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LAW LIBRARY JOURNAL

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worked at the iron works; most of our mothers worked for Dura Automotive, a rural assembly line making component parts for the “Big Three” in Detroit. For many of us, this was our first big trip away from home. We were taking a three-day field trip to see, among other things, the world-renowned Henry Ford Museum. There were many memorable moments from this trip. I remember seeing the chair in which Lincoln was assassinated, with its blood-soaked back. I saw Buckminster Fuller’s Dymaxion House. And I saw the future of automation in the auto industry.

¶2 One of the museum’s exhibits displayed the new robotic arm of the automotive assembly line. The docent leading our school tour touted this as “revolutionizing” the line. As we filed to the next exhibit, I remember the distinct pit that formed in my stomach. While that robotic arm symbolized a revolutionary step in manufacturing, it also symbolized a loss of work and wages for the many struggling families in my hometown. The robotic arm would be great for Ford’s bottom line; it would be disastrous for my family’s bottom line.

¶3 Sure enough, within five years, Dura Automotive left East Jordan and took its jobs with it. While not solely attributable to automation, it was no doubt part of the equation. As a result of this early life experience, I developed a near obsession

AI Becomes a Reality

¶7 To understand how AI will be employed in legal research and the various ethical implications at play, it is important to understand the current state of AI, particularly systems like DeepQA technology, and how professions such as finance, medicine, and law are already using this technology.

The Current State of Artificial Intelligence

¶8 Although AI has steadily progressed since the 1950s,[1] most software-driven capabilities still depend "on work processes that can be reduced to numbers and handled as mathematical calculations."[2] However, we are rapidly approaching a time when computing power will move beyond the reduction to numbers to the ability to process "vast quantities of text-based knowledge, and . . . [prove] able to answer questions that on their face have nothing to do with math and with high levels of reliability."[3] With some of the newer AI technologies, we are just starting to see this capability.

¶9 The first real iteration of the current capability was showcased in 2011, when IBM Watson beat former *Jeopardy!* champions Brad Rutter and Ken Jennings.[4] At this point, "IBM productized deep learning and natural language interaction to form a level of artificial intelligence known as 'cognitive computing.'"[5] To perform against the former *Jeopardy!* champions, Watson was programmed with basic language rules.[6] Additionally, Watson "also possesses over 100 separate modules with their own unique algorithm[s], each of which individually [tries] to determine the correct answers to questions on the show."[7] Watson is also made up of "a separate layer of algorithms that balance the results suggested by the computing modules to find the right answer."[8] Ultimately, Watson "combine[s] structured data, unstructured data, natural languages, and data analysis that could learn from other systems without the need for a human programmer to create software for every scenario."[9]

¶10 The genius of Watson is that "Watson does not generate one definitive answer but instead generates several possible answers, each with its own probability of being right."[10] During the *Jeopardy!* game, "Watson attempted to answer a ques

> [A]ccount software . . . can analyze and sort legal documents, doing the work that even well-paid lawyers often spend hours on. Journalists face start-ups like Automated Insights, which is already writing up summaries of basketball games. Finance stood out in particular: Because of the degree to which the industry is built on processing information—the stuff of digitization—the research suggested that it has more jobs at high risk of automation than any skilled industry, about 54 percent.[25]

These examples preview the extent to which knowledge-based work is vulnerable to automation. One of the more surprising fields affected is journalism. At one time, writing seemed least likely to be automated because it requires bespoke actions like retrieving information from a variety of systems; performing an often in-depth analysis; and writing understandable, compelling prose. But even it has been automated.[26] In fact, at least one scholar predicts that within fifteen years, more than ninety percent of news articles will be written algorithmically.[27]

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¶26 Until recently, most computer programs in the healthcare arena stored and retrieved structured data. The systems were not programmed to understand natu

advise judges. . . . While these expert systems don't make the decisions for the judges, they provide consultative or advisory tools to save time and provide consis tency to decisions.[65]

In Brazil, judges use a computer program that is programmed with an algorithm to review

"ROSS uses machine learning technology to fine tune its research methods. The legal robot is accessed via computer and billed as a subscription service."[75] Promotional material for ROSS states:

> With the support of Watson's cognitive computing and natural language processing capabilities, lawyers ask ROSS their research question in natural language, as they would a person, then ROSS reads through the law, gathers evidence, draws inferences and returns highly relevant, evidence based candidate answers. ROSS also monitors the law around the clock to notify users of new court decisions that can affect a case. The program continually learns from the lawyers who use it to bring back better results each time.[76]

Part of ROSS's learning process involves allowing users to upvote and downvote excerpts based on the robot's interpretation of the question. "Every time it answers a question, ROSS asks for feedback on its performance. Over time . . . ROSS's answers become more representative of the answers you would have gotten from the human professionals themselves. This is one of the primary features of all Watson progeny."[77]

¶37 ROSS's cofounder, Andrew Arruda, touts ROSS as saving lawyers up to thirty percent of their time, which, not coincidentally, corresponds with the same percentage that surveys show new attorneys spend on legal research.[78] ROSS is just starting to gain traction, with the law firm Baker & Hostetler announcing it would be licensing ROSS Intelligence to use in its bankruptcy practice. Other law firm subscribers include Latham & Watkins and von Briesen & Roper.[79]

¶38 In January 2017, Blue Hill Research Group released a benchmark report financed by ROSS, Inc., titled

¶42 When it comes to premature disruption, in medicine, IBM Watson has been criticized by Oren Etzioni as the "Donald Trump of the AI Industry" making out landish claims about its ability that no credible data supports.[93] Etzioni, CEO of the Allen Institute for AI, continued, stating that IBM Watson's "marketing and PR has run amok—to everyone's detriment."[94]

¶47

¶51 Experts generally agree that the greatest potential for immediate-future improvement is still in routine, repetitive tasks.[120] "For the next few decades . . . [it will be] a more complicated time—an interregnum in which the computers are not as smart as people but smart enough to do many of the tasks that make us money."[121] At this point, however, there is every reason to believe this process will continue to accelerate in the long term.[122]

AI in Legal Research

> The algorithm can solve a case. It cannot build a case.[123]

¶52 The shorter-term reality means that legal research is nowhere near being automated. Legal research is not routine or repetitive. It is a highly sophisticated skill that requires a level of thinking better suited to the human brain. Christopher Columbus Langdell, dean of the Harvard Law School from 1870 to 1895, famously said that the law is a science, and the library is its laboratory.[124] From Langdell's time onward, law has seen significant improvements in the ability to access the vast trove of legal information.[125] It's literally at our fingertips. Currently, however, the process is at an interim period between giving lawyers access to information and

which AI is currently generally better suited.[129] As noted, to create the best argument for a client, the pragmatic-level, analytical thinking is inextricably linked to legal research.[130] The legal research process requires the highest level of NLP because it is "impossible to do legal research without analyzing, synthesizing, and applying the information found, both to the original issue and to the research plan developed to address the issue."[131] Legal research "cannot be mechanically divorced from legal analysis and reasoning."[132]

¶56 According to New York Law School's Kris Franklin, "[u]nderstanding how legal authorities are most effectively deployed to build legal arguments requires mastery of all of the most fundamental components of legal reasoning: reading sources of law k,e9 (t)-5chigoaelente(q)1(h p)12 (r)1e9 (t)-5(nin)8.1 (s t)-6 (h)4r

¶59 During the early stages, it is unlikely that a search engine will be able to determine, on its own, the one case that is most on point. "Instead, following Watson, the search engine will likely use competing algorithms to 'score' each possible case for how well it lines with the search query and come up with a short list of the top-ranked cases."[140] While "[t]he algorithm [will] . . . also take into account non language related factors, such as whether the opinion was heavily cited to or searched for," it is, at this point, impossible for the legal search engines to choose the "best" case to make the most creative legal argument.[141]

The Limitations of AI and the Need to Use AI Responsibly

¶60 While DeepQA and its progeny have great potential to aid legal research, their current NLP capabilities limit their usefulness. This is a big problem for well-researched, well-reasoned legal analysis in a complex case.

no guidance issued on the use of algorithms, it is not far-fetched to conceive that the use of algorithms will fall under this ethical rule at some point.[169]

¶70 In addition to the Duty of Technology Competence, ABA Model Rule 5.1 bears on a lawyer's duties regarding technology insofar as tasks aided or supported by technology are performed by someone other than the attorney. This responsibility extends to immediate as well as remote support staff, with ABA Model Rule 5.1 requiring that "[l]awyers must also supervise the work of others to ensure it is completed in a competent manner."[170]

> This attempt at establishing "the principle of supervisory responsibility without introducing a vicarious liability concept" has led to considerations regarding inexperience generally, but the implications for technological applications should be clear—an associate or other paralegal professional is much more likely to use technology to support legal work than she is to make a representation before a court or like body.[171]

¶71 Like ABA Model Rule 5.1, ABA Model Rule 5.3 sets forth responsibilities of partners and supervising attorneys to nonlawyer assistants. This rule

> further reinforces the responsibilities attorneys have to apply sufficient care in their practice when outsourcing supporting legal work to inexperienced non-professionals, and to ensure that confidentiality is maintained with outsourcing staff. This is not just a matter of supervising specific tasks. It also contemplates knowing which tasks are appropriate for delegation, both within the firm and to third-party vendors. For example, if a delegate of the attorney uses technology to begin an engagement, it's possible that such an arrangement could be viewed as "establish[ing] the attorney-client relationship," which may be prohibited under ABA Model Rule 5.5.[172]

¶72 On a practical level, lawyers could eventually use such technologies to replace lower-level legal professionals. For example, a1nty2e,1w2.1 (p)2or BT 0 Tw 5

require meticulous attention to detail. Delegating the tasks to a computerized program involves a significant amount of trust.[175] Given the various ethical duties and the precision necessary to practice law, if the algorithms do not provide the requisite transparency, these duties, when violated, may open lawyers up to malpractice

thorized practice of law.[183] The developers could be liable for the unauthorized practice of law if the legal software in question goes beyond simple clerical work to the drafting of legal documents or the proffering of legal advice.[184]

Algorithmic Literacy: Legal Research Instruction Implications

¶78

¶82 The responsibility to teach burgeoning technologies does not stop with law librarians. "Legal educators of the future will need to train new kinds of experts. Society will need a cadre of legal 'engineers' who can work with technologists to devise the new digital applications—hopefully while remembering that law has a public purpose."[193] Law schools should play an important role in educating nonlawyer developers to aid in best practices of legal algorithm creation. "Legal scholars are well positioned, if they can avoid the temptation to be rear-guard defenders of the old ways, to evaluate the risks and benefits of the new solutions, and to guide the debate on how they can be incorporated" into the practice of law.[194]

> It will take us some time to develop the wisdom and the ethics to understand and direct th[e] power [of algorithms]. In the meantime, we honestly don't know how well or safely [this power] is being applied. The first and most important step is to develop better . . . awareness of who, how, and where it is being applied.[195]

¶83 Moving forward, we must teach algorithmic literacy, transparency, and oversight concerns by which we provide education about how algorithms function in law.[196]

Conclusion

¶84 "It is premature to state categorically that computers will be used as aids in the process of legal reasoning, or even that they should be."[197] Those words, dating from the 1970s, no longer ring true. In 2018, we are closer to a time when computers will be used as aids in the process of legal reasoning, and it is beyond time to start considering how they should be.

¶85 In this interim period of NLP capability, when algorithms are used increasingly in the everyday practice of law, we must understand both the current limitations and the associated pitfalls. The strong PR campaigns of the latest and greatest technologies may exaggerate how well the technology performs given current NLP capabilities. While we can expect that PR folks will say certain things to sell a product, we cannot rely blindly on these claims or the products they describe.

¶86 Current and prospective lawyers must understand current computing capability to make an independent judgment regarding a system's abilities. They must consider algorithmic transparency and the associated machine learning bias that may be embedded into the results. Lawyers must also consider the ethical pitfalls such as the Duty of Technology Competence, supervisory requirements, and malpractice considerations.

¶87 And lawyers must do this while understanding that progress will come in fits and starts. After all, "[s]uch a system could be developed only to die of neglect; it could survive only in the cloisters of academia; it could become an occasional tool of some small or large number of lawyers; it could, conceivably, become a major influence in the practice of law."[198] This is where law librarians can be highly

193. Campbell, supra note 2, at 12.
194. Id. at 13.
195. Anderson & Rainie, supra note 155, at 16.
196. Id.
197. Buchanan & Headrick, supra note 127, at 60.
198. Id. at 61.

influential. Because law librarians are on the front lines of teaching legal research tools that increasingly rely on algorithms to perform the work, they are in the best position to teach prospective lawyers about the various issues surrounding the use of algorithms in law

¶88 There are many conceivable futures for computers in law.

As a profession, it is important that we don't identify with the pre-Gutenberg scribes. We

Access to Print, Access to Justice*

Kimberly Mattioli**

least some public access to their collections. This includes access not only to print, but usually also to computer terminals where the public can access the Internet to use free online legal resources or subscription databases like Nexis Uni.[10] Access to public law libraries is essential for self-represented litigants, and for many of them having Internet access to legal materials meets their needs. But what about the self-represented litigants who cannot use the computer?

¶4 Before attending library school, I volunteered at a community legal aid clinic in Berkeley, California. The clinic worked exclusively with individuals who fell under a certain income threshold and who lived in Alameda County—everyone else was turned away. Many of the clients were either homeless or in Section 8 housing and unemployed. Others were employed and had homes or apartments but had been completely overwhelmed by debt. These clients were not self-represented litigants, but they would have been had they not had access to the clinic. I noticed a fascinating pattern: regardless of which group the clients fell into, unemployed or employed, many of them did not know how to use a computer. Some were adamant about not even attempting to use a computer and certainly did not want to try to use the Internet. Many clients were willing to sit next to us while we worked on the computer for them, but others refused.

¶5 Later, during my time as a library school student, I worked part time and had an internship in a law library. I realized how similar some of our patrons were to the clients at the legal aid clinic. Now, however, I felt that I was working at a disadvantage. At the legal aid clinic, it was nearly irrelevant whether the clients were computer literate because we could do everything for them. We told them what statutes or cases they needed to rely on, we filled out their forms, we fe te f

initiatives that are helping to bridge the justice gap in America. I end by explaining how librarians are uniquely situated to take part in these programs.

Background

Print Collections in Law Libraries

¶8 What to do with print materials has been widely discussed in the law library literature.[11] It is no secret that law school libraries have been under immense pressure to cut their budgets. At a time when law schools are strapped for cash, the library budget is usually one of the first expenditures to be put on the chopping block.[12] Critics of the current model of legal education have not minced words: "As legal practice continues to move away from requiring lawyers to consult books of any sort, the millions of dollars per year that the typical law school expends on maintaining a comprehensive law library could be reduced to a more rational level of expenditure," writes Paul Campos.[13] He continues, "[L]aw libraries . . . grow ever-more pharaonic even as the practice of law becomes less book-based, and as, if my own observations are accurate, law students find it less and less necessary or desirable to use these literary labyrinths even as opulent study spaces."[14] Everyone can form an individual opinion as to whether Campos's observations are accurate, but there is no debating that his sentiment, if widely shared, is worrisome for law libraries.

¶9 The legal education reformers could be called alarmist or hyperbolic or accused of oversirad,.ìªŽ hå"îãMãµj ni-¡á'F)©l Nz Á& ŒÓ @s33(di)12 (t)10 ()3 (s n)4 (

¶10

net, especially as smartphones and tablets become increasingly prevalent, but research has shown that the problem of access has not been entirely alleviated.[30]

¶18 The knee-jerk response to legal materials being digitized and put online for free is that physical access will no longer be an issue—self-represented litigants will not have to visit their local public law libraries to look at print codes or reporters. Instead, they will be able to access the material for free from their home computers or from places with free Internet access, like public libraries. Setting aside the issue of whether an individual is computer literate, recent research calls into question whether free online legal material should really count as access in the first place. In a recent study, Sarah Glassmeyer surveyed the websites of all fifty states to see how open the access was to state primary materials—statutes, cases, and regulations.[31] Glassmeyer identified fourteen barriers to "free" state legal materials, some being minor annoyances to users while others were real impediments to retrieving mate rials. For example, Glassmeyer points out that not all state websites have search functionality, and some that do search the entire page and not just the law. As Glassmeyer points out in her research, "the mere existence of information on a webpage does not automatically mean that there is access to it."[32]

¶19 Glassmeyer's research assumes that those in need of legal information are able to use a computer, even though that is very often not the case. If making legal information freely available online does not completely solve the physical access problem, as Glassmeyer posits in her research, it certainly does not solve the next aspect of information access: intellectual access. Intellectual access is when an indi vidual not only knows how to get to information, but also is able to understand the information once it has been obtained.[33]

> Intellectual access requires the ability to understand the information in a source, which, in turn, requires the cognitive ability to understand the source, the ability to read the language and dialect in which the source is written, and the knowledge of the specific vocabulary that is used. Intellectual access also requires knowledge of the use of any necessary technology to access a source, such as telephones, computers, mobile devices, search engines, electronic databases, or the internet.[34]

¶20 The third aspect of information access is social access. This is the idea that just because a person can access information does not mean that the person will.[35] In addition, not every person will interpret the information in the same way. For the purposes of this project, I will assume that social access is outside of the realm of concern for public law libraries.

¶21 While it is debatable whether physical access to legal information is univer-

public law library to technically have access to primary source material. The type of access law librarians who want to serve the public should be concerned with is intellectual access. It is bad enough that many self-represented litigants will lack intellectual access because they cannot understand the specific vocabulary that is used—it takes it to another level when the individual cannot even understand the required technology. It also brings about an important question for law librarians: what are we expected to do for individuals who are computer illiterate if electronic resources are all that we have available?

¶22 Public libraries have been conducting technology training for their patrons for many years. The library science literature makes evident that technology training is one of the biggest services that public libraries provide.[36] These trainings can take the form of workshops or one-on-one sessions, and tend to consist of topics

ninety-four percent of those with college degrees.[42] Most of the respondents who did not use the Internet had never used the Internet at all, and many of them reported living in a household where no one else had ever used it either. Adults living with disabilities were also shown to be less likely to use the Internet.[43]

¶25 A more recent study further shows that income level is associated with whether a person has Internet access in the home. "A 90 year old in the top income quartile is more likely to have an internet connection than a person of any age in the bottom quartile."[44] As of 2014, fewer than half of households in the bottom income quintile had Internet access, as opposed to ninety-five percent in the top quintile. Similar numbers are seen with education levels.[45] In addition, there is a slight disparity in Internet usage between urban and rural residents—seventy-nine percent of urban residents have Internet access at home, as opposed to seventy-four percent of rural residents.[46]

¶26 Some progress has been made in decreasing the digital divide. For instance, the gap in Internet usage between white people and minorities has decreased. Even so, black households are still sixteen percent less likely to have Internet access than white households. Hispanics are eleven percent less likely than whites, and Native Americans are nineteen percent less likely.[47] In addition, the gap based on income and education remains. Libraries and other social institutions have implemented programs to assist those who have been left behind. However, a large number of U.S. citizens, many of them poor and uneducated, simply do not have Internet access and would not know how to use it anyway. For them, the question of whether free online legal material really amounts to physical access is irrelevant. It is these people who will be further left behind when there are no more physical law books in a library's collection.

Self-Represented Litigants

¶27 It is estimated that three out of five litigants in civil cases go to court without a lawyer.[48] This number is an estimate rather than a firm statistic because there is simply no reliable data about self-represented litigants. However, some courts routinely report that seventy-five percent or more of cases have at least one self-represented litigant.[49]

¶28 Demographic information in this area is severely lacking. A survey of the literature turned up no national demographic data on self-represented litigants. Individual courts have conducted surveys to learn more about their self-represented

Network's Law Librarians' Working Group and the State, Court and County Law Library Special Interest Section (now known as the Government Law Library Special Interest Section) of the American Association of Law Libraries (AALL).[56] The survey garnered 153 responses from academic law libraries and government law libraries from across the country, and two responses from overseas. Of those libraries, ninety-nine percent reported that they provided services to self-represented litigants.[57] The survey results were split into two different categories: traditional library services and self-help centers. Self-help centers will be discussed later in this article

For traditional library services, the most common services provided to self-represented litigants were traditional legal research help, referrals to other programs, computerized legal research, telephone reference, and maintaining a collection of print materials for nonlawyers. In addition, ninety-five percent of libraries provide court forms—to a lesser degree, some libraries also provide 9 (er)C10.9 1 0 0 1

¶36 I used Qualtrics to both draft and distribute the survey. The survey was distributed through several different e-mail listservs in an attempt to get diverse responses. I assumed that academic law libraries and government law libraries would interact the most with self-represented litigants, so I focused my distribution on those two types of institutions.

¶37

where many respondents indicated that they worked with self-represented litigants on a daily basis.

¶43 While there are some limitations to the methodology I used in conducting this survey, none of them cast any serious doubt on the results. I received responses from sixty-eight academic, court, county, and state law libraries located in thirty states. This is a small number of law libraries in relation to the total number in the country, but a lot of useful information can be gleaned from the responses.

Survey Results

¶44 The survey had sixty-eight responses, the majority (66.18%) being from government law libraries, while 29.41% were from academic law libraries. One library reported being private, while the other sixty-seven were public law libraries. All sixty-eight libraries reported being open to the public.

¶45 In an effort to determine what types of obstacles self-represented litigants may face when they visit libraries regardless of their digital literacy status, I asked respondents whether their libraries place any sort of restrictions on the general pub lic. This could include restrictions on hours, usage, or any other way in which public

tions, one could question whether putting a blanket ban on circulation for public

¶52 There are a couple of likely explanations for this discrepancy. One is a problem with the wording of the question. The question asked about plans to eliminate "print resources that self-represented litigants tend to use." The phrasing of this question likely led to confusion among the respondents because of its lack-of specificity. Perhaps respondents thought of form books or books for nonlawyers (Nolo books) when asked about resources that self-represented litigants "tend to use." Their libraries may have no immediate plans to eliminate form books or Nolo books for their print collection, leading the respondents to answer "probably not" or "definitely not" to the question. Another, less likely, explanation is that since my survey had such a high number of responses from government law libraries, these respondents actually fall within the small group of law libraries nationwide that have no plans to eliminate any print from their collections. Perhaps these law libraries deal with such a large number of self-represented litigants that they have decided not to cull their print collections in the hopes that their patrons will be able to research in print rather than online. Another possible explanation is that the majority of these libraries already eliminated much of their print collections and have no plans for further weeding. Finally, it is possible that these libraries do in fact have plans to eliminate print, but they are eliminating for everyone and not specifically for self-represented litigants.

¶53 While the latter explanations are certainly possible, it seems more plausible that the former is the real reason for the inconsistent responses. When asked in the previous question about what types of print resources self-represented litigants use in their libraries, 79.41% answered that they use print state or federal codes, and 41.18% answered that they use print reporters. In Law Library Plans for the Print Materials Collection,[64] more than two-thirds of both academic and government law libraries stated that they planned to eliminate print primary sources.

seem that the state does not require a lot of public law libraries to serve its population.[65] However, even though it is not very populous, New Mexico is the fifth largest state in the country.[66]

time trying to get legal advice from librarians. Others are not only digitally illiterate but also illiterate in the general sense and are unable to understand books any better than they can understand a computer. Others may be able to read but have low comprehension of what they are reading. Librarians tend to want to help everyone, but for those patrons who have needs for which the typical law library is not equipped, other options have to be explored. For self-represented litigants who are unwilling or unable to research on their own, a self-help center is an ideal solution. These institutions will be discussed below.

¶60 A similar problem that is different enough to warrant its own discussion is the issue of self-represented litigants who are not native English speakers. One respondent to the survey said, "self-help materials in other languages—particularly Spanish—are woefully inadequate." The American Community Survey conducted from 2009 to 2013 and published by the United States Census Bureau shows that there are at least 350 different languages spoken in the United States.[69] Spanish is by far the most common, with 37.58 million people in the United States speaking the language. Librarians in large metropolitan areas and those in states that border Mexico are likely to encounter self-represented litigants who are not native English speakers.[70] It is essential to this group of patrons that librarians can help them with legal research, and this is an area that should be further explored.

Recommendations

Background

¶61 The access to justice problem is a real one for our society. The unfortunate truth is that many people in the United States cannot afford an attorney and do not qualify for or live near legal aid services. Many of these people are low-income and undereducated. They are expected to navigate a complicated legal system on their own from beginning to end. It is another unfortunate truth that many of these people are unable to conduct legal research online without significant technological training; when libraries eliminate print materials, they are further cutting these individuals off from their day in court.

¶62 This article argues that libraries are irreparably harming digitally illiterate self-represented litigants when print collections are culled, but it has yet to address the biggest barrier to avoiding this access to justice crisis: the decision to eliminate print sources is nearly always outside the library's control. No librarian would set out to deny access to a vulnerable patron base. The decisions to eliminate print resources have been ones of necessity—government law library budgets have been slashed by state legislatures, and academic law library budgets have been reduced by money-conscious law school administrators who need the cash for recruitment, scholarships, clinics, and more. Librarians reading this article may come away

“Lawyer in the Library” Programs and Self-Help Centers

¶63 Self-help centers already exist in public law libraries around the country. The 2013 survey conducted by the Law Librarians’ Working Group of the Self-Represented Litigation Network showed that about thirty-four percent of the 153 library respondents were affiliated in some way with a self-help center—the majority of these respondents were from government law libraries.[71] There is no standard definition of a self-help center, but a 2014 AALL white paper called Law Libraries and Access to Justice gives examples of several self-help center functions, including providing court forms and instructions, making referrals to other legal service providers, and sponsoring clinics in the law library.[72] Ideally, a self-help center should have no restrictions on subject matter and no income requirement. These types of programs are invaluable community assets, but it does not appear that they will solve the underlying problem for those self-represented litigants who are digitally illiterate.

¶64 There are many examples of self-help centers that go well beyond this basic level of service, however. Some government law libraries have taken the extra step and have coordinated “Lawyer in the Library” programs.[73] Some government law libraries even have full-time attorneys on staff, an incredible service that is unfortunately out of the question for most cash-strapped libraries. The Los Angeles County Law Library has had a Lawyer in the Library program since 2014 staffed by volunteer attorneys.[74] The attorneys come to the library once a month for a three-hour block. Self-represented litigants who take advantage of the program are cautioned that these attorneys do not represent them and will not be going to court—rather the attorneys help them fill out forms, explain legal details, confirm that the patron is on the right track or tell them to go in another direc(o)11 (ur)-5 ( )3ÓìRãn¥ÚWÂ‰Õ

not plan a similar program. Alumni of the law school may be eager to help out the community and simultaneously gain pro bono hours. Law school deans could potentially appreciate the public relations benefit, and prospective students who are interested in social justice may be attracted to the school because of its dedication to the public. State and local bar associations might be able to help coordinate volunteer attorneys for both government and academic law libraries. Organizing a Lawyer in the Library program is a way for public law librarians to continue to help digitally illiterate self-represented litigants at a time when the shrinking of their print collection may be entirely out of their control.

Clinics

¶66 For librarians who work in academic law libraries, it may be an option to refer self-represented litigants, whether digitally illiterate or not, to one of the law school's legal clinics. Clinics allow law students in their second and third years to get hands-on legal experience under the supervision of a licensed attorney. While some law schools may have general legal clinics, most clinics deal with a specific type of legal issue, such as family law or disability law.[76] Many clinics also have income requirements, similar to how legal aid organizations work. What this means for self-represented litigants is that they must fall into a very specific category to have their cases chosen by a clinic. The same is true for patrons of government law libraries, which often are home to legal clinics—these clinics have the same barriers as law school clinics, such as subject requirements and income requirements.[77]

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times of year when the law school is in session. Some law school clinics do operate year-round though, so this is not a hurdle that is impossible to overcome.[81] Another limitation is that law schools may still set an income requirement so that the clinic is not overrun by clients who could probably afford an attorney but are choosing not

¶75 Another interesting aspect of technology and digital literacy is that some individuals cannot use a computer but are able to effectively use a smartphone. Self-represented litigants who fall into that category might be able to use an app on their smartphones to help them with their legal needs. Some law schools have been instrumental in creating access to justice apps. For example, a class at Georgetown Law Center called “Technology, Innovation and Legal Practice” requires teams of students to develop an app that addresses an access to justice issue.[92] One of the apps that was developed in the class was for the U.S. Department of Justice and helps individuals with disabilities.[93] Librarians should keep abreast of access to justice apps like those coming out of Georgetown so that they can recommend them to self-represented litigants who may be savvy enough with a smartphone to use them.

Conclusion

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The Reference Assistant*

Annalee Hickman Moser** and Felicity Murphy***

In 2017, the authors conducted the third survey in an unofficial series about a type of law student employee that the authors call the reference assistant. This article analyzes the survey results, argues the advantages of the reference assistant, and details a case study of successful implementation of the reference assistant model at the BYU Law Library.

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¶2 We recognize that law student employees already make significant contributions in many academic law libraries across the country.[8] We also understand that how law students are expected to spend their employment time, as well as the terminology used to describe the various responsibilities their positions entail, vary dramatically from institution to institution.[9] It is likely that academic libraries use

concludes the article. Finally, the appendix provides a copy of the questions asked in the 2017 survey, as well as samples of more detailed responses to it

Who Is the Reference Assistant?

¶6 Broadly speaking, the vast majority of students employed in academic libraries perform limited and easily defined tasks related to the library's circulation or technical services departments. Students in these capacities generally check out and reshelve books, answer basic informational and directional questions, and perform various clerical tasks. The tasks are time-consuming and usually result in more student hires than what academic law libraries need in their research and reference departments. It is common practice for academic law libraries to hire law students to help supplement the research support they provide to their faculty;[11] some libraries manage research assistant pools,[12] while others oversee and train research assistants selected by individual faculty members.[13] As implemented at the BYU Law Library, reference assistants are different from traditional research assistants in that their duties comprise everything research assistants would do and more. While much of the current literature addresses the popular practice of hiring research assistants in academic law libraries,[14] this article focuses on an expanded rsa6lo,-6urld do aot tmo (o)12 (s)5cuott419ka (d)] (d)]c (o)12T (t t) ((a)-5 (l)0)1?9 (9

responding to reference inquiries, the reference assistant works on faculty research requests that have been directed to the reference desk or to a library faculty liaison who has deemed the project appropriate to assign to the reference assistant. This way the reference assistant fulfills the responsibilities of a research assistant while offering the library many services other than just faculty research.

¶9 The reference assistant model includes enough reference assistants to fully staff the reference desk for typical reference hours. At the BYU Law Library, this is from 8 . . to 9 . . Monday through Friday and 9 . to 5 . . on Saturdays. A professional law librarian also staffs the reference desk, with the reference assistant, from 8 . . to 5 . . Monday through Friday. The reference assistant's hours do not overlap with any other reference assistants. This model allows one reference assistant at a time to cover the reference desk and to work on faculty research support.

¶10 Understanding how the reference assistant (and its model) differs from just a research assistant (and the "pool" model) is paramount in understanding how this position is underutilized in academic law libraries today.

Which Law Libraries Employ the Reference Assistant? Three Surveys

¶11 Prior research has been conducted on the potential benefits and drawbacks of employing law students in the law library.[15] We are the third set of law librarians since 1930 who have endeavored to quantify the use of such employees in the academic law library setting. In doing so, we relied on the work of our predecessors—Rowena U. Compton, who published the first survey in 1930,[16] and Harriet Richman and Steve Windsor, who published the second survey in 1999.[17] Our goal in conducting the third survey in 2017 was to determine whether there has been an increase in the number of law libraries employing law students as research assistants and how many of these law libraries are using these law student research assistants in their reference departments—that is, which academic law libraries employ the reference assistant

The First Survey (1930)

¶12 In 1930, Rowena U. Compton, then law library director of the Jerome Hall Law Library of the Maurer School of Law at Indiana University–Bloomington, published (-)Tj ET EMC cT 0 Tw 12 (.9494 221.0031 Tm (-)Tj ET EMC /Span <</La0 0

lishing the questions and results of her survey, Compton instead summarized different aspects of what she learned from the survey, along with her own vague opinion of how best to use student assistants.

¶13 Compton reported that "[t]he majority of the largest and most important law libraries [participating in the survey] had either entirely done away with stu

. . . [because] if you are to have good work done in the library," then it should not be done by student assistants.[28]

¶16 Nonetheless, her survey was a starting point for an unofficial series of surveys about the topic of law student employees in academic law libraries.

The Second Survey (1999)

¶17 Sixty-nine years after Compton's survey was published, Harriet Richman and Steve Windsor conducted and published the second survey about law student employees in academic law libraries.[29] Of the 184 academic law libraries that they contacted, 124 responded to their survey, and these responses, along with the actual questions in the survey, were included in the appendix of their article,[30] providing more details than Compton's survey and her subsequent article.

¶18 According to Richman and Windsor's survey, very few academic law libraries employed law students for faculty research. The exact number is unknown due to the inconsistency and opaqueness of their article. In the main body of their article, Richman and Windsor concluded that fewer than twenty-five law libraries employed law students for faculty research and that only ten law libraries had a pool of law student research assistants supervised by a law librarian;[31] in the appendix of their article, Richman and Windsor did not even record how many law libraries employed law students for faculty research, giving only the average of students employed (fifteen for law schools with 500 or more students and six for law schools with 200 to 500 students).[32] However, they did record that twenty-five law libraries had the research assistant pool, which conflicted with the body of their article where they said the number was ten.[33] In analyzing their results, Richman and Windsor pointed out that it was "unclear why most libraries fail to employ students in a research capacity" and offered the following explanations: the constant turnover of student employees; the expense to train new student employees; and the custom that law librarians fulfill faculty requests just like patron requests, neither with any help from student employees.[34]

¶19 In addition to explaining their survey and the results, Richman and Windsor did a case study of how they personally used the law students in their library at

hours of every day to help with faculty research support. We thought it was time to take their ideas one step further.

The Third Survey (2017)

¶21 Because of the positive advocacy for law student employees in the article by Richman and Windsor, we were curious whether, after eighteen years, more academic law libraries employed law students in the ways that Richman and Windsor recommended in their article. Our curiosity got the best of us, and what followed was the third survey in this unofficial series.

¶22 In our 2017 survey, we asked law librarians the same questions as Richman and Windsor,[36] plus a few of our own.[37] To keep the integrity of the survey, we individually reached out to one law librarian at each law library associated with an ABA-accredited law school.[38] This way no more than one law librarian from each law school could participate in the survey, so as to not skew our results. We also think that individually reaching out to law librarians helped to increase the participation rate in the survey. We reached out to the law librarians through e-mail, but the survey itself was conducted through and recorded by Qualtrics.[39]

¶23 Our hypotheses for the results of our survey were these: (1) More law libraries employ law student employees than when Richman and Windsor conducted their survey. (2) More law libraries allow these law student employees to participate

libraries—possibly the same number of law libraries that did not employ law student workers when Richman and Windsor conducted their survey.[42] The reasons why they do not employ law students are as follows: two law libraries have used them in the past and deemed them ineffective; two law libraries have used them in the past, but their positions were eliminated for budgetary reasons; nine law libraries have library staffs that can adequately fill faculty research demand; thirteen law libraries have law faculty that have their own research assistants; and one law library noted other reasons.[43]

Hypotheses 2 and 3: More Law Libraries Allow These Law Student Employees to Participate in Faculty Research, but the Overwhelming

discussion of why academic law libraries should use reference assistants and how they can increase the capacity and productivity of law student employees in their libraries

Advantages of the Reference Assistant

Benefits for the Academic Law Library

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pletely replace law librarians on the reference desk; they do not have the knowl edge, training, schooling, or expertise that professional law librarians have. The reference assistant's role is supplementary. In fact, many of the reference shifts during regular hours can, and should, be covered by both the reference assistant and the law librarian. But should a librarian have other pressing commitments or meetings during a shift (making coverage of the reference desk impractical), the reference desk would not go uncovered; the reference assistant would be available to field inquiries and pass the more difficult questions on for follow-up by a law librarian.

¶34 The reference assistant can also help the law library elevate its "competitive edge[51] by cr

ians are not conscientious and hard-working but because they are being forced to turn their attention in a number of different directions to compensate for the reduction in staff. In these cases, the well-trained and astute reference assistant can help ease some of the burden. The expectation is not to have the reference assistant replace law librar

¶42 Overall, if law libraries are limiting their law student employees' contributions to administrative tasks and ready reference, they are failing to maximize the potential benefits of employing a law student.

Benefits for the Reference Assistant

¶43 An effective reference assistant contributes in a myriad of significant ways to the law library and the law school community. In return, the library can compensate the reference assistant in a variety of ways: monetary remuneration, research assistant experience for a variety of law professors, opportunity to work under guided practice of law library professionals, mentoring relationships with the law librarians, relationships with the other reference assistants, transferrable "good employee" skills, and a future career.

¶44 Primarily, the reference assistant receives monetary remuneration for his or her work. The options law libraries have for compensating the reference assistant include a tuition waiver, an hourly wage, or both. The BYU Law Lmer1 (ce a)3 (s)56e

Library are currently employed as law library professionals, including the current director (Kory Staheli) and the current deputy director (Shawn Nevers) of the BYU Law Library.[72] In addition, one of the authors of this article, Annalee Hickman Moser, was recruited to the field of librarianship because of her initial employment as a reference assistant at the BYU Law Library.[73]

¶51 While it is unlikely that a single reference assistant will benefit in all of these ways, these advantages illustrate the many ways the reference assistant might benefit because of his or her position.

Practical Concerns in Hiring the Reference Assistant

of the reference assistant model.[75] Consistent and clear management can often

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get help with a variety of needs from reference assistants, who are already clocked in and ready to work, will bring immense happiness to the law faculty, and we all know how important it is to keep the faculty happy.[83]

law libraries should seek out law students with potential and acumen when looking to hire reference assistants, they should not be reluctant to reach deep into the applicant pool when searching for suitable candidates. Unlike the limited training provided to most research assistants, the reference assistant benefits from ongoing training and support opportunities. Unlike law professors, many of whom have little time or inclination to train the students they are paying to do research, law librarians can factor training and supervising time into their reference hours when no student or patron is approaching the reference desk. The reference assistant position is an opportunity for the law school to implement a more egalitarian approach to student employment by hiring law students with interest and potential (even with a range of GPAs), not just the top ten percent.

¶63 Further, the hiring process can be structured so that competent law students are hired as the reference assistant. Some important aspects of the hiring process can include: (1) a requirement that the applicant has completed a rigorous legal research program in his or her first year of law school, (2) a strong recommendation from his or her legal research instructor, and (3) a research hypothetical given during the interview in which the applicant must explain his or her methodology for solving the research problem. These aspects, when carried out, can help law librarians to hire applicants with strong legal research skills.

¶64 As discussed in ¶ 37, the American Bar Association (ABA) is moving away from all theory-based law school courses toward more skills-based courses in which law students are expected to put into practice the principles they are learning in the classroom.[89] Law schools have a duty to prepare their law students to go out and practice law, and there is a variety of new approaches to legal education that appeal to today's

tion by helping law students become practice-ready, which in turn helps the law library demonstrate its worth and relevance during today's legal education crisis.[91][92]

¶65 The reference assistant participates in active learning daily as he or she problem-solves and addresses real-world issues, building competence. "[S]tudies in cognitive science show that students retain what they are learning better with active learning than when passively sitting and listening to a lecture."[93] In addition, rather than tackling engineered hypotheticals with predictive or prescribed out

them can often be akin to traversing a minefield. Pro se patrons are often feeling a gambit of emotions, depending on the nature of their legal actions.[95] Some may be angry and combative while others may be seeking a sympathetic ear. Serving these kinds of patrons may be difficult for even the most seasoned law librarian. However, like other practical skills, such as negotiation, which the reference assistant is learning in law school, working with potentially difficult patrons such as these is excellent preparation for the practice of law. Under the careful guidance of the law librarian, the reference assistant can be taught mechanisms for helping these patrons. And like the other practical skills he or she is developing in law school, the more opportunities the reference assistant has to participate in guided practice the better he or she will become at it. As with every other instance, the law librarian can become involved in the transaction if the reference assistant is struggling.

Retention

¶68 Some law librarians have voiced their concerns that the reference assistant would not be effective because of the high rate in turnover—that he or she would not be worth the cost.[96] However, law librarians can combat the high rate of-turn over with the following ideas.

¶69 First, have a wide variety of law students who are the reference assistant, so that there is never a completely new group of them. This can be done by making sure there is a somewhat equal balance of second-year law students and third-year law students. While some may suggest to have law students from all three years of law school,[97] we recommend law students from only the second and third years so that they have had an entire year of the legal research curriculum before becoming the reference assistants.

¶70 Second, law libraries should “market” the opportunity to law students and then ensure the experience reflects the marketing done. Over time, the position will be marketed by the reference assistants themselves as a prized opportunity, one that is not just limited to students with the highest GPA in their class. In the beginning, the law library has to make the position of the reference assistant attractive to students, and as students see the benefits involved with being the reference assistant, they will take over the marketing through peer recruitment and word of mouth.

¶71 Third, the law librarians can make it a point to give meaningful faculty requests to the reference assistant so that he or she can see the value in the job.[98] The pride that comes from seeing his or her research appear in a law professor’s

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article published in a law review or in a law professor's blog post that then gets cited in the Washington Post[99] cannot be overstated. Knowing that he or she had a hand in helping further the scholarly work of a plethora of law professors will give the reference assistant satisfaction in the learning progress and in the position in the law library.

¶72 These four practical concerns—supervision, cost, competence, and retention—can be overcome and should not deter law librarians from implementing the reference assistant model.

The Reference Assistant Model: A Case Study

The History of the Reference Assistant at the BYU Law Library

¶73 Brigham Young University's J. Reuben Clark Law School opened on August 27, 1973, and as part of his opening remarks, University President Dallin H. Oaks expressed the pride he felt at the "extraordinary efforts" that made the school a reality.[100] In his description of what the law school had to offer prospective students, he highlighted "a law librarian whose professional skills and performance . . . [had] already won [the law school] wide acclaim in the world of legal education."[101] He described too how the founders of the law school "assembled and placed in opera

in legal education and legal research.[104] The substantial increase in space contributes to the library's ability to "respond to the changing ways law is taught and learned" and to "provide better service to all of the library's varied clientele."[105] A fundamental way that the BYU Law Library has been able to offer better service for the library's clientele is by increasing its reference presence.

¶75 The BYU Law Library first hired law students to work on the reference desk in a limited capacity in the mid-1980s. The original reference assistant model was designed and instituted by now retired BYU Law librarians Constance K. Lundberg[106] and Gary Hill.[107] The goal of the model was to have coverage for the reference desk be as comprehensive as possible without imposing too heavily on the schedules of the law librarians.[108] As such, law librarians provided reference coverage from 8 to 5 . . on weekdays, and the reference assistants, who were law students, were hired and trained to cover reference during the week from 6 to 9 . . and on Saturdays from 9 . . to 5 . . These early reference assistants served patrons and worked on a limited number of research assignments for the faculty. This remained the model for meeting faculty research needs and for maintaining extended reference desk hours until the early 1990s. It was at this time that the BYU Law Library embraced an additional model—a pool of research assistants. Although the reference assistant model was not dissolved, it became ancillary to the newly established research assistant pool.

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assistants could not be contacted in a timely manner to complete them or had only just checked out because they had been told that there were no outstanding requests.[112] After only a few years of using the research assistant pool with limited success, the BYU Law Library received a boon—they were to be the recipients of an impressive library expansion.[113] Between May 1995 and November 1996, a 60,000-square-foot addition was added to the library, more than doubling its original size and making the BYU Law Library "one of the most functional and best-equipped academic law libraries in the nation."[114] This transformative building remodel motivated the law librarians to reinvent their faculty and reference services to take full advantage of the renewed building's potential.

¶77 If you were to visit the BYU Law Library today, you would enter past the circulation desk onto the main floor of the library. The (v)8 (e)-5 (d a b)-9 (o3 (s)5 (n-US)

the reference assistant position. Chosen reference assistants have also completed the highly competitive hiring process that includes an in-person panel interview where they must be prepared to discuss research strategy.

¶80 Once hired, each reference assistant works a variety of shifts for a total of approximately ten hours each week, during which they help with coverage of the reference desk and respond to faculty requests. The reference assistant schedules may vary depending on the availability of the employed law students and often change from semester to semester as student class schedules change. The BYU Law Library makes an effort to accommodate the academic schedules of its reference assistants as much as reasonably possible, which contributes to the attractiveness of the position for law students. This flexibility also helps with employee retention as current reference assistants know their supervising law librarian will ask for their input as they develop upcoming shift schedules.

¶81 The first thing the reference assistant does when he or she comes to the reference desk for a shift is to determine whether any patron assistance or faculty research is in progress. This is done verbally by communicating with the reference assistant vacating the desk or by referring to messages and notes that have been conveyed through the management program that the BYU Law Library uses. The reference assistants recently moved away from communicating through long, complicated e-mail chains and adopted a free project management program called Trello instead. Trello allows the reference assistants and the librarian supervisor to communicate with one another and track project progress in real time. Trello is easy to use and eliminates the confusion that is often associated with long e-mail exchanges among multiple recipients. Once the reference assistant is sufficiently up to speed with the status of the projects, he or she begins the shift by either addressing patron reference queries or resuming research for faculty members. The reference assistant is expected to make answering reference questions, especially ones submitted in person, the first priority.

¶82 Although some patrons may approach the reference desk and immediately begin talking to the law librarian fearing a student may not be able to help them, with proper training the reference assistant is usually capable of assisting most patrons. At the very least, having the reference assistant take care of all printing, scanning, computer, and directional needs is convenient and frees up the librarian's valuable time for tasks requiring advanced expertise. In addition to aiding-in-person patrons, the reference assistant also answers the reference desk phone. Many times the caller is seeking legal advice. In these cases, the reference assistant has been trained to direct the caller to potential community services or legal resources, which also saves the librarian time.

¶83 By tasking the reference assistant with some of these more straightforward responsibilities, the law librarian can turn his or her attention to things like preparing lesson plans for a legal research course, working on in-depth faculty projects, and developing personal scholarship. Of course, the law librarian is always present to assist the reference assistant in addressing more difficult or advanced reference questions. Such scenarios allow the librarian to teach the reference assistant "on the desk" by answering patrons' questions together. These teaching moments allow the librarian to model behaviors and skills that the reference assistant should be using, including how to conduct the reference interview. With each teachable moment,

6. Approximately how many full-time law librarians participate in reference work at your law library?

   - 4 law libraries have approximately 1 full-time law librarian participate.
   - 106 law libraries have between approximately 2 and 5 full-time law librarians participate.
   - 43 law libraries have between approximately 6 and 10 full-time law librarians participate.
   - 2 law libraries have between approximately 11 and 20 full-time law librarians participate.

7. Approximately how many part-time law librarians participate in reference work at your law library?[119]

   - 9 law libraries have approximately 0 part-time law librarians participate.
   - 29 law libraries have approximately 1 part-time law librarian participate.
   - 19 law libraries have between approximately 2 and 5 full-time part librarians participate.

8. Approximately how many full-time law librarians participate in faculty services at your law library?

   - 0 law libraries have approximately 0 full-time law librarians participate.
   - 16 law libraries have approximately 1 full-time law librarian participate.
   - 99 law libraries have between approximately 2 and 5 full-time law librarians participate.
   - 36 law libraries have between approximately 6 and 10 full-time law librarians participate.
   - 4 law libraries have between approximately 11 and 20 full-time law librarians participate.

9. Approximately how many part-time law librarians participate in faculty services at your law library?[120]

   - 27 law libraries have approximately 0 part-time law librarians participate.
   - 25 law libraries have approximately 1 part-time law librarian participate.
   - 4 law libraries have between approximately 2 and 5 part-time law librarians participate.
   - 1 law library has between approximately 6 and 10 part-time law librarians participate.

10. Approximately how many non–law student workers are employed in your law library? (You should include any undergraduate or non-law graduate students in your response.)

    - 40 law libraries have approximately 0 non–law student workers.
    - 9 law libraries have approximately 1 non–law student worker.
    - 43 law libraries have between approximately 2 and 5 non–law student workers.

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119. This question was asked only to the fifty-seven law librarians who indicated that part-time law librarians are on the library staff at their law libraries.

120. This question was asked only to the fifty-seven law librarians who indicated that part-time law librarians are on the library staff at their law libraries.

- 34 law libraries have between approximately 6 and 10 non–law student workers.
- 21 law libraries have between approximately 11 and 20 non–law student workers.
- 7 law libraries have between approximately 21 and 50 non–law student workers.
- 1 law libraries have approximately more than 50 non–law student workers.

11. Approximately how many law student workers are employed in your law library?

- 20 law libraries have approximately 0 law student workers.
- 9 law libraries have approximately 1 law student worker.
- 39 law libraries have between approximately 2 and 5 law student workers.
- 43 law libraries have between approximately 6 and 10 law student workers.
- 33 law libraries have between approximately 11 and 20 law student workers.
- 11 law libraries have between approximately 21 and 50 law student workers.

12. You indicated that no law students are employed by your law library. The reason(s) is: (You may select more than one answer.)[121]

- 2 law libraries have used them in the past, and they are not effective.
- 2 law libraries have used them in the past, but their positions were elimi nated for budgetary reasons.
- 9 law libraries have library staffs that can adequately fill faculty research demand.
- 13 law libraries have faculty that have their own research assistants.
- 1 law library has other reasons.

13. You indicated that law students are employed by your law library. How would

14. You indicated that your law library employs law students for research purposes. How do you consider the quality of their work?[123]

    - 16 law libraries consider the quality of their work excellent.
    - 30 law libraries consider the quality of their work good.
    - 7 law libraries consider the quality of their work fair.
    - 1 law library considers the quality of their work poor.

15. For faculty members who do not hire their own research assistants, research support is provided by: (You may select more than one answer.)

    - For 104 law librarians, a law librarian who fills the request or delegates it.
    - For 71 law libraries, a specific librarian assigned to each faculty member who can be contacted for research support.
    - For 37 law libraries, a pool of law student research assistants under the supervision of a librarian.
    - For 3 law libraries, no one in the law library.

16. Is there a reference desk at your law library?

    - Yes in 135 law libraries.
    - No in 20 law libraries.

17. Because law students are employed in your law library and your law library has a reference desk, we would like to know if the law students employed in your law library participate in staffing the reference desk.[124]

    - Yes in 32 law libraries.
    - No in 84 law libraries.

18. Because you indicated that your law student employees participate in staffing the reference desk, would you please describe how you utilize them?

    - 32 law librarians answered this question.

123. This question was asked only to the fifty-four law librarians who indicated that law students are employed in their law libraries for research purposes.

124. This question was asked only to the 116 law librarians who indicated that law students are employed in their law libraries and that their law libraries have reference desks.

Ten years later, Edward S. Bade, Professor of Law at the University of Minnesota Law School, wrote “that anyone who knows the alphabet and can count at least to

recognition and equality with the teaching faculty was being waged.[13] Among those engaged in the fight were librarians at the University of New Mexico (UNM).

¶5 This article is a case study of the University of New Mexico School of Law (UNMSOL) librarians' fight against second-class treatment and for dignity, respect, faculty status, and ultimately, equal voting rights within their school. This case study begins (¶¶ 6–21) with a profile of Arie Poldervaart, an original member of UNMSOL faculty and its first law librarian. Later in Poldervaart's career, he resisted moves by UNMSOL administration to demote him from a teaching member of the faculty to a mere "librarian member,"[14] and against efforts to move him from a nine-month to an eleven-month contract with no change in compensation. Paragraphs 22–27 examine UNM general librarians' push for faculty status during the mid-to-late 1960s and how their success directly benefited UNMSOL rank and file law librarians. Paragraphs 28–37 look at the rank and file law librarians' fight for and success in forming their own autonomous law library faculty despite years of sustained resistance from UNMSOL administration, faculty, and the head law librarian. Paragraphs 38–45 examine the issue of whether UNMSOL librarians would have voting rights within UNMSOL or just within the law library and at UNM general faculty meetings. Paragraphs 46–53 examine the history of voting rights at UNMSOL and discusses how UNMSOL's long-standing practice of inclusive governance, the changing role of librarians within the school since the formation of the law library faculty in 1975, and the discovery of governing university policy were all factors that contributed to the law librarians' success in winning equal voting rights within their school.

Faculty Status of the University of New Mexico's First Law Librarian

¶6 Arie William Poldervaart served as UNMSOL's first law librarian from 1947 to 1963. Prior to his appointment as one of four original faculty members,[15] Poldervaart had served for nearly a decade as the New Mexico Supreme Court's law librarian.[16] Sam G. Bratton, federal circuit judge, president of UNM Board of Regents, and "father of the law school," recommended Poldervaart to UNMSOL Dean Alfred Gausewitz.[17] At the time of his appointment, Poldervaart had also just begun serving a one-year term as president of the American Association of Law Libraries (AALL).[18]

¶7 Born in 1909 in the Netherlands, Poldervaart spent most of his early life in Iowa, where he earned a B.A. in journalism from Coe College in 1931 and an M.A., having majored in journalism and law, and minored in library science, from the

13. Lewis C. Branscomb, Preface, in

University of Iowa (UI) in 1934.[19] Poldervaart spoke several languages, including Dutch, German, Spanish, and French.[20] When Poldervaart joined the UNMSOL faculty he had not yet earned a law degree, although he had completed a major part of the work toward an LL.B. during his time at UI and had been a member of the New Mexico State Bar since 1939.[21] Poldervaart finally earned a J.D. with "high distinction" in 1953 after attending summer semesters at UI College of Law between 1949 and 1953.[22] Dean Mason Ladd of the UI College of Law stated that Poldervaart's "thoroughness, his capacity for research and his brilliance as a law student is exceptional . . . . [W]e regard him as a real credit to any law school and in the field of library work consider him one of the best men in the country."[23]

¶8 As a law school instructor, Poldervaart taught legal bibliography and research, legislation I and II, brief and argument, office practice, wills and probate, and international law.[24] As a scholar, he authored entries on New Mexico for Collier's Encyclopedia and Yearbook (e)-5 (di)-2.9 (a)0.52(y)1e8T80 (f)-10 (icpan <</Lang (en-US)/MC

remarked that Poldervaart had worked "diligently, intelligently, and with effect" as a librarian and teacher, served "willingly and efficiently" on college and university committees, had valuable connections with New Mexico lawyers and with librarians throughout the country, had published "soundly and with consistent regularity," and had written materials of a "quality that demonstrate mastery in his field."[31] UNM Academic Vice President, France V. Scholes, concurred, noting that Poldervaart's "publication record [was] excellent" and that "[a]s librarian of the law library, he ha[d] been very successful in building up its resources."[32]

¶9 In February 1958, Poldervaart suffered a stroke that prevented him from working for four weeks and from finishing his legal bibliography.[33] In addition, over Poldervaart's "vigorous objections" and the opinion of his doctor that he was fit to resume his teaching duties, UNMSOL Acting Dean Robert Emmet Clark and the faculty decided that he should not teach classes during the fall 1958 semester, "despite any affirmations of medical men to the contrary."[34] In a letter to UNM President Tom Popejoy, Poldervaart complained about being relieved of his teaching duties for the fall. He further alleged that UNMSOL had failed to give him the usual pay increase that accompanied an advancement in rank when he was promoted to full professor in 1956 and failed to give him a pay increase again in 1957. When he finally received a pay increase in 1958, Poldervaart wrote that it was only half that received by his UNMSOL colleagues of equal rank, thereby increasing the difference of compensation between himself and other UNMSOL professors to approximately twenty percent.[35]

¶10 According to Poldervaart, Clark had explained to him that the growing dif

¶11 In response to Poldervaart's letter, Clark wrote Popejoy and noted, "It seems to me that Mr. Poldervaart's letter to you raises one fundamental question: Are law librarians paid on the same basis as law professors?"[38] Clark inquired into the salary and status of law librarians at other law schools in the region and found that law librarians were not paid on the same basis as law professors, that Poldervaart was "among the best paid librarians in the region," even when compared to other law librarians with law degrees, and significantly, that most law librarians worked twelve-month rather than nine-month contracts like Poldervaart.[39] Clark concluded, "If he believes that he should be paid the same salary as a full professor because he has been given that title, the Administration may have to make some decision on the matter that will affect others on the University staff, particularly in the general library."[40]

¶12 On March 20, 1959, Poldervaart wrote Popejoy concerning Clark's suggestion that he be moved from a nine-month to an eleven-month contract.[41] Poldervaart responded:

> I was originally persuaded to leave the Supreme Court library to join the law school faculty with the understanding that I would be placed on the same nine months basis as the other faculty members. In fact, it was this consideration which served as the primary inducement for me to leave the court, though in doing so I was giving up a ten year benefit under the state retirement program.[42]

That same day, Clark informed Popejoy that UNMSOL no longer planned to have Poldervaart "teach regularly on the faculty" and stated that the salary that Poldervaart believed he deserved on a nine-month contract is what the law school believed his compensation should be on an eleven-month contract.[43]

¶13 In April 1959, UNMSOL offered Poldervaart an eleven-month contract at a reduced monthly salary and informed him that he would no longer be permitted to teach.[44] Clark explained to Popejoy that the decision to move Poldervaart to an eleven-month contract and to discontinue his teaching responsibilities was "it seemed to me, a fair way to make the valid distinction between Mr. Poldervaart's status and the regular full-time teaching members of the faculty."[45] Poldervaart informed Popejoy that while he was willing to move to an eleven-month contract, if properly compensated, he was not interested in giving up teaching.[46] Despite Poldervaart's extensive teaching experience, Clark and the faculty agreed that he

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38. Letter from Robert Emmet Clark, Acting Dean, UNM Law, to Tom L. Popejoy, President, UNM (Aug. 19, 1958) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

39. Id.

40. Id.

41. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Tom L. Popejoy, President, UNM; E.K. Castetter, Vice President, UNM; & Robert E. Clark, Acting Dean, UNM Law (Mar. 20, 1959) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

42. Id.

43. Letter from Robert Emmet Clark, Acting Dean, UNM Law, to Tom L. Popejoy, President, UNM (Mar. 20, 1959) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

44. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Tom L. Popejoy, President, UNM (Apr. 7, 1959) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

45. Letter from Robert Emmet Clark, Acting Dean, UNM Law, to Tom L. Popejoy, President, UNM (Apr. 8, 1959) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

46. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Tom L. Popejoy, President, UNM (Apr. 7, 1959) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

was to be demoted from a teaching member of the faculty to a mere "librarian member" of the faculty.[47] Clark concluded that Poldervaart possessed an "unrealistic view" of his status at UNM and that "his increased duties in further expanding our excellent library demand all his time."[48]

¶14 On April 8, 1959, Poldervaart rejected the terms that UNMSOL had offered him and made a counteroffer that included an agreement to accept an eleven-month contract, at greater compensation, provided that he be permitted to teach a two- or three-hour course per semester.[49] UNMSOL did not accept Poldervaart's counteroffer, and on April 22, 1959, he signed his first eleven-month contract.[50] Aside for teaching, Poldervaart never again served as lead instructor of a course at UNMSOL.[51]

¶15 On April 4, 1960, UNMSOL Dean Vern Countryman wrote, with the unanimous support of the law faculty, to express their concern with Poldervaart's administration of the law library.[52] Poldervaart was accused of improper use of library funds, inattention or lack of capacity for details of library administration, inability or unwillingness to supply faculty with information about library acquisitions, and irrationality of communications.[53] The letter concluded by expressing sympathy for Poldervaart's diminished health since his illness in February 1958, but that the law faculty had recommended a complete audit of the law library's financial books and accounts and threatened that unless Poldervaart was able to remedy his administrative deficiencies, the law faculty would seek a remedy from UNM administration.[54]

¶16 Over the next few days, Poldervaart provided a point by point rebuttal of Countryman's accusations concerning his incompetence as an administrator and concluded,

> I feel your remarks regarding incompetence in the administration of the library are unjust and unwarranted. I have built up a 50,000 volume library in my nearly thirteen years as librarian, and maintained the standard for ABA accreditation as best I could with our funds. I have always given the best service possible to the students, faculty and local attorneys.[55]

¶17

incompetence or gross insubordination or both.[56] By the end of the letter, Countryman had narrowed Poldervaart's responsibilities in the law library to cataloging new acquisitions, circulating new publications to the faculty, and installing pocket cards in books.[57] Poldervaart's status at UNMSOL had reached its nadir.

¶18 On July 21, 1962, Poldervaart wrote to UNM Academic Vice President Harold L. Enarson to complain that

> [e]ver since Dean Countryman has been with us, it has been apparent to me that unlike Dean Gausewitz, he is opposed to having the law librarian as a member of the law school faculty. . . . While I was on my Sabbatical during the first semester of the last school year various articles in the press, attributed to Dean Countryman, made it appear that I was not a member of the faculty but only a librarian.[58]

¶19 On March 26, 1963, Countryman wrote Popejoy to inform him that he intended to give Poldervaart an ultimatum—either apply for disability retirement or face removal proceedings for administrative incompetence.[59] In this letter, Countryman revealed how he learned that in 1959 when Poldervaart was moved from a nine-month to an eleven-month contract, his designation was changed from "professor of law and law librarian" to simply "law librarian" and how this change of designation was intended to deprive Poldervaart of his tenured status.[60] Countryman doubted that a change in contract designation could have stripped Poldervaart of his tenure and remarked that

> [e]ven if Poldervaart has tenure, however, I do not believe the problem is a serious a -29 ((t90 >>BD r)1

> look forward to seeing your final appraisal, which should be very helpful for law librarians everywhere.[62]

Nonetheless, on April 11, 1963, Popejoy gave Countryman permission to deliver his ultimatum to Poldervaart and to commence dismissal proceedings if Poldervaart failed to apply for disability retirement.[63] On May 2, 1963, Poldervaart applied for disability retirement.[64]

¶21 Poldervaart died June 3, 1969. On June 6, 1969, he was memorialized by UNM general faculty. The memorial minute stated that

> Professor Poldervaart made important and lasting contributions to the Bar of New Mexico, to this University, and to the law school. His work, with very little budgetary support, in building the law library to a credible position was a truly remarkable accomplishment. Arie Poldervaart deserves a place of honor among those who have made this University a stronger, more useful institution, and he deserves a very special place in the history of the School of Law.[65]

Two years after Poldervaart was forced to retire, UNM librarians took up the fight for academic rank and equality with the teaching faculty, which was being waged on university campuses across the country.[66]

University of New Mexico Librarians' Fight for Faculty Status (1965–1969)

¶22 The UNM Library Committee began to discuss the matter of academic rank for librarians as early as the spring semester, 1965.[67] UNMSOL Head Law Librarian Myron Fink regularly attended these committee meetings.[68] The committee's discussion of faculty status for librarians considered academic rank, tenure rights, sabbatical leave, and voting rights for professional librarians.[69] In May 1966, the Library Committee agreed to refer its recommendation of academic rank for professional librarians to the UNM Administrative Committee.[70] The issue languished there until May 1968, when University Librarian Davis Otis Kelley asked the Faculty Policy Committee (FPC) to take up the question.[71] At the time, UNM had no

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62. Letter from Harold L. Enarson, Acad. Vice President, UNM, to Arie Poldervaart, Law Librarian & Professor of Law (Mar. 5, 1962) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

63. Letter from Tom L. Popejoy, President, UNM, to Vern Countryman, Dean, UNMSOL (Apr. 11, 1963) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

64. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Kenneth A. Davis, Educ. Retirement Bd. (May 2, 1963) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

65. UNM Faculty, Memorial Minute (June 6, 1969) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 3).

66. Branscomb, *supra* note 13, at v (1970).

67. UNM Library Comm., Meeting Minutes (Apr. 6, 1965)) (on file with UNM, General Library, Ctr for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 21).

68. See, e.g., UNM Library Comm., Meeting Minutes (Apr. 6, May 18, May 25, Oct. 14, 1965) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 21).

69. UNM Library Comm., Meeting Minutes (May 18, 1965) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 21).

70. Report of the Univ. Library Comm. (May 10, 1966) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 21).

71. UNM FPC, Summarized Minutes (May 22, 1968) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 6).

¶27 But to what school or department faculty would UNMSOL librarians seek appointments? Christopher clearly did not believe that any of UNMSOL librarians were worthy of appointment to the law faculty, although his assertion that “we may have others” suggested that he was open to the possibility of appointing a future rank and file law librarian to UNMSOL law faculty assuming he or she was quali fied (i.e., possessed a J.D.). However, the possibility of appointment to the law

> I did not want to rule out the possibility of "promoting" professional librarians to the rank of Instructor, Assistant Professor, Associate Professor, or Professor. Normally, we will use these titles only when one or more of our librarians also has a law degree but in an appropriate case the director of the library could well recommend that a person without such a degree might be given one of these ranks in an appropriate situation.[92]

In conclusion, Hart remarked, "I recognize that this response to your memorandum does not grant your request in full and that to some extent there are disadvantages to being employed by our library rather than the general University library. I trust that there are also advantages of being here rather than there."[93]

¶30 Dissatisfied with Hart's response, UNMSOL librarians sent a letter to UNM vice president for academic affairs, Chester C. Travelstead, requesting a ruling on "whether the action of the General Faculty in giving faculty status and rank to librarians of the General Library specifically excluded those librarians employed by UNMSOL Law Library."[94] According to UNMSOL librarian Sandra Coleman, Travelstead affirmed the law librarians' position concerning the scope of the general faculty's resolution and asked Hart "to resolve the issue of two different types of status for professional librarians on campus."[95] By December 1972, Hart and Fink had adopted the rank and file law librarians' recommendation to appoint UNMSOL law librarians to a separate law library faculty while they continued to hold out the possibility of appointing assistant and associate law librarians with J.D.s to the law faculty.[96] Throughout 1973–1974, the law librarians actively participated in the process of drafting, debating, and revising guidelines that were, at that point,

to gain appointment to the law library faculty were either an M.L.S. or a J.D., while

> The law school faculty formally requests that Ferrel Heady, President of the University, appoint a University-wide committee to review the advisability of professorial ranking of all professionals, including all librarians, within the University. The law school faculty has voted to grant professorial ranking to the law school librarians. However, that was done only because of the fairness involved in giving law librarians equal rank with other librar ians on the campus. To prejudice the law librarians is not acceptable. The law school faculty questions the organizational wisdom of giving professorial rank to librarians or any other professionals who are employed on a full-time basis at the University.[111]

¶35 On May 6, 1975, Heady acknowledged receipt of UNMSOL law faculty's resolution and reminded Hart, "As you probably know the granting of faculty status for librarians was action taken by the University Faculty. If this matter is to be reconsidered, I think it should be initially by the Faculty Policy Committee, rather than by appointment of a committee by the President."[112] Although the Faculty Policy Committee (FPC) did not revisit the "wisdom of giving professorial rank to librarians," the committee did address one of Hart's principal concerns, namely, the question of voting rights of UNMSOL librarians within UNMSOL, which shall be examined in detail in the next section.

¶36 On April 29, 1975, Hart forwarded the Law Library Faculty Guidelines to Travelstead. In an attached memorandum, Hart remarked,

> The Guidelines would establish a "Law Library Division." This would not be a department nor would it be a separate school. Both of those possibilities were considered and discussed but each seemed to present problems and have undesirable connotations. Under the cir cumstances, it would appear that a division is a far better solution. . . . All employees of the law school library would be members of the law library division. Full-time professionals would have teaching faculty status and be governed by the Faculty Handbook policies that relate to teaching faculty. Therng (en-US)/M1 (um)8 (s)5 (t)-5.9 (a 1 2 (a)7 99(e)4 (l)-3 (a)19 (t)6 (e

voting faculty at UNMSOL, was soon satisfactorily settled by an FPC pronouncement on the matter.

Voting Rights of the "Anomalous" Law Library Faculty

¶38 On October 8, 1975, the FPC took up the question of the law library faculty's voting rights by acknowledging their "anomalous position" and asking "where do they belong—with the General Library, General Faculty, Law, etc.?"[116] Three weeks later, FPC Chairman James Thorson wrote to UNM academic deans:

> The Faculty Policy Committee is currently undertaking a study of the thorny problem of voting membership in the General Faculty. As a first step, the FPC has accepted the principle that a faculty member must have voting rights in his or her department or division and school or college. The dual requirement would not apply to divisions, since they are not in colleges, nor to undepartmentalized colleges and schools.[117]

¶39 On October 31, 1975, Hart commented on the FPC's principle concerning voting membership in the general faculty:

> As you probably know, the law school finally followed the University in granting faculty status to professional librarian[s]. In taking this step, we spent close to a year in trying to determine exactly how this ought to be done. We concluded among other things that these individuals would not have voting rights in the law faculty and indeed would not become members of the law faculty. We also decided that they would not become attached to the library faculty at Zimmerman [i.e., the General Libraries' Faculty]. It also seemed undesirable to establish them as a separate "division" or as a separate "department." As a result, in a sense at least, they have no real home base comparable to individuals in other colleges and schools. I do not mean to imply that they do not have any governmental rights or responsibilities within the law library but it is just a unique situation. I would hope that whatever policy that you adopt will not disenfranchise these individuals. If it does, I would like to be heard on the matter in some way.[118]

¶40

were due, and counted law librarians as members of UNMSOL faculty when determining its representation on the UNM faculty senate.[124]

¶45 Instead, UNMSOL approval of the original 1975 Law Library Faculty Guidelines had merely created a new tenure-stream faculty within its undepartmentalized school.[125] Under the UNM Faculty Constitution, a school's voting faculty consists of all full-time members of that school's faculty holding professorial rank or lectureship.[126] By 2014, all of UNMSOL librarians were full-time employees and possessed a professorial rank or a lectureship. Accordingly, UNMSOL librarians possessed voting rights within the law school. Armed with this constitutional argument, UNMSOL librarians began to organize to fight for the right to participate in their school's governance. Along the way, they also articulated merit- and moral-based arguments to support their claim to voting rights in their school, specifically, the sea change in their professional responsibilities since the formation of the law library faculty and the school's own rich history of democratic and [illegible]

of both the voting faculty of the university and UNMSOL.[130] On the other hand, the 1972 voting rights policy extended voting privileges to faculty members who were not members of the voting faculty of the university, namely all instructors and visi tors.[131] In approving the 1972 voting rights policy, UNMSOL provided those who held professorial rank voting rights on appointment, promotion, and tenure deci sions regardless of whether they had tenure, and exercised its authority under the 1971 Faculty Constitution to extend voting privileges beyond the minimum required under the Faculty Constitution, decisions that represented a relatively inclusive approach to shared governance. Later, UNMSOL further extended voting privileges "upon all matters brought before the faculty" to student representatives,[132] all assistant and associate deans,[133] and emeritus faculty.[134]

¶48 During the fall of 2003, UNMSOL Dean Suellyn Scarnecchia attempted to reverse course on UNMSOL's long-standing practice of inclusiveness in shared governance. Under Scarnecchia's proposed voting rights policy, only the tenured

¶51 Threatening to derail the deliberations on this issue, however, was an unresolved question concerning whether UNMSOL was a departmentalized or unpartmentalized school. In other words, though the law library had never formally been established as a department of UNMSOL, had it become a de facto department of UNMSOL? There was some evidence to suggest that the law library was seen as a de facto department by UNMSOL, the law library, and UNM administration. First, law library budget requests consistently qualified the law library as a department of UNMSOL.[137] Second, employment contracts and promotion and tenure recommendations regularly identified the law library as a department of the law school and the head law librarian as the departmental chair, respectively. Finally, since at least 2007, the law library had conducted its own hiring, promotion, and tenure reviews and made its recommendations to the UNMSOL dean, without formal involvement from UNMSOL law faculty.

¶52 If the law library had become a de facto department of UNMSOL, should the law librarians' voting rights continue to be limited solely to governance issues within the law library? The law librarians argued that whether or not the law library was a de facto department of UNMSOL should not preclude the librarians from voting on issues of school-wide significance (e.g., curriculum, assessment and teaching, building and safety, and student awards) given the extent to which the responsibilities of law librarians had changed since the formation of the law library faculty in 1975. For example, most UNMSOL librarians now taught required cour >>BDC b(t)10 (uden o)12 EMC /Sle, mos1()]TJ ETl (ra) (, iogl)12 (tra7 (le)6 (,h

ments on the law faculty often still struggle to be seen by their academic peers as anything more than a second-class member of the law faculty.

¶55 This case study also reveals two significant professional gains accomplished by UNMSOL law librarians. First, UNMSOL law librarians may have been the first academic law librarians to advocate and accomplish the formation of a separate law library faculty as a means for professional law librarians to acquire academic rank and preserve their professional autonomy. UNMSOL law librarians began advocating for the formation of a separate law library faculty as early as the fall of 1971.[141] A 1973 survey of law library autonomy and law librarian faculty status made no mention of professional librarians achieving faculty status through their law libraries.[142] Then, in 1975, UNMSOL law librarians succeeded in forming a separate law library faculty.[143] Three years later, law librarians at thirteen schools held faculty appointments on separate law library faculty.[144] By 2009, the majority of law librarians with faculty status held appointments to separate law library faculty rather than general library faculty.[145]

¶56 In addition, UNMSOL law librarians became one of only a handful of other academic law librarian groups in the country to acquire equal voting rights at their law school.[146] They did so through a combination of merit-, moral-, and rule-based arguments. Charlotte Schneider has summarized the merit- and moral-based arguments.[147] She argues that it is only fair that librarians who teach, produce scholarship, serve on law school committees, and support the teaching mission and research interests of their law school community through research support, reference services, and collection development "deserve an equal voice with respect to law school governance."[148] UNMSOL librarians have contributed to this "movement of greater librarian inclusion and participation" in the shared governance of law schools by encouraging law librarians fighting for voting rights to consult university policies that have the potential to inform or even decide the question concerning whether law librarians should have equal voting rights at their law school.[149] The UNM Faculty Constitution bestows full-time law librarians holding professorial rank inalienable voting rights wi(p)4(l)-4(h)-3 92 89(s)-1 1 6 0 0 2 >>BDC BT 0.052 Tw 1

Remaking the Public Law Library into a Twenty-First Century Legal Resource Center*

Mark G. Harmon,** Shannon Grzybowski,*** Bryan Thompson,**** and Stephanie Cross†

This article reviews the current operations of Multnomah County, Oregon's public law library and assesses the feasibility of creating a legal resource and self-help center within the library. The article reviews common governance models of law libraries and common self-help models, supplemented by interviews with key stakeholders. We conclude that the county could greatly benefit from a self-help center and make recommendations of best practices.

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Introduction

¶1 For many years, a number of stakeholders have worked to devise ways to more effectively meet the legal needs of people in Multnomah County, Oregon. Multnomah's Law Library (MLL) is one county resource that could serve the changing legal needs of the community. Richard Zorza, an attorney who works on issues of access to justice, writes in a paper on twenty-first century law libraries that "this is a moment of opportunity for law libraries to transform themselves as lead ers in providing access to justice for all as part of a broad realignment of the legal system."[1] In 2012, Chief Juvenile and Family Court Judge Maureen McKnight and Presiding Judge Nan Waller of Multnomah County developed and circulated among a wide range of stakeholders a draft concept for a legal resource center that would provide information, resources, referrals, and support services for people with legal questions and needs. The concept paper generated much interest among stakeholders.

needs in Multnomah County, and professionals from other jurisdictions. The team did an exhaustive literature review of best practices and research related to law libraries and legal resource centers and interviewed fourteen individuals from out side Multnomah County, including law librarians, directors of legal service centers, consultants, and attorneys in seven other jurisdictions. Overall, these findings and recommendations are informed by the views of internal and external stakeholders and leading experts in the field. The team also reviewed state and national reports on pro se litigants, legal service centers, and law libraries.

Background and Historical Context

¶5 MLL "was incorporated in 1890 as a subscription library by a group of Mult nomah County lawyers. Since 1927 the county has contracted with MLL, a non-profit corporation, to provide law library service for the County's legal community and officials. It is also open to the general public."[3] The MLL meets the county's obligation under an Oregon statute that requires each county to operate a free law library or provide law library services at one or more locations that are convenient and available at reasonable hours.[4] The MLL receives approximately $950,000 per year in state funding to provide state-required legal resources to Multnomah Coun ty's 760,000 residents—including litigants, attorneys, and the general public. The MLL occupies roughly a 9000 square foot space within the current Multnomah County courthouse. County officials hope to rebuild or replace the courthouse within the next five to ten years, which will impact the MLL.

¶6 The Oregon Statutes also state that counties with more than 400,000 resi dents may contract with any law library association or corporation owning and maintaining a law library in the county at or convenient to the courthouse for the use of the library by the judges of the circuit and county courts, county commis sioners, district attorney, and all members of the bar.[5]

¶7 The MLL has amassed a significant collection of resources over the years. In addition to the space it occup0.6 ((o)0.6 58e007 Tw EMC3 (y co)11 (ur) t)-6 (/EMC3

happens in the state happens in Multnomah County, making it the de facto court for business law. Because of these factors, the MLL must meet a demand that no other court in Oregon faces. It also serves as repository for a variety of rare legal materials that are accessed by the state and other counties.

¶9

tance with locating and checking in and out materials, photocopiers and computer printing, stacks maintenance, and some filing. The part-time special projects librarian is responsible for reorganizing the treatise collection, reclassifying certain subject areas, and updating the online catalog. MLL also has two part-time library assistant positions. A seven-member board of directors with staggered three-year

fulfillment of its statutory charge but its central mission. On the KCLL's webpage, its mission is clearly stated: "Without access to information, there is no justice."[31]

Private (Nonprofit, Nonfirm) County Law Libraries

¶19 Private law libraries not affiliated with law firms or academic institutions also exist, but their mission, charge, and governing and funding structures often differ from county public law libraries. According to Laureen Adams and Regina Smith, private law libraries were the forerunners to the publicly funded law libraries that exist today and helped shape public attitudes about having law libraries serve the public. While the AALL provides recommended practices and governance structures for county public law libraries, no corresponding guidelines for private law libraries could be found during the course of this research. However, two of the oldest private law libraries in the United States—the Jenkins Law Library in Philadelphia and the Social Law Library in Boston—serve as examples of the private law library model in action.[32]

¶20 The Jenkins Law Library[33] was founded in 1802 and touts itself as the nation's oldest law library.[34] Similar to the Maryland [illegible]

¶22 The Social Law Library of Boston advertises itself as Massachusetts's premier and longest-enduring public/private partnership, an institution that, despite its private character, "provides vital legal research services that inform the three coordinate branches of the Commonwealth's government in fulfilling their respective 'public' mandates."[39] The Social Law Library has many of the same services and structures as the Jenkins Law Library: it is a 501(c)(3) structured and membership-based institution.[40] Yet there is one notable difference from the Jenkins Law Library: the public is not generally permitted to access the Social Law Library or use its resources.[41] The library will grant admittance to "pro se litigants, casual visitors, and academic researchers, as well as attorneys engaged in research, and will allow such qualified persons access to library materials."[42]

Where Does the MLL Fit?

¶

litigation, law, and legal procedure is not a new concept for many public law libraries. According to the Law Librarians' Working Group of the Self-Represented Litigation Network, "[m]any law libraries, especially public law libraries, have always served self-represented litigants as part of their mission." In a 2009 survey conducted by the Law Librarians' Working Group, twenty-nine law libraries surveyed identified programs that they provide to assist self-represented litigants.[51] Thus, delivering "self-help" or "legal resource" services is not wholly the purview of specially designated "self-help" centers; rather public law libraries have, and likely will continue to have, an important role in assisting pro se litigants.

¶35 Additionally, the idea of a "self-help center" or "self-help program" is not well defined. A 2006 report prepared by the Self-Represented Litigation Network, championing the cause, defined a "self-help program" in the most general terms. It defined a self-help program as a service or coordinated group of services that enhances the ability of self-represented litigants to secure access to justice by providing them with legal resources, which would otherwise be unavailable to them.[52] Yet the most recent survey from the Self-Represented Litigation Network admits "[t]here is no model or standard for a self-help center."[53] Instead there is "a variety of operating styles across the country."[54]

¶36 Further, many of the practices and services offered by such centers or programs overlap with the traditional functions of a public law library.[55] Scholarship on self-help centers often list services that are part of the traditional law library's core functions, such as legal research assistance, free computer access for online legal research, court forms and packets, staff to answer questions, and referrals to other programs.[56] Moreover, some public law librarians question whether the difference between traditional public law libraries and "legal resource" or "self-help" programs or centers is one of semantics: since there is not a strong definitional difference between the traditional law library and a self-help center, the real issue in some law librarians' minds is the notion that the word "library" represents an older, more outdated concept of information services delivery, whereas a "legal resource" or "self-help" center conveys a modern method of providing users with the information they seek.

¶37 But questions of form and semantics should not distract from the larger issue: namely, "[t]here is increasing understanding that both access to justice and effective court operations are greatly facilitated by services for those who represent themselves, and the need for the identification of best practices in such services is

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51. J M. B ., L S -H P S : A S L L P S -R L , S -H C 2 (Apr. 2014) (noting that "[o]f the 153 libraries answering the survey from 33 states and two other countries, provided services to self-represented litigants" (emphasis added)); see also L ' W G , S -R L N , D L -B S -H P (July 2009), http://www.aallnet.org/sis/sccll/docs/toolkit/directory.pdf [https://perma.cc/HX7G-HHSU].

52. Richard Zorza, The Self-Help Program: A Court-Based Solution for the Access to Justice Problems of Self Represented Litigants, Self-Represented Litigation Network (Feb. 9, 2006) (on file with authors).

53. B . , supranote 51, at 1.

54. Id.

55. Id.

56. Id.; Zorza, supranote 52.

licensed attorneys in library programs for pro se litigants to seek limited assistance from, (3) mediation programs, and (4) educational workshops and webinars.[65]

Best Practices for Law Libraries and Self-Help Centers

¶41 Much like there is no one model of self-help centers for public law libraries or courts to rely on in serving their pro se constituencies, there does not appear to be any one set of best practices for self-help centers that are universally agreed to by members of the law library, judicial, and legal aid communities. According to Charles R. Dyer, a current law library consultant and former director of the San

¶44 The number and quality of online tools to find legal information have improved significantly over the past decade. Numerous resources that used to be strictly accessible from libraries are available at near instantaneous speeds from virtually any location in the world by using a computer. For instance, the Oregon legislature and an independent organization provide the 2015 versions of the Oregon Revised Statutes for free online.[71] However, serious issues surrounding online tools remain: from accessibility to cost, from accuracy and completeness of information to the trustworthiness of sources. The Internet has proven that it is not a magic salve that can cure issues involving pro se access to or understanding information.

¶45 Indeed, many of the best Internet-based resources for accessing statutes, case law, and secondary legal materials remain prohibitively expensive and complex for pro se litigants to routinely use on their own. For example, Westlaw and LexisNexis are two of the most well-known and well-used legal research resources by individuals in the legal field. Yet a common complaint is that these services, as well as others that supplement and displace other hard volume collections of legal information, are often unaffordable for small law firms, let alone pro se litigants. The costs are only increasing as the firms routinely increase contract costs by several percentage points every year, which makes these services less accessible each year. Finally, other Internet resources are often incomplete in their information and unreliable in terms of accurately stating the law.[72]

¶46 One of the most basic needs of pro se litigants is access to the forms that they need to carry their legal dispute from conception to resolution in the courts. The Self-Represented Litigation Network states that "[s]imple, easy-to-use forms are essential for self-help programs and benefit both litigants and courts" by encouraging efficiency and clearly establishing the issues and procedures at issue in particular legal problems.[73] Though little hard data exists to demonstrate whether forms are a cost-savings tool for courts, there is compelling qualitative evidence that forms are helpful to the litigants themselves when trying to prepare "legally sufficient paperwork."[74]

¶47 The importance of forms for pro se litigants has not been lost on the majority of state jurisdictions or most public law libraries throughout the country. When asked what resources are most essential for a law library to provide for pro se litigants, stakeholders routinely emphasized the importance of forms. Further, in a 2012 survey the Texas Access to Justice Commission found that forty-eight states and the District of Columbia have standardized state forms available, with thirty-three states requiring their courts to accept those forms when litigants submit them to the court.[75] Oregon does not have standardized forms. Of all of the law libraries surveyed by the Self-Represented Litigation Network in 2014, nearly ninety-five

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71. Oregon Revised Statutes (ORS) 2015 Edition, https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx.

s/P4 (t)heights.gov/bills_laws/Pages/ORS.aspx)/Filter /FlateDecode /Length 3 0 R /Type /Page >> stream x]n 0 E{ ~ ` 0 (,)]TJ ET EMC

percent provide court forms to the public, with sixty-seven percent providing instructions on the forms.[76]

¶48 Providing access to available technology has long been a staple of the majority of public law libraries' traditional services. According to the Self-Represented Litigation Network, ninety-seven percent of 130 law libraries that responded to its 2014 survey stated that they provide public computers with Internet access to the public, with ninety-three percent offering access to paid online legal research databases and services.[77] Law libraries also serve as valuable access points for the public to use other essential technology including printers, copiers, scanners, and microfilm and microfiche readers and printers.[78]

¶49 Centralized websites providing access to legal information are another means by which law libraries and self-help centers can provide essential aid to self-represented litigants.[79] Such self-help websites are seen as a bridge between the self-represented litigant on the one hand and the information that he or she needs in order to have sufficient access to justice on the other. As the Self-Represented Litigation Network points out, "[w]ell-designed and comprehensive self-help web sites are highly effective in providing the informational component of access to justice. After significant initial development costs, they can distribute information widely with little additional or marginal cost other than those [for] ongoing updates and maintenance."[80] For those law libraries that provide such websites, their online information is often regarded as an essential resource for their jurisdiction's self-represented litigants as well as other community stakeholders to provide individuals with access to accurate legal information.[81]

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to the library's catalog, legal guides on topics that most commonly touch the lives of the self-represented, court rules and forms, and basic information on library hours and contact information.[83] The library's website also includes information on upcoming legal clinics held in the library's space but conducted by outside groups, such as the King County Bar Association,[84] library classes on topics ranging from how-to-file and legal research to how to guard one's online privacy,[85] and how to obtain traditional library services such as photocopier access, document delivery, and notary services.[86] King County's website further notes that it has used funds to purchase videoconference equipment to allow inmates and their families to confer ence with one another free of charge.[87]

Models of Self-Help Centers

¶52 The models that self-help centers take on vary considerably across the country. The effectiveness of any self-help center depends, in part, on implement ing the best model for the resources, patrons, and general needs of the county. The next section will explore the types of self-help centers, services, and resources employed by county law libraries and courts in jurisdictions comparable to Mult nomah County.[88]

Law Library–Based and –Operated Self-Help Centers

¶53 A survey by the Law Libraries' Working Group of the Self-Represented Liti gation Network (SRLN) examined the self-help services provided by law libraries and self-help centers across the country. As part of its survey, the Working Group identified three general self-help models: (1) a self-help center located within and operated by a jurisdiction's public law library; (2) a self-help center located within the public law library but operated by another entity (typically the overseeing court); and (3) a self-help center partnered with the law library through referrals and other services, but located outside of the library and operated by an external organization.[89] Other literature identifies the court-based and -operated self-help center as another model that jurisdictions have employed.[90]

¶54 According to the Working Group's report, the majority of identifp d.

¶58 Advanced-level law libraries continue to build on the basic and intermediate models by incorporating additional self-help center services into the law library's operational structure.[98] These additional expanded services include having an attorney on staff directing the self-help center's operations; providing videos, research guides, forms, and court practice tips; and working with the court and local legal services to improve self-represented litigants' experiences in the judicial system.[99]

¶59 While no single law library serves as the paragon of what a self-help-focused law library could be, several county public law libraries across the country have taken on the responsibility of developing effective self-help programs. The Travis County Law Library in Austin, for instance, has been hailed as a leader for transforming its services to be more beneficial to pro se litigants.[100] The library's self-help center, established in 2002 and operated by the library, provides many of the services that the AALL champions in a robust self-help center. Such services include reference attorneys employed by the library to assist family law litigants with filling out forms and attend uncontested dockets; technical service librarians; two central websites containing forms (both printable and web-based interactive), do-it-yourself guides, self-help videos, legal resource information, and links to outside legal and non-legal aid programs; and an in-house attorney and dispute resolution office.[101] Moreover, Travis County Law Library provides notary services and assistance with family law issues.[102] In delivering these services, the Travis County Law Library relies on in-house attorneys and clerks, legal aid attorneys, and volunteer mediators.[103] However, only the legal aid attorney is permitted to provide legal advice; all other employees and volunteers of the law library/self-help center can provide only legal information.[104]

¶60 Closer to Ortega Skid 18 (w (i)8 0 0 3 Tm [(L)-15 (6l2kn(31 8 (w L)-6 (i)4 (b)12 (ra

cierge desk staffing, they likely should not be the only staff available. Indeed, one criticism of the concierge desks' early performance was that they were staffed by AmeriCorps members in its initial run, who largely had no court experience and no knowledge on court forms, procedure, or even the location of various legal and

Increasing Access to Justice Through Digital and Online Materials

¶74 "Access to justice requires the ability to find the law. . . . Without ready access to research the law, lawyers and judges cannot apply the law and justice cannot be dispensed. Public law libraries make the law directly accessible to members of the public."[124] The explosion of digitally available resources and information over the past two decades has made the Internet an essential informational and educational resource for many. Significant amounts of material that were either confined to bound volumes or inaccessible due to distance are now readily available at the click of a mouse. The legal field has also been swept up by the progression of technology: online resources like Westlaw, LexisNexis, HeinOnline, and a myriad of other subscription and no-cost resources provide access to legal information that used to be contained primarily in bound volumes of regional case law reporters, state statutes, and secondary sources such as the Restatements and the American Law Reports.

¶75 Yet as noted elsewhere in this article, the Internet is not a cure-all for every access to justice or access to information problem that exists for self-represented litigants and attorneys. The perception that the Internet contains all the legal information that the represented and self-represented alike will need is both pervasive and incorrect. Much of the general public perceives little need for law libraries when so much material is available on the Internet. The Internet is a double-edged sword: it contains valuable information, and it contains false, misleading, and other spurious information. Statutory information is particularly problematic. Attorneys and legal researchers generally prefer to use print materials for statutes. A statute needs to be read in context to be fully understood.[125]

¶76 Further, while the Internet is a veritable treasure trove of data, many of the most essential legal materials that are available in some form online come at a heavy price. Public and nonpublic law librarians interviewed as part of this research explained that online legal services such as Westlaw, LexisNexis, and HeinOnline provide convenient digital access to the core legal materials that are essential to any law library's collection—for example, cases, statutes, and major secondary sources. Yet the ever-increasing costs to access these online resources show no signs of slowing. One law librarian described a feeling of being "at the mercy" of online providers to supply digital access to materials that libraries once used to keep physically on hand. And while a library owns the physical copies of legal materials on its shelves, it has no ownership to the resources it can access online; instead, the ever-increasing fees are merely for rights to access the material during a contracting period. Further, the learning curve required to use and search services are often steep for members of the public.

¶77 In addition, a host of legal materials vital for access to justice are simply "not available online."[126]

> Just a short list would include Oregon legislative history (older statutes, [Oregon Administrative Rules], minutes, exhibits, etc.), the majority of current and older secondary resources

(texts, monographs, treatises, hornbooks), superseded court rules, supplementary local rules, appellate rules and procedures, continuing legal education program course books, authoritative (citable) legal dictionaries and thesauri, authoritative medical dictionaries, older municipal codes and ordinances[127].

¶78 In the legal field, access to such historical materials is vital to the outcome of many cases, particularly when the law changes between the occurrence of the ¶ portious or criminal act and its adjudication[128]. If individuals are unable to find out what the state of the law was at the time of the events central to their case, their

meaning they may not be able to use electronic resources to find the information they need. Indeed, members of the public who come to law libraries to access computers and online resources often face steep learning curves. Beyond usage issues, the basic fact is that most court materials are not available in a digital format. As noted above, some of the most basic legal research materials would no longer be accessible if the print copies were to vanish out of a library's collection.[131] The legal field's reliance on historical resources necessitates that past copies of statutes, legislative history, and case law be maintained in some form that is accessible in infinitum. For example, while microfilm and microfiche are considered to be outdated formats for archiving,[132] many critical legal resources and records such as past versions of the Oregon Revised Statutes can be obtained only in those formats. Toward that end, the Clackamas County Law Library recently purchased new microfilm/microfiche readers and printers to access important legal information and records such as past versions of the Oregon Revised Statutes maintained in those formats.

¶82 The costs of document conversion and digitization are very project specific and hard to quantify in the abstract. When using an outside document conversion vendor, costs can vary greatly depending on a multitude of factors, such as the size of the collection to be converted; the age, quality, and condition of the materials in question; whether the materials need to be returned after digitization or whether er 7

Legal Needs Assessment of Multnomah County Residents

¶91 Significant unmet legal needs exist in Multnomah County. This article is not the first to identify the unmet legal needs of individuals. Oregonians represent themselves in Family Court in sixty-seven to eighty-six percent of cases filed, according to the 2011 Oregon Judicial Department/Oregon State Bar report on family law forms and services.[134] According to judges and service providers in Multnomah County, self-representation occurs in about eighty-five percent of family law cases, mostly because the litigants cannot afford an attorney. In criminal cases, defendants who cannot afford an attorney are appointed a criminal defense attorney to represent them. However, this is not the case in civil cases. Pro se litigants face significant challenges navigating the justice system, which can put a strain on court operations.

¶92 This is not a new problem. In 2000, the *State of Access to Justice in Oregon* report found a significant need for civil legal services for low- and moderate-income people in Oregon that was not met by existing legal services.[135] Further, as reported in the Multnomah Bar Association's publication, *Multnomah Lawyer*, the Campaign for Equal Justice (CEJ) found that between "2000 and 2011, those eligible for free civil legal services in Oregon (125% of the federal poverty level) increased by 61.5%, the 8th highest rate in the nation. CEJ also reports at a time when resources for legal aid have declined, the increase in poverty has been staggering, leaving about 85% of the civil legal needs of the poor unmet."[136]

¶93 According to a paper by the Conference of Chief Justices, the civil legal problems of low-income people involve "essential human needs" including "protection from domestic abuse, safe and habitable housing, access to necessary health care, and family law issues including child custody actions."[137] Fewer than one in five of the legal problems experienced by low-income people are addressed with the help of an attorney. Often, low-income people who are experiencing problems do not know that they need legal help and face a variety of obstacles. Many do not know where to go for assistance, do not know that they are eligible for legal aid, have limited English proficiency or cultural or ethnic barriers, low literacy, physical or mental disabilities, and apprehension about the courts and the legal system.[138]

¶94 In addition to facing obstacles in navigating the court system, pro se litigants can also hinder efficient court operations. A 2010 survey of trial judges in thirty-seven states found that pro se litigants "failed to present necessary evidence, committed procedural errors, [and] were ineffective in witness examination," among other problems. Seventy-eight percent of the judges who took the survey reported that

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134. R OJD/OSB T F F L F S , at ii (Feb. 2011), http://www.courts.oregon.gov/Multnomah/docs/FamilyCourt/ReportFromTheOJDOSBTaskForceOnFamilyLawFormsAndServices.pdf [https://perma.cc/L9RC-CK38].

135. D. M D , T S A J O P I: A L N (Mar. 31, 2000), https://www.osbar.org/_docs/resources/legalneedsreport.pdf [https://perma.cc/S2B2-2NP4].

136. Richard Vangelisti, *Equal Justice & Our Profession*, M L . , Apr. 2014, at 1.

137. The Importance of Funding for the Legal Services Corporation from the Perspective of the Conference of Chief Justices and the Conference of State Court Administrators 2 (n.d., 2012?), http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Web%20Documents/LSC_WHTPR.ashx [https://perma.cc/UN3K-FA44].

138. Id.

"unrepresented litigants negatively impacted the effectiveness and efficiencies of the courts."[139]

¶95 At least four state-commissioned reports have acknowledged the issues and legal needs of low-income and pro se litigants in Oregon. These include a 2011 report from the OJD/OSB Task Force on Family Law on Forms and Services;[140] a 2007 report from SFLAC'S Self-Represented Legal Services Committee titled Self-Representation in Oregon's Family Law Cases: Next Steps;[141] a 2000 report titled State of Access to Justice in Oregon Part I: Assessment of Legal Needs;[142] and a report of the Oregon Family Law Legal Services Commission, 1990.[143] While the need is apparent and widely recognized, it appears that progress toward meeting this need with a systematic, statewide approach has been slow. However, judges, service providers, state officials, librarians, and attorneys in Multnomah County whom the PSU team interviewed had many suggestions on the legal and court-related needs of current and projected library users. Some suggested services are those that the MLL already provides (and stakeholders agree are necessary); however, most are services not currently provided.

Existing Necessary Services

¶96 As previously noted, about half of the users of the Multnomah Law Library are attorneys and half are members of the public. While most large law firms have their own law libraries, most of the attorneys in 0.034 Tw 11 0 0 11 58 483.0031 Tm [(in)

need assistance with legal and social services from other agencies that provide a variety of services to individuals with legal matters, such as Multnomah County Family Court Services of the Oregon Department of Justice Division of Child Support, but they often do not know where to go or how to begin.

¶98 While court staff at the service counters provide some of this information, it is not always consistent. Further, this type of customer service can be inefficient and slow down the court staff's normal work. Prior to May 1, 2012, family court offered family law facilitators at a self-help center to answer questions and review forms. However, due to budget constraints, this service was cut. Further, it did not address the needs of individuals or litigants with other civil court needs, such as foreclosure or dispute resolution.

¶99 Interviewees agreed that many people with legal needs in Multnomah County do not know where to begin. Informational classes and legal clinics on key topics that many litigants face provide the necessary background, legal, and procedural information to help people decide whether they can handle the matter on their own or should seek additional legal assistance. Further, such clinics may provide referrals for attorney services, social services, or other complimentary services to assist them with their legal matter. Workshops or clinics presented by self-help attorneys or paralegals under attorney supervision would provide general procedural and legal information in a group setting.

¶100 All legal procedures begin with completing and filing a form. However, we found that legal forms are not readily available, often difficult to obtain, and difficult to complete without legal assistance. Legal forms are not uniform or standardized across the state, and most stakeholders agree that they are not user-friendly. The variations in forms, complex instructions, and legal terminology increases the difficulty of understanding the forms and being able to fill forms out correctly the first time.

¶101 While some family law forms are available electronically on the Oregon Justice Department's Family Law Forms website[145] or on the Multnomah County Circuit Court webpage for Family Law Forms,[146] many pro se litigants find it challenging to find them online, to determine which form they need, to complete the form, and to file it appropriately. Others were not able to find what they needed online, either due to limited computer proficiency or limited computer or Internet access.

¶102 Alternatively, Multnomah County legal forms are available at Stevens-Ness, a law publishing company across the street from the Multnomah County Courthouse. Prices range from $5.00 for a paper form, to $9.95 for a printable electronic form, to $24.95 for an electronic form that purchasers can fill in using a computer. Prices are discounted for multiple paper copies, or limited time subscriptions to particular electronic forms, allowing a user to complete a form over time or access multiple copies of the form, if necessary. The compounding cost of the forms is a barrier for some low-income self-represented litigants.

¶103 Once self-represented litigants obtain the forms, they face significant challenges completing them. The forms are long (more than fifty pages for the forms and instructions for Custody and Parenting Arrangements for Unmarried Parents;

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thirty-six pages for the instructions and forms for Family Abuse Prevention Act Restraining Order) and written in technical language using legal terms. Other studies on the justice system in Oregon have made recommendations on forms—including the need to standardize them and make them more readily accessible in print and electronic formats. Further, the issues relating to forms arose in every interview with local stakeholders that the PSU team conducted.

¶104 A variety of legal assistance options are available in Oregon and Multnomah County, however; according to a 2007 report from the State Family Law Advisory Committee of the Oregon Judicial Department "approximately 600,000 low-income and elderly Oregonians qualify for the services of Oregon's legal aid programs [but] only about 18% are able to have their legal needs met by with Legal Services of Pro Bono programs."[147] Additional services, such as the Modest Means Program through the Oregon State Bar; sliding scale services; or no- to low-cost document review programs also exist. However, legal needs in the community outpace the availability of services.

¶105 Multnomah County has more than 760,000 residents, twenty percent of whom do not speak English at home.[148] About fifteen percent of Oregonians need language assistance to conduct their court business. The Oregon Judicial Department offers court interpretation services in ninety-one languages in all thirty-seven Oregon counties for several situations including in court, at the public court counter, or by telephone to communicate with OJD staff, mandatory court arbitration proceedings, and others. However, language barriers pose significant hurdles to trying to find information or navigate court procedures that, as noted above, are difficult to navi

courts from conception to completion. Based on the recommendations of the Self-Represented Litigation Network, forms that are effective for litigants and the court should cover all major legal issues and sides; be designed in a logical and understandable format; be written in plain language; allow for handwritten responses; be accompanied by detailed instructions that explain how to fill out the forms, define all legal terms used, and instruct on what to do with/how to submit the forms when completed; be provided in multiple languages for non-English-speaking communities; be available in paper form as well as multiple file formats; avoid obscure requirements that are potentially confusing for litigants, such as fonts, paper size/color, and cover sheets; be available at the courthouse and other physical locations as well as online; be available without cost; be universally accepted by all judges; and be accompanied by training from staff on how to fill out.[151]

¶108 For forms to be of the most use to the public, they need to be readily available beyond the courthouse's doors. Consequently, including forms in a compre
hensive self-heideud t.-5 (iga)9 (n)19.1 (ts, s)5 (uc)6 (h a)3 (s f)(e)-6 (adie f)-10 (i)-4.9 (l

library model. The county has formally adopted this model and has created a working group to begin designing the details of its operation.

¶110 A law library's natural character as a neutral, nonconfrontational space further marks it as an ideal location for a self-help center.[156] Indeed, for litigants, courts are the seats of judicial power that will be wielded either in or against their favor. For some self-represented litigants, having a self-help center, or even just self-help resources, away from that authority can be important. Further, a law library–based self-help center model is advantageous in that it has physical proximity to the les (p r)13 (c1 >>BDC BT -0p)7aatioer np r sourc (e)0.5 (110.9 (ui)12 (t)-3 (y

Be uniform and written in plain language. ey should be accompanied by detailed but easily understood instructions that inform the litigant on how to •ll out the forms, de•ne all legal terms used, and instruct on what to do with/how to submit the forms when completed.
Be available physically in the courthouse, in the self-help center, and other physical locations as well as online in a manner that is both user-friendly and interactive.
Be accompanied, where appropriate, by training or assistance from staff on how to fill out.
Be universally accepted by all judges throughout the Multnomah County Circuit Court.
Cover all major legal issues and sides.
Be allowed to be handwritten.
Be provided in multiple languages for non-English-speaking communities.
Avoid obscure requirements that are potentially confusing for litigants, such as fonts, paper size/color, and coversheets.
Be available without cost.

¶114 Providing procedural information from court staff along with legal information from volunteer attorneys on specific topics that are of frequent interest to self-represented litigants would increase the efficiency of the courts while providing valuable information to the public. Legal clinics would provide free, brief legal advice (not ongoing representation), which may help people decide whether to pursue their case with or without legal representation. To develop and provide these services, the self-help center may consider partnering with Lewis and Clark Law School, the University of Oregon Law School's Portland Program, or legal assistance programs in Multnomah County. Types of clinics might include separation/divorce, child custody, establishing paternity, expunging criminal records, child support, debt collection and defense, housing/rent/eviction, elder law, small claims, forms review, and dispute resolution/mediation.

¶115 A comprehensive self-help center should serve not only as an entry point to the judicial system but as a bridge. Though there are several free and reduced-

¶117Every stakeholder and external consultant that the research team spoke to indicated a strong need for human resources, including qualified, cross-trained staff, increased communications and visibility, staff who can provide procedural information and legal assistance, staff to help conduct research and use library materials, and a cadre of service providers to assist with individual needs.

¶118Currently, the MLL is designed as a large open space, primarily filled with books and several large tables for reading and research. Most of the individuals the research team interviewed said that their (id t)C /Span <</Lang (7 (y)73 e)-o n (n)4 (p)-

interest. City of Cleburne v. Cleburne Living Center[3] extended that doctrine by striking down a law enacted due to constituent bias against intellectually disabled people and implying that courts are justified in engaging in a more searching form of the usually deferential rational basis review in situations where animus is strongly suspected. In Romer v. Evans,[4] the Court looked at more objective factors, such as the extreme breadth of the law, to find animus behind a state constitutional amendment barring discrimination claims based on sexual orientation. Finally, in United States v. Windsor,[5] struck down section 3 of the Defense of Marriage Act, which defined marriage for purposes of federal law as a union between one man and one woman, finding that it was motivated by unconstitutional animus. While these cases are stories with which most students of constitutional law are generally familiar, Araiza presents them in a new and reasoned light, focusing on the role of animus in the Court's analysis and the Court's use of animus to provide a ground to justify a heightened—albeit usually unacknowledged—form of rational basis review.

¶3 Part II, "Building the Structure," builds on the insights gained from the close examination of case law in part I to answer permutations of the central question of the book: "What exactly counts as unconstitutional animus, and how do we uncover it?" (p.73). The analysis in these chapters probes issues important to the animus doctrine yet not explicitly addressed by the courts, including problems with using subjective dislike to find animus, what objective factors can be used to define unconstitutional animus, lessons that can be learned from Village of Arlington Heights v. Metropolitan Housing Development Corp.[6] and other case law related to discriminatory intent, when judicial review should be heightened in the presence of suspected animus, and how much evidence of animus is necessary to strike down a law. Araiza also briefly sets forth how his structured approach to animus could be applied to laws discriminating based on disability, transgender status, and sexual orientation. Finally, he concludes with a chapter explaining how animus was a central theme in Obergefell v. Hodges,[7] which held that the Constitution protects the right of same-sex couples to marry.

¶4 Animus is thorough yet concise, taking an in-depth look at an area of constitutional law that has often perplexed students and scholars, and explaining it in an easily understandable and readable way. The only point that could be improved is in the application of the animus framework to situations not yet addressed by the courts. To demonstrate the viability of his approach, Araiza could have considered specific laws rather than abstractly stating how such contexts are "promising candidate[s] for an animus analysis" (p.152). For example, how would an animus-based analysis of the recent spate of bathroom bills, which require all people to use the public restroom that corresponds to the gender assigned at their birth or the gender on their birth certificates, play out? Despite this minor criticism, Animus would be a welcome addition to any academic law library collection. Given the easy-to-read prose and detailed explanations of difficult concepts, the book would also be a good selection for undergraduate courses in constitutional law.

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3. 473 U.S. 432 (1985).
4. 517 U.S. 620 (1996).
5. 570 U.S. 744 (2013).
6. 429 U.S. 252 (1977).
7. 135 S. Ct. 2584 (2015).

Childs, Scott, Sibyl Marshall, and Carol McCrehan Parker. Tennessee Legal Research, Second Edition. Durham, N.C.: Carolina Academic Press, 2016. 192p. $29.

Reviewed by Jason Murray*

¶5 Tennessee Legal Research, Second Edition is part of the Legal Research Series published by Carolina Academic Press. The first edition of Tennessee Legal Research was published in 2007. Scott Childs joins the authors of the first edition, Sibyl Marshall and Carol McCrehan Parker. Like the previous edition, the second edition targets law students, although solo practitioners, paralegals, pro se litigants, and anyone with an interest in researching Tennessee law will find this book quite useful.

¶6 Many law students will also be pleased to know that the second edition is available as a Kindle e-book as well as in print. The authors made the second edition more concise and updated the information in the area of digital technology and research, noting that significant changes have occurred in the aearch, nt thw welt

Hilyerd, William A., Kurt X. Metzmeier, and David J. Ensign. *Kentucky Legal Research, Second Edition*. Durham, N.C.: Carolina Academic Press, 2017. 188p. $27.

Reviewed by Vanessa Sheeger

¶10 As part of Carolina Academic Press's Legal Research Series, *Kentucky Legal Research, Second Edition* contains some of the same information and follows the same outline as other books in the series: legal research basics, federal research, court rules, citations, and ethics. Beyond that, this guide offers state-specific information such as legal issues covered by the state constitution, cases, statutes, legislative history, administrative regulations, and secondary sources. This book goes even further than other books in the series in that it contains a chapter on online research as well.

¶11 The information presented in this book is intended for the learner—the law student, paraprofessional, layperson, and librarian. There is just enough background to put the information in context and illustrate the complexity of the Kentucky legal system without overwhelming or distracting the reader. The table of contents and index are both strong and make for easy navigation of the various topics. The chapters are very short (generally around ten pages) and are broken down into concise sections that are easy to read and understand. Footnotes back up any assertions made by the authors. The tables and figures are clearly expressed to offer a visual explanation of topics that are difficult to describe with words alone; the graphical representations of hierarchies and processes or procedures are especially helpful.

¶12 The majority of the guide focuses on print resources, some of which are readily available at academic or public libraries, while others require special access

ever, defines terms as they are introduced and keeps the information on a level appropriate for most readers. Overall, this is a valuable resource for any library that works with the public, students, or paraprofessionals interested in Kentucky law.

Lamdan, Sarah. *Environmental Information: Research, Access & Environmental Decisionmaking*. Washington: Environmental Law Institute, 2017. 343p. $35.95.

Reviewed by Mari Cheney*

¶15 With *Environmental Information: Research, Access & Environmental Decisionmaking*, Sarah Lamdan has written an environmental treatise that hits the sweet spot that some legal research books miss. It is thorough yet accessible, it could be a textbook in an environmental law research course, and it functions equally well as a handbook for practicing attorneys. One of the book's unique features is the material on how to find and use environmental information, including

defending the accused murderer. For anyone who enjoys mysteries and political thrillers, this is an enjoyable read. The characters and plot are richly developed, and there is constant action. Locke has a unique gift with dialogue. Her characters sound and feel real, and it is easy to get lost in their stories.

¶25 The disillusionment Porter struggles with is common in the legal profession, and though the book is a political thriller, Porter encounters a number of professional and ethical issues that could be used as examples in a legal ethics course or CLE. Beyond this, there is a lot to unpack in *Pleasantville*. The book highlights issues of race, segregation, money, class, and political power. The plot of the book is almost secondary to the light the book casts on the day-to-day realities of being black in America, and the continued repercussions of historical and current injustices.

¶26 Locke is a masterful storyteller. This book and her earlier novels are recommended additions to any law library seeking to provide access to a diverse collection of legal fiction.

Marx, Gary T. *Windows into the Soul: Surveillance and Society in an Age of High Technology*. Chicago: University of Chicago Press, 2016. 404p. $35.

Reviewed by Shannon Roddy*

¶27 *Windows into the Soul: Surveillance and Society in an Age of High-Technology* by Gary T. Marx is the culmination of the author's fifty-plus-year career as a sociologist studying surveillance and privacy. Marx focuses on what he calls the new surveillance. He defines it as "scrutiny of individuals, groups, and contexts through the use of technical means to extract or create information" (p.20). Much of the rest of the book focuses on examining that definition and exploring how the new surveillance and privacy relate.

¶28 This work does not seek to answer the question of whether surveillance is good or bad; rather, Marx focuses on identifying and defining the concepts surrounding surveillance. Marx avoids being critical of surveillance; instead he encourages readers to consider short- and long-term consequences of proposed changes in surveillance and privacy. The author mentions George Orwell in his introduction and notes that his work differs from Orwell's in three important ways: first, empirical evidence shows that societal trends are moving away from the world Orwell describes (with respect to literacy and human rights, for example); second, modern forms of control are softer and more manipulative; and third, Orwell did not anticipate a world in which private groups are potentially a larger threat to privacy than the state.

¶29 The most useful and accessible parts of the book are the fictional case studies peppered throughout. These short examples, drawn from amalgamations of real-life scenarios, drive home the esoteric points Marx attempts to make. For instance, an excerpt from a fictitious company's employee handbook is a composite of policies found in many workplaces. The company seeks to break down barriers between employees' home and work lives, encouraging employees to take care of their personal business through company-sponsored portals (shopping, health

Having noted in the preface that Wyoming lacks a state-specific legal encyclopedia, the authors take time to discuss the purpose of general legal encyclopedias and how they can benefit researchers. The authors point out in their footnotes that legal encyclopedias can lead to primary sources, but mention, “it is rare to find leads to primary law for certain states, such as Wyoming” (p.27). Wyoming’s lack of state-specific sources again hampers the authors in their discussion of books and trea tises, but the authors gamely discuss the categories of books (treatises, hornbooks, and nutshells) that can be used during research and provide examples of each. The University of Wyoming has published its law review under three different titles since its inception, so there is an ample discussion of researching law reviews in general and discussion of the Wyoming-specific law review in particular.

¶34 The chapter of the book that provides a lot of Wyoming-specific research material is chapter 7 on statutes, in which we learn about Wyoming’s legislature and its legislative process. Chapter 8 discusses legislative history, but once again, the authors encounter a familiar problem: “the number of resources is limited” (p.100). Despite this limitation, the authors dedicate a solid twelve pages to Wyo ming legislative material, and as an outsider who has never researched anything in Wyoming, I found this to be the most valuable part of the book.

¶35 I would recommend this book to Wyoming attorneys who are looking for a s

¶38 The book's arrangement is similar to Posner's Divergent Paths: The Academy and the Judiciary,[10] and shares like themes. Following a short preface, The Federal Judiciary begins with a relatively long introduction spanning forty-three pages. In his introduction, Posner expresses distress at the growth of interdisciplinary profes sors at elite law schools. He focuses on top-tier schools because they produce a

nalist jurisprudence with a skeptical eye. It makes for interesting reading even if the reader judges Posner's words as somewhat harsh.

¶42 Posner takes similar approaches to his review of the circuit courts of appeal in chapter 3 and the district courts in chapter 4, which are both much shorter than chapter 2. His case examples in chapter 3 are, not surprisingly, often from-the Sev

Crawford stumped the panel on a 1954 episode of *What's My Line?* and were revealed to be lawyers.

¶47 *Balancing the Scales* continues with examples of blatant bias and discrimination in practice from a lack of opportunities for employment and advancement, unequal pay, and denial of membership in legal groups. Director Sharon Rowen even describes a judge explaining that he ruled against her client because women should not be practicing law. Beyond official discrimination in legal education and employment, Justice Ginsburg points out that during her time as a student only one teaching building at Harvard had a women's bathroom, making the high-pressure atmosphere even more daunting for the few pioneers enrolled.

¶48 The film continues chronicling the rise of women as law students and professionals and the victories and setbacks along the way. In *Hishon v. King & Spalding*[11] the U.S. Supreme Court ruled that barring women from law firm partnership on the basis of sex was a violation of Title VII of the Civil Rights Act of 1964. However, the film points out, not long afterward an article in the *Wall Street Journal* described a wet t-shirt contest among female summer associates, also at King & Spalding.

¶49 From there *Balancing the Scales* gets to its most crucial point. Although women make up half of law school graduates and just under half of new associates, they represent fewer than twenty percent of equity partners in law firms. This gap means that for all of the gains accomplished throughout the twentieth century, there are still too few women in positions of power to truly change traditional legal practice.

¶50 Interviews in the second half of the film focus on the current state of law practice, with commentary from current partners and associates. While most blatant forms of sex discrimination have left the workplace, subjects describe the many ways that law remains a difficult work environment. Issues like appearance, child care, work-life balance, and personal presentation are explored, with an associate discussing her frustration at being told that she was both too timid and too forceful in her presentation and another associate describing a situation where a partner suggested that she attend a meeting in her "skimpiest bikini." Pregnancy is also discussed, with interviewees talking about their desire to have children and the choices they made.

¶51 While sex discrimination is the focus of the documentary, *Balancing the Scales* also examines issues of racial and ethnic discrimination. Leah Ward Sears, Georgia's first female and first African American Superior Court Judge and Supreme Court Chief Justice, was interviewed extensively, and her insights appear throughout the film. She, as well as other minority interviewees, discuss sometimes not knowing whether the challenges they face in law come from racial or gender

of women in Scandinavian countries, considered by most to be ultra-progressive. While Scandinavian policies on parental leave are far more generous and-expecta

or select chapters as needed and rest assured that they will be directed-to potentially relevant material in other chapters. The last eighty pages of the book are appendixes, with each appendix an example or exercise correlating to its respective chapter. Even chapter 10, a new chapter to this edition titled “Troubleshooting,” serves as a sort of index to the rest of the book organized by classroom problem,

¶68 The rest of the publication follows the same outline covering topics such as "Framing the Case: Parties and Pleadings," "Attacking the Pleadings," "Winning with Motions," "Ending the Case Without Trial," "Sanctions," and others. The publication also contains the Federal Rules of Civil Procedure in an appendix.

¶69 Those who are familiar with the Rutter Guides will find the layout of the content in each chapter very familiar. There are lots of sections and subsections contained in each chapter, and each subpoint has its own complex letter and number designation. While this does make it easier to direct someone else to the specific area of the text to reference, it can make the text a little more challenging to read. However, this publication breaks up the text in a slightly different format from the Rutter Guides, and the material is a little easier to read. It is helpful to have the numbers to aid with pinpoint citations, which outweigh any impact on readability.

¶70 This is a new publication for LexisNexis and it takes a complex, fundamental subject area and breaks it down into easy-to-use sections. This publication works well both for new practitioners who need an overview of the topic or who are doing federal litigation for the first time, as well as the hardcore, experienced practitioner who has a more technical question on how a rule might be treated or what procedure to follow in a specific instance. The videos are interesting and will likely find both fans and detractors depending on learning style. Since they are easily ignored, they are a nice benefit for those who want to use them without being too much of a distraction for those who do not care for them. The version of the publication on Lexis Advance has an appendix with a listing of the videos, which is helpful for those who just want to quickly review a topic. Each video also has a transcript underneath the video, providing another method of accessing the information.

¶71 This is a good publication for academic law libraries that want to provide their students with another good basic treatise on civil procedure. It is also a great resource for practitioners who are likely to end up in federal court. It is well written, helpful, and will likely become a fundamental resource in many collections.

LAW LIBRARY JOURNAL Vol. 110:1 [2018-7]

Practicing Reference . . .

My Year of Citation Studies, Part 1[*]

Mary Whisner[**]

Ms. Whisner begins a year of exploring how legal scholarship citation counts are created and viewed. What works do authors actually cite? Which legal sources are included? She shares her first findings here.

¶2 I can't pretend to have read all of the bibliometric studies of legal scholarship, although I think they're fascinating. They address many interesting questions: Who (if anyone) is using the articles that our faculties and student authors are churning out? What are the most successful articles? How long does an article stay in the limelight?

¶3 But I'm also aware of the limitations of citation studies. What is counted depends on the databases available and the way they are searched. Moreover, frequent citation is an imperfect proxy for usefulness, brilliance, or importance.[8] For example, suppose author A writes a great article about distribution of assets in one of the nine community property states when a nonmarital relationship breaks up. The article could be useful to practitioners in those states and interesting to family law scholars—but, despite its qualities, that article won't reach the stratosphere of citation counts because it's a narrow topic, made narrower by its application in only nine states. Now consider author B's article about constitutional interpretation. It touches on many hot-button topics (abortion, free speech, gun control, presidential power), but it's a little sloppy. Many of the people who cite it disagree with it. Later citations cite the critiques and add parentheticals that the article they're citing quotes author B. Author B's paper may have twice as many citations as author A's, but we shouldn't conclude that it is better.

¶4 Sometimes I come up with questions that might be addressed by a citation study. How many professional articles cite student notes and comments? How many student works cite student works? Is anybody citing legal encyclopedias? Has the widespread use of journal articles in electronic format changed citing preferences? (That is, if it's just as easy to find and download an article from a nonelite school's journal as from the *Yale Law Journal*, has the mix of cited journals shifted at all?) How often are law review articles cited in briefs later cited in a court opinion? And how often do courts find and cite articles on their own without the briefs having cited them first?

¶5 I have questions, but I don't have the knowledge, time, or skills to do big, complex studies. For example, Ian Ayres and Fredrick E. Vars created a dataset of 979 articles (excluding student pieces) from three journals over sixteen years, and

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Counts, Law Review Citation Counts, and Teaching Evaluations? An Empirical Study, 55 STAN. L. REV. 619 (2008); Brian Leiter, Measuring the Academic Distinction of Law Faculties, 29 J. LEGAL STUD. 451 (2000); Gregory Sisk et al., Scholarly Impact of Law School Faculties in 2012: Applying Leiter Scores to the Top Third, 91 U. CIN. L. REV. 838, 851–53 (2011); Gregory Sisk et al., Scholarly Impact of Law School Faculties in 2015: Updating the Leiter Score Ranking for the Top Third, 102 IOWA L. REV. 100, 109–16 (2015) [hereinafter Sisk et al., Scholarly Impact 2015]; Steinbuch, *supra* note 6; see also Bernard S. Black & Paul L. Caron, Ranking Law Schools: Using SSRN to Measure Scholarly Performance, 81 IND. L.J. 83 (2006) (adding SSRN's data about papers posted and number of downloads to the mix). Patrick Woods observes that a focus on these metrics can skew authors' choice of topic toward the academic and away from the practical. Patrick Arthur Woods, Stop Counting (or at Least Count Better), JOTWELL, https://jotwell.com/wp-content/uploads/2014/07/Woods-Stop-Counting.pdf (2014) [https://perma.cc/CF2J-L8HT]. Woods presented the paper in November 2017 at a

coded the articles by subject, position in the issue, and other characteristics. They examined citation counts (from

that not all environmental law articles would use the word “environment” in the title. At the same time, some titles with the word “environment” are talking about the “environment of business” or the “regulatory environment.”

¶9 I searched for environment* OR natural resource* OR pollut* OR conservation in the title. I sorted by “Number of Times Cited by Articles,” and I skimmed. I didn’t restrict the search to Notes and Comments and, in fact, did find some things labeled articles that were notes. I knew that my search was not comprehensive. For example, it would miss notes with “Endangered Species Act” or “Superfund” in the title, if the titles did not also use one of my search terms.

¶10 I did not think to use HeinOnline’s Subject field. Using the subject Environment/Conservation Law (in addition to searching for a common word, like “law,”

Table 1

Most-Cited Student Works in Environmental Law (June 2017)

Year	Student Work	Times Cited in Journals	Times Cited in Cases
1991	Rachel D. Godsil, Note, *Remedying Environmental Racism*, 90 M . L. R . 394 (1991)	157	2
1986	E. Joshua Rosenkranz, Note, *The Pollution Exclusion Clause Through the Looking Glass*, 74 G . L.J. 1237 (1986)	97	56
1983	Palma Joy Strand, Note, *The Inapplicability of Traditional Tort Analysis to Environmental Risks: The Example of Toxic Waste Pollution Victim Compensation*, 35 S . L. R . 575 (1983)	129	6
1970	J.Y.P., Jr., Note,		

line.[20] I searched for the word "law" in those fifteen journals, sorted the list by times cited, and skimmed.[21] I noticed "articles" written by students from schools other than the journal's home school. I decided to include these in the list because the point of the project was to find successful student writing. The top entries from the two tech lists are in tables 3 and 4.

¶14 It was only when I was creating table 4 that I noticed the coincidence that three pieces were from the same volume of the Columbia Science and Technology Law Review, and they each had the same number of citations. Closer inspection revealed that all of the pieces in that volume—by professional authors and by students—had the same citation count. 4 COLUM. SCI. & TECH. L. REV. 1. I began to suspect that all of them together had thirty-four citations, not that each of them did. So instead of relying on HeinOnline's ScholarCheck tally, I ran searches for the author's name and words in the title (table 5). My guess was half right: not one of the works had thirty-four citations. But I was surprised to see that the total was forty-four, not thirty-four. Surely there wasn't that much overlap in citing references. Plus there would be even more citations if we looked at the outside articles in that volume (that had the same citation).

¶15 I dug a little deeper and found that many of the citing references weren't in Bluebook form. For example, John Miller's piece is cited as:

> John Miller, "Beyond Biotechnology: FDA Regulation of Nanomedicine," [22] The Columbia Science and Technology Review, 2003, Vol. IV, p.2.
> John Miller, Beyond Biotechnology: FDA Regulation of Nanomedicine, [23] 4 COLUM. SCI. & TECH. L. REV. 5 (2002).
> John Miller, Beyond Biotechnology: FDA Regulation of Nanomedicine, [24] 4 COLUM. SCI. & TECH. L. REV. 1-2 (2002).
> J. Miller, "Beyond Biotechnology: FDA Regulation of Nanomedicine," [25] Columbia Science and Technology Law Review (2003): 1-35.
> John Miller, Beyond Biotechnology: FDA Regulation of Nanomedicine, 4 Colum. Sci. & Tech. L. Rev. 2, 2, 5, 16, (2002/2003), available at http://www.stlr.org/cite.cgi?volume=4&article=5

Table 3

¶16 You get the point. If HeinOnline's algorithm looks for Bluebook citation, then that would explain both the original miscount (attributing the thirty-four citing references to each piece with the same citation) and the undercount.

¶17 This potential for undercounting applies to all citation counts in the system. Let's go back to the most-cited student work in environmental law: Rachel D. Godsil, Note, *Remedying Environmental Racism*, 90 M. L. R. 394 (1991). Last June,

Table 5

Citation Counts for Student Works in 4 C . S . & T . L. R .

Work	Search in Law Journal Library	Times Cited in Journals
Richard Seth Gipstein, The Isolation and Purification Exception to the General Unpatentability of Products of Nature, 4 C . S . & T . L. R . 1 (2002–2003)	"(gipstein) (isolation and purification)"~25	17
Jeremy Friedman, Prying Eyes in the Sky: Visual Aerial Surveillance of Private Residences as a Tort, 4 C . S . & T . L. R . 1 (2002–2003)	"(friedman) (prying eyes)"~25	6
John Miller, Beyond Biotechnology: FDA Regulation of Nanomedicine, 4 C . S . & T . L. R . 1 (2002–2003)	"(miller) (beyond biotechnology)"~25	21

HeinOnline' ScholarCheck told me it was cited by 157 articles and two cases. In November 2017, it was 158 articles. When I click on the link for "Cited by 158 Articles," HeinOnline displays the search it uses to generate the list of citing articles: 158 results searching for ((("90 Mich. L. Rev. 394" OR "90 Mi. L. 394" OR "90 Mich LR 394" OR "90 Michigan Law Review 394") AND NOT id:hein.journals/mlr90.21)) in Law Journal Library.

¶18 Can I find any other citing references? Yes, I can. Here's my search: fifteen results searching for ("(godsil) (remedying environmental racism)" ~5 NOT (("90 Mich. L. Rev. 394" OR "90 Mi. L. 394" OR "90 Mich LR 394" OR "90 Michigan Law Review 394"))) in Law Journal Library.

¶19 These fifteen citing references were missed by HeinOnline's algorithm because the journals used different citation styles (as with the nanotechnology example), because HeinOnline's OCR of the original was garbled, or—in one instance—because the citing author got a page wrong.

Variant Citation Form Examples

R. Godsil, "Remedying Environmental Racism" (1991) 90 Michigan L. Rev. 394.[29]

Rachel D. Godsil, "Remedying Environmental Racism" (1991) 90:2 Mich L Rev 394.[30]

Godsil, Rachel. 1991. "Remedying Environmental Racism." Michigan Law Review 90:394-425.[31]

29. Elaine L. Hughes & David Iyalomhe, Substantive Environmental Rights in Canada, 30 O L. R . 229, 247 n.108 (1999).

30. Anna di Robilant, Common Ownership and Equality of Autonomy, 58 M G L.J. 263, 312 n.194 (2012).

31. Liam Downey, The Unintended Significance of Race: Environmental Racial Inequality in Detroit, 83 S . F 971, 1005 (2005).

Godsil, Rachel D. 1991-1992. Remedying Environmental Racism. Michigan Law Review 90 (2): 394-427.

Jumbled OCR Examples

90 MicH. L. R-v. 394

Table 6

Twenty Most Cited Articles from 2017R

Rank	Article Identifier	Citation	Cited by Articles (HeinOnline)	Other Counts
15 (tie)	15	Mark P. Gergen et al., The Supreme Court's Accidental Revolution—The Test for Permanent Injunctions, 112 C . L. R . 203 (2012)	83	WS: 38 SH: 86 KC: 91
15 (tie)	16	Oona A. Hathaway et al., The Law of Cyber-Attack, 100 C . L. R . 817 (2012)	83	WS: 49 SH: 77 KC: 83
17 (tie)	17	Jean R. Sternlight, Tsunami: AT&T Mobility LLC v. Concepcion Impedes Access to Justice, 90 O . L. R . 703 (2012)	82	WS: n/a SH: 78 KC: 92
17 (tie)	18	Peter L. Strauss, Deference Is Too Confusing—Let's Call Them Chevron Space and Skidmore Weight, 112 C . L. R . 1143 (2012)	82	WS: 59 SH: 90 KC: 92
17 (tie)	19	Jeanne C. Fromer, Expressive Incentives in Intellectual Property, 98 V . L. R . 1745 (2012)	82	WS: 27 SH: 79 KC: 86
20	20	Annemarie Bridy, Coding Creativity: Copyright and the Artificially Intelligent Author, 2012 S . T . L. R . 5	80	WS: n/a SH: 16 KC: 13

notes and comments from 2012, based on HeinOnline's ranking. Why 2012? I figured that five years was a good length of time to get cited,[36] but wasn't so far back in time that I wouldn't see any citations to YouTube or Twitter.[37]

¶22 In many fields, it would be easy to see all works an article cites because it's standard to have a list of references at the end. But legal scholars put all their references in footnotes (a system I'm generally very comfortable with—except when I want a simple list!).

¶23 What I'd like is a table of authorities, like at the beginning of a brief, with the different authorities split out by type—e.g., Cases, Statutes and Regulations, Secondary Sources. Both KeyCite (in Westlaw) and Shepard's (in Lexis Advance) enable researchers to see a table of authorities for a given work. Alas, they generally include only cases,[38] and I'm interested in the entire range of authorities cited. Web

36. In the sample of elite journals studied by Ayres and Vars, "[c]itations to a piece peaked 4 years after its publication, declined, then flattened out." Ayres & Vars, *supra* note 9, at 436. I read that after I'd chosen 2012, but it's nice to have my hunch validated.

37. YouTube and Twitter launched in 2005 and 2006 respectively. *Timeline of Social Media*, W , https://en.wikipedia.org/wiki/Timeline_of_social_media [https://perma.cc/6HDD-96QT].

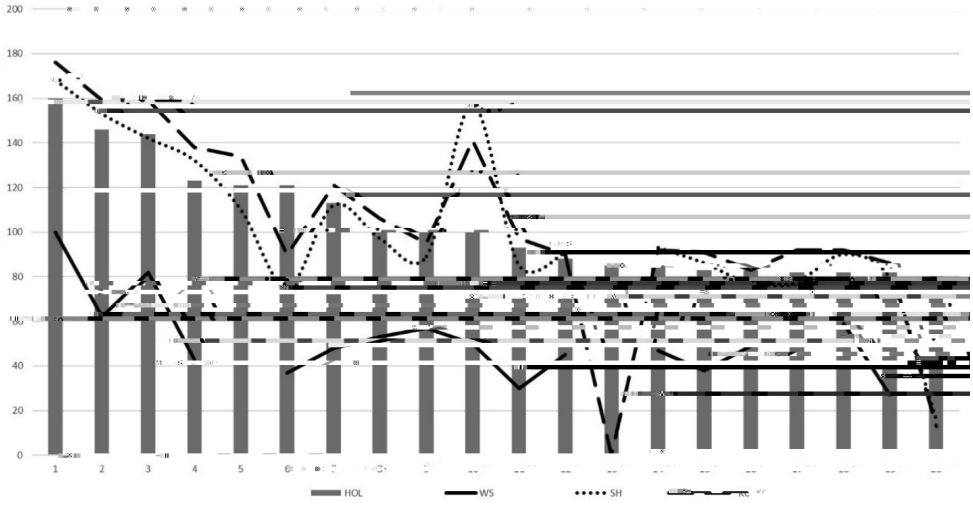
38. Shepard's and KeyCite include some IRS materials in the Table of Authorities for law review articles. For example, the Shepard's and KeyCite tables of authorities (both accessed Nov. 13, 2017) for Note, Taxing Private Equity Carried Interest Using an Incentive Stock Option Analogy, 120 Y. L. R . 846 (2008), each list seven authorities: three Revenue Procedures, two Revenue Rulings, and two Notices. The Note has ninety-four footnotes and does not cite a single case. Now I'm curious about how many law review pieces cite no cases. Perhaps that's a rabbit hole to go down another time.

¶27 I also can see that there are challenges in deciding how to count some types of authority. It's easy to count the number of law journal articles cited, but how should I count statutes? Do citations to five sections of a statute or regulation count as five citations or one? How about subsections? Should I count a citation to the Freedom of Information Act (5 U.S.C. § 552) separately from a citation to the Administrative Procedure Act (codified in scattered sections of 5 U.S.C., including §§ 551–559)? The ambiguities might make it too hard to come up with a meaningful tally. Maybe I'll just look at the blunt question whether an article cites statutes at all. Does the article cite a federal statute, yes or no? Does it cite a state statute, yes or no?

¶28 I created my lists of most cited articles and student works in HeinOnline, using its numbers for the times cited by articles. But when I looked at other online tools for counting citing references, I saw some sharp differences. For example, the top article in the list was cited 160 times according to HeinOnline, but only 100 times according to Web of Science. Shepard's and KeyCite were close, with 168 and 176 citations,[44] respectively. A graph showing the comparative ups and downs is in figure 1.

Figure 1

Comparison of Citing Reference Counts for HeinOnline, Web of Science, Shepard's, and KeyCite



Articles are ranked by the number of citations listed in HeinOnline's Scholarcheck. The solid line indicates citations listed in Web of Science. Shepard's and KeyCite results are shown with dashed and dotted lines, respectively.

44. The HeinOnline search was done Nov. 3, 2017. Web of Science searches were done Nov. 8, 2017. I generally searched for words in the title, adding other fields if title words were common. Shepard's searches (Nov. 8 and 10, 2017) were by each article's citation. The number is for "Other Citing Sources" (i.e., citing sources other than decisions), excluding "Court Documents" to count just law review articles and treatises. KeyCite searches (Nov. 8, 2017) were by article citation. The number is for "Secondary Sources."

¶29 Why would the systems vary so much? First, Web of Science just doesn't include as many law journals as the other three systems, so it misses citations. It has no entries at all for the articles that were published in the Columbia Business Law Review, The Crit: A Critical Studies Journal (University of Idaho College of Law),