual Spanish speaker, was pulled over while driving a rental vehicle and asked “Puedo buscar su coche?,” which three Spanish-speaking witnesses testified did not mean the intended “Can I search your car?” but rather “Can I look/search/locate for your car?” Leiva claimed that he was never asked for consent to search his car and could not have provided consent to a search. The court provided a detailed analysis of the Spanish verb *buscar* and found that the officer’s omission of *en* when asking Leiva was insufficient. However, the court indicated that the context of the question was key, despite the mistranslation:

“Can I locate your wallet” does not mean “Can I search your wallet.” However, if there is a language barrier between a police officer and an individual who has been subject to a traffic stop and the person’s wallet is in plain view of both individuals, the first question would make little sense. Under certain circumstances and depending on the context of the encounter—if, for example, the wallet is right in front of the two people—the Court believes that the person stopped would reasonably interpret the officer’s question as asking for consent to search the wallet. The same is true with respect to the car based on the circumstances here.

§21 Unfortunately for non-English-speaking defendants and their defense attorneys, under this standard, law enforcement officers are required only to be reasonably close to the English meaning of non-English terms, particularly if the environment in which the parties are acting provides defendants with additional context regarding the officers’ intentions.

### Substantive Cases

§22 While procedural criminal cases turn on the actions and words of law enforcement officers and other governmental actors, substantive criminal cases involve the actions and words of private individuals. Instances of intimidation or threats are most likely to be germane to the usage of non-English terms.

§23 The rule surrounding use of foreign terms to intimidate or threaten varies depending on the criminal code of the particular jurisdiction, but generally legislatures criminalize threats via action, conduct, or words, regardless of the language used.

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29. See People v. Rojas, 2013 WL 649500 (Cal. Ct. App. Feb. 2, 2013) (distinguishing between the Spanish terms *apuntado* and *abogado* in the context of Miranda’s guarantee of appointed counsel for indigent defendants); United States v. Leiva, 26 F. Supp. 3d 811 (C.D. Ill. 2014) (turning on the improper use of the Spanish term *Puedo buscar su coche* by a law enforcement officer prior to a search of a defendant’s car; the phrase has multiple potential English-language translations that are not equivalent of the intended English phrase “Can I search your car?”).
30. Leiva, 26 F. Supp. 3d at 814.
31. Id.
32. Id. at 821.
Generally, if an alleged victim interprets the defendant’s action in a threatening or intimidating manner, the conduct may involve any language, so long as the defendant had necessary intent. In these cases, courts do not contend with varying translations of the terms at issue but will often provide translations of the offending term for reference; for instance, in *Cortez v. State*, the court included the following as a footnote: “According to [language expert] John, appellant said, *Te voy a chingar*. John testified the phrase was Spanish for ‘I’m going to f-you up.’” Most of these cases, however, do not turn on the meaning or use of Spanish terms and are too voluminous to include directly in this discussion.

**Intellectual Property**

¶24 Intellectual property cases largely turn on the interpretation of terms under the Lanham Act. While not concerning non-English terms, the Eleventh Circuit’s analysis of Lanham Act protections in *FCOA v. Foremost Title & Escrow Services* provides a two-part test for determining potential trademark protections: the term’s (1) conceptual strength and (2) commercial strength. Regarding the conceptual strength of a term, the court provides the following categories: generic, descriptive, suggestive, and fanciful. The court states that generic and descriptive marks are “so weak that they are not valid trademarks.” However, a descriptive mark may be strong enough to merit protection if it acquires a “secondary meaning” that comes from consumers’ viewing the term as synonymous with the entity in question. As discussed below in *Weiss Noodle*, marks need not be English words or phrases to be generic or descriptive. Fanciful marks are those that are “coined by a user to identify itself or its goods and services,” while suggestive marks are those that are “merely suggestive of the nature or characteristics of the product or business”; both are inherently distinctive. While conceptual strength deals largely with a trademark’s descriptive adjective, commercial strength refers to the real-world recognition of a particular term as the product or company in question; it is therefore less important to this discussion than conceptual strength.

**Copyright and Trademark Infringement**

¶25 Cases involving copyright and trademark infringement often rely on the doctrine of foreign equivalents, which disallows trademark protection for non-English
terms commonly used as generic or descriptive in that language, even if used untranslated in the United States. For example, a German pencil company would not be awarded protections if it used the term bleistift as a brand name for its pencils in the United States. Opinions in the dataset are not consistent in providing translations of terms being analyzed under the doctrine.

¶26 The decision in Weiss Noodle Co. v. Golden Cracknel & Specialty Co. turned on a trademark using a hyphenated version of the Hungarian word haluska, a descriptive name for egg noodles. The court determined that descriptive words and their phonetic equivalents—English or otherwise—cannot merely be hyphenated and receive trademark protections. Important to this article, the court also held that descriptive names need not be English: “it is immaterial that the name is in a foreign language.” Weiss Noodle is the earliest case from the time period studied discussing the attempted registration of descriptive or generic terms from non-English terms as trademarks under the Lanham Act.

¶27 Orto Conserviera Cameranese di Giacchetti Marino & C., S.N.C. v. Biconserve S.R.L. involves a dispute over the Italian term Bella di Cerignola, a registered trademark held by the defendant. Under the doctrine in Otokoyama (discussed below), the court held that the foreign equivalents doctrine requires analyzing the term in the context of its public perception in the country of origin; accordingly, Bella di Cerignola was simply a generic and descriptive designation for a type of Italian olives and therefore not eligible for protections.

¶28 Pizzeria Uno Corp. v. Temple was a dispute between two growing restaurant franchises, one selling pizza and the other selling tacos. Unfortunately for plaintiff Pizzeria Uno, the court was not swayed by the tenet that there can be only one. The court engaged in an analysis under the Lanham Act test to determine whether Pizzeria Uno warranted trademark protections and found that both “pizzeria” and “uno” were simply descriptive, with “pizzeria” meaning “an establishment . . . where pizzas are made and sold” and “uno” “signify[ing] number one—synonymous with the best.” “Uno” retains similar connotations in English, Spanish, and Italian, evoking compliment and praise. The court did not analyze “uno” under the foreign equivalents doctrine, indicating that its use had been sufficiently adopted into English.

¶29 Otokoyama Co. v. Wine of Japan Import, Inc. arose from a dispute surrounding the term otokoyama, which was used by both parties as a name for the alcoholic beverage sake. Unfortunately for the plaintiff, which took its brand name from the term, the court held that otokoyama is merely a generic and descriptive term for a type of sake.
that is used by many Japanese breweries and therefore is not subject to Lanham Act protections.

¶30 As the sole result involving a Native American language, *Mohegan Tribe of Indians of Connecticut v. Mohegan Tribe & Nation, Inc.*\(^50\) involved a Lanham Act trademark dispute between the federally recognized Mohegan Tribe of Indians of Connecticut and a group of Native Americans with Mohegan ancestry. The court held that the federally recognized tribe did not possess “a legally protectible interest in the terms ‘Mohegan’ and ‘Mohegan Tribe’” because those terms were generic and had not acquired a secondary meaning in the marketplace. Indeed, the opinion cited to a dictionary definition of “Mohegan” as “a member of the Mohegan people” and “an Indian people of southeastern Connecticut.”\(^51\) In essence, the court determined that the phrase “Mohegan Tribe” was merely descriptive of all groups of Native Americans of Mohegan descent and therefore not subject to trademark protection.

¶31 *Theta Chi Fraternity v. Leland Stanford Junior University*\(^52\) turns on the Greek letters comprising the name of the fraternity. The court held that the university’s continued use of a similar set of Greek letters did not constitute dilution of the fraternity’s trademark, largely because continued usage in the market by both entities would not cause confusion.

¶32 As a slight diversion, two of the cases include the esoteric ancient Greek term *hapax legomenon*, which means “a word or form occurring only once in a document.”\(^53\) It may be surmised that many of the foreign-language terms discussed here are *hapax legomena*, not just in their respective case opinions but across U.S. jurisprudence as a whole because of their relative rarity in the studied dataset.

¶33 All five of the results involving terms in Vietnamese were from the realm of intellectual property, with four trademark cases and one copyright case. All five involved the Vietnamese phrase in a legally significant way. *Aureflam Corp. v. Pho Hoa Phat I, Inc.*\(^54\) involved the phrase *Pho Hoa*, which is noted as being a Vietnamese phrase that commonly and generically designates a restaurant that serves pho. Given the mere descriptive nature of the phrase, the court granted Aureflam’s motion to dismiss on grounds that Pho Hoa Phat I did not adequately plead a claim. In *Derek & Constance Lee Corp. v. Kim Seng Co.*,\(^55\) both parties used and claimed ownership of a variant of the term *que huong*.\(^56\) The court implemented the doctrine of foreign equivalents from *Palm Bay Imports*,\(^57\) which translates foreign words into English to determine the term’s

\(^{50}\) 255 Conn. 358 (2001).
\(^{51}\) Id. at 369–70, n.6, quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1453 (1961).
\(^{52}\) 212 F. Supp. 3d 816 (N.D. Cal. 2016).
\(^{54}\) 2005 WL 2253813 (N.D. Cal. Sept. 16, 2005).
\(^{56}\) Translated as “homeland,” the term often uses various diacritical marks that are absent in the case opinion. See Homel and, CAMBRIDGE ONLINE DICTIONARY, https://dictionary.cambridge.org/dictionary/english-vietnamese/homeland [https://perma.cc/C4PM-KCNC].
\(^{57}\) Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1369, 1377 (Fed. Cir. 2005).
genericness or descriptiveness. Strangely, despite invoking the doctrine, the court never provided the English equivalent of *que huong* but found that the term was sufficiently generic.

¶34 *Sunstar Inc v. Alberto-Culver Co.*58 turned on the inclusion of the Japanese phrase *senyoshiyoken* immediately after “exclusive license,” its English equivalent, in a translated English license agreement.59 Though inclusion of the term was intended to clarify potential misunderstandings, *senyoshiyoken* was not defined within the document and the consulted experts expressed disagreement over what the term entailed. Rather than defining the term itself, the court instead pushed for a determination of the parties’ intent at the time the term was used and allowed the factfinder to make the determination. Important for this discussion, Judge Posner provided advice to future judges to prefer translated documents to expert testimony when determining tenets of foreign law, particularly those in non-English languages:

> [J]udges are experts on law, and there are published materials on foreign law, in the form of treatises, law review articles, and cases. Of course, the most authoritative literature on the law of a foreign country is apt to be in a language other than English. But the parties can have the relevant portions translated into English; judges can handle translations, which figure prominently in a variety of cases tried in American courts, such as drug-trafficking and immigration cases. Relying on paid witnesses to spoon feed judges is justifiable only when the foreign law is the law of a country with such an obscure or poorly developed legal system that there are no secondary materials to which the judge could turn.

The parties presented evidence by expert witnesses concerning the meaning of *senyoshiyoken* in Japanese trademark law. But fortunately, the experts cited to scholarly literature as well, which can help us decide whether a *senyoshiyoken* allows its holder to vary a licensed trademark.60

**Patent Infringement**

¶35 Modern patent cases often involve disputes over incredibly specific scientific concepts. While English has largely been the worldwide language of science since World War II, non-English-speaking scientists often publish articles in their native languages that companies then use in the research and development phase of their products. These articles may go untranslated into English until a dispute arises in U.S. courts; *Mitsubishi Chemical Corp. v. Barr Laboratories, Inc.*61 exemplifies this phenomenon and serves as a rare case for this dataset in that the court conducted an in-depth analysis of several expert translations of a single sentence of a technical article originally written in Japanese. That article, referred to in the opinion as the “Yamamoto Article,” discussed the finer points of the effects of a drug, argatroban, as it relates to cerebral

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58. 586 F.3d 487 (7th Cir. 2009).
59. *Id.* at 494. While the opinion does not include an excerpt of the contract text, it provides the following excerpt and explanation: “The license agreement (the terms of which were negotiated by Sunstar and Alberto–Culver, Bank One’s duties being limited to enforcement) calls the license granted Sunstar a *senyoshiyoken*, which in English means ‘exclusive-use right.’”
60. *Id.* at 496.
microcirculation in rats. Four potential translations were admitted into evidence, each named after its respective translator: Hartmann, Aschmann, FDA, and Cross. By his own admission, Hartmann’s translation was riddled with errors; in a scathing rebuke, the court agreed: “His translation violates a basic rule of Japanese grammar. . . . In view of the multitude of substantive errors that changed the meaning of the original source text and lack of proper translation skill and judgment, Mr. Hartmann’s translation lacks sufficient credibility and reliability.”62 After dispensing with the Hartmann translation, the court turned to the Aschmann translation and quickly dismissed its accuracy: “Mr. Aschmann testified that, in his opinion, the Hartmann translation is an accurate translation of the original Japanese and that the Cross translation is not . . . the defendant’s other expert translator Mr. Hartmann also acknowledged that there is no ‘where’ in the original Japanese source text to support Mr. Aschmann’s translation.”63 Similar to the Hartmann and Aschmann translations, the court picked apart the FDA translation, thereby wholly undercutting all of the defendant’s offered translations. The Cross translation, offered by the plaintiff, was accepted as reliable by the court following an analysis of the translation itself and the method by which Cross engaged in his translation, namely by consulting with Japanese-speaking scientists familiar with the scientific concept at issue; none of the other translators did so. Accordingly, the court analyzed the remaining claims in favor of the plaintiff, thereby enjoining the defendant from further infringing Mitsubishi’s patent going forward.

Tariffs

¶36 Terrazzo & Marble Supply Co. v. United States64 involved a dispute over the customs duties on small pieces of colored glass, called smalti in the original Italian and translated into English as “glass enamel.” The court dispensed with squabbling over the use of smalti versus “glass enamel” and the origins and usages of descriptive words by stating that the commercial meaning of particular terms in other countries “could not affect the classification of the involved merchandise upon being imported into the United States.”65 Since the term appeared in a number of English-language dictionaries and was thus classified under the statutory definition according to the common English meaning, the court enforced the statutorily required tariff rate of 60 percent rather than the plaintiff’s preferred tariff rate of 30 percent.66

Treaties

¶37 Given the multinational nature of many treaties, such documents are often written and executed in multiple languages, with each version typically being viewed as original and binding. This may lead to ambiguity in the instance of a dispute; when this occurs and the languages conflict, courts will look to the historical context and intent of
the parties to resolve ambiguities. Given the geopolitical dominance of the Anglophone and Francophone nations in the period studied, many treaties are written and executed in those two languages. However, it is not atypical for an extradition treaty between the United States and a non-Anglophone or non-Francophone nation to be written and executed in the national language of the other treaty party.

¶38 The largest category of cases involving French terms is treaty interpretation, with 15 cases. All of these discuss the Warsaw Convention, a 1929 treaty governing international air travel that was superseded by the 1999 Montreal Convention. The Warsaw Convention was written in French—the governing version—with translations subsequently produced in other languages, including English. In this dataset, the courts focused on one of two interpretations of the French term *lesion corporelle*, which the courts all held as translating into English as “bodily injury.” Plaintiffs attempted to recover from mental distress resulting from their traumatic time on an airplane—anguish that necessarily flowed from their physical presence in the plane. Unfortunately for many of the plaintiffs seeking redress for mental distress incurred during aircraft accidents, the treaty envisioned recovery for physical injury only rather than mental distress.

¶39 *In re Sindona* concerned the extradition request by the Republic of Italy of Michele Sindona, an Italian businessman convicted in Italian courts of “fraudulent bankruptcy.” The Treaty on Extradition Between the United States of America and Italy enumerated “fraudulent bankruptcy” as one of the crimes warranting extradition. Sindona contested the extradition on the grounds that the Italian court declared Sindona’s business insolvent (insolvenza) rather than bankrupt (fallito), and he therefore had not committed a fraudulent bankruptcy. The Southern District of New York, however, determined that the two terms were equivalent in both Italian and English and that Sindona’s actions constituted a “fraudulent bankruptcy” under the meaning of the treaty; accordingly, Sindona was eligible for extradition.

¶40 *In re Gambino* involved the extradition of a convicted drug trafficker under the same America-Italian extradition treaty as *Sindona*. Gambino was convicted in federal court of drug trafficking and related conspiracy charges in 1988 and was nearing the end of his 15-year sentence; the Italians sought extradition in 2005 to prosecute him under other charges stemming from the same years-long trafficking conspiracy. However, rather than focusing on a particular enumerated crime as in *Sindona*, *Gambino* discussed the treaty’s *Non Bis in Idem* clause. The clause is translated in English as “Extradition shall not be granted when the person sought has been

convicted, acquitted or pardoned, or has served the sentence imposed, by the Requested Party for the same acts for which extradition is requested” (emphasis added). Otherwise substantively similar, the Italian translation uses the term stessi fatti as the equivalent of “same acts”; the court determined that stessi fatti translates into English as “for the same facts.73 Further confusing the matter, the court also provides that both versions of the treaty—Italian and English—are “equally authentic,” while other cases discussing the same treaty use the phrase “same offense.”74 This clause is included to prevent double jeopardy in multiple jurisdictions.75 The standard for resolving disputes of treaty interpretation is to look at the text of the treaty itself and then, if as here, the text is ambiguous, the context in which a treaty was drafted. The Gambino court provided a lengthy discussion of the social and political contexts in which the treaty was conceived—the rising tide of drug trafficking of the 1970s and 1980s76—before defining both English and Italian terms as “material propositions of fact.”77 In light of this interpretation and the underlying facts in the case, the court did not bar Gambino’s extradition to face further prosecution in Italy.78

Other Civil Cases

¶41 Aside from intellectual property, there were no major trends for inclusion of non-English terms in case opinions by specific civil case type. The catchall category of torts included many subtypes of cases, and only a broad rule may be gleaned from these cases: generally, if a non-English term appears in an opinion, its inclusion results either from an inconsequential judicial clarification or some ambiguity in meaning relevant to the lawsuit; if relevant to the case, the term’s meaning will be disambiguated or otherwise explained by the judge. Expert translators seldom, if ever, weigh in on a term’s meaning outside of intellectual property cases.

Conclusion

Practice Implications

¶42 Given the increase in linguistic diversity in the United States, non-English terms will likely only increase in frequency in future judicial opinions. If prior trends faithfully indicate future outcomes, most cases will involve Spanish terms and appear in cases involving criminal or intellectual property issues. Typically, criminal cases will turn on terms uttered by law enforcement officers (procedural cases) or defendants (substantive). Intellectual property cases will often involve Lanham Act claims. In intellectual property cases, courts will continue to develop procedures for administering the

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73. Id. at 298.
74. Id. at 300 (discussing Elcock v. United States, 80 F. Supp. 2d 70, 79 (E.D.N.Y. 2000); Sindona v. Grant, 619 F.2d 167, 177 (2d Cir. 1980))
75. Id. at 306.
76. Id. at 310.
77. Id. at 313.
78. Id. at 319.
doctrine of foreign equivalents. In treaty disputes, courts will employ timeworn procedures like the canons of statutory construction of U.S. laws.

¶43 This study of the use of foreign language terms indicates the following tenets for practitioners involved in litigation with non-English terms:

1. Terms typically appear in U.S. case opinions in one of three situations:
   a. Latin, Greek, or French terms incorporated into English legalese;
   b. statements of fact regarding a party’s actions or product that are incidental to the case outcome;
   c. statements of fact regarding a party’s actions or product that are central to the case outcome.

2. When terms do appear, ambiguity may result. In such an event:
   a. translations must be accurate;
   b. in the absence of clear and agreed-upon meanings, courts will consult external sources such as dictionaries or, more rarely, translators to discern correct translations;
   c. when choosing between multiple translations offered by parties, courts will choose a translation that is most persuasive, meaning that the text is methodically and accurately translated and subsequently double-checked by a native speaker with some knowledge of the subject matter.

Future Research

¶44 Several potential projects emerged during this research. Of particular and immediate interest is an analysis of the usage of the Latin, ancient Greek, and French terms that were excluded from this article; contrasting the usage of terms from those languages with the usage in this article will elucidate the chasm between linguistic conservatism of U.S. courts and the growing linguistic diversity of the general U.S. population.
Law as a Consuming Passion: Food Policies in Law Libraries*

Daniel L. Bell**

This article discusses two surveys conducted 20 years apart about food and drink policies in U.S. academic law libraries. It compares changes from 2002 to 2022 and identifies recent trends. Using this data, libraries can create environments that better support legal research and the well-being and specific requirements of their patrons.

Implications for Practice

1. With the changing nature of libraries as “third places” and the shift toward more permissive food policies, librarians should regularly review and update their food and drink policies.
2. Recognizing that outright food bans can lead to an adversarial relationship with students and hidden food trash, librarians should proactively engage with patrons.
3. The evident shift in attitudes and policies over the past 20 years suggests that the dynamics of library usage and student behaviors are in flux and warrant continual monitoring and research.

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** Assistant Professor of Law and Faculty Services Librarian, University of Arkansas School of Law Young Law Library, Fayetteville, Arkansas, dlb021@uark.edu, https://orcid.org/0000-0001-5641-0074. I wish to thank the directors and their designees who responded to the survey; Jessie Burchfield, associate dean for information and technology services, and director of the law library at the University of Arkansas Little Rock Bowen School of Law, who wrote the original survey and graciously gave me permission to write an update; and Logan Goodwin, graduate research assistant, for help compiling the database of policies. This article’s title is a reference to signs extant in my original law school library featuring a bewigged judge admonishing, “We know law is a consuming passion, but please take your food elsewhere.”
Introduction

¶1 This paper presents a survey of food policies and attitudes toward consumption of food and drink in academic law libraries. It is an update to a survey published in 2002 by Jessie Cranford (now Burchfield), which provided an overview of policies and attitudes at that time.¹ The aim of this updated survey is to show how attitudes have changed in the intervening 20 years, to suggest some possible reasons for the changes, and ways in which further study in this area can be improved.

¶2 Libraries have transformed in the past two decades. Patrons no longer need to be physically present to access many, if not most, of a library’s resources. Another is that libraries have reinvented themselves as “third places,” besides home and classroom, where students go to study, collaborate, and socialize.² As a result, more students are gathering at and spending long hours in the library. But during these long hours, students naturally want to eat or drink sometimes, whether they bring their own snacks, order from nearby student unions, or have food delivered.

¶3 This normal desire on the part of the patrons’ conflicts with libraries’ responsibility to protect materials from stains, pests, and other problems. Burchfield’s study from 20 years ago mentions this conflict on the very first page but notes a trend already in progress toward liberalization of food policies.³ The dominant concerns in food policies remains the same today. As will be seen, however, the trend toward more permissive policies noted 20 years ago is no longer just a trend, but a mostly established fact in most law libraries. Attitudes have greatly changed in the past 20 years. There are some surprises, however, in this new survey.

¶4 The idea for this article began several years ago as idle curiosity when I worked at a library that banned food outright. We encountered many problems in trying to enforce the policy. It was mostly ignored when library staff were out of sight, especially on nights and weekends. It fostered an adversarial relationship with students. It did not stop students from bringing food into the library, but certainly seemed to encourage them to hide their food trash on the way out.

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³.  Burchfield, supra note 1, at 4. “The data seem to indicate a trend toward liberalization of food and drink Policies. . .”
This article presents findings from a 2022 survey of food policies and attitudes toward consumption of food and drink in academic law libraries. The survey began originally as a census of food and drink policies found on library websites; it eventually grew to duplicate the survey published in 2002 by Jessie Burchfield. The 2022 survey shows how policies and attitudes have changed in the intervening 20 years, suggests some reasons for the changes, and proposes ways to improve further study in this area.

The original survey canvassed academic, corporate/special, law firm, state, court, and county law libraries. This survey focuses solely on academic law libraries. For the sake of convenience, it uses libraries associated with the American Bar Association’s list of approved law schools.

This paper’s initial premise was that outright bans on food are ultimately counter-productive to the mission of the library and often create more problems than they solve due to staff resistance, student unrest, and the problems of students hiding food trash, especially when libraries are fighting to keep students in the library. The data section is presented without intentional bias. However, after becoming far too intimately acquainted with food policies and individual libraries’ answers, the author concludes that restrictive food policies are appropriate in some situations.

This article is organized as follows: first, it reviews the sparse literature on this topic and the original survey. Second, it describes the methodology used in the present study. Third, it reviews publicly available food policies collected from library websites and then examines the distributed survey. Most questions are examined and compared with the original survey. Fourth, it summarizes the survey responses and identifies trends. Finally, the article suggests ways to improve the survey and looks ahead at the need for additional research. An appendix with the survey instrument appears at the end of the article.

Literature

Burchfield’s original survey was distributed in 2000 and published in 2002. It surveyed academic, law firm, corporate/special, state, court, and county libraries. Sixty-eight academic law libraries participated.

The Burchfield study revealed that the main concerns behind food policies were damage to furniture and facilities, followed by bugs and other live pests. Rationales behind less-restrictive food policies included positive public relations, the unenforceability of bans, and the ability to require lidded drink containers to reduce spills. Also noteworthy was library staff’s reluctance to police food and drink. Most libraries with more liberal food policies reported few to only occasional problems resulting from their choice to allow food and drink.

4. Id.
5. AM. BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, List of ABA-Approved Law Schools, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/ [https://perma.cc/7C37-R8F3].
6. BURCHFIELD, supra note 1.
¶11 Burchfield concluded that there was a trend toward more permissive food policies and fewer negative results because of it. She suggested that more libraries examine their policies and consider liberalizing them.

¶12 The Burchfield study noted a study published by the Association of Research Libraries in 1998, which found that most of the libraries surveyed did not allow food, but that there was a moderate trend toward allowing food in some form. The literature since 2002 has been sparse to nonexistent. No survey since has attempted to duplicate the original or even examine food policies in detail.

¶13 The liberalization of food policies belongs to a general trend of thinking about the place of libraries and library design. The idea of libraries as “third places,” as referenced in the introduction, is almost cliché. It’s been repeated and discussed at least since 2009 in the panel discussion cited above and in other places, notably a 2010 AALL Spectrum article. The article discusses several issues related to transforming the library into a more welcoming space for patrons. Besides going into detail about the theory of third places, it discusses the idea of social capital and community creation within the library.

¶14 Several articles from the last decade discuss library design relating to making a more patron-friendly, and even family-friendly, library. Some of these articles mention the role that food policies play in community building. Lee People, for example, writes, “Law schools interested in encouraging learning should view food service amenities not as ends in and of themselves but as means to domesticate space and create community among faculty and students.” Julie Brown addresses the overall need for more family-friendly environments, noting that “[l]aw libraries do not provide parenting patrons with an environment where they feel comfortable enough to bring their child(ren) without the fear of disturbing other students and/or other patrons.” This criticism implicates food policies; young children like to eat wherever they are, and many libraries ban all food.

¶15 Joyce Saltalamachia, in a nearly 40-year-old article, discusses a few of the issues with which we are still dealing with today. She notes, somewhat tongue-in-cheek:

Let’s face it, you cannot separate a law student from his/her food. The wise law librarian will realize the futility of trying to bar food and drink from the library and will instead try to capitalize on the students’ voracious junk food appetites. Perhaps a combination candy counter/loan desk. Or maybe a staff member could take a book trunk loaded with goodies around the reading rooms and sell them to students at exorbitant prices.

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7. Danner, Kauffman & Palfrey, supra note 2, at 144.
11. Joyce Saltalamachia, To Eat or Not to Eat, Is That the Question?, 4 LEGAL REFERENCE SERVS. Q. 95 (1984).
12. Id. at 96.
Methodology

¶16 The study uses a mixed-methods approach: both quantitative and qualitative data were collected to learn more about the state of food policies in academic law libraries. (Unlike Burchfield’s survey, this instrument collected data only on academic law libraries.) The data are divided into two parts: a census created from library websites and a survey instrument. The first part began as a database created in Microsoft Access with entries for 197 ABA-approved law schools.13 The database was populated by visiting every law library’s website between April and November 2022 and searching for its food and drink policies. Links to the policies were entered into the database and then sorted into categories of policies. Unlike the questionnaire survey in part two, there are separate entries for food and drink. Entries for libraries that do not have their policies posted online were supplemented and coded if respondents from those libraries answered the questionnaire. Note that some food policies among 197 institutions have inevitably changed over the course of time. This article uses data current to at least April 2022, with most policies having been viewed in November 2022.

¶17 The second part of the study data was collected through a survey instrument. The methodology for the survey was straightforward. Most of the questions, with a few changes noted below, were taken directly from the Burchfield study so that a direct comparison could be made. Two questions were added: one relating to COVID policies and one open-ended question asking for any related information the survey hadn’t asked that the respondent wanted to share.

¶18 The survey was distributed via email and sent directly to the 197 ABA-approved law school library directors in September 2022. Ninety-five surveys were returned after three weeks, either by library directors or their designees.

¶19 While many of the questions were multiple choice, most of the questions required textual responses. The text entries were coded and sorted. For example, in the question regarding rationales behind a strong food policy, answers citing mice, vermin, pests, bugs, and other nuisances were all categorized as “bugs/vermin.”

¶20 A variety of anonymous illustrative quotes from responses are sprinkled throughout the Findings section. The consent form for the survey noted that quotes would be anonymous unless specific permission was received. The quotes were picked to give a diverse context to the answers given by respondents.

¶21 No attempt was made to use scientific statistical tools on the data. Any attempt would be hampered by the fact that the original survey received 68 responses out of almost 200 libraries, and the present survey counts 171 websites or equivalents, with the questionnaire itself receiving 95 responses.

Food Policies

¶22 Of the 197 law school library websites viewed, 46 libraries did not include food policies on their websites. Twenty libraries without publicized policies responded to the

13. List of ABA-Approved Law Schools, supra note 5.
questionnaire. The percentages that appear in table 1 are based on 171 schools that either had public policies or responded to the survey.

**TABLE 1**

<table>
<thead>
<tr>
<th>171 Policy Types</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No food allowed</td>
<td>41</td>
<td>23.97%</td>
</tr>
<tr>
<td>Distraction-free food allowed in select areas</td>
<td>34</td>
<td>19.88%</td>
</tr>
<tr>
<td>Distraction-free food allowed</td>
<td>35</td>
<td>20.46%</td>
</tr>
<tr>
<td>Food allowed in select areas</td>
<td>10</td>
<td>5.84%</td>
</tr>
<tr>
<td>Food allowed, but with a “use common sense” or “please clean up” clause</td>
<td>20</td>
<td>11.69%</td>
</tr>
<tr>
<td>Food allowed without explicit restrictions</td>
<td>28</td>
<td>16.37%</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>3</td>
<td>1.75%</td>
</tr>
</tbody>
</table>

¶23 The categories organically grew as the census data was gathered. These categories are much more finely classified than perhaps is needed (especially the “unrestricted with common sense” category). However, the categories do summarize all but three of the extant food policies.

¶24 **No food allowed:** This policy type is self-explanatory. Some policies of its type are short, blanket prohibitions, and others are longer, offering rationales for the policy. A very few law libraries retain policies related to COVID-19. Libraries with policies that allow food only in a specific lounge separate from the library were included in this category. Some specific policies include:

- “No food is permitted within the law library.”¹⁴
- “Please be aware that CONSUMPTION OF FOOD IS NOT ALLOWED IN THE LAW LIBRARY. The pests that are attracted to the Library by food also eat our books. We ask for your cooperation in adhering to the ‘NO FOOD’ policy.”¹⁵
- “Due to COVID-19, food and drink are not permitted in the Law Library.”¹⁶
- “The . . . Law Library want[s] to provide all patrons with a comfortable and welcoming study environment. Consumption of food in Library spaces is prohibited.”¹⁷

¶25 **Distraction-free food allowed (some policies restrict this to select areas, see next heading):** This type of policy is stated usually one of two ways. One is a prohibition on food that smells, creates noise, or is greasy. The other is a limitation to snacks

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only. The heart of the policies in this category is to allow food but to prevent distractions to other patrons. Some policies are highly specific:

- “Light snacks and drinks in covered containers are permitted in the Law Library.”
- “Please avoid bringing foods into the library that are odorous, greasy, or noisy when eaten . . .”
- “Sandwiches, fruit, wrapped items such as those dispensed in vending machines are permitted. No ‘messy’ foods are allowed. ‘Messy’ foods include, but are not limited to, items such as pizza, spaghetti, ribs, chicken wings, and ice cream. Meals are not allowed. The delivery of beverages and food to the library by outside vendors is prohibited, except for catered events that have been approved by library administration.”
- “[A] patron may be asked not to consume food or drink items if doing so causes a disturbance to another user . . .”
- “Acceptable: Pretzels, nuts, candy, granola bars, cookies, bagels, grapes, raisins[.] Not Acceptable: Pizza, burgers, french fries, salads, soup, meals from the cafeteria, food requiring utensils[.]”

§26 Food allowed in select areas: A few food policies specify food (either unrestricted or distraction free) is only allowed in designated areas, almost always away from the computer lab.

- “Food is not allowed in the silent areas.”
- “Enjoy food and snacks here. Drinks are permitted in all areas except where computers, scanners, microform equipment, and photocopiers are located. Food and drinks are not permitted in the Rare Book Room. Patrons are asked to consume food and drinks responsibly, including cleaning up after themselves and disposing of trash.”

§27 Food unrestricted/unrestricted with a dose of common sense: Some libraries simply say that food and drink are allowed, while others add a request to clean up spills or be mindful of others. There is probably no functional difference between the two.

• “Can I eat in the Law Library? Yes. Food and drink are allowed in the library.”

• “The library welcomes all food because our librarians recognize the importance of feeding your brain, even if it is with late night pizza. Speaking of which, you can get anything from local restaurants to Uber eats delivered to the library. Also, when you walk into the library, you will be greeted with a joke. To be honest, it’s a dad joke but it will bring a smile to your face.”

• “Food and drinks are allowed in the library. Ensure that the library stays clean by disposing of trash and maintaining a clean space.”

¶28 Miscellaneous: A few policies didn’t fit neatly into any of the above categories or were ambiguous whether food is banned or merely frowned upon. For example:

• “Food is discouraged in the library.”

¶29 Unstated policies: Twenty libraries that did not include food policies on their websites responded to the questionnaire. Their responses are included in the categorized responses shown in table 1. They are noted because several responded that they explicitly do not have a written policy because they either do not restrict food or have an unwritten policy to retain flexibility. Several cited the fact that they are open 24/7 as a reason for not having a food and drink policy.

¶30 Burchfield’s study did not discuss categories as finely detailed as the categories in the present survey. Table 2 adds together the various types of food policies recorded above and eliminates the unclassifiable three miscellaneous. The percentage is thus out of 168. Combining the categories above to make a direct comparison across 20 years shows the results given in table 2.


TABLE 2
Does Your Library Permit Food?

<table>
<thead>
<tr>
<th>Does your library permit food and drink to be consumed in non-staff areas of the library, such as the reading room, stacks, and open study areas?</th>
<th>2002</th>
<th>2022</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>26</td>
<td>83</td>
<td>11.17%</td>
</tr>
<tr>
<td>Some areas</td>
<td>32</td>
<td>44</td>
<td>−20.87%</td>
</tr>
<tr>
<td>Not in any non-staff areas</td>
<td>10</td>
<td>41</td>
<td>9.70%</td>
</tr>
</tbody>
</table>

¶31 The biggest change here is that, contrary to what we might expect, the number of libraries that ban all food and drink increased by nearly 10 percent. Again, the 2002 sample is perhaps too small to make strong comparisons, but it is interesting, nonetheless.

¶32 A more interesting and perhaps more reliable result because of its sheer size is the almost 21 percent decrease in libraries that restrict food in certain areas. The decrease seems to be shared slightly unevenly between no area restrictions and a total ban. Table 3 shows the results from adding the various types of policies above and uses 127 for calculating percentages (all policies minus total bans and miscellaneous policies).

TABLE 3
Restrictions on Permitted Food

<table>
<thead>
<tr>
<th>If you permit food, do you have restrictions on the types of food and/or drink that may be consumed in the library (e.g., only “non-messy” foods or only bottled water or drinks in non-spill cups)?</th>
<th>2002</th>
<th>2022</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>54</td>
<td>79</td>
<td>−34.22%</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
<td>48</td>
<td>34.22%</td>
</tr>
</tbody>
</table>

¶33 While the number of libraries that ban food may or may not have increased in 20 years, the lopsided results above suggest that libraries that allow food have made a 34 percent change in allowing food without explicit restrictions.

Drink Policies

¶34 Of the 197 law library websites viewed or directors surveyed, 165 revealed drink policies. A few policies mention food but do not mention drink. The survey counts a food policy that is silent on drinks as “not on-site” and does not count it for percentage purposes. The percentages shown in table 4 are based on 165 policies.

29. Burchfield, supra note 1, at 5.
30. Categories added together: Distraction-free food allowed (35), Unlimited common sense (20), and Unlimited (28). Percentage taken from 171 policies found.
31. Categories: Distraction-free food allowed in select areas (34) and Food allowed in select areas (10).
TABLE 4
Drink Policies

<table>
<thead>
<tr>
<th>Drink Policies</th>
<th>Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No drinks allowed</td>
<td>7</td>
<td>4.24%</td>
</tr>
<tr>
<td>Drinks allowed in covered containers only</td>
<td>83</td>
<td>50.30%</td>
</tr>
<tr>
<td>Drinks allowed in covered containers, except for alcohol</td>
<td>20</td>
<td>12.12%</td>
</tr>
<tr>
<td>Drinks allowed except for alcohol</td>
<td>9</td>
<td>5.45%</td>
</tr>
<tr>
<td>Drinks unrestricted</td>
<td>43</td>
<td>26.06%</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>3</td>
<td>1.82%</td>
</tr>
</tbody>
</table>

**¶35 No drinks allowed:** Seven law libraries do not permit drinks. However, a handful of these were still operating under COVID restrictions as of the writing of this article.

- “Under the new Law School protocols/guidelines for reopening, no food or drink is permitted anywhere except in the cafeteria. The only exception is for occasional sips of water.”32
- “Food and drink are prohibited.”33

**¶36 Drinks allowed in covered containers only:** 62 percent of law libraries require drinks to be in a lidded container of some sort.

- “Please use lids on all drinks.”34
- “Beverages are permitted if they are in a sealed container, such as a travel mug or a water bottle.”35
- “[P]atrons may bring drinks in approved, spill-proof mugs into the library. Bottled drinks and cardboard coffee cups, even with a cover, do not qualify as an approved, spill-proof container. Patrons will be asked to enjoy their food and drink outside the library if they are found to have them inside the library.”36

**¶37 Drinks allowed except alcohol:** Only 17 percent of law libraries explicitly ban alcoholic beverages, regardless of whether a lid is required.

- “Hot and cold beverages are allowed in covered containers; alcoholic beverages are not permitted.”37

37. Policies, Univ. of Tex. at Austin Sch. of L. Tarlton L. Libr. Jamail Ctr. for Legal Rsch.,
“You may drink from any covered containers with a cap or lid . . . Alcoholic beverages are not allowed, even in approved containers.”  
“Food and Non-alcoholic Drink: Snacks and drink are permitted in the library. As a courtesy to others, please clean up afterward.”  
“Alcoholic beverages may not be stored or consumed in the library.”

38 **Drinks allowed without restriction:** Several libraries do not restrict the consumption of liquids.

“Beverages are allowed on both floors of the library.”
“Food and drink are allowed in the library but may not be stored in carrels.”
“The Belmont Law Library strives to be ‘student focused.’ As such, food and beverages may be consumed in the library. We ask that students please clean up after themselves.”

39 **Drinks allowed everywhere except select areas:** Drinks, if forbidden at all in select areas, are almost always restricted near computers. This policy variation was not tracked as a separate category in the survey.

“Drink and food are not permitted near computers and must be cleaned up immediately in permitted areas of the library stacks and reading room.”

40 **Miscellaneous or unclear:**

“Students are urged to take their food and drink to the Student Lounge where tables and couches have been provided.”
“Water fountains and bottle fillers are available throughout the library.”

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Questions 1–2: Introductory Questions

¶41 Question 1 asked for consent to the study (as required by the University of Arkansas Institutional Review Board). Responses below have been either paraphrased or coded into categories. Question 2 requested the names of the respondent and law library.

¶42 Selected responses are quoted below without attribution to add extra context to the raw numbers.

**Question 3: Did you have temporary COVID food policies in place that are more restrictive than usual? If so, what were the changes, and by what criteria will you (or did you) return to “normal”?**

Table 5 shows the results of question 3, which, of course, did not appear on the original Burchfield survey.

<table>
<thead>
<tr>
<th>Answer</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>No changes to the policy</td>
<td>33</td>
</tr>
<tr>
<td>No changes, but we didn’t allow food or drink in the first place</td>
<td>1</td>
</tr>
<tr>
<td>No changes, but masks were required when not eating or drinking</td>
<td>5</td>
</tr>
<tr>
<td>Yes, food (and sometimes drink) banned</td>
<td>40</td>
</tr>
<tr>
<td>Food banned but drinks allowed</td>
<td>7</td>
</tr>
<tr>
<td>Food allowed in specific areas</td>
<td>4</td>
</tr>
</tbody>
</table>

¶43 Most respondents did not list criteria for easing their temporary restrictive food policy. The ones who did, however, said they followed university rules in deciding when to return to normal. A few miscellaneous comments (paraphrased below) stood out in the responses:

- Five law libraries stopped providing free coffee and/or snacks to students.
- One library relaxed its normal food policy after COVID-19 restrictions were lifted.
- One library banned food permanently after COVID-19 restrictions were lifted.

Questions 4–7: Self-Reported Food Policies

¶44 Questions 4 through 7 of the survey replicated questions from the original survey. They asked respondents to provide their policy or provide a link to it and then asked for details about the restrictions. These responses were used to supplement the survey and analysis of public websites.
Question 8: If you prohibit the consumption of food and drink in public areas of the library, what are the primary factors behind this policy? Please list up to three factors and rate them in order of importance.

¶45 The Burchfield study surveyed and ranked the factors behind food prohibitions. While the present study retained the wording and rating for each factor, the decision was made during counting to simply record each response as a “vote.” Categories from the 2022 survey were coded into categories and then counted. Responses from the 2002 survey were then put into the same categories where possible. However, some comments did not fit perfectly.

¶46 Rather than present the top 10 or so factors by vote from each survey, table 6 presents the raw numbers of responses in each category ordered by the amount of change. Note that because not all libraries chose to answer every question, the raw numbers of answers vary from question to question.

¶47 The “% change” column compares the percentage of responses in the category in 2002 and 2022 relative to the total number of factors listed by respondents. A blank in the column represents that either the 2002 or 2022 survey had no responses in that category. Admittedly, it is an unscientific sampling, but the results are interesting, nonetheless.

TABLE 6
Factors in Prohibiting Food

<table>
<thead>
<tr>
<th>Factors</th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spills/stains on furniture and carpet</td>
<td>41</td>
<td>39.05%</td>
<td>7</td>
<td>9.72%</td>
<td>−29.33%</td>
</tr>
<tr>
<td>Trash and cleanliness</td>
<td>5</td>
<td>4.76%</td>
<td>15</td>
<td>20.83%</td>
<td>16.07%</td>
</tr>
<tr>
<td>Creates a distraction to other patrons</td>
<td>11</td>
<td>10.48%</td>
<td>14</td>
<td>19.44%</td>
<td>8.97%</td>
</tr>
<tr>
<td>Professional appearance of the library</td>
<td>4</td>
<td>3.81%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>There are other nearby places to eat</td>
<td>—</td>
<td>—</td>
<td>2</td>
<td>2.78%</td>
<td>—</td>
</tr>
<tr>
<td>Easier to enforce an outright ban than partial restrictions</td>
<td>—</td>
<td>—</td>
<td>2</td>
<td>2.78%</td>
<td>—</td>
</tr>
<tr>
<td>Health and safety</td>
<td>—</td>
<td>—</td>
<td>2</td>
<td>2.78%</td>
<td>—</td>
</tr>
<tr>
<td>Pests/vermin</td>
<td>26</td>
<td>24.76%</td>
<td>16</td>
<td>22.22%</td>
<td>−2.54%</td>
</tr>
<tr>
<td>Protect technology</td>
<td>5</td>
<td>4.76%</td>
<td>5</td>
<td>6.94%</td>
<td>2.18%</td>
</tr>
<tr>
<td>Poor judgment of patrons</td>
<td>2</td>
<td>1.90%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Ban encourages students to take breaks outside the library</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>1.39%</td>
<td>—</td>
</tr>
<tr>
<td>No one has complained</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>1.39%</td>
<td>—</td>
</tr>
<tr>
<td>School-wide policy</td>
<td>1</td>
<td>0.95%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Protect the collection</td>
<td>10</td>
<td>9.52%</td>
<td>7</td>
<td>9.72%</td>
<td>0.20%</td>
</tr>
</tbody>
</table>

47. Burchfield, supra note 1, at 6.
¶48 Selected responses include the following.

- “[T]ropical environment (Miami) means pests are ever present and easily attracted.”
- “When we have tried allowing food in the past, we immediately had pest infestations (bugs and rats).”
- “Disturbance of other patrons is the overriding concern.”
- “[R]eduction in campus cleaning and maintenance staff . . .”
- “Inconveniencing library users (students).”

¶49 Note that several categories did not appear in both surveys. In the 2002 survey, maintaining a professional appearance of the library is distinct from the general cleanliness category. It encompasses one response of “professional appearance of library” and three responses of “public food consumption incompatible with scholarly atmosphere.” The latter responses, and the lack of a few other response categories between the surveys, perhaps suggest an attitude change in the last 20 years about whether food is even appropriate in a scholarly environment.

¶50 Regardless, noting the ratio of certain popular responses to the lack of change, the major factors behind food prohibitions remain basically the same after 20 years. Pests and protecting both the collection and technology are still important concerns in crafting a food policy.

**Question 9: If you do not prohibit the consumption of food and drink in public areas of your library, what are the primary reasons behind this policy? Please list up to three factors and rate them in order of importance.**

¶51 Responses to this question were coded and, where possible, harmonized between the 2002 and 2022 surveys (table 7). Rankings of first, second, and third were again not used.

<table>
<thead>
<tr>
<th>Factors</th>
<th>2002 48</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creates goodwill toward the library</td>
<td>17</td>
<td>22.97%</td>
<td>4</td>
<td>2.56%</td>
<td>−20.41%</td>
</tr>
<tr>
<td>Comfort of patrons</td>
<td>4</td>
<td>5.41%</td>
<td>25</td>
<td>16.03%</td>
<td>10.72%</td>
</tr>
<tr>
<td>If food is “underground,” students will be reluctant to report spills</td>
<td>9</td>
<td>12.16%</td>
<td>3</td>
<td>1.92%</td>
<td>−10.24%</td>
</tr>
<tr>
<td>Hard or impossible to enforce a ban</td>
<td>16</td>
<td>21.62%</td>
<td>19</td>
<td>12.18%</td>
<td>−9.44%</td>
</tr>
<tr>
<td>We trust student/treat them as professionals</td>
<td>—</td>
<td>—</td>
<td>10</td>
<td>6.41%</td>
<td>—</td>
</tr>
<tr>
<td>Student wellness</td>
<td>—</td>
<td>—</td>
<td>7</td>
<td>4.49%</td>
<td>—</td>
</tr>
<tr>
<td>Opportunity costs of using staff to enforce</td>
<td>1</td>
<td>1.35%</td>
<td>9</td>
<td>5.77%</td>
<td>4.42%</td>
</tr>
<tr>
<td>Student needs (time, convenience, money)</td>
<td>4</td>
<td>5.41%</td>
<td>15</td>
<td>9.62%</td>
<td>4.21%</td>
</tr>
</tbody>
</table>

48. Id. at 8.
<table>
<thead>
<tr>
<th>Factors</th>
<th>2002%</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less worried about preservation</td>
<td>—</td>
<td>—</td>
<td>6</td>
<td>3.85%</td>
<td>—</td>
</tr>
<tr>
<td>Spill-proof containers don’t cause as many issues</td>
<td>2</td>
<td>2.70%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Staff want to eat and drink in public areas</td>
<td>2</td>
<td>2.70%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>There aren’t other good places to eat nearby</td>
<td>—</td>
<td>—</td>
<td>4</td>
<td>2.56%</td>
<td>—</td>
</tr>
<tr>
<td>The library is integrated into the school, so enforcement is hard</td>
<td>—</td>
<td>—</td>
<td>3</td>
<td>1.92%</td>
<td>—</td>
</tr>
<tr>
<td>The library is large and users can spread out away from each other to prevent distractions</td>
<td>—</td>
<td>—</td>
<td>3</td>
<td>1.92%</td>
<td>—</td>
</tr>
<tr>
<td>Fewer problems with our policy than prohibiting</td>
<td>4</td>
<td>5.41%</td>
<td>11</td>
<td>7.05%</td>
<td>1.65%</td>
</tr>
<tr>
<td>Pressure from other institutions on campus</td>
<td>2</td>
<td>2.70%</td>
<td>2</td>
<td>1.28%</td>
<td>−1.42%</td>
</tr>
<tr>
<td>Encourages/welcomes people to the library</td>
<td>8</td>
<td>10.81%</td>
<td>19</td>
<td>12.18%</td>
<td>1.37%</td>
</tr>
<tr>
<td>Belief that food shouldn’t be banned</td>
<td>1</td>
<td>1.35%</td>
<td>4</td>
<td>2.56%</td>
<td>1.21%</td>
</tr>
<tr>
<td>Banning creates ill will toward the library</td>
<td>1</td>
<td>1.35%</td>
<td>4</td>
<td>2.56%</td>
<td>1.21%</td>
</tr>
<tr>
<td>Inherited the policy</td>
<td>1</td>
<td>1.35%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Students will be expected to multitask in professional life</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>.64%</td>
<td>−0.71%</td>
</tr>
<tr>
<td>The library has a café or other integrated food source</td>
<td>1</td>
<td>1.35%</td>
<td>3</td>
<td>1.92%</td>
<td>0.57%</td>
</tr>
<tr>
<td>Students asked</td>
<td>1</td>
<td>1.35%</td>
<td>3</td>
<td>1.92%</td>
<td>0.57%</td>
</tr>
</tbody>
</table>

¶52 Selected responses included the following.

- “Students should not need to get up and leave the library to have a snack. Eating and drinking is part of an environment in which students can get their work done most effectively.”
- “We have a part-time and evening program. Those students need to be able to grab food when possible, usually between arriving at school and their first class.”
- “The Student Bar Association asked the library to loosen its restrictions on food and drink some years ago. We agreed to do so for a limited period as a trial run. Our experience was (and remains) that allowing food and drink did not cause any negative effects.”
- “Daily custodial services with plenty of trash cans minimizes mess.”
- “It is our library’s position that forbidding food and drink is an outdated library policy (except in cases of rare or archival books and the like, which not all libraries have).”
- “There is no logical reason to ban food and drink.”
- “Our library is integrated into the Law School’s facility with adjacent offices for staff and faculty. It would be difficult and unenforceable to have a more restrictive food and drink policy near other spaces.”
- “In the old days people used to talk about food attracting bugs, etc. In my experience (35+ years) people are pretty good about cleaning up, if you ask them to...”
• “I’m not willing to impose library use rules that we can’t consistently enforce. The law school and law library are open 24/7 and we cannot enforce food and drink policies over this extended time period.”
• “They do it anyway.”

\(\text{¶}53\) The precipitous drop in the category “creates goodwill toward the library” is interesting and unexplainable, while the positive percentage change in the “comfort to patrons” column is heartening. Also interesting are the six responses indicating less of a need for preservation. There are at least two aspects of preservation in the context of food policies: users damaging books with food, and rodents of unusual size gnawing on books. Presumably, the former is to blame for this attitude change in the past 20 years, as students increasingly do not have to use physical reporters, treatises, or even Nutshells.

\textit{Question 10: Disregarding temporary changes due to COVID, during the last 10 years, would you say your library has become more or less permissive about food and drink in the library, or has your policy stayed about the same?}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
Answers & 2002 & % & 2022 & % & % change \\
\hline
About the same & 48 & 70.59% & 46 & 48.42% & −22.17% \\
More Permissive & 8 & 11.76% & 44 & 46.32% & 34.55% \\
Less Permissive & 12 & 17.65% & 5 & 5.26% & −12.38% \\
\hline
\end{tabular}
\caption{Changes over Time}
\end{table}

\textit{¶54} The responses to this question, shown in table 8, support the idea that libraries that do allow food have become steadily more liberal in their policies. These results agree with those in table 3.

\textit{Question 11: If you said more or less to the previous question, how long ago was the change made?}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
Answers & 2002 & % & 2022 & % & % change \\
\hline
Within the last year & 7 & 13.21% & 3 & 6% & −7.21% \\
1–4 years ago & 23 & 43.40% & 10 & 20% & −23.40% \\
4–7 years ago & 19 & 35.85% & 14 & 28% & −7.85% \\
7–10 years ago & 4 & 7.55% & 23 & 46% & 38.45% \\
\hline
\end{tabular}
\caption{Time Since Change}
\end{table}

49. \textit{Id}. at 10.
50. \textit{Id}.
55 With nearly 40 percent of policies changing 7 to 10 years ago, library policies seem to be relatively stable.

**Question 12: If there were changes to your regular (non-COVID) policy, what were they and why?**

56 In the 2002 survey, this question was phrased differently as “note details of the change here.”51 Some of the responses received in the earlier survey answered how the policy changed, and some answered why, making it difficult to directly compare the responses without a table of Brobdingnagian size. Responses in the 2022 survey often included how, but not why. The responses to this question in both surveys were relatively few, often unique, and not easily categorizable, leading to perhaps meaningless percentage comparisons.

57 Tables 10 and 11 categorize responses only from the 2022 survey. Factors behind policies that did not change appear only once under “more detailed policy.” Most responses, when reasons were given, were for a more liberal policy.

**TABLE 10**

Factors in Changing the Policy

<table>
<thead>
<tr>
<th>Factors leading to policy change</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bans are difficult to enforce and/or not worth it</td>
<td>3</td>
</tr>
<tr>
<td>A more detailed policy was written</td>
<td>3</td>
</tr>
<tr>
<td>Students asked, and we found no issues</td>
<td>3</td>
</tr>
<tr>
<td>Students use print less, so preservation is less of a concern</td>
<td>3</td>
</tr>
<tr>
<td>New director, new policy</td>
<td>2</td>
</tr>
<tr>
<td>A coffee shop was added, leading to the expectation of food and drink being allowed in the library</td>
<td>2</td>
</tr>
<tr>
<td>Banning creates ill will</td>
<td>1</td>
</tr>
<tr>
<td>Staff don’t like to enforce</td>
<td>1</td>
</tr>
<tr>
<td>It was a compromise with students</td>
<td>1</td>
</tr>
<tr>
<td>Needed to increase our gate count</td>
<td>1</td>
</tr>
<tr>
<td>Pressure from other institutions on campus</td>
<td>1</td>
</tr>
<tr>
<td>The old policy was being ignored anyway</td>
<td>1</td>
</tr>
<tr>
<td>The library is open 24/7, impossible to enforce</td>
<td>1</td>
</tr>
<tr>
<td>Food and students were getting out of hand</td>
<td>1</td>
</tr>
<tr>
<td>Cleanliness</td>
<td>3</td>
</tr>
<tr>
<td>Pests</td>
<td>2</td>
</tr>
<tr>
<td>Total ban easier to enforce</td>
<td>1</td>
</tr>
<tr>
<td>Stains</td>
<td>1</td>
</tr>
<tr>
<td>Food causes distractions</td>
<td>1</td>
</tr>
</tbody>
</table>

51. *Id.*
§58 Selected responses included the following.

- “Switched to 24/7 so it seemed odd to have a policy we enforced only during certain hours. Students generally proved themselves trustworthy.”
- “We used to prohibit food and drinks only in spill proof containers. Over time it became harder and harder to enforce these policies. We gave up as we didn’t feel it was an appropriate use of librarian time to be ‘food police.’”
- “The decreased use of print materials made it possible to allow food and drink.”
- “We changed our policy from a rarely enforced prohibition on food and restriction on drinks to ending restrictions and simply asking students to be courteous and respectful in how they ate and drank. We had two main reasons. The precipitating reason for the change was pressure from the fact that the main University library changed its food and drink policy, and heavy pressure was put on us to follow their lead. The secondary reason was that we had known for some time that nobody was following or enforcing our strict food and drink policies and we figured there would be greater credibility and efficacy if we ended the charade and simply appealed to student courtesy and respect for each other.”
- “We gradually began to relax library rules prohibiting some types of food and beverages in part because we saw no evidence that food and drink was causing harm, particularly since patrons were using books much less. Also, library staff always disliked enforcing food and drink restrictions.”
- “We saw that users were getting out of hand and ordering pizzas and dinners to be delivered to the law library—not the spirit of allowing food and drink. The library is not party central. The smells and messiness were getting to other users who were trying to focus on studying/scholarship, etc.”

### TABLE 11

How Were Policies Changed?

<table>
<thead>
<tr>
<th>Change Description</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Changed from a ban to allowing food</td>
<td>8</td>
</tr>
<tr>
<td>Changed to a generally more liberal policy</td>
<td>7</td>
</tr>
<tr>
<td>Changed from a ban to allowing distraction-free food</td>
<td>3</td>
</tr>
<tr>
<td>Changed to allow drinking</td>
<td>2</td>
</tr>
<tr>
<td>Changed from allowing distraction-free food to unrestricted</td>
<td>1</td>
</tr>
<tr>
<td>Alcohol was banned</td>
<td>1</td>
</tr>
<tr>
<td>Changed from no restrictions to a distraction-free food policy</td>
<td>1</td>
</tr>
<tr>
<td>Changed from focusing on types of food to enforcing types of trash left behind</td>
<td>1</td>
</tr>
</tbody>
</table>
Question 13: Are your policies and practices for library staff regarding food and drink the same as or different from those that apply to your patrons?

**TABLE 12**

Are Food Policies Different for Staff?

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2022</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>The same</td>
<td>8</td>
<td>44</td>
<td>34.55%</td>
</tr>
<tr>
<td>The same in public areas but different in staff areas</td>
<td>56</td>
<td>45</td>
<td>−34.98%</td>
</tr>
<tr>
<td>Different</td>
<td>4</td>
<td>6</td>
<td>−0.43%</td>
</tr>
</tbody>
</table>

¶59 The large change in this answer (table 12) is perhaps attributable to food policies becoming generally more liberal and students being given the same food privileges that staff have enjoyed.

**Question 14: If you restrict food and drink in your libraries, do library staff participate in enforcement of the restrictions?**

**TABLE 13**

Staff Enforcement

<table>
<thead>
<tr>
<th>Answers</th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>No, library staff are not expected to enforce</td>
<td>2</td>
<td>3.28%</td>
<td>15</td>
<td>30.61%</td>
<td>27.33%</td>
</tr>
<tr>
<td>Yes, but only some staff are expected to enforce</td>
<td>20</td>
<td>32.79%</td>
<td>14</td>
<td>28.57%</td>
<td>−4.22%</td>
</tr>
<tr>
<td>Yes, all staff are expected to enforce</td>
<td>39</td>
<td>63.93%</td>
<td>20</td>
<td>40.82%</td>
<td>−23.12%</td>
</tr>
<tr>
<td>Yes, but only security staff enforce</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

¶60 This answer showed a large change of nearly 30 percent, indicating library staff were not expected to enforce policies as much as they did in 2002.

**Question 15: If library staff participate in enforcing food and drink restrictions, have they received special training in how to do this?**

**TABLE 14**

Training to Enforce Food Policies

<table>
<thead>
<tr>
<th>Answers</th>
<th>2002</th>
<th>2022</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>16</td>
<td>15</td>
<td>14.31%</td>
</tr>
<tr>
<td>No</td>
<td>45</td>
<td>22</td>
<td>—</td>
</tr>
</tbody>
</table>

52. *Id.* at 12.
53. *Id.*
54. *Id.*
Note that the total number of responses in this conditional question in 2002 was 61, while in 2022 the total was only 37, again indicating that staff are less often expected to enforce policies.

**Question 16: If you restrict food and drink, how successful would you say that you have been?**

**TABLE 15**

<table>
<thead>
<tr>
<th>Answers</th>
<th>2002</th>
<th>2022</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very successful</td>
<td>7</td>
<td>8</td>
<td>7.38%</td>
</tr>
<tr>
<td>Somewhat successful</td>
<td>42</td>
<td>26</td>
<td>−8.10%</td>
</tr>
<tr>
<td>Minimally successful</td>
<td>8</td>
<td>5</td>
<td>−1.43%</td>
</tr>
<tr>
<td>Not very successful</td>
<td>2</td>
<td>1</td>
<td>−0.95%</td>
</tr>
<tr>
<td>Not at all successful</td>
<td>1</td>
<td>2</td>
<td>3.10%</td>
</tr>
</tbody>
</table>

This question was perhaps unfortunately worded and received only 42 responses out of 97. It could be interpreted as a total restriction or partial restriction. Most of the responses were from libraries with a total ban. Of those responses, there is a 7 percent uptick in saying the policies are very successful and 3 percent in “not at all successful.” However, with a response number of only two for the latter, it is hard to have much confidence in the result.

**Question 17: Please list the most significant problems or obstacles (up to three) to success in your management of food and drink in your libraries.**

**TABLE 16**

<table>
<thead>
<tr>
<th>Factors</th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are no problems</td>
<td>—</td>
<td>—</td>
<td>24</td>
<td>24</td>
<td>—</td>
</tr>
<tr>
<td>Staff doesn’t want to enforce</td>
<td>23</td>
<td>20.72%</td>
<td>4</td>
<td>4</td>
<td>−16.72%</td>
</tr>
<tr>
<td>Student attitudes, obstinacy, and abusiveness</td>
<td>15</td>
<td>13.51%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Occasional spills or messes</td>
<td>—</td>
<td>—</td>
<td>13</td>
<td>13</td>
<td>—</td>
</tr>
<tr>
<td>Students sneaking in food and noncompliance</td>
<td>22</td>
<td>19.82%</td>
<td>10</td>
<td>10</td>
<td>−9.82%</td>
</tr>
<tr>
<td>Inadequate cleaning staff</td>
<td>—</td>
<td>—</td>
<td>8</td>
<td>8</td>
<td>—</td>
</tr>
<tr>
<td>Not enough staff to enforce</td>
<td>18</td>
<td>16.22%</td>
<td>11</td>
<td>11</td>
<td>−5.22%</td>
</tr>
<tr>
<td>Limited faculty/institutional enforcement</td>
<td>4</td>
<td>3.60%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

55. *Id.* at 13.

56. *Id.*
<table>
<thead>
<tr>
<th>Factors</th>
<th>2002%</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Students like to eat and drink, expect a Borders atmosphere</td>
<td>5</td>
<td>4.50%</td>
<td>1</td>
<td>-</td>
<td>-3.50%</td>
</tr>
<tr>
<td>Frequent messes or stains</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Student complaints about food</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Undergraduates</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Ignorance of rationale behind the policy</td>
<td>3</td>
<td>2.70%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>People don’t read signage or know the policy</td>
<td>1</td>
<td>0.90%</td>
<td>3</td>
<td>3</td>
<td>2.10%</td>
</tr>
<tr>
<td>No penalties</td>
<td>2</td>
<td>1.80%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Exams/reading periods</td>
<td>2</td>
<td>1.80%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Inconsistent enforcement (staff and student workers)</td>
<td>7</td>
<td>6.31%</td>
<td>8</td>
<td>8</td>
<td>1.69%</td>
</tr>
<tr>
<td>Can’t monitor study rooms/carrels</td>
<td>1</td>
<td>0.90%</td>
<td>2</td>
<td>2</td>
<td>1.10%</td>
</tr>
<tr>
<td>Damage to furniture and fixtures</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Getting students to report spills and problems</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>No written policy</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Pests</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Restrictive food policies worsen relations with students</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Staff would like to drink coffee and soda</td>
<td>1</td>
<td>0.90%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>The public/attorneys</td>
<td>1</td>
<td>0.90%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other campus libraries</td>
<td>1</td>
<td>0.90%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Food service doesn’t sell or give acceptable containers</td>
<td>1</td>
<td>0.90%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Building design has too many entrances</td>
<td>1</td>
<td>0.90%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Defining an acceptable container</td>
<td>1</td>
<td>0.90%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Food source in close proximity to the library entrance</td>
<td>1</td>
<td>0.90%</td>
<td>1</td>
<td>1</td>
<td>0.10%</td>
</tr>
<tr>
<td>Extended hours make it difficult to enforce</td>
<td>1</td>
<td>0.90%</td>
<td>1</td>
<td>1</td>
<td>0.10%</td>
</tr>
</tbody>
</table>

In addition to question 17’s answers, comments included the following.

- “Students will sneak in snacks because they are here for several hours. There are areas just outside the library that allow food.”
- “The main issue is that students are very sneaky about bringing food in. The other issue is that our law school gives students free lunches for events pretty much every day, but the campus is discouraging food-based events inside. So, students grab their lunch boxes and try to come right into the library with them. Also, part of the day, we have rotating student guards and they have a different level of attention to enforcement of the food policy (and our policy differs from other campus libraries where they may also work).”
- “There have been reductions in custodial crews provided by main campus, so law library staff has had to start taking a more active role in cleaning the law library.”
Our previous consideration of policing food and drink taking more staff time is now offset by the fact that the law library staff must spend more time cleaning because we allow food and drink.”

- “Food in the library has not been a problem in my time here. We are lucky to have a very responsive custodial crew. The only consistent problem is coffee spills. We must call facilities to clean up coffee spills at least a few times each week.”
- “Undergraduate students who use the library don’t self-police well. They do not share the sense of ownership that our law students have in law library spaces.”

Question 18: Please list the most successful strategies (up to three) that you have used in the management of food and drink in your libraries.

**TABLE 17**

Successful Strategies

<table>
<thead>
<tr>
<th>Strategy</th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Giving out spill-proof cups</td>
<td>14</td>
<td>13.46%</td>
<td>4</td>
<td>3.96%</td>
<td>−9.5%</td>
</tr>
<tr>
<td>Polite reminders as patrons enter</td>
<td>9</td>
<td>8.65%</td>
<td>−</td>
<td>−</td>
<td>−</td>
</tr>
<tr>
<td>Allocating more cleaning crew to the library</td>
<td>−</td>
<td>−</td>
<td>9</td>
<td>8.91%</td>
<td>−</td>
</tr>
<tr>
<td>Allowing drinks with lids</td>
<td>7</td>
<td>6.73%</td>
<td>−</td>
<td>−</td>
<td>−</td>
</tr>
<tr>
<td>Appealing to better nature/reasoning with patrons</td>
<td>5</td>
<td>4.81%</td>
<td>11</td>
<td>10.89%</td>
<td>6.08%</td>
</tr>
<tr>
<td>Talking about it in orientation</td>
<td>5</td>
<td>4.81%</td>
<td>9</td>
<td>8.91%</td>
<td>4.10%</td>
</tr>
<tr>
<td>Lax enforcement</td>
<td>−</td>
<td>−</td>
<td>3</td>
<td>2.97%</td>
<td>−</td>
</tr>
<tr>
<td>Creating a dedicated eating space</td>
<td>−</td>
<td>−</td>
<td>3</td>
<td>3.03%</td>
<td>−</td>
</tr>
<tr>
<td>Having reasonable policies</td>
<td>4</td>
<td>3.85%</td>
<td>6</td>
<td>5.94%</td>
<td>2.09%</td>
</tr>
<tr>
<td>Allowing food and drink</td>
<td>2</td>
<td>1.92%</td>
<td>4</td>
<td>3.96%</td>
<td>2.04%</td>
</tr>
<tr>
<td>Giving students access to cleaning supplies</td>
<td>−</td>
<td>−</td>
<td>2</td>
<td>2.02%</td>
<td>−</td>
</tr>
<tr>
<td>Providing an area near the door where food can be left</td>
<td>2</td>
<td>1.92%</td>
<td>−</td>
<td>−</td>
<td>−</td>
</tr>
<tr>
<td>Making patrons learn to pick up after themselves</td>
<td>2</td>
<td>1.92%</td>
<td>−</td>
<td>−</td>
<td>−</td>
</tr>
<tr>
<td>Emailed reminders that policy can change</td>
<td>2</td>
<td>1.92%</td>
<td>−</td>
<td>−</td>
<td>−</td>
</tr>
<tr>
<td>Reminding students of other places they can go</td>
<td>4</td>
<td>3.85%</td>
<td>2</td>
<td>1.98%</td>
<td>−1.87%</td>
</tr>
<tr>
<td>Signs, websites, emails</td>
<td>25</td>
<td>24.04%</td>
<td>22</td>
<td>21.78%</td>
<td>−2.26%</td>
</tr>
<tr>
<td>Patrolling/enforcement</td>
<td>11</td>
<td>10.58%</td>
<td>9</td>
<td>8.91%</td>
<td>−1.67%</td>
</tr>
<tr>
<td>Working with students</td>
<td>3</td>
<td>2.88%</td>
<td>4</td>
<td>3.96%</td>
<td>1.08%</td>
</tr>
<tr>
<td>Uniform enforcement</td>
<td>2</td>
<td>1.92%</td>
<td>3</td>
<td>2.97%</td>
<td>1.05%</td>
</tr>
<tr>
<td>Modeling good behavior</td>
<td>−</td>
<td>−</td>
<td>1</td>
<td>1.01%</td>
<td>−</td>
</tr>
</tbody>
</table>

57. *Id.* at 14.
<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>We don’t have issues with food</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>1.01%</td>
<td>—</td>
</tr>
<tr>
<td>Clear policies</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>1.01%</td>
<td>—</td>
</tr>
<tr>
<td>Having staff routinely search for trash</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>1.01%</td>
<td>—</td>
</tr>
<tr>
<td>Encouraging students to report food violations</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>1.01%</td>
<td>—</td>
</tr>
<tr>
<td>Working with administration</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>1.01%</td>
<td>—</td>
</tr>
<tr>
<td>Having a single entrance</td>
<td>1</td>
<td>.96%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Keeping mugs which can be borrowed</td>
<td>1</td>
<td>.96%</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Encouraging spill reporting</td>
<td>2</td>
<td>1.92%</td>
<td>1</td>
<td>0.99%</td>
<td>−0.93%</td>
</tr>
<tr>
<td>Polite enforcement</td>
<td>2</td>
<td>1.92%</td>
<td>2</td>
<td>1.98%</td>
<td>0.06%</td>
</tr>
<tr>
<td>Security staff at entrance</td>
<td>1</td>
<td>0.96%</td>
<td>1</td>
<td>0.99%</td>
<td>0.03%</td>
</tr>
</tbody>
</table>

¶64 In addition to question 18’s answers, selected responses included the following.

- “We try to instill pride in the law students in their law library. They want to keep it clean.”
- “Don’t manage it. If you treat the students more like adults rather than children, most of them will act that way.”
- “We remind students that there are places right outside our doors where they can enjoy a meal.”
- “We just got out of the way and accepted the inevitable.”
- “Enforcement of policy at entrance. We have guards to control access to the library and they also enforce the no food policy. We have full-time guards most of the time.”
- “We also ask students to email (or they can text anonymously) about bothersome food violations around them.”
- “Communication. The rules are covered in orientation.”
- “Be direct, consistent, and fair.”
Question 19: If you don’t completely restrict food and drink, do you believe that this policy has resulted in any problems (damage to carpet or furniture, damage to materials, increase in pests) caused by their consumption within the library?

<table>
<thead>
<tr>
<th>Problems</th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>No problems</td>
<td>5</td>
<td>15.63%</td>
<td>24</td>
<td>28.24%</td>
<td>12.61%</td>
</tr>
<tr>
<td>Occasional problems</td>
<td>27</td>
<td>84.38%</td>
<td>61</td>
<td>71.76%</td>
<td>−12.61%</td>
</tr>
<tr>
<td>Lots of problems</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>N/A</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

¶65 No libraries across the two decades reported “lots of problems” caused by food and drink in the library. A nearly 13 percent rise was recorded for libraries reporting “no problems.”

Question 20: Do you have any special areas within the library in which users are permitted to consume food and drinks? If so, please describe the area.

¶66 Fewer than half answered this question in 2022, and several respondents reiterated in their answers that food was unrestricted everywhere in their library. Therefore, this question is probably not a good indicator for a direct comparison.

<table>
<thead>
<tr>
<th>Special Food Areas</th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>38</td>
<td>74.51%</td>
<td>33</td>
<td>76.74%</td>
<td>−2.23%</td>
</tr>
<tr>
<td>Yes</td>
<td>13</td>
<td>25.49%</td>
<td>10</td>
<td>23.26%</td>
<td>2.23%</td>
</tr>
</tbody>
</table>

¶67 The 2002 survey listed only one response describing the special food areas available in their library, which was a Starbucks. Respondents listed more special food areas in the present survey.

58. Id. at 15.
59. Id. at 16.
60. Id.
TABLE 20
Types of Special Food Areas

<table>
<thead>
<tr>
<th>Types of Special Food Areas</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kitchen</td>
<td>4</td>
</tr>
<tr>
<td>Outside special seating area</td>
<td>2</td>
</tr>
<tr>
<td>Conference room</td>
<td>1</td>
</tr>
<tr>
<td>Coffee bar</td>
<td>1</td>
</tr>
<tr>
<td>Special reading/seating area</td>
<td>1</td>
</tr>
<tr>
<td>The rare books room</td>
<td>1</td>
</tr>
</tbody>
</table>

*Question 21: How rigorously are your food and drink policies enforced?*

¶68 Only 56 of 97 respondents answered, probably because it is hard to rigorously enforce an unrestricted food policy.

TABLE 21
How Rigorously Enforced?

<table>
<thead>
<tr>
<th>How Rigorously Enforced</th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very rigorously</td>
<td>9</td>
<td>15.52%</td>
<td>4</td>
<td>7.14%</td>
<td>−8.37%</td>
</tr>
<tr>
<td>Somewhat rigorously</td>
<td>30</td>
<td>51.72%</td>
<td>15</td>
<td>26.79%</td>
<td>−24.94%</td>
</tr>
<tr>
<td>Not very rigorously</td>
<td>16</td>
<td>27.59%</td>
<td>22</td>
<td>39.29%</td>
<td>11.70%</td>
</tr>
<tr>
<td>Enforcement is quite lax</td>
<td>3</td>
<td>5.17%</td>
<td>15</td>
<td>26.79%</td>
<td>21.61%</td>
</tr>
</tbody>
</table>

¶69 Sixty-six percent of the libraries whose responses either enforce their policies “not very rigorously” or quite laxly. The 17 libraries that do not allow food that answered this question do not uniformly enforce theirs rigorously.

TABLE 22
No Food Allowed—How Rigorously Enforced?

<table>
<thead>
<tr>
<th>How Rigorously Enforced</th>
<th>2022</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very rigorously</td>
<td>1</td>
<td>6.25%</td>
</tr>
<tr>
<td>Somewhat rigorously</td>
<td>6</td>
<td>37.50%</td>
</tr>
<tr>
<td>Not very rigorously</td>
<td>6</td>
<td>37.50%</td>
</tr>
<tr>
<td>Enforcement is quite lax</td>
<td>3</td>
<td>18.75%</td>
</tr>
</tbody>
</table>

61. Respondent possibly misread the question.
Question 22: Some libraries have instituted reward systems related to food and drink. Does your library have a reward system related to food and drink management (e.g., a free spill-proof mug)? If so, describe.

¶70 Many libraries did not answer this question.

### TABLE 23

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>2</td>
<td>3.28%</td>
<td>9</td>
<td>15%</td>
<td>11.72%</td>
</tr>
<tr>
<td>No</td>
<td>59</td>
<td>96.72%</td>
<td>51</td>
<td>85%</td>
<td>−11.72%</td>
</tr>
</tbody>
</table>

¶71 In the 2002 survey, there was one answer of a “free spill-proof mug.” In 2022, nine libraries answered they give lunch boxes, mugs, or water bottles. One library is considering its reward options.

Question 23: If you restrict food and drink in your libraries, have you estimated the cost of enforcement? If so, how much, and by what method?

### TABLE 24

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>1</td>
<td>1.61%</td>
<td>4</td>
<td>18.18%</td>
<td>16.57%</td>
</tr>
<tr>
<td>No</td>
<td>61</td>
<td>98.39%</td>
<td>18</td>
<td>81.82%</td>
<td>−16.57%</td>
</tr>
</tbody>
</table>

¶72 In 2022, three respondents answered “yes” and said it costs the library nothing, while one added in the cost of giving away free mugs at about $1,000 per year. Many noted the question was inapplicable because they barely enforce the policy or took the opportunity to say they were against food bans.

- “Because we are already enforcing sound—and law-only restrictions in those areas, there is no measurable added costs, and with less trash/wiping of furniture my guess is if we counted we would come out ahead.”
- “Zero dollars.”

---

63. Id.
64. Id. at 17.
Question 24: Are you satisfied with your current policies and practices related to the management of food and drinks in your libraries?

**TABLE 25**

Satisfaction with Policies

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, very satisfied</td>
<td>12</td>
<td>18.75%</td>
<td>66</td>
<td>69.47%</td>
<td>54%</td>
</tr>
<tr>
<td>Yes, somewhat satisfied</td>
<td>34</td>
<td>53.13%</td>
<td>20</td>
<td>21.05%</td>
<td>−14%</td>
</tr>
<tr>
<td>Only marginally satisfied</td>
<td>13</td>
<td>20.31%</td>
<td>6</td>
<td>6.32%</td>
<td>−7%</td>
</tr>
<tr>
<td>Not very satisfied</td>
<td>4</td>
<td>6.25%</td>
<td>3</td>
<td>3.16%</td>
<td>−1%</td>
</tr>
<tr>
<td>Not at all satisfied</td>
<td>1</td>
<td>1.56%</td>
<td>0</td>
<td>0%</td>
<td>—</td>
</tr>
</tbody>
</table>

§73 Combining all answers for all policies, libraries appear to be more satisfied with their policies in 2022 than they were in 2002. Curious whether there might be a difference among policy types in satisfaction levels, I further analyzed the answers to this question. Breaking out satisfaction by policy type led to an interesting discovery.

**TABLE 26**

Satisfaction by Policy Type

<table>
<thead>
<tr>
<th>Policy Type</th>
<th>Responses</th>
<th>% within category</th>
</tr>
</thead>
<tbody>
<tr>
<td>No food allowed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very satisfied</td>
<td>10</td>
<td>47.61%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>4</td>
<td>19.04%</td>
</tr>
<tr>
<td>Marginally satisfied</td>
<td>4</td>
<td>19.04%</td>
</tr>
<tr>
<td>Not very satisfied</td>
<td>3</td>
<td>14.28%</td>
</tr>
<tr>
<td>Distraction-free food allowed in select areas:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very satisfied</td>
<td>12</td>
<td>70.58%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>5</td>
<td>29.41%</td>
</tr>
<tr>
<td>Distraction-free food allowed anywhere:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very Satisfied</td>
<td>13</td>
<td>76.47%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>4</td>
<td>23.52%</td>
</tr>
<tr>
<td>Unrestricted food allowed in select areas:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very satisfied</td>
<td>3</td>
<td>50%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>3</td>
<td>50%</td>
</tr>
<tr>
<td>Unlimited food allowed or allowed using common sense:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very satisfied</td>
<td>28</td>
<td>82.35%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>4</td>
<td>11.76%</td>
</tr>
<tr>
<td>Marginally satisfied</td>
<td>2</td>
<td>5.88%</td>
</tr>
</tbody>
</table>

65. Id.
¶74 From breaking out satisfaction by policy type, we can see that regardless of problems of preservation and cleanliness of the library, those with unrestricted policies have the highest satisfaction level at 82 percent, followed by the two types of distraction-free policy. Meanwhile, outright bans seem to have the lowest overall satisfaction.

**Question 25: What are the reasons you selected the prior response?**

¶75 The 2002 survey reported no responses to indicate why the respondents answered as they did in the previous question dealing with existing policy satisfaction. This survey received 84 responses.

¶76 This question was open-ended and hard to code. Many responses were unique, and many revealed that library directors are very attached to their policies regardless of whether they allow or ban food. Many responses on both sides of the question were almost argumentative. Several said how much they did not like the idea of enforcing restrictions, and several said how much eating in the library caused problems.

¶77 Table 27 is divided into responses from libraries that do and do not allow food, roughly ordered in level of descending satisfaction with the policy.

### TABLE 27

<table>
<thead>
<tr>
<th>Reasons for Satisfaction Level</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food allowed</td>
<td></td>
</tr>
<tr>
<td>No problems</td>
<td>28</td>
</tr>
<tr>
<td>Students and staff happy</td>
<td>13</td>
</tr>
<tr>
<td>Cost/benefit of enforcing restrictions isn’t worth it</td>
<td>11</td>
</tr>
<tr>
<td>Right balance achieved</td>
<td>5</td>
</tr>
<tr>
<td>Library is welcoming, accommodating, and a popular place to be</td>
<td>3</td>
</tr>
<tr>
<td>Better relations with students</td>
<td>1</td>
</tr>
<tr>
<td>Still have some problems</td>
<td>6</td>
</tr>
<tr>
<td>Working on a new policy</td>
<td>3</td>
</tr>
<tr>
<td>Cleaning crew is inadequate</td>
<td>1</td>
</tr>
<tr>
<td>Gave up on trying to enforce</td>
<td>1</td>
</tr>
<tr>
<td>Would like to relax the policy more</td>
<td>1</td>
</tr>
<tr>
<td>It takes staff time to clean messes</td>
<td>1</td>
</tr>
<tr>
<td>Respondent does not like people eating in the library</td>
<td>1</td>
</tr>
<tr>
<td>No food allowed</td>
<td></td>
</tr>
<tr>
<td>No problems</td>
<td>6</td>
</tr>
<tr>
<td>Right balance achieved</td>
<td>2</td>
</tr>
<tr>
<td>No messes</td>
<td>1</td>
</tr>
</tbody>
</table>

66. *Id.*
### 2022

| It encourages students to take breaks | 1 |
| It encourages healthy eating        | 1 |
| Good communication with our patrons | 1 |
| Struggling with the policy          | 1 |
| Staff are resistant to enforcing    | 1 |
| Respondent wished the policy was more liberal, but librarians resist | 2 |
| Patrons hide food                   | 1 |

§78 Selected responses included the following.

- “[W]e do not hear student complaints anymore, and no one is ‘sneaking’ food.”
- “Our current system seems to be working without user complaints.”
- “There have been far fewer problems than anticipated when we made the change years ago, and it has brought a lot of goodwill. The goodwill and good relationship with the students far outweigh any hassles. It’s far less problematic to spray for ants occasionally, or have a coffee spill cleaned up, than to be constantly monitoring.”
- “We are not constantly at odds with our students over food/drink.”
- “Because I don’t have to yell at adults as if they were children, our students are being respectful of the space and their fellow students.”
- “After years of trial and error, I feel like we have struck the best balance for us and students. Of course, students do still sneak in food, but because it’s contraband, they are more likely to throw it away in the proper trash cans. The main goal is not to have a pest infestation and that hasn’t happened for at least 10 years with our current policy.”
- “We have few spills from beverages. Food consumption is quite low in the library, but it does occur.”
- “I’m not sure it’s ‘library best practices’ to permit food in the library. It’s just a tradeoff for not being able to enforce a policy.”
- “I would personally rather we allowed food in the library, as it would increase usage.”
- “[O]ur policy does avoid messes. Our policy does help keep the library clean. Our policy does encourage healthier eating and study habits, i.e., doing one at a time in the designated area; however, it is hard to ask students to stop studying to go have a snack.”
- “Why do people feel they have to eat all the time?”

**Question 26:** *(Setting aside COVID)* Do you anticipate a change in your management of food and drink in the near future?

§79 The stability of the answers to this question across 20 years is notable. Few libraries anticipate change.
### TABLE 28
Changes

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>%</th>
<th>2022</th>
<th>%</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>5</td>
<td>7.81%</td>
<td>7</td>
<td>7.37%</td>
<td>−0.44%</td>
</tr>
<tr>
<td>No</td>
<td>59</td>
<td>92.19%</td>
<td>88</td>
<td>92.63%</td>
<td>0.44%</td>
</tr>
</tbody>
</table>

**Question 27: If you anticipate a change, provide the details.**

Due to the paucity of responses to this question and its 2002 equivalent, no attempt was made to compare the surveys.

### TABLE 29
Anticipated Changes

<table>
<thead>
<tr>
<th>Response</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan to be more permissive</td>
<td>2</td>
</tr>
<tr>
<td>Change in administration will probably result in more restrictions</td>
<td>1</td>
</tr>
<tr>
<td>May become more permissive if better cleaning services are obtained in the future</td>
<td>1</td>
</tr>
<tr>
<td>Plan to study the issue</td>
<td>1</td>
</tr>
<tr>
<td>Plan to tweak the policy to focus on disruption rather than type of food</td>
<td>1</td>
</tr>
</tbody>
</table>

**Question 28: Rate your (estimated) students’ satisfaction with your food policies.**

This question did not appear in the original survey. I was curious what students think about food policies. Unable to ask students directly, I crafted this question to ask respondents to rate student satisfaction. As in question 24, this question rates student satisfaction by food policy type.

### TABLE 30
Satisfaction Correlation

<table>
<thead>
<tr>
<th>Food Policy Type</th>
<th>Responses</th>
<th>% within category</th>
</tr>
</thead>
<tbody>
<tr>
<td>No food allowed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very satisfied</td>
<td>6</td>
<td>28.57%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>6</td>
<td>28.57%</td>
</tr>
<tr>
<td>Marginally satisfied</td>
<td>8</td>
<td>38.09%</td>
</tr>
<tr>
<td>Not very satisfied</td>
<td>1</td>
<td>4.76%</td>
</tr>
<tr>
<td>Distraction-free food allowed in select areas</td>
<td></td>
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</table>

67. *Id.*
68. *Id.*
**Question 29: Is there anything this survey didn’t ask which you would like to share, to give a fuller picture of food and drink in your library?**

¶82 This question also did not appear in the original survey. It allowed respondents to list anything that had escaped the survey’s questions. Several used it as an opportunity to sum up their feelings about food policies.

- “Over time the policy has become much more permissive to accommodate patron needs. With patrons mostly using online materials the concern about damage to books has decreased markedly. The restrictive policies of long ago put library staff in a difficult position of enforcement and were not consumer friendly. Allowing food and drink has created a much better environment for everyone.”
- “It is always a moving target. Do you need a specific list of food items allowed? If you allow everything, what types of problems can that create? If you are too restrictive, how can it easily be enforced? How do you arrive at a happy medium?”
- “If your library serves human beings who are expected to use it for extended periods of time, banning drinks and food is irrational and mean.”
- “I think it’s a cultural issue; by cultural I mean the law school culture. We have established that you don’t eat full meals or smelly food in the library. As time goes on it becomes a student enforced thing. You don’t see others doing this, so you don’t do it either.”
- “We have extremely minimal staff, and most of our front-desk presence is JD students. So even if we wanted to tighten the policy, we wouldn’t have staff to enforce it.”
- “Do others still stress over this? They should stop.”

**Discussion**

¶83 The data collected in this study point to some notable trends. The first concerns any lingering impact from COVID on food and drink policies. While COVID-19...

<table>
<thead>
<tr>
<th></th>
<th>Responses</th>
<th>% within category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td>12</td>
<td>70.58%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>4</td>
<td>23.52%</td>
</tr>
<tr>
<td>Not very satisfied</td>
<td>1</td>
<td>5.88%</td>
</tr>
<tr>
<td>Distraction-free food allowed without restriction</td>
<td>13</td>
<td>76.47%</td>
</tr>
<tr>
<td>Very satisfied</td>
<td>13</td>
<td>76.47%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>4</td>
<td>23.52%</td>
</tr>
<tr>
<td>Food allowed in select areas</td>
<td>3</td>
<td>50%</td>
</tr>
<tr>
<td>Very satisfied</td>
<td>3</td>
<td>50%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>3</td>
<td>50%</td>
</tr>
<tr>
<td>Food unrestricted or with a dose of common sense</td>
<td>34</td>
<td>97.05%</td>
</tr>
<tr>
<td>Very satisfied</td>
<td>34</td>
<td>97.05%</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>1</td>
<td>2.94%</td>
</tr>
</tbody>
</table>
continued to circulate during the study period, restrictions due to COVID were almost entirely gone from the public landscape. For libraries, the impact of COVID varies depending on their location and the state of the pandemic in their area. That said, most law libraries had relaxed back to pre-COVID food policies. Only one library responded in the survey that it still enforced COVID policies, while two library websites still listed pandemic-related restrictions.

¶84 The biggest change identified over several questions was that libraries that allowed food had made their policies much more permissive over the past two decades. Respondents and students were happy about the liberalization of food and drink policies, and relations with students had improved. The review of website food policies indicated that the percentage of libraries that had zero restrictions on food was far higher, and the ones that allowed foods in specific areas were 10 percent higher. Interestingly, the percentage of libraries that banned food outright had increased.

¶85 Responses across nearly every question in the 2022 survey showed greater concern for student needs and well-being, which resulted in more satisfied students (who presumably wanted to spend more time in the library). Written responses frequently cited that students stayed in the library for hours and therefore needed to eat and drink while there. Other responses indicated there were no good food options nearby or that students had long commutes and thus needed places to eat once they arrived at the library.

¶86 The most popular categories of response in question 9 regarding reasons for allowing food included user comfort, creating a welcoming environment, and student needs regarding time, money, and wellness. Enough responses used the word “trust” that it became its own (small) category.

¶87 Several responses specifically mentioned “treating students like professionals” and seeing much better relations with students when fewer restrictions were made. In question 28, respondents estimated that 97 percent of students were very satisfied with an unrestricted food policy. Combining the satisfaction rates of all policies that allowed food brought the number of students satisfied with the food policy down to a still-respectable 82 percent.69 Question 24 regarding respondents’ satisfaction with current food policies indicated a more than 50 percent raise in satisfaction with the current policies relative to 20 years ago.

¶88 An unfortunate side note of these results was that many responses to questions regarding more liberal food policies hinted at an attitude of surrender. In question 9, the second-highest factor in allowing food was that restrictions were hard or impossible to enforce. In question 17 regarding the most significant problems related to managing food, high-ranking factors were inconsistent enforcement, not enough staff to enforce, and students’ sneaking in food. Another unfortunate issue that stood out was the number of responses across several questions that cited inadequate janitorial service. These

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69. All policies that allow food in some form when added together results in 82 percent very satisfied, 16 percent somewhat satisfied, and 1 percent not satisfied, compared to 47 percent for policies that do not allow food.
results seemed to suggest that some libraries would increase restrictions if they had the
staff and resources to do so.

¶89 Results also indicated that there were slightly more libraries in 2022 that banned
food entirely than there were 20 years ago. One library reported that it decided to go
food-free after mandatory COVID restrictions were lifted because it saw fewer prob-
lems while following the pandemic rules.

¶90 It is tempting to think that libraries that banned food did not consider or care
about all the reasons above for allowing food. However, those libraries usually named
solid reasons for their choices. The top reasons listed for banning food in question 8
were pests/vermin, followed by trash (which attracts the former), distraction to patrons,
spills, and protection of the collection. While students perhaps use physical books far
less than 20 years ago, rare collections are still vulnerable to these pests. Libraries with
inadequate trash service certainly made a good argument for banning food, especially
those in climates where bugs, mice, or other pests are endemic and students can eat
outside year-round.

¶91 Another reason identified for no-food policies was the distraction factor.
Smells, loud eating sounds, or food-fueled gatherings in study rooms potentially caused
huge distractions, especially in smaller libraries that might not have enough space for
patrons to spread out.

¶92 Additionally, some libraries were within convenient walking distance of restau-
rants, coffee shops, and other options. One library responded that it was having a salad
vending machine installed. Many respondents also mentioned that their law schools
had dedicated café seating or kitchens nearby for students to use. All these options
would make food bans more palatable.

¶93 In contrast to the changes over the last 20 years that the survey shows, many
problems and solutions have stayed the same or relatively so. Concerning obstacles to
enforcing food policies, both the 2002 and 2022 surveys had high numbers of responses
for “not enough staff to enforce” and “students sneaking food.” Yet the percent change
was less than 1 percent in 20 years. The same results appeared when “creating a welcom-
ing environment” was the motive for allowing food. “Signs, websites, and emails” and
“patrolling” remained the most popular strategies across the decades.

¶94 An unanticipated insight, unrelated strictly to food, emerged from the survey.
Two otherwise innocuous responses in the survey piqued my interest, and perhaps fit
together. Less use of print sources and student rudeness. Many libraries in the present
responded that students were no longer using books as frequently, leading to a lower
concern for preservation.

¶95 Why are students using fewer print resources? All case reporters and statutes
are available online in various services to which the library subscribes. A logical reason
for less print use could also be that patrons are taking advantage of online study aids
such as those published by West and Aspen instead of competing for three or four
reserved print copies of Glannon’s.70

¶96 Second, none of the 95 responding libraries cited rude students as a factor in this study’s question 17, a quite different response from that in 2002, when “student attitudes/obstinacy, abusiveness, rudeness, intolerance to staff” was identified as being the second highest obstacle to enforcement. I cannot recall any recent incident with a rude student and certainly nothing that could be called abusive in a decade. Have libraries, by making food policies more liberal and taking advantage of the availability of online study aids, removed two major reasons for angry students? Or are students simply nicer than 20 years earlier? Perhaps it is a combination of both.

¶97 The survey also lacked two expected responses. Despite the growth in the past few years of services like Uber Eats, DoorDash, and other food delivery services, only 11 food policies addressed deliveries. Nine prohibited food deliveries to the library, while one expressly allowed them. Are deliveries not an issue at other libraries? Perhaps students just ask for deliveries to the law school proper.

¶98 Also not seen were any mentions of nonstudent patrons such as bar members abusing food policies, in contrast to the earlier survey. Have members of the bar gone on a diet, become nicer, or stopped coming to the library?

Improvements and Conclusions

¶99 Researchers interested in continuing this work might consider the following improvements to the methodology. Finding a metric for measuring collection rarity would be useful to identify any direct correlations between that factor and food restrictions. It would also be interesting to request information about staffing levels to see whether libraries with fewer staff have fewer restrictions. Perhaps food bans are luxuries that only libraries with rare collections or very well-staffed libraries need and can have. Climate could correlate to food policies as well. Do libraries in hot, humid, or year-round sunny conditions where pests are more of a problem have stricter food policies?

¶100 Another avenue of inquiry, unrelated to food policies, is libraries’ autonomy over their websites. In studying 197 law library websites, it seemed many libraries had moved their policies and general information about the institution to LibGuides instead
of using the main law school library sites. Was this because LibGuides was easier to use and update, or because libraries had less day-to-day control of the flagship, campus controlled websites?

¶101 Another way to improve this study would be to add a question regarding how strongly respondents are invested in their food policies. Library directors from all sides of the food debate appeared (from the tone of responses) to be very attached to their policies. This survey, appearing 20 years after Burchfield's original, has shown that food policies are generally more liberal, that libraries are having staff shortages, that janitorial staff is a problem, and that libraries with fewer restrictions on food are generally happier with their policies. Libraries reported trusting students and having concern for their well-being. Perhaps this indicates that academic law libraries are buying into the notion of transforming libraries into community-based “third spaces” as espoused for so long by public and undergraduate libraries.

¶102 When considering future research, scholars should note that in this study, almost one-quarter of responses to question 17 regarding obstacles to food management simply indicated they had no problems. Twenty years ago, no libraries responded they had zero problems. Question 19 asking about problems with food indicated 71 percent of respondents had only occasional problems, while 28 percent had none (at least among those that allow food). Question 21’s responses indicated many libraries have quite lax enforcement, even the ones that ostensibly ban food.

¶103 Given the lack of problems and the lax of enforcement, libraries that allow food at all are likely to continue to make their policies more permissive. Perhaps the future will hold only two policies: unrestricted and completely restricted. But further research alone will tell how accurate this scenario might be.

Appendix

1. Consent.
2. What is your name and associated university?
3. Did you have temporary COVID food policies in place which are more restrictive than usual? If so, what were the changes, and by what criteria will you (or did you) return to “normal?”
4. Do you have a public policy regarding food and drink, and would you be comfortable sharing it here (as a link to your site or text)?
5. Does your library permit food and drink to be consumed in non-staff areas of the library, such as the reading room, stacks, and open study areas?
   a. Yes, in all areas.
   b. Yes, but not in all areas.
   c. No. Not in any non-staff areas.
6. If you permit food and drink, do you have restrictions on the types of food and/or drink that may be consumed in the library (for example, only “non-messy” foods or only bottled water or drinks in non-spill cups)?
7. If you said yes to the previous question, what are the restrictions?
8. If you prohibit the consumption of food and drink in public areas of the library, what are the primary factors behind this policy? Please list up to three factors and rate them in order of importance.
9. If you do not prohibit the consumption of food and drink in public areas of your library, what are the primary reasons behind this policy? Please list up to three factors and rate them in order of importance.
10. Disregarding temporary changes due to COVID, during the last 10 years, would you say your library has become more or less permissive about food and drink in the library, or has your policy stayed about the same?
   a. More permissive.
   b. Less permissive.
   c. About the same.
11. If you said more or less to the previous question, how long ago was the change made?
   a. Within the last year.
   b. One to four years ago.
   c. Four to seven years ago.
   d. Seven to ten years ago.
12. If there were changes to your regular (non-COVID) policy, what were they and why?
13. Are your policies and practices for library staff regarding food and drink the same or different from those which apply to your patrons?
   a. The same.
   b. Different.
   c. The same in public areas but different in staff areas.
14. If you restrict food and drink in your libraries, do library staff participate in enforcement of the restrictions?
   a. Yes, all staff are expected to enforce restrictions.
   b. Yes, but only some staff are expected to enforce restrictions.
   c. Yes, but only security staff enforce restrictions.
   d. No, library staff are not expected to enforce restrictions.
15. If library staff participate in enforcing food and drink restrictions, have they received special training in how to do this?
   a. Yes.
   b. No.
   c. NA.
16. If you restrict food and drink, how successful would you say that you have been?
   a. Very Successful.
   b. Somewhat successful.
   c. Minimally Successful.
17. Please list the most significant problems or obstacles (up to three) to success in your management of food and drink in your libraries.
18. Please list the most successful strategies (up to three) that you have used in the management of food and drink in your libraries.
19. If you don't completely restrict food and drink, do you believe that this policy has resulted in any problems (damage to carpet or furniture, damage to materials, increase in pests) caused by their consumption within the library?
   a. No problems at all.
   b. Occasional Problems.
   c. Lots of Problems.
   d. NA.
20. Do you have any special areas within the library in which users are permitted to consume food and drinks? If so, please describe the area?
21. How rigorously are your food and drink policies enforced?
   a. Very rigorously.
   b. Somewhat rigorously.
   c. Not very rigorously.
   d. Enforcement is quite lax.
   e. NA.
22. Some libraries have instituted reward systems related to food and drink. Does your library have a reward system related to food and drink management (for example a free spill-proof mug)? If so, describe?
23. If you restrict food and drink in your libraries, have you estimated the cost of enforcement? If so, how much, and by what method?
24. Are you satisfied with your current policies and practices related to the management of food and drinks in your libraries?
   a. Yes, very satisfied.
   b. Yes, somewhat satisfied.
   c. Only marginally satisfied.
   d. Not very satisfied.
   e. Not at all satisfied.
25. What are the reasons you selected the prior response?
26. (Setting aside Covid) Do you anticipate a change in your management of food and drink in the near future?
   a. Yes.
   b. No.
27. If you anticipate a change, provide the details?
28. Rate your (estimated) students’ satisfaction with your food policies.
   a. Yes, very satisfied.
   b. Yes, somewhat satisfied.
   c. Only marginally satisfied.
d. Not very satisfied.
e. Not at all satisfied.

29. Is there anything this survey didn’t ask which you would like to share, to give a fuller picture of food & drink in your library?
Law Libraries’ Role in Technical Competence and the Effects of COVID-19*

Brittany Morris**

During the COVID-19 pandemic, law school libraries were forced to expeditiously adopt and adapt technologies to deliver in-person services. This article summarizes March 2020 survey responses regarding how the pandemic affected libraries’ technology choices, uses, and training. It also shares data on which technologies met or did not meet student needs. It ends by suggesting several additional avenues for research.

Implications for Practice

1. The COVID-19 Pandemic highlighted the importance of academic law libraries in continuing law school operations as well as ensuring equitable access.
2. This article provides a baseline assessment of law libraries’ participation in technological competence issues facing students.
3. Law librarians are uniquely situated to fulfill unmet student needs regarding technology competence and equitable access.
Introduction

1. On February 8, 2021, a short video went viral. The footage showed a lawyer participating in a Zoom hearing—but not just any lawyer. By accident, the lawyer had a filter placed over his face. The filter wasn’t a blurring filter, popular with those working from home to hide a messy room, but instead was an image of a cat (figure 1). As the lawyer struggled painfully and humorously to remove the filter, he insisted, “I’m not a cat.” With help from both the judge and his assistant, the attorney did manage to remove the filter. The lawyer, although almost certainly embarrassed by this very relatable mistake, later said, “If I can make the country chuckle for a moment in these difficult times they’re going through, I’m happy to let them do that at my expense.”

2. Our experience as legal professionals tells us that in today’s world we are expected to expertly keep up with technological changes, no matter how fast they develop. The technology market is saturated with all kinds of options: in the areas of communication (e.g., Zoom, Skype), collaboration (e.g., Microsoft OneDrive, Dropbox), document exchange (e.g., Scholastica, e-filing), and many others. It is imperative that legal professionals familiarize themselves with technological developments, including potential pitfalls such as feline face filters. If this wasn’t already clear, the COVID-19 pandemic in 2020 crystallized this truth.

This article examines data on how law libraries adapted during the challenges of the COVID-19 pandemic and looks at how law schools and their libraries could contribute to training students to be technologically competent lawyers in compliance with the Model Rules of Professional Conduct (MRPC).

Methodology

To narrow the article’s focus, I drafted a list of survey questions tailored to a few areas:

1. Library instruction technology
2. Operations
3. Competency/tech literacy of students
4. Professional responsibility
5. Research
6. Accessibility

The survey from which this article draws its data was available in March 2020 for approximately three weeks, with invitations sent to the American Association of Law Libraries (AALL) special interest section (SIS) (ALL-SIS) listserv and the directors-only list. The request yielded 94 individual responses, of which 88 were usable, representing

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3. Please see the appendix for a list of survey questions.
73 unique law schools. The data collected was then combined with datasets from the AccessLex Institute containing law school demographics to check representativeness. The dataset was exceptionally representative of the makeup of law schools in the United States (see appendix, figures 1 and 2), with a slight overrepresentation in schools with a selectivity rating of 60 to 80 percent and a corresponding underrepresentation in schools with the highest 20 percent of selectivity (see appendix, figure 3). There was also a similar expected imbalance in schools by the number of matriculants (see appendix, figure 4).

Data Analysis

Library Instruction Technology

Lecture Delivery

¶6 The overwhelming choice for delivering lectures during COVID was Zoom, with 86 percent of institutions reporting that their faculties used Zoom. In second place was Webex by Cisco with 5 percent, and other platforms with 9 percent (see appendix, figure 5).

¶7 Zoom's daily users increased from 10 million in December 2019 to 200 million in March 2020. One of the ways that Zoom edged its way to the front of the pack was through universities and schools. In late February 2020, as the pandemic was increasing in severity, the founder of Zoom offered K–12 schools free use of the software to continue educating students. With 90,000 schools in 20 countries taking up the offer, it quickly gave Zoom insight into features that teachers and faculty would find helpful. However, Zoom has not been without problems. At the beginning of the pandemic, it was not unheard of that individuals might “crash” or “zoombomb” Zoom meetings to cause mischief or distress.

¶8 Webex by Cisco, a distant second preference for a video conferencing platform, responded to Zoom's dominance during the pandemic by implementing more data tracking of participants. How the participants feel about this from a privacy standpoint may be an interesting trend to monitor.
Lastly, several questions raised by Zoom’s dominance concerns universities’ pre-pandemic access to video conferencing software. Due to aggressive marketing, many universities have site licenses with either Microsoft or Google. Each of these companies has video conferencing software, Teams and Hangouts, respectively. Did the overwhelming preference for Zoom during the pandemic mean that it fulfilled needs not met by Teams and Hangouts? Or were universities simply unaware of what resources were already available to them? Further research might consider how libraries communicate the resources that a university already has to the university-wide community.

**Learning Management Software (LMS)**

The survey showed that, during the pandemic, faculties and libraries used a much wider variety of LMSs than they did lecture delivery software (see appendix, figure 611), perhaps because they had already invested in an LMS before the pandemic hit. Nearly 15 percent of law libraries had multiple LMS platforms, and only 6 percent had no LMS. Of the surveyed law schools using an LMS, Canvas was the most popular, with 41 percent of survey participants reporting that they used it. Blackboard was the second most popular, with 20 percent of law schools using it. Over 50 percent of law libraries reported that they were not responsible for supporting the LMS. Many responded that LMS training was provided by university teacher training, the university’s IT department, or the law school’s IT department, with the library providing support on an ad hoc basis. Only 26 percent reported that they were solely responsible for providing training for an LMS. Of the most selected choices for an LMS (Canvas, Blackboard), libraries provided full training between 25 percent and 33 percent of the time.

**Operations**

Looking at integrated library systems (ILS) options selected by more than 5 percent of respondents, the results were Alma (42% of respondents), Sierra (30%), SirsiDynix (6%), Aleph (5%), and Innovative (5%) (see appendix, figure 7). Nearly 94 percent of those surveyed reported that the ILS system was adequate for the library’s needs. However, nearly 23 percent preferred an alternate system. In addition, of these 23 percent, about 30 percent expressed a preference for Innovative. Among Innovative users, only one person preferred another system: OCLC WMS.

Aleph was the ILS with the highest “insufficient” rating, and half of the users (two unique schools) were in the process of migrating to Alma. However, no explanation was given for its specific inadequacies.

Alma also had 19 percent of users who found the ILS insufficient to the library’s needs. Several complaints surfaced that the software could not manage digital archives.
and lacked data visualization options. Other issues were identified that developed during the pandemic, such as the need for contactless pickup.

¶14 Sierra had a much higher satisfaction rate, with 96 percent of users reporting it sufficient for their needs. However, one of the criticisms echoed from Alma was the lack of data visualization options available for information that the ILS collects.

¶15 During the pandemic, one of the more frequently cited valuable features that the ILS systems offered (particularly with Alma users) was the ability to have digital items indicated to students, including digital rights management. Other features that users found to be particularly useful were options to request items digitally for remote pick-up and the program being web-based.

Competency/Tech Literacy of Students

¶16 More than 70 percent of law schools reported having baseline research and writing competencies for law students, 13 percent reported no competencies, and almost 17 percent reported not sure. Combined with nearly 80 percent reporting that the library took part in developing required research and writing classes, this is a very promising statistic. The law library can be an incredibly valuable resource in developing competency in research. According to a 2012 survey, “New Attorney Research Methods Survey” by the Research Intelligence Group, new associates at law firms (both large and small) spend about 30 percent of their time on legal research.\textsuperscript{12} Despite the large amount of time spent on research, only 29 percent of law firms provide any formal training on legal research methods.\textsuperscript{13} Of particular note, over half of the research time is spent on paid-for legal research.\textsuperscript{14} Of the 2012 survey participants, 49 percent agreed with the statement that “legal research should be a larger part of the curriculum.”\textsuperscript{15}

¶17 Students who became solo practitioners after leaving law school are not represented in the 2013 survey. These may be the students who are most left behind in the conversation. These students are unlikely to have any formal postgrad training in legal research.

¶18 With 92 percent of respondents to this article’s survey reporting some involvement in research instruction, it is clear law school libraries play an important part in transmitting research instruction by developing competencies and courses, teaching 1L and advanced legal research, and requesting research skills education. As legal research experts, law librarians can make a significant impact in this area. Some suggestions of methods for improving legal research skills have been: legal research workshops hosted in conjunction with writing faculty, mandatory 1L research for-credit courses, extra-curricular legal research certificate programs, and clinical/externship/

\begin{footnotes}
\item[13.] Id at 2. It is important to note that while the survey was split equally by small and large firms, most students do not go into big law. Therefore, the 46 percent of big law respondents who reported that their firm provided formal training possibly skews how badly this is hurting law students.
\item[14.] Id at 3.
\item[15.] Id at 6.
\end{footnotes}
clerkship orientations. The 2012 survey showed associates were relatively evenly divided between several options of what area of legal research should have been given more time in their law school education: statutory research, administrative law, public records, case law research, legislative history, secondary sources, and dockets, with the respondents permitted to select more than one option.

Research Databases

This article also addressed which research platforms law schools were providing students access to (see appendix, figure 8). All law schools reported that they provided access to both Westlaw and Lexis. Access to Bloomberg Law was reported by 82 percent of respondents, 73 percent provided Fastcase access, and at least 21 percent provided access to Hein. Among some of the less common responses for the option of “other” are a Wolters Kluwer product—Cheetah—and PLI PLUS from Practicing Law Institute. The percentage of survey takers who reported support for students and faculty and which platforms provided training to the library team are shown in table 1.

<table>
<thead>
<tr>
<th>Training for Students/Faculty, Librarians, and Library Staff</th>
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<tr>
<td>Lexis</td>
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<tr>
<td>Westlaw</td>
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<tr>
<td>Bloomberg Law</td>
</tr>
<tr>
<td>Fastcase</td>
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<tr>
<td>Hein</td>
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Across the board, librarians reported that they were receiving more training on the research platforms than the students were receiving. The difference in training for students versus librarians could indicate the platforms’ trust in librarians for legal research and writing professors to teach the platform. It could also suggest that the platforms’ business models require librarians to promote their product to students, which they cannot do unless they have sufficient training.

Professional Responsibility

In 2012, the American Bar Association (ABA) adopted comment 8 to Rule 1.1 of the Model Rules of Professional Conduct (MRPC). The comment reads, “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant

16. It is important to note that the author intended the question to be about legal research platforms, and the question may have been poorly worded. This made it difficult to measure Hein access because several participants mentioned Hein, but several others listed “too many to count.”

technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.”\(^{18}\) The comment has been adopted by 40 states, with Hawaii being the latest to adopt the rule.\(^{19}\) When surveyed, 49 percent of the respondents reported that their school’s state requires lawyers to maintain technical competence to comply with Comment 8, 32 percent said “not sure,” and 20 percent reported “no.” Based on these responses, it appears law librarians are reasonably aware of the changing landscape of legal ethics and technology.

\(^{\ ¶} 22\) When asked whether their respective law schools had discussed adopting a basic technical competency for students, 35.6 percent responded “yes,” 24.4 percent responded “no,” and nearly 40 percent answered “not sure.” While the decisions surrounding the curriculum are wider than the library, the library is in a unique position to help with many of the technical competence issues raised by the new rule. For example, the law school curriculum can offer substantive as well as practice classes, such as clinics, simulation courses, and seminars. All of these offer opportunities to delve deeper into research and the surrounding issues. According to this article’s survey, 45 percent of libraries participated in curriculum development, and 92 percent reported a role specifically in research instruction. The ability to research ever-changing technology, its uses, and its hazards is essential in maintaining technological competence. Law librarians are uniquely familiar with the underlying information architecture and organization of the wealth of legal knowledge that our users encounter. As new methods for discovery (such as advanced searching and AI) enter the market, the library is in a unique position to identify “benefits and risks” of the new tool, which is precisely what comment 8 demands of attorneys.

\(^{\ ¶} 23\) When asked about the most critical competencies that should be taught to students, 51.2 percent responded the relationship of technology to the MRPC, including important subjects such as data security. That 51.2 percent, coupled with 29.1 percent responding that data security was the most important, led to an overall 80.3 percent of respondents who believe that data security, in some form, is one of the most important aspects of the new comment to the MRPC. Of the respondents, 11.6 percent believed that one of the critical competencies is knowledge of productivity software, such as Microsoft Office Suite. Finally, 5.8 percent of respondents tied the competency back to research skills with the response of “research platform language searching,” and 2.3 percent responded “database usage.”

\(^{\ ¶} 24\) Another area addressed by this article’s survey is whether law schools are providing or requiring technology courses. Of survey participants, 45 percent reported that their law schools had some form of technology classes, 43 percent responded that their schools did not have classes on technology, and 12 percent answered that they were not sure. None of those surveyed responded that their schools required a course in technology. When asked whether the schools had discussed technology competency baselines

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18. Id.

for students, 40 percent responded “not sure,” 35.6 percent responded “yes,” and 24.4 percent responded “no.” From this data we can see a significant shortfall in turning out what some law schools promise; practice-ready attorneys. This is an expanding area where librarians can have a significant impact.

**Accessibility**

¶25 One of the more frustrating aspects of the pandemic was the upending of established infrastructure designed to enable and support the full participation of people who are disabled. In the early days of the pandemic, patrons with disabilities found both positive and negative aspects to how in-person library services functioned. For example, remote classes allowed students to attend classes that they may not have been able to attend in person, but the requirement to keep the camera on for the duration of class was very uncomfortable for many neurodivergent students. All of this was on top of public discourse about rationing healthcare that would leave disabled persons at risk, not only for inadequate healthcare but also for death. Understandably many library users were frustrated.

¶26 The survey focused on the accommodations for students with hearing impairments. However, the survey also sought individual feedback on potential accommodations librarians were observing that might be necessary. This issue is significant for librarians, as the American Library Association’s (ALA) Code of Ethics requires us to provide equitable access. Considering the impact of the pandemic on in-person services, now is an opportune moment to reflect on areas where we can implement changes to enhance equitable access to our services.

**Video Conferencing and Accessibility**

¶27 Because of the overwhelming use of Zoom to present lectures in place of in-person classes, it is unsurprising that 80.3 percent of respondents reported that their software provided either live or after-the-fact transcription. Almost 4 percent of respondents also mentioned that the transcription software sometimes slowed down the playback. Of respondents, 14.3 percent said they were unsure of what accommodations were offered by the software or the law school.

¶28 Other accommodations that law schools provided for live and recorded distance classes were note-takers, PowerPoint slides provided in advance, and transcriptions of the lecture when the auto-generated transcript was not sufficient. However,

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most librarians reported that these services went through a separate office on campus that worked with students to develop accommodations. Several respondents also expressed that their law schools had or that they personally preferred Otter.ai for transcriptions. The respondents indicated this preference was due to the Zoom transcription not being sufficient for the needs of the students.

**Other Accessibility Issues**

¶29 Many participants pointed out that the physical devices needed to accommodate vision-impaired students were not adequate. For instance, a shared screen on Zoom could not be enlarged past the full screen. Or a student who could read a printed and enlarged PowerPoint slide might be limited by the device they were viewing the presentation on. However, if provided the slides before the lecture, students can use screen readers to read the information on the slide.

¶30 Another frequently mentioned issue in the survey results was the needs of neurodivergent students. Of particular concern for researchers was the effect that the pandemic, prolonged isolation, and upending of routines had on autistic people.24 Amid the pandemic, the University of Connecticut unveiled a Radical Inclusion program (INCLUDE) to assist neurodivergent students in their pursuit of engineering degrees.25 This program includes a one-hour credit class that focuses on how different brains work.26 This initiative also provides training faculty in new pedagogies to meet the needs of neurodivergent students.27

¶31 Several respondents reported that some students found the lack of access to physical library facilities during the pandemic inhibited their ability to participate in their curriculum fully or to the best of their ability. Unfortunately, not every law student had a quiet place to participate in online classes, reliable access to an internet connection, or even a permanent home or address.

**Conclusion**

¶32 The challenges faced during the COVID-19 pandemic have given us the opportunity to assess how we have been approaching our work in regards to public and educational services. To make changes that benefit the legal community, we first need a baseline of what law schools are doing in regard to technical competence and preparing our students for practice. This survey is a first attempt in gathering the necessary information for law libraries to see where they stand and possibly what other libraries are doing with educational outreach and services and the pandemic's effects.

26. *Id*.
27. *Id*.
§33 Law schools and law school libraries depend on technology to serve students, and during the pandemic, this dependence formed a lifeline. The need for technology is not going anywhere, nor do we want it to. But we must not abdicate our responsibilities as a profession, as implied by comment 8 of MRPC Rule 1.1. Familiarity with the technologies that are being adopted is essential to the library staff, faculty, and students. The hope is to share information and have a starting point for measuring where we are by analyzing the data from this baseline survey.

Future Research

§34 Past surveys could be repeated, for example, the 2012 survey of firm librarians about summer associate’s preparedness for research and the 2013 survey of associates regarding their feelings of readiness and time spent on research. Updating the results for these surveys would help researchers evaluate the library patrons’ point of view rather than just the library’s.

§35 One question that could be asked in a future survey is whether the responding law school is part of a larger institution and, if so, whether they share resources with the main campus libraries. A follow-up question would be to ask to what extent respondents believe this arrangement frees up resources, makes work more challenging, or produces other advantages or disadvantages.

§36 Finally, it may be worth pursuing further research and scholarship on the appropriate role of law libraries in response to the technology competence requirements imposed by state bar associations.
Appendix

Law Library Technology Survey

Demographic Information

1. Name of your institution

2. Your position

3. City and State of your Library

4. Type of Law Library
   Mark only one oval.
   - Academic
   - Government
   - Firm
   - Public
   - Other:

Library Instruction Technology

5. Which platform does your school use for delivering lectures in an on-line environment?
   Mark only one oval.
   - Zoom
   - Webex
   - BlueJeans
   - Other
6. Has your school incorporated learning management software?
   
   *Mark only one oval.*
   
   ☐ Yes
   ☐ No

7. If yes, which system?
   
   *Mark only one oval.*
   
   ☐ Moodle
   ☐ Blackboard
   ☐ Google Classrooms
   ☐ Other: ____________________________

8. Is the Library providing training to faculty and students on the LMS?
   
   *Mark only one oval.*
   
   ☐ Yes
   ☐ No
   ☐ Other: ____________________________

Operations

9. What ILS does your library use
   
   *Mark only one oval.*
   
   ☐ ALMA
   ☐ Innovative
   ☐ Sierra
   ☐ In-House Created System
   ☐ Other: ____________________________
10. Is it sufficient for your needs?

   Mark only one oval.
   
   ☐ Yes  ☐ No

11. If not, please briefly explain.

12. If yes, has any feature been particularly helpful for managing your library during the pandemic? Which and why?

13. If not, what functionality is lacking?

14. Do you prefer another ILS?

   Mark only one oval.
   
   ☐ ALMA  ☐ Innovative  ☐ Sierra
   ☐ In-House Created System  ☐ Other: __________________________
Competency/ Tech Literacy of Students

15. Does your school have baseline competencies for legal research and writing?

Mark only one oval:

☐ Yes
☐ No
☐ Not sure

16. Does the Library take part in the development of the Legal Research and Writing Skills Classes?

Mark only one oval:

☐ Yes
☐ No

17. Which aspects of the program does the library contribute to? (Select all that apply)

Check all that apply:

☐ Curriculum development
☐ Teaching research skills as requested
☐ Setting competency benchmarks for students
☐ Teaching advanced or specialized legal research
☐ Law Librarians develop and teach the IL required class
☐ Other: ____________

18. In other, please explain your department’s relationship with the legal research and writing department:

________________________________________________________________________

________________________________________________________________________
19. Does your institution offer or require classes in technology specifically for attorneys?

*Mark only one oval.*

- Offered
- Required
- Neither
- Not sure

Professional Responsibility

20. Does the state where your school is located require lawyers to maintain technology competency?

*Mark only one oval.*

- Yes
- No
- Not sure

21. Has your school discussed implementing basic technology competency requirements for students?

*Mark only one oval.*

- Yes
- No
- Not sure
- They already have

22. What area of technology competency do you think are most important to maintaining technology competence as laid out in comment 8 Rule 1.1 MRPR "To maintain the requisite knowledge and skill, a lawyer shall keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."

*Mark only one oval.*

- Data Security
- Relationship of Tech Competency to professional responsibility (AI, cloud security)
- Use of office suite software (Word, word perfect, google docs)
- Database usage
- Research platform language searching
23. Which research platforms does your institute make available to students?
   Check all that apply.
   - Westlaw
   - Lexis
   - Bloomberg
   - FastCase
   - Other: ____________

24. Which research platforms provide training to students and faculty on a regular basis?
   Check all that apply.
   - Westlaw
   - Lexis
   - Bloomberg
   - FastCase
   - Other: ____________

25. Does your library team receive training from any of the platforms?
   Check all that apply.
   - Westlaw
   - Lexis
   - Bloomberg
   - FastCase
   - Other: ____________

   During the Covid-19 pandemic that began in 2020, many institutions by necessity moved to online learning. As a consequence many institutions that previously had plans to accommodate found themselves without specific methods for navigating accessibility.

26. Does the program used to host in-person classes have functionality for students that are Deaf or Hard of Hearing?
   Mark only one oval.
   - Yes, automatic transcription
   - Yes, transcription after the class has been recorded and uploaded
   - Yes, the ability to slow down the recording
   - No, we use another accommodation. Please explain below
27. Accommodations for students in live remote classes.

28. Are there any specific accessibility issues that you have encountered or anticipate that you would like to see researched and discussed? Vision impairment, neurodivergent students etc.
FIGURE 1
Response by Law School Type
Compared to Population Among ABA Schools

<table>
<thead>
<tr>
<th>All Law Schools</th>
<th>Survey Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large Private</td>
<td>35%</td>
</tr>
<tr>
<td>Large Public</td>
<td>16%</td>
</tr>
<tr>
<td>Small Private</td>
<td>21%</td>
</tr>
<tr>
<td>Small Public</td>
<td>28%</td>
</tr>
</tbody>
</table>

FIGURE 2
Response by 2020 Admissions Law School LSAT Quantile

<table>
<thead>
<tr>
<th>All Law Schools</th>
<th>Survey Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lowest 20% of LSAT Score</td>
<td>17%</td>
</tr>
<tr>
<td>20-40%</td>
<td>18%</td>
</tr>
<tr>
<td>40-60%</td>
<td>21%</td>
</tr>
<tr>
<td>60-80%</td>
<td>22%</td>
</tr>
<tr>
<td>Highest 20% of LSAT Score</td>
<td>21%</td>
</tr>
</tbody>
</table>

* All schools quintiles not even due to ties
FIGURE 3
Response by 2020 Admissions Law School Selectivity

<table>
<thead>
<tr>
<th>All Law Schools</th>
<th>Survey Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lowest 20% of Selectivity</td>
<td>20%</td>
</tr>
<tr>
<td>20-40%</td>
<td>20%</td>
</tr>
<tr>
<td>40-60%</td>
<td>20%</td>
</tr>
<tr>
<td>60-80%</td>
<td>20%</td>
</tr>
<tr>
<td>Highest 20% of Selectivity</td>
<td>20%</td>
</tr>
</tbody>
</table>

FIGURE 4
Response by 2020 Admissions Law School Number of Matriculants

<table>
<thead>
<tr>
<th>All Law Schools</th>
<th>Survey Responses</th>
</tr>
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<tbody>
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<td>Lowest 20% of Matriculants</td>
<td>20%</td>
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<tr>
<td>20-40%</td>
<td>20%</td>
</tr>
<tr>
<td>40-60%</td>
<td>20%</td>
</tr>
<tr>
<td>60-80%</td>
<td>20%</td>
</tr>
<tr>
<td>Highest 20% of Matriculants</td>
<td>20%</td>
</tr>
</tbody>
</table>
FIGURE 5
Lecture Platform in Use

Other: 9%
Webex: 5%
Zoom: 86%

FIGURE 6
LMS Platform in Use and Library Training Responsibilities

<table>
<thead>
<tr>
<th>Platform</th>
<th>No Training</th>
<th>Some Training</th>
<th>Full Training</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blackboard</td>
<td>20%</td>
<td>39%</td>
<td>28%</td>
</tr>
<tr>
<td>BrightSpace</td>
<td>1%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Canvas</td>
<td>41%</td>
<td>64%</td>
<td>11%</td>
</tr>
<tr>
<td>D2L</td>
<td>3%</td>
<td>33%</td>
<td>0%</td>
</tr>
<tr>
<td>Sakai</td>
<td>3%</td>
<td>67%</td>
<td>0%</td>
</tr>
<tr>
<td>TWEN</td>
<td>3%</td>
<td>33%</td>
<td>33%</td>
</tr>
<tr>
<td>Multiple</td>
<td>15%</td>
<td>46%</td>
<td>23%</td>
</tr>
<tr>
<td>None</td>
<td>6%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Other</td>
<td>7%</td>
<td>67%</td>
<td>33%</td>
</tr>
</tbody>
</table>
FIGURE 7
ILS Platform in Use and Sufficiency

<table>
<thead>
<tr>
<th>Platform</th>
<th>Insufficient</th>
<th>Sufficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aleph</td>
<td>25%</td>
<td>75%</td>
</tr>
<tr>
<td>Alma</td>
<td>42%</td>
<td>81%</td>
</tr>
<tr>
<td>EOS</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Innovative</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Koha</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Multiple</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>None</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Sierra</td>
<td>4%</td>
<td>96%</td>
</tr>
<tr>
<td>SirsiDynix</td>
<td>20%</td>
<td>80%</td>
</tr>
<tr>
<td>TIND</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Uncertain</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>WMS</td>
<td>0%</td>
<td>100%</td>
</tr>
</tbody>
</table>
FIGURE 8
Research Platform in Use and Training

* Data Potentially Not Fully Representative Due to Several Responses of 'Too Many To List'
**Keeping Up with New Legal Titles**

Compiled by Chava Spivak-Birndorf** and Matt Timko***

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* If you would like to review books for “Keeping Up with New Legal Titles” please send an email to book review editors Chava Spivak-Birndorf (cys28@drexel.edu) and Matt Timko (mtimko@niu.edu).

** Research and Instructional Services Librarian and Adjunct Professor of Law, Drexel University Thomas R. Kline School of Law, Philadelphia, Pennsylvania, [http://orchid.org/0000-0002-5510-9690](http://orchid.org/0000-0002-5510-9690).


Reviewed by Christine Anne George*

¶1 In my family, there is a running joke about giving a spoiler warning if something bad is going to happen by saying “something happens to the whale.” It dates back to the movie *Free Willy*, which I had previously seen, but my aunt, who had taken my sisters and me to the movies, had not. After we sat down with our popcorn, my aunt asked me to tell her if something happened to the whale in the movie. Having been trained against giving spoilers, I was evasive. She then demanded I tell her if something happened to the whale, or we would walk out of the theater. I confirmed that the film hid nothing with the title—the whale was free in the end.

¶2 I went into *We Were Once a Family* fairly blind, somehow having missed the national story that inspired it, but knowing that this would most likely be a tragic read. Something did not just happen to the whale—something happened to so, so many whales that I had not even realized were there.

¶3 Even if I had been following the 2018 murder of the six Hart children, I would not have been prepared for the gut punch of a narrative that Roxanna Asgarian presents. As Asgarian notes in the book, the press coverage of the car crash came from a very specific perspective: granting a favorable view toward the White, lesbian couple, even when identifying them as murderers, and ignoring the systematic failures that allowed them to adopt six children from a flawed foster care system. To borrow a term from the art world, what Asgarian manages to do for Markis, Hannah, Devonte, Jeremiah, Abigail, and Ciera1 is to fill in the negative space around them, exploring their birth families and how they fared under Texas’s Child Protective Services system. Though the picture will never be complete because we will never be able to hear from the children, this additional context begins to paint a very dark picture.

¶4 But this story is not limited to two sets of siblings who were adopted out of the foster care system and the relatives they were forced to leave behind. Asgarian looks back in U.S. history to the orphan trains that took children from poverty on the East Coast and deposited them to uncertain futures in the west, and into federal Indian boarding schools meant to sever children from their culture through barbaric methods. The progressive argument for this claimed to look out for the good of the child: to remove children from a dangerous situation into one where they can thrive. Unfortunately, that theory, while nice on paper, is ripe for corruption as the intersecting prejudices against race and class can take a child from a potentially dangerous situation to a fully disastrous one.

¶5 There are several issues at play, from poverty being coded as neglect, to interracial adoption, to pay to play court systems, to unconscious (or sometimes fully conscious) bias, to the failures of an overtaxed and underfunded foster system. Asgarian


1. Listing out the children’s names is a deliberate choice.
walks the reader through the microlevel of how these realities led to this particular tragedy, but also the macro of how the laws and system came to be and continue to harm children in the United States.

§6 Though the topic is particularly heavy, this is an extremely readable book, providing a clear introduction for someone unfamiliar with the topic. Those familiar with the history of child removal will also find the book informative because of how it ties into more recent events and offers perspectives from the birth families. Anyone planning to read this title should be aware of the explicit discussion of abuse—mental, physical, and sexual (faced by both children and adults)—along with addiction, substance abuse, suicide, and murder.

§7 Seeing as I already made it clear that something happens to the whale, I do not think it is a spoiler to say that there are no happy endings for this story. Not for Markis, Hannah, Devonte, Jeremiah, Abigail, and Ciera; not for their birth families; and certainly not for all those being impacted by the foster care system. It is clear enough that there is a problem, but figuring out a solution seems insurmountable. Perhaps the first step is to look deeper, as Roxanna Asgarian did, and consider a fuller picture. I recommend this title.


Reviewed by Diane Ellis* 

§8 “Social justice is about connecting people with the resources they need most: economic opportunities, health care, education, and housing” (p.12). In Practicing Social Justice in Libraries, Alyssa Brissett and Diana Moronta have compiled 11 essays and papers about the importance of promoting social justice and challenging the library community to be more proactive in addressing social justice issues. Brissett and Moronta’s stated goals with this compilation are to demonstrate “how information workers implement inclusive practices in and around our work across institutions, communities, and collaborations in the field of librarianship” (p.2). Overall, they accomplish these important goals.

§9 The murder of George Floyd was both an awakening and a call to action for many Americans, including librarians. In the chapter “Black Librarianship in the Times of Racial Unrest: An Ethnographic Study from Three Black Voices,” Anthony Bishop, Jina DuVernay, and Rebecca Hankins discuss each of their responses to Floyd’s murder, as well as the responses of each author’s respective library and university. The authors acknowledge where responses were lacking, how they could be improved, and where they were successful. In doing so these critiques offer valuable lessons for libraries and librarians seeking to practice social justice. These lessons are important. Even though librarians and libraries have championed social justice and community outreach for

* © Diane Ellis, Law Librarian, Research Services, Litigation and the Practice of Law, Adjunct Assistant Professor of Law, Asa V. Call Law Library, University of Southern California Gould School of Law, Los Angeles, California, http://orchid.org/0009-0004-3815-7959.
years, librarians are again asking: Are we doing enough? Do we need to rethink our information processes, our library collections, and the tools we rely on?

§10 In responding to these questions, several authors, including Stephanie Porrata in the chapter “LibGuides for Social Justice: Limitations and Opportunities,” cautions against using social justice or anti-racism LibGuides as an easy response to social inequities. While they acknowledge that LibGuides are a valuable tool, in the context of social justice or anti-racism, they urge librarians to question whether a LibGuide is a low effort way to promote a simple answer to complicated social issues. “[L]ibrary workers must remember that action must not begin and end with the creation of a LibGuide, especially if it is primarily composed of a reading list” (p.43).

§11 Porrata urges librarians seeking to prepare an impactful social justice LibGuide to consider expanding the types of resources referenced therein to include sources that are important and informative to the impacted community. Librarians should reflect on what “scholarly” means in the context of addressing issues of concern to groups that continue to suffer from oppression and should strive to include the resources that the oppressed community values and relies on. This might mean highlighting the voices of Indigenous and Native peoples, which are often excluded from mainstream media coverage, as well as highlighting content that likely exists outside of library collections. In preparing LibGuides, librarians should consider including a variety of non-traditional resources, such as news, literature, commentary, blogs, and social media. Being mindful and inclusive of the resources utilized can help counteract the bias against BIPOC (Black, Indigenous, and People of Color), for instance, which is often found in mainstream media.

§12 In the stand-out chapter in this compilation, “Weaving the Longhouse “Four Rs” in LibGuides: Indigenous Teachings in Library Practice” by Indigenous librarians Kayla Lar-Son, Karleen Delaurier-Lyle, and Sarah Dupont, the authors examine Indigenous libraries and Indigenous librarians, as well as the roles of Indigenous Elders, beliefs, and traditions in educating Indigenous communities.

§13 While the provision of library services to Indigenous communities has long been overlooked, since the Canadian Truth and Reconciliation Commission released its Calls to Action in 2015, many Canadian cultural heritage institutions, including libraries, acknowledged their commitment to reconciliation with Indigenous communities. However, “as of 2017, there were less than 25 Indigenous librarians with a Masters of Library and Information Studies (MLIS) currently working in libraries and archives across Canada” (p.53).

§14 Yet there is some progress: the Xwi7xwa Library at the University of British Columbia (where the authors work), is the first and only Indigenous branch of an academic library at a post-secondary institution in Canada. The authors note that “[a]s Indigenous librarians, we cannot separate our worldview from our professional practices” (p.54). This includes incorporating the Longhouse Four R teachings of respect, relationships, responsibility, and reverence into their work. The authors focus on connecting the Longhouse Four Rs to the Xwi7xwa Library’s practices, services, and LibGuides. They also note the importance of supporting LibGuides that are authored by
Indigenous librarians. These LibGuides make it possible for Indigenous librarians to express unique perspectives, worldviews, and lived experiences. They also serve as a form of personal accountability to Indigenous communities to share information that is accessible to their members, while adhering to Indigenous knowledge-sharing protocols.

¶15 This book is a thought-provoking read on several different levels. Brissett and Moranta assert that this book “is for library workers who are frustrated with the lack of practical applications, the talk about increasing diversity without concrete actions, and those who are searching for practical ways to implement more inclusive practices into their work” (p.2). All librarians have different backgrounds, experiences, and identities, but each will find chapters in this collection that resonate deeply for them, which makes the book a welcome addition to any library, particularly academic law libraries.


*Reviewed by Kathryn Crandall*

¶16 This book begins by recognizing that libraries are dedicated to improving the lives of their patrons but will at times fall short of meeting the same standard for their staff. That is the core problem that the author aims to resolve. In this handbook, the topic of wellness in libraries is assessed from a macro view while addressing the individual pillars of wellness and action that can be seen in the focus of each chapter. The book is divided into five chapters: chapter one defines health and wellness; chapter two focuses on improving the physical space of the library from ergonomics down to smell; chapter three examines procedures and policies in libraries; chapter four addresses issues of diversity and inclusion; and finally, chapter five attempts to tie it all together by addressing library management and tasking administrators with ways to improve workplace wellness.

¶17 This handbook is very well-researched and packs a lot of information into few pages. At times it reads like a series of case-studies on what makes libraries operate and function, including the promise and shortcomings of modern societal wellness techniques. The book takes a deep dive into an important topic while offering additional reading materials with which the reader can continue their wellness learning journey.

¶18 It is clear from this work that thoughtfulness and detail are characteristics the author possesses. For example, the author addresses the pre- and post-pandemic mentality when it comes to wellness given the impact COVID-19 had on workplace culture, social issues, a shift in the importance of health, and flexibility in the work environment. Another much appreciated example, given the sheer volume of helpful references, is that the author places references at the end of each chapter so that the reader does not have to muddle through clunky footnotes while reading.

¶19 On the other hand, this book sometimes goes beyond the practical. Having a private area for phone calls, practically speaking, means that distractions are minimized.

for other staff. However, the author takes it one step further to highlight the potential state of burnout for a profession focused on others and how private space can encourage decompression from that weight. This is just one more example of the level of thought the author has put into the statements made in this text.

20 On that note there are, however, times the author could have provided additional guidance or suggestions. For instance, there is a recap list at the end of the book that, while helpful, would have been particularly valuable had it been at the end of each chapter highlighting some ways that administrations could improve in the areas the author noted during that topic discussion. For example, instead of saying administration should speak to their staff about their work environment, perhaps the author could have provided some prompts or sample questions to strike up meaningful and productive conversations between leadership and staff. These additional suggestions would have taken this work from a great resource to an outstanding resource. Overall, I would recommend this handbook for any professional collection because of its depth of resources and thorough analysis of what it means to foster wellness in the workplace.


Reviewed by Matthew S. Cooper

21 In her book, *This Is My Jail*, history professor Melanie Newport discusses the role local jails have played in the story of mass incarceration in the United States. Newport makes the distinction early in the book between prisons, which house individuals convicted of felony-level offenses, and jails, which confine people convicted of misdemeanor-level offenses along with arrestees who cannot make bail. Newport situates her work as unique in its exclusive focus on jails and mass incarceration. While she references large urban jails in cities like Los Angeles, New York City, and Detroit, she focuses on the substantial growth of the Cook County jail system in Chicago from the 1950s through the 1990s.

22 A main theme in Newport’s book is her emphasis on the significant role of local politics in the massive expansion of Cook County’s jail capacity. She explains that the initial, progressive reform efforts envisioned a rehabilitative jail, which was critical to obtaining political and popular support for costly jail construction. Despite these intentions, problems persisted through the decades, such as overcrowding, inhumane conditions, poor jail design, mismanagement, and inmate abuse. Later reform efforts and calls for jail expansion by “law and order” policymakers gained support as a reaction to perceived lawlessness and rampant drug use outside the jail. To his own political advantage, Cook County State’s Attorney and eventual Chicago Mayor Richard M. Daley led efforts to expand pretrial detention in the 1980s to prevent accused individuals from committing crimes while out on bail. These expanded detentions required more jail space and the familiar problems in the Cook County jail system remained.

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Another key theme in the book is Newport’s assertion that racism shaped Cook County jail policy, and that the disproportionate jailing of persons of color was not merely an unintended consequence of neutral policies. Rather, according to Newport, the disproportionate effect of jailing on people of color was entirely foreseeable and part of a broader system of conscious, racialized regulation of what some decision-makers viewed as an unruly segment of the population. While Newport acknowledges that such factors as racist police practices and high bail amounts set by judges were contributors to this disproportionate effect, jail policy perpetuated the problem with an unimaginative focus on expansion without adequately addressing underlying issues.

The book features Winston Moore as a central figure. Moore was Cook County jail warden from 1968 to 1977, one of the first Black wardens of a major U.S. jail system. Moore assumed control of the jail as inmates and wider society began mobilizing to a greater degree around civil rights. According to Newport, Moore, like officials before him, linked urban unrest with the need to re-establish control and order, including in the jail. With his “law and order” persona, he increased public support for jail expansion. Moore professed to believe in the rehabilitative aim of jails, but nevertheless stated that control of the jail population must come first. Providing the book its title, in 1968 he reportedly told a protestors jailed during Chicago’s Democratic National Convention: “You are a forgotten man! This is My Jail!” (p.3). Moore’s tenure as warden seemed to reflect the common pattern: the promise of reform in terms of a newly constructed, modern, more effective jail facility but the reality of a still overcrowded jail with very harsh conditions for its predominantly Black inmates.

Newport’s book sheds historical light on Cook County’s jail policy and the overlapping influences of local politics and race. She advocates for incorporating the past into current assessments, which may require a re-examination of the resources in which societies should invest and to what degree. She argues for situating jails within larger systems of inequality and questions whether officials can justify devoting funds to jails over other priorities such as education, physical and mental healthcare, and job-related resources.

Newport conducted extensive research for the book and provides numerous footnotes. She consulted many archival resources including papers and organization records at the Chicago History Museum Research Center and in the special collections of the University of Chicago and the University of Illinois Chicago libraries. The book appears to have grown out of Newport’s PhD dissertation submitted in 2016. The book is highly readable and relatively compact in its six chapters, given the time period it covers, and the depth of treatment Newport gives the topic.

This Is My Jail would be an excellent addition to a law or general academic collection that features other resources on the effects of prison and jail policy, particularly books dealing with the racial aspects of mass incarceration. The book would complement other well-known works on race and mass incarceration such as former law academic Michelle Alexander’s 2010 book, The New Jim Crow, and sociologist Jessica Simes’s
2021 book, Punishing Places: The Geography of Mass Imprisonment in America, which focuses on the effects of mass incarceration on smaller cities, suburbs, and rural areas.


Reviewed by Ashley Evans*

¶28 In an inspiring collection of stories, Her Honor: Stories of Challenge and Triumph from Women Judges takes readers on a journey into the lives and experiences of 25 female judges. These distinguished women are all recipients of the American Bar Association’s Margaret Brent Award, an honor bestowed upon women who achieve professional excellence and serve as inspirations in the legal field. The collection of narratives in this book shines a light on the exceptional lives, hardships, and accomplishments of these exceptional women, leaving readers feeling empowered and motivated.

¶29 Editor Lauren Stiller Rikleen curated a unique and diverse group of stories that reflect the varied backgrounds and experiences of women judges. Each chapter provides a unique perspective, allowing readers to gain insights into the struggles, harassment, and discrimination they each faced in their quest for equality and recognition in the courtroom. Their stories serve as testaments to their determination, perseverance, and ambition. The narratives are firsthand accounts or reflections from former law clerks, family members, and friends, and are arranged in order of birth and bookended by United States Supreme Court Justices Sandra Day O’Connor and Ruth Bader Ginsburg.

¶30 The book opens with an introduction by Rikleen, discussing the origins of the book and her intentions in telling these stories. The first woman featured is Justice Sandra Day O’Connor, one of the most renowned trailblazers for women in law. In 1950, Justice O’Connor entered law school as one of only five women and graduated toward the top of her class. Despite her undeniable success and abilities, she faced significant obstacles in finding employment after graduation. Rather than settling for a position as a legal secretary, she took an unpaid role with the county attorney’s office. Throughout her career, she worked tirelessly, forging her own path, and ultimately earning a spot as the first female justice on the United State Supreme Court.

¶31 Similarly, Justice Ginsburg encountered prejudice and discrimination, struggling to find employment after law school. Denied a clerkship with the Supreme Court due to her gender, she dedicated much of her career to women’s rights and human equality. Despite her initial rejection as a clerk, she later joined Justice O’Connor on the Supreme Court. Justice Ginsburg, along with the other women featured in Her Honor, spent her career inspiring, mentoring, and motivating other women to advocate for justice, strive for equality, and empower others.

¶32 A common thread connecting all the stories is the crucial importance of a diverse and representative judiciary, as well as a commitment to mentorship, advocacy, and community. As we are reminded in the book’s final chapter, Justice Ginsburg

famously stated, “A system of justice will be the richer for diversity of background and experience. It will be poorer . . . if all of its members are cast from the same mold” (p.293). Throughout the book, readers witness this principle in action by hearing how these women advocated for others, fought for equality, and made a lasting impact on the world through their work as lawyers and judges.

¶33 The experiences shared by the women featured in this book underscore the link between the past and future of women’s rights as well as women’s role in the legal profession. Each of these women made significant strides in cracking the glass ceiling through their work and advocacy, yet the glass ceiling remains. Each generation and each woman faced a unique set of challenges, but all shared a common struggle and built upon the accomplishments of their predecessors. This book emphasizes the ongoing need for progress in achieving gender equality within the legal profession and judiciary, while simultaneously acknowledging the profound contributions made by these women judges. It is a captivating read that will undoubtedly inspire and motivate readers, making it an excellent addition to academic law libraries or any collection focusing on the legal profession and judiciary.