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Notice

American Association of Law Libraries
Law Library Journal Author's Guide

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1. Content. *Law Library Journal* includes articles in all fields of interest and concern to law librarians and others who work with legal materials. Examples include law library collections and their acquisition and organization; services to patrons and instruction in legal research; law library administration; the effects of developing technology on law libraries;

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1. Title and Author Page. Provide a title that is brief, specific, and descriptive of the article's content. Below the title, provide the name(s), professional title(s), and affiliation(s) of the author(s), and the address of the author to whom correspondence should be sent.

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Possible Futures for the Legal Treatise in an Environment of Wikis, Blogs, and Myriad Online Primary Law Sources*

Peter W. Martin**

Law treatises published in e-book form have begun to appear. The article compares this latest format to alternatives, print and electronic, and traces the corporate and technological developments that have brought treatises to their current place and role among legal research tools. It concludes by reviewing a range of possible futures for this classic form of legal scholarship.

The Appearance of Law E-books

¶1 Recently Thomson Reuters and LexisNexis began releasing e-book versions of some of their treatises and other legal reference works, in the United States and elsewhere.[1] Wolters Kluwer has followed suit, publishing numbers of its Aspen

 The article builds on papers presented at the Law via the Internet Conference, Montreal, 2007, and at faculty workshops in 2011.

** Jane M.G. Foster Professor of Law, Emeritus, and cofounder, Legal Information Institute, Cornelew7U3lTmc0 (h/Span .7aP2int)-6thand at an .7aP2Ny wo

imprint law titles in e-book form.[2] Bloomberg BNA appears headed in the same direction.[3]

¶2 While the distribution strategies of these companies differ, the marketing materials of all four highlight a similar list of asserted advantages of this new electronic format over print, on the one hand, and online access to treatise-length commentary, on the other. Having works in e-book form, it is argued, allows one (1) to carry around many volumes' worth of material on a phone, tablet, or laptop; (2) to search a book's contents; (3) to move directly along its internal cross-references; and (4) with an Internet connection and subscription, to follow its citations of primary legal sources into the publisher's online system.[4] However, unlike books held within Westlaw, LexisNexis, or Bloomberg Law,[5] once loaded on a portable device, these do not require Internet access for use. The lawyer or other legal researcher can consult an e-book anywhere. Not stressed, but also true, is that these e-books don't require a subscription to the publisher's database. A lawyer who relies on Fastcase or Google Scholar for her case research can, nonetheless, use *Nimmer on Copyright* published by LexisNexis or Thomson's *Title Insurance Law* by Joyce Palomar. While she can't follow the *Nimmer* citation links into LexisNexis or *Title Insurance Law*'s links into Westlaw, she can insert them into a browser aimed at the online service of her choice. Lastly, the software platforms employed by all four publishers enable readers to personalize their e-books with project-specific notes, tags, and bookmarks.[6] For all of that, these remain, at core, minimally enhanced books, tied down by the print form for which they were originally prepared even more than their online counterparts. As a result, they fall short of what a commentary work of treatise-like scope might be in the present legal research environment. Not clear is whether it is in the interest of their publishers to transform them into anything more.

¶3 How the expert law treatise has evolved in the digital era has been as much a story of ownership and commercially grounded choice among competing revenue streams as of technology and fresh possibilities. This article begins by tracing the several stages of that still-unfolding story. It concludes with speculation about

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-library-63246-1.html. Most, although not all, of these e-books are clones of works also available in print. For an exception, see . , & (2011) (according to the website, "available as an e-book only," *see* http://legalsolutions.thomsonreuters.com/law-products/Other/The-Structure-Of-M--A-Contracts/p/100081985 (last visited Nov. 17, 2015)).

2. *See* , https://itunes.apple.com/us/app/wk-ereader/id546756775?mt=8 (last visited Nov. 17, 2015).

3. *See Reductions in Force in Employment Law, Second Edition*, , http://www.bna.com/reductions-force-employment-p17179877052/ (last visited Nov. 17, 2015).

the institutional arrangements that might foster the creation and maintenance of treatises free of the limits imposed by print and of the incentives that lead the major legal publishers to tie them to their proprietary online services.

Law Treatises at the Dawn of Computer-Based Legal Research

¶4 While the earliest law treatises predate the systematic dissemination of court opinions, by the early twentieth century this form of legal commentary had become an essential tool for lawyers and judges seeking to organize and understand the growing quantity of published case law. That was a period of monumental treatises, books that brought order to large sectors of the common law and caused authors' names to become synonymous with their fields—evidence (Wigmore), contracts (Williston), trusts (Scott), and so on. Brian Simpson's history of the legal treatise, first published in 1981, documented the importance of those works but concluded that they marked a culmination.[7] The title of his essay, *The Rise and Fall of the Legal Treatise*, summarized Simpson's view of the status and future of the genre. Undoubtedly he was right to conclude that individual works of such dominance were not likely to be seen again. It is also true that even at the time Simpson wrote, other forms and outlets for scholarship were attracting more of the creative energy of U.S. legal academics. But empirically he was flat wrong. Law treatises proliferated during the latter half of the twentieth century. Many were summoned by new fields grounded on statute rather than common law.[8] The new titles did not necessarily supplant old ones. Existing treatises were sustained through successive editions. In time these became the responsibility, in whole or part, of second- and third-generation authors and revisers. Reference works of this type expanded in scope and detail. Because of their very number, individual works and their authors grew less conspicuous. In time, most legal fields, from admiralty to zoning, were covered by multiple treatises marketed by the country's then still numerous law publishers.[9]

¶5 While coming in different sizes and formats, what distinguishes the legal treatise from other categories of commentary is that it aims to survey a complete field, providing organized, efficient, and relatively up-to-date access to the law on its many topics. Examples range from multivolume works covering the Uniform

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7.

Commercial Code, bankruptcy, or copyright to stand-alone books on practice

- Treatises synthesize the multiple strands of primary authority by identi-

they offered distinct advantages over the original print form. Importantly, they enabled full-text searching. Some of their references could be followed with a mouse-click. Copy and paste functions facilitated easy extraction of passages for insertion in notes or a brief. And to the extent the authors or publisher personnel took advantage of the medium's fluidity, electronic treatise editions could be kept dramatically more up to date. Nonetheless, these electronic works remained tightly conformed to the print original.

Online Sources and Treatises Brought Under Common Ownership

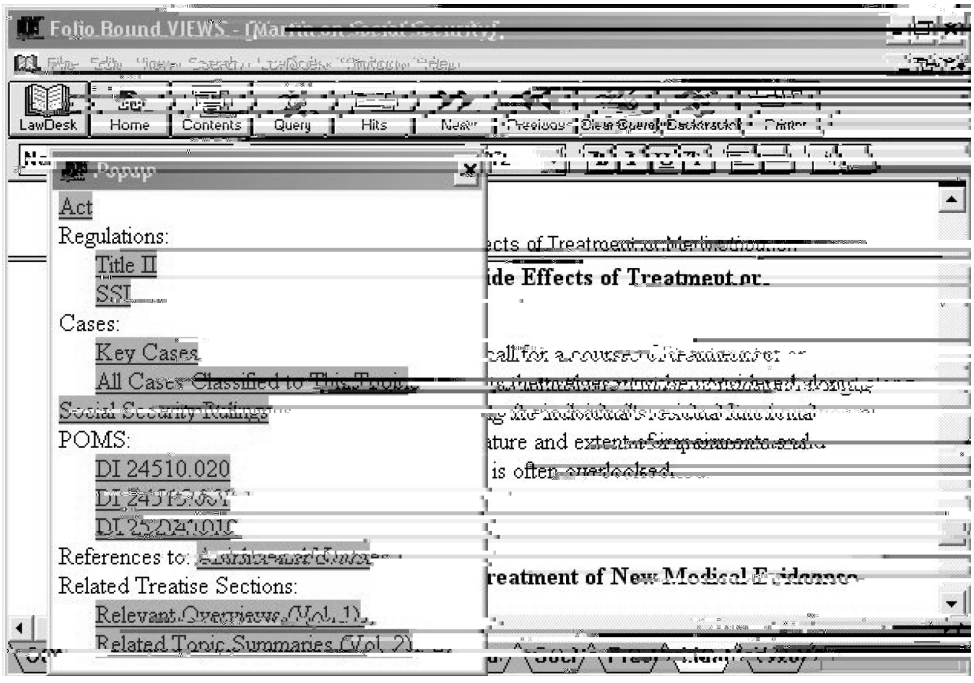
¶12

of Zoning and Planning (fourth edition), which was for years updated and revised by Edward H. Zeigler and is now in the hands of Sara C. Bronin and Dwight Merriam. *Rathkopf* came into Thomson's ownership through its acquisition of Clark Boardman in 1980. A third treatise in the field, *American Land Planning Law* by Norman Williams, Jr. and John M. Taylor, was acquired along with Callaghan & Company in 1979. Thomson also owns and publishes works on the zoning law of several individual states. They include Connecticut, New Jersey, New York, Pennsylvania, and Ohio.

¶14 Reed Elsevier (which became the owner of LexisNexis in 1994) achieved a zoning collection of its own through acquisitions of the Michie Company, publisher of zoning treatises by E.D. Yokley[22] and Daniel R. Mandelker,[23] and Matthew Bender, publisher of both a single volume by Nyal A. Deems and N. Stevenson Jennette III[24] and the massive *Zoning and Land Use Controls*

Figure 2

Martin on Social Security as It Appeared on the Social Security Plus CD-ROM



¶23 Thomson's Clark Boardman Callaghan subsidiary released *Social Security Plus* on CD-ROM in 1994 (see figure 2). While not the very first treatise to be issued in that medium, it was the first to be designed and written specifically for it. Critical to that initial product were the primary authority data available because of the contractual terms of the prior LexisNexis experiment. In addition to the core treatise, the 1994 CD-ROM held well over 9000 federal court decisions, the relevant statutes and regulations, agency rulings and manuals—all drawn from LexisNexis.[34] That allowed it to offer levels of interactivity that were, until quite recently, simply not possible using standard web technology to access content held by any of the online systems. By 1996 several other publishers of treatises and loose-leaf services were offering CD-ROM versions, either bundled with print or by separate subscription.[35] When they had the choice, lawyers of the period preferred doing research on CD-ROMs to the online services.[36]

¶24 Despite, or perhaps because of, the considerable market demand, there was no widespread exploration of what may have been the greatest advantage of the CD-ROM format: the opportunity it afforded to cut loose from the design constraints of

34. By 1999 the case count was 12,480, and due to Thomson's acquisition of West, the bulk of them were at that point drawn from Westlaw.

35. *See* , *supra* note 15, at 127–29.

36. *See* . ' , 1 71, 73 (2000).

print on the one side and the limitations inherent in large, decade's old mainframe data systems to create a new kind of specialized reference. Without a print original to which it had to conform, *Social Security Plus* was able to explore that space. Its design suggests some of the possibilities that, years later, remain largely untapped.

¶25 The introduction to this CD-ROM version of *Martin on Social Security*

Electronic Treatises and Online Primary Sources—Stage 2

¶32 Recall that these are not works to be read through. They are consulted, episodically, as needed. In electronic form, full-text search and hyperlinked navigation aids can dramatically speed access to the part or parts of a zoning treatise on point on any issue, such as the required amortization of a nonconforming use. Cross-references can be followed with a click. Once pertinent sections are found in an online work, there is no need to leave one's desk or computer to read the cited authorities. Electronic publication also permits better integrated and more frequent updates.

¶33 To recapitulate, over the past three decades the rights to existing treatises have been gathered from the previous array of independent and competing publishers into large portfolios held by two conglomerates (three, if one includes Wolters Kluwer, the owner of Aspen Publishers, and CCH, or four, if one includes the most recent entrant, Bloomberg Law[42]). These companies have embedded the treatises they own within comprehensive subscription services.[43] Online these commentary works have greater functionality but far less distinct visibility. And they are unavailable to nonsubscribers. The value of a Thomson Reuters treatise online cannot be separated from its Westlaw context. Its Matthew Bender counterpart is available only as part of LexisNexis. And even for subscribers, depending on the terms of their contract, consultation of treatise content may trigger a substantial additional charge. If the title is not included in a subscriber's flat-rate plan, accessing a single section may cost up to $80.[44]

¶34 In print, treatises can be consulted without incurring incremental charges, they can be shared by multiple researchers, and they can be used with the full spectrum of online legal research services. These include the many smaller services in the United States (both free and fee) that have in recent years succeeded in securing respectable market or use share with collections of primary authority. While the likes of Fastcase, Casemaker, and Google Scholar don't have online commentary, nor are they the targets of electronic treatise links, they can be used together with print treatises published by others.

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42. Bloomberg Law offers secondary sources alongside its primary law databases. These include a decade or so of law journals and treatises published by the Practising Law Institute (PLI) and BNA. *See generally* Robert J. Ambrogi, *Can It Be a Contender? Bloomberg Law*, 70 . . . . 15 (2010). Very recently the company launched a specialist service combining commentary and primary law material in the field of financial services law. *See Bloomberg Law: Banking*, , http://www.bna.com/banking-law/ (last visited Nov. 17, 2015).

43. As noted previously, *supra* ¶15, Wolters Kluwer's treatment of its treatise inventory has taken a somewhat different path. By the time it sold Loislaw, only a relatively small number of the company's legal titles were accessible through that service. Some of its strongest titles were bundled with appropriate primary law materials and offered online as specialist information services. *See, e.g.*, *Copyright Integrated Library*, & ., http://www.wklawbusiness.com/store/products/copyright-integrated-library-prod-000000000010032166 (last visited Nov. 17, 2015); *Products Liability Integrated Library*, & ., http://www.wklawbusiness.com/store/products/products-liability-integrated-library-prod-000000000010016234 (last visited Nov. 17, 2015) 0 9 253.2e Tw 9hg (laou

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tion or are simply habitual users of some other one. The publicly sponsored primary authority sites do not solve the problem. Although they represent an attractive option for some users, compared to the commercial services they lack comprehensiveness. Moreover, they do not present a consistent interface, and, in far too many cases, do not enable retrieval using standard citation parameters. It is for good reason that legal professionals who can will turn to one of the commercial services that gather, organize, and add value to public law documents.

¶47 A partial solution lies in links that provide the user with a choice of source. Limited examples already exist (see figures 4 and 5). Because most of the commer

¶49 A second form of integration suggested by the CD-ROM version of the

with enduring law treatises, publishers have also assured maintenance over time, even to the point of bringing in collaborating and successor authors as needed. These multiple forms of value, commonly bundled with or lying in back of books, have been shaped by significant needs of authors and information product consumers. Perritt's thesis was that electronic media make it possible for "traditional information supplier functions to be disintegrated and performed by multiple suppliers in the place of single authors or publishers or combined in different ways," the need for someone to perform them remains.[53]

¶52 To date, no clear examples of institutional arrangements that offer comparable levels of value to 3.9 (o)3 (nicsp-30 ( )0.a5. t8a)-14 (le au)3 (tho)3els oel(r func)6n ponl

intellectual production and distribution that have emerged on the web to the domain historically served by the law treatise. A few examples follow.

ongoing need to track and analyze fresh legal developments within its scope. They also demonstrate how a blog can be used to display the author's expertise and give greater visibility to the published work itself. Charles Hall's blog includes links to an order form for his book and also to his firm's site.[66]

¶55 The inherent structure of a blog is chronological. It is therefore well suited to updating and current awareness. While postings on specific topics inevitably accumulate over time,[67]

point ("rules" or "exceptions"); adding, editing, or vouching for authorities in support of a point; and inserting comments. The topical architecture and editorial oversight within a branch of law were to be provided by Spindle-designated editors, termed "branch managers." Navigation was highly interactive. Search was controlled by topical structure. An extensive set of icons were available to signal case outcome, jurisdiction, and the nature of a legal proposition (e.g., topic, rule, rule with exceptions, exception to a rule). Cited authorities were linked to the full text at multiple sites, both free (e.g., Google Scholar, the Public Library of Law) and some that charge a fee (LexisNexis, Westlaw, Fastcase). A utility facilitated the exportation of both text and citations to a user's research notes. Tellingly, Spindle Law failed to generate sufficient authorial involvement across the fields of law to attract a substantial user base. After a short span of time, it disappeared.

A more recent startup, Casetext,[84] has also pursued a crowdsourcing model of commentary production. It is far too soon to see whether its combination of distinct communities of interest[85] and helpful authoring tools[86] will enjoy greater success than Spindle and whether, if successful, it will break out of the scope and temporal limitations inherent in the blogging genre.

Concluding Reflections

¶59 U.S. law treatise publication has consolidated in a handful of firms. Their incentives all point toward integration of commentary material of all sorts into their respective comprehensive, subscription-based information systems. Locating a treatise on the web outside those systems could well offer would-be authors, individually or in large-scale collaborations, a broader audience, particularly if that placement did not deny users the features of their favorite comprehensive source whenever they followed one of its links to a cited case, statute, or journal article.

¶60 What are the odds that authors will respond and create treatises or successor forms of quality legal commentary on the open web? The answer lies ultimately not in the existence of a congenial information environment (it already exists) or appropriate information management tools and web utilities (they are not difficult to conceive or build), but rather on whether entities emerge that are able to recognize the opportunity and to create the institutional supports and incentives necessary to draw legal authors into a new form of sharing individual and collective expertise.

¶61 The dominant commercial legal information services, having accumulated vast quantities of commentary through merger and acquisition, commentary to which they hold copyright and which they pay to sustain, are not likely to permit any of those assets to escape to the open web or be linked to primary law collections other than their own. They are also in a position to offer financial incentives to freelance writers and to deploy their own editorial personnel to create fresh content in legal fields not yet adequately covered. Unquestionably, they have the capability

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to build or commission or reconfigure existing legal treatises in ways that break free from print constraints and are available apart from their comprehensive online libraries. But the brief history of the Internet strongly suggests that innovation is more likely to arise from other sources.

¶62 Putting out existing treatises in e-book form represents a clumsy attempt to map legal commentary publication onto the explosive growth in electronic distribution of other forms of book-length writing. Without far more sophisticated software, reconfiguration of content to fit this very different environment, altogether different pricing strategies, or a combination of all three it is not likely to change how lawyers, judges, and other professionals work with this kind of material.

¶63 It does seem probable that the fresh potential of the web, includ/Span2iin way3 (m)0

Who Owns This Article? Applying Copyright's Work-Made-for-Hire Doctrine to Librarians' Scholarship*

Paul Hellyer**

The Copyright Act of 1976 provides that works—including scholarship—written within the scope of employment belong to employers. But copyright law and actual practices widely diverge. The academic community generally allows librarians to claim ownership of their writing, even when that ignores copyright law. Mr. Hellyer supports copyright ownership by librarians, and calls for the law and common practices to be harmonized.

Introduction

¶1 Many librarians publish scholarship under the assumption that they own the copyright to their own work, but the ownership question is far from clear under copyright's work-made-for-hire doctrine. Generally, employers own the copyright to any works written by their employees acting within the scope of their employment.[1] Commentators have closely examined the question of who owns

 I am grateful to James S. Heller and Benjamin J. Keele for their helpful feedback.

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1. *See* 17 U.S.C. §§ 101, 201(b) (2012).

for purposes of copyright law, most librarians are employees, and their libraries or parent institutions are their employers.

¶7 For the small number of librarians who are unsure whether they are employees or independent contractors, we turn to the factors set forth in *Reid*. In that case, a nonprofit organization that served the homeless hired a sculptor to create a sculpture, and the parties later disputed the copyright ownership of the resulting work. In deciding that the sculptor was not an employee, the Supreme Court identified the following factors, none of which is determinative on its own:

> [W]e consider the hiring party's right to control the manner and means by which the product is accomplished . . . [;] the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.[7]

Because the Court found that the sculptor was not an employee, it did not reach the scope-of-employment question.

Does "Scope of Employment" Include Scholarship? Consider Professors' Scholarship

¶8 For most librarians, the key question is not whether they are employees but whether their scholarship fits within the scope of their employment. In deciding whether a work falls within the scope of employment, the main factors are derived from the Restatement of Agency.[8] They are (1) whether it is the kind of work the employee is employed to perform; (2) whether the work is done substantially within authorized work hours and space; (3) whether the work is actuated, at least in part, by a purpose to serve the employer; and (4) whether the employee is acting while subject to the employer's control or right to control.[9]

¶9 I found no cases or secondary sources that closely examine the application of these factors to librarians' scholarship.[10] But a large body of work discusses whether professors' (sometimes referred to under the broader term "academics") scholarship are works made for hire, and these analyses are a useful starting point.

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7. *Id.* (citing ( ) § 220(2) (1958)).

8. 1 . & , § 5.03[B][1][b][i] (2015) (citing ( ) § 228 (1958)).

9. ( ) § 228. The first three factors are in the main text of the section, while the fourth factor is referred to in comment b, which states: "As stated in Section 220 [of the Restatement (Second) of Agency], one is a servant only if, as to his physical conduct in the

issue at all. In dicta, the Seventh Circuit has observed that "copyright law gives an employer the full rights in an employee's 'work for hire' . . . unless a contract provides otherwise. The statute is general enough to make every academic article a 'work for hire' and therefore vest exclusive control in universities rather than scholars."[20] The court did not explain the reasoning behind its dicta. Secondary sources provide more detailed guidance, although they do not always agree. First, let's consider what the major copyright treatises say on whether professors own their scholarship.

¶14 Nimmer writes that the matter is t alonts tha(e)3 (rd)0., (")]TJ5maj alises ntntNFi

notes that K–12 teachers are not subject to the same "publish or perish" pressures as professors, and for that reason, he concludes that their scholarly work is less likely to be within the scope of their employment.[44] Of course, this point is a generaliza-

uled work hours, which they fulfill at the library. Some libraries permit or even encourage their librarians to work on scholarship during their regular workdays, while other libraries discourage or ban such activity. This makes the second factor very relevant to librarians and adds a great deal of clarity with respect to ownership of librarians' scholarship.

¶25 At first glance, the third factor (whether the work is actuated, at least in part, by a purpose to serve the employer) may be difficult to distinguish from the first factor (purpose of employment). A helpful distinction is that the first factor considers the employer's viewpoint (why did the employer hire the employee?), whereas the third factor considers the employee's viewpoint (why did the employee decide to create the work?). Unlike the first factor, the third factor is very similar with respect to both professors and librarians. Most of the reasons for producing scholarship are the same regardless of who is writing it—to serve a professional or scientific community if not the broader public, to advance knowledge, to further the author's career, to enjoy the pleasure of research and writing, and to benefit the author's institution.[49]

¶26 Let's stop for a moment to consider that last point. How does librarians' scholarship benefit libraries? For academic librarians, the reputations of their par-

with his supervisors do not amount to much; his employer does not exercise actual control. The balance of factors points against the columns being made for hire.

The Tenure-Track University Reference Librarian

¶37 Nancy works as a reference librarian at a university library and has regular works hours. She is on a tenure track and is required to publish scholarship to secure tenure and retain her position. Her supervisor has stressed that librarians' scholarship is important to the library. Prior to starting her current job, Nancy had never considered writing an article for publication, but now publishing has become an important goal for her.

¶38 Nancy writes an article about collection development for *College and Research Libraries*, working mostly in her office and mostly during regular work hours. She uses a computer provided by her employer, and she has been allowed free use of her library's interlibrary loan services and photocopiers. She is helped by a student research assistant who is paid by the library. Prior to writing, she discusses her topic with her supervisor, and prior to publication, she shares a draft with her supervisor, who suggests specific revisions. Nancy follows the suggestions because her supervisor's opinion of her scholarship is critical to her continued employment.

¶39 For Nancy, the application of the first factor is complicated. It is clear that her employer cares about her scholarship: if her scholarship is inadequate, she will lose her position; moreover, her employer has provided her with substantial resources to write her article, in particular, the provision of a research assistant. But it could be countered that Nancy's scholarship is what qualifies her for continued employment, and that it is not an actual purpose of her present employment—the actual purpose being service to patrons. On the first factor, Nancy is in the same ambiguous position as most professors. At most, the first factor weighs somewhat in favor of her work being made for hire.

¶40 As for the second factor, she has written the article mostly at work during her regular work hours, so that factor weighs in favor of her work being made for hire. On the third factor, Nancy never thought of publishing until she began her tenure-track position, so it seems clear that she is motivated in part (if not mostly) by a desire to serve her employer. Her supervisor even exercised a certain degree of control over the article. On the whole, it appears that Nancy's scholarship is made for hire.

Who Owns This Article?

¶41 Now to answer the question posed in the title: who owns this article? Let's consider the four factors one at a time. First, is it the type of work I am employed to perform? My library encourages its librarians to publish and engage in other professional activities, but it is not a requirement for my position, and we have no tenure track or ranking system for librarians. Although this article will be included in my library's online repository, the first factor weighs mostly against this article being made for hire. Second, did I create it at work during regular work hours? Yes, I worked on this article mostly in my office during slower periods within my regular work hours, so this factor weighs in favor of this article being made for hire.

Third, was I motivated at least in part to serve my employer's interests? Yes. Although I had mixed motives, I wrote it partly because my employer encourages publishing and I want to enhance my employer's reputation, even if I accomplish that goal in only a small way. Fourth, did my employer exercise control over the article? Although my library director reviewed the article prior to publication and offered his comments, I chose the topic and made all the final decisions as to its content. So the fourth factor weighs against this article being made for hire.

¶42 The first, third, and fourth factors put together do not give a clear answer. I believe the second factor (time and place) is decisive here. If I had written the article at home on my own time, I would say I own the article, but as it is, I conclude that my article is probably made for hire, and the College of William and Mary is its legal author. But under my employer's intellectual property policy, any copyrights the College owns in the scholarship of its employees are assigned to the creators.[55] That's why you see the copyright notice in my own name.

Part II: Recognizing Ownership: The Practices and Policies of Libraries and Librarians

¶43 Although libraries often have a strong legal basis for claiming ownership of their librarians' scholarship, they do not actually make these claims. To assess actual practices and policies, I reviewed written intellectual property policies at universities that are members of the Association for Research Libraries (ARL), copyright notices in articles authored by librarians, and submission guidelines in library journals.

¶44 As expected, I found that libraries and the broader academic community almost always recognize librarians as the owners of their own scholarship, but there were some surprises along the way. I found several policies at ARL universities that discriminate between librarians and faculty when it comes to recognizing copyright ownership, and I discovered that it is not uncommon for U.S. government librarians to treat their scholarship as works of the U.S. government.

Intellectual Property Policies at ARL Universities

¶45 Almost all major universities have responded to the work-made-for-hire doctrine by developing written intellectual property policies that purport to alter or clarify the default legal rules.[56] Generally, these policies preserve the tradition that authors own the copyrights to their own scholarship, regardless of what the law would otherwise provide. But are these policies legally effective? And does their scope include librarians' scholarship? To get a sense of what these intellectual property policies say, I reviewed all the policies I could find online from U.S. universities that are members of ARL. Before discussing these policies, we should first consider how the policies are supposed to work according to copyright law.

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55. *Intellectual Property Policy* § 3.2, . & (Jan. 6, 2015), https://www.wm.edu/offices/techtransfer/documents/propertypolicy.pdf [http://perma.cc/X32M-D74L].

56. I base this conclusion on my own review of intellectual property policies. *See also* Ashley Packard, *Copyright or Copy Wrong: An Analysis of University Claims to Faculty Work*, 7 . . & ' 275, 294–97 (2002).

¶46 Even if an employee's work is within the scope of his or her employment, it is possible for the employer and employee to alter the usual rules so that the employee will own the copyright. This can be done in one of two ways. The first method is set forth in section 201(b) of the Copyright Act, which provides that an employee's work will not be made for hire if "the parties have expressly agreed otherwise in a written instrument signed by them."[57] The other method is to simply transfer copyright ownership pursuant to section 204 of the Act, which requires that the transfer be "in writing and signed by the owner of the rights conveyed."[58]

¶47 Each method has its pros and cons. If the parties opt for the section 201(b) method, the work will not be made for hire and the employee will be the original author and owner. However, section 201(b) requires stricter formalities than section 204. Whereas section 204 transfers may be signed only by the transferor, section 201(b) agreements must be signed by both parties—the employer and the employee.[59] Also, section 201(b) specifies that agreements must be made "expressly," a term that does not appear in section 204. Nonetheless, it is possible for a university to create an effective intellectual property policy under section 201(b). If the policy is incorporated into an employee's written employment contract that is signed by both parties, it should meet the signature requirements of section 201(b).[60] To ensure that the policy qualifies as an "express agreement," the policy should explicitly state that the employee's works of scholarship are not works made for hire.[61]

¶48 Although the requirements of section 204 are easier to satisfy, the result may not be satisfactory. A section 204 transfer does not change the original authorship of the work; it merely transfers ownership from the original author (in this case, the employer) to someone else (the employee). A work that has been transferred to an employee under section 204 will still be a work made for hire, albeit one that has a new owner. This distinction matters because the Copyright Act treats works made for hire differently from other types of works. The duration of a copyright normally lasts for the life of the author plus seventy years; but if the work is made for hire, the term is disconnected from the author's life and is set at ninety-five years from the date of first publication.[62] More important, if an author trans-

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57. 17 U.S.C. § 201(b) (2012).

58. *Id.* § 204(a). Section 201(d) establishes that copyrights may be transferred, and section 204 specifies the method.

59. For a discussion of what constitutes a signature, see 1 & , *supra* note 8, § 10:03[A]; 2 , *supra* note 13, § 5:107.

60. Laura G. Lape, *Ownership of Copyrightable Works of University Professors: The Interplay Between the Copyright Act and University Copyright Policies*, 37 . . . 223, 248–50 (1992).

61. Using such explicit language is the safest approach, but it may not be necessary. At least one appellate court offers a relaxed interpretation of section 201(b). In *Weinstein v. University of Illinois*, the Seventh Circuit considered a policy that stated "a professor retains the copyright unless the work falls into one of three categories," including one that excluded "works created as a specific requirement of employment or as an assigned University duty." 811 F.2d 1091, 1094 (7th Cir. 1987). Although

fers his rights to someone else (such as a publisher), section 203 of the Copyright Act ordinarily gives him the right to regain ownership of the work after thirty-five years—except that section 203 is not applicable to works made for hire.

made for hire. Thus, the differences we see between U.S. government librarians and their nonfederal peers is a good illustration of how law and policy intersect in determining who actually claims (or disclaims) ownership of librarians' scholarship.

¶65 In addition to searching specifically for articles authored by U.S. government librarians, I also searched specifically for articles authored by librarians at the eight universities whose intellectual property policies do not recognize librarians as the owners of their own scholarship. If these universities and their librarians are taking their own policies seriously, we should expect to see that at least some of these librarians' articles have copyright notices in the name of the universities. To test this theory, I searched issues of *Law Library Journal* published since 2000 for articles authored by librarians at these eight universities.[95] I reviewed seventeen copyright notices in these articles and did not find a single one that was held in the name of a university. It seems that these universities are not enforcing the work-made-for-hire law or their own policies.

Submission Guidelines in Library Journals

¶66 Library journals have reason to be concerned about who owns librarians' scholarship. The journals all include copyright notices that routinely claim ownership by the librarians or the journals. At least some of these notices must be legally incorrect, a conclusion supported by the legal analysis in part I, as well as part II's discussion of the deficiencies in intellectual property policies. If an article is made for hire and the journal gets no license from the employer, the journal is infringing the employer's copyright by printing and distributing the article.[96] The journal would also be misleading its readers about who owns the articles, which could create further problems if readers ask permission to make copies.

¶67 To see whether the journals address the possibility that submitted articles are works made for hire, I reviewed the submission guidelines in *College and Research Libraries*, *Journal of Library Administration*, *Law Library Journal*, *Library Resources & Technical Services*, *Reference and User Services Quarterly*, and *Research Library Issues*.[97] I found that only the *Journal of Library Administration* addresses the issue at all, and then only briefly.

From Rome to the Restatement: S.P. Scott, Fred Blume, Clyde Pharr, and Roman Law in Early Twentieth-Century America*

Timothy G. Kearley**

This article describes how the classical past, including Roman law and a classics-based education, influenced elite legal culture in the United States and university-educated Americans into the twentieth century and helped to encourage Scott, Blume, and Pharr to labor for many years on their English translations of ancient Roman law.

of the twentieth century.[2] The new translation almost certainly will replace the poorly received English translation by Samuel Parsons Scott (1846–1929) published in 1932.[3] In the same era, Clyde Pharr (1883–1972) led a group (which included Justice Blume) that produced the only English translation of the Theodosian Codex.[4]

¶2 Each of these projects required countless hours of work over many years in the first half of the twentieth century. An observer situated in the second decade of the twenty-first century might well wonder why these men chose to devote such huge amounts of time to these efforts. What caused Scott, Blume, and Pharr to dedicate so much of their lives to translating ancient Roman law into English in that era? Were their activities related to a movement then prevalent in American law, or was each driven solely by personal interest? Also, what equipped these men for their arduous undertakings? How is it that three men from very different socio-economic origins were able, and inclined, to translate difficult, ancient Latin into English?

¶3 This article examines these questions and concludes that the answer to the first two lies between the polar extremes. It suggests that although Scott, Blume, and Pharr probably were supported and encouraged by enthusiasms then prevailing in an elite segment of the American legal community—including the Restatement movement—each man seems to have been motivated mainly by a sense of personal mission and a desire to connect himself to the history of Western civilization. As to the second cluster of queries, the article finds that despite their very different backgrounds, Scott, Blume, and Pharr all shared a classics-oriented education, similar to that of the American Founders, which made them value highly the Roman legal tradition and gave them the tools for translating its laws. Few persons in the present day would be able to undertake similar projects.

Rome and the Classical Tradition in Early American History

¶4 To understand why Scott, Blume, and Pharr devoted much of their lives to translating Roman law into English, we first need to examine the role the Roman Republic and the classical tradition played in American history from colonial times into the early twentieth century.

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2. The author of this article published Blume's translation online in 2008 and supplied the panel with the files it used as the basis for its new version. *See generally* Timothy G. Kearley, *Justice Fred Blume and the Translation of Justinian's Code*, 99

¶5 Most of the Founders received a classics-oriented education, whether at Latin schools or from tutors.[5] Colonial education for the elite was modeled on the English grammar school, which emphasized Latin and the classics.[6] Hence, most American leaders into the early 1800s could read Livy, Cicero, Justinian's Digest, and the like, in Latin, and they shared common cultural references.[7] The American Founders culled what they deemed to be most worthy from the thought of the founders of Western civilization and employed it in creating their new nation.[8] The American Founders were particularly enamored of the Roman Republic. Modern students of the Constitution acquire a vague sense of this when they read the *Federalist Papers*

demonstrated his own veneration of Roman heroes when, in the dire circumstances at Valley Forge, he staged a reenactment of Cato the Younger's resistance to Caesar and his death at Utica trying to save the Roman Republic.[12]

Roman Law, Civil Law, and Natural Law in Early America

Uses and Sources

¶6 In addition to learning some Roman law as part of their classics-based education, elite colonial and early American lawyers found Roman law, as well as Roman-based civil law and natural law, to be of practical use in court. Roman law was particularly relevant in admiralty cases,[13] but it also was employed in the law of mercantile suretyship, conflict of laws, and public international law.[14] In addition, early in American history jurists made extensive use of natural law,[15] which borrowed Roman law concepts.[16]

¶7 Moreover, the Founders and other Enlightenment thinkers were attracted to "scientific systems" generally, and they saw Roman law as such a system. Michael Hoeflich notes that early modern jurists were impressed by the orderly and logical nature of the arguments made by classical jurists in Digest fragments.[17] The Founders, and others who appreciated Roman law, considered it to be *ratio scripta*—reason in writing.[18]

¶8 However, the Founders also were quite human, and they were not above

raries. John Adams (1735–1826) was clear about this in his diary: "Few of my contemporary beginners in the study of law have the resolution to aim at much knowledge in the civil law. Let me therefore distinguish myself from them, by the study of the civil law, in its native languages, those of Greece and Rome."[20] Adams went so far as to refer to ordinary practitioners making a living litigating as "petty foggers" and "dirty dabblers in the law."[21]

¶9 To gain favor with Jeremiah Gridley and other elite Boston lawyers, whose support he knew he would need to be admitted to the Suffolk bar, Adams studied Justinian's *Institutes* and Cicero.[22] Not only did this strategy succeed for purposes of Adams's bar admission, but it led eventually to him being asked to join as a founding member of the Sodalitas law club, an association of gentlemanly Bostonian lawyers who read Cicero, the *Corpus Juris Civilis*, and other classics, together.[23]

¶10 James Kent (1763–1847), judge, law professor, treatise writer, and graduate of Yale College, used his classical education similarly.[24] Although by his own admission he was "a very inferior classical scholar" while at Yale, an embarrassing encounter with his classmate Edward Livingston a few years after they graduated motivated him to much improve his Greek, Latin, and French.[25] He confessed that later, as a judge, "I made much use of the *Corpus Juris*, and as the judges (Livingston excepted) knew nothing of French or civil law I had immense advantage over them. I could generally put my Brethren to rout and carry my point . . . ."[26]

¶11 As we shall see, acquiring Roman law knowledge as part of a gentlemanly and scholarly legal education, to distinguish its holders from ordinary attorneys, is a thread that runs through the history of Roman law in the United States into the twentieth century. Hoeflich writes that Roman law was part of the "high legal culture" in early America.[27] Classically educated lawyers considered themselves to be part of a "philosophical and legal profession."[28]

¶12 Finally, Roman law, and Roman-based civil law and natural law, flowed into

who had lived under the civil law before immigrating to America.[29] For instance, James Wilson, a Founder, a Declaration of Independence signer, and an original U.S. Supreme Court Justice, was born and raised in Scotland, and on account of his Scottish heritage, he argued for an American law that was independent from English common law and that incorporated much natural law.[30]

Possible Adoption of the Civil Law in the United States

¶13 Contrary to what likely would be the assumption of most modern Ameri-

¶15 It is impossible to know whether civil law actually might have been adopted in the United States soon after the Revolution. However, it is clear that Roman law and civil law had lost their appeal for most American lawyers by the middle of the nineteenth century.[38] There were several reasons for this. The decade of the 1830s marked a sea-change in American leadership, with the poorly educated populist, Andrew Jackson, succeeding the classically educated John Quincy Adams in 1829.[39] One aspect of Jacksonian democracy was an anti-elitist sentiment that involved lowering bar admission standards to accommodate the less educated,[40] who had either "read law" or learned it as a trade in their law office apprenticeships.[41] These new lawyers could not read Greek, Latin, or French and were not inclined to favor foreign law.[42] In addition, the anti-English feeling and the antipathy to English common law associated with it had dissipated as the Revolution and the War of 1812 receded from memory. The common law by then was less likely to be seen as an antiquated, feudal system and more as an ancient source of rights against the central government, whereas codes were associated with tyrannies.[43] Moreover, by this time, a sufficient body of American case law and writing had developed to obviate the need to look abroad for authority.[44]

Roman Law and Civil Law in the Later Nineteenth Century

¶16 However, Roman law and civil law continued to be of interest throughout the nineteenth century to American jurists in the codification movement, which began in the 1820s,[45] as well as to those in the movement to replace the legal apprenticeship system with law school education, which started around the same time[46] but took hold only much later in the century.[47]

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38. Reimann finds that "[a]round 1820, the die was cast against a wholesale adoption of the civil law." Mathias Reimann, *Introduction, in*

The Codification Movement

¶17 It is hard for a modern American lawyer to fathom the intensity and importance of the codification debate. "No technical issue of law reform so agitated the elite and academic lawyers of the nineteenth century as codification."[48] Many ordinary citizens complained of the complexity of law, and progressive forces wanted to achieve change through law, while lawyers were frustrated by the many conflicting statutes and case law among the states.[49] Jeremy Bentham (who coined the term "codification")[50] was active during the early part of this period and provided inspiration for many,[51] as did the French civil code of 1804.[52] David Dudley Field (1805–1894), the most prominent American codification advocate, was a New England aristocrat who knew Latin and Greek.[53] Field was well disposed toward Roman and civil law and believed American law was at a stage of confusion similar to that of France before Napoleon and the Roman Empire before Justinian.[54] Field's Code of Civil Procedure was partially adopted in New York in 1846,[55] and it and his Code of Criminal Procedure were enacted by many of the new western states following the Civil War.[56] However, the champions of true codification, in the sense of a *Code Civil*–style simplification and harmonization of law, lost to those who did not trust legislatures and who favored the judicial discretion, and flexibility, of the common law.[57] Moreover, the codifications that had been enacted were routinely amended by legislatures and construed like ordinary legislation by courts.[58]

Law School Education in the Nineteenth Century

¶18 Although law teaching in colleges began in the United States in the late 1700s, the first wave of law schools did not appear until the nineteenth century—from about 1810 to 1860.[59] Roman law played a significant role in the curriculum of some of these early law schools. In the second decade of the 1800s at the Univer-

48. Konefsky, *supra* note 40, at 95.

sity of Maryland, David Hoffman gave thirty lectures on Roman law,[60] and Daniel Mayes included Roman law in the Transylvania law school curriculum in the 1830s.[61] Others, such as Simon Greenleaf at Harvard, used Roman law for purposes of comparison with the common law.[62] As Stein points out, the leading figures of legal education in this period viewed the civil law "as the source of that academic method of legal study they hoped would replace the traditional practical learning."[63] However, as has been noted above, the practice of law as a profession was under attack in the third and fourth decades of the nineteenth century, and as a result, many law schools closed.[64]

¶19 Still, law school education (and the legal profession) rebounded in the second half of the century, and, again, Roman law accompanied it to a significant extent. There were 31 law schools in the United States in 1830, 51 by 1880, 61 by 1890, and a total of 102 at the turn of the century.[65] It was in the later 1800s that many universities added law schools.[66]

¶20 The reasons for this resurgence of the bar and of university-based legal education in the second half of the nineteenth century include the general institutionalization and industrialization of life in America and an associated interest in "scientific" progress in all areas of life,[67] as well as a reform movement in law and government that also led to the organization of the American Bar Association (ABA) by an elite group of lawyers in 1878.[68] Tellingly, one of the ABA's first actions was to create the Committee on Legal Education and Admission to the Bar, headed by Carlton Hunt, a Louisiana lawyer.[69]

¶21 The universities in which these new law schools were taking root looked toward continental European models, and especially to Germany, where law was seen as a science and the prestige of the professoriate was high.[70] Thus, it is not

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60. Lewis C. Cassidy, *The Teaching and Study of Roman Law in the United States*, 19 . . . 297, 301 (1930); *see also* Stein, *supra*ffma02.5489ƀBDCSrABsus(tat)3 (e188.7CT1_(e)-1.9 (9 (TomasEMC /Se(tat)3 (e1

surprising that many American law schools of the era viewed Roman law as the paradigm of the scientific legal system they ought to teach. The 1879 *Report of the ABA Committee on Legal Education and Admission to the Bar* reflected this view in referring to "the movement everywhere observable in favor of codification and the use of the symmetry and scientific accuracy of the Roman jurisprudence."[71] The committee, chaired by the civilian lawyer Hunt, lauded Roman and civil law at length[72] and ended by recommending that state and local bars lobby for the creation in their jurisdictions "by public authority" of law schools "whose diplomas shall . . . be essential as a qualification for practicing law" and in which "the Civil or Roman Law" was part of the curriculum.[73]

¶22 Absorbing Roman law also was viewed as a way of establishing law in the United States as a learned profession, as opposed to a trade, inasmuch as it provided a broad historical understanding of the law in its ethical, political, and economic aspects.[74] Introducing Roman law into the curriculum also was often associated with

starting in the 1890s.[80] Thus, at the turn of the twentieth century, conflicting currents were sweeping through the legal profession and legal education.

Roman Law in Twentieth-Century America

¶24 While the legal profession and legal education were thriving in the United States as the twentieth century began, they lacked cohesion. The elite bar and university law schools saw law as a learned profession for gentlemen, whereas the less affluent (who often did not have good educational backgrounds)[81] and the schools that served them tended to see law more as a technical skill that could lift life prospects and solve social problems. Economic interests were at stake in addition to these philosophical ones. Friedman puts it clearly: "These evening and part-time schools supplied the ranks of Greek lawyers, Jewish lawyers, Irish and Italian lawyers, and other lawyers who took care of clients in immigrant communities . . . . The upper-crust lawyers worrieris4BDC 7ha(p)6G11 (ie)-omma81-omm"Tnd od parr gentlemen,

codes."[100] Franklin expounded on this position at length in an article whose title clearly states his thesis: "Restatement as Transitional to Codification."[101]

¶31 Others, while not necessarily viewing the Restatements as a preliminary stage of codification, connected them with Roman law. One writer referred to them "as a sort of [Justinian] *Digest* without its statutory force,[102] while an ALI member making the same connection saw the Restatements as being more like the glossators' annotations on the Digest.[103]

¶32 Even the ALI officials who most stoutly denied that the Restatements were attempts to codify connected them to Roman law. Lewis compared the "difficulty and magnitude" of the project to the "codification and exposition of Roman law undertaken in the reign of Justinian,"[104] while Wickersham repeated the assertion made in the original committee report: "As a scientific, constructive legal work, there has been nothing to compare with it, not even the work of framing the Napoleonic Code, since under the direction of Justinian, the Roman law was given systematic expression."[105]

¶33 For reasons that will be described below, it is certain that Blume was aware of the Restateeed the ass(r)12 (e)]TJET 3f5 (t)-3 (io)3 (nFL[(o)32 (e)9 (nne)-2 (c)easo)(t)-3 (i

¶35 Illustrative of the elite bar's interest in Roman law in this era is the list of notables whose endorsements Pharr gathered in 1933 for his *Project for a Variorum Translation into English of the Entire Body of Roman Law*.[108] Fifteen of them were members of the American elite bar: officers or members of the ALI or of important

connected them to the ancient Greeks and Romans and that provided them with the basic tools they needed to translate ancient Roman laws.

Samuel Parsons Scott

¶37 S.P. Scott was born into a wealthy family in Hillsboro, Ohio, only ten years after the death of Founder and fourth U.S. president James Madison, so it was to be expected that Scott would be provided a classics-based education.[114] As already has been described, a Latin grammar school education had been the sine qua non for college-bound students, such as Madison, who were preparing for careers in the ministry, medicine, or law, in the Colonial and early post-Revolutionary era.[115]

¶38 Despite some efforts to make education in the United States more practical and to deemphasize the study of Latin and Greek, the classical curriculum of grammar schools and colleges remained much the same into the first decades of the 1800s.[116] Latin grammar schools gradually gave way to "academies," which taught Latin and Greek less intensively but that still "retained the study of Latin, and usually Greek through the medium of English."[117] It seems that Scott attended such an academy in Hillsboro, Ohio, before going on to earn an A.B. degree from Miami University (Ohio), and Phi Beta Kappa honors, in 1867.[118] At Miami University, Scott's studies were heavily weighted toward the classics; according to his college catalog, twenty of the fifty-one required courses were on Greek or Latin literature or history (e.g., Heroditus, Greek History, Livy, and Roman history).[119] Scott's university education also included training in the classical art of rhetoric, and he gave a skillful valedictory address at his graduation.[120]

Fred H. Blume

¶39 Blume's background was much less privileged than Scott's, yet he also obtained the fundamentals of a classics-based education that made him later believe he could translate the Justinian Codex and helped equip him to do so. He was born in Winzlar, Germany (near Hannover), in 1875, where his parents, Wilhelm and Caroline, owned a small forty-acre farm.[121] Friedrich, as he was christened, almost certainly attended school, for long before then German states had mandated compulsory elementary school education.[122] While it is not known

that he knew some French.[123] The family's economic prospects must not have been good, even by the standards of that place and time, for each of the three sons eventually emigrated to the United States.[124]

¶40 In the United States, Fred (as he became) attended rural or small-town schools in several midwestern states while working as a farmhand.[125] He settled in Audubon, Iowa, where he graduated from high school in 1894, in a class of 13.[126] Yet he learned Latin even in that small-town high school, and he helped some of his classmates with it.[127]

¶41 The admission requirements of the State University of Iowa (now the University of Iowa) for the bachelors in philosophy, which Blume earned there in 1898, prove that high school education in Iowa must have been rich in the classics. It is not known which set of requirements Blume qualified under, but both courses included Group I, Ancient Languages. The Philosophy A Course entrance requirements consisted of seven or nine terms (depending on their length in the applicant's high school) of ancient languages, including Latin grammar, Caesar (four books), Cicero (four orations), Virgil (six books) with prosody, Latin prose composition, Greek grammar, and Xenophon's *Anabasis* (two books). Taking the Philosophy B Course path allowed a student to substitute science or modern languages (German or French), but B Course students still had to take fifteen credits in Latin during their first year at the university and nine in ancient history, and in the second year they had to pass fifteen hours of Latin or French.[128] In short, regardless of which set of requirements he satisfied, Blume could not have earned his degree without having studied a significant amount of Latin, and some Greek,[129] and clearly this sort of background was not uncommon among state university graduates of the era.

¶42 Blume, like Scott, also learned the classical art of rhetoric. Blume was a member, and ultimately president, of a literary, or forensic, society called the Irving Institute, which was part of the university's Debating League whose teams engaged in both intra- and intercollegiate debate.[130] Blume remained proud all through his life of these endeavors.[131]

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123. Golden, *supra* note 121, at 203, 206; Frank Mantz, *Audubon High School Graduates of 1957 Can Get Inspiration from Blume Story*, - , May 16, 1957 (unpaginated photocopy; on file with author). The types of school were the *Gymnasium*, *Realgymnasium*, *Oberrealschule*, and *Volksschule*. , *supra* note 122, at 189–90. Blume may have attended the second or third listed, given that they taught modern languages. *Id.*

124. Golden, *supra* note 121, at 203–04.

125. *Id.* at 203–05.

126. *Id.* at 206.

127. Letter from Fred Blume, Justice, Wyo. Sup. Ct., to Clyde Pharr, Prof., Vanderbilt Univ. (Dec. 28, 1943) (on file with the Wyo. State Archives); Mantz, *supra* note 123.

128. , , 1 4 ר, at 12–19, http://hdl.handle.net/2027/uiug.30112076172102?urlappend=%3Bseq=16.

129. Blume's university Greek notebooks (heavily corrected in red) are among the materia76EMC 0.57/Spa

Yellow Flag Fever: Describing Negative Legal Precedent in Citators*

Aaron S. Kirschenfeld**

This study analyzes the accuracy with which descriptions of subsequent negative treatment are applied by online citators. A system making use of a hierarchical controlled vocabulary applying these descriptions appears marginally more accurate, but the citator's traditional role in legal research must be reconceptualized.

Flying the Flag: An Introduction

professionals bear the responsibility of questioning legal information vendors about the accuracy of their citator products. I also offer areas of further research for developing a more robust, rigorous literature on citators as legal research products. Finally, I present alternatives to traditional citators that might someday subsume their functions, including citation analysis tools based on visualization or on algorithmic extraction and presentation of subsequent negative treatment.

¶3 But let us start our inquiry with some first principles. The system of common law[1] as practiced in the United States depends on the doctrine of stare decisis, or in adhering to precedent established in earlier cases. Judges in state appellate courts rely on precedent from their own jurisdictions and are sometimes bound by it, but also consider precedent from other states, which can be seen as persuasive authority. On constitutional issues, state judges must defer to pronouncements of the U.S. Supreme Court. Judges in federal district courts look to precedent from the appellate court from the geographic circuit they practice within when interpreting federal law, and to the Supreme Court as well. Precedent from other circuits may also be persuasive. And state law precedent binds federal courts in diversity of jurisdiction actions.[2] In this system of overlapping, often complex, authority, lawyers must research and argue based on judicial precedent and its application to their particular clients' facts. Not only is finding precedent that supports clients' desired outcomes necessary, however; lawyers must also find precedent that calls

employees of the legal information vendors—to differentiate the market-leading citators at different points in time.[8]

¶9 Perhaps the leading, albeit dated, comparison of citators (following the introduction of KeyCite in the mid-1990s) is Taylor's 2000 article in *Law Library Journal*. He compared Shepard's and KeyCite for three factors: completeness, currency, and accuracy. He defined accuracy as "whether the system correctly identifies all citing opinions that have a negative effect on the validity or persuasiveness of the cited opinion."[9] Because he was assessing the citator holistically, this definition suited his purposes. But it more describes the concept of "recall" than "accuracy." Taylor's study, however, supplies a framework for talking about the types of information found in citators, and his vocabulary is discussed in this article's section on methodology.

¶10 That said, in other studies assessing the accuracy of a controlled vocabulary, the term is meant as a study in the accuracy of application—for example, were all articles about cholesterol-lowering drugs marked with one of the correct subject terms relating to cholesterol-lowering drugs?[10]

that Mart fixes on is between human-generated headnotes and algorithm-generated headnotes, and she studies how inclusive each type of headnote is in listing cases cited. Mart's article does assume that the Shepard's explanatory phrases are both generated or selected and applied by human editors, while the KeyCite explanatory phrases are likely generated or selected and applied algorithmically.[13] But this is merely an assumption based on a general impression of the data gathered, not on any otherwise verifiable information. And this point will not be a focus of the article, as it presents what is likely a distinction without a difference—the object of this study is the explanatory phrases themselves and whether or not they are accurately applied to the judicial disposition in a case, not how they were generated. Mart's conclusions ultimately echo those in earlier citator comparisons in the narrow sense: both products are flawed, but flawed in different ways.[14]

¶12 Some in the profession have questioned whether the companies that market citators ought to claim that their descriptions of subsequent negative treatment "validate" case law.[15] Updating case law or checking citations is no simple task. Regardless of what the citator claims about the treatment of a case, there will be misapplications or gaps in coverage. Yet substantial anecdotal evidence suggests that lawyers accept the companies' claims about validity more or less unquestioningly.[16] This perspective from actual lawyers adds urgency to our problem. Validity follows from perceived accuracy, and challenges to the role and uses of citators in attorney's legal research will be discussed following the presentation of this study's results.

¶13 Literature about standardized controlled vocabularies, judicial precedent, and citation indexing in general are most useful to this article's task. Studies of law-specific controlled vocabularies have focused on the difficult nature of selecting terms using literary warrant—or classification based on the content of the informa-

citators.[18] And while this article is not a user study, it does aim to address this gap in the literature.[19]

¶14 The literature on the application of standards, specifically ANSI/NISO Z39.19 2005, to collections has been helpful, although ultimately limited. As with some of the studies mentioned earlier, the measure of "accuracy" is more about consistency in application rather than correctness or perceived usefulness. The studies of standards tend to consider issues of whether application of terms is "correct" rather than "useful." Here, of course, we are concerned with the latter. That said, the standard is also relatively new, meaning that there have been few substantive studies on it since its publication and adoption by information professionals. The standard itself does, however, offer methods for assessing controlled vocabularies.

¶15 While the literature on Medical Subject Headings (MeSH) is well developed, it lacks relevance when applied to legal subject matter in one key respect: medical article and citation indexing does not, at least to this point, employ judgments of subsequent negative treatment.[20] This article might be able to shed light on an issue not yet taken up in other professional communities—which way is best to express when articles or hypotheses, like cases or points of law, are challenged, distinguished, or even discredited. And while law is not a science—and American writers in the field have to be given credit for acknowledging such, at least since the late nineteenth century—its peculiar crucible of precedent developed through trial and appeal can be seen as an analogue to work in more practice-oriented sciences like medicine.

¶16 Finally, a look into whether "subsequent negative treatment" has itself been satisfactorily defined is needed. In short, the literature on this topic is in one sense quite large, but for the most part focuses on the concepts of legal change or of "compliance," that is, whether cases actually follow other cases, and to what degree.[21] This literature tends to come from the political science community, and is probably not relevant here. However, compliance is a larger inclusive category for study of the common law doctrine of *stare decisis*, or judicial precedent. The legal

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18. For an interesting recent survey on lawyer use of information, see - & , , (June 2013), http://www.aallnet.org/sections/all/storage/committees/practicetf/final-report-07102013.pdf.

19. That said, David L. Armond & Shawn G. Nevers, *The Practitioners' Council: Connecting Legal Research Instruction and Current Legal Research Practice*, 103 . . 575, 2011 . . 36, provides an interesting, if sobering, take on the difficulty of engaging practicing lawyers in a discussion of legal resources.

20. Mark E. Funk & Carolyn Anne Reid, *id*,

explaining negative subsequent case law treatment, 116 of the 227 Yellow Flag cases

data. The one we are concerned with, however, is: which phrase, if any, is an accurate description of subsequent negative treatment for the Target Case?

¶27 To analyze descriptions of subsequent negative treatment, Target Cases having matching Citing Cases were collected, read, and assessed.[29] Absent other methods of conducting this type of analysis, this seemed most likely to yield useful, practical results for lawyers and legal information professionals. If the most negative Citing Cases match on at least two of the citators tested, it can be assumed that users should presume these cases present the same subsequent negative treatment. The question here is whether a hierarchical controlled vocabulary term, like those employed by Shepard's, is a more accurate description of subsequent negative treatment than the uncontrolled systems used by KeyCite.[30]

29. Note that the example from table 2 meets this criterion and was subject to the analysis described below.

30.

Results

¶28 In the 116-case dataset, 31 Target Cases had matching "most negative" Cit-

> **Criticized by**—The citing opinion disagrees with the reasoning/result of the case you are *Shepardizing*, although the citing court may not have the authority to materially affect its precedential value.
> **Distinguished by**—The Citing Case differs from the case you are *Shepardizing*, either involving dissimilar facts or requiring a different application of the law.
> **Overruled in part by**—One or more parts of the decision you are *Shepardizing* have been expressly nullified by the subsequent decision from the same court, thus casting some doubt on the precedential value of the case you are *Shepardizing*.
> **Questioned by**—The citing opinion questions the continuing validity or precedential value of the case you are *Shepardizing* because of intervening circumstances, including judicial or legislative overruling.[32]

¶32 According to Shepard's, the "criticized by" and "distinguished by" phrases should be assigned the Yellow Triangle signal, meaning "caution."[33] "Overruled in part by" should be assigned the Red Hexagon signal, meaning "warning."[34] "Questioned by" should be assigned the Q in Orange Box signal, meaning "questioned."[35] "Criticized by," "distinguished by," and "questioned by" are considered to be "common analysis phrases."[36] Thus it can be inferred that, as common phrases, these would likely be encountered by a researcher while he conducts legal research.

¶33 Seven KeyCite analytical phrases are used in describing the subsequent negative treatment in the final seventeen cases studied: "called into doubt by," "criticized by," "declined to extend by," "declined to follow by," "disagreed with by," "not followed as dicta," and "rejected by." As mentioned earlier, WestlawNext does not define these phrases. The phrases, in the large dataset, appear in combination with either a Red Flag or Yellow Flag, the only two symbols used by KeyCite. These facts support two propositions. First, that KeyCite's system of applying analytical phrases to cases is not an example of a hierarchical controlled vocabulary. Second, it will be more difficult to assess whether the phrases have been applied to cases accurately because the definitions of the phrases are necessarily somewhat subjective.[37] Words such as "disagreed"[38] and "doubt"[39] suggest common definitions while "dicta" is a legal term of art.[40] "Followed,"[41] "extend,"[42] and "rejected"[43] seem to be

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32. *Id.*
33. , , . (2012), http://www.lexisnexis.com/documents/pdf/20120605102055_large.pdf [http://perma.cc/YYC7-NCLM]. "Caution: Possible negative treatment indicated" is the full definition of the graphical signal.
34. *Id.* "Warning: Negative treatment is indicated" is the full definition of the graphical signal.
35. *Id.* "Questioned: Validity questioned by citing refs." is the full definition of the graphical signal.
36. *Id.*
37. I consulted two dictionaries in crafting the definitions that follow in this section: (1 -0.01 0.01 0 0

hybrids of words used commonly and as legal terms of art; they are therefore the most difficult to assess. I define the seven KeyCite analytical phrases as follows:

1. **Called into doubt by**—The Citing Case expresses uncertainty about the precedential value of the Target Case.
2. **Criticized by**—The Citing Case disagrees with the reasoning or result of the Target Case, although the citing court may not have the authority to materially affect its precedential value.[44]
3. **Declined to extend by**—The judge in the Citing Case has chosen to not increase the influence of the Target Case.
4. **Declined to follow by**—The judge in the Citing Case has chosen not to comply, conform with, or accept the Target Case as authoritative.
5. **Disagreed with by**—The Citing Case expresses a difference of opinion or lack of agreement with the Target Case.
6. **Not followed as dicta**—The court in the Citing Case will not accept the Target Case as authoritative because statements in the Target Case are considered to be unnecessary to the decision in the case and therefore not precedential.
7. **Rejected by**—The Citing Case declines to make use of reasoning from the Target Case.

¶34 With these definitions in place, we may finally assess how accurately the

¶36 The Citing Case, from a federal district court in the First Circuit, chooses not to apply a particular doctrinal rule used in the Target Case, from a federal district court in the Seventh Circuit. It fits the definition of "criticized by" and the definition of "rejected by," presented above. Therefore, the description of the subsequent negative treatment has been accurately applied.

Table 3

Seventeen Matching "Most Negative" Cases

Target Case Name	Target Case Citation	Flag Color on WLN	Symbol on LEX	Classification on WLN	Classification on LEX
Gregory v. United States	369 F.2d 185	Yellow	Q in Orange Box	Criticized by	Questioned by
McCurdy v. Steele	353 F. Supp. 629	Yellow	Red Hexagon	Declined to Follow by	Questioned by
United States v. DeCoster	487 F.2d 1197	Yellow	Red Hexagon	Called into Doubt by	Questioned by
Brandenburger v. Thompson	494 F.2d 885	Yellow	Q in Orange Box	Disagreed With by	Questioned by
Finley v. United States	404 F. Supp. 200	Yellow	Q in Orange Box	Disagreed With by	Questioned by
United States v. Dorfman	542 F. Supp. 345	Yellow	Red Hexagon	Rejected by	Criticized by
Melson v. Kroger Co.	578 F. Supp. 691	Yellow	Q in Orange Box	Disagreed With by	Questioned by
People v. Johnson	204 Cal. Rptr. 563	Yellow	Yellow Triangle	Not Followed as Dicta	Criticized by
In re A & C Properties	784 F.2d 1377	Yellow	Red Hexagon	Declined to Follow by	Questioned by
Barber v. National Bank of Alaska	815 P.2d 857	Yellow	Q in Orange Box	Called into Doubt by	Questioned by

¶37 But what about an instance from this group in which a descriptive phrase has been inaccurately applied? *Brandenburger v. Thompson*, 494 F.2d 885, a Target Case, is described in Shepard's as "questioned by" but as "disagreed with by" in KeyCite. Only the phrase from Shepard's accurately describes the negative precedent here:

> A third exception, known as the private attorney general theory, has been recognized by several lower courts when the expense of litigation may act as a deterrent to the bringing of private litigation deemed necessary to enforce important public policies. *See, e.g., Taylor v. Perini*, 503 F.2d 899 (6th Cir. 1974); *Fowler v. Schwarzwalder*, 498 F.2d 143 (8th Cir. 1974); *Brandenburger v. Thompson*, 494 F.2d 885 (9th Cir. 1974); *Knight v. Auciello*, 453 F.2d 852 (1st Cir. 1972); *Lee v. Southern Home Sites Corp.*, 444 F.2d 143 (5th Cir. 1971). In *Alyeska Pipeline* the Supreme Court expressly disapproved the use of the private attorney general exception in federal courts.[46]

The Target Case, we can see, is included by the Citing Case as part of a string citation of cases that have been implicitly overruled by a Supreme Court case. This kind of treatment is accurately described by Shepard's "questioned by" phrase, but does not match at all with what "disagreed with by," the KeyCite term, seems plainly to mean.

¶38 In the set of cases studied, eleven of seventeen, or 64.7% of descriptions of subsequent negative treatment in Shepard's were applied accurately as shown in table 4. The KeyCite system applied descriptions of subsequent negative treatment accurately in nine of seventeen, or 52.9% of cases. Neither citator applied descriptions of subsequent negative treatment accurately in two of the seventeen cases, or 11.8% of the time for this set as shown in table 5. While the sample size studied is small and no conclusions can be reached about the ultimate comparative quality of this aspect of either citator, these data do suggest that each system describes the actions taken in identical Citing Cases with dify

Thomson Reuters, and the case identified as “most negative” could each present

¶41 There are other indicia of accuracy in application descriptions of subsequent negative treatment: namely, the consistency with which cases are tagged with a cita-

Citations Service, exclusively from LexisNexis®, when it comes to validating research?" The answer? "It's a matter of trust."[52] Likewise, KeyCite materials tout "West's 125-year tradition of editorial excellence" and the company's "leading-edge technological expertise" in suggesting that users can "instantly verify whether a case . . . is good law."[53] Of course, as Wolf and Wishart point out, these statements are largely meaningless, if not misleading, marketing attempts to differentiate products.[54] It can be tempting to believe these kinds of statements based on the credibility of the source,[55] not to mention the cost of the product.[56] But savvy legal researchers know—and legal research instructors profess—that there is no sidestepping the need to read a case and use professional judgment to determine the precedential effect of later-citing cases. Still, citators are seen as essential components of legal research databases.[57]

¶45 In light of this study's results, researchers have even greater reason to doubt the adequacy of citators' determination. More troubling, perhaps, is the implicit boost that some instructional texts give to citators by identifying them as a "good starting place" or "invaluable resources." Indeed, if the graphical signals and the explanatory phrases cannot be trusted to be applied accurately—at best, approximately seventy-five percent of the time, or at worst, less than fifty percent of the time—it is difficult to see how descriptions of subsequent negative treatment would reliably set the researcher down the correct path. It could be argued that the presence of *any* negative symbol or phrase is enough to alert the user that "here there be dragons"[58] and therefore, a concurrent need to read and understand the "flagged" case before citing it.[59] This argument is easily countered, however, by the fact that not reading a case before citing it is almost certainly a violation of Rule 1.1 of the ABA *Model Rules of Professional Conduct*, requiring a lawyer to provide "competent representation to a client[,]" a duty defined as consisting of, among other things, "thoroughness and preparation."[60] So, if a tap on the shoulder from a

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52. , . (2012), https://www.lexisnexis.com/pdf/Shep%20and%20KCite%20Comp%20Paper.pdf [http://perma.cc/G4JV-5G2T].

53. , *supra* note 25.

54. Wolf & Wishart, *supra* note 15, at 27.

55. Bob Berring calls this the "Tinkerbell" effect. He writes: "In the Walt Disney animated feature 'Peter Pan,' Tinkerbell was a fairy. She only existed if children believed in her existence. This character, viewed by the author at an impressionable age, stands for the classic bootstrapping of authoritativeness." Robert C. Berring, *Chaos, Cyberspace and Tradition: Legal Information Transmogrified*, 12 . . . 189, 193 n.17 (1997). The term was later used by Mary Whisner. Mary Whisner, *Bouvier's, Black's, and Tinkerbell*, 92 . . 99, 2000 . J. 8. The extension of the idea to citators specifically is my choice alone.

56. Hilke Plassmann et al., *Marketing Actions Can Modulate Neural Representations of Experienced Pleasantness*, 105 . ' . . . . 1050, 1051 (2008).

57. Greg Lambert, *Casemaker Unique Among Legal Research Providers*, 89 . . . 54, 56 (2010).

58. This phrase comes to mind because of an article on a slightly different topic in legal research. *See* Peggy Roebuck Jarrett & Mary Whisner, *"Here There Be Dragons": How to Do Research in an Area You Know Nothing About*, 6 . . & 74 (1998).

59. More appropriately, the relevant portion of the case. *See* Robert C. Berring, *Unprecedented Precedent*: *Ruminations on the Meaning of It All*, 5 2d 245 (2002).

60. . ' , 11 (2011). This is assumed from the work done in Bast & Harrell, *supra* note 5. Likewise, there are no cases specifically on point in Kristina L. Niedringhaus, *Ethics Considerations Related to Legal Research Practices: A Selective Annotated Bibliography*, 31 . . 104 (2012).

citator, even without any further intelligible explanation, means "read the case," the question remains: where's the value in that? A competent researcher will expect to

a given case was cited, among other things. KeyCite includes graphical representations of a case's direct procedural history, while both services include extensive lists of Citing Cases, regardless of whether the treatments within are approving, negative, or neutral.

¶49 Given the change in the nature of citation analysis possible in the digital realm and the shaky performances of both systems in accurately describing sub-

implicit overruling problem,[69] the inclusion or exclusion of unpublished opinions,[70] the misleading nature of certain graphical representations of precedent,[71] and of course, the inaccuracy in how symbols and explanatory phrases are used to signal subsequent negative treatment. Additionally, it cannot be left to the information vendors to teach how these products work,[72] especially if citators are being presented as tools for instantly confirming or disconfirming the validity of a point of law in a given Target Case.

¶53 Beyond teaching what citators can and should do well presently, looking to the future is necessary too. There, new tools will assume some of the traditional citator's functions, and market needs and competition will push WestlawNext and LexisNexis to reimagine their current products. Startup companies already are producing new-wave citation analysis tools based on algorithmic extraction of citation

¶59 To this point, the relevant scholarly literature has been largely silent on descriptions of negative precedent in law. Some comparisons of citators for other factors have been done, and considerable writing by legal information professionals has critiqued the overall trustworthiness of citators. This article addresses the gap and provides a framework for assessing particular elements of citators. But an important goal of scholarship in library and information science is to make concrete suggestions for improvement, which this article does in discussing the best use of citators given the results of the study. Citators remain valuable tools as citation

ings Institute predicts that by 2025 Millennials will make up a whopping seventy-five percent of the labor pool.[3]

¶2 Given that Millennials will eventually replace Boomers in the law library setting, it is essential that they are ready for the job. Fortunately, we belong to a profession known for its mentoring skills. As Michael Chiorazzi said when he received the 2013 American Association of Law Libraries Distinguished Lectureship Award at the AALL Annual Meeting, "If you are in the profession, you are by definition a teacher and a mentor. If you aren't, you aren't a librarian."[4] In his lecture, Chiorazzi recalled the essential role mentors played in his professional development through the years.[5]

¶3 However, to be an effective trainer or mentor, a librarian must first relate to her younger coworkers. Unfortunately, much of the material written about the qualities of Boomers and Millennials indicates that their co-existence in an office setting could create workplace misunderstandings rather than workplace harmony. All people—librarians included—are inclined to pass judgment on a younger generation for lacking the same skills and virtues they imagine they themselves had at a similar age. This trend is not new. Even what we know now as the Greatest Generation was reviled in its youth.[6] While the notion that younger generations are across the board lacking can be dismissed out of hand, it is worth considering that all generations are not exactly alike. As Alexis de Toqueville wrote when speaking of democratic nations, "every fresh generation is a new people."[7] But for Boomers

¶5 A brief word about our very unscientific protocol: on Millennial's first day on the job, Boomer proposed a plan. Each would document her daily workplace experiences for approximately the next thirty days in a journal. These journals would form the core material for this article. Then Boomer and Millennial would read all the material they could get their hands on about workplace issues involving Boomers and Millennials.[9] Last, they would compare their experiences against that body of work and, as mentioned above, establish that *plus ça change, plus c'est la même chose*. Not.

¶6 While members of different generations may always experience some kind of gap between them, effective trainers and mentors do their best to close that gap or, at the very least, to ensure that it does not become a chasm. This process involves cultivating an honest awareness of shared points as well as divergent ones, and perhaps even an appreciation for these differences.

Generations Defined

¶7 We begin by defining our terms. Boomers are those born between 1946 and 1964. Until the Millennials came on the scene, Boomers were the largest cohort ever born in the United States and number about eighty million.[10] The generation before the Boomers is most commonly referred to as the Traditionalists, and when you consider the time span ascribed to them, 1900 to 1945, they really could be two generations. Gen X is typically defined as those born between 1965 and 1980, with a total of approximately forty-six million members. Finally, we have the Millennials, a whopping eighty-six million having been born between 1981 and 1999, making them the largest cohort in history.[11]

¶8 When experts reflect on generational differences, they often describe how a generation's shared events and conditions tend to create similarities among members. A zeitgeist goes a long way to defining who we are and, to some extent, why we are like that. Lynne Lancaster and David Stillman call this shared perspective the "generational personality."[12] Before we discuss actual traits of the two groups we are concerned with, we thought it useful for each of us to describe the collective experiences that we believe have shaped our generational personality.

¶9 The Boomer: unsupervised play stretching across many city blocks, the Beatles, the threat of nuclear war (everybody under the desks!), JFK's assassination, RFK's assassination, MLK's assassination, moon landing, Vietnam War, psychedelic music, the draft lottery, hippie culture, Eugene McCarthy, working from an early

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9. We want to acknowledge one particular work that we discovered late in the writing process by and about librarians at the McIntyre Library at the University of Wisconsin-Eau Claire. This article is insightful and interesting in that, although written five years earlier, many of the themes and concerns mentioned in our article were already evident. Eric Jennings & Jill Markgraf, *Mind the Generation Gap*, 17 . & . 93 (2010).

10. According to the U.S. Census Bureau, there were 78.8 million people living in the United States born between 1946 and 1964, including immigrants, as of May 2014. . & - . , . . , 2012 20 0, at 2, http://www.census.gov/prod/2014pubs/p25-1141.pdf.

11. . &

age, protests and demonstrations, *The Pentagon Papers*, Richard Nixon's resignation, Walkmans, and yes, yuppies.

¶10 The Millennial: team sports galore (including t-ball where scores weren't kept), apocryphal stories of Satanic ritual abuse and "stranger danger," working

¶18 One way to hold on to youth is to keep up with technology. Librarians have had little choice about this. Librarians continue to be early adopters of technology due to the nature of their work,[23] but has anyone else noticed the escalating number of job advertisements for "emerging technologies" librarians? Methinks the Boomers have technology fatigue.

¶19 For a generation that fought so hard to change so many things, Boomers lost a lot of steam when they got to the workplace. In *You Raised Us—Now Work with Us*, author Lauren Stiller Rikleen describes the workplace in which Boomers most typically found themselves. This setting, created by the Traditionalists of the previous generation, is described as "rigid office hours, face-time demands, [and] inflexible work arrangements."[24] Rikleen contends that Boomers did little to change the rigidity of the workplace they inherited. In fact, Boomers have thrived in these work environments, working long hours and expecting those around them to do so as well.[25]

¶20 Observations about Boomer culture are not always flattering. Indeed, in some quarters a steady drum beat of negativity is common. Leonard Steinhorn has a section entitled "Boomers under Fire," summarizing this negativity in his book *The Greater Generation*. Interestingly, one of his repeated criticisms is that Boomers are self-centered, spoiled, and selfish;[26] this is fascinating in view of the most prevalent criticism Boomers now lodge against Millennials—yes, the "entitled" card!

Primary Characteristics of Millennials

¶21 Millennials are defined as those born after 1980 and before 1999.[27] Overall, Millennials are judged to be less ready than Boomers to assume the mantle of adulthood. And a steady supply of commentators weighs in about why that is.

¶22 A much talked about *New York Times* magazine article assessing the perceived failure of Millennials to "mature" explores the idea of a new stage in human development labeled "emerging adulthood." Jeffrey Jensen Arnett, a psychology professor at Clark University, has been the most vocal advocate for adopting the

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23. One Boomer librarian had this to say:

> I recall the now quaint-seeming leap from a keyboard to a mouse and the enormous challenge it posed just in terms of physical coordination. In considering the distance Boomers have traversed technologically, it is mind boggling and quite impressive. Millennials, who were born maneuvering a mouse, are often lauded for their adeptness and comfort with technology. As a group they readily embrace the latest technology and can sometimes exhibit frustration with—and occasionally even arrogance toward—their older colleagues who may not adopt the latest technology as readily or with the same level of enthusiasm. While it is likely that the Millennial Generation will change the profession exponentially through technology, we should not forget that our seasoned library veterans were—and continue to be—the technology pioneers who learned, adapted, and developed technological innovations that transformed the profession.

Jennings & Markgraf, s*upra* note 9, at 95.

24.

term.[28] Arnett points to several cultural shifts as explanations for the Millennials'

close."[36] This is in stark contrast to Boomers, who responded to similar survey

¶30 Though some have derided Millennials as lacking the work ethic of the industrious Boomers, Millennials see things differently. Working long hours in an age of increased technological efficiency makes little sense to them. If quality work can be accomplished in fewer hours, why not reap the benefits of that extra time? As one researcher put it: "The tension between measuring productivity by hours worked seems anathema to a generation raised on devices that promote efficiency and multitasking."[44]

¶31 Unlike the "workaholic" Boomers, Millennials as a group favor "work-life balance" over career advancement. This attitude can in part be traced back to the common experience of being raised by two working parents who often prioritized work over family time. Millennials don't want this for themselves and do their utmost to find jo[-4.9 (ho o)370.8507 T1 0a2O7tolifak (ho o)3 i (y b)11 (e)3 (ni (y b)11 (o)3

intergenerational conflicts that support the Boomer's initial theory that things have not changed very much. However, some things that come out in the following paragraphs go beyond that. These result from influences on each generation that can truly make working together difficult and the mentoring process nearly impossible.

Hey, I Have an Idea About How To Do This!

¶36 *Renee*: As a Boomer, while still new on a job, my tendency would be to just do my assignment, raising as few flags as possible. On the other hand, Liza comes from a generation that is known for its confidence and not being reluctant to express its opinion. There is an illustrative anecdote in *When Generations Collide*: one Boomer's child was completely absorbed in a miniseries called *The '60s*. The Boomer questioned her child when it was over—well, what did you think about the protest movements of the sixties? "Well," the Millennial answered confidently, "I thought it was a very inefficient way to make the point."[47]

¶37 Therefore, from Liza's first days on the job, she has thought about the tasks given to her and proposed different ways to do them. This is not all that surprising since in addition to being a research librarian she is the emerging technologies librarian. Still, that didn't prevent me from being startled the first few times it happened. The Boomer behavior at issue here is the tendency to just do a job as best as possible without creating a lot of notice, and also wanting to be circumspect in dealings with a supervisor. Journal entry: "Day One: I know from my earliest experiences with Liza that she has very good problem-spotting skills. This ability leads her to ask many questions and to suggest different ways to do things."

¶38 My initial surprise gave way to pragmatism; it didn't take long for me to realize that the suggestions were good ones and that we were lucky to have someone so invested in her workplace. Because of Liza's questions and suggestions, we now have a more efficient way to keep our daily reference statistics, we used Google Docs to collaboratively write this article, and we have explored ways to use our iPads in the classroom for more dynamic lectures.

¶39 *Liza:* I have a tendency to make suggestions when I'm confident—like when it relates to a fix that could be accomplished with the help of technology. This behavior by a newcomer could be considered forward by members of an older generation. I'm less inclined to offer suggestions when I feel like I'm out of my depth in comparison to someone more skilled, such as when Renee and I are working on a reference request together. This attitude does seem to be in keeping with my generation generally. Lancaster and Stillman conducted interviews with Millennials and found that "they are simply accustomed to a household, school, or work situation where job assignments are based on capability, not seniority."[48]

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47. & , *supra* note 11, at 30. Lancaster and Stillman go on to describe this behavior as emanating from being raised by "highly communicative, participation-oriented parents." Millennials have been participating in family decisions "since they were old enough to point." *Id.* at 31.

48. . & , - 56 (2010).

They go on to point out that while historically "it was assumed that employees who had been around a long time automatically knew more than the younger ones did," that is not necessarily true today.[49]

¶40

terrain. Additionally, given that Millennials are used to the significant role adults play in their decision making, they often view problem solving as a collective process involving advice from their parents, as well as teachers and coaches.[52] One Boomer librarian tentatively reached a similar conclusion, speculating that "[t]he intimate and open relationships that Millennials have with their parents may contribute to their relative comfort and confidence in professional relationships with older colleagues."[53] Growing up, I was also always encouraged to ask questions when starting new jobs or when I was in school. From my perspective, it's less a signal of weakness and more a sign that I'm trying to do a good job. In general I enjoy collaboration, especially with someone who might be able to offer a different viewpoint, like a more experienced colleague; I've genuinely enjoyed writing this article, for instance. From my perspective, it's better not to work in a vacuum, especially when you're part of a team.[54]

¶44 At the same time, relying too much on clarification from more senior colleagues can be viewed as a crutch, at times appropriately. Put bluntly, "Millennials tend to be uncomfortable with ambiguity" and expect detailed information and specific guidance with their assignments.[55] While ambiguity can be avoided in the school room, where assignments are meted out carefully and with an instructive function in mind, this is not how real-world office spaces operate. Tasks are assigned as needs arise; Millennials must be called on to adjust to an environment that bears little resemblance to their highly structured childhoods.

¶45 When faced with this behavior, Boomers can be left feeling exasperated and impatient. They view Millennials as less savvy when it comes to problem solving than they were at the same age. Boomers may have some legitimate qualms with their junior employees. However, frustration on the part of supervisors is not a helpful response to someone who's trying to find his or her way in the workplace. At the same time, Millennials should try to recognize when it's appropriate to ask questions and when they can solve a problem on their own. The expectation that their supervisors will devote to them the same nurturing attention that they received from concerned parents and teachers is un-3 (t)9 (n ⁄AMCI8 (e t)10 2/Spa8es un-3 (t)9 (n

case, this ultimately was a nonissue since the Millennial demonstrated flexibility and willingness to put in the hours required to accomplish a task. In fact, within her first weeks the Millennial volunteered to work extra hours to help the Boomer complete a long, tedious assignment for which the Boomer remains grateful.

Feedback

¶54 *Renee:* In the past, the Boomer's approach to training a new librarian has been to give the new librarian a task, give the overarching guidelines for how to do the task including the resources to consider, and walk away, giving the new librarian "space" to do her job. The Boomer might also throw the new librarian "into the Reference fray," letting her have the satisfaction that comes from facing an issue on her own and finding a solution to it.

¶55 Any [illegible] one reads about M661ask incCID 109014.7s/MCID 1094.11 at5784that them

¶59 ***Lesson***: The solution to this difference may actually take some changing on both sides. While it is possible for the Boomer to react to this as an excessive need for hand-holding, this reaction is neither helpful nor correct. This seems like an instance of a Boomer saying, "Why isn't this person more like me?" and the underlying thought is that being "more like me" also means being somehow "better." There is no harm in a Boomer being more aware that a Millennial would like more feedback or input throughout the mentoring or training process. On the other hand, perhaps the Millennial can be more self-aware of this need and realize that for some Boomers, providing feedback above and beyond what they are used to feels exhausting.

Conclusion, or "The Real Purpose of This Article"

¶60 Recall that one of the tasks we set ourselves was to see how much of the difference between Millennials and Boomers was attributable to the typical feeling that the upcoming generation does not measure up to the standards of the elders. We did discover some of that, but more importantly, we discovered that certain concrete differences between the generations do need to be addressed. The good news is that just talking about these potential issues can dissipate their power over us.

¶61 Unexpectedly, we also found that some characteristics that Boomers fault in Millennials are qualities that Boomers themselves are accused of possessing. For example, Millennials are famously accused of bringing an attitude of entitlement to the workplace, but Boomers are also often labeled an "entitled bunch."[64] And while much is made of Millennials' seeming inability to take on adult responsibilities, isn't that just the other side of Boomers' inability to accept their own aging?[65]

¶62 Here we come full circle from Chiorazzi's emphasis on mentoring in law librarianship to ask our own questions: how can established librarians mentor and train new librarians if they don't understand them? How can common ground be found if the relationship is fraught with misperceptions? It would be so easy for established librarians to squash the enthusiasm and optimism of the incoming group by over-reliance on routines and requirements that daily lose their relevance. The rush to judgment is equally unhelpful. Observers of the workplace have come to unhelpful predictions about the Millennials. Consider the following: "Many Boomer managers believe the concept of a work ethic will die with them (meaning with the Boomers.)"[66] That seems a little bombastic. In any event, we wonder if working hard, even to the extent of robbing time from family and friends, is really the virtue we have made it out to be.

¶63 We advocate individual efforts as the starting point to increase our kn 155.75 Ti5.9 (k e)-3

C. Lancaster and David Stillman; *You Raised Us—Now Work With Us* by Lauren Stiller Rikleen; and *The Next America* by Paul Taylor. We have found that greater knowledge breeds humor, a welcome quality in any workplace. Liza loves to point out when Renee reverts to Boomer behavior, for example, by saying things that equate to "let's put our nose to the grindstone and work really hard to get this done." Conversely, Renee loves to tell Liza that a job particularly well done will surely earn Liza a trophy. We are also the first to admit that even after all our research, we can still fall into unhelpful or polarizing behaviors. But that doesn't mean we will stop trying to get it right.

Keeping Up with New Legal Titles*

Compiled by Benjamin J. Keele** and Nick Sexton***

Contents

Barton, Benjamin H. *Glass Half Full: The Decline and Rebirth of the Legal Profession.* New York: Oxford University Press, 2015. 305p. $29.95.

*Reviewed by Carey A. Sias**

¶1 According to Benjamin Barton's *Glass Half Full: The Decline and Rebirth of the Legal Profession*, American legal practice has been largely unchanged by the course of time. Barton observes similarities between today's courts and those described in Charles Dickens's *Bleak House*,[1] concluding that "[l]aw may have changed less than any other area of the economy between 1850 and today. The same basic product is being sold and the same basic service is being performed" (p.2). Yet the American legal profession finds itself in a state of flux. Economic and

mine business opportunities for small-firm and solo practitioners. As technology expands and online providers grow to compete for high-margin work, he does not expect Big Law to recognize the threat until a large portion of traditional legal work has already been replaced by computerization.

¶5 "Death from the state" describes how courts and legislatures have reined in litigation since the 1980s through tort reform and limitations on damages, class action lawsuits, and attorneys' fees. Funding for legal aid, government hiring, and court appointments is at an all-time low.

¶6 "Death from the side" examines the thirty-year decline for solo practitioners and small firms. Barton analyzes tax and employment data to compare earnings over time: "Adjusted for inflation to 2010 dollars, the average solo practitioner earned $69,955 in 1988 and $46,560 in 2010, a 34 percent decline in buying power" (p.6). For many of today's unemployed and underemployed lawyers, it makes more financial sense to leave the profession entirely.

¶7 Part II delves into the history, present, and future of American law schools. From the 1980s forward, the market for lawyers shrank while law schools expanded. Students have been lured in by false employment statistics and salary information, crippled by student debt, and released into bleak job markets. Barton cites and responds to suggestions proposed by other writers before outlining his expectations: law schools will cut costs drastically but will not radically redesign the structure or curriculum.

¶8 In Part III, Barton pulls the focus back, explaining why Big Law and law schools value hierarchy and competition over differentiating their products. This strategy was effective for centuries but will prove self-destructive in today's market. Barton predicts a future in which innovators and entrepreneurs will develop new ways for lawyers to deliver cheaper, better-quality legal services. Computerization and outsourcing will cut legal costs, improve efficiency, encourage alternative law firm arrangements, and provide the general public with more tools and autonomy to address their own legal needs. He foretells fewer jobs, smaller salaries, and budget cuts to law schools and large firms, ultimately resulting in a fragmented but nevertheless improved profession.

¶9 *Glass Half Full* finds companionship with a host of recent works on the state of the American legal profession, including Deborah Rhode's *The Trouble with Lawyers*.[4] Barton's optimism sets his work apart, as does his insightful overview of emerging technology. He examines specific online legal information providers and virtual alternatives to traditional practice. Unfortunately, he ignores law libraries entirely, except as an item on the chopping block for law school budget cuts. This is a grave oversight, considering that much of the optimism projected in *Glass Half Full* depends on increased information access.

¶10 The future of law libraries is closely aligned with that of the [illegible]

(other than who and where they are)" (p.77). While Burns addresses issues of race throughout the book, it is not his focus, and race comes up primarily during his discussion of socioeconomic factors, as described above. Interestingly, Burns so successfully builds his argument without referring to racial discrimination that when the allusion to it finally arrives, the impact is that much greater. Readers have already begun to realize how easily they could be trapped by the unknowability and ubiquity of the law. They already feel a creeping paranoia and a newfound sense of their own vulnerability; it turns out that Burns has been building empathy all along.

¶17 In the fourth and final chapter, "Spaces of Freedom in American Law?," Burns questions whether the U.S. legal system includes any safeguards against its own devolution into a Kafkaesque nightmare. Burns sees the jury trial, with all of its attendant formalities, as one potential safeguard; however, he does not seem optimistic that the jury trial will endure as a "space of freedom" (p.126). Alluding again to the predominance of plea bargaining, he notes that for the jury trial to successfully function as a safeguard, more cases would have to go to trial, and the trial process itself would have to become less bureaucratic. Burns also argues in favor of greater formality and publicity within the bureaucracies themselves, but expresses strong doubt about the possibility of reforms to the criminal justice system.

¶18 Thus, despite his attempt at a call to arms, Burns is clearly more interested in drawing comparisons between our system and that of *The Trial* than in offering concrete solutions. The reader is left with the impression that perhaps Burns thinks we have reached a point of no return, and whether the book succeeds or fails in the eyes of individual readers will depend on their reasons for reading it and on the strength of their need for optimism. Those who approach the book looking for answers will likely be disappointed. However, those who can appreciate the book for what it is—a close literary reading, warning bell, and indictment of the American justice system—will find it more than adequate. *Kafka's Law* is highly recommended for students, scholars, and recreational readers interested in criminal law or law in literature. It is a creative and insightful approach to a timely topic and deserves a place on every law library's shelf.

Graber, Mark A. *A New Introduction to American Constitutionalism*. New York: Oxford University Press, 2013. 292p. Paperback ed. $24.95.

*Reviewed by Robert N. Clark**

¶19 Mark Graber describes his approach in *A New Introduction to American Constitutionalism* as historical-institutionalist. A term of social science, "historical institutionalism" is a method of studying institutions to identify social, historical, and political trends. So you might call Graber's method the big-picture approach to constitutional scholarship. Indeed, the central theme of the book is that traditional constitutional study in the United States is hampered by an overly narrow

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focus on constitutional law as embodied in the decisions of the U.S. Supreme Court. According to this traditional view, law and politics are two distinct realms, with law providing necessary constraints on politics. But as Graber writes (and repeatedly demonstrates), "[c]onstitutions . . . integrate legal and political norms in ways that blur sharp separations" (p.213). His aim, then, is to see constitutionalism as a whole, noting that "[c]onstitutional controversies are structured in part by constitutional texts, in part by history, and in part by present politics" (p.13).

¶20 The book is divided into eight chapters: "Introduction to American Constitutionalism," "What Is a Constitution?," "Constitutional Purposes," "Constitutional Interpretation," "Constitutional Authority," "Constitutional Change," "American Constitutionalism in Global Perspective," and "How Constitutions Work." Graber's careful organization of his material provides a foundation in political theory that lends context to discussions of specific constitutional issues. In the first chapter, an analysis of Chief Justice John Marshall's opinion in *McCulloch v. Maryland*[5] gives rise to a wide-ranging discussion of constitutional purposes, problems of interpretation, the nature of constitutional authority, and the difference between funda-

[redacted]

¶26 Grossi initiates the reader into the common-law method and then provides a perspective for assessment and critique. She proceeds to analyze the Court's decision making in relation to personal jurisdiction, *forum non conveniens*, subject matter jurisdiction, and conflict of laws, including analyses of personal jurisdiction and *forum non conveniens* from a transnational perspective.

¶27 Grossi again looks abroad in chapter 6 by using the questionnaire responses of a variety of civil law professionals as a method of comparison, drawing the perhaps surprising conclusion that civil law's codification is actually more flexible and adaptable to new scenarios than the method employed by the Supreme Court. Respondents to her survey include a doctoral student and law clerk in the Belgian Constitutional Court, a Rio de Janeiro Court of Appeals judge who is also a professor at the Rio de Janeiro Court of Appeals School, a German law professor, a lecturer at the University of Athens, and a Hungarian law professor. In chapter 7, Grossi offers proposals for judicial guidelines tailored toward legal systems that operate within a democracy that aim to create "a global judicial dialogue" (p.4).

¶28 One interesting nuance of Grossi's overarching argument is the potential ability of her reforms to insulate the Court against charges of inappropriate judicial activism. She cites "a legitimate concern that judicial law making may stray into the realm of everyday politics" (p.19) and her belief that "a framework from which to assess the quality and legitimacy of judicial law making" (p.19) will help promote a given decision's, and the Court's, legitimacy. Further, she asserts that the model for judicial decision making that she provides would, in essence, fix the problem, if it were only followed. That is a big if.

¶29 Grossi makes bold assertions in her book and does an admirable job of supOne intectiel f

disruptive technologies and the entrance of digital natives into practice. The book is edited by Paul A. Haskins, Senior Counsel for the American Bar Association Standing Committee on Professionalism. The distinguished group of individual authors includes professors, consultants, practicing attorneys in firms of all sizes, and bar association officials. Each brings a unique perspective on how lawyers can survive and thrive in a changing market while maintaining a level of professionalism that is the essence of professional identity.

¶31 The book is arranged into five broad categories: transformation, equity, practice settings, regulation, and development. Each category is divided into chapters written by individual experts, and each chapter is a take on the evolving profession and the difficult conversations taking place in legal organizations around the world, even if the subject is unwelcome and uncomfortable for those participating. In the transformation section, chapters cover how the profession has already changed and what responses are necessary; there is also an introduction to alternative legal service providers and an exploration of how technology has changed potential client behavior and interaction with the law and lawyers in a world of LegalZoom, limited scope representation, and more. The equity section looks at issues of inclusion and diversity in organizations large and small. This section focuses on the shifting demographics of the potential client base and the law school pipeline, as well as the high rates of attrition of women in large firms and the rise of alternative practice in the hunt for work-life balance in the face of implicit bias that remains entrenched in law firm culture.

¶32 The practice settings section begins with an introduction to virtual law practice and how it is already changing how clients and attorneys interact. The section examines ways that the profession can adapt to meet the needs of digital natives and increase access to justice for low- and middle-income people with little opportunity to seek help with their legal problems in the current legal business model. Then the section turns to the changes that large firms are making to keep up with rapid market changes, increased cost pressure, globalization, technological advances, client expectations, and new competitors. It also addresses the niche that solo and small-firm practitioners can inhabit and some of the regulatory changes that are needed to make the market friendlier to independent lawyers. The section also takes on the dual professional responsibilities of military lawyers as they act as both soldiers and attorneys, and the lessons that others can learn from this dual professionalism mod (d)3 (e)aual

new entrants into the profession, and to make law school achievable for those who cannot enroll due to distance and other barriers. Next, the section looks at the importance of mentoring for both newly minted and seasoned attorneys and the benefits for mentor and mentee. The section also looks at the realities of social media, the vital role that professionalism plays in navigating the swiftly changing legal marketplace, and the importance of bar association membership and active participation, especially among newer attorneys.

¶35 The book can be read cover to cover as an overview of how the profession has and is changing and what lawyers can do to cope with the changes. It can also be read one essay at a time based on the reader's goals. The essays are all well written but vary in the level of factual reporting versus opinion and advice. *The Relevant Lawyer* is a worthy addition to academic law library collections and would be useful in law firm collections, even if change is not as warmly welcomed in that environment. By reading this book, any lawyer, law professor, law firm leader, librarian, and current or would-be law student can gain valuable insight into the future of practice and what can be done now to prepare for the coming disruptions and opportunities afforded by the evolution of law practice.

Millhiser, Ian. *Injustices: The Supreme Court's History of Comforting the Comfortable and Afflicting the Afflicted*. New York: Nation Books, 2015. 350p. $27.99.

Reviewed by Lynne F. Maxwell[*]

¶36 This eminently readable book is an intriguing exploration of the U.S. Supreme Court and its capacity to shape law and social policy, for better or worse. Ian Millhiser is a senior fellow at the Center for American Progress and editor of ThinkProgress Justice. As a scholar, he focuses on the Constitution and the Supreme Court, and in this book he reveals the frequent tension between these forces of law. As an author, he provides compelling historical and jurisprudential evidence for the argument that the Court has abused its power by mistaking ideology for law and imposing it on a captive country. In short, the Justices have "read doubtful ideologies into the Constitution's vaguest phrases. And they've ignored provisions intended to protect the unpopular and least fortunateT0.031 Tw 18 (fflic)3 (r)-7 (ud)3 fTEM

at jobs with expensive research platforms. (Murray and DeSanctis are rightfully skeptical of the efficiency of legal research using free online sources.) *Legal Research Methods* thus would work well with most first-year legal research courses, particularly those that begin immediately with computer-assisted research.

¶45 Finally, Murray and DeSanctis use a direct, unpretentious tone that is likely to connect well with students. The authors use the second person to deliver both specific instructions and more general advice. They often make use of hypotheticals to aid students in understanding the reasons for research steps, as well as the mechanics of conducting research. However, at times the discussion of technical steps, such as Boolean searching, struck me as a bit quick, so I would emphasize to students the value of having a computer handy to follow along and visualize fully the concepts being relayed by the reading.

¶46 In conclusion, *Legal Research Methods, Second Edition*, provides a necessary update to the first edition and would be a solid choice as a text for first-year legal research courses, particularly those that jump straight to computer-assisted research.

Palfrey, John. *BiblioTech: Why Libraries Matter More Than Ever in the Age of Google*. New York: Basic Books, 2015. 280p. $26.99.

Reviewed by Jodi L. Collova[*]

¶47 Libraries will be as necessary in the future as they were in the past—if we play our cards right. John Palfrey, former director of the Harvard Law Library, sug-

justify a legal system that values a lawyer's salary as some sort of marker of success, where first-year lawyers at Big Law firms feel entitled to starting salaries approaching $200,000, and partners want to measure their incomes in seven figures?

¶55 The subject has been well covered, but Deborah Rhode's *The Trouble with Lawyers* bundles all of these topics and many more into a cohesive discussion. Although she starts from the premise that "the bar is failing to deal with fundamental problems in the conditions of legal practice, access to justice, diversity in the profession, regulation of lawyers, and legal education" (p.2), the fact of the matter is that most of the problems concern money.

¶56 Although one of the shorter chapters in the book, the chapter on legal education is one of the most important, and the one this review focuses on, with its discussion of school rankings, tuition rates, and crushing student loan burdens. We all know we are going to have to pay tuition, so why does this chapter merit emphasis? Because the ability to pay—or, perhaps more important, to pay back—that ever-rising tuition bill has far-reaching effects. As an illustration, Rhode points out that lower-scoring law school applicants pay full tuition rates, and those students' payments, in turn, subsidize the scholarships that attract the top candidates, with some key results: those top candidates' LSAT scores and undergraduate grades bolster the law schools' rankings, and, as students at the top-ranked schools, they obtain the highest-paying summer clerkships and first-year positions at the large firms. Then, as hiring partners at those Big Law firms, they in turn perpetuate the system. Rhode discusses this process and its detrimental effects on both diversity in the profession and the financial availability of top-level legal services to the average person, and makes a strong argument for expanding the reach of legal services beyond law firms and solo practices.

¶57 Quoting the tired axiom that the goal of legal education is to teach students to think like lawyers, Rhode contends that it, in fact, actually teac(l)5 3s18 (e la)2t-5 (l)3 (y it,)[(th

¶60 Who should read this book? Everyone contemplating becoming a lawyer,

is for the director to clearly communicate the many vital roles the library plays in the law school by supporting the scholarship and research needs of its students and faculty. Both also recognize the need for the director to find ways to assist in resolving the budget crisis without compromising essential library operations. They stress how important obtaining accurate information is in this process, both in knowing just how serious the situation is and in understanding whether the dean's proposals will actually ameliorate the financial situation. This case study and the responses are another essential section of the book.

¶74 The final entry I will cover in this part is "Library Director as Politician," with an analysis by Filippa Marullo Anzalone. The most compelling part of the case study concerns a new director who believed that the cuts he and his staff made to the library's collections, services, and staff were informed choices that minimized the effect on the law library's core mission while resolving the budget crisis at his law school. Unfortunately, the dean did not agree, feeling they were not deep enough and that the proposed service cuts would antagonize students and faculty. As Anzalone correctly points out, this scenario is all too common in academic law libraries today. Library budgets and staff are attractive targets for administrators looking to their bottom lines.

¶75 Anzalone looks at these problems through a political prism and asks us to determine whether the director, as a responsible and "virtuous leader," has actually made his decisions with skill, transparency, and "organizational loyalty" (p.331). She notes that the director did not adequately communicate his efforts to cut his budget and staff to the dean or fully discuss how those cuts would affect library services and the law school. Without that information and the possibility that those conversations would have established a rapport and supporting relationship with his dean and faculty, the new director has greatly limited his options for a successful outcome.

¶76 The part on service contributions covers responsibilities the director may take outside the law library (involving such roles as chair of a university committee and consultant to another law school library) and provides an especially important analysis that describes the multiple responsibilities directors have in ABA site visits, for their own schools and by serving on an inspection team. The essay explains the use and application of the ABA standards for libraries in a clear and concise manner, with suggestions on how best to comply with the standards. All three analyses show that these roles add tremendous value to our larger institutions and to the profession as a whole.

¶77 The two essays in the part on developing issues cover "Law Librarians' Roles in Modern Law Libraries" and "Privacy and Competing Library Goals: How Can Library Directors Lead When Values Collide?" Richard Leiter's essay on modern libraries attempts a herculean task: to sum up the impact of the shift from print to digital resources on the operations of the law library. He urges us to rethink how we provide access to our myriad databases and encourages the development of subject-based access tools.

¶78 Anne Klinefelter's essay provides a nuanced view of the many issues involving privacy concerns in our era of constantly evolving technologies. She asks us to consider how our traditional notions of privacy in academic libraries are affected

Practicing Reference . . .

Animal Stories for Good Reference Librarians*

amazing feats: we just have to help individuals with the questions they have. It was

more than aptitude: the dogs must be trained. If you took an untrained beagle[8] to the airport, it might well investigate travelers' bags, but it wouldn't know what

a degree that the subject in question might not seem to merit."[11] Falling down a rabbit hole is not all bad,[12] but it can prevent us from finding what we need. I sometimes suggest to students that they write down the question they are trying to answer and look at it from time to time, to guard against "question drift"—the tendency to start looking for material that is tangentially related to the question, either because it is interesting or because it is easy to find.

¶9 In addition to the vast rabbit hole that Alice explored, there's the smaller, cozier hole Winnie-the-Pooh found when he went to visit his friend Rabbit.[13] Smaller is the essential attribute: the hole itself was so small that when Pooh tried to leave after enjoying a good snack he became stuck. Pooh had eaten too much, and we researchers can sometimes take in too much as well. More than once I've gone downstairs to grab two or three old volumes of *Martindale-Hubbell*, decided to look at more, and regretted not bringing along a book truck. That's physically too much. We can also "eat" too much online by finding and reading more than our project merits. Maybe it's all relevant, so we aren't going down the rabbit hole of distraction, but it's still more than is needed. Like Pooh, we need to restrain our appetite.

Fishing Lessons

¶10 Our role is often to teach patrons how to fish rather than handing them a fish.[14] If we're in an academic setting, helping students develop their skills is part of our teaching mission. And even if patrons are not explicitly "students," many of them want to learn: it's satisfying to develop research skills, and researchers can get

other end of the spectrum, a patron who knows very little and is unlikely to return might need special treatment too. It would take too long to teach such a visitor enough about the library, research, and computers to find and download the needed document, so it can make sense for the librarian to do most of the work.

¶12 The proverb channels us into thinking that we have only two options: teach

relevant works,[18] without the funny false hits. But at the time, examples like the article using "wolf in sheep's clothing" provided a wonderful entrée to the idea of controlled vocabulary. That article was itself a wolf in sheep's clothing, an irrelevant article disguised as a relevant one by clothing itself with the term we wanted ("clothing").[19] We moved to subscription databases where we could require "clothing" to be in the subject field, leading us to "clothing industry" as a good descriptor. In Academic Source Complete (Ebscohost),[20] the search de(clothing industry) and (waste or sustainable) yielded many articles that the student thought were promising. We tried a similar search in ProQuest Environmental Science Collection[21] and found some more. Finally, I showed the student ProQuest Dissertations & Theses Globan(t)-3 (y11 547.75a33eG8)ntrée to th[tided a wont(e)-1(ud)3 (e)3 (nt P)1u51fidm we wadw