

LAW LIBRARY JOURNAL

ARTICLES

2018: A Legal Research Odyssey: Artificial
Intelligence as Disruptor [2018-1]

Jamie J. Baker 5

Access to Print, Access to Justice [2018-2]

Kimberly Mattioli 31

The Reference Assistant [2018-3]

Annalee Hickman Moser and Felicity Murphy 59

The History of the University of New Mexico School of Law Librarians'
Fight for Faculty Status and Equal Voting Rights [2018-4]

Ernesto A. Longa 93

Remaking the Public Law Library into a Twenty-First Century
Legal Resource Center [2018-5]

*Mark G. Harmon, Shannon Grzybowski, Bryan Thompson,
and Stephanie Cross* 115



American Association of Law Libraries

Editorial Staff

Editor: James E. Duggan
Assistant Editor: Tom Gaylord
Publications Manager: Heather Haemker
Production: ALA Production Services

2017–2018 Association Officers

Gregory R. Lambert, President; Femi Cadmus, Vice President/President-Elect; Luis Acosta, Secretary; Jean L. Willis, Treasurer; Ronald E. Wheeler Jr., Immediate Past President; Elizabeth G. Adelman, Emily R. Florio, Mary Jenkins, Meg Kribble, Mary E. Matuszak, Jean P. O'Grady, Board Members; Kate Hagan, Executive Director.

2017–2018 *Law Library Journal* Board of Editors

James E. Duggan (ex-officio), Tom Gaylord (ex-officio), Frank G. Houdek, Anne Klinefelter, Janet Sinder, members.

Law Library Journal® (ISSN 0023-9283) is published quarterly in the Winter, Spring, Summer, and Fall by the American Association of Law Libraries, 105 W. Adams Street, Suite 3300, Chicago, IL 60603. Telephone: 312.939.4764; fax: 312.431.1097; email: aallhq@aall.org. Member subscriptions are \$35 per year; nonmember subscriptions are \$125 per year; individual issues are \$31.25. Periodicals postage paid at Chicago, Illinois, and at additional mailing offices. POSTMASTER: Send address changes to *Law Library Journal*, AALL, 105 W. Adams Street, Suite 3300, Chicago, IL 60603.

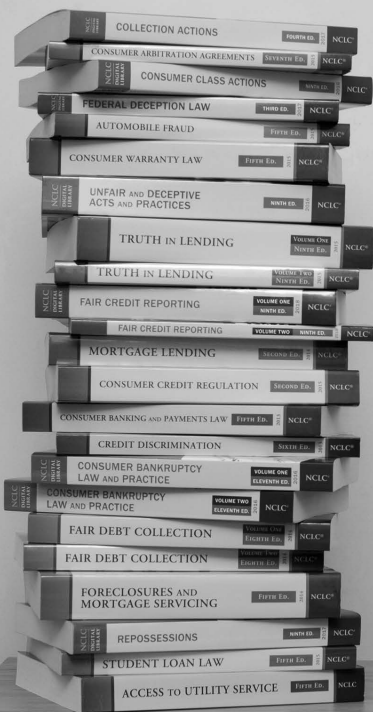
Advertising Representatives: Innovative Media Solutions, 320 W. Chestnut Street, PO Box 399, Oneida, IL 61467. Telephone: 309.483.6467; fax: 309.483.2371; email: bill@innovativemediasolutions.com.

All correspondence regarding editorial matters should be sent to Tom Gaylord, *Law Library Journal* Assistant Editor, Northwestern Pritzker School of Law, Pritzker Legal Research Center, 375 E. Chicago Ave., Chicago, IL 60611. Telephone: 312.503.4725; email: tom.gaylord@law.northwestern.edu.

This publication is provided for informational and educational purposes only. The American Association of Law Libraries does not assume, and expressly disclaims, any responsibility for the statements advanced by the contributors to, and the advertisers in, the Association's publications. Editorial views do not necessarily represent the official position of the Association or of its officers, directors, staff, or representatives. All advertising copy is subject to editorial approval. The Association does not endorse or make any guarantee with respect to any products or services mentioned or advertised in the publication. *Law Library Journal* is printed on acid-free paper.

Notice

All articles copyright © 2018 by the American Association of Law Libraries, except where otherwise expressly indicated. Except as otherwise expressly provided, the author of each article in this issue has granted permission for copies of that article to be made for classroom use or for any other educational purpose provided that (1) copies are distributed at or below cost, (2) author and journal are identified, and (3) proper notice of copyright is affixed to each copy. For articles in which it holds copyright, the American Association of Law Libraries grants permission for copies to be made for classroom use or for any other educational purpose under the same conditions.



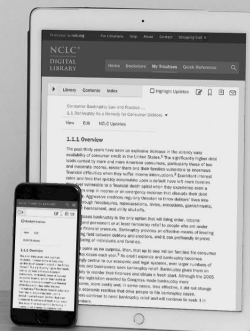
The Consumer Law Practice Series

A LAW LIBRARY ESSENTIAL

The definitive consumer law treatises for over 35 years. Save \$1,100 on 20 books in print and interactive digital formats with unlimited access for students and faculty.

Visit nclc.org/library for more information or call (617) 542-9595 to order.

NCLC®
DIGITAL
LIBRARY



NATIONAL
CONSUMER
LAW
CENTER®

Table of Contents

General Articles

2018: A Legal Research Odyssey: Artificial Intelligence as Disruptor [2018-1]	<i>Jamie J. Baker</i>	5
Access to Print, Access to Justice [2018-2]	<i>Kimberly Mattioli</i>	31
The Reference Assistant [2018-3]	<i>Annalee Hickman Moser Felicity Murphy</i>	59
The History of the University of New Mexico School of Law Librarians' Fight for Faculty Status and Equal Voting Rights [2018-4]	<i>Ernesto A. Longa</i>	93
Remaking the Public Law Library into a Twenty-First Century Legal Resource Center [2018-5]	<i>Mark G. Harmon Shannon Grzybowski Bryan Thompson Stephanie Cross</i>	115

Review Article

Keeping Up with New Legal Titles [2018-6]	<i>Benjamin J. Keele Nick Sexton</i>	149
---	--	-----

Regular Feature

<i>Practicing Reference . . .</i> My Year of Citation Studies, Part 1 [2018-7]	<i>Mary Whisner</i>	167
---	---------------------	-----

2018: A Legal Research Odyssey: Artificial Intelligence as Disruptor*

Jamie J. Baker**

Cognitive computing has the power to make legal research more efficient, but it does not eliminate the need to teach law students sound legal research process and strategy. Law librarians must also instruct on using artificial intelligence responsibly in the face of algorithmic transparency, the duty of technology competence, malpractice pitfalls, and the unauthorized practice of law.

Introduction	5
AI Becomes a Reality.	7
The Current State of Artificial Intelligence	7
Artificial Intelligence in the Professions	9
Finance: Kensho and Beyond	10
Medicine: IBM Watson for Medicine.	11
Law	13
Natural Language Processing and Premature Disruption	16
AI in Legal Research	20
DeepQA Applied to Legal Research.	20
The Limitations of AI and the Need to Use AI Responsibly	22
Algorithmic Accountability and Computational Negligence	22
The Duty of Technology Competence and Malpractice Pitfalls.	25
Unauthorized Practice of Law.	27
Algorithmic Literacy: Legal Research Instruction Implications	28
Conclusion	29

Introduction

¶1 My fascination with worker automation started at age twelve. My classmates and I traveled four hours away from our rural northern Michigan town of 2500, a town that had not changed much since the late 1800s when the manufacturing stronghold, the East Jordan Iron Works, was established. Most of our fathers

* © Jamie J. Baker, 2018. I would like to thank Paul Friener for his dedicated ear. I would also like to thank my mentor, John Michaud, for his ever-present advising and thorough review, and law librarian Alyson Drake for her constant inspiration. I would also like to thank Texas Tech University School of Law for its generous support. This paper was presented at the SEALS New Scholar Colloquia in August 2017.

** Interim Director, Texas Tech University School of Law Library, Lubbock, Texas.

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

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

¶3 Sure enough, within five years, Dura Automotive left East Jordan and took its jobs with it. While not solely attributable to automation, it was no doubt part of the equation. As a result of this early life experience, I developed a near obsession with prognostications about automation’s future impact on society, including my chosen profession: law.

¶4 The assembly line involves the type of routinized work that is prime for automation, but we’re now starting to hear about the automation of knowledge work in fields like finance, medicine, and law. And much of what we’re hearing is that in the immediate future, knowledge work will see automation advances similar to those already seen in the manufacturing sector.

¶5 While it is naïve to think that automation won’t affect knowledge work at all, it is clear that computing capability is not ready to replace highly skilled professionals. If stakeholders start to believe the hype of the PR campaigns surrounding artificial intelligence (AI) and automation, various sectors may be subject to premature disruption—the notion that workers are displaced before the technology is truly ready to replace them. To avoid premature disruption, legal professionals must understand current computing capability and the associated pitfalls of blindly relying on technology.

¶6 This article provides context for current computing capability and ultimately warns against the use of AI in violation of certain legal ethical obligations. Paragraphs 7–39 summarize current advances in AI technology and describe how knowledge-based professions such as finance, medicine, and law are using these advances. Paragraphs 40–51 discuss natural language processing (NLP) and the notion of premature disruption. Paragraphs 52–83 hypothesize about how legal research is likely to use AI while noting the complexities involved in the legal research process. That section ends by briefly discussing the ethical issues at play and the need to use AI responsibly, noting that law librarians are in the best position to teach prospective lawyers about the benefits and risks associated with the use of algorithms in law.

AI Becomes a Reality

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

The Current State of Artificial Intelligence

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

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

¶10 The genius of Watson is that “Watson does not generate one definitive answer but instead generates several possible answers, each with its own probability of being right.”¹⁰ During the *Jeopardy!* game, “Watson attempted to answer a question only if the probability of the top-ranked answer reached a certain threshold.”¹¹

1. See generally *History of Artificial Intelligence*, WIKIPEDIA, https://en.wikipedia.org/wiki/History_of_artificial_intelligence [<https://perma.cc/8VHA-NS3B>].

2. Ray Worthy Campbell, *The Digital Future of the Oldest Information Profession* 3 (Jan. 17, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2716972 [<https://perma.cc/VUV8-UTWH>].

3. *Id.*

4. Ed Sohn, *alt.legal: Can Computers Beat Humans at Law?*, ABOVE THE LAW: ALT.LEGAL (Mar. 23, 2016, 4:02 PM), <http://abovethelaw.com/2016/03/alt-legal-can-computers-beat-humans-at-law/> [<https://perma.cc/PHE2-84JC>].

5. *Id.*

6. John O. McGinnis & Steven Wasick, *Law's Algorithm*, 66 FLA. L. REV. 991, 1014 (2014).

7. *Id.*

8. *Id.*

9. Howard Lee, *Paging Dr. Watson: IBM's Watson Supercomputer Now Being Used in Health-care*, 85 J. AHIMA 44, 44–47 (May 2014), http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_050656.hcsp?dDocName=bok1_050656 [<https://perma.cc/WT7B-SB9A>].

10. McGinnis & Wasick, *supra* note 6, at 1014.

11. *Id.*

¶11 IBM Watson is powered by “DeepQA” technology. In *Watson: Beyond Jeopardy!*, Ferrucci et al. provide the following explanation of DeepQA:

DeepQA is a software architecture . . . informed by extensive research in question answering systems. . . . DeepQA analyzes an input question to determine precisely what it is asking for and generates many possible *candidate answers* For each of these candidate answers, a *hypothesis* is formed DeepQA searches its content sources for evidence that supports or refutes each hypothesis. For each evidence–hypothesis pair, DeepQA applies hundreds of algorithms that dissect and analyze the evidence along different *dimensions of evidence* The final result of this process is a ranked list of candidate answers, each with a confidence score indicating the degree to which the answer is believed correct, along with links back to the evidence.¹²

DeepQA remains flexible while using natural-language processing (NLP) to search large amounts of data.¹³ Historically, “the ability to continuously process a stream of unstructured information from . . . [the] environment is . . . [something] for which humans are uniquely adapted. The difference . . . is that in the realm of big data, computers are able to do this on a scale that, for a person, would be impossible.”¹⁴

¶12 In the coming years, DeepQA will be applied to many different domains. We’re already starting to see this with IBM Watson–powered systems in areas as varied as medicine and cooking. Ferrucci et al. provide an example of adapting DeepQA to medicine, one of the first areas to adopt DeepQA computing. The authors illustrate three adaptations: content, training, and functional.

[1] Content for the medical domain ranges from textbooks, dictionaries, clinical guidelines, and research articles, to public information on the web. There is often a tradeoff between reliability and recency of information available from these content sources.

...

[2] By using training questions [with known correct answers], the machine-learning models in DeepQA can learn what weight to attach to them. Alternatively, the decision maker may choose to do so manually, adjusting the confidence in a hypothesis based on its sources.

...

[3] Functional adaptation: DeepQA defines a general set of processing steps needed in a hypothesis evidencing system Conceptually, this pipeline includes analyzing and interpreting a question, searching, generating candidate hypotheses, retrieving supporting evidence, and finally scoring and ranking answers.¹⁵

Effectively, DeepQA’s “language and knowledge processing infrastructure must . . . combine statistical and heuristic techniques to assess its own knowledge and produce its best answer with an accurate confidence—a measure of the likelihood it is correct based on a self-assessment of its sources, interference methods and prior performance.”¹⁶

12. David Ferrucci et al., *Watson: Beyond Jeopardy!*, ARTIFICIAL INTELLIGENCE, June–July, 2013, at 93, 94.

13. MARTIN FORD, *RISE OF THE ROBOTS* 87 (2015).

14. *Id.*

15. Ferrucci et al., *supra* note 12, at 100–01.

16. Roger Leuthy, *IBM Announces Solid-State Memory Breakthrough*, STORAGE CH BLOG (Dec. 28, 2010), <https://rogerleuthy.wordpress.com/author/rogerleuthy/page/452/?chocaid=397> [<https://perma.cc/GQ26-RZAH>].

¶13 This capability to generate hypotheses and rank answers is unique to cognitive computing and DeepQA technology. IBM Watson, for example, does this “by analyzing the question as input, then generat[ing] a set of features and hypotheses by looking across data it has consumed as content. The computer then seeks the best potential response to the question.”¹⁷

¶14 IBM Watson “[u]s[es] hundreds of reasoning algorithms embedded within the system . . . [to do] a deep comparison of the language of the question itself as well as each of the candidate answers.”¹⁸ The system then produces a relevance score that measures its confidence in the candidate answer.¹⁹

¶15 It is these types of expert systems, like IBM Watson powered by DeepQA technology, that are pushing the use of AI in the professions forward.

Artificial Intelligence in the Professions

¶16 For quite some time, the library world has harbored fears that technology may begin to replace human staff.²⁰ Within the last few years, and with the advent of DeepQA technology, the discussion surrounding the “world without work” has gotten louder—not just for librarians but for the professional world as a whole.²¹

¶17 According to Martin Ford’s *Rise of the Robots*, Richard Susskind and Daniel Susskind’s *The Future of the Professions*, and countless articles on point, nearly all professions are being bombarded with the message that they are doomed in the face of the AI boom.²² “Computers are getting dramatically better at performing specialized, routine, and predictable tasks, and it seems very likely that they will soon be able to outperform many of the people now employed to do these things.”²³

¶18 In the early years of automation, particularly in the manufacturing sector, many could easily see how automation would transform the industry. The work of an assembly line was a prime target for automation as robots programmed to do routinized tasks were well suited to perform the same work previously done by humans and for far less money.

¶19 While routinized, predictable tasks were thought susceptible to automation, it has come as a surprise that much less routinized and predictable tasks are also being overtaken by automation. “In late 2013, two Oxford academics released a paper claiming that 47 percent of current American jobs are at ‘high risk’ of being automated within the next 20 years.”²⁴ Automation threatens some occupations more than others:

17. Lee, *supra* note 9, at 44–47.

18. *Id.*

19. *Id.*

20. See, e.g., DESK SET (Twentieth-Century Fox 1957) (offering an example from the 1950s of librarians in fear of being replaced by computers).

21. See, e.g., FORD, *supra* note 13; RICHARD SUSSKIND & DANIEL SUSSKIND, *THE FUTURE OF THE PROFESSIONS* (2016); Derek Thompson, *A World Without Work*, ATLANTIC (July/Aug. 2015), <https://www.theatlantic.com/magazine/archive/2015/07/world-without-work/395294/> [<https://perma.cc/B2JW-JR4N>].

22. See generally FORD, *supra* note 13; SUSSKIND & SUSSKIND, *supra* note 21; Thompson, *supra* note 21.

23. FORD, *supra* note 13, at 73.

24. Nathaniel Popper, *The Robots Are Coming for Wall Street*, N.Y. TIMES MAG. (Feb. 25, 2016), <https://www.nytimes.com/2016/02/28/magazine/the-robots-are-coming-for-wall-street.html>.

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

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

¶20 Briefly reviewing automation's current impact on the finance and medical sectors will provide insight into the implications of automation on the legal sector.

Finance: Kensho and Beyond

¶21 To understand automation's effect on finance, we need look no further than Kensho, created by Daniel Nadler. Kensho parses an enormous number of datasets to provide predictive analysis for investors.²⁸ For example, when the Bureau of Labor Statistics released a monthly employment report, Kensho “scraped the data from the bureau's website. *Within two minutes*, an automated Kensho analysis [provided] a brief overview, followed by 13 exhibits predicting the performance of investments based on their past response to similar employment reports.”²⁹

¶22 Another practical example of Kensho's capability was its analysis helping investors understand how to position their portfolios in response to the Syrian civil war. “In the old days, [human workers] could draw on their own knowledge of recent events and how markets responded, . . . [or they] might have called a research analyst . . . to run a more complete study . . .”³⁰ Now, with Kensho, the human workers can

simply click an icon and . . . pick from a series of drop-down menus that narrow the search to a specific time period and a specific set of investments

. . . *The whole process had taken just a few minutes. Generating a similar query without automation . . . “would have taken days, probably 40 man-hours, from people who were making an average of \$350,000 to \$500,000 a year.”*³¹

Kensho works quickly and accurately by using cognitive computing to

constantly [tweak] and broaden[] search terms, all with little human intervention Kensho's search engine automatically categorizes events according to abstract features The software looks for new and unexpected relationships between events and asset prices, allowing it to recommend searching that a user might not have considered. For this feature Nadler hired one of the machine-learning whizzes who worked on Google's megacatalog of the world's libraries.³²

25. *Id.*

26. FORD, *supra* note 13, at 85–86.

27. *Id.* at 84–85.

28. Popper, *supra* note 24, at 1–2.

29. *Id.* (emphasis added).

30. *Id.* at 5–6.

31. *Id.* at 6–7 (emphasis added).

32. *Id.* at 6.

Ultimately, Kensho is performing tailored analysis once solely performed by highly educated, highly paid analysts.³³ And Kensho is but one computer program being used on Wall Street. “Machines are now responsible for most of the activity on Wall Street.”³⁴ Other algorithms are being used to review stocks by looking at earnings statements, news reports, and regulatory filings because they are faster and “[a] lot can happen in [the] time frames before humans can react.”³⁵

¶23 The use of algorithms on Wall Street means greater efficiency and larger profits. But a major downside to this automation is that with markets reacting so quickly to computer analysis, the markets are more susceptible to glitches than ever before.³⁶ Critics argue that the markets are more volatile, and trading rules are not fit to handle orders in milliseconds.³⁷

Medicine: IBM Watson for Medicine

¶24 Not only is finance seeing an insurgence of AI affecting its once-human processes, but medicine is too. After IBM Watson proved itself by winning at *Jeopardy!*,³⁸ the “supercomputer has moved on to practical applications—including being ‘taught’ to understand the complexities of healthcare.”³⁹ A variety of “pilot programs . . . have recently launched that use Watson to improve healthcare processes and treatment” with its ability to combine structured and unstructured data to create several possible diagnosis options.⁴⁰

¶25 The following case study illustrates the structured and unstructured data created in healthcare:

A doctor gets a visit from a patient who has diabetes. The doctor determines he needs to do a blood sugar A1C test, a blood draw, an EKG, a blood pressure check, a cholesterol test, and a physical exam . . . First, the results of a blood sugar test with a meter are usually logged in a patient’s diary and not as part of a database. Since it’s on paper, it is free text data and thus considered unstructured data. The A1C is done and logged into another system . . . The blood draw goes to the lab, where technicians will look for abnormalities . . . Blood pressure is usually done and hand written in a chart, creating more unstructured data that is not in the electronic health record (EHR). EKG results are checked by a doctor, but again stored as unstructured data in the health record. Finally, the physical exam results are typically written down by a doctor . . . and not entered as structured data in the EHR.⁴¹

This typical doctor-patient interaction shows that much of the medical data is unstructured.⁴² This fact, together with “[t]he amount of medical information . . . doubling every five years,”⁴³ results in doctors’ getting lost in data when trying to treat patients.

33. *Id.* at 10.

34. Michelle Fleury, *How Artificial Intelligence Is Transforming the Financial Industry*, BBC NEWS (Sept. 16, 2015), <http://www.bbc.com/news/business-34264380> [<https://perma.cc/AP9N-K97J>].

35. *Id.*

36. *Id.*

37. *Id.*

38. See Jennings Brown, *Why Everyone is Hating on IBM Watson—Including the People Who Helped Make It*, GIZMODO (Aug. 10, 2017, 8:45 AM), <https://gizmodo.com/why-everyone-is-hating-on-watson-including-the-people-w-1797510888> [<https://perma.cc/YW62-KNEQ>] (discussing how IBM Watson works).

39. Lee, *supra* note 9, at 44.

40. *Id.*

41. *Id.* at 45.

42. *Id.*

43. *Id.*

¶26 Until recently, most computer programs in the healthcare arena stored and retrieved structured data. The systems were not programmed to understand natural language or analyze abstract data in an unstructured form.⁴⁴ But IBM Watson has changed all that. One of the first adopters of IBM Watson for healthcare was the premier cancer center of Memorial Sloan-Kettering Cancer Center (MSKCC), which taught

IBM Watson about their breast and lung cancer research . . . and create[d] a system that [would] allow MSKCC to use the best available data to treat their cancer patients. IBM Watson used its cognitive computing natural language and decision support system to find patterns in unstructured information, mine patient data, analyze structured data, and look for disease patterns that most closely approximate each individual's case.⁴⁵

The renowned cancer center of MD Anderson was another early adopter of the Watson technology, dubbing it “MD Anderson's Oncology Expert Advisor (OEA).” “By understanding and analyzing data in a patient's profile as well as information published in medical literature, the OEA can then work with a doctor to create evidence-based treatment and management options that are unique to that patient.”⁴⁶

¶27 The systems at MSKCC and MD Anderson both use DeepQA, a key characteristic of which is its use of search and NLP techniques. In addition, DeepQA “also helps ensure that the evidence provided in support of a set of possible solutions is readable and consumable by human users because the content is typically created by other experts in natural language rather than by knowledge engineers in formal rules.”⁴⁷

¶28 The Watson system for healthcare is a diagnostic support tool that uses “a rich set of observations about a patient's medical condition . . . and generates a ranked list of diagnoses (*differential diagnosis*) with associated confidences based on searching and analyzing evidence from large volumes of content.”⁴⁸ Such diagnostic systems can help physicians avoid missing important potential diagnoses. But they are currently not widely used because they are not integrated into the day-to-day operations of healthcare organizations.⁴⁹ When a patient sees many different healthcare workers, and the patient's resulting medical data is scattered across different computer systems in both structured and unstructured form, it makes it nearly impossible for one program to have a complete picture of the patient's health record.⁵⁰ In addition, the diagnostic systems are difficult to interact with and the resulting list of possible diagnoses too long with little reasoning behind the diagnostic suggestions.⁵¹ The diagnostic systems also do not provide an action plan for the physician because they are unable to ask for missing information that would increase confidence in a particular diagnosis.⁵² Last, the diagnostic

44. *Id.*

45. *Id.* at 46.

46. *Id.*

47. Ferrucci et al., *supra* note 12, at 98.

48. *Id.* at 95.

49. *Id.* at 97.

50. *Id.*

51. *Id.*

52. *Id.*

systems are difficult to keep up to date, so the diagnostic suggestions are not always based on the latest medical evidence.⁵³

¶29 To overcome some of these challenges, early adopters of IBM Watson as a clinical-decision support system have insisted on transparency in the decision-making processes that lead to the various diagnostic hypotheses.⁵⁴ Watson “must be able to decompose the confidence in a hypothesis into its constituent dimensions of evidence and compare [the evidence] across multiple competing hypotheses so that practitioners can arrive at their own conclusions.”⁵⁵ Even given these transparency demands, the doctors working with Watson for Oncology⁵⁶ are critical of being able to validate Watson’s results.⁵⁷

¶30 While IBM Watson has made grand claims regarding its ability to revolutionize healthcare, in 2018 we are still waiting for the revolution. “AI can have a tremendous impact on health care and many other industries. But the technology doesn’t seem advanced enough to have a transformational impact just yet.”⁵⁸ In fact, recently the collaboration with the MD Anderson Cancer Center fell apart with the criticism that IBM was overly optimistic about Watson’s abilities.⁵⁹

Law

¶31 Recent AI applications in finance and medicine have increased the focus on AI capabilities for law.⁶⁰ From a historical perspective, law has not changed much since the industrial revolution. “The tools of research and of expression changed, progressing from goose quill to typewriters to word processors residing in the cloud, but throughout it all the nature of lawyers’ daily work changed less than perhaps any other profession.”⁶¹ But as law shifts into the digital revolution, we will see the practice of law change dramatically. Many of the changes brought about by the digital revolution are just starting to take shape, and many others are still hidden from view.⁶²

¶32 To date, expert systems have been developed for use by attorneys working in bankruptcy, immigration, estate planning, food and drug safety, and securities matters.⁶³ “In various ways, these expert systems evaluate input against existing information (including legal rules and analyses), draw inferences, make conclusions, and recommendations, and provide the reasoning therefor.”⁶⁴ In addition, “[e]xpert systems and machine learning algorithms are even being used . . . to

53. *Id.*

54. *Id.* at 99.

55. *Id.*

56. See *Oncology & Genomics*, IBM WATSON HEALTH, <https://www.ibm.com/watson/health/oncology-and-genomics/oncology/> [<https://perma.cc/U3CG-GRDX>].

57. See Brown, *supra* note 38.

58. *Id.*

59. David H. Freedman, *A Reality Check for IBM’s AI Ambitions*, MIT TECH. REV. (June 27, 2017), <https://www.technologyreview.com/s/607965/a-reality-check-for-ibms-ai-ambitions/> [<https://perma.cc/UF9P-W867>].

60. See generally JOANNA GOODMAN, *ROBOTS IN LAW: HOW ARTIFICIAL INTELLIGENCE IS TRANSFORMING LEGAL SERVICES* (2016).

61. Campbell, *supra* note 2, at 1.

62. *Id.*

63. Pamela S. Katz, *Expert Robot: Using Artificial Intelligence to Assist Judges in Admitting Scientific Expert Testimony*, 24 ALB. L.J. SCI. & TECH. 1, 32 (2014).

64. *Id.*

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

In Brazil, judges use a computer program that is programmed with an algorithm to review past decisions and recommend results in matters involving traffic collisions. Statistical software has been available to judges for many years to assist in sentencing, giving them an idea of sentencing on similar convictions in the past. Judges can now use expert systems to do that and more, such as: evaluate the convict's record, their seriousness, and frequency, as well as a number of other factors to be considered in sentencing. Then, these systems can weigh the factors and provide judges with the reasoning for their decisions. While these expert systems don't make the decisions for the judges, they provide consultative or advisory tools to save time and provide consistency to decisions.⁶⁶

¶33 Improved technology has helped to augment lawyers' work in other ways too:

Document assembly systems . . . help lawyers [draft] documents more quickly. Online research tools . . . have adopted . . . elements of artificial intelligence [that track] which returned sources are most heavily used and giving those sources more prominence in future searches for the same terms. Other tools . . . help lawyers hone in [on] the foundational cases more quickly.⁶⁷

¶34 These advances have been works in progress as research tools, in particular, get to practical implementation against good data on a large scale. The "Big 2," LexisNexis and Westlaw, "have applied natural language processing (NLP) techniques to legal research for 10-plus years After all, the core NLP algorithms were all published in academic journals long ago"⁶⁸ These systems are continuously refining processes as computing power allows for a transition from natural language processing to natural language *understanding*.⁶⁹

¶35 There has been incremental progress toward practical implementation against good data on a large scale through various vendors, such as Ravel Law⁷⁰ and Lex Machina.⁷¹ For example, after Lex Machina built a large set of intellectual property (IP) case data, it used the corresponding data mining and predictive analytics techniques to forecast outcomes of IP litigation.⁷² "Recently, it has extended the range of data it is mining to include court dockets, enabling new forms of insight and prediction."⁷³

¶36 The next major step toward practical implementation will likely occur with a system like ROSS Intelligence, powered by IBM Watson, for legal research.⁷⁴

65. *Id.* at 33.

66. *Id.*

67. Campbell, *supra* note 2, at 4.

68. Michael Mills, *Artificial Intelligence in Law: The State of Play 2016*, THOMSON REUTERS LEGAL EXEC. INST. 3 (Mar. 24, 2016), <https://www.neotalogic.com/wp-content/uploads/2016/04/Artificial-Intelligence-in-Law-The-State-of-Play-2016.pdf> [<https://perma.cc/BRK5-S96E>].

69. See *infra* ¶¶ 40–51; Mills, *supra* note 68, at 6.

70. RAVEL LAW, <http://ravellaw.com/> [<https://perma.cc/9VLF-F7EL>] (recently purchased by LexisNexis).

71. LEX MACHINA, <https://lexmachina.com> [<https://perma.cc/GUH9-CWMH>] (recently purchased by LexisNexis).

72. Mills, *supra* note 68, at 5.

73. *Id.*

74. ROSS INTELLIGENCE, <http://www.rossintelligence.com/> [<https://perma.cc/BT4C-RL7M>].

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

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

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

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

¶38 In January 2017, Blue Hill Research Group released a benchmark report financed by ROSS, Inc., titled *ROSS Intelligence and Artificial Intelligence in Legal Research*.⁸⁰ Accordingly, the research objective was “[t]o assess the impact of ROSS-assisted use cases in bankruptcy law research with respect to: Information Retrieval Quality, Usability and User Confidence, and Research Efficiency.”⁸¹ Blue Hill used a panel of sixteen legal researchers to benchmark ROSS-use cases with those involving Boolean and natural language search capabilities of other research platforms.⁸² Ultimately, the benchmark report found that when users conduct searches by entering questions in plain language, “ROSS’s cognitive computing and semantic analysis

75. Karen Turner, *Meet “Ross,” the Newly Hired Legal Robot*, WASH. POST (May 16, 2016), https://www.washingtonpost.com/news/innovations/wp/2016/05/16/meet-ross-the-newly-hired-legal-robot/?utm_term=.227b92ab403d [<https://perma.cc/KMU8-MPBC>].

76. *ROSS Intelligence Announces Partnership with BakerHostetler*, PR NEWSWIRE (May 5, 2016), <http://www.prnewswire.com/news-releases/ross-intelligence-announces-partnership-with-baker-hostetler-300264039.html> [<https://perma.cc/S6TG-FVF9>].

77. *IBM Watson Takes the Stand*, ATLANTIC, <http://www.theatlantic.com/sponsored/ibm-transformation-of-business/watson-takes-the-stand/283/> [<https://perma.cc/8B8X-J9GL>].

78. *The Tech Start-Up Planning to Shake up the Legal World*, BBC NEWS (May 17, 2016), <http://www.bbc.com/news/business-36303705> [<https://perma.cc/98PQ-QYPV>]; Andrew Arruda: *Artificial Intelligence and the Law Conference at Vanderbilt Law School*, YOUTUBE (May 6, 2016), https://www.youtube.com/watch?v=LF08X5_T3Oc#t=2540.653469484.

79. Stephanie Francis Ward, *Jimoh Ovbiagele: Putting AI in Law Practice*, A.B.A. J. (Sept. 1, 2016, 11:45 AM), http://www.abajournal.com/legalrebels/article/jimoh_ovbiagele_profile/ [<https://perma.cc/5PAC-THH7>].

80. DAVID HOULIHAN, ROSS INTELLIGENCE AND ARTIFICIAL INTELLIGENCE IN LEGAL RESEARCH, BLUE HILL RESEARCH (Jan. 17, 2017), (<http://bluehillresearch.com/ross-intelligence-and-artificial-intelligence-in-legal-research/>).

81. *Id.* at 1.

82. *Id.*

capabilities permit the tool to understand the intent of the question asked and identify answers ‘in context’ within the searched authorities.”⁸³

¶39 Based on the results, Blue Hill found that “ROSS AI plus Westlaw outperforms either Westlaw or LexisNexis alone.”⁸⁴ One of the primary takeaways from the Blue Hill report includes the following:

*It should be noted that none of these findings indicate that AI-assisted legal research constitutes a dramatic transformation in the use of technology by legal organizations. Rather, the use cases and impact reviewed indicate that tools like ROSS Intelligence more closely represent a significant iteration in the continuing evolution of legal research tools that began with the launch of digital databases of authorities and have continued through developments in search technologies.*⁸⁵

From this report, it is clear that ROSS powered by IBM Watson is a form of “augmented intelligence” that, guided by human experts, may make attorneys more efficient in their work.⁸⁶ Even with this efficiency, though, it is not ready to save attorneys thirty percent of their time because it does not have the computing capability to perform the requisite legal research.⁸⁷

Natural Language Processing and Premature Disruption

¶40 ROSS Intelligence is described on its website as “an AI lawyer that helps human lawyers research faster and focus on advising clients.”⁸⁸ And, as previously mentioned, ROSS’s cofounder has touted that ROSS will save lawyers up to thirty percent of their time, the same percentage that surveys show new attorneys spend on legal research.⁸⁹ The various stakeholders, from firm partners to law students, must understand the current capabilities *and limitations* of ROSS and other expert systems, contrasted with developers’ irresponsible hype, given the notion of premature disruption.⁹⁰

¶41 While ROSS may well be better at NLP than any legal research system before it, ROSS is still limited by current computing capabilities.⁹¹ “Sometime in the future it may be easier to find information without the help of a human individual interaction but that . . . seems a long way off because a computer has to be able to interpret whatever someone is saying and infer in ways that would be very challenging.”⁹²

83. *Id.* at 2.

84. Robert Ambrogi, *ROSS AI Plus Westlaw Outperforms Either Westlaw or LexisNexis Alone, Study Finds*, LAW STES (Jan. 17, 2017), <http://www.lawsitesblog.com/2017/01/ross-artificial-intelligence-outperforms-westlaw-lexisnexis-study-finds.html> [<https://perma.cc/95KM-QCFM>].

85. *Id.* (emphasis added).

86. Jean P. O’Grady, *Hand in Hand with IBM Watson*, AALL SPECTRUM, Sept.-Oct. 2015, at 19, 20–21.

87. See *infra* ¶¶ 40–51.

88. Ward, *supra* note 79.

89. *The Tech Start-Up Planning to Shake Up the Legal World*, *supra* note 78.

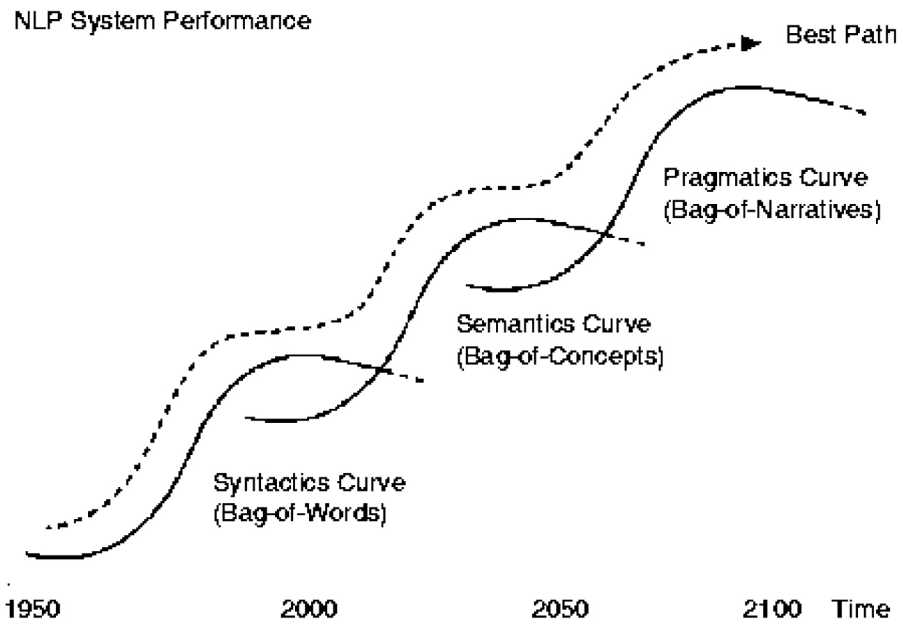
90. See Brian Sheppard, *Incomplete Innovation and the Premature Disruption of Legal Services*, 2015 MICH. ST. L. REV. 1797.

91. See Gary Marcus, *Artificial Intelligence Is Stuck. Here’s How to Move It Forward*, N.Y. TIMES (July 29, 2017), <https://www.nytimes.com/2017/07/29/opinion/sunday/artificial-intelligence-is-stuck-heres-how-to-move-it-forward.html>.

92. *The Tech Start-Up Planning to Shake Up the Legal World*, *supra* note 78.

Figure 1

NLP Performance Curve



¶42 When it comes to premature disruption, in medicine, IBM Watson has been criticized by Oren Etzioni as the “Donald Trump of the AI Industry” making outlandish claims about its ability that no credible data support.⁹³ Etzioni, CEO of the Allen Institute for AI, continued, stating that IBM Watson’s “marketing and PR has run amok—to everyone’s detriment.”⁹⁴ This is because the technology is not truly ready to do what the PR folks tout that it can do. A Watson for Oncology designer opined that “IBM needs to be held accountable for the image that it’s producing of its successes compared to what they’re actually able to deliver, because at a certain point it becomes an ethical issue.”⁹⁵

¶43 The problem lies with the current limitations on computing capability, particularly with the ability of a computer to understand NLP. Looking at the NLP performance curve helps to explain this problem (see figure 1⁹⁶). While NLP research has made great strides in producing artificially intelligent behaviors (e.g., Google, IBM’s Watson, and Apple’s Siri), none of such NLP frameworks actually understand what they are doing—making them no different from a parrot that learns to repeat words without any clear understanding of what the words mean.

93. See Brown, *supra* note 38.

94. *Id.*

95. *Id.*

96. Erik Cambria & Bebo White, *Jumping NLP Curves: A Review of Natural Language Processing Research*, IEEE COMPUTATIONAL INTELLIGENCE MAG., May 2014, at 48, <http://sentic.net/jumping-nlp-curves.pdf> [<https://perma.cc/GC2N-CD4W>].

Today, even the most popular NLP technologies view text analysis as a word- or pattern-matching task. Trying to ascertain the meaning of a piece of text by processing it at word level, however, is no different from attempting to understand a picture by analyzing it at pixel level.⁹⁷ Thus far, NLP research has focused on word-level approaches. “Single-word expressions, however, are just a subset of concepts, multi-word expressions that carry specific *semantics and sentics*. Sentics . . . specifies the affective information associated with . . . real-world entities, which is key for common-sense reasoning and decision-making.”⁹⁸ It is only with commonsense reasoning and decision making that NLP can truly leap from syntax to semantics and understand both “high- and low-level concepts as well as nuances in natural language understanding.”⁹⁹ In practice, commonsense understanding allows a computer to properly deconstruct “natural language text into sentiments according to different contexts—for example, . . . the concept ‘go read the book’ as positive for a book review but negative for a movie review.”¹⁰⁰

¶44 As NLP systems continue to advance, they will gradually move from relying on syntactic, word-based techniques and start to exploit semantics more consistently and, hence, make a leap from the Syntactics Curve to the Semantics Curve.¹⁰¹ But “[s]emantics . . . is just one layer up in the scale that separates NLP from true natural language *understanding*.”¹⁰² For systems to achieve the ability to accurately process information, the computational models must “be able to project semantics and sentics in time, compare them in a parallel and dynamic way, according to different contexts and with respect to different actors and their intentions.”¹⁰³ This means that systems must eventually progress from the Semantics Curve to the Pragmatics Curve, “which will enable NLP to be more adaptive and, hence, open-domain, context-aware, and intent-driven.”¹⁰⁴

¶45 While the paradigm of the Syntactics Curve is the bag-of-words model and the Semantics Curve is characterized by a bag-of-concepts model, the paradigm of the Pragmatics Curve will be the bag-of-narratives model. In this last model, each piece of text will be represented by mini-stories or interconnected episodes, leading to a more detailed level of text comprehension and sensible computation. While the bag-of-concepts model helps to overcome problems such as word-sense disambiguation and semantic role labeling, the bag-of-narratives model will enable tackling NLP issues such as co-reference resolution and textual entailment.¹⁰⁵

¶46 Pragmatics will provide a narrative understanding to allow for reasoning, decision making, and “sensemaking.”¹⁰⁶ “Once NLP research can grasp semantics at a level comparable to human text processing, the jump to the Pragmatics Curve will be necessary, in the same way as semantic machine learning is now gradually evolving from lexical to compositional semantics.”¹⁰⁷

97. *Id.* at 51.

98. *Id.*

99. *Id.*

100. *Id.* at 51–52.

101. *Id.* at 56.

102. *Id.* at 52 (emphasis added).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.* at 54.

107. *Id.* at 55.

¶47 Jumping the curve, however, is not an easy task. In fact, the origin of human language has been called the hardest problem of science.¹⁰⁸ “[A]lgorithms are limited by the fact that they can process only information that they can ‘see.’ Language, however, is a system where all terms are interdependent and where the value of one is the result of the simultaneous presence of the others.”¹⁰⁹ As text processors, humans “‘see more than what we see’ in which every word activates a cascade of semantically-related concepts that enable the completion of complex NLP tasks, such as word-sense disambiguation, textual entailment, and semantic role labeling, in a quick and effortless way.”¹¹⁰ For an intelligent system to truly organize concepts into knowledge, the system must understand “physical knowledge of how objects behave, social knowledge of how people interact, sensory knowledge of how things look and taste, psychological knowledge about the way people think, and so on.”¹¹¹ This type of computing power is still a long way off.¹¹²

¶48 As this detailed discussion of current computing capability suggests, “[w]hile exponential acceleration offer[s] valuable insight into the advance of information technology over a relatively long period, the short-term reality is more complex.”¹¹³ In the short term, progress will likely thrust forward but then stop “while new capabilities are assimilated into organizations and the foundation for the next period of rapid advance is established.”¹¹⁴

¶49 In the long term,

some . . . see computers continuing to double in power every two years, reaching levels of computing power by the 2020s that rival the human brain and that by the 2050s rival, in a single desktop machine, the power of all human brains combined. Even aside from the growth in processing power, there is every reason to expect that learning algorithms will bring ever-greater performance from existing machines. Given such vast increases in computational power, they see computers as besting humans at what lawyers do, which is to provide reliable, expert answers to difficult questions.¹¹⁵

¶50 In the short term, it is imperative that the various stakeholders consider the notion of premature disruption, whereby technologies replace human workers before the technology is truly ready to perform at the level of the replaced humans.¹¹⁶ Even though some software is being touted as ready to replace humans,¹¹⁷ in cases “where software must interact directly with people, . . . software has largely failed to leverage the advances that have occurred in hardware.”¹¹⁸ And DeepQA is just the latest software advancement to offer workplace assistance.¹¹⁹

108. *Id.* at 56.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 48.

113. FORD, *supra* note 13, at 64.

114. *Id.*

115. Campbell, *supra* note 2, at 8; *see also* SUSSKIND & SUSSKIND, *supra* note 21.

116. *See* Sheppard, *supra* note 90.

117. *See id.*

118. FORD, *supra* note 13, at 71; *see supra* ¶¶ 24–30.

119. J. Philip Craiger, *Technology, Organizations, and Work in the 20th Century*, SOC'Y FOR INDUS. & ORGANIZATIONAL PSYCHOL. (Jan. 1997), <http://www.siop.org/tip/backissues/tipjan97/craiger.aspx> [https://perma.cc/FP26-F5BC].

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

AI in Legal Research

The algorithm can solve a case. It cannot build a case.¹²³

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

DeepQA Applied to Legal Research

¶53 While lawyers can generally access the information they seek, computers do not yet have the ability to move beyond natural language processing to natural language *understanding*. It is impossible, then, for computers to truly perform effortless expert legal research. Expert legal research takes a level of creativity that requires context and pragmatic-level understanding to be performed properly.¹²⁶

¶54 The skillful advocate strings together rules in a way that justifies the result she is seeking and at the same time encompasses the factual occurrence in a way that makes the rules she has selected appear to be the ones best applicable to the situation. The lawyer’s research strategy is to identify the string of rules that both leads to a desired result and plausibly encompasses a set of facts that accounts for what has happened to her client.¹²⁷

¶55 The advocate knows that “[t]he goal is not to reach the right decision but to make the best argument for one side.”¹²⁸ And this requires a level of sophisticated pragmatic thinking that is distinctive from logic or scientific reasoning, for

120. FORD, *supra* note 13, at 71.

121. Popper, *supra* note 24, at 8.

122. See McGinnis & Wasick, *supra* note 6, at 1050.

123. Siddhartha Mukherjee, *A.I. versus M.D.*, NEW YORKER (Apr. 3, 2017), <https://www.newyorker.com/magazine/2017/04/03/ai-versus-md> [<https://perma.cc/U7NA-BRJA>].

124. See F. Allan Hanson, *From Key Numbers to Keywords: How Automation Has Transformed the Law*, 94 LAW LIBR. J. 563, 563, 2002 LAW LIBR. J. 563, ¶ 1.

125. See *supra* ¶¶ 31–39.

126. See *supra* ¶¶ 40–51.

127. Bruce G. Buchanan & Thomas E. Headrick, *Some Speculation About Artificial Intelligence and Legal Reasoning*, 23 STAN. L. REV. 40, 47–48 (1970).

128. Phoebe C. Ellsworth, *Legal Reasoning*, in CAMBRIDGE HANDBOOK OF THINKING AND REASONING 685 (Keith J. Holyoak & Robert G. Morrison eds., 2005).

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

¶56 According to New York Law School’s Kris Franklin, “[u]nderstanding how legal authorities are most effectively deployed to build legal arguments requires mastery of all of the most fundamental components of legal reasoning: reading sources of law meticulously, interpreting them critically, and applying them strategically.”¹³³ Legal research, therefore, is linked directly to the “fundamental components of legal reasoning.”¹³⁴ Moreover, “[i]f AI is to do justice to [legal research] processes, . . . it needs to accommodate their complexity in a realistic manner . . . [L]aw, like many other areas, challenges AI to articulate the architectural features required to support reasoning in a domain saturated by complexity, uncertainty, defeasibility, and conflict.”¹³⁵

¶57 Because of the current limitations of NLP used in the existing retrieval systems, however, these systems help only with the periphery of this process. “They retrieve cases and statutes that are potentially relevant to some of the facts under consideration,”¹³⁶ but they do not produce the legal arguments that make up the end product of the research. That is because “legal search engines still work as a searchable index. Lawyers searching the index play a guessing game, trying to come up with the magical combination of terms that will get the search engine to return the relevant case law. The guessing game takes time, energy, and money.”¹³⁷

¶58 In the short term, as law adopts the use of DeepQA technology akin to the medical field’s, the early iteration of the technology, taking into account current NLP capabilities, will allow “legal search engines to eliminate the guessing game by understanding, at a human level, the legal question being posed.”¹³⁸ And “[i]nstead of typing in a search term [using Boolean connectors] . . . , the lawyer will simply ask ‘find case law where the court discusses whether helping to cover up a conspiracy means you are responsible for the acts of the conspiracy.’”¹³⁹ The more sophisticated NLP capabilities using semantic-level understanding should be able to retrieve relevant results. Researchers need to understand, though, that relevant does not necessarily mean the “best” results to advocate for the client.

129. *Id.*

130. Sarah Valentine, *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 U. BALT. L. REV. 173, 209–10 (2010).

131. *Id.* at 210.

132. *Id.* at 211.

133. *Id.*

134. *Id.*

135. John A. Barnden & Donald M. Peterson, *Artificial Intelligence, Mindreading, and Reasoning in Law*, 22 CARDOZO L. REV. 1381, 1383 (2001).

136. Buchanan & Headrick, *supra* note 127, at 51.

137. McGinnis & Wasick, *supra* note 6, at 1018.

138. *Id.*

139. *Id.*

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

The Limitations of AI and the Need to Use AI Responsibly

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

This [overall] problem [is in the] . . . limitations in software: (1) it cannot predict the infinite fact patterns that occur in difficult cases that are typically litigated; [and] (2) because machine learning is largely based on pattern recognition, it is likely to provide the easy solution associated with a similar easy case, while unable to replicate common sense judgments regarding important loopholes and policy concerns that apply to more specific fact patterns associated with substantially more difficult cases Th[e] limiting user interface, which would be the most likely artificial intelligence solution, could make the odds for the client even worse. For example, a client might [be advised to] settle based on a software program’s [results] even though contract terms were ambiguous or unconscionable, not knowing that a court would not have upheld them [because those cases were not returned].¹⁴²

While DeepQA is a good start in finding relevant cases, it is the harder “cases, ones that do not occur regularly and are generally not predictable, [that] clients now decide to consult with an attorney [about]. For easy cases, that occur regularly, like a standard rear-end collision with no personal injury, many people settle without attorneys.”¹⁴³ For this reason, DeepQA and other AI agents are currently of limited use in legal research.

¶61 The technology will inevitably continue to evolve and advance at an exponential rate, and attorneys must understand the issues surrounding computing capability. There is a real danger in relying blindly on algorithms to do sophisticated legal research without understanding how the algorithms generate results. Lawyers must be cognizant of total reliance on algorithms in the face of algorithmic accountability, the Duty of Technology Competence, malpractice pitfalls, and the unauthorized practice of law.

Algorithmic Accountability and Computational Negligence

¶62 The danger with algorithmic accountability is that currently little regulation in this area exists. “As routine matter of business, the corporations offering legal services do not share the[ir] algorithms.”¹⁴⁴ Without understanding how the

140. *Id.*

141. *Id.*

142. Frank Pasquale & Glyn Cashwell, *Four Futures of Legal Automation*, 63 UCLA L. REV. DISCOURSE 26, 43 (2015).

143. *Id.* at 44.

144. Campbell, *supra* note 2, at 11.

algorithms generate results, it is difficult, if not impossible, for attorneys to vet the information.

[I]nvisible to the user, these products could be subject to intentional or unintentional biases. For example, a product relying on Big Data analysis and statistical correlation might give different advice in response to a criminal charge if race or income were a variable, embedding, unknown to the consumer, historic biases in the information given. With the algorithm hidden, the bias would be, as a practical matter, undetectable. In order for digital legal services to achieve their potential, these issues need careful thought. Given the lack of transparency, it cannot be assumed that the market will provide a sufficient check as consumers may not even realize the issue exists, and most likely will be unable to evaluate the options, even if they recognize the general issue of private algorithms. While tight government regulation of the giant Internet companies summons up its own parade of horrors, the issue is too important to ignore.¹⁴⁵

¶63 In addition, as we continue to transition from the Digital Age to the Algorithmic Society, algorithms will increasingly be used to govern populations.¹⁴⁶ The underlying data and algorithms will be used to understand, analyze, control, direct, order, and shape society. “Because the relationship is one of governance, the obligations are fiduciary.”¹⁴⁷ Without algorithmic accountability and transparency,¹⁴⁸ the very people who create laws to govern will not be able to act in their fiduciary capacities.

¶64 To ensure that lawyers are able to meet their fiduciary responsibilities, the three principles of the Algorithmic Society should be taken into account:

(1) With respect to clients, customers, and end-users, algorithm users are *information fiduciaries*.

(2) With respect to those who are not clients, customers, and end-users, algorithm users have *public duties*. If they are governments, this follows from their nature as governments. If they are private actors, their businesses are affected with a public interest, as constitutional lawyers would have said during the 1930s.

(3) The central public duty of algorithm users is to avoid externalizing the costs (harms) of their operations. The best analogy for the harms of algorithmic decision-making is not intentional discrimination but socially unjustified pollution.¹⁴⁹

With respect to principal (1), fiduciaries “who use robots, AI agents, and algorithms have duties of good faith and trust toward their end users and clients. Fiduciary duties apply whether a business or entity uses robots, AI agents, or machine learning algorithms in delivering services.”¹⁵⁰ In adopting this fiduciary duty, it is recognized that “the use of algorithms can harm not only the end-user of a service, but many other people in society as well.”¹⁵¹ It equates to “the socially unjustified use of computational capacities.”¹⁵² Because “the algorithm doesn’t have intentions, wants, or desires . . . , we have to focus on the social effects of the use of a particular

145. *Id.*

146. Jack Balkin, *The Three Laws of Robotics in the Age of Big Data*, 78 OHIO ST. L.J. 1217, 1226 (2017).

147. *Id.*

148. See Sara Castellanos & Steven Norton, *Inside Darpa’s Push to Make Artificial Intelligence Explain Itself*, WALL STREET J. (Aug. 10, 2017, 12:59 PM), <https://blogs.wsj.com/cio/2017/08/10/inside-darpas-push-to-make-artificial-intelligence-explain-itself/>.

149. Balkin, *supra* note 146, at 1227.

150. *Id.* at 1230.

151. *Id.* at 1232.

152. *Id.* at 1233.

algorithm, and whether the effects are reasonable and justified from the standpoint of society as a whole.”¹⁵³ And this duty is nowhere greater than in law, where the use of algorithms has the greatest ability to result in deleterious effects on society. Without algorithmic transparency and the ability to monitor operations, there is no means to provide a rebuttal or method for holding the algorithm accountable. This will not do when so much is at stake.¹⁵⁴

¶65 Even with sufficient transparency, biases may still exist in algorithmically organized systems.¹⁵⁵ This could be a result of “the algorithm creators . . . build[ing] into their creations their own perspectives and values.”¹⁵⁶ Or it could be that “the datasets to which algorithms are applied have their own limits and deficiencies.”¹⁵⁷ Realistically, “[t]he algorithms will be primarily designed by white and Asian men—the data selected by these same privileged actors—for the benefit of consumers like themselves.”¹⁵⁸ Thus, “[t]he makers of these algorithms and the collectors of the data used to test and prime them have nowhere near a comprehensive understanding of culture, values, and diversity.”¹⁵⁹ A prime example of this dangerous bias exists “in criminal justice, for example, [where] . . . an algorithm that fulfills basic statistical desiderata is also a lot more likely to rate black defendants as high-risk even when they will not go on to commit another crime.”¹⁶⁰

¶66 Another core problem with algorithmic-based decision-making and transparency is that the machines have literally become black boxes—even the developers and operators do not fully understand how outputs are produced. “There is a larger problem with the increase of algorithm-based outcomes beyond the risk of error or discrimination—the increasing opacity of decision making and the growing lack of human accountability.”¹⁶¹ Thus,

[t]he danger in increased reliance on algorithms is that the decision making process becomes oracular: opaque yet unarguable. The solution is design. The process should not be a black box into which we feed data and out comes an answer, but a transparent process designed not just to produce a result, but to explain how it came up with that result. The systems should be able to produce clear, legible text and graphics that help the users—readers, editors, doctors, patients, loan applicants, voters, etc.—understand how the decision was made. The systems should be interactive, so that people can examine how changing data, assumptions, rules would change outcomes.¹⁶²

¶67 In the simplest terms, the call for algorithmic transparency would allow sophisticated users to “review a software-driven action after-the-fact . . . to see if it

153. *Id.* at 1234.

154. *Id.* at 1239.

155. Janna Anderson & Lee Rainie, *Code-Dependent: Pros and Cons of the Algorithm Age*, PEW RES. CTR. 11 (Feb. 8, 2017), <http://www.pewinternet.org/2017/02/08/code-dependent-pros-and-cons-of-the-algorithm-age/> [<https://perma.cc/P3QF-LW76>].

156. *Id.*

157. *Id.*

158. *Id.* at 12.

159. *Id.* at 21.

160. Emma Pierson, *Hey Computer Scientists! Stop Hating on the Humanities*, WIRED (Apr. 24, 2017, 10:00 AM), <https://www.wired.com/2017/04/hey-computer-scientists-stop-hating-humanities/> [<https://perma.cc/J3KU-2B6L>].

161. Anderson & Rainie, *supra* note 155, at 19.

162. *Id.* at 22–23.

comports with applicable social, political, or legal norms.”¹⁶³ This is particularly challenging for machine learning systems that adapt on their own and change often without the ability to create a discernable decision log.¹⁶⁴

Although the subject of such a process may not have the literal ability to know or understand what reasons are behind a decision, when a sensitive decision is being made— . . . when the state is making decisions that raise due process concerns—the state must use software that furnishes relevant evidence to support evaluation and hence allow for technical accountability.¹⁶⁵

¶68 Law, like medicine, should require algorithmic transparency. Arguably, all legal outcomes are sensitive decisions. If users do not have a clear picture of how a decision was made or how a particular case hypothesis was generated, the user cannot fulfill his or her fiduciary duty to the client and avoid “computational negligence.”

The Duty of Technology Competence and Malpractice Pitfalls

¶69 Not only is there a theoretical fiduciary duty created by the use of algorithmic decision making when governing populations, there is also the very real, newly created Duty of Technology Competence.

[T]he American Bar Association formally approved a change to the Model Rules of Professional Conduct to make clear that lawyers have a duty to be competent not only in the law and its practice, but also in technology. More specifically, the ABA’s House of Delegates voted to amend Comment 8 to Model Rule 1.1, which pertains to competence, to read (emphasis added)

“ . . . To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”

This being a model rule, it must be adopted in a state for it to apply there So far, twenty-one states have done so.¹⁶⁶

Because most attorneys do not have specialized training focused on a particular technological field, basic ethical rules provide a framework for determining a practitioner’s professional duties and obligations with regard to technology—specifically, rules pertaining to competent client representation, adequate supervision, confidentiality, and communications.¹⁶⁷ Thus far, the Duty of Technology Competence has been interpreted to apply to eDiscovery.¹⁶⁸ While there has been

163. Deven R. Desai & Joshua A. Kroll, *Trust But Verify: A Guide to Algorithms and the Law*, 31 HARV. J.L. & TECH. 1, 39 (2017).

164. *Id.* at 49–50.

165. *Id.* at 44–45 (footnote omitted).

166. Robert Ambrogi, *Ethics and Technology Competence*, ABOVE THE LAW: THIS WEEK IN TECH (July 11, 2016, 3:02 PM), <http://abovethelaw.com/2016/07/this-week-in-legal-tech-ethics-and-technology-competence/>.

167. Stacey Blaustein, Melinda L. McLellan & James A. Sherer, *Digital Direction for the Analog Attorney—Data Protection, E-Discovery, and the Ethics of Technological Competence in Today’s World of Tomorrow*, 22 RICH. J.L. & TECH. no. 4, 2016, 10, 25.

168. See State Bar of Cal. Standing Comm. on Professionalism, Responsibility & Conduct, Formal Op. No. 2015-193, [https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202015-193%20%5B11-0004%5D%20\(06-30-15\)%20-%20FINAL.pdf](https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202015-193%20%5B11-0004%5D%20(06-30-15)%20-%20FINAL.pdf) [<https://perma.cc/7ZUG-V7A9>].

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

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

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

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

further reinforces the responsibilities attorneys have to apply sufficient care in their practice when outsourcing supporting legal work to inexperienced non-professionals, and to ensure that confidentiality is maintained with outsourcing staff. This is not just a matter of supervising specific tasks. It also contemplates knowing which tasks are appropriate for delegation, both within the firm and to third-party vendors. For example, if a delegate of the attorney uses technology to begin an engagement, it's possible that such an arrangement could be viewed as "establish[ing] the attorney-client relationship," which may be prohibited under ABA Model Rule 5.5.¹⁷²

¶72 On a practical level, lawyers could eventually use such technologies to replace lower-level legal professionals. For example, a software application could first conduct a fact-gathering intake session to formulate the questions that need to be answered. Then using algorithms that employ natural language understanding, the algorithm would analyze the user inputs to understand the question. The algorithms would generate the appropriate case law, statutes, and regulations to analyze and compile a memo that succinctly describes the current law.¹⁷³ It is not difficult to see that this would be considered the outsourcing of legal support work to a nonlawyer. And the lawyer is required to supervise the legal work accordingly.

¶73 The various ethical duties, including the Duty of Technology Competence, are inextricably linked to malpractice considerations. "The legal . . . industr[y is], by nature, [an] industr[y] of precision. A small typographical error in a legal document could result in a malpractice lawsuit"¹⁷⁴ Most tasks in this industry

169. See generally Lauren Kellerhouse, *Comment 8 of Rule 1.1: The Implications of Technological Competence on Investigation, Discovery, and Client Security*, 40 J. LEGAL PROF. 291 (2016).

170. Samantha Ettari & Noah Hertz-Bunz, *Ethical E-Discovery: What Every Lawyer Needs to Know*, LEGAL TECH. NEWS (Nov. 10, 2015, 10:21 A.M.), <https://www.law.com/legaltechnews/almID/1202742064964/?slreturn=20180003193746> (archived at LEXIS ADVANCE, <https://advance.lexis.com/api/permalink/e04c5f11-08cc-4586-8119-9de6ee059246/?context=1000516>).

171. Blaustein, McLellan & Sherer, *supra* note 167, at 28 (footnote omitted).

172. *Id.* at 28–29.

173. Justin D. Leonard, *Cyberlawyering and the Small Business: Software Makes Hard Law (But Good Sense)*, 7 J. SMALL & EMERGING BUS. L. 323, 346 (2003).

174. *Can An A.I. Robot Perform Due Diligence Better Than Your Lawyer?*, MERGER TECHNOLOGY.COM (Sept. 28, 2016, 9:00 AM), <http://mergertechology.com/security/can-an-a-i-robot-perform-due-diligence-better-than-your-lawyer-3699> [<https://perma.cc/5KZ8-82WB>].

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

Unauthorized Practice of Law

¶74 Along with the issues that flow from algorithmic accountability, various legal ethical duties, and malpractice pitfalls, stakeholders must be cognizant of issues surrounding the unauthorized practice of law when using algorithms. “Ostensibly, the main policy rationale for this prohibition is legal services quality assurance and the protection of the public from unqualified legal practitioners, who while appropriating the full benefits of legal practice, often eschew the corresponding responsibilities that traditionally underpin the attorney and client relationship.”¹⁷⁶

¶75 To understand what constitutes the unauthorized practice of law, Texas has a preliminary definition that lists circumstances under which a person would be presumed to be practicing law.¹⁷⁷

These include giving advice or counsel to persons on their legal rights and responsibilities or to those of others, selecting, drafting, or completing legal documents or agreements that affect the legal rights of others, representing a person before an adjudicative body, including but not limited to documents preparation, or filing, or conducting discovery, or negotiating legal rights or responsibilities on behalf of a person.¹⁷⁸

Anyone engaging in the unauthorized practice of law is subject to criminal and civil penalties.¹⁷⁹ After Texas adopted this preliminary definition, the ABA recommended that every state and territory adopt a similar definition.¹⁸⁰

¶76 Algorithms, like websites, do not “just grow out of thin air and . . . aren’t maintained out of thin air. They’re put together by people It’s the people who develop [the algorithms] that [arguably] provide the assistance.”¹⁸¹ The more the software, or algorithm, does, the greater the chances that it could be seen as conducting the unauthorized practice of law. For example, if “[t]he software . . . go[es] far beyond providing clerical services [to] determin[ing] where (particularly, in which schedule) to place information provided by the debtor, select[ing] exemptions for the debtor[,] and suppl[y]ing relevant legal citations, . . . [p]roviding such personalized guidance has been held to constitute the practice of law.”¹⁸²

¶77 Developers who create legal algorithms for nonlawyers must understand the distinction between clerical work and preparing legal documents, as this “is the traditional benchmark for ascertaining whether a non-attorney is engaged in unau-

175. *Id.*

176. Taiwo A. Oriola, *The Use of Legal Software by Non-lawyers and the Perils of Unauthorized Practice of Law Charges in the United States: A Review of the Jayson Reynoso Decision*, 18 ARTIFICIAL INTELLIGENCE & L. 285, 286 (2010).

177. *Id.* at 307.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.* at 291.

182. *Id.* at 295.

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

Algorithmic Literacy: Legal Research Instruction Implications

¶78 It behooves law librarians to bring these issues surrounding the use of algorithms to light during legal research instruction. In the words of Professor Robert Berring, “[i]n the midst of an information revolution that it cannot stop and seems hardly to understand, the legal profession must reassess the very way it thinks about legal research and legal research training.”¹⁸⁵ “[N]atural language search, as it is refined, will have fundamental implications for legal search and ultimately the form of law.”¹⁸⁶

¶79 Using algorithms properly necessitates the need for advanced instruction. But law librarians face an uphill battle when it comes to teaching advanced research concepts because “[t]oday’s students arrive at law school often bereft of any research skills except the ability to ‘Google.’”¹⁸⁷ “This is a challenge not unlike that faced by legal writing instructors who are expected to teach successful legal writing when they must first teach basic writing skills.”¹⁸⁸

¶80 The challenge of teaching students who lack even basic research skills is that “it [is] simply too convenient for people to follow the advice of an algorithm (or, too difficult to go beyond such advice).”¹⁸⁹ When students have relied on simple Google searches throughout their entire education without vetting the results to consider pitfalls like machine learning bias, it is of utmost importance that law librarians take the time to discuss these issues while teaching the foundations of legal research. “[A]lgorithms may lead to a loss in human judgment as people become reliant on the software to think for them.”¹⁹⁰ And there is no greater threat than having machines create laws and govern populations without human understanding and oversight.

¶81 What we will see as search engines become more intelligent is that the systems will become even better at returning highly relevant results. “Seen through the prism of information theory, the legal information system will have improved its ability to communicate. Naturally, this improvement in capability should lead to changes in how the law is created and disseminated.”¹⁹¹ In turn, prospective lawyers will not have to spend a great deal of time looking through irrelevant results and instead will be able to focus on the implications of the results and parsing through how the results were generated.¹⁹²

183. *Id.*

184. *Id.*

185. Valentine, *supra* note 130, at 204.

186. McGinnis & Wasick, *supra* note 6, at 1010.

187. Valentine, *supra* note 130, at 189.

188. *Id.*

189. Cecilia Mazanec, *Will Algorithms Erode Our Decision-Making Skills?*, NPR: ALL TECH CONSIDERED (Feb. 8, 2017), <http://www.npr.org/sections/alltechconsidered/2017/02/08/514120713/will-algorithms-erode-our-decision-making-skills>.

190. *Id.*

191. McGinnis & Wasick, *supra* note 6, at 1022.

192. *Id.*

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

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

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

Conclusion

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

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

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

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

193. Campbell, *supra* note 2, at 12.

194. *Id.* at 13.

195. Anderson & Rainie, *supra* note 155, at 16.

196. *Id.*

197. Buchanan & Headrick, *supra* note 127, at 60.

198. *Id.* at 61.

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

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

As a profession, it is important that we don't identify with the pre-Gutenberg scribes. We are already in the business of using our expertise to help our constituents manage information overload. Watson and other augmented intelligence platforms are potentially powerful partners that can elevate and enhance our ability to manage the information tsunami pounding our desktops every day. It is clear that our role as experts in assessing and curating information quality will be more important than ever.¹⁹⁹

¶89 As we law librarians consider the fate of law libraries in the Information Age and beyond, it is imperative that we continue to assess and instruct on information quality. "The fundamental aim of every law library ought to be to remind its patrons and constituents to dare to think otherwise—to see the law in its true, transformative essence. If law librarians do not play this important role, the battle may be lost entirely."²⁰⁰

199. O'Grady, *supra* note 86, at 21.

200. Paul D. Callister, *Law and Heidegger's Question Concerning Technology: A Prolegomenon to Future Law Librarianship*, 99 LAW LIBR. J. 285, 303, 2007 LAW LIBR. J. 285, ¶ 40.

Access to Print, Access to Justice*

Kimberly Mattioli**

This article examines the relationship between self-represented litigants and digital literacy and how this particularly vulnerable patron group stands to be harmed by the elimination of print materials from public law libraries. An examination of the literature and a survey help to shed light on this growing problem.

Introduction	31
Background	34
Print Collections in Law Libraries	34
Digital Literacy and Access to Information	36
Self-Represented Litigants	39
Survey on Public Law Libraries and Self-Represented Litigants	41
Methodology	41
Survey Results	43
Survey Conclusion	48
Further Research	48
Recommendations	49
Background	49
“Lawyer in the Library” Programs and Self-Help Centers	50
Clinics	51
Access to Justice Initiatives	52
Technology Recommendations	53
Conclusion	54
Appendix: Survey on Self-Represented Litigants and Law Library Resources	56

Introduction

¶1 The legal industry and law schools are in a time of flux. Scholars, journalists, lawyers, and nonlawyers bemoan the glut of newly minted JDs who are churned out of law schools across the country every spring.¹ These commenters claim there are too many lawyers, many of whom are grossly unprepared to compete for the relatively small number of job openings in the legal field. The law schools they

* © Kimberly Mattioli, 2018. This article benefited from comments offered by Ashley Ahlbrand, Linda Fariss, and Jennifer Morgan.

** Student Services Librarian and Adjunct Lecturer in Law, Indiana University Maurer School of Law, Bloomington, Indiana.

1. See Editorial, *The Law School Debt Crisis*, N.Y. TIMES, Oct. 25, 2015, at SR8; Noam Scheiber, *An Expensive Law Degree, and No Place to Use It*, N.Y. TIMES (June 17, 2016), <https://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html>.

attend do not give them the real-world experience they need to practice law—instead, critics say, these fledgling attorneys are taught three years of irrelevant legal theory by overpaid law professors, overseen by money-hungry law school administrators who admit underqualified students just so they can stuff their coffers with tuition from those who are too unsophisticated to know better. Unless you can be admitted to a top school, they say, you would be foolish to attend law school.² This is the story the public is fed by popular-press pieces in the media. Whether it is true or not, the seemingly ceaseless media coverage of the demise of the American law school does seem to be taking its toll. Law school applications plummeted dramatically for several years and stagnated in 2016.³ Some law schools are being forced to buy out tenured faculty members or offer them early retirement.⁴ Others have drastically lowered the number of applicants they accept so they can keep their Law School Admission Test scores and grade point average numbers steady, resulting in less revenue from tuition.⁵ It is easy to understand why law school administrators need to look for places to save money. Often, the first place hit with a budget cut is the law library.⁶

¶2 Law library literature is full of articles talking about shrinking budgets.⁷ When budgets shrink, it logically follows that print collections shrink. Many of the most expensive volumes in a print collection are duplicated online—codes, digests, and periodicals to name a few, and these materials continue to grow more expensive.⁸ Law students are technologically savvy, and law faculty members are becoming increasingly so. It makes sense to save money by eliminating underutilized print volumes. Much of the literature on this topic focuses on how the downsizing of print collections will impact law librarianship or ways that librarians can remain relevant in the face of such a large change.⁹ This article shifts the focus away from how libraries and librarians will be affected to how the changes will affect a different group—self-represented litigants.

¶3 Public law school libraries have long served members of their communities. While access policies vary greatly from library to library, most institutions allow at

2. Elie Mystal, *A Guide for Choosing a Low-Ranked Law School*, ABOVE THE LAW (July 30, 2013, 6:04 PM), <http://abovethelaw.com/2013/07/a-guide-for-choosing-a-low-ranked-law-school/> [https://perma.cc/8CR9-H675].

3. *A Steep Slide in Law School Enrollment Accelerates*, N.Y. TIMES (Dec. 17, 2014), <https://dealbook.nytimes.com/2014/12/17/law-school-enrollment-falls-to-lowest-level-since-1987> [https://perma.cc/L2XY-WLK7]; Karen Sloan, *Number of Students Enrolling in Law School Basically Flat*, NAT'L L.J. (Dec. 15, 2016), <https://www.law.com/nationallawjournal/almID/1202774844249/> [https://perma.cc/NZ7R-Z7LJ].

4. See, e.g., Dave Stafford, *Valpo Law Announces Faculty Buyouts, Smaller Future Classes*, IND. LAW. (Feb. 26, 2016), <https://www.theindianalawyer.com/articles/39615> [https://perma.cc/X3KM-AM9J?type=image].

5. See, e.g., Elizabeth Olson, *Minnesota Law School, Facing Waning Interest, Cuts Admissions*, N.Y. TIMES (May 12, 2016), <https://www.nytimes.com/2016/05/13/business/dealbook/minnesota-law-school-facing-waning-interest-cuts-admissions.html>.

6. Linda K. Fariss, *Issues Facing Academic Law Libraries—New Challenges, New Opportunities*, 31 IND. LIBR. 37, 38 (2012).

7. See Taylor Fitchett et al., *Law Library Budgets in Hard Times*, 103 LAW LIBR. J. 91, 2011 LAW LIBR. J. 5.

8. Amanda M. Runyon, *The Effect of Economics and Electronic Resources on the Traditional Law Library Print Collection*, 101 LAW LIBR. J. 177, 2009 LAW LIBR. J. 11.

9. See Genevieve Blake Tung, *Academic Law Libraries and the Crisis in Legal Education*, 105 LAW LIBR. J. 275, 2013 LAW LIBR. J. 14.

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

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

¶5 Later, during my time as a library school student, I worked part time and had an internship in a law library. I realized how similar some of our patrons were to the clients at the legal aid clinic. Now, however, I felt that I was working at a disadvantage. At the legal aid clinic, it was nearly irrelevant whether the clients were computer literate because we could do everything for them. We told them what statutes or cases they needed to rely on, we filled out their forms, we filed forms with the court, we e-mailed opposing counsel for them. As librarians, of course, we are not allowed to do any of these things because it may constitute the unauthorized practice of law. If a print title is not available, how are librarians supposed to help computer-illiterate patrons find legal resources? What happens to computer-illiterate patrons when they do not live near or qualify for a legal aid program?

¶6 Arguably, eliminating print titles will cut off access to the law for a subset of the population. The focus of this article is to direct discussion to a simple question: are self-represented litigants negatively impacted by the shrinking print collections in public law libraries? The answer to this question may be elusive—there are many interrelated facets of the problem that connect in complicated ways. In spite of the difficulty in reaching a conclusive answer, my thesis is that on the whole, self-represented litigants have less access to legal materials due to the shrinking print collections in public law libraries.

¶7 In this article, I first identify and discuss three issues that comprise the wider access to justice problem: shrinking print collections in public law libraries, digital literacy, and the rise in the number of self-represented litigants. I then discuss the results of a survey I conducted in the spring of 2017 that shed light on how large a problem public law libraries face when they attempt to help self-represented litigants. I next make some recommendations for public law librarians and describe

10. LAW LIBRARIANS' WORKING GROUP OF THE SELF-REPRESENTED LITIGATION NETWORK, A SURVEY OF LAW LIBRARY PROGRAMS FOR SELF-REPRESENTED LITIGANTS, INCLUDING SELF-HELP CENTERS 7 (Apr. 2014), <http://www.srln.org/node/551/survey-srln-library-working-group-national-self-help-libraries-survey-srln-2013>.

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

Background

Print Collections in Law Libraries

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

¶9 The legal education reformers could be called alarmist or hyperbolic or accused of oversimplifying the problem, but they are not the only voices speaking out about where the future of academic law libraries is headed. If law librarians were ever in denial about the place of print collections in law schools, they seem to have adopted a tone of acceptance. In a *Law Library Journal* article entitled *Law Library Budgets in Hard Times*, several academic law library directors quash arguments that print proponents put forward in an effort to convince naysayers that print materials are necessary—namely the licensing agreements with commercial databases and the fact that people enjoy studying in rooms filled with books.

User emphasis is on access; few faculty and even fewer students are interested in whether the information that they use is licensed rather than owned by the library. As librarians, we may feel nostalgic and fiduciary responsibilities for our print collections, often carefully developed over decades, but few of our users, including our deans and faculties, feel the same way.¹⁵

It is not that these librarians believe licensing or fiduciary responsibilities are not valid concerns if law libraries eliminate print, but rather that librarians need to resign themselves to the fact that it is a battle that will not be won. For some librarians, there is no battle to fight at all.

11. See Ashley Krenelka Chase & Elizabeth C. Barnes, *The Road Oft Traveled: Collection Analysis and Development in a Modern Academic Law Library*, 39 COLLECTION MGMT. 196 (2014).

12. Fariss, *supra* note 6, at 38.

13. Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 217 (2012).

14. *Id.* at 195.

15. Fitchett et al., *supra* note 7, at 94, ¶ 10.

¶10 The tone in the literature and in popular press pieces is clear—print collections are too large; they are wasteful and unnecessary since nobody uses books anymore. Lawyers prefer to access their legal research materials online, and a law school's duty is to teach students how to be lawyers. There is simply no point in instructing students on how to do extensive print research when they will not have access to those books once they are in practice anyway. Some librarians have also noted that it is untenable with today's financial constraints to maintain dual formats of information resources; since statutes, cases, and other materials are available online, there is no need to also have them in print.¹⁶ Nor are academic law libraries the only institutions facing pressure to limit the size of print collections—government law libraries, often funded through court filing fees, are also facing budget decreases.¹⁷ It is important to find out what is happening behind all this rhetoric—are law libraries actually shrinking their print collections?

¶11 Primary Research Group recently conducted a survey called *Law Library Plans for the Print Materials Collection*.¹⁸ The survey was given to sixty-six law libraries, with a mixture of academic, firm, and government organizations responding. A small number of the respondents were from private company law libraries. The survey consisted of questions about the size of print collections, whether the libraries had plans to shrink those collections, about what items were being weeded, and about specific sources such as print journals and legal encyclopedias.¹⁹

¶12 Based on the answers to the survey, the expected two-year drop in spending on print resources from 2014 to 2016 was about twenty-two percent.²⁰ Law school libraries are aggressively eliminating reporters, journals, and looseleaf subscriptions. Many law firm libraries stated they have aggressively eliminated print sources across the board, while others emphasized digests and reporters. The government law libraries that responded often stated that they are eliminating primary source materials, though one respondent did state that “[w]e maintain our Georgia print collection because 90% of our users are self-represented litigants who are not computer literate.”²¹

¶13 The survey shows that law libraries are in fact reducing their print collections. Of particular interest for this article is the fact that many libraries are eliminating their primary sources in print. Primary sources (along with basic secondary sources like legal encyclopedias) are likely the most important resources for self-represented litigants. Two-thirds of academic law libraries stated that they were eliminating primary sources and digests. Sixty percent of firm law libraries responded that they were eliminating either certain primary sources or primary sources across the board. The number is likely even higher, however, because other firm libraries stated they were eliminating all duplicative primary sources. As for government law libraries, sixty-eight percent responded that they were eliminating

16. Connie Lenz, *The Public Mission of the Public Law School Library*, 105 LAW LIBR. J. 31, 2013 LAW LIBR. J. 2.

17. See Anne Galloway, *State Law Library Victim of Budgeting*, STOWE REP. (June 18, 2015), http://www.stowetoday.com/stowe_reporter/news/state_news/state-law-library-victim-of-budgeting/article_6c0f06b8-1696-11e5-9677-7f76511f7b11.html [https://perma.cc/SP7D-9UW6].

18. PRIMARY RESEARCH GROUP, INC., LAW LIBRARY PLANS FOR THE PRINT MATERIALS COLLECTION (2015).

19. *Id.*

20. *Id.* at 17.

21. *Id.* at 38.

primary sources, and even more were eliminating duplicative materials.²² One law school librarian responded that “[a]s it becomes the ‘norm’ to have less primary materials in print, it be will be easier and safer to discard them.”²³ A statement like this indicates that even libraries that have no current plans to eliminate their primary materials may do so in the future.

¶14 Another source that is likely quite important to self-represented litigants, legal encyclopedias, is also reportedly being eliminated, with a 32% drop in spending for academic law libraries, a 32.4% drop for firm law libraries, and a 23.2% drop in government law libraries.²⁴ When asked what they anticipated would happen to their print collections in the next five years, about eighty percent of law school libraries said they expected their collections would either shrink or stay about the same. Law firm libraries all expected decreases to their print collections.²⁵ Some libraries seem aware that self-represented litigants have different needs than other patron bases. When asked what they do when they have a material in both print and digital format, one law school librarian responded, “Some print sources are used more heavily by the general public than by our faculty and students. We try to balance those needs when we make decisions.”²⁶ Another stated, “We have an obligation to serve the public as well as the bench and bar. . . . Print material is often the easiest for patrons outside of academia to understand and use.”²⁷

¶15 As shown from the responses to this survey, the shrinking of law library print collections has already begun in earnest, and it will likely continue into the future. While some librarians seem to understand that many self-represented litigants are not going to have the computer skills to conduct adequate online legal research, other librarians seem eager to rid themselves of print. Others simply have no choice.

Digital Literacy and Access to Information

¶16 To understand how self-represented litigants may be negatively impacted by the decrease in print primary sources and print secondary sources such as legal encyclopedias, it is necessary to explore the phenomenon of digital literacy. Much of the literature on libraries and digital literacy uses a three-part framework to show the different aspects of information access: physical access, intellectual access, and social access.²⁸

¶17 Physical access is what many people think of as the “digital divide.” This is the issue of an individual’s ability to access information, whether in print or online.²⁹ The fear when the Internet became widespread was that low-income people or families in rural areas would be cut off from Internet access and thus further marginalized. More and more people do have physical access to the Inter-

22. *Id.* at 73–76.

23. *Id.* at 42.

24. *Id.* at 20.

25. *Id.* at 18.

26. *Id.* at 68.

27. *Id.* at 74.

28. See KIM M. THOMPSON ET AL., DIGITAL LITERACY AND DIGITAL INCLUSION: INFORMATION POLICY AND THE PUBLIC LIBRARY 10 (2014).

29. *Id.* at 4.

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

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

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

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

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

¶21 While it is debatable whether physical access to legal information is universal, it is clear that making legal information freely available online is a step in the right direction. It allows homebound individuals or those who do not live near a

30. See MAPPING THE DIGITAL DIVIDE 4 (Council of Economic Advisers Issue Brief, July 2015), https://obamawhitehouse.archives.gov/sites/default/files/wh_digital_divide_issue_brief.pdf [<https://perma.cc/45HH-VRR6>].

31. Sarah Glassmeyer, *Access to Law in the Twenty-First Century: Current Barriers to Access and the Future of Legal Information*, AALL SPECTRUM, Nov./Dec. 2016, at 34.

32. Sarah Glassmeyer, *State Legal Information Census: An Analysis of Primary State Legal Information: Search*, <http://www.sarahglassmeyer.com/StateLegalInformation/barriers-to-access/search/> [<https://perma.cc/5MMT-4D3F>].

33. THOMPSON ET AL., *supra* note 28, at 5.

34. *Id.* at 5–6.

35. *Id.* at 6.

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

¶22 Public libraries have been conducting technology training for their patrons for many years. The library science literature makes evident that technology training is one of the biggest services that public libraries provide.³⁶ These trainings can take the form of workshops or one-on-one sessions, and tend to consist of topics such as general Internet searching, setting up an e-mail account, applying for a job, or e-filing government forms such as Affordable Care Act registrations.³⁷ Another thing that is evident from the library science literature is that most of these technology trainings are still very basic, even though the Internet has been widespread for upwards of twenty years. “[T]he most requested topics have not deviated from the basics. General computer topics, including word processing, email and internet use, remain the leading classes. Libraries are still teaching people how to use the mouse and how to search the internet.”³⁸

¶23 These technology trainings are a wonderful and indispensable service to the public. In an age where it is increasingly difficult to get by in life without using the Internet, technology trainings can help people apply for jobs or government aid such as disability payments. If it is true, however, that most public library trainings are still teaching people how to set up an e-mail account, can these same individuals be expected to then perform complicated legal research tasks? Legal research is difficult enough for many self-represented litigants without the added hurdle of trying to navigate the sources online if the person is not accustomed to using technology. At a time when many individuals who cannot afford an attorney or do not qualify for legal aid are already cut off from justice, eliminating the only resource they have experience with may further affect their access.

¶24 Librarians are not the only ones concerned about access to information. Many studies have been conducted by nonpartisan think tanks addressing the issue.³⁹ One study released in 2012 shows that while Internet use is increasing among all demographics, individuals with low incomes and with low educational attainment are much less likely to use it.⁴⁰ Some of the differences were stark—sixty-two percent of people with annual household incomes less than \$30,000 used the Internet, as opposed to ninety-seven percent of people with annual household incomes higher than \$75,000.⁴¹ Education was even more divisive—forty-three percent of those with no high school diploma were Internet users, as opposed to

36. Stephanie Gerding, *Transforming Public Library Patron Technology Training*, LIBR. TECH. REP., Aug./Sept. 2011, at 43.

37. *Id.*

38. *Id.* at 44.

39. See, e.g., MAPPING THE DIGITAL DIVIDE, *supra* note 30.

40. KATHRYN ZICKUHR & AARON SMITH, DIGITAL DIFFERENCES (Pew Internet & American Life Project, 2012).

41. *Id.* at 6.

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

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

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

Self-Represented Litigants

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

¶28 Demographic information in this area is severely lacking. A survey of the literature turned up no national demographic data on self-represented litigants. Individual courts have conducted surveys to learn more about their self-represented litigant population, however. A 2005 survey in the New York City Family Court and the New York City Housing Court sheds some light on the types of individuals who are showing up to court without a lawyer. The majority of the self-represented liti-

42. *Id.* at 5.

43. *Id.* at 2.

44. MAPPING THE DIGITAL DIVIDE, *supra* note 30, at 3.

45. THE DIGITAL DIVIDE AND ECONOMIC BENEFITS OF BROADBAND ACCESS (Council of Economic Advisers Issue Brief, Mar. 2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160308_broadband_cea_issue_brief.pdf [<https://perma.cc/W58Z-7U3P>].

46. *Id.* at 3.

47. MAPPING THE DIGITAL DIVIDE, *supra* note 30, at 2.

48. SELF-REPRESENTED LITIGATION NETWORK, <http://www.srln.org> (last visited Mar. 24, 2018).

49. SRLN Brief: How Many SRLs?, SELF-REPRESENTED LITIGATION NETWORK (Oct. 2015), <http://www.srln.org/node/548/srln-brief-how-many-srls-srln-2015> [<https://perma.cc/EC3P-5FRE>].

gants in those two New York City courts had low incomes, believed they could not afford a lawyer, and had low education levels.⁵⁰ More specifically, about half of the respondents reported having a high school education or less. Eighty-three percent of the respondents had an annual household income of less than \$30,000, while fifty-seven percent had an income of less than \$20,000. The percentages for education level and for income were lower than for the total population of New York City at the time. In addition, eighty-three percent of the respondents reported being African American, Hispanic, or Asian, indicating a racial component to this issue as well.⁵¹ Most of the self-represented litigants indicated that they wanted written materials to be available in courthouses, while one-third expressed interest in having information online.⁵²

¶29 Other states have surveyed not self-represented litigants per se but low-income individuals to determine their legal needs. A survey conducted in 2014 by researchers at Washington State University discovered that more than seventy percent of low-income individuals in Washington face at least one legal problem per year.⁵³ Again, low-income people of color are disproportionately affected by legal issues. Of the respondents who had legal issues, seventy-six percent of them did not retain the services of an attorney.⁵⁴ “[L]ow-income Washingtonians continue to face their problems without necessary legal help, no matter how serious or complex the problem may be and regardless of the potential short- or long-term consequences.”⁵⁵

¶30 While these two reports are small and cover only a very small percentage of the population, they still tell us something important: self-represented litigants are involved in the majority of the civil cases in the United States, and they may tend to be disproportionately poor and uneducated. Low-income individuals may be more likely to encounter legal troubles, and when they do, they may be unable or unwilling to hire an attorney. From the existing literature, it is reasonable to deduce that self-represented litigants are more likely to be poor and uneducated, and people who are poor and uneducated are more likely to be computer illiterate. Therefore, self-represented litigants may be more likely to be computer illiterate. Self-represented litigants are compelled to do their own legal research, and it is critical that they are able to do so using a medium that they can understand. When public law libraries eliminate their print materials, they may very well be taking the only source a vulnerable person can understand and throwing it in the garbage.

¶31 While statistics and demographics on self-represented litigants are lacking, there is information on the types of resources that law libraries offer to this patron group. A study published in April 2014, *Library Self-Help Programs and Services: A Survey of Law Library Programs for Self-Represented Litigants, including Self-Help Centers*, outlines the findings of a joint task force of the Self-Represented Litigation

50. OFFICE OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES, at i (2005), https://www.nycourts.gov/reports/AJJL_Self_Rep06.pdf [<https://perma.cc/3BYJ-C99A>].

51. *Id.*

52. *Id.* at ii.

53. CIVIL LEGAL NEEDS STUDY UPDATE COMM., WASH. STATE SUP. CT., 2015 WASHINGTON STATE CIVIL LEGAL NEEDS STUDY UPDATE (2015), http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf [<https://perma.cc/9C9H-9M58>].

54. *Id.* at 3.

55. *Id.*

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

¶32 For traditional library services, the most common services provided to self-represented litigants were traditional legal research help, referrals to other programs, computerized legal research, telephone reference, and maintaining a collection of print materials for nonlawyers. In addition, ninety-five percent of libraries provide court forms—to a lesser degree, some libraries also provide instructions for court forms, forms in plain language, or forms in multiple languages. Ninety-seven percent of libraries surveyed provide self-represented litigants with computers with Internet access.⁵⁸

¶33 It is unclear how many self-represented litigants currently are involved in the court system in the United States, but it is clear that there are a lot, and their numbers are rising. It is also evident from the survey of Library Self-Help Programs and Services that self-represented litigants are welcome to conduct their legal research in most public law libraries across the country. What is less clear at this point is whether public law libraries can meaningfully assist self-represented litigants in a time of massive budget cuts and decreasing print collections.

Survey on Public Law Libraries and Self-Represented Litigants

Methodology

¶34 In the spring of 2017, I created and circulated a survey that aimed to give me a better understanding of how librarians in public law libraries around the country view the self-represented litigant issue, and whether they believe this patron group can adequately conduct their legal research online. I distributed the survey through several different e-mail listservs, and outline the results below.⁵⁹

¶35 In drafting the survey questions, I reviewed the available empirical data and identified gaps in the knowledge. As shown above, previous survey results tell us what resources law libraries offer to self-represented litigants in different types of law libraries across the country. Previous studies also tell us that law libraries of all types are eliminating print resources. What we do not know is how often self-represented litigants are using public law libraries, what resources they are using, and how they are accessing those materials. It is also impossible to tell from the existing empirical data whether self-represented litigants will be adversely affected by the decrease in law library print collections. My goal was to design a survey that would shed light on these unanswered questions.

56. LAW LIBRARIANS' WORKING GROUP OF THE SELF-REPRESENTED LITIGATION NETWORK, *supra* note 10.

57. *Id.* at 2.

58. *Id.* at 3.

59. *See infra* appendix.

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

¶37 To reach academic law librarians, I asked the director of my library to send an e-mail to the law library directors' listserv, with a request to have the most appropriate person in the library fill out the survey. I chose this method rather than distributing the survey through the AALL Academic Law Libraries (ALL-SIS) listserv in an attempt to avoid duplicative responses.

¶38 To reach government law libraries, I distributed the survey through the Ohio Regional Association of Law Libraries (ORALL) listserv. I made this decision after presenting a preliminary version of this project at the ORALL conference in Fort Wayne, Indiana, in October 2015. Ohio is required by statute to have a law library in every county,⁶⁰ and librarians at those institutions interact extensively with self-represented litigants. Many librarians at that conference indicated that while they were members of ORALL, they were not members of AALL. Using the ORALL listserv allowed me to survey librarians whom I would not have been able to reach through AALL.

¶39 To further contact all types of librarians who are interested in self-represented litigants, I contacted the chair of the AALL Legal Information Services to the Public Special Interest Section (LISP-SIS). She kindly agreed to distribute the survey on the section's My Communities page. This allowed me to reach out to librarians who deal with the public, regardless of the type of library in which they are employed.

¶40 There are some limitations to my methodology that deserve to be addressed. I had a relatively low number of responses from academic libraries, and I believe that the majority of academic responses came from the survey request through the LISP-SIS My Communities page. I chose to distribute it through the directors' listserv instead of the ALL-SIS My Communities page because a colleague had luck with gathering survey responses in that manner. However, I may have received more responses had I contacted a larger number of people.

¶41 Another limitation to my methodology was that choosing to use the ORALL listserv had the potential to give me a disproportionate number of responses from Ohio libraries, skewing my data. While I did have a significant number of Ohio librarians respond to the survey, I received survey responses from thirty states, encompassing all areas of the United States. The results were varied enough that I do not think the high number of Ohio responses negates the findings of the survey.

¶42 A final limitation to this methodology is that it may be hard to get a representative sample when sending out a survey to a large population. Librarians with a particular interest in access to justice issues or who spend significant amounts of time assisting self-represented litigants may have been more likely to respond to the survey. While this would not invalidate any of the information gathered from the survey, it may give a falsely high estimate of how often self-represented litigants are using law library materials. There is some evidence of this in my survey results,

60. OHIO REV. CODE ANN. § 307.51 (Supp. 2017).

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

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

Survey Results

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

¶45 In an effort to determine what types of obstacles self-represented litigants may face when they visit libraries regardless of their digital literacy status, I asked respondents whether their libraries place any sort of restrictions on the general public. This could include restrictions on hours, usage, or any other way in which public patrons are treated differently from the library's other patron base. Every respondent answered this question, with fifty librarians (73.53%) answering yes, and eighteen (26.47%) answering no. Of the respondents who indicated that restrictions were placed on their public patrons, there were two overwhelmingly common responses: restrictions on the hours public patrons are allowed in the building (nineteen, including one that has public access only once a week) and a blanket ban on circulation to public patrons (fifteen). Further circulation limitations included requiring public patrons to purchase a special card to check out materials (two), requiring a deposit for circulation privileges (one), and restricting the materials that a public patron can check out (one). Related to public usage of computers, six respondents said their libraries put a time limitation on public computers (though one noted that this was enforced only if other patrons were waiting), and two said the public computer terminals had restricted Internet access. One respondent mentioned that the library has no public computer access at all. This is unusual among libraries that serve the public—the *Library Self-Help Programs and Services* survey indicates that more than 90% of law libraries offer computerized legal research help to self-represented litigants.⁶¹

¶46 The purpose of this article is not to discuss the ramifications of restrictions such as these on self-represented litigants. Imposing artificial time limits on computer usage certainly has the potential to be problematic, and other researchers have commented on this. Rather, the focus of this article is on whether self-represented litigants who are digitally illiterate will be able to continue to research in law libraries when print materials are culled. This issue does provide some insight into the types of challenges self-represented litigants may face in public law libraries, however, even in those libraries that still provide public patrons with print materials.

¶47 The restrictions on circulation policies for public patrons is particularly important to this topic. While none of the circulation restrictions listed in the survey responses overtly prevent self-represented litigants from using library collec-

61. Law Librarians' Working Group of the Self-Represented Litigation Network, *supra* note 10, at 2.

tions, one could question whether putting a blanket ban on circulation for public patrons is really granting them full access. Individuals with low literacy skills or low educational attainment may need more time to comprehend complicated legal materials and may be more comfortable looking at these materials at home rather than in a public space. In addition, requiring public patrons to purchase a special circulation card may deter some particularly low-income individuals from checking out materials. There are certainly good reasons for reserving circulation privileges for a library's typical patron base—at academic law libraries, for example, librarians are able to locate students with overdue materials fairly easily or send library fines to the student's bursar account if necessary. The same cannot be said of members of the general public who may borrow materials and then never come back to the library. Librarians involved in creating borrowing policies must balance the risks of allowing circulation to the public against the need of providing public patrons with full access to the materials they need. It is natural that different institutions will come to different conclusions, but librarians should consider whether they are putting undue burdens on self-represented litigants when they make these decisions. These considerations are moot, of course, when it comes to certain materials that self-represented litigants may very likely need for their research (statutory codes, reporters, etc.) that do not circulate to anyone.

¶48 After these preliminary questions, I then asked respondents a series of questions about self-represented litigant usage in their libraries. When asked how frequently self-represented litigants used their libraries, sixty (88.24%) respondents stated that they helped this patron base several times per month. Four respondents (5.88%) chose once or twice a month, and another four answered several times per year. There were no respondents who replied that they saw self-represented litigants only once or twice per year or not at all. It is very likely that the high number of government librarians who responded to the survey resulted in such a high number of people who reported seeing self-represented litigants several times per month—perhaps government law libraries are more likely to serve the public on a regular basis than are academic law libraries. In fact, several government librarians left comments stating that they actually see self-represented litigants on a daily basis or several times per day.

¶49 When asked whether self-represented litigants tend to use a library's print or electronic resources more often, the majority of respondents (71.64%) said that they tend to use a mixture of both. This is perhaps unsurprising given that self-represented litigants are such a large and diverse group. As stated above, there are no reliable demographic statistics about self-represented litigants as a whole, but we do know that it is estimated that three out of five civil litigants go to court without a lawyer.⁶² This tells us that the group cannot be homogenous, and it makes sense that digital literacy skills are varied amongst individuals. In fact, one respondent to the survey stated, "SLRs can and do refuse 'paper' and insist on electronic resources." However, the next highest response (20.9%) stated that self-represented litigants use mostly print resources. Only five respondents said that this particular patron group uses mostly electronic resources—it is unclear whether this is by choice or by circumstance. The responses to this question could indicate that while a large number of self-represented litigants are able to use a mixture of sources, the

62. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 48.

majority are not comfortable conducting their research *solely* online. As one respondent succinctly put it, “most SRLs are not interested in the computers, that’s why they come to the law library.” This group of individuals could certainly be negatively impacted by the print resources at their public law library being eliminated.

¶50 Another question designed to gauge self-represented litigant usage in public law libraries asked respondents to indicate which types of print sources these patrons tend to use. Respondents were given a list of resources and told to choose all that applied to their situation. The highest response was print state or federal codes at fifty-four respondents (79.41%). Form books came in second at fifty respondents (73.53%), followed by secondary sources such as *American Law Reports* or legal encyclopedias at forty-eight respondents (70.59%), and Nolo books or other books for nonlawyers at forty-five respondents (66.18%). Twenty-eight respondents (41.18%) indicated that self-represented litigants use print reporters when they are conducting their legal research. Of all the survey respondents, only two (2.94%) stated that self-represented litigants in their libraries do not use many print materials and instead conduct their legal research online—again, it is unclear whether the patrons at those libraries choose to use the computers or whether they are forced to because of an inadequate print collection. These survey results are alarming when taken in conjunction with the *Law Library Plans for the Print Materials Collection* survey, which indicates that about two-thirds of academic and government law libraries stated they had already eliminated or planned to eliminate print primary sources, presumably including both codes and reporters.⁶³ Many of those same libraries also reported eliminating print secondary sources. When these two surveys are taken together, it appears that many libraries will be eliminating print resources that self-represented litigants tend to use on a regular basis. It is not clear from the *Law Library Plans for the Print Materials Collection* survey whether form books and books for nonlawyers are also on the chopping block for these libraries.

¶51 After determining how frequently self-represented litigants visit public law libraries, which sources they tend to use, and whether they access those materials online or in print, I asked the respondents to state whether their libraries have any immediate plans to eliminate the frequently used print sources. This question was essentially duplicative of the survey *Law Library Plans for the Print Materials Collection*, but I hoped to tailor it more specifically to self-represented litigants. To that end, I asked, “Does your library have immediate plans to eliminate any of the print resources that self-represented litigants tend to use?” The responses to this question were somewhat surprising and do not match up with either the *Law Library Plans for the Print Materials Collection* survey or the other responses in my survey. Only 14.7% of respondents indicated that there were probably or definitely immediate plans to eliminate these particular print resources. Sixteen percent of respondents said they were unsure, while nearly seventy percent of respondents said that there were probably not or definitely not any plans to eliminate these materials. These results seem unlikely when taken in conjunction with the other national survey that indicates more than two-thirds of both academic and government law libraries are eliminating primary materials in print.

63. PRIMARY RESEARCH GROUP, INC., *supra* note 18, at 17.

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

¶53 While the latter explanations are certainly possible, it seems more plausible that the former is the real reason for the inconsistent responses. When asked in the previous question about what types of print resources self-represented litigants use in their libraries, 79.41% answered that they use print state or federal codes, and 41.18% answered that they use print reporters. In *Law Library Plans for the Print Materials Collection*, more than two-thirds of both academic and government law libraries stated that they planned to eliminate print primary sources.⁶⁴ It simply does not follow that 70% of the current respondents have no plans to eliminate sources that self-represented litigants tend to use in print. While the responses to this question certainly introduce some inconsistencies to my study, I do not believe they cast any serious doubt onto my assertion that public law libraries are actively eliminating print sources that self-represented litigants rely on to conduct their legal research. In fact, several respondents commented about sources that their libraries are canceling or no longer updating. One stated, “We do still keep a number of state secondary resources in print for pro ses, but I don’t know how long we’ll be able to keep doing that.” Another said, “We just cancelled our print subscription to AmJur2d encyclopedia—I haven’t found an alternative—it’s OK for now, but as the volumes become more and more out of date it will be a problem.” Finally, one other respondent said, “we have not updated the pro se material recently due to a shrinking budget.”

¶54 The next questions in my survey were intended to get an understanding of how robust public law libraries’ current collections are and whether librarians often have to refer self-represented litigants to electronic resources. I asked respondents whether they feel they can adequately assist self-represented litigants with their existing print collections, without having to send them to a computer. This is important for those patrons who may be digitally illiterate. About a third of respondents (33.82%) stated that they can adequately assist patrons using only their print materi-

64. *Id.*

als. Thirty-four respondents (50%) stated that they can only sometimes assist self-represented litigants using only print resources without having to turn to electronic sources, and eleven (16.18%) said they can never rely solely on print before having to go to the computer. This tells us that at current levels, two-thirds of respondents say they cannot rely solely on their print collections to help self-represented litigants. This obviously has an extremely negative impact on digitally illiterate patrons who do not feel comfortable researching in a format other than print. One librarian commented,

our biggest issue is our pro se print collection. It seems to always be out of date and we don't have the funds to continuously update the books, so we are looking into getting Nolo online. However, this might not fix the issue entirely because many pro se's do not like to use the computers. They want to read a book.

The number of librarians having to refer their patrons to electronic resources likely stands to increase as print collections decrease even further.

¶55 The next question asked whether when referring self-represented litigants to electronic resources, the respondent feels that the patron can adequately navigate the databases without further technology training. Forty-two respondents (61.76%) answered that they feel self-represented litigants can sometimes manage the technology without further training, while twenty-six respondents (38.24%) said that they do not feel that the group can manage effectively. No respondents answered that, as a whole, self-represented litigants are able to use electronic databases with no further technology training. As mentioned above, self-represented litigants are a hugely varied group of people with a wide range of skill, education, and ability levels. It is telling, however, that in general, librarians who regularly work with them feel that they need more technology training to effectively use online resources. One respondent stated, "75% of our patrons are computer illiterate, a very real digital divide exists with patrons and desktop computing. Social media interaction on a cell phone is very different from trying to navigate through a desktop Word document or understanding how to navigate through Westlaw or a federal government forms website." Another respondent stated, "the biggest hurdle is that we are moving a lot of resources to electronic only, and we encounter many computer illiterate patrons." One respondent framed the issue very well by saying "some can use the online [resources] with help from librarians. None can just sit down and know what to do with Westlaw."

¶56 The final question of the survey was an important one: "Do self-represented litigants have other options for legal research help in your area?" Options could include other law libraries that serve the public or self-help centers. Thirty-eight respondents (55.88%) answered yes, twenty-two (32.35%) answered no, and eight (11.76%) were unsure. This issue is important because if a self-represented litigant is digitally illiterate and the only public law library in the state has eliminated all primary print resources, that person will have no other options for conducting legal research. Whether a self-represented litigant can rely on other libraries or self-help centers will depend entirely on where that person lives. Individuals in sparsely populated areas may be the most negatively impacted. For example, one respondent commented, "We are only 1 of 2 law libraries open to the public in the entire state of New Mexico." According to the 2010 United States Census, New Mexico is ranked thirty-seventh of the states in terms of population, so at first glance it may

seem that the state does not require a lot of public law libraries to serve its population.⁶⁵ However, even though it is not very populous, New Mexico is the fifth largest state in the country.⁶⁶ The two public law libraries are located in Santa Fe and Albuquerque. According to Google Maps, a self-represented litigant residing in Las Cruces who cannot use a computer would have to drive three hours to Albuquerque to access a public law library.⁶⁷ Other examples are even more striking. If a self-represented litigant lives on the eastern border of Montana, the closest public law library is in Helena—more than an eight-hour drive away.⁶⁸ This would be an insurmountable hurdle for many self-represented litigants who may be unable to take time off work or who may not have reliable transportation.

Survey Conclusion

¶57 The vast majority of respondents to the survey indicated that self-represented litigants visit their libraries on a regular basis. Only four respondents stated that they see self-represented litigants only a few times per year. This shows that the problem described in this article is not an insignificant one that affects only a small group of people; self-represented litigants from all over the country rely on public law libraries. According to this survey, many of those same self-represented litigants do not have the technology skills to conduct their legal research solely online without further training. It follows that when libraries eliminate print materials such as codes, reporters, and legal encyclopedias, these patrons are going to be unable to efficiently conduct their legal research to prepare themselves for court. Self-represented litigants are often already the victims of the larger access to justice problem—the ones who are digitally illiterate are being further victimized by not being able to access information in a format they can understand.

Further Research

¶58 At the end of the survey, I left a space for any comments respondents had about self-represented litigants and how they related to print or electronic resources. Many of the comments are outlined in the discussion above, but several respondents raised issues that are outside the scope of this article but are also incredibly important. I outline them here as related issues that warrant further research.

¶59 One respondent left a comment that many law librarians who serve the public can probably relate to: “They don’t want to do legal research. They want fill in the blank forms or access to a lawyer.” Other respondents put it less bluntly but had the same types of comments. One stated, “they seem to need help whether using print or electronic resources,” and another said, “if they don’t recall how to use an index or table of contents, let alone the internet, we are not much help.” While these three comments approach it slightly differently, they are all describing the same basic problem: a number of self-represented litigants are beyond our help. Some patrons are unwilling to research on their own or just want to spend their

65. *2010 Census Data*, U.S. CENSUS 2010, <https://www.census.gov/2010census/data/> [<https://perma.cc/8FTQ-JPSL>].

66. *Size of U.S. States by Area*, NATIONS ONLINE, <http://www.nationsonline.org/oneworld/US-states-by-area.htm> [<https://perma.cc/9KYF-EW93>].

67. See GOOGLE MAPS, <http://www.google.com/maps> (last visited Mar. 24, 2018).

68. *Id.*

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

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

Recommendations

Background

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

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

69. Press Release, U.S. Census Bureau, Census Bureau Reports at Least 350 Languages Spoken in U.S. Homes, <https://www.census.gov/newsroom/press-releases/2015/cb15-185.html> [https://perma.cc/K24W-ENPJ].

70. *Id.*

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

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

¶64 There are many examples of self-help centers that go well beyond this basic level of service, however. Some government law libraries have taken the extra step and have coordinated “Lawyer in the Library” programs.⁷³ Some government law libraries even have full-time attorneys on staff, an incredible service that is unfortunately out of the question for most cash-strapped libraries. The Los Angeles County Law Library has had a Lawyer in the Library program since 2014 staffed by volunteer attorneys.⁷⁴ The attorneys come to the library once a month for a three-hour block. Self-represented litigants who take advantage of the program are cautioned that these attorneys do not represent them and will not be going to court—rather the attorneys help them fill out forms, explain legal details, confirm that the patron is on the right track or tell them to go in another direction, and provide general guidance on what to do next.⁷⁵ It is difficult to overstate how helpful this would be to any self-represented litigant, but especially to those who cannot conduct research online. Without this type of program, a digitally illiterate self-represented litigant who goes to a law library that has significantly reduced its print collection will be unable to effectively find the legal materials he or she needs to prepare for court. With a Lawyer in the Library program, that individual could go to the same library and not be greatly hindered by the fact that legal research materials are available only online. The attorney would be able to guide the patron toward the correct forms (even helping the patron find them online), help that patron fill out the forms, explain the filing instructions, explain the law, and provide advice for further actions. These are all things that public law librarians may be incredibly hesitant to do for fear of engaging in the unauthorized practice of law.

¶65 Lawyer in the Library programs are often talked about in conjunction with government law libraries, but there is no reason that academic law libraries could

71. LAW LIBRARIANS’ WORKING GROUP OF THE SELF-REPRESENTED LITIGATION NETWORK, *supra* note 10, at 1.

72. AM. ASS’N OF LAW LIBRARIES, *LAW LIBRARIES AND ACCESS TO JUSTICE* 26 (2014), <https://www.aallnet.org/wp-content/uploads/2017/11/2013-2014-CommFR-Access-to-Justice-Special-Committee.pdf> [<https://perma.cc/7LDH-MJZ4>].

73. Malinda Muller & Sandra Levin, *Law Libraries and the Delivery of Direct Legal Services: Why “Lawyer in the Library” Makes Sense*, GLL NEWS, Summer 2016, at 25.

74. *Id.* at 26.

75. *Id.* at 27.

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

Clinics

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

¶67 Law libraries can help to fill in the gap that other clinics create. The Law Library at Cornell University Law School hosts the Cornell Legal Research Clinic. The clinic was formed in 2015 and is unique among law school clinics in that it does not require that clinic clients be involved in a specific type of legal dispute.⁷⁸ The director of the clinic, Amy Emerson, said that she was inventing problems for her first-year students so that they could learn how to research, and “at the same time, we had people from the community coming into the library with legal questions, but librarians are not supposed to give legal advice.”⁷⁹ The clinic was formed to help alleviate this problem. Students in the Legal Research Clinic work under the supervision of two attorneys to help self-represented litigants conduct their legal research. Students do not do anything beyond answering the legal research question that is presented by the client, though they are able to recommend specific courses of action.⁸⁰

¶68 Like Lawyer in the Library programs, the Cornell Legal Research Clinic is a phenomenal resource for self-represented litigants in the community, particularly those who are unable to conduct legal research online. There are a few small limitations, however. First, unless students are hired to staff the clinic over the summer, clients will necessarily be required to submit legal research questions during specific

76. LAW LIBRARIANS' WORKING GROUP OF THE SELF-REPRESENTED LITIGATION NETWORK, *supra* note 10, at 8.

77. See *Legal Clinics*, TEX. STATE LAW LIBR., <https://www.sll.texas.gov/self-help/where-to-go-for-help/legal-clinics/> [<https://perma.cc/4MLS-T9PM>].

78. Melanie Lefkowitz, *Law Students Resolve Questions for Residents, Nonprofits*, CORNELL CHRON. (Nov. 28, 2016), <http://news.cornell.edu/stories/2016/11/law-students-resolve-questions-residents-nonprofits> [<https://perma.cc/8KVY-5MR2>].

79. *Id.*

80. CORNELL LEGAL RESEARCH CLINIC, <https://law.library.cornell.edu/lrc> [<https://perma.cc/4KD9-5KJK>].

times of year when the law school is in session. Some law school clinics do operate year-round though, so this is not a hurdle that is impossible to overcome.⁸¹ Another limitation is that law schools may still set an income requirement so that the clinic is not overrun by clients who could probably afford an attorney but are choosing not to hire one. This might preclude middle-income self-represented litigants from using the clinic's services. As mentioned in ¶¶ 8–33 of this article, however, digital literacy tends to rise with income level, so perhaps our concern should focus mainly on the lowest-income groups in our communities.

¶69 Self-represented litigants, digitally illiterate and literate alike, would greatly benefit from the existence of more legal research clinics like the one at Cornell Law Library. This type of program should be especially interesting to law school deans and administrators at a time when law students are demanding more experiential learning opportunities.

Access to Justice Initiatives

¶70 There are initiatives underway from organizations around the country that will make it easier for law librarians to assist self-represented litigants who are digitally illiterate. One of them is the Access to Justice Lab, which is a part of the Center on the Legal Profession at Harvard Law School. The Access to Justice Lab strives to change legal practice in the United States by producing empirical evidence of what works to increase access to the court system and then implementing “creative interventions” to address the issues.⁸²

¶71 The A2J Lab, as it is known, is by no means geared just toward computer-illiterate self-represented litigants. However, many individuals in that patron base could greatly benefit from the work the organization is doing. The A2J Lab conducted a study on debt collection cases, as most debt collection lawsuits in the United States are decided because the defendant defaults.⁸³ This study tried to determine which types of mailings from a legal service provider could cause defendants to file answers and show up on their court dates. Defendants in the study were divided into three groups: a group that received limited mailings, a group that received enhanced mailings, and a control group.⁸⁴ Of particular interest for this article is the mailing that the A2J Lab sent to the enhanced group. The mailing was a set of instructions for filing an answer to a complaint, but the instructions featured a cartoon showing the defendant the actions they needed to take.⁸⁵ The drawing contained no legalese or check box and featured only about twenty words. The A2J Lab found that defendants who received these mailings were more likely to file answers and show up in court, but there was no statistically significant difference between the limited mailings group and the enhanced mailings groups.⁸⁶ This is

81. Some law school clinics hire summer clerks who do work similar to that of students during the academic year. See *FAQs About the Human Trafficking Clinic (HTC) and the Human Trafficking Law Project (HTLP)*, MICH. LAW, <https://www.law.umich.edu/clinical/humantraffickingclinicalprogram/Pages/FAQs.aspx> [<https://perma.cc/LL5W-7WP5>].

82. *Access to Justice Lab*, HARV. LAW SCH. CTR. ON THE LEGAL PROFESSION, <http://a2jlab.org/> [<https://perma.cc/MZ45-4UV9>].

83. *The Problem of Default*, HARV. LAW SCH. CTR. ON THE LEGAL PROFESSION, <http://access2justice.wpengine.com/current-projects/signature-studies/default/> [<https://perma.cc/5C4J-2ZVN>].

84. *Id.*

85. *Id.*

86. *Id.*

certainly a useful study for those who are interested in lowering the default rate in debt collection cases, but it features even more valuable research for law librarians who serve self-represented litigants.

¶72 D. James Greiner, Dalie Jimenez, and Lois R. Lupica conducted research through the A2J Lab, both on default and on financial distress. They also published an article called *Self-Help, Reimagined* in the *Indiana Law Journal*, that outlines their work with visuals in self-help materials for individuals without legal representation. They used research from the areas of education, psychology, and public health showing that visuals and graphics can improve learning outcomes in order to develop a cartoon that they call “Blob.”⁸⁷ Responses to their cartoons were positive, with one person saying “I don’t understand the official wording so the cartoons help.”⁸⁸ Another said, “I’d rather read a long picture book than a short book with no pictures.”⁸⁹

¶73 Incorporating materials with visuals into existing self-help centers is a way that law librarians could help their self-represented litigant patrons. It is clear from the A2J Lab researchers’ work that these types of materials will help not only self-represented litigants who are digitally illiterate but other public patrons as well. Librarians could create their own self-help materials using visuals or flowcharts that have fewer words than traditional forms, even ones that are supposed to be in plain language. This is an area that likely needs to grow and develop before law librarians can easily embrace it, but using research from other disciplines like education and psychology is a way to ensure that law librarians are being as helpful to self-represented litigants as possible.

Technology Recommendations

¶74 Some law librarians, no matter their good intentions, are not going to have the ability to spearhead a Lawyer in the Library program or a new law school clinic devoted to legal research. They also might not have the resources or the ability to create self-help materials that incorporate visuals or flowcharts. Librarians in those situations who are seeing their print collections shrink will need to use technology even for self-represented litigants who cannot use the computer. Richard Zorza, a former public defender and the founder of the Self-Represented Litigation Network, outlines several technology recommendations in his white paper.⁹⁰ These recommendations include keeping public access terminals in a user-friendly location, creating a single gateway specifically designed for self-represented litigants, using chat reference for patrons who cannot physically come to the law library, and not artificially inhibiting time on the computers.⁹¹ All of this advice is important, though it does not really help people who cannot use a computer. For those patrons, law librarians will simply have to do the best they can, perhaps referring them to the local public library for technology training if possible.

87. D. James Grenier et al., *Self-Help, Reimagined*, 92 IND. L.J. 1119 (2017).

88. *Id.* at 1137–38.

89. *Id.* at 1138.

90. RICHARD ZORZA, THE SUSTAINABLE 21ST CENTURY LAW LIBRARY: VISION, DEPLOYMENT AND ASSESSMENT FOR ACCESS TO JUSTICE (2012), https://www.srln.org/system/files/attachments/Zorza%2021st%20Century%20Library_0.pdf [<https://perma.cc/752P-8NDF>].

91. *Id.* at 38.

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

Conclusion

¶76 This country faces an immense access to justice problem. The number of self-represented litigants in the U.S. court system is on the rise, without any corresponding increase in the number of people available to help them. Frequently, these individuals are on their own from start to finish. In addition, many self-represented litigants are either completely digitally illiterate or not technologically savvy enough to conduct legal research online. The unfortunate truth is that the great strides made in digitizing legal information and making it freely available on the Internet are simply not enough for a significant group of people in this country. Librarians in public law libraries have a mandate to help the public with its legal research needs, and the recent trend of eliminating print materials—particularly primary sources and select secondary sources—makes it increasingly difficult for librarians to fulfill that duty.

¶77 Nothing in this article is meant to criticize recent initiatives to digitize legal materials and make them freely available to the public. We should continue to make legal information as freely available to as many people as possible, and this certainly includes digitizing materials and putting them online. Technology makes life better for many people and has the greatest potential to help solve the access to justice problem. This article points out, however, that a group of people is being left behind in our rush to digitize. Digitally illiterate people may not see the same benefits of technology that others do, but nevertheless, “the digital divide was never a sufficient reason not to make maximal use of the internet for persons who did have access to it.”⁹⁴ This sentiment is still true, and technology should be maximized to its greatest extent. People who care about self-represented litigants should continue to take full advantage of all that technology can offer, while remaining aware that there is more to the story.

92. See *Students Pitch Projects to Experts and Luminaries*, GEORGETOWN LAW, <http://www.law.georgetown.edu/news/web-stories/students-pitch-projects-to-judges-and-luminaries.cfm> [https://perma.cc/54Q6-9J4R].

93. Terry Carter, *Professor Tanina Rostain Has Her Students Developing Access-to-Justice Apps*, A.B.A. J. (Sept. 23, 2015), http://www.abajournal.com/legalrebels/article/tanina_rostain_profile [https://perma.cc/BRH3-6DU3].

94. James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241, 266 (2012).

¶78 Many librarians may feel that these issues are out of their control, and to some extent that is true. Government law librarians are subject to the whims of the legislators in their state, and if their budgets are cut, they may have no choice but to eliminate important print materials. So too with academic law librarians, whose first priorities necessarily lie with law students and faculty members. What librarians in these situations can do is make their voices heard to law school administrators or state legislators. Let the decision-makers know that the supposition that nobody uses books anymore is false. Stress the importance of helping *all* self-represented litigants, regardless of how independently they can use the library's resources. Explain that by eliminating particular print resources they are harming the most vulnerable part of an already vulnerable group. Remind those who set the budget that taxpayers have the right to use these materials in a format they can understand—otherwise, there is no hope for them in the court system. If all these efforts fail and print collections are reduced, librarians can do the best they can and try to follow technology recommendations that make things easier for self-represented litigants. Librarians who care about self-represented litigants may not be able to stop print collections from being eliminated, but they certainly do not need to remain silent about those who are left behind as a result of these decisions.

Appendix

Survey on Self-Represented Litigants and Law Library Resources

1. In what type of library do you work?
 - a. Academic
 - b. Firm
 - c. Government
 - d. Other _____
2. Is your library public or private?
 - a. Public
 - b. Private
3. Does your law library serve the general public?
 - a. Yes
 - b. No
4. Does your library put any sort of restrictions on the general public (hour restrictions, usage restrictions, etc.)? Please indicate the type of restriction.
 - a. Yes _____
 - b. No
5. How often does your library serve self-represented (pro se) litigants?
 - a. Several times per month
 - b. Once or twice a month
 - c. Several times per year
 - d. Once or twice a year
 - e. Never
6. Do self-represented litigants tend to use your library's print or electronic resources more often?
 - a. Mostly print
 - b. Mostly electronic
 - c. A mixture of both
7. What sorts of print sources do self-represented litigants typically use? Check all that apply.
 - a. State or federal codes
 - b. Reporters
 - c. Secondary sources, like encyclopedias or ALRs
 - d. Form books
 - e. Nolo books or other law books for nonlawyers
 - f. Nothing—they use electronic resources
 - g. Other _____

8. Does your library have immediate plans to eliminate any of the print resources that self-represented litigants tend to use?
 - a. Definitely yes
 - b. Probably yes
 - c. Might or might not
 - d. Probably not
 - e. Definitely not
9. Do you feel that you can adequately assist self-represented litigants with your existing print collection without referring them to online resources?
 - a. Yes
 - b. Sometimes
 - c. No
10. When referring self-represented litigants to electronic resources, do you feel they can adequately navigate the databases without further technology training?
 - a. Yes
 - b. Sometimes
 - c. No
11. Do self-represented litigants have other options for legal research help in your area (other public law libraries, self-help centers, etc.)?
 - a. Yes
 - b. No
 - c. Unsure
12. Please respond below with any other thoughts or comments about self-represented litigants and their ability to conduct legal research in your library.

The Reference Assistant*

Annalee Hickman Moser** and Felicity Murphy***

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

Introduction	60
Who Is the Reference Assistant?	62
Which Law Libraries Employ the Reference Assistant? Three Surveys.	63
The First Survey (1930)	63
The Second Survey (1999)	65
The Third Survey (2017)	66
Advantages of the Reference Assistant	69
Benefits for the Academic Law Library	69
Benefits for the Reference Assistant	73
Practical Concerns in Hiring the Reference Assistant	75
Supervision	75
Cost	77
Competence	78
Retention	81
The Reference Assistant Model: A Case Study	82
The History of the Reference Assistant at the BYU Law Library.	82
What Does the Reference Assistant Do at the BYU Law Library?	84

* © Annalee Hickman Moser and Felicity Murphy, 2018. This is a revised version of the winning entry in the new member division of the 2017 AALL/LexisNexis Call for Papers. A version of this article was presented at the Ninth Annual Boulder Conference on Legal Information: Scholarship and Teaching, held at the Tarlton Law Library, University of Texas–Austin, Austin, Texas, on July 13–15, 2017. Many thanks to Susan Nevelow Mart for organizing the conference and to all the participants for their helpful reviews and commentary. We would like to thank our library directors Melissa Bernstein and Kory Staheli for their encouragement and support, Kerry Lohmeier and Shawn Nevers for their insightful comments and input, and the rest of the law librarians at the Howard W. Hunter and James E. Faust law libraries for the time they spent workshopping this article with us. We are also grateful to Karina Osgood and Melissa Fiso for their excellent research contributions; they are terrific examples of reference assistant success stories!

** Law Library Fellow and former Reference Assistant, Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

*** Assistant Librarian and Adjunct Professor of Law, James E. Faust Law Library, S.J. Quinney College of Law, University of Utah, Salt Lake City, Utah. Former Assistant Librarian and Head of Reference Services, Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

The Future of the Reference Assistant	86
Scalability of the Reference Assistant Model	86
Conclusion	87
Appendix: 2017 Survey Questions and Results	88

Introduction

¶1 Most academic libraries hire students.¹ Often this class of employee is an amalgam of graduate and undergraduate students. In academic law libraries, student employees bear an array of titles and job descriptions, including circulation attendant, law library research assistant pool member,² research assistant,³ graduate assistant,⁴ and reference assistant.⁵ Unfortunately, a lack of common nomenclature and job descriptions across the law librarianship profession makes it difficult to discuss student employment in academic libraries. Therefore, for the purposes of clarity, we use the term “reference assistant” to refer to the librarian-supervised law student working in an academic law library whose primary responsibilities include both providing reference service⁶ and faculty research support.⁷

1. See, e.g., *ARL Statistics 2013–2014*, in ASSOCIATION OF RESEARCH LIBRARIES 1, 26–38 (Martha Kyrillidou et al. eds., 2015), <http://publications.arl.org/ARL-Statistics-2013-2014/> (only 5 of the 112 reporting research libraries did not employ student assistants); see also David Gregory, *The Evolving Role of Student Employees in Academic Libraries*, 21 J. LIBR. ADMIN., nos. 3–4, 1995, at 3, 5 (“Student assistants are widely recognized as an integral part of the workforce in academic libraries”); Katherine E. Malmquist, *Managing Student Assistants in the Law Library*, 83 LAW LIBR. J. 301, 313 (1991) (“[Student workers] are an important and indispensable part of the law library”); Emilie C. White, *Student Assistants in Academic Libraries: From Reluctance to Reliance*, 11 J. ACAD. LIBRARIANSHIP 93, 93 (1985) (“The employment of student workers in American college and university libraries has been a widespread practice since the nineteenth century,” and “reliance upon student library assistants has become traditional in American institutions of higher education.”).

2. See Darcy Kirk & Barbara Rainwater, *The Research Assistant Pool in the Law Library*, 6 TRENDS L. LIBR. MGMT. & TECH., Oct. 1994, at 4; see also Simon Canick, *Library Services for the Self-Interested Law School: Enhancing the Visibility of Faculty Scholarship*, 105 LAW LIBR. J. 175, 178 n.17 (2013); Harriet Richman & Steve Windsor, *Faculty Services: Librarian-Supervised Students as Research Assistants in the Law Library*, 91 LAW LIBR. J. 279 (1999).

3. See, e.g., David McClure, *Joining the Conversation: Law Library Research Assistant Programs and Current Criticisms of Legal Education*, 32 LEGAL REFERENCE SERVS. Q. 274 (2013); see also Canick, *supra* note 2, at 196; Jon S. Schultz, *The Faculty Services Department: Fine-Tuning the Research Engine*, 83 LAW LIBR. J. 771 (1991).

4. See, e.g., *Law Library Graduate Assistantship*, UNIV. LIBR., UNIV. OF ILL. AT URBANA-CHAMPAIGN, <http://www.library.illinois.edu/administration/human/positions/ga/lawlibrary.html> [<https://perma.cc/23AM-NVWG>]; see also *Library Graduate Assistantship*, UNC KATHRINE R. EVERETT LAW LIBR., <https://library.law.unc.edu/about/opportunities/assistantship/> [<https://perma.cc/DF5R-69L9>].

5. For an example of the term “reference assistant” referring to an undergraduate in a standard academic library, see Andrew Brenza et al., *Perceptions of Students Working as Library Reference Assistants at a University Library*, 43 REFERENCE SERVS. REV. 722 (2015). For examples of the term “reference assistant” referring to a law student in an academic law library, see *Recruiting Law Librarians*, 69 LAW LIBR. J. 7, 12 (Sue Dyer ed., 1976); Robert S. Payne, *Answering Faculty Research Requests*, 4 AALL SPECTRUM, Apr. 2000, at 10.

6. As is discussed in ¶¶ 32–42, the reference assistant does not replace the law librarian in reference services. Rather, there exists a supplementary and supportive role for the reference assistant in reference services, which continues to be headed and maintained by professional law librarians. We realize that the reference assistant does not have the training that a law librarian has. Thus, the reference assistant’s supplementary role is limited, while still being valuable to the academic law library.

7. There are some law libraries that employ students enrolled in library and information science graduate programs, who have already completed their law degrees or who are doing a dual

¶2 We recognize that law student employees already make significant contributions in many academic law libraries across the country.⁸ We also understand that how law students are expected to spend their employment time, as well as the terminology used to describe the various responsibilities their positions entail, vary dramatically from institution to institution.⁹ It is likely that academic libraries use position titles, such as “research assistant” versus “reference assistant,” to differentiate individual employee job responsibilities.

¶3 This distinction in the duties of law student employees from one institution to the next was one of our inspirations for conducting a follow-up of two previous surveys regarding the use of law student employees in academic law libraries. Before conducting our survey in 2017, we hypothesized that more academic law libraries employ law students than they did in 1930 or 1999, when the first and second surveys in this unofficial series were published.¹⁰ We further posited that only a small number of academic law libraries use law student employees to provide reference assistance in addition to a more traditional role assisting with faculty research.

¶4 In this article, we argue that when academic law libraries limit law student employees to providing only faculty research support (or even limit them to general circulation duties), not only do they undervalue and underutilize those student employees’ potential contributions, but they also may be inefficiently carrying out their faculty research support. By employing law students to assist the law librarians with reference services in addition to faculty support, in a model that has set employment times for the law students (as opposed to a work-whenever-and/or-remotely schedule), academic law libraries will maximize the benefit this class of employee has to offer. Therefore, the purpose of this article is twofold: (1) to follow up on the first two surveys about law student employees in academic law libraries by giving the “state” of these employees today, as shown through our 2017 survey; and (2) to advocate that academic law libraries should consider carrying out the reference assistant model (or some scaled version of it) not only to do faculty research but also to assist with reference inquiries, which can improve faculty research support and can also improve other functional aspects for law libraries.

¶5 This article proceeds in seven parts. Paragraphs 6–10 define who the reference assistant is and what his or her duties include. Paragraphs 11–42 summarize the two previous surveys about law student employees in academic law libraries and present the results and analysis of the third survey from 2017. Paragraphs 43–51 articulate the advantages of the reference assistant. Paragraphs 52–72 address the practical concerns of the reference assistant. Paragraphs 73–86 provide a case study of the reference assistant model, as implemented at the Howard W. Hunter Law Library at the J. Reuben Clark Law School at Brigham Young University (BYU Law Library). Paragraphs 87–91 present ideas for the scalability of the reference assistant. Paragraph 92

degree, to assist in reference services and faculty research support. See *supra* sources cited in note 4. While this article focuses only on law student employees, many of the principles of the reference assistant model discussed in this article can be applied to law library student employees enrolled in library school.

8. Of the 155 law libraries that participated in our survey, 135 (87%) employ law students. See *infra* appendix, question 11.

9. See *id.* at questions 13 and 17.

10. See *infra* ¶¶ 11–20 for a discussion of the first and second surveys.

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

Who Is the Reference Assistant?

¶6 Broadly speaking, the vast majority of students employed in academic libraries perform limited and easily defined tasks related to the library's circulation or technical services departments. Students in these capacities generally check out and reshelve books, answer basic informational and directional questions, and perform various clerical tasks. The tasks are time-consuming and usually result in more student hires than what academic law libraries need in their research and reference departments. It is common practice for academic law libraries to hire law students to help supplement the research support they provide to their faculty;¹¹ some libraries manage research assistant pools,¹² while others oversee and train research assistants selected by individual faculty members.¹³ As implemented at the BYU Law Library, reference assistants are different from traditional research assistants in that their duties comprise everything research assistants would do and more. While much of the current literature addresses the popular practice of hiring research assistants in academic law libraries,¹⁴ this article focuses on an expanded role for law student employees, one that includes providing reference coverage in addition to faculty research support, which is the model followed at the BYU Law Library. We also seek to show how externalities of this expanded role will improve the faculty research support provided by law student employees.

¶7 Unlike most student library jobs, the reference assistant position is associated with the law library's reference department and requires specific expertise, knowledge, and higher-order reasoning skills. The reference assistant is a current law student with a proven acumen for both legal research and legal reasoning. The reference assistant regularly fields a number of higher-order questions and requests from a variety of patrons including faculty, student peers, and the public. Unlike his or her circulation and technical services counterpart, the reference assistant is less likely to be able to predict what a shift on the reference desk may require. The reference assistant must have a solid legal understanding from which to draw, as well as strong creative problem-solving skills. In addition, he or she should develop a firm grasp of the library's physical and digital collections and learn to evaluate which sources will be most helpful and efficient when answering various reference requests.

¶8 As the name implies, the reference assistant provides support to those who approach the reference desk looking for answers to their legally related inquiries. For the most part, the reference assistant provides this support under the supervision of a professional law librarian who guides and directs as necessary. When not

11. Of the 155 law libraries that participated in our survey, fifty-four (35%) employ law students who conduct legal research for faculty under the supervision of one or more staff librarians. See *infra* appendix, question 13.

12. See Kirk & Rainwater, *supra* note 2, at 4; see also Canick, *supra* note 2, at 178 n.17; Richman & Windsor, *supra* note 2, at 279–82; appendix *infra*, question 15.

13. This is the case at the University of Utah. It is likely the case at other institutions.

14. See, e.g., McClure, *supra* note 3, at 274; see also Kirk & Rainwater, *supra* note 2, at 4; Payne, *supra* note 5, at 10; Richman & Windsor, *supra* note 2, at 279–82; Schultz, *supra* note 3, at 773.

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

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

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

Which Law Libraries Employ the Reference Assistant? Three Surveys

¶11 Prior research has been conducted on the potential benefits and drawbacks of employing law students in the law library.¹⁵ We are the third set of law librarians since 1930 who have endeavored to quantify the use of such employees in the academic law library setting. In doing so, we relied on the work of our predecessors—Rowena U. Compton, who published the first survey in 1930,¹⁶ and Harriet Richman and Steve Windsor, who published the second survey in 1999.¹⁷ Our goal in conducting the third survey in 2017 was to determine whether there has been an increase in the number of law libraries employing law students as research assistants and how many of these law libraries are using these law student research assistants in their reference departments—that is, which academic law libraries employ the reference assistant.

The First Survey (1930)

¶12 In 1930, Rowena U. Compton, then law library director of the Jerome Hall Law Library of the Maurer School of Law at Indiana University–Bloomington, published the first survey about how the larger academic law libraries used student assistants and what their perceptions of student assistants were.¹⁸ Her research and analysis was improperly documented (at least by today's standard). For example, Compton never explicitly said that the student assistants were law students, as opposed to undergraduate students, but the article implied it.¹⁹ And without pub-

15. See, e.g., McClure, *supra* note 3, at 274; see also Kirk & Rainwater, *supra* note 2, at 5 (concluding after a trial year of having a research assistant pool in the law library that the authors were "delighted" that [the pool] was a success"); Payne, *supra* note 5; Richman & Windsor, *supra* note 2; Schultz, *supra* note 3, at 773 (arguing that the research assistance the librarian-supervised law students provide to his faculty is "indispensable").

16. Rowena U. Compton, *The Student Assistant*, 23 LAW LIBR. J. 24 (1930).

17. Richman & Windsor, *supra* note 2, at 280.

18. Compton, *supra* note 16.

19. See *id.* at 26 ("Appointments [of the student assistants] should be made from first, second, and third year classes each year . . .").

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

¶13 Compton reported that “[t]he majority of the largest and most important law libraries [participating in the survey] had either entirely done away with student assistants or had retained only one or two for minor work at night and on Sundays or holidays.”²⁰ She listed that the “[d]uties of student assistants, in the majority of cases, consisted in bringing books from stacks, charging them to students, checking [the books] in and replacing on shelves, messenger service, locking and unlocking building, and keeping order in reading room,” with only fifty percent of the law libraries “entrust[ing]” the student assistants with reference work.²¹ She also essentially categorized the law libraries into three groups: (1) those that did not have student assistants; (2) those that did have student assistants because they wanted them; and (3) those that had no choice but to have student assistants, with her library being in the third category.²²

¶14 After reporting about the survey, Compton then advised on the best method to use student assistants, if one is forced to have them.²³ Her recommended method includes the following: hiring only one new assistant at a time, employing assistants from all three years of law school at once, and not hiring the applicants with the highest GPAs because they will not be as service oriented.²⁴

¶15 Since Compton did not advocate the hiring of law student employees,²⁵ and was not particularly pleased to conduct the survey and publish a write-up of the results,²⁶ we reason that this is why her article is sparse with details. This has caused scholars to disagree about Compton’s conclusion. For example, the authors of the second survey summarized Compton’s conclusion as follows: “[R]esistance to student-employees in the law library arose from primarily economic concerns. These libraries found student-employees less economical and satisfactory for the work involved.”²⁷ However, we read a different conclusion in Compton’s article—not only did she never explicitly say economic reasons were the primary concern, but out of all the law librarians who participated in her survey, and out of all the comments she must have received in their responses, she chose to highlight in her article the following gem: Student assistants should “be eliminated as far as possible

20. *Id.*

21. *Id.* at 25–26.

22. *Id.* at 24, 26 (explaining that she “supervises a library of only 20,000 books and . . . would not choose to, but . . . must use student help”).

23. *Id.* at 26–27.

24. *Id.* at 26 (“The man who is striving to lead his class is too often impatient of being interrupted, in the midst of briefing a case or studying a difficult point of law, to find material or to show another student how to find it; he is apt to be less painstaking in checking up charges, shelving books, etc., and will probably do little to encourage inquiries and stimulate interest in the use of law books. This sort of grudging service defeats the main purpose of the library.”).

25. *See id.*

26. *See id.* at 24. Compton begins her article with the following paragraph: “The notes originally written . . . on this question [of student assistants] were destroyed on the assumption that the discussion was purely informal. When requested to submit them as an outline for the stenographic notes taken during the meeting, it was necessary to write entirely new notes.”

27. Richman & Windsor, *supra* note 2, at 280.

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

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

The Second Survey (1999)

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

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

¶19 In addition to explaining their survey and the results, Richman and Windsor did a case study of how they personally used the law students in their library at the University of Houston Law Center. In a stark contrast to Compton's article, Richman and Windsor elaborated on hardly anything but the advantages of law student research assistants in the law library, while recognizing that their point of view was an anomaly.³⁵

¶20 However, they advocated only as far as having law students as research assistants in the law library (supervised by a law librarian), preferably as a "pool" of them; they did not address law students' ability to do reference work, with scheduled hours so that a law student employee was available in the law library most

28. Compton, *supra* note 16, at 24 (quoting Margaret Klingelsmith, Librarian of the University of Pennsylvania's Biddle Law Library).

29. Richman & Windsor, *supra* note 2, at 289–90.

30. *Id.*

31. *Id.* at 281.

32. *See id.* at 290.

33. *See id.* at 281, 290.

34. *See id.* at 280–81.

35. *See id.* at 280 ("Library administrators and staff have traditionally resisted using student-employees in any but the most menial roles.").

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

The Third Survey (2017)

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

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

¶23 Our hypotheses for the results of our survey were these: (1) More law libraries employ law student employees than when Richman and Windsor conducted their survey. (2) More law libraries allow these law student employees to participate in faculty research. (3) The overwhelming majority of law libraries still do not employ law students for assistance in faculty research. (4) Fewer than five law libraries besides the BYU Law Library employ the reference assistant—meaning fewer than five task a pool of law student employees with reference work, in addition to faculty research, using the model implemented at the BYU Law Library. Upon completion of our survey, we determined that our initial hypotheses were correct. What follows is a discussion of the results of our survey.

¶24 One hundred fifty-five law librarians responded to our survey out of the 205 ABA-accredited law schools that were invited to participate. This made the participation rate seventy-six percent, which is an increase from the sixty-seven percent participation rate that Richman and Windsor had.⁴⁰ The percentages in the following analysis are based on the total number of participating law libraries in the survey, 155.

Hypothesis 1: More Law Libraries Employ Law Student Employees than When Richman and Windsor Conducted Their Survey.

¶25 The survey results support our first hypothesis that most academic law libraries do employ law students. More specifically, 135 law libraries (87%) do employ law students,⁴¹ meaning that only twenty law libraries do not. Of these twenty law

36. See *id.* at 289–90.

37. See *infra* appendix for a copy of all the questions in our survey and a summary of the responses from the participating law librarians.

38. We included provisionally approved law schools and law schools on probation in our category of ABA-accredited law schools, in accordance with the ABA website. *ABA-Approved Law Schools in Alphabetical Order*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/in_alphabetical_order.html [<https://perma.cc/S5U3-JH3X>].

39. The survey results in their entirety from Qualtrics are on file with the authors.

40. See Richman & Windsor, *supra* note 2, at 281.

41. See *infra* appendix, question 11.

libraries—possibly the same number of law libraries that did not employ law student workers when Richman and Windsor conducted their survey⁴²—the reasons why they do not employ law students are as follows: two law libraries have used them in the past and deemed them ineffective; two law libraries have used them in the past, but their positions were eliminated for budgetary reasons; nine law libraries have library staffs that can adequately fill faculty research demand; thirteen law libraries have law faculty that have their own research assistants; and one law library noted other reasons.⁴³

Hypotheses 2 and 3: More Law Libraries Allow These Law Student Employees to Participate in Faculty Research, but the Overwhelming Majority of Law Libraries Still Do Not Employ Law Students for Assistance in Faculty Research.

¶26 The 135 law libraries that do employ law students were asked to select how they would best describe the law student employees' responsibilities. One hundred and eight law libraries use law students for general support such as shelving and circulation duties; fifty-four law libraries use law students for legal research for faculty under the supervision of one or more staff librarians; thirty-five law libraries use law students for reference work; and twenty-three law libraries use law students for other reasons.⁴⁴ Because of the opaqueness of the Richman and Windsor survey, we cannot know for sure whether these numbers are an increase in law libraries tasking law students with more advanced responsibilities, such as faculty research and reference. However, while we suspect there has been some increase, the majority of law libraries still do not employ law students to help with faculty research. This conclusion supports our second and third hypotheses.

Hypothesis 4: Fewer than Five Law Libraries Besides the BYU Law Library Employ the Reference Assistant—Meaning Fewer than Five Task a Pool of Law Student Employees with Reference Work, in Addition to Faculty Research, Using the Model Implemented at the BYU Law Library.

¶27 In regard to how research support for faculty members is provided by the law libraries, all 155 law libraries responded to this question. One hundred and four law libraries have a law librarian who fills the request or delegates it; seventy-one law libraries have a specific librarian assigned to each faculty member who can be contacted for research support; thirty-seven law libraries have a pool of law student research assistants under the supervision of a law librarian, an increase from either ten or twenty-five when Richman and Windsor surveyed the libraries;⁴⁵ and three law libraries provide no research support to faculty members.⁴⁶

42. See *id.*, while remembering the note earlier that their results are inconsistent and nontransparent, so this number may not be correct.

43. Law librarians could select more than one answer to this question of why their law libraries do not employ law student workers. See *id.* at question 12.

44. Law librarians could select more than one answer to this question of what responsibilities law student employees have in their law libraries. See *id.* at questions 13 and 14.

45. See ¶ 18 and notes 31–33 for an explanation of this ambiguity.

46. Law librarians could select more than one answer to this question of how their libraries provide research support to faculty. See *infra* appendix, question 15.

¶28 A new element that was explored in the 2017 survey that had not been explored in the past two surveys was the employment of law students to do reference work. First, it was important to see whether reference desks are still common in law libraries, and the survey showed that they are—135 law libraries have a reference desk. Of those 135 law libraries, thirty-two employ law students to participate in staffing the reference desk. Because this element had not been quantified by a survey before, we individually contacted these thirty-two law libraries to gather more details. Our research found that it is apparent that few use the same large pool of law student employees to do both reference and faculty research support like the reference assistant model at the BYU Law Library. Of these thirty-two law libraries, eight use law student employees to do reference and faculty research support during the evenings and/or weekends only (or they hire only one or two law students, usually ones interested in law librarianship), which does not allot these law libraries very many hours a week to benefit from these employees like the reference assistant. Five law libraries use law student employees at the reference desk for forty or more hours each week but do not enlist them to help with faculty research support during their spare time. They either hire additional law student employees to do faculty research support or do without law students assisting the professional law librarians with faculty research support. Eleven law libraries use the law student employees at the reference desk for fewer than forty or more hours a week (usually either evenings only and/or weekends, or they only hire one or two law students who are especially interested in law librarianship), and they do not enlist these employees' help with faculty research support. It is unknown at the time of writing this article what five of these thirty-two law libraries do with their law student employees who staff the reference desk.⁴⁷

¶29 Our fourth hypothesis was that fewer than five carry out a model like the reference assistant model at the BYU Law Library. Our survey revealed that two other law libraries, in addition to the BYU Law Library (which was included in the survey and in these thirty-two law libraries), have a model where law student employees staff the reference desk for forty or more hours a week and do faculty research projects when they are not answering reference questions.

¶30 It should be noted that there is overlap between the thirty-two law libraries that staff their reference desks with law student employees and the thirty-seven schools that have law student research assistant pools. This is likely for two reasons: (1) the “pool” of employees who staff the reference desk are also doing faculty research, so they would meet the definition for a law student research assistant pool; or (2) there are two different types of positions available for law students in these law libraries, one being in the research assistant pool and the other being in the pool of reference assistants. In short, some of the overlap between the thirty-two law libraries and the thirty-seven law libraries comes from overlap with the same employees, and others come from having two distinct positions filled by law students in their law libraries.

¶31 Overall, for the majority of law libraries, there is clearly a need and a budget for law student employees. However, not even half the libraries use law students in a research capacity, and even fewer use them in a reference capacity. What follows is a

47. These five law libraries did not respond to our individual contact after they completed our initial survey through Qualtrics.

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

Advantages of the Reference Assistant

Benefits for the Academic Law Library

¶32 Academic law libraries stand to benefit in many significant ways by employing the reference assistant and implementing the reference assistant model. The major benefits observed include that the reference assistant can contribute to the workloads of overextended law librarians, allow the library to serve more patrons effectively in a cost-efficient manner, and perhaps even increase patron use of reference services. Additionally, the adept reference assistant can help the law library contribute more fully to the academic mission of its law school by responding to increased numbers of faculty requests more expeditiously and more thoroughly and by actively engaging in the educational lives of law students through guided practice and real-life problem solving.

¶33 Hiring the reference assistant can ease some of the law librarian's extensive workload. While the reference assistant cannot answer every reference question, he or she can answer "many reference questions [that] do not require a reference librarian's expertise."⁴⁸ Some scholars argue that to alleviate some of the law librarian's impossible workload, artificial intelligence should be used to answer many reference questions.⁴⁹ Others suggest the implementation of "an information desk near the circulation area [where] more difficult inquiries are referred to a reference desk" or a "combination of an information desk and an office consultation with a professional librarian who works away from a hectic reference desk."⁵⁰ Hiring the reference assistant to help staff the reference desk remains more true to the historical model of an independent reference desk, while maximizing its potential to provide patron service. It ensures a face at the reference desk, serves patrons, and allows law librarians more time to engage in duties that do require their well-honed expertise. However, this is not a suggestion that the reference assistant should com-

48. Nancy B. Talley, *Imagining the Use of Intelligent Agents and Artificial Intelligence in Academic Law Libraries*, 108 LAW LIBR. J. 383, 394, 2016 LAW LIBR. J. 19, ¶ 24; see also, e.g., Bradley Wade Bishop & Jennifer A. Bartlett, *Where Do We Go from Here? Informing Academic Library Staffing Through Reference Transaction Analysis*, 74 C. & RES. LIBR. 489, 499 (2013) (concluding from the study the authors conducted that "two-thirds of the total [reference] questions asked in [the authors' academic library] concerned library locations and their attributes, all of which staff with minimal training may easily answer"); Margaret McDermott, *Staffing the Reference Desk: Improving Service Through Cross-Training and Other Programs*, 19 LEGAL REFERENCE SERVS. Q., nos. 1/2, 2001, at 207, 211 (suggesting that a "major problem[] in staffing reference desks" is "the number of questions that do not require a professional librarian").

49. See Talley, *supra* note 48, at 395, ¶ 25 ("With evidence suggesting that such a small percentage of reference questions actually require librarian assistance, the question remains whether academic law libraries should eliminate the traditional reference desk. Rather than forgo the reference desk, a better solution is to incorporate agent technology into academic law libraries so that librarians, along with intelligent reference assistants, answer patrons' reference questions efficiently and effectively. . . . Librarians can then focus their attention on the percentage of reference questions that require expertise and other important duties, including teaching and involvement in clinics or directed research."). See generally Jamie J. Baker, 2018: *A Legal Research Odyssey: Artificial Intelligence as Disruptor*, 110 LAW LIBR. J. 7, 2018 LAW LIBR. J. 1.

50. McDermott, *supra* note 48, at 208–09.

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

¶34 The reference assistant can also help the law library elevate its “competitive edge”⁵¹ by creating increased face-to-face interaction with the patrons while still maintaining cost-effectiveness. Some law libraries continue to offer extended reference coverage on evenings and weekends, but this approach to reference coverage can be costly and force many law libraries to perform a difficult cost-benefit analysis. Library administrators across the country are likely asking themselves whether the extended reference services their libraries are providing are worth the cost needed to maintain a physical presence at the reference desk or whether reference hours should be reduced and the money saved be invested elsewhere.⁵² The reference assistant helps alleviate some of the tension between offering convenient service for patrons and reducing the cost of doing so in that the position allows libraries to offer extended reference services at a fraction of the budget. The seasoned and well-trained reference assistant could be assigned to cover reference desk hours when law librarians are unavailable for consultation, while the more novice reference assistant, who would benefit from the mentorship and guidance of a law librarian, could be assigned to cover shifts that overlap with librarian desk coverage. Further, most law librarians today are easily available by phone or e-mail if the reference assistant needs immediate guidance while covering the reference desk singlehandedly.⁵³

¶35 The reference assistant model not only helps expanding law libraries facing budgetary restraints but also significantly benefits smaller or shrinking law libraries looking to supplement service needs. It is likely that many law libraries, similar to the James E. Faust Law Library at the University of Utah, are not replacing professional law librarians as they retire or leave their employment. In some cases, this may be due to reduced need, but in most it is an attempt to maximize the work capacity of remaining library staff and professionals while minimizing the impact on library budgets. Generally, the exiting librarian's duties are divided among the remaining, already overburdened librarians.⁵⁴ The budget may be spared, but chances are the quality and quantity of work being produced may decline. This is not because librar-

51. See Jean M. Holcomb, *Maintaining Your Competitive Edge*, 101 LAW LIBR. J. 121, 121, 2009 LAW LIBR. J. 7, ¶ 1 (arguing that a law library must “maintain its competitive edge” and that “[i]n today's information age, where answers to every question appear to hide only a keystroke away, law libraries must compete as never before for customer loyalty”).

52. According to our survey, twenty law libraries do not even have reference desks. See *infra* appendix, question 16. Our rationale of the cost-benefit analysis of a reference desk is likely one of the reasons why some law libraries do not have reference desks.

53. This is the case at the BYU Law Library.

54. See Taylor Fitchett et al., *Library Budgets in Hard Times*, 103 LAW LIBR. J. 91, 107, 2011 LAW LIBR. J. 5, ¶ 51 (“Each time a position [in a law library] becomes open, it offers a chance to see if duties can be eliminated or reassigned to another position . . .”).

ians are not conscientious and hard-working but because they are being forced to turn their attention in a number of different directions to compensate for the reduction in staff. In these cases, the well-trained and astute reference assistant can help ease some of the burden. The expectation is not to have the reference assistant replace law librarians, but rather to have them provide librarians, especially those in smaller or shrinking libraries, with an additional support structure.

¶36 Employing law students to work on the reference desk could potentially increase patron use of reference services. Many students benefit from peer-to-peer learning, and some may feel more comfortable approaching a fellow student with their inquiry rather than a professional law librarian.⁵⁵ In limited cases, the reference assistant may be better able than the law librarian to address questions because often, as a fellow student, the reference assistant benefits from unique insights or contextual understanding related to requests, which could enable him or her to respond more efficiently and empathetically than the law librarian could.⁵⁶

¶37 In addition, the new ABA standards for law school accreditation include six credit hours of experiential learning where students are required to work on professional skills development.⁵⁷ These courses may include simulation-based training, as well as opportunities to participate in pro bono initiatives.⁵⁸ Although employing law students as reference assistants does not fulfill these new standards, it is very much in keeping with the spirit behind this paradigm shift to include practice-based learning. By helping to prepare students to practice through mentorship and training of the reference assistant, law libraries are contributing in a very meaningful way toward law schools' goals of producing "effective, ethical and responsible . . . members of the legal profession."⁵⁹

¶38 Ideally, law librarians make responding to faculty requests one of their primary priorities⁶⁰ because this helps law libraries to prove their value.⁶¹ However, the many constraints on law librarians' time do not always make this prioritization possible. Many law librarians teach research courses for the law school, participate in professional committees, advise law students, staff the reference desk, and contribute to librarianship and the law school in a variety of other ways that may conflict with their ability to address faculty needs immediately. It is in instances such as these that having access to the reference assistant can be particularly helpful because the reference assistant can make a significant contribution to the faculty services the library offers. Since some faculty requests are "administrative support,"⁶²

55. See, e.g., Brenza et al., *supra* note 5, at 726 ("[S]tudents are more comfortable approaching someone their own age for help.") (citation omitted).

56. See, e.g., *id.*

57. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017–2018, at 16 (2017) (Standard 303(b)).

58. *Id.* (Standard 303(a)(3)).

59. *Id.* at 15 (Standard 301(a)).

60. See Sheri H. Lewis, *A Three-Tiered Approach to Faculty Services Librarianship in the Law School Environment*, 94 LAW LIBR. J. 89, 89, 2002 LAW LIBR. J. 5, ¶ 1 ("A primary function of the law library in the academic setting is to support the research and teaching needs of the faculty.").

61. Richard A. Danner, S. Blair Kauffman & John G. Palfrey, *The Twenty-First Century Law Library*, 101 LAW LIBR. J. 143, 143, 2009 LAW LIBR. J. 9, ¶ 2 (explaining that "[q]uestioning the role of the library, particularly the role of the law library . . . [is] now a common question" and that law libraries need to prove they are "worth it").

62. Lewis, *supra* note 60, at 96, ¶ 21 ("Administrative support requests tend to comprise a significant amount of the ongoing library services provided to law faculty.").

the reference assistant can be trained to complete many of these tasks, thereby freeing up the law librarian's time for more involved or complicated projects. Having the reference assistant handle faculty members' administrative requests also ensures that these needs are addressed expeditiously.

¶39 Furthermore, the reference assistant can do so much more than provide administrative support for faculty members; they can also help with their "substantive research assistance."⁶³ In most law libraries, "substantive research services are typically the work of professional librarians."⁶⁴ However, the reference assistant can address many of these requests with the guidance of law librarians. Law librarians should seek ways to make meaningful contributions to the academic growth of law students. Encouraging the reference assistant to undertake complex research or reference tasks with the careful oversight of the law librarian allows the librarian to impart valuable transferable skills and knowledge to that student.

¶40 Many law libraries have already embraced the law student employee as a member of their research assistant pools.⁶⁵ What makes the reference assistant model different is that the reference assistant has set hours and is readily available during those set reference hours to complete a faculty request, whether that request be administrative support or substantive research assistance. This model means there is always someone available to start on requests right away and allows faculty projects that require many hours of work to get done more quickly than if the faculty used their own personal research assistants. With a pool of research assistants, the research assistants might not be available that day to begin working on a project. Thus, the reference assistant model is able to take faculty support to a higher level than the pool can. By way of example, many law professors have complained to the BYU Law Library that their personal research assistants are busy, have finals, or are gone for the summer and cannot complete their requests quickly enough. But where there is the reference assistant assigned to work for seventy-three hours every week, the law professors' requests are completed in a timely manner by the reference assistants, bypassing one of the major pitfalls of either personal research assistants or a pool of research assistants.

¶41 The faculty also benefit from the reference assistant because their research requests receive the collaboration of multiple law students, as well as close supervision from the law librarian. Because most faculty research requests are passed on from one reference assistant to the next, the faculty's requests are more thoroughly and creatively researched than if just one research assistant worked on the request. Further, the supervising law librarian looks over every faculty request that the reference assistant works on. This allows the law librarian to not do all the work on the faculty request but rather to spend time on it after the reference assistant has had the first go on the project. This means more faculty requests can be fulfilled and have the expertise of the law librarian brought to the request, without overburdening the law librarian.

63. *Id.* ("When law faculty . . . seek assistance from their academic library, these requests tend to fall into two distinct categories. The first is administrative in nature; the second is for substantive research assistance."); *see, e.g.*, Schultz, *supra* note 3, at 774 ("Much of the work that reference librarians should delegate can be assigned to research assistants.").

64. *See* Lewis, *supra* note 60, at 97, ¶ 22.

65. *See infra* appendix, question 15.

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

Benefits for the Reference Assistant

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

¶44 Primarily, the reference assistant receives monetary remuneration for his or her work. The options law libraries have for compensating the reference assistant include a tuition waiver, an hourly wage, or both. The BYU Law Library offers an hourly wage that matches that of a professor's research assistant, a position some consider to be the best job in law school.⁶⁶ Because the BYU Law Library reference assistant works for many law professors and receives the same pay as an individual research assistant, his or her position is just as coveted as a professor's individual hire. Researching for many law professors can be a highly desired benefit for the reference assistant.⁶⁷

¶45 The reference assistant also profits from performing guided practice with the oversight of law library professionals, in addition to receiving valuable training from various library professionals (circulation, interlibrary loan, reference, etc.).⁶⁸ This guidance and training helps the reference assistant improve more quickly than his or her research assistant counterpart, who may receive little if any feedback from the supervising law professor. Further, mentoring relationships may develop between the reference assistant and law librarians as they work together to complete complex legal research requests.⁶⁹ These mentoring relationships can lead the reference assistant to being better prepared when applying for postgraduation jobs in the legal field.

¶46 The reference assistant also has the opportunity to develop relationships, both academic and personal, with the other reference assistants. Although the reference assistant does not work a shift with another reference assistant, both are often involved in collaborative research efforts to complete projects or fulfill faculty

66. See, e.g., Mark E. Wojcik, *Should You Be a Faculty Research Assistant?*, 36 STUDENT LAW, Sept. 2007, at 35, 35 (listing ten reasons why being a research assistant to a law professor is a great job).

67. See, e.g., Kirk & Rainwater, *supra* note 2, at 5 (noting that the authors' law student assistants "praised the [research assistant] pool [in the law library] for the opportunity to work with a variety of faculty and in a directed program which provided a positive learning experience").

68. See, e.g., Patricia Warren, *Inside Internships*, 4 C. & UNDERGRADUATE LIBR., no. 1, 1997, at 117, 123 (calling student jobs in a library "a priceless opportunity to learn from experienced professionals").

69. This article itself came about because of a mentoring relationship between us, before we were coauthors—one of us as the reference assistant and the other as the nurturing mentor. Further, law librarians acting as mentors, in general, is paramount for keeping our profession sharp, relevant, and indispensable. See Renee Rastorfer & Liza Rosenof, *Mentoring Across Generations: The Training of a Millennial Librarian*, 108 LAW LIBR. J. 101, 117, 2016 LAW LIBR. J. 5, ¶ 64 ("The health of our [law librarianship] profession depends in part on taking measures now to ensure our roles going forward as effective mentors and trainers.").

requests. This necessitates that the reference assistant regularly communicates with the other reference assistants, creating the opportunity to develop these relationships.

¶47 The reference assistant interacts in person with the other reference assistants during regular training meetings (monthly at the BYU Law Library). During these meetings, the reference assistants can discuss current reference desk issues or projects and problem-solve together. These regular trainings afford the reference assistant the opportunity to learn not only from the supervising law librarian, but also from the other reference assistants. Discussions about experiences while working on the desk, research strategies, and even personal matters enrich the reference assistant's law school experience and better equip him or her to transition out of law school and into the legal field.

¶48 The reference assistant benefits from a unique opportunity to broaden his or her network to encompass students across all law school classes. Many law students have limited academic and social spheres, sometimes establishing personal and academic relationships with only those in their own class. However, because the hiring pool for the reference assistant could span all three law classes, hired law students have a naturally expanded network that takes them beyond those in their current law class. These larger networks may create opportunities for the reference assistant to become a mentor to and be mentored by his or her peers. The novice research assistant can turn to the more seasoned reference assistant for guidance and advice. Eventually, as relationships are built, this guidance and advice may go beyond working on the reference desk and spill into the realm of law school generally. The third-year reference assistant may be able to provide advice to the first- or second-year reference assistant about coursework, externship opportunities, and beneficial study aids and techniques.

¶49 As part of his or her employment, the reference assistant not only becomes a better legal researcher, but also develops practical skills such as customer service, organization, teamwork, and responsibility. These marketable soft skills make the reference assistant more attractive to future employers,⁷⁰ perhaps resulting in full-time professional opportunities. Interactions with local attorneys who visit the law library give the reference assistant opportunities to expand his or her professional network and establish a reputation as thorough, reliable, and skilled. Perhaps these interactions might ultimately lead to employment opportunities after graduation.

¶50 The reference assistant position could also be seen as a vehicle for recruitment to the profession of law librarianship. Students who show aptitude and interest during their employment as reference assistants may consider, or be encouraged to consider, entering the field.⁷¹ A number of students who were introduced to law librarianship as law students while working as reference assistants at the BYU Law

70. See McClure, *supra* note 3, at 282 (arguing that hiring law students in law libraries “offer[s] a unique opportunity to equip law students with skills that meet the new demands of the legal marketplaces”).

71. See *Recruiting Law Librarians*, *supra* note 5, at 12 (“Recruitment of law-trained personnel is . . . an integral part of the recruitment program. One method that can be helpful is the use of law students as reference assistants. Ideally, these positions should be available after the law students have had thorough training in the circulation department and are competent to handle circulation problems. A ‘promotion’ to the reference department for those law students who are competent and interested can provide an experience that will demonstrate to law students that the law library profession can be an interesting professional alternative to the practice of law.”).

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

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

Practical Concerns in Hiring the Reference Assistant

¶52 Embracing any new service model is difficult. It is important to have all of the information and to consider the potential downsides and drawbacks of implementing such a model. The following sections discuss some of the issues—namely supervision, cost, competence, and retention—that may concern law librarians when deciding whether to hire reference assistants. When law librarians perform a cost-benefit analysis before deciding, however, they usually see that the benefits outweigh the costs.

Supervision

¶53 An understandable concern when instituting a model like the reference assistant model is how and by whom the reference assistant will be supervised.⁷⁴ The wisest strategy is to task a single law librarian with the management of the reference assistants. This way each reference assistant will know to whom they are accountable and whom they should approach for help. This does not mean that the reference assistant cannot approach whichever law librarian is working on the reference desk; however, a single supervisor gives the reference assistant a consistent point of contact. Like a faculty services librarian, the librarian assigned to oversee the reference assistant should expect to dedicate some time to the smooth running

72. See Kory D. Staheli, BYU Law, http://law.byu.edu/faculty/profile_2016.php?id=45 [<https://perma.cc/7GT3-4TMS>]; Shawn G. Nevers, BYU Law, http://law.byu.edu/faculty/profile_2016.php?id=43 [<https://perma.cc/D3TT-VZWH>]. Others include the following. Kristin Gerdy is a teaching professor and director of the Rex E. Lee Advocacy Program at BYU Law School. Kristin B. Gerdy, BYU Law, http://www.law2.byu.edu/faculty/profile_2016.php?id=17 [<https://perma.cc/PQ5A-ARDR>]. Ron Fuller is a law firm librarian at Steptoe and Johnson and is a former law librarian at the University of Utah and Washington & Lee University. Ron Fuller, LinkedIn, <https://www.linkedin.com/in/ron-fuller-a1243b6> (last visited May 9, 2018). Dennis Sears is the senior law librarian for foreign and international law at the BYU Law Library. Dennis S. Sears, BYU Law, http://www.law2.byu.edu/faculty/profile_2016.php?id=44 [<https://perma.cc/6LN4-CT5F>]. Steve Averett was a senior law librarian and the head of collection development at the BYU Law Library until his retirement in August 2017.

73. Hickman Moser had originally intended to join a small personal injury firm as a litigator after graduation. However, in her final months of law school, she learned of a fellowship opportunity that became available at the BYU Law Library. After learning of the possible employment opportunity, she began to research the profession and learned she was uniquely qualified to apply for the position because of her experience gained while working at the reference desk. She was gratified to learn that the skills she had developed while working on the reference desk could potentially translate into a productive and fulfilling long-term legal career. She is currently fulfilling a two-year law library fellowship with the BYU Law Library and, upon its completion, hopes to begin work as an assistant law librarian.

74. See generally Malmquist, *supra* note 1, at 301–13 for a discussion about supervising student employees in a law library setting.

of the reference assistant model.⁷⁵ Consistent and clear management can often eliminate potential problems and save time. Plus, once the model is up and running, the supervising librarian will accomplish more thanks to the reference assistants' help, increasing the librarian's work product.⁷⁶

¶54 Additionally, trainings must be designed, developed, and delivered. Ideally, these training sessions should be determined and coordinated by the supervisor as he or she should be intimately aware of the reference assistant's needs. This does not mean that the supervisor should necessarily deliver or facilitate every training. The supervisor should draw on the talents of others throughout the library to enrich the training experience. People working in technical services or circulation have a wealth of information that can be helpful for the reference assistant. Even the reference assistant could be called on to present a training on an area of his or her expertise or to update the other reference assistants on the status of a project and how best to proceed. The supervisor should also take advantage of training time to conduct housekeeping, relay significant information, and set or reinforce expectations. This can mitigate redundant questions by the reference assistant and contribute to uniformity of product, both of which will ultimately save valuable time. Appropriate training opportunities not only contribute to the reference assistant's overall aptitude at the desk but also help encourage faculty confidence in the student's competence to complete difficult or complex research assignments.

¶55 Because the reference assistants all work on the same faculty research projects, the supervising law librarian must ensure that these group projects are clearly communicated from one reference assistant to another. There are many free and low-cost programs available to help manage group tasks such as these. Some of these programs include Trello, Taiga, Restyaboard, and TaskBoard. All of them are similar, but by way of example, Trello, the free program of choice at the BYU Law Library, is essentially a digital Kanban board. Kanban, "a tool for managing the flow of materials or information in a process," was developed in response to the movement of Lean methodology⁷⁷ that seeks to eliminate waste and increase efficiency.⁷⁸ In simplest terms, a Kanban board helps workers visualize workflow processes and manipulate those workflows to produce optimal efficiency. In the case of Trello, this is done by maintaining a series of lists where each individual task or project in the list is a digital card or sticky note that can be easily edited or moved until optimal efficiency is achieved or projects are completed. Management solutions such as Trello are key to supervising the reference assistant because there are many reference assistants and lots of switching off among them. Trello helps the reference assistant to not repeat another's work and allows the supervising law librarian to keep an eye on the faculty projects, to make sure that the research is going in the correct direction, and to make sure no project is ever forgotten.

75. See Schultz, *supra* note 3, at 774 ("Supervision and training of research assistants is a big job, and it takes up a large portion of the faculty services librarian's time and thought.").

76. See Malmquist, *supra* note 1, at 313 ("Without student workers, [law] librarians would not be free for other duties.").

77. See generally ERIC RIES, *THE LEAN STARTUP: HOW TODAY'S ENTREPRENEURS USE CONTINUOUS INNOVATION TO CREATE RADICALLY SUCCESSFUL BUSINESSES* (2011).

78. PAUL KLIPP, *GETTING STARTED WITH KANBAN 4* [n.d.], <https://morebetterlabs.kanbanery.com/ebook/GettingStartedWithKanban.pdf> [<https://perma.cc/9N7C-FJMS>].

Cost

¶56 A potentially significant downside law librarians may have to consider when implementing the reference assistant model is the cost. Law library budgets are tight,⁷⁹ and it is doubtful they will ever be less tight.⁸⁰ So realistically, how much does the reference assistant cost if he or she is staffing the reference desk during the days, evenings, and weekends?

¶57 At the BYU Law Library, the reference assistant is employed for 73 hours of labor every week, meaning that approximately 3700 hours of reference and faculty research are completed by the reference assistant every year, upping the productivity of the library. The reference assistant's hourly pay is the same pay as the law faculty's own research assistants, so while this may be high for some libraries, if the academic law library already has money allocated for a pool of research assistants, the overall cost of the reference assistant model would be about the same. The difference is that the reference assistant has set hours that do not overlap with the other reference assistants so that there are more hours of coverage, both at the reference desk and for answering faculty requests.

¶58 Further, even if the pool of research assistants is not a model currently implemented in a particular law library, most law libraries do employ law students—eighty-seven percent of law libraries to be specific.⁸¹ Perhaps many of these law libraries are employing fewer law students than ever before. Regardless, in 2017 eighty-seven percent of law libraries had some kind of budget to employ these law student employees. Thus, the cost for the reference assistant model, or a scalable model, may already be covered for most law libraries. What we encourage these law libraries to see is how to more effectively use these law student employees whom they have already hired and budgeted for. Thus, for most law libraries, it should not be a question of how to get the money for reference assistants but more a question of how these law libraries can use student employees more effectively.

¶59 It is possible that the dean of the law school may help law librarians increase their law library budget to be able to afford reference assistants, and their requests to increase their budget to hire reference assistants may save their law school money overall, as was the situation at Georgetown.⁸² Emphasizing how reference assistants will help the law school's faculty members could make the model attractive to law school administration. Knowing that at the drop of a hat the faculty can

79. See, e.g., Fitchett et al., *supra* note 54, at 91, ¶ 1 (claiming these times to be “the worst recession many law librarians have ever seen, . . . driv[ing] the need for academic law library directors who are imaginative, creative, and strategic thinkers, particularly about resources”); see also Bishop & Bartlett, *supra* note 48, at 489 (recognizing “the ever-present challenges . . . with declining budgets in the academic environment”).

80. See Fitchett et al., *supra* note 54, at 93, ¶ 8 (“Virtually every law library director . . . [thinks] [the current tough economic times are permanent,]” with “most qualif[y]ing their remarks by saying they [think] that while economic conditions for law schools will improve, those of academic law libraries probably will not.”).

81. See *infra* appendix, question 11.

82. See Kirk & Rainwater, *supra* note 2, at 4 (explaining that a research assistant pool in the Georgetown University Law Library began when the academic dean, with a “cost-cutting focus,” reduced the research assistant funds for faculty to have individual research assistants, and instead gave the library an increased budget to hire research assistants who could work efficiently and for a variety of faculty members, and that the use of a pool of research assistants continued because of the monetary savings for the administration).

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

¶60 While a budget increase is probably not the norm, it is wise to not discount (no pun intended) the creative cost solutions available to law libraries, either by expecting more out of the law libraries' current law student employees or by seeing whether the reference assistant model can be a more efficient and a cost-effective answer to research assistants provided by the law school, as shown by the Georgetown example. Regardless, the reference assistant model can help the law library produce more work product and serve more patrons, students, and faculty members.

Competence

¶61 Some law librarians and scholars may believe that law students are not knowledgeable enough to perform reference work,⁸⁴ research for faculty,⁸⁵ or even menial administrative tasks in the law library. However, those views are outdated and, frankly, grossly inaccurate.⁸⁶ Although it is true that the reference assistant may require initial development before the law library's investment returns dividends, it is also true that part of the purpose of hiring the reference assistant is so the law library can contribute in a meaningful way to law student growth and education. The training that comes from the close supervision of the reference assistant by the law librarian is what will strengthen their skills, making them more competent over time as a reference assistant.⁸⁷

¶62 There is a widespread tendency for law faculty to favor the upper echelons of student achievers when choosing student research assistants. The top ten percent of any given law class seem to account for the vast majority of scholarship and job offer recipients while the remaining ninety percent tend to languish.⁸⁸ While

83. See Lewis, *supra* note 60, at 89, ¶ 2 (“A pivotal role of librarians in a law school environment is to ascertain the research and teaching needs of the faculty and to assure that those needs are served by the library.”)

84. Compton, *supra* note 16, at 24 (“Several librarians, . . . in no uncertain terms, . . . consider[] [law student employees] a bane and not a blessing and strongly recommend[] discontinuance of their employment, giving it as their experience that full-time assistants g[i]ve much more satisfactory service and at slightly additional cost.”)

85. See, e.g., Monroe H. Freedman, *The Professional Responsibility of the Law Professor: Three Neglected Questions*, 39 VAND. L. REV. 275, 281 (1986) (remarking that “[a law] student might not have known any better” when she plagiarized as a research assistant for a law professor).

86. See, e.g., McClure, *supra* note 3, at 282 (“Students who have served a year or longer [as the research assistant] typically experience tremendous improvement in their legal research skills as a result of the one-on-one instruction and the variety of projects they have encountered. . . .”); see also McDermott, *supra* note 48, at 212 (“A conscientious law student who is well-trained and closely monitored can be an especially valuable employee” to the law library.); Schultz, *supra* note 3, at 773–74 (advocating for law student help with faculty research projects given to a law librarian).

87. See McDermott, *supra* note 48, at 212 (“Training and supervision can address the occasional problems, such as the overconfident student who fails to refer appropriate questions to the librarian.”).

88. See, e.g., Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 117 (2002) (arguing the existence of “[t]he top-ten-percent tenant,” defining it as “the belief that success in law school is exclusively demonstrated by high grades, appointment to a law review, and similar academic honors” and concluding that the “belief is entirely obvious at most law schools, whether elite or more typical”).

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

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

¶64 As discussed in ¶ 37, the American Bar Association (ABA) is moving away from all theory-based law school courses toward more skills-based courses in which law students are expected to put into practice the principles they are learning in the classroom.⁸⁹ Law schools have a duty to prepare their law students to go out and practice law, and there is a variety of new approaches to legal education that appeal to today's students' diverse learning styles.⁹⁰ There is nothing more practical than addressing real-life legal research inquiries. By offering law students the opportunity to work as reference assistants, law librarians become part of the solu-

89. See generally Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 MERCER L. REV. 909 (2008) (exploring the implementation of more skills-based courses in law schools because of the ABA's push for more skills education); Roy Stuckey, *The American Bar Association's New Mandates for Teaching Professional Skills and Values: Impact, Human Resources, New Roles for Clinical Teachers, and Virtual Worlds*, 51 WAKE FOREST L. REV. 259 (2016) (discussing the ABA's new accreditation requirements that include more skill-based courses for law students and hypothesizing about the speed with which schools will implement skill requirements).

90. See, e.g., Myra E. Berman, *Portals to Practice: A Multidimensional Approach to Integrating Experiential Education into the Traditional Law School Curriculum*, 1 J. EXPERIENTIAL LEARNING 157 (2015) ("The cost of legal education, the reluctance and often the incapability of law firms to bear the cost of training new attorneys in basic lawyering skills, costs which they must pass on to their already overburdened clients due to increasing costs of litigation, the new technologies and the concomitant need for different kinds of lawyers with skills unfamiliar to the academy, the glut on the market of lawyers, except in the public interest areas where they are most needed—these factors have combined to create the perfect storm for thrusting experiential education to the forefront of the law school agenda and for altering the way law schools train future lawyers. And with two major national organizations focusing on this type of professional education, Educating Tomorrow's Lawyers and the Alliance for Experiential Learning in Law, we can state definitively that experientially-based legal education is here to stay." (footnotes omitted)); see also Ann Marie Cavazos, *Demands of the Marketplace Require Practical Skills: A Necessity for Emerging Practitioners, and Its Clinical Impact on Society—A Paradigm for Change*, 37 J. LEGIS. 1, 5 (2011) ("[I]ncorporating practical skills into legal education provides a solution currently demanded by today's marketplace."); Genevieve Blake Tung, *Academic Libraries and the Crisis in Legal Education*, 105 LAW LIBR. J. 275, 279, 2013 LAW LIBR. J. 14, ¶ 10 ("Many of the most urgent voices for [law school] reform advocate a dramatic overhaul of the traditional scholarly curriculum in favor of experiential learning and cultivating 'practice-ready' [law school] graduates.")

tion by helping law students become practice-ready, which in turn helps the law library demonstrate its worth and relevance⁹¹ during today's legal education crisis.⁹²

¶65 The reference assistant participates in active learning daily as he or she problem-solves and addresses real-world issues, building competence. “[S]tudies in cognitive science show that students retain what they are learning better with active learning than when passively sitting and listening to a lecture.”⁹³ In addition, rather than tackling engineered hypotheticals with predictive or prescribed outcomes, the reference assistant faces the reality that legal research problems are not always easily resolved and finding answers may require skillful use of multiple resources.

¶66 Some law librarians might be concerned that the reference assistant is not competent enough to avoid engaging in the unauthorized practice of law⁹⁴ or that the reference assistant is incapable of believing and conveying to a patron that he or she does not know everything. Not only is the latter an improper blanket judgment of all law students, it is also unsupported and unfounded. Additionally, because the supervising librarian maintains constant contact with the reference assistant, and because most shifts at the reference desk involve the law librarian advising the reference assistant, it is unlikely that the reference assistant will cross the unauthorized practice of law line. Moreover, patrons from the community, whether they are contacting the academic law library in person or by phone, seem to follow a similar pattern when they are asking for legal advice. The reference assistant, who has already received training before beginning work at the reference desk, will soon be able to differentiate these patrons from the others who contact the reference desk. Simplistically, the reference assistant can be trained to ask him- or herself the following: does answering this patron's question involve using skills or knowledge that are singular to the education and training of a lawyer? If so, this patron requires legal advice that the reference assistant should not and cannot provide. If the reference assistant has any doubt about providing the patron with an answer, he or she can always turn to the law librarian for guidance. As a law student, the reference assistant is apt enough to follow this guidance. To date, the BYU Law Library has never encountered a problem with the reference assistant providing legal advice.

¶67 Another concern that law libraries might have is the reference assistant's ability to interact with pro se patrons. Many individuals visiting the law library are seeking legal information to represent themselves in a legal action, and assisting

91. See Tung, *supra* note 90, at 278, ¶ 7 (“Law librarians must demonstrate, to both our schools and our students, that our work is part of the solution, not part of the problem.”).

92. See McClure, *supra* note 3, at 275 (“Legal education is under siege.”).

93. Alyson M. Drake, *The Need for Experiential Legal Research Education*, 108 LAW LIBR. J. 511, 520, 2016 LAW LIBR. J. 26, ¶ 22.

94. See Robin K. Mills, *Reference Service vs. Legal Advice: Is It Possible to Draw the Line?*, 72 LAW LIBR. J. 179, 192 (1979) (“It is virtually impossible to develop a reliable test or standard to be applied to determine where the line should be drawn between giving legal information and legal advice,” so “law librarians should still be very concerned about the giving of legal advice by library staff members” and should mitigate the unauthorized practice of law by: (1) “posting . . . notices urging those who need legal assistance to consult an attorney”; (2) “carefully instruct[ing]” any library staff member who may be approached by library patrons; (3) “urg[ing]” the patrons to speak to an attorney; (4) “refer[ring] patrons] to other agencies whenever possible.”).

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

Retention

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

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

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

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

95. See Amy Hale-Janeke & Sharon Blackburn, *Law Librarians and the Self-Represented Litigant*, 27 LEGAL REFERENCE SERVS. Q. 65, 73–76 (2008).

96. See, e.g., Schultz, *supra* note 3, at 774 (acknowledging the high turnover of law students working in a law library); see also McClure, *supra* note 3, at 285 (recognizing that “[c]onstant turnover of [law student employees in law libraries] can be a drain on law school resources”); Richman & Windsor, *supra* note 2, at 280 (“Two leading reasons for [the] resistance [of law students employed in law libraries] are the constant turnover of student-employees and the cost associated with repeatedly training new students in the intricacies of a law library and its resources.”)

97. See Compton, *supra* note 16, at 26 (“Appointments should be made from first, second, and third year classes each year to keep a trained senior assistant always available to have only one new man at a time.”).

98. See, e.g., McDermott, *supra* note 48, at 212 (“If law students understand that improved research skills will be a benefit of the position, they may appreciate having the experience on their resume and keep the job throughout law school!”).

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

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

The Reference Assistant Model: A Case Study

The History of the Reference Assistant at the BYU Law Library

¶73 Brigham Young University's J. Reuben Clark Law School opened on August 27, 1973, and as part of his opening remarks, University President Dallin H. Oaks expressed the pride he felt at the "extraordinary efforts" that made the school a reality.¹⁰⁰ In his description of what the law school had to offer prospective students, he highlighted "a law librarian whose professional skills and performance . . . [had] already won [the law school] wide acclaim in the world of legal education."¹⁰¹ He described too how the founders of the law school "assembled and placed in operation a law library of just over 100,000 volumes."¹⁰² The clear implication of Oak's effusions is that the inclusion of a law library and its services were a pivotal component of creating a state-of-the-art law school that would contribute to the institution's mission to "provide an education that is spiritually strengthening, intellectually enlarging, and character building, thus leading to lifelong learning and service."¹⁰³

¶74 Many changes have occurred since those early days of the law school, including a major expansion of the BYU Law Library in 1995. According to the "Mission of the Law Library," the expansion allows the BYU Law Library to meet the "demands of the new legal education and launch another generation of growth

99. This exact situation happened to one of the authors when she, as the reference assistant, worked tirelessly collecting the cases in a time-sensitive matter that then was highlighted in a *Washington Post* article. See Jonathan H. Adler, *What Happened When Merrick Garland Wrote for Himself*, WASH. POST: THE VOLOKH CONSPIRACY (Mar. 21, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/03/21/what-happened-when-merrick-garland-wrote-for-himself/?utm_term=.34ceaf619e44 [<https://perma.cc/VK7N-XZ45>] (highlighting that "[BYU Law professor] Aaron Nielson has collected all the cases in which Garland wrote concurrences or dissents . . . [and] has also collected those cases in which Garland was in the majority but another judge dissented" and citing Aaron Nielson, *Reviewed: Brooding Spirits*, C.J. Garland Edition, YALE J. REG.: NOTICE & COMMENT (Mar. 16, 2016), <http://yalejreg.com/nc/d-c-circuit-review-reviewed-brooding-spirits-c-j-garland-edition-by-aaron-nielson/> [<https://perma.cc/RM2L-YTJQ>]; and Aaron Nielson, *D.C. Circuit Review—Reviewed: More Brooding Spirits*, C.J. Garland Edition, YALE J. REG.: NOTICE & COMMENT (Mar. 18, 2016), <http://yalejreg.com/nc/d-c-circuit-review-reviewed-more-brooding-spirits-c-j-garland-edition/> [<https://perma.cc/AB2B-VSTB>]).

100. President Dallin H. Oaks, *Opening Remarks*, BYU LAW 10, 10 (Aug. 27, 1973), <http://www.law2.byu.edu/site/files/info/oaksbecomingclarksschool.pdf> [<https://perma.cc/8UY7-67JH>].

101. *Id.*

102. *Id.*

103. *Mission & Goals*, BYU LAW, <http://www.law2.byu.edu/site/mission/> [<https://perma.cc/5PWW-VTGD>].

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

¶75 The BYU Law Library first hired law students to work on the reference desk in a limited capacity in the mid-1980s. The original reference assistant model was designed and instituted by now retired BYU Law librarians Constance K. Lundberg¹⁰⁶ and Gary Hill.¹⁰⁷ The goal of the model was to have coverage for the reference desk be as comprehensive as possible without imposing too heavily on the schedules of the law librarians.¹⁰⁸ As such, law librarians provided reference coverage from 8 A.M. to 5 P.M. on weekdays, and the reference assistants, who were law students, were hired and trained to cover reference during the week from 6 P.M. to 9 P.M. and on Saturdays from 9 A.M. to 5 P.M. These early reference assistants served patrons and worked on a limited number of research assignments for the faculty. This remained the model for meeting faculty research needs and for maintaining extended reference desk hours until the early 1990s. It was at this time that the BYU Law Library embraced an additional model—a pool of research assistants. Although the reference assistant model was not dissolved, it became ancillary to the newly established research assistant pool.

¶76 Moving the focus to this additional model of a research assistant pool was partially motivated by an increased national discussion among law librarians about how to meet faculty research needs more effectively.¹⁰⁹ One of the recommendations getting the most traction at the time was the creation of a pool of research assistants, overseen by the library, from which the faculty could draw. The research assistant pool is a model of faculty services that is still popular in many law libraries today.¹¹⁰ In simplest terms, the research assistant pool involves hiring a group of law students who will field faculty research requests as they are submitted to the librarian tasked with pool administration. The BYU Law librarians found that although the pool gave them access to a number of law student research assistants, the model never really performed up to their expectations.¹¹¹ It was particularly frustrating when faculty would contact the library with urgent research requests and research

104. Constance K. Lundberg, *Learning in the Light: The New BYU Law Library*, CLARK MEMORANDUM, Spring 1995, at 16, 18, <http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1016&context=clarkmemorandum>.

105. *Id.* at 25.

106. Lundberg was the second director of the BYU Law Library (1989–2008). *Constance K. Lundberg*, BYU LAW, http://www.law2.byu.edu/faculty/profile_2016.php?id=187 [<https://perma.cc/WQJ5-T6DY>].

107. Hill was the deputy director of the BYU Law Library until his retirement in 2014. *After 30 Years Gary Hill Retires from the Law Library*, BYU LAW (Dec. 3, 2014), <http://www.law2.byu.edu/news2/after-30-years-gary-hill-retires-from-law-library> [<https://perma.cc/37ML-6KJV>].

108. Telephone Interview with Gary Hill, Former Deputy Director, BYU Law Library (Feb. 10, 2017).

109. Interview with Kory Staheli, Director, BYU Law Library, in Provo, Utah (Feb. 10, 2017) (recalling research assistants supervised by law librarians being the buzzing topic at many AALL programs in the 1990s).

110. See, e.g., Kirk & Rainwater, *supra* note 2, at 4; see also Canick, *supra* note 2, at 178 n.17; Richman & Windsor, *supra* note 2, at 279–82; appendix *infra*, question 15.

111. Interview with Kory Staheli, *supra* note 109.

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

¶77 If you were to visit the BYU Law Library today, you would enter past the circulation desk onto the main floor of the library. The very large reference desk is centrally located on this main floor and has a dedicated workstation for both the full-time law librarian and the reference assistant. Both stations are equipped with a two-monitor computer and have easy access to the shared reference telephone, which is located between the two workstations. The desk is also adjacent to the bank of public access computer terminals, computer terminals reserved for exclusive use by students, the law students’ LexisNexis printer, as well as a large campus printer. From the reference desk, the law librarian and the reference assistant have an unobstructed view into the reserve reading room, which houses the majority of the library’s reference materials. The reference desk is a considerable presence in the library and was designed with implementation of the current reference assistant model at its core.¹¹⁵

¶78 Kory Staheli, the current director of the BYU Law Library, characterizes the building today as a “true teaching library.”¹¹⁶ Motivated by a desire to educate all patron groups, the BYU Law Library planned and instituted the existing reference assistant model to fill the gap in faculty services left by the abandonment of the research assistant pool. The reference desk, in particular, is a fundamental tool in forwarding this idea of a teaching library and supporting the reference assistant model. Ample room is available at the desk not only for the librarian and reference assistant, but for patrons to sit across from them to discuss their legal research needs. The reference assistant model has been in place at the BYU Law Library for more than twenty years. The model has undergone minor adjustments in that time to meet the changing demands placed on the library, but at its core, the model remains the same and has become the embodiment of a “teaching library” paradigm.

What Does the Reference Assistant Do at the BYU Law Library?

¶79 The BYU Law Library generally employs between five and eight law students as reference assistants. Each of these students has completed the rigorous year-long legal research and writing course and has been fully vetted by his or her legal research instructor as competent to fulfill the responsibilities associated with

112. *Id.*

113. Stephanie Tripp, *Hunter Law Library Dedicated*, *BYU MAG.*, <https://magazine.byu.edu/article/hunter-law-library-dedicated/> [<https://perma.cc/J2BF-U5BJ>].

114. *Id.*

115. Interview with Kory Staheli, *supra* note 109.

116. *Id.*

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

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

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

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

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

the reference assistant learns more and becomes better equipped to handle increasingly difficult or complex reference questions on his or her own.

¶84 When not answering caller inquiries or providing directional aid, the reference assistant works on faculty research requests, just like a research assistant would. Since the hours the reference assistant works are carved out into his or her weekly schedule and do not overlap with the other reference assistants' schedules, there is always one reference assistant clocked in and ready to work every minute between 8 A.M. and 9 P.M. on weekdays and from 9 A.M. to 5 P.M. on Saturdays. This means that when a faculty member has a request, it is immediately worked on because the reference assistant is right there ready to begin. This provides a large advantage over having a pool of research assistants managed by the library because their schedules are not as set and not as comprehensive. This allows the BYU Law Library to get results back quickly and thoroughly to the faculty.

¶85 Overall, the BYU Law Library finds that the reference assistant model elevates its legal reference services and its faculty research support to a more efficient and productive level. It also alleviates unnecessary burdens on its law librarians, allowing them to have more time to dedicate to their expertise, such as their legal research courses and their personal scholarship. The BYU Law Library has enjoyed continued success with its reference assistant model over the past twenty years and anticipates a continued employment of the model into the foreseeable future, benefiting law students, law librarians, and patrons alike.

The Future of the Reference Assistant

¶86 The longevity of the reference assistant model at the BYU Law Library is due in vast part to dedicated law librarians who see the value of the model and their willingness to make adjustments to it as necessary to accommodate changing student, faculty, and patron needs. Ongoing training of the reference assistant will be vital as the law library makes new physical and digital acquisitions. In addition, with the increase of faculty interest in empirical research, the reference assistant will need to be taught to mine, organize, and interpret data. Ultimately, to remain as relevant and productive as it has been historically, the reference assistant model will need to maintain its malleability, and subsequent law librarians and administrators will need to continue to give the model their enthusiastic support.

Scalability of the Reference Assistant Model

¶87 This article details the reference assistant model when used and applied at maximum capacity. However, the model at the BYU Law Library can be scaled back while still perhaps improving law student employment in the law library, as well as library work product given to law professors.

¶88 At minimum, use employees where they are most needed. Consider whether it is better for law faculty to be responded to quickly and with research requests in more depth or whether internal library shelving and organizing should be as up-to-date as possible. Consider whether a law student employee can staff the reference desk and do something productive for the law library when no students or patrons are requesting reference services.

¶89 Additionally, use employees efficiently. If you already have a research assistant pool, consider what your work product for law faculty would be like if you had

on hand, at a moment's notice, a research assistant ready to take on a research project. Other times, when you seek help, some research assistants may avoid volunteering because they are in the middle of studying or turning in a paper and find it an inopportune time. If a law library does not have any law student employees, consider switching out a few of your undergraduate student employees for law student employees. Start with this change, then work your way into introducing more law-school-like, advanced responsibilities, like research and reference as the law library administrator sees fit. Law libraries can also exchange a couple of law students who are doing more general and menial tasks to undergraduate students, who cost less, so that the law student employees who remain can do faculty research and reference work.

¶90 Lastly, be creative. Law librarians know their specific law libraries best. Consider all the tasks that need to be done and the budget that is currently allocated to student employees and see whether faculty requests and reference work can somehow happen with a few law student employees. Once the model is in place, the law librarians will be supported and will be able to accomplish more, pleasing their law schools and law faculty.

¶91 In short, eighty-seven percent of the law libraries that participated in our survey have at least one law student worker. This article encourages allocating responsibilities so that law libraries maximize the funding that is already being spent on law student employees.

Conclusion

¶92 The reference assistant is a multipurpose employee who improves many aspects of academic law libraries' productivity, including faculty research support and reference services. Invaluable to their law libraries, reference assistants benefit as well as they prepare to graduate from law school and contribute to the legal field in some way. This article shows that although there has been an increase in employees like the reference assistant since past surveys on the topic were published, there is room for more academic law libraries to implement the reference assistant model or a scaled version of it. We hope that this article has an impact on academic law libraries, increasing the number that employ the reference assistant so that law libraries can continue to soar and to demonstrate their worth to the law school community and beyond.

Appendix: 2017 Survey Questions and Results

This appendix presents in more detail the questions¹¹⁷ and results from our 2017 survey.¹¹⁸ The survey was sent to all 205 ABA-accredited law libraries.

1. At which university are you currently a law librarian?
 - 155 of the 205 ABA-accredited law schools had a law librarian participant in our survey.
2. Approximately how many law students are enrolled at your law school?
 - 11 law schools have fewer than approximately 200 law students.
 - 76 law schools have between approximately 200 and 500 law students.
 - 68 law schools have approximately more than 500 law students.
3. Approximately how many full-time law faculty are at your law school?
 - 16 law schools have approximately fewer than 20 law faculty.
 - 99 law schools have between approximately 20 and 50 law faculty.
 - 35 law schools have between approximately 51 and 100 law faculty.
 - 5 law schools have approximately more than 100 law faculty.
4. Approximately how many full-time law librarians are on the library staff at your law school? (You should include any full-time law library employee with an M.L.I.S. (or equivalent) and/or J.D. degree in your response.)
 - 1 law school has approximately 1 full-time law librarian.
 - 66 law schools have between approximately 2 and 5 full-time law librarians.
 - 68 law schools have between approximately 6 and 10 full-time law librarians.
 - 17 law schools have between approximately 11 and 20 full-time law librarians.
 - 2 law schools have between approximately 21 and 30 full-time law librarians.
 - 1 law school has between approximately 31 and 40 full-time law librarians.
5. Approximately how many part-time law librarians, if any, are on the library staff at your law school? (You should include any part-time law library employee with an M.L.I.S. (or equivalent) and/or J.D. degree in your response.)
 - 98 law schools have approximately 0 part-time law librarians.
 - 33 law schools have approximately 1 part-time law librarian.
 - 23 law schools have between approximately 2 and 5 part-time law librarians.
 - 1 law school has between approximately 6 and 10 part-time law librarians.

117. Many of the questions in our survey are the same ones asked by Richman and Windsor in the 1999 survey. Richman & Windsor, *supra* note 2. We did this to maintain the integrity of their survey so that we could accurately follow up and see whether there had been an increase in law student usage and variety in law student duties since the second survey was published in 1999.

118. More detailed results are on file with Annalee Hickman Moser. E-mail her at mosera@law.byu.edu with questions or a request for access.

6. Approximately how many full-time law librarians participate in reference work at your law library?
 - 4 law libraries have approximately 1 full-time law librarian participate.
 - 106 law libraries have between approximately 2 and 5 full-time law librarians participate.
 - 43 law libraries have between approximately 6 and 10 full-time law librarians participate.
 - 2 law libraries have between approximately 11 and 20 full-time law librarians participate.
7. Approximately how many part-time law librarians participate in reference work at your law library?¹¹⁹
 - 9 law libraries have approximately 0 part-time law librarians participate.
 - 29 law libraries have approximately 1 part-time law librarian participate.
 - 19 law libraries have between approximately 2 and 5 full-time part librarians participate.
8. Approximately how many full-time law librarians participate in faculty services at your law library?
 - 0 law libraries have approximately 0 full-time law librarians participate.
 - 16 law libraries have approximately 1 full-time law librarian participate.
 - 99 law libraries have between approximately 2 and 5 full-time law librarians participate.
 - 36 law libraries have between approximately 6 and 10 full-time law librarians participate.
 - 4 law libraries have between approximately 11 and 20 full-time law librarians participate.
9. Approximately how many part-time law librarians participate in faculty services at your law library?¹²⁰
 - 27 law libraries have approximately 0 part-time law librarians participate.
 - 25 law libraries have approximately 1 part-time law librarian participate.
 - 4 law libraries have between approximately 2 and 5 part-time law librarians participate.
 - 1 law library has between approximately 6 and 10 part-time law librarians participate.
10. Approximately how many *non-law student* workers are employed in your law library? (You should include any undergraduate or non-law graduate students in your response.)
 - 40 law libraries have approximately 0 non-law student workers.
 - 9 law libraries have approximately 1 non-law student worker.
 - 43 law libraries have between approximately 2 and 5 non-law student workers.

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

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

- 34 law libraries have between approximately 6 and 10 non-law student workers.
 - 21 law libraries have between approximately 11 and 20 non-law student workers.
 - 7 law libraries have between approximately 21 and 50 non-law student workers.
 - 1 law libraries have approximately more than 50 non-law student workers.
11. Approximately how many *law student* workers are employed in your law library?
- 20 law libraries have approximately 0 law student workers.
 - 9 law libraries have approximately 1 law student worker.
 - 39 law libraries have between approximately 2 and 5 law student workers.
 - 43 law libraries have between approximately 6 and 10 law student workers.
 - 33 law libraries have between approximately 11 and 20 law student workers.
 - 11 law libraries have between approximately 21 and 50 law student workers.
12. You indicated that no law students are employed by your law library. The reason(s) is: (You may select more than one answer.)¹²¹
- 2 law libraries have used them in the past, and they are not effective.
 - 2 law libraries have used them in the past, but their positions were eliminated for budgetary reasons.
 - 9 law libraries have library staffs that can adequately fill faculty research demand.
 - 13 law libraries have faculty that have their own research assistants.
 - 1 law library has other reasons.
13. You indicated that law students are employed by your law library. How would you best describe their responsibilities? (You may select more than one answer.)¹²²
- 108 law libraries use law students for general support such as shelving, circulation duties, etc.
 - 54 law libraries use law students for legal research for faculty under the supervision of one or more staff librarians.
 - 35 law libraries use law students for reference work.
 - 23 law libraries use law students for other responsibilities.

121. This question was asked only to the twenty law librarians who indicated that no law students are employed by their law libraries.

122. This question was asked only to the 135 law librarians who indicated that law students are employed by their law libraries.

14. You indicated that your law library employs law students for research purposes. How do you consider the quality of their work?¹²³
- 16 law libraries consider the quality of their work excellent.
 - 30 law libraries consider the quality of their work good.
 - 7 law libraries consider the quality of their work fair.
 - 1 law library considers the quality of their work poor.
15. For faculty members who do not hire their own research assistants, research support is provided by: (You may select more than one answer.)
- For 104 law librarians, a law librarian who fills the request or delegates it.
 - For 71 law libraries, a specific librarian assigned to each faculty member who can be contacted for research support.
 - For 37 law libraries, a pool of law student research assistants under the supervision of a librarian.
 - For 3 law libraries, no one in the law library.
16. Is there a reference desk at your law library?
- Yes in 135 law libraries.
 - No in 20 law libraries.
17. Because law students are employed in your law library and your law library has a reference desk, we would like to know if the law students employed in your law library participate in staffing the reference desk.¹²⁴
- Yes in 32 law libraries.
 - No in 84 law libraries.
18. Because you indicated that your law student employees participate in staffing the reference desk, would you please describe how you utilize them?
- 32 law librarians answered this question.

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

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

The History of the University of New Mexico School of Law Librarians’ Fight for Faculty Status and Equal Voting Rights*

Ernesto A. Longa**

Based on research of over sixty years of archival records, this article presents a case study of the University of New Mexico School of Law librarians’ fight for respect, professional recognition, faculty status, and voting rights in the face of persistent opposition from law school administrators, faculty, and head librarians.

Introduction	93
Faculty Status of the University of New Mexico’s First Law Librarian.	95
University of New Mexico Librarians’ Fight for Faculty Status (1965–1969) . . .	101
University of New Mexico School of Law Librarians’ Fight for Academic Rank and Autonomy (1971–1975)	104
Voting Rights of the “Anomalous” Law Library Faculty.	108
University of New Mexico School of Law Librarians Win Equal Voting Rights	110
Conclusion	112

Introduction

¶1 Within the academic law library community, librarian status has been a perennial issue. One author has even described law librarians’ preoccupation with their status as a “form of paranoia,” which is not to deny that law librarians have often been treated as second-class members or worse by law school administrators and faculty.¹ In 1938, William Roalfe, Law Librarian at Duke University, decried the widespread misconception that

almost any person [was] qualified to act as librarian, whether such person be an untrained but deserving widow of some professor, a broken down lawyer or teacher who has not made good, a clerk, or perhaps a regular faculty member who is more or less fully occupied with teaching and other duties.²

* © Ernesto A. Longa, 2018. The author wishes to thank Christopher Geherin and Portia Vescio for their tremendous research assistance at the Center for Southwest Research.

** Professor of Law Librarianship, University of New Mexico School of Law, Albuquerque, New Mexico.

1. Christine A. Brock, *Law Libraries and Librarians: A Revisionist History; or More Than You Ever Wanted to Know*, 67 LAW LIBR. J. 325, 347 (1974).

2. William R. Roalfe, *The Essentials of an Effective Law School Library Service*, 31 LAW LIBR. J. 333, 350 (1938).

Ten years later, Edward S. Bade, Professor of Law at the University of Minnesota Law School, wrote “that anyone who knows the alphabet and can count at least to three hundred is qualified to be a law librarian,” and added that after the law librarian had completed the tasks of unpacking books and shelving them, he or she might be asked to “assist the janitor, and walk professor Jones’ dog.”³ This misconception existed despite the fact that at the time Bade wrote these disparaging remarks, two-thirds of academic law librarians had law degrees, while more than one-third had library degrees, and many had both.⁴ In addition to having comparable academic credentials to their peers, nearly half of the academic law librarians had faculty status and taught legal bibliography, while a quarter of the academic law librarians also taught substantive law courses.⁵

¶2 After World War II, the double-degree standard and faculty status both became the battle cry of academic law librarians.⁶ Harry Bitner, Law Librarian at Columbia University, remarked that the more education a librarian has the better; he added, “librarianship is an educational process, and, like educators, librarians may never say that they have had enough training or learning. Those who enter the field should expect to continue their own education for the rest of their lives.”⁷ Indeed, law librarians urged their colleagues to “not be satisfied with their academic attainments until they have reached the doctoral heights in either law or library science . . . on the assumption that not until the librarian equals the teaching faculty in qualifications will he be given commensurate status.”⁸

¶3 During the 1950s and 1960s, full faculty rank and status for academic law librarians was vigorously pursued such that by 1974, eighty-six percent of head law librarians possessed faculty status.⁹ With faculty status came the opportunity to teach, conduct research, produce scholarship, and serve on faculty committees, as well as academic freedom, sabbatical leave, voting rights, and formal recognition as an equal member of the law faculty.¹⁰ What did not come with faculty status was equal compensation. Academic law librarians continued to earn significantly less than their nonlibrarian colleagues of equal rank on the faculty even though they often held twelve-month rather than nine-month contracts.¹¹

¶4 Interestingly, “[head] law librarians led the field for many years in achieving faculty status, while their general library colleagues [and rank and file law librarians] worked in numerous ranks of stature ranging from faculty ‘equivalency’ to those resembling clerks’ classifications.”¹² However, by the mid-to-late 1960s, there were hundreds of college and university libraries where the fight for full academic

3. Brock, *supra* note 1, at 347.

4. Miles O. Price, *The Law School Librarian*, 1 J. LEGAL EDUC. 268, 270 (1948).

5. *Id.*

6. Brock, *supra* note 1, at 348.

7. Harry Bitner, *The Educational Background of the University’s Law Librarian*, 40 LAW LIBR. J. 49, 54 (1947).

8. Bernita J. Davies, *The Place of the Law Library: Some Theories, Some Facts and Some Reflections*, 46 LAW LIBR. J. 207, 217 (1953).

9. James F. Bailey & Mathew F. Dee, *Law School Libraries: Survey Relating to Autonomy and Faculty Status*, 67 LAW LIBR. J. 3, 19 (1974); Brock, *supra* note 1, at 348.

10. Brock, *supra* note 1, at 348.

11. M. Minnette Massey, *Law School Administration and the Law Librarian*, 10 J. LEGAL EDUC. 215, 219 (1957).

12. Bailey & Dee, *supra* note 9, at 16.

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

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

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

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

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

13. Lewis C. Branscomb, *Preface*, in *THE CASE FOR FACULTY STATUS FOR ACADEMIC LIBRARIANS*, at v (Lewis C. Branscomb ed., 1970).

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

15. HENRY P. WEIHOFEN, *HISTORY OF THE LAW SCHOOL, 1947–1987*, at 2 (1994).

16. *Id.*

17. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Harold L. Enarson, Acad. Vice President, UNM (July 21, 1962) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

18. UNM Faculty, Memorial Minute (June 6, 1969) (on file with UNM, General Library, Ctr. for Southwest Research, University of New Mexico: Faculty Senate Records, Box 3).

University of Iowa (UI) in 1934.¹⁹ Poldervaart spoke several languages, including Dutch, German, Spanish, and French.²⁰ When Poldervaart joined the UNMSOL faculty he had not yet earned a law degree, although he had completed a major part of the work toward an LL.B. during his time at UI and had been a member of the New Mexico State Bar since 1939.²¹ Poldervaart finally earned a J.D. with “high distinction” in 1953 after attending summer semesters at UI College of Law between 1949 and 1953.²² Dean Mason Ladd of the UI College of Law stated that Poldervaart’s “thoroughness, his capacity for research and his brilliance as a law student is exceptional . . . [W]e regard him as a real credit to any law school and in the field of library work consider him one of the best men in the country.”²³

¶8 As a law school instructor, Poldervaart taught legal bibliography and research, legislation I and II, brief and argument, office practice, wills and probate, and international law.²⁴ As a scholar, he authored entries on New Mexico for Collier’s Encyclopedia and Yearbooks,²⁵ New Mexico practice manuals,²⁶ journal articles,²⁷ and a book on the history of the New Mexico Supreme Court during New Mexico’s territorial period (1846–1912).²⁸ Poldervaart earned tenure as an associate professor in 1953,²⁹ just prior to the completion of his J.D., and was promoted to full professor in 1956.³⁰ In recommending Poldervaart’s promotion to full professor, Gausewitz

19. UNM Biographical Record (Nov. 28, 1951) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

20. *Id.*

21. *Id.*; Recommendation from Alfred Gausewitz, Dean, UNM Sch. of Law, to Tom L. Popejoy, President, UNM (Oct. 6, 1955) (on file with UNMSOL Library Archives, Law School Records, Faculty Files); Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Tom L. Popejoy, President, UNM (Aug. 27, 1958) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

22. Letter from Mason Ladd, Dean, Univ. of Iowa Coll. of Law, to France V. Scholes, Acad. Vice President, UNM (Dec. 1, 1953) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

23. *Id.*

24. University Biographical Record (Nov. 28, 1951) (on file with UNMSOL Library Archives, Law School Records, Faculty Files); Coll. of Law, Univ. of N.M. Bulletin (1947–1963) (on file with UNMSOL Library Archives, Law School Records).

25. UNM Biographical Record (Nov. 28, 1951).

26. ARIE POLDERVAART, MANUAL FOR EFFECTIVE NEW MEXICO LEGAL RESEARCH (1955); ARIE W. POLDERVAART, BRIEF AND ARGUMENT: NEW MEXICO APPELLATE PRACTICE (1958); ARIE W. POLDERVAART, MANUAL OF NEW MEXICO JUSTICE COURT PRACTICE (1958); ARIE POLDERVAART, NEW MEXICO PROBATE MANUAL (1961).

27. Arie Poldervaart, *The New Mexico Statutes: Observations in Connection with Their Most Recent Compilation*, 18 N.M. HIST. REV. 52 (1943); Arie Poldervaart, *The New Mexico Law Library—A History*, 38 LAW LIBR. J. 167 (1945); Arie Poldervaart, *Donnelly, “The Government of New Mexico”* (book review), 23 N.M. HIST. REV. 156 (1948); Arie Poldervaart, *The New College of Law Library at the University of New Mexico*, 46 LAW LIBR. J. 26 (1953); Arie Poldervaart, *Legislation by Reference—A Statutory Jungle*, 38 IOWA L. REV. 705 (1953); Arie Poldervaart, *Statute Law in the Field of Legal Research*, 50 LAW LIBR. J. 504 (1957); Arie Poldervaart, *Book Selection for the Law Library on a Limited Budget; or, Practical Suggestions for Making the Book Budget Stretch in a Law Library*, 50 LAW LIBR. J. 529 (1957).

28. ARIE W. POLDERVAART, BLACK-ROBED JUSTICE (1948).

29. Letter from Tom L. Popejoy, President, UNM, to Arie Poldervaart, Law Librarian & Assoc. Professor of Law (July 1, 1953) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

30. Recommendation from Alfred Gausewitz, Dean, UNM Law, to Tom L. Popejoy, President, UNM (Oct. 6, 1955) (on file with UNMSOL Library Archives, Law School Records, Faculty Files) (featuring President Popejoy’s signature approving Poldervaart’s promotion, dated Apr. 18, 1956).

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

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

¶10 According to Poldervaart, Clark had explained to him that the growing difference in salary between him and other UNMSOL faculty members of equal rank was because of Clark’s belief that to provide Poldervaart a salary equal to that of other UNMSOL professors would jeopardize the UNMSOL’s objective to build a good law school.³⁶ Poldervaart countered,

To build a good law school, we need a good faculty. To attract and to hold a good faculty, we need a good library in which the faculty can do its research. To build a good library requires a good librarian. To attract and to hold a good librarian calls for an adequate salary commensurate with his qualifications and the pay received by his colleagues of equal rank.³⁷

31. *Id.*

32. Letter from F.V. Scholes, Acad. Vice President, to Tom L. Popejoy, President, UNM (Apr. 18, 1956) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

33. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Tom L. Popejoy, President, UNM (July 18, 1958) (on file with UNMSOL Library Archives, Law School Records, Faculty Files); Letter from Vern Countryman, Dean, UNM Law, to Tom L. Popejoy, President, UNM (Mar. 26, 1963) (on file with UNMSOL Library Archives, Law School Records, Faculty Files); UNM Law Faculty Meeting Minutes (Feb. 18, 1958) (on file with UNMSOL Library Archives, Law School Records).

34. Letter from Robert Emmet Clark, Acting Dean, UNM Law, to Arie Poldervaart, Law Librarian & Professor of Law, July 18, 1958) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

35. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Tom L. Popejoy, President, UNM (July 18, 1958) (on file with UNMSOL Library Archives, Law School Records, Faculty Files). Poldervaart earned approximately \$9000 per year whereas other faculty members of equal rank were earning approximately \$11,000 per year. *See* Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Tom L. Popejoy, President, UNM (Mar. 20, 1959) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

36. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Tom L. Popejoy, President, UNM (July 18, 1958) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

37. *Id.*

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

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

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

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

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

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

39. *Id.*

40. *Id.*

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

42. *Id.*

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

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

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

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

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

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

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

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

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

¶17 Over two years later, on July 18, 1962, Countryman wrote a scathing letter to Poldervaart concerning “library reclassification” accusing him of “either gross

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

48. *Id.*

49. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Robert Emmet Clark, Acting Dean, UNM Law (Apr. 8, 1959) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

50. Letter from Vern Countryman, Dean, UNM Law, to Tom L. Popejoy, President, UNM (Mar. 26, 1963) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

51. See COLL. OF LAW, UNIV. OF N.M. BULLETIN (1959–1963) (on file with UNMSOL Library Archives, Law School Records).

52. Letter from Vern Countryman, Dean, UNM Law, to Arie Poldervaart, Law Librarian & Professor of Law (Apr. 4, 1960) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

53. *Id.*

54. *Id.*

55. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Vern Countryman, Dean, UNM Law (Apr. 6, 1960) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

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

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

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

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

[e]ven if Poldervaart has tenure, however, I do not believe the problem is a serious one. He has tenure only as a professor, not as a librarian. Hence, the only aspect of competence that is relevant is his competence as a Professor. Since his voice is gone, apparently permanently, he obviously cannot teach. This leaves only research and his efforts in that direction since 1958 are preposterous.⁶¹

¶20 Contrary to Countryman’s assertion, following Poldervaart’s illness in 1958 and his subsequent demotion from teaching member of the law faculty to mere librarian member, Poldervaart produced the following scholarly works: *New Mexico Appellate Practice, Brief and Argument* (1958); *Manual of New Mexico Justice Court Practice* (1958, supplemented annually 1959–1963); *Compilation of Laws Governing the University of New Mexico* (1960, revised 1961–1962); and the *New Mexico Probate Manual* (1961). In addition, while on sabbatical leave during the fall 1961 semester, Poldervaart visited more than seventy-five libraries in fifteen countries to research classification schemes for legal materials. After reading Poldervaart’s report on his sabbatical leave, Enarson wrote,

I read your report with great interest. It is clear, concise, and compels interest all the way. It was a joy to read. I can see that you took a very systematic approach to your work and shall

56. Letter from Vern Countryman, Dean, UNM Law, to Arie Poldervaart, Law Librarian & Professor of Law, (July 18, 1962) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

57. *Id.*

58. Letter from Arie Poldervaart, Law Librarian & Professor of Law, to Harold L. Enarson, Acad. Vice President, UNM (July 21, 1962) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

59. Letter from Vern Countryman, Dean, UNM Law, to Tom L. Popejoy, President, UNM (Mar. 26, 1963) (on file with UNMSOL Library Archives, Law School Records, Faculty Files).

60. *Id.*

61. *Id.*

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

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

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

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

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

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

¶22 The UNM Library Committee began to discuss the matter of academic rank for librarians as early as the spring semester, 1965.⁶⁷ UNMSOL Head Law Librarian Myron Fink regularly attended these committee meetings.⁶⁸ The committee's discussion of faculty status for librarians considered academic rank, tenure rights, sabbatical leave, and voting rights for professional librarians.⁶⁹ In May 1966, the Library Committee agreed to refer its recommendation of academic rank for professional librarians to the UNM Administrative Committee.⁷⁰ The issue languished there until May 1968, when University Librarian Davis Otis Kelley asked the Faculty Policy Committee (FPC) to take up the question.⁷¹ At the time, UNM had no

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

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

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

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

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

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

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

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

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

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

faculty senate, and the FPC was authorized “to make reports and recommendations direct to the University’s general faculty for action by that body.”⁷²

¶23 On October 2, 1968, the FPC began discussing the question of academic rank for librarians.⁷³ During the meeting, Fink took the position that academic rank was not necessary for UNMSOL rank and file law librarians because they did not teach or conduct research, and consequently did not need academic freedom or sabbatical leave.⁷⁴ It is surprising that Fink was unaware of why librarians might need academic freedom even if they were not engaged in formal classroom teaching, and what might be the potential benefits to UNMSOL in granting faculty status to its rank and file law librarians.⁷⁵ At the time, there was a near consensus within the academic library community that the bestowal of faculty status would motivate librarians toward greater professionalism, compel greater involvement in scholarship and publication, inspire lifelong commitment to continuing education, strengthen identification with their institutions, and improve morale via improved salary and benefits.⁷⁶ Perhaps Fink was concerned that the bestowal of faculty status to UNMSOL’s rank and file law librarians might somehow diminish his own status within UNMSOL.

¶24 On January 8, 1969, the FPC agreed to recommend to UNM general faculty that qualified librarians be given academic rank.⁷⁷ In support of its recommendation to the general faculty, the FPC emphasized that

to promote and maintain an integrated team effort, librarians need to be involved with the teaching and research faculty as to be able to keep abreast of developments, anticipate and plan for the library needs and to be adequately advised of University goals and trends. The University needs to move towards requiring advanced degrees including doctoral degrees or comparable scholarly qualifications for the ranking librarians, with recruitment, promotions and compensations according to the same principles used for teaching and research faculty. A significant number of universities have found that the most effective step in

72. UNM FACULTY CONSTIT. art. I, § 6(a)(4) (as amended in 1968) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 3).

73. UNM FPC, Summarized Minutes (Oct. 2, 1968) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 6).

74. *Id.*

75. See Lewis C. Branscomb, *Tenure for Professional Librarians on Appointment at Colleges and Universities*, in *THE CASE FOR FACULTY STATUS FOR ACADEMIC LIBRARIANS*, *supra* note 13, at 65 (originally published in 26 *COLL. & RES. LIBR.* 297 (1965)) (“Professional librarians are involved in intellectual and other tasks that can be performed only in an atmosphere of freedom. Examples of such tasks are: (1) the selection of publications, including determination of what to discard from an existing collection and what to accept or reject from donors; (2) the determination of restrictions of circulation or access with regard to controversial library materials; (3) the determination of the degree of prominence in the shelving of selected library materials; (4) the determination of exhibit programs involving controversial subjects; (5) the employment of staff members alleged to have or who express nonconformist opinions, habits, manners, or appearance; (6) the issuing of bibliographies that might include controversial publications; (7) the planning or design of well thought out but possibly unorthodox library facilities; (8) the defense of library policies in the face of unjust accusations; (9) publishing of articles or books and delivery of speeches in defense of the principles of free speech and the unhampered pursuit of truth, etc.; (10) the use of defensible, but unorthodox classifications, subject designations in catalogs, or labels for books; (11) the adoption of promising but untried methods of operation or management; and (12) the advising of students as to what to read or study.”).

76. Robert H. Muller, *Institutional Dynamics of Faculty Status for Librarians*, in *THE CASE FOR FACULTY STATUS FOR ACADEMIC LIBRARIANS*, *supra* note 13, at 38.

77. UNM, FPC, Summarized Minutes (Jan. 8, 1969) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 6).

acquiring and retaining the quality of librarians desired is to make the professional librarians members of the faculty with the same rights and responsibilities, including appointment and promotion, tenure and sabbatical policies as for the teaching and research faculty.⁷⁸

¶25 At the March 11, 1969, general faculty meeting, it was moved that the faculty “approve the basic principle of academic rank of qualified librarians.”⁷⁹ Of critical importance for UNMSOL librarians was the following statement made by Marion M. Cottrell of the FPC at the beginning of the faculty meeting:

We have tried to make a policy statement here that would not take away from the autonomy of the libraries of the two schools, the School of Law and the School of Medicine. Now, I was informed, informally, a week or two ago that the School of Law took issue with our statement because of the degree requirements. If you will notice our resolution, it does not specify degree requirements This is still left up to the individual college, basically.⁸⁰

Cottrell concluded that if UNMSOL had some differences of opinion as to what degrees a law librarian would need to gain appointment to its faculty, the resolution allowed for those details to be worked out between its dean and UNM academic vice president.⁸¹

¶26 Toward the end of the faculty meeting UNMSOL Dean Thomas Christopher stated that

[t]he law school does not oppose what you want to do for the University Library in any way. Our librarian is a member of the law faculty, has been for many years. We may have others. The important point that I rise to make is that, as I understand it, what you are voting on today does not apply to the law school only the University Library.⁸²

Unfortunately, neither Cottrell nor any other member of the FPC expressly corrected Christopher’s misstatement concerning the intended reach of the FPC’s recommendation, and a few moments later, the general faculty voted in favor of the resolution.⁸³ As a consequence, convinced the resolution did not apply to UNMSOL, Christopher took no action to implement the resolution. As later events make clear, however, under the approved resolution, UNMSOL law librarians had been given faculty status, and the terms of their employment were now governed by UNM *Faculty Handbook*.⁸⁴ Yet, they remained unaffiliated with any particular academic unit until the UNMSOL dean could be persuaded that the general faculty’s resolution applied to them.⁸⁵

78. FPC, Faculty Status for Professional Librarians (Jan. 1969) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 6).

79. UNM Faculty Meeting Transcript 22 (Mar. 11, 1969) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 3).

80. *Id.* at 23.

81. *Id.*

82. *Id.* at 29–30.

83. *Id.* at 22, 31.

84. See Memorandum on the Status of Qualified Professional Librarians in the U.N.M. Sch. of Law Library, from Nina B. Duncan, Senior Cataloger & Assoc. in Law, to Myron Fink, Dir. of the UNMSOL Library (Oct. 18, 1971) (on file with UNMSOL Library Archives, Law School Records, Law Library Files); Univ. of N.M. Board of Regents Minutes for Jan. 9, 1971, http://digitalrepository.unm.edu/bor_minutes/390 (appearing under the heading “Revised Faculty Contracts: (1970-71)” were the names of all of UNMSOL’s rank and file law librarians).

85. Memorandum on the Status of Qualified Professional Librarians in the U.N.M. Sch. of Law Library, *supra* note 84.

¶27 But to what school or department faculty would UNMSOL librarians seek appointments? Christopher clearly did not believe that any of UNMSOL librarians were worthy of appointment to the law faculty, although his assertion that “we may have others” suggested that he was open to the possibility of appointing a future rank and file law librarian to UNMSOL law faculty assuming he or she was qualified (i.e., possessed a J.D.). However, the possibility of appointment to the law faculty for some future imagined law librarian was not an offer that satisfied the rank and file law librarians. Instead, they sought to acquire academic rank and preserve their own professional autonomy by advocating, fighting for, and ultimately succeeding in forming their own separate and distinct law library faculty.

University of New Mexico School of Law Librarians’ Fight for Academic Rank and Autonomy (1971–1975)

¶28 On October 18, 1971, UNMSOL librarians sent Head Law Librarian Myron Fink and Dean Frederick Hart a memorandum in which they contended that the March 11, 1969, resolution approving “academic rank for qualified librarians” specifically applied to UNMSOL law librarians.⁸⁶ In support of their contention, they pointed out that in August 1970, UNM administration requested that they submit biographical record forms required of all faculty members, and that their most recent contracts expressly stated that their appointments were governed by the *Faculty Handbook*.⁸⁷ The librarians concluded their memorandum by stating:

We recognize that academic rank with full faculty status requires the assumption of duties and responsibilities as well as privileges. As our titles would be Instructor of Librarianship, Assistant Professor of Librarianship, etc., we would be members of the faculty of the School of Law Library not the Faculty of the School of Law. If it seems desirable to differentiate us from the General Libraries Faculty presumably (Law) could be added. We therefore request administrative implementation of this faculty resolution, not only to place qualified librarians in the School of Law Library on a level with other librarians in the University, but also to encourage a higher level of professionalism in our important sector of this academic community.⁸⁸

¶29 Nearly seven months passed before Hart responded to the law librarians’ memorandum.⁸⁹ First, Hart proposed giving them the professional title of “Associate in Law,” a title given at the time to nonteaching faculty at UNMSOL, specifically to attorneys working in the clinic.⁹⁰ Second, Hart offered to extend sick and annual leave benefits to the new “Associates in Law,” but noted that they would not be eligible for tenure rights or sabbatical leave.⁹¹ Third, Hart ignored their suggestion that a law library faculty be formed. Instead, he pledged, as had Dean Christopher, to leave open the possibility for future law librarians to earn appointments to UNMSOL law faculty. Hart explained,

86. *Id.* This memo to Fink included a cover letter and an additional copy to be forwarded to Hart “with or without recommendations as you see fit. As you are a professional librarian we hope that you will concur in our point of view.”

87. *Id.*

88. *Id.*

89. Letter from Frederick M. Hart, Dean, UNM Law, to Law Library Professional Staff (May 17, 1972) (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

90. *Id.*

91. *Id.*

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

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

¶30 Dissatisfied with Hart’s response, UNMSOL librarians sent a letter to UNM vice president for academic affairs, Chester C. Travelstead, requesting a ruling on “whether the action of the General Faculty in giving faculty status and rank to librarians of the General Library specifically excluded those librarians employed by UNMSOL Law Library.”⁹⁴ According to UNMSOL librarian Sandra Coleman, Travelstead affirmed the law librarians’ position concerning the scope of the general faculty’s resolution and asked Hart “to resolve the issue of two different types of status for professional librarians on campus.”⁹⁵ By December 1972, Hart and Fink had adopted the rank and file law librarians’ recommendation to appoint UNMSOL law librarians to a separate law library faculty while they continued to hold out the possibility of appointing assistant and associate law librarians with J.D.s to the law faculty.⁹⁶ Throughout 1973–1974, the law librarians actively participated in the process of drafting, debating, and revising guidelines that were, at that point, primarily concerned with which librarians would have faculty status, what titles and ranks they would be given, which faculty they would be appointed to, and whether the law library should be designated as a separate school or department within UNMSOL.⁹⁷

¶31 By February 1975, the proposed guidelines included criteria for evaluating law librarians for appointment, promotion, and tenure to the law library faculty.⁹⁸ For example, under these proposed guidelines, the minimum degree requirements

92. *Id.*

93. *Id.*

94. Letter from Helen S. Carter, Research Librarian; Sandra S. Coleman, Technical Services Librarian; Karen L. Morgan, Cataloger; Joseph Sabatini, Assistant Librarian, to Chester C. Travelstead, Vice President for Acad. Affairs, UNM (June 12, 1972) (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

95. Letter from Sandra S. Coleman, UNM Law Librarian, to Ellen M. Gibson, Reference Librarian, State Univ. of N.Y. (Apr. 15, 1976) (on file with UNMSOL Library Archives, Law School Records, Law Library Files). Two different statuses existed because by the fall of 1970, UNM’s general libraries had formed a library faculty and assigned academic ranks to its qualified librarians. See Memorandum on the Status of Qualified Professional Librarians in the U.N.M. Sch. of Law Library, *supra* note 84.

96. Letter from Myron Fink, Law Librarian & Professor of Law, to Sandra Coleman, Public Services Librarian & Assoc. in Law (Sept. 14, 1973) (including Coleman’s response and the December 1972 draft policy as an attachment) (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

97. Letter from Sandra S. Coleman, *supra* note 95; Draft Policy Regarding Faculty Status of Law Librarians (Sept. 20, 1974) (on file with UNMSOL Library Archives, Law School Records, Law Library Files); Letter from Frederick M. Hart, Dean & Professor of Law, to Chester C. Travelstead, Vice President for Acad. Affairs (Apr. 29, 1975) (on file with UNMSOL Library Archives, Law School Records, Dean’s Correspondence).

98. UNM Law Library Faculty, Proposed Guidelines (Feb. 1, 1975) (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

to gain appointment to the law library faculty were either an M.L.S. or a J.D., while appointment to the rank of associate professor required an M.L.S. and either an additional subject master's degree (such as a degree in economics, political science, history, or sociology) or a J.D.⁹⁹ Also, appointment at the higher ranks required considerable professional experience; for example, to hold the title of Professor of Law Librarianship, a librarian would need to have had ten years of professional law library experience after acquiring his or her second degree.¹⁰⁰

¶32 The criteria considered for promotion was professional competence as measured by the chief librarian, peers, and library staff; service to professional associations; creative scholarship; and personal characteristics.¹⁰¹ The criteria considered for tenure were job performance, professional growth, service, and personal characteristics.¹⁰² Professional growth could be shown by contributions to the profession, academic work in law-related areas of study, commitment to the development of UNMSOL, and evidence of creative scholarship contributing to law librarianship.¹⁰³ In addition, the February 1975 version of the proposed guidelines abandoned the section detailing which professional librarians might be eligible for appointment to UNMSOL law faculty.¹⁰⁴

¶33 Finally, all references to a law library department that first appeared in the September 20, 1974, draft guidelines had been deleted.¹⁰⁵ Instead, the new draft guidelines proposed establishing a law library division.¹⁰⁶ UNMSOL contemporaneous records are silent as to why UNMSOL elected to move from qualifying the law library as a department to a division.¹⁰⁷ Both were academic units that required the general faculty's approval to establish.¹⁰⁸ As will be seen later, however, the likely reason for the change had to do with the UNMSOL administration's desire to ensure that the law librarians would have no voting rights within UNMSOL outside the law library. As a departmental faculty within UNMSOL, the law librarians would be eligible to vote at school-wide faculty meetings, whereas a division's faculty would not because, at the time, divisions were considered academic units separate from any school or college.¹⁰⁹

¶34 On April 7, 1975, *Law Library Faculty Guidelines* were submitted to the law faculty for approval.¹¹⁰ UNMSOL law faculty approved the *Guidelines*, but also voted unanimously in favor of the following motion:

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*; Draft Policy Regarding Faculty Status of Law Librarians, *supra* note 97.

106. UNM Law Library Faculty, *supra* note 98.

107. See Letter from Frederick M. Hart, Dean & Professor of Law, to Chester C. Travelstead, Vice President for Acad. Affairs (Apr. 29, 1975) (on file with UNMSOL Library Archives, Law School Records, Dean's Correspondence).

108. UNM FACULTY CONSTIT. art. I, §2(2) (as amended 1970) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 3).

109. Letter from James Thorson, Chairman, Faculty Pol'y Comm., to Academic Deans, Dirs. of Divs., ROTC Commanding Officers, Mr. Travelstead, Mr. Durrie (Oct. 27, 1975) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 7).

110. UNM Law Faculty Meeting Minutes (Apr. 7, 1975) (on file with UNMSOL Library Archives, Law School Records).

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

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

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

The Guidelines would establish a "Law Library Division." This would not be a department nor would it be a separate school. Both of those possibilities were considered and discussed but each seemed to present problems and have undesirable connotations. Under the circumstances, it would appear that a division is a far better solution. . . . All employees of the law school library would be members of the law library division. Full-time professionals would have teaching faculty status and be governed by the Faculty Handbook policies that relate to teaching faculty. These individuals would be members of the law library division and not of the law faculty unless the law faculty specifically offered them faculty status in the law school¹¹³

On May 22, 1975, Travelstead responded that "[u]pon first examination of this proposal, I'm inclined to think it makes good sense. I suggest, however, that we ask one or two key faculty groups . . . and a few other persons to look at it before we take action through the General Faculty."¹¹⁴

¶37 However, on July 25, 1975, Travelstead returned a copy of the *Law Library Faculty Guidelines* with the term "division" struck through everywhere it appeared and a margin note that simply read "no 'division' per Travelstead."¹¹⁵ Afterward, UNMSOL made no further effort to have the law library formally designated a division, either through the vice president's office or the general faculty, arguably because their principal reason for doing so, to formalize who were and were not

111. *Id.* Disappointingly, Myron Fink, the head law librarian, was among the law faculty members who questioned "the organizational wisdom of giving professorial rank to librarians."

112. Letter from Ferrel Heady, President, UNM, to Frederick M. Hart, Dean & Professor of Law (May 6, 1975) (on file with UNMSOL Library Archives, Law School Records, Dean's Correspondence).

113. Letter from Frederick M. Hart, Dean & Professor of Law, to Chester C. Travelstead, Vice President for Acad. Affairs (Apr. 29, 1975) (including a handwritten response from Travelstead to Hart dated May 22, 1975) (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

114. *Id.*

115. *UNM Law Library Faculty Guidelines* (accepted as amended Apr. 7, 1975) (including Travelstead's edits) (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

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

Voting Rights of the “Anomalous” Law Library Faculty

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

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

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

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

¶40 On November 12, 1975, the FPC met with the directors of all UNM libraries as well as the vice president for academic affairs to discuss voting rights of the law and health sciences librarians and concluded:

After reviewing the background and past faculty action, it was apparent that the original [March 11, 1969,] action authorized faculty rank for all librarians. Law and Health Sciences librarians may, when ready, assume faculty rank; however, they do not become members of the Law School or Medical School faculties. In order to assure that voting rights in the General Faculty are not denied because they do not have voting rights in their schools, the criteria developed by the FPC will be amended as follows: “. . . must have departmental or division or library voting rights and school or college voting rights in their own units.”¹¹⁹

116. FPC Summarized Minutes (Oct. 8, 1975) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 7).

117. Letter from James Thorson, Chairman, FPC, to Acad. Deans, Dirs. of Divs., ROTC Commanding Officers, Mr. Travelstead, Mr. Durrie (Oct. 27, 1975) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 7).

118. Letter from Frederick M. Hart, Dean, UNM Law, to James L. Thorson, Chairman, FPC (Oct. 31, 1975) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 7).

119. FPC Summarized Minutes (Nov. 12, 1975) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 7).

¶41 On February 10, 1976, the FPC presented the following statement of principle to UNM general faculty for approval, “Members of the [University’s] Voting Faculty must have voting rights in their College, School, degree-granting Division, or Library, though such membership alone does not qualify a person for membership in the Voting Faculty.”¹²⁰ After considerable discussion, the FPC’s proposal was tabled and never taken up again. Nonetheless, the FPC’s conclusion that members of the law library faculty held no voting rights within UNMSOL turned out to be a completely satisfactory outcome for all parties within UNMSOL.

¶42 In fact, the law librarians who had fought for faculty status had never wanted to be a part of UNMSOL law faculty. In 1976, Sandra Coleman, the lead agitator for academic rank and autonomy, explained to a librarian at SUNY at Buffalo that they had sought to create “a separate law library faculty; being members of the law faculty was never an issue. We also never wanted to be members of the general library faculty; our autonomy is very important to us.”¹²¹

¶43 Decades later, however, the question of UNMSOL law librarians’ voting rights reemerged, and the answer previously provided by the FPC no longer seemed satisfactory to all the parties, particularly UNMSOL law librarians. So it was asked again: Did the 1975 *Guidelines*, approved by UNMSOL law faculty and amended by UNM vice president for academic affairs, somehow create a new faculty group unattached to UNMSOL wherein the full-time professional librarians would have teaching faculty status within UNM, but not possess voting rights within UNMSOL?

¶44 For UNMSOL not to be the law library’s home base, UNM general faculty would have had to approve the designation of the law library as a new school or division (i.e., a separate, autonomous academic unit).¹²² University Libraries, for example, had established itself as a separate college, designated its head librarian as dean of that college, approved its own guidelines, and submitted its hiring, promotion, and tenure recommendations directly to the vice president for academic affairs. To compare, the law library’s head librarian continued to hold appointment on the law faculty, the *Law Library Faculty Guidelines* were approved by the law faculty, and the law library’s primary function was “to serve the study, reference and research needs of the law school faculty and student body.”¹²³ In addition, when the law library’s tenure-stream librarians went up for promotions or tenure, they were reviewed by UNMSOL review committee, chaired by a member of the law faculty, and the committee’s recommendation was made to the head law librarian, then to the UNMSOL dean. UNMSOL clearly did not treat the law library as an unattached academic unit, nor was it viewed as unattached by UNM administration who notified the UNMSOL dean when promotion and tenure decisions for law librarians

120. UNM, Faculty Meeting, Summarized Minutes (Feb. 10, 1976) (including Presentation from FPC to University Faculty Relative to Voting Status) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 3).

121. Letter from Sandra S. Coleman, Assistant Librarian for Public Services & Assistant Professor of Law Librarianship, to Ellen M. Gibson, Reference Librarian, State Univ. of N.Y. (Apr. 15, 1976) (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

122. UNM FACULTY CONSTIT. art. I, § 2(a)(2) (1975, as amended through 2015), <http://handbook.unm.edu/policies/section-a/faculty/a51.html> [<https://perma.cc/FG2R-PS8W>].

123. *UNM Law Library Faculty Guidelines* (accepted as amended Apr. 7, 1975—law faculty; July 25,—Acad. Vice President) (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

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

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

University of New Mexico School of Law Librarians Win Equal Voting Rights

¶46 Despite UNMSOL's practice of denying voting rights to key faculty groups over the years, namely its librarians and legal writing instructors, relatively speaking governance at UNMSOL had always been fairly inclusive, even, some would argue, radically democratic. For example, since the adoption of a formal voting rights policy in 1972, UNMSOL voting faculty had always included classes of faculty who were not members of the university's voting faculty. In addition, UNMSOL historically sought to govern informally by consensus rather than the ballot box. Sharing this history with UNMSOL's administration and law faculty proved instrumental in persuading them to enact a new voting rights policy that formally extended equal voting rights to its rank and file law librarians.

¶47 UNMSOL first adopted a voting rights policy on September 25, 1972.¹²⁷ Under the policy, the voting faculty included full-time faculty members (permanent and visiting) who held the rank of instructor, assistant professor, associate professor, or professor of law.¹²⁸ Full-time permanent faculty were given voting rights "upon all matters brought before the faculty," regardless of whether they had tenure, while visiting faculty were permitted to "vote on all matters except promotion, tenure, hiring, and other personnel matters."¹²⁹ Significantly, voting rights were not provided to lecturers in law, which was unconstitutional given that UNM's 1971 *Faculty Constitution* expressly identified lecturers as being members

124. Letter from Anne J. Brown, Sec'y of the Univ., to Robert J. Desiderio, Dean, UNMSOL (Mar. 15, 1984) (on file with UNMSOL Library Archives, Law School Records, Law Library Files); 2014 List of UNMSOL's Faculty from UNM's Office of Faculty Affairs & Services (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

125. UNMSOL also approved amendments to the *Law Library Faculty Guidelines* in 1981 (an action that would only be expected from a particular faculty's home base).

126. UNM FACULTY CONSTIT. art. II, § 2, *supra* note 122.

127. UNM Law Faculty Meeting Minutes (Sept. 25, 1972) (including the approved Attendance and Voting Rights at Law School Faculty Meetings Policy) (on file with UNMSOL Library Archives, Law School Records).

128. *Id.*

129. *Id.*

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

¶48 During the fall of 2003, UNMSOL Dean Suellyn Scarnecchia attempted to reverse course on UNMSOL’s long-standing practice of inclusiveness in shared governance. Under Scarnecchia’s proposed voting rights policy, only the tenured and tenure-stream law faculty would be eligible to vote at UNMSOL’s faculty meetings, while only the tenured law faculty would be eligible to vote on appointment, promotion, and tenure decisions.¹³⁵ Fortunately, for all the groups facing a renewed denial of voting rights (e.g., librarians and writing instructors), reduced voting rights (e.g., nontenured law faculty), or outright disenfranchisement (e.g., student representatives and emeritus faculty), Scarnecchia’s voting rights proposal was never approved.

¶49 A decade later, a reverse trend occurred in which UNMSOL Dean David Herring extended voting privileges to groups traditionally excluded from voting at UNMSOL faculty meetings, namely librarians and legal writing instructors. Herring’s informal extension of voting privileges upset members of the law faculty who began to complain about the danger of vote dilution and to advocate for a voting rights policy that would formally limit or exclude certain faculty members from voting on key governance issues brought before UNMSOL faculty.

¶50 Consequently, in the fall of 2015, UNMSOL Deans Sergio Pareja and Alfred Mathewson formed an Ad Hoc Voting Rights Committee to examine the history of voting rights at UNMSOL,¹³⁶ UNM’s Faculty Constitution, American Bar Association and Association of American Law Schools’ accreditation standards, and the voting rights policies of other UNM colleges and schools. In addition, the committee consulted with the UNM Provost Office, UNM Committee on Governance, and UNMSOL Library Committee. At the center of the ad hoc committee’s deliberations was the issue of voting rights for rank and file law librarians.

130. UNM FACULTY CONSTIT. art. II, § 2 (as amended 1971) (on file with UNM, General Library, Ctr. for Southwest Research, Univ. of N.M.: Faculty Senate Records, Box 3).

131. UNM Law Faculty Meeting Minutes, *supra* note 127.

132. UNM Law Faculty Meeting Minutes (Nov. 20, 1972) (on file with UNMSOL Library Archives, Law School Records).

133. Attendance and Voting Rights Policy at Faculty Meetings (amended October 4, 1976) (on file with UNMSOL Library Archives, Law School Records).

134. UNM Law Faculty Meeting Minutes (May 5, 1986) (on file with UNMSOL Library Archives, Law School Records).

135. UNM Law Faculty Meeting Minutes (Sept. 16, 2003) (including a proposed voting rights policy dated Aug. 22, 2003) (on file with UNMSOL Library Archives, Law School Records).

136. Many faculty members presumably were not even aware that UNMSOL had a written voting rights policy until the ad hoc committee began its work.

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

¶52 If the law library had become a de facto department of UNMSOL, should the law librarians' voting rights continue to be limited solely to governance issues within the law library? The law librarians argued that whether or not the law library was a de facto department of UNMSOL should not preclude the librarians from voting on issues of school-wide significance (e.g., curriculum, assessment and teaching, building and safety, and student awards) given the extent to which the responsibilities of law librarians had changed since the formation of the law library faculty in 1975. For example, most UNMSOL librarians now taught required courses and provided bibliographic instruction across the curriculum, produced scholarly works for professional conferences and publication, and regularly served on law school committees. On the other hand, under a departmentalized school model, appointment, promotion, and tenure matters would primarily be handled at the departmental level rather than at the school level.

¶53 Ultimately, though, UNMSOL administration opted to proceed as an undepartmentalized, "unified faculty," and on January 17, 2017, the law faculty voted overwhelmingly in favor of adopting a new voting rights policy that provided equal voting rights to its law librarians.¹³⁸ Under the new voting rights policy, tenured and tenure-stream law librarians now have voting rights on all matters brought before the faculty including appointment, tenure, and promotion decisions.¹³⁹ In addition, lecturers in law librarianship gained voting rights on all matters brought before the faculty with the exception of appointment, tenure, and promotion decisions.¹⁴⁰

Conclusion

¶54 This case study of UNMSOL librarians illustrates a number of challenges law librarians have confronted as they have sought to obtain rights and privileges within their institutions that their academic credentials and professional responsibilities warrant. Poldervaart's experience reveals that even nationally prominent, dual-degreed librarians who teach legal research and substantive law courses, have respectable publication records, serve on law school committees, and hold appoint-

137. UNM Budget Requests (1975–1994) (on file with UNMSOL Library Archives, Law School Records, Law Library Files).

138. UNMSOL Voting Rights Policy (adopted Jan. 17, 2017) (on file with UNMSOL Library Archives, Law School Records).

139. *Id.*

140. *Id.*

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

¶55 This case study also reveals two significant professional gains accomplished by UNMSOL law librarians. First, UNMSOL law librarians may have been the first academic law librarians to advocate and accomplish the formation of a separate law library faculty as a means for professional law librarians to acquire academic rank and preserve their professional autonomy. UNMSOL law librarians began advocating for the formation of a separate law library faculty as early as the fall of 1971.¹⁴¹ A 1973 survey of law library autonomy and law librarian faculty status made no mention of professional librarians achieving faculty status through their law libraries.¹⁴² Then, in 1975, UNMSOL law librarians succeeded in forming a separate law library faculty.¹⁴³ Three years later, law librarians at thirteen schools held faculty appointments on separate law library faculty.¹⁴⁴ By 2009, the majority of law librarians with faculty status held appointments to separate law library faculty rather than general library faculty.¹⁴⁵

¶56 In addition, UNMSOL law librarians became one of only a handful of other academic law librarian groups in the country to acquire equal voting rights at their law school.¹⁴⁶ They did so through a combination of merit-, moral-, and rule-based arguments. Charlotte Schneider has summarized the merit- and moral-based arguments.¹⁴⁷ She argues that it is only fair that librarians who teach, produce scholarship, serve on law school committees, and support the teaching mission and research interests of their law school community through research support, reference services, and collection development “deserve an equal voice with respect to law school governance.”¹⁴⁸ UNMSOL librarians have contributed to this “movement of greater librarian inclusion and participation” in the shared governance of law schools by encouraging law librarians fighting for voting rights to consult university policies that have the potential to inform or even decide the question concerning whether law librarians should have equal voting rights at their law school.¹⁴⁹ The UNM Faculty Constitution bestows full-time law librarians holding professorial rank inalienable voting rights within UNMSOL.¹⁵⁰ UNMSOL librarians won equal voting rights at their school through persuasion rather than coercion, but it was reassuring to know that university policy could be relied on if UNMSOL administration or law faculty failed to do the right thing.

141. Memorandum on the Status of Qualified Professional Librarians in the U.N.M. Sch. of Law Library, *supra* note 84.

142. See Bailey & Dee, *supra* note 9, at 21 (noting that nondirector librarians who had achieved faculty status did so primarily through their general libraries).

143. *UNM Law Library Faculty Guidelines*, *supra* note 115.

144. James F. Bailey III & Oscar M. Trelles II, *Autonomy, Librarian Status, and Librarian Tenure in Law School Libraries: The State of the Art, 1978*, 71 *LAW LIBR. J.* 425, 455–56 (1978).

145. Carol A. Parker, *The Need for Faculty Status and Uniform Tenure Requirements for Law Librarians*, 103 *LAW LIBR. J.* 7, 18, 2011 *LAW LIBR. J.* 1, ¶ 29.

146. SUSAN P. LIEMER, WHO VOTES AT LAW SCHOOL FACULTY MEETINGS IN THE UNITED STATES?, at 14 (2006), www.equaljusticeworks.org/sites/default/files/FacultyMeetingVotes.pdf [<https://perma.cc/B86A-YW8T>].

147. Charlotte D. Schneider, *Inclusion and Participation: Law Librarians at Law Faculty Meetings*, 107 *LAW LIBR. J.* 113, 2015 *LAW LIBR. J.* 4.

148. *Id.* at 114, ¶ 2.

149. *Id.* at 115, ¶ 4.

150. UNM FACULTY CONSTIT., *supra* note 122, art. II, § 2.

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

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

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

Introduction	116
Data Collection Techniques	116
Background and Historical Context	117
MLL Patrons.	117
MLL Budget and Staffing.	118
Law Library Governance Models.	119
Public Law Libraries	120
Private (Nonprofit, Nonfirm) County Law Libraries.	122
Where Does the MLL Fit?	123
Access to Justice: An Increased Need	124
Best Practices: Law Libraries and Access to Justice	125
Best Practices for Law Libraries and Self-Help Centers.	128
Models of Self-Help Centers.	131
Law Library–Based and –Operated Self-Help Centers	131
Court-Based Self-Help Centers.	134
Conclusions About Self-Help Center Models.	136
Increasing Access to Justice Through Digital and Online Materials	137
Legal Needs Assessment of Multnomah County Residents.	141
Existing Necessary Services.	142
Conclusions.	144
Suggested Services to be Included in the New MLL’s Self-Help Center.	146

* © Mark G. Harmon, Shannon Grzybowski, Bryan Thompson and Stephanie Cross, 2018.

** Assistant Professor and Graduate Coordinator, Department of Criminology and Criminal Justice, Portland State University, Portland, Oregon.

*** Management Consultant, Public Knowledge LLC, Portland, Oregon.

**** Associate Attorney, Lewis Brisbois Bisgaard & Smith LLP, Portland, Oregon.

† Forecast and Research Analyst, Washington State Statistical Analysis Center, Office of Financial Management, Forecasting and Research Division, Olympia, Washington.

Introduction

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

¶2 According to county officials, the library's extensive and ever-growing physical collection of books, law journals, and other publications is now rarely accessed or used, as legal resources are increasingly available through other means (e.g., the Internet and other digital resources). Meanwhile, Multnomah County's presiding judge noted that an increasing number of litigants—especially those for whom English is not their native language—express a need for basic assistance and accessible resources to help them in navigating the court system.²

¶3 In addition, Multnomah County is in the process of planning for a new courthouse to be complete by 2020. Part of the planning includes analyzing what functions are essential in a new courthouse to meet the needs of the community over the next fifty years and beyond. As Multnomah County develops its plans for a new county courthouse and assesses the types of support services to include in the new facility, questions about the current and future usage and services of the MLL need to be answered. For example, what different configurations and resource allocations might better serve Multnomah County residents? Are there different governance structures that might provide better service and accountability to taxpayers? To assist with this, Multnomah County engaged the help of Portland State University (PSU) in April 2014 to identify options and recommendations for transforming the MLL into a twenty-first century "Legal Resources Center" that provides necessary, appropriate, and cost-effective legal services to Multnomah County's increasingly diverse population.

Data Collection Techniques

¶4 The information collected, findings presented, and recommendations of this assessment are based on more than three dozen in-depth interviews and information sessions with service providers, state officials, judges, attorneys, law librarians, MLL Board members, other stakeholders with an interest and awareness of legal

1. RICHARD ZORZA, *THE SUSTAINABLE 21ST CENTURY LAW LIBRARY: VISION, DEPLOYMENT AND ASSESSMENT FOR ACCESS TO JUSTICE* (2012), https://www.srln.org/system/files/attachments/Zorza%2021st%20Century%20Library_0.pdf [<https://perma.cc/TZX6-H6K8>].

2. See Interview with Nan Waller, Presiding Judge, Multnomah County Court (May 28, 2014) (notes on file with authors).

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

Background and Historical Context

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

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

¶7 The MLL has amassed a significant collection of resources over the years. In addition to the space it occupies in the Multnomah County Courthouse, the MLL rents a storage space to store books that the library cannot contain within its operating space. Table 1 outlines the extent of the library’s collection.⁶

MLL Patrons

¶8 MLL staff estimate that between forty and sixty people access the law library each day, composed primarily of attorneys and members of the public, with minimal use by judges. In addition, the MLL provides assistance to other law libraries around the state, as it is considered to have one of the most extensive collections for a public access law library. Further, the majority of complex business litigation that

3. Laura Orr, *Multnomah Law Library in Portland, Oregon*, OREGON LEGAL RESEARCH BLOG (June 2, 2010), <http://blog.oregonlegalresearch.com/2010/06/multnomah-law-library-in-portland-oregon.html>.

4. OR. REV. STAT. § 9.815 (2017).

5. *Id.* § 9.820.

6. RUTH METZ ASSOCS., OREGON’S COUNTY LAW LIBRARIES: FINAL REPORT TO THE LSTA PROJECT PLANNING COMMITTEE OREGON COUNCIL OF COUNTY LAW LIBRARIES (2010), <http://www.oregon.gov/OSL/LD/LSTA/2010/10-06-1oconsultrpt.pdf> [<https://perma.cc/TA7Z-CVL7>].

Table 1**Multnomah Law Library Collection**

Print Collection	Additional Materials, Access, and Services
Complete Oregon reported decisions, laws and regulations from territory to date, appellate briefs and treatises	Online access to LexisNexis, Westlaw, and other leading online legal research services
Reported decisions of all U.S. state and federal courts and agencies; Canadian federal and selected provincial courts; British high courts	Public computer terminals with Internet access
All U.S. state laws and codes; all U.S. federal laws, codes, and regulations	Telephone, e-mail, and in-person customer service
Canadian and British laws and codes	Research assistance
Federal, Pacific, General, and selected state digests	Referrals to external resources, when necessary
<i>American Law Reports</i> series	Working space for attorneys
More than 500 periodicals	
Treatises	

happens in the state happens in Multnomah County, making it the de facto court for business law. Because of these factors, the MLL must meet a demand that no other court in Oregon faces.⁷ It also serves as repository for a variety of rare legal materials that are accessed by the state and other counties.

¶9 There is some disagreement as to the role the MLL is playing as a public law library. Some see the MLL as a valuable resource for attorney and general public research. Others believe that attorneys conduct the majority of their legal research online and use the MLL materials only when they need to see a specific original document. Further, they believe that the State Law Library should serve as a repository for such resources and think the MLL has become more like a “book museum” with a significant collection of rarely used materials. Finally, some believe that the public money spent on additional print materials is not “serving its highest purpose” when the community has significant unmet legal needs.

MLL Budget and Staffing

¶10 The MLL currently has two full-time, two nearly full-time, and three part-time staff. The director (full time) is responsible for daily operations, legal research and reference services, library programs and planning, finance and budgets, staff management, print and digital collection management, and policies and procedures. The library technician (full time) is responsible for the off-site storage facility, equipment and general maintenance, computer workstation assistance, and other patron services. The library technician (near full time) is responsible for acquisitions, communicating with vendors, checking in materials, filing loose-leaves and updates, and providing patron services including reference (both print and online). The library assistant (near full time) is responsible for phone queries, assis-

7. *Id.*

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

¶11 Historically, all county law libraries received funding based on court case filing and other fees. In 2011, the Oregon Legislature passed HB 2710,⁸ which changed the way counties received funding for the purposes of mediation/conciliation services and operating law libraries. As a result, on July 1, 2011, these programs, which included the MLL, began receiving General Fund appropriations (though the allocations are still based on 2009–2011 court revenues).

¶12 In the 2011–2013 biennium, the Oregon Judicial Department (OJD) allocated \$1,917,650 for Multnomah County law library services.⁹ In the 2013–2015 biennium, the allocation decreased slightly to \$1,893,597,¹⁰ which the county passes through to the MLL at about \$79,000 per month. In fiscal year 2013, Multnomah County received one-time legislative approval to spend \$545,000 of that allocation on furnishings for the new East County Courthouse, which resulted in a twenty-eight percent budget reduction for the MLL that biennium. In the 2017–2019 biennium, MLL was allocated \$1,821,511, a slight reduction from the previous biennium.¹¹

Law Library Governance Models

¶13 Law libraries have traditionally been repositories of legal materials and resources as well as great bodies of institutional knowledge, personified by the librarians, staff, and volunteers who devote their time to maintaining their library's respective collections. Yet as more individuals have begun representing themselves in court, law libraries have become the catchall resource for people who cannot afford to hire an attorney on the one hand, and who do not qualify for legal aid assistance on the other. It is a role that some law libraries have been forced into with the explosion in the number of self-represented litigants seeking judicial assistance. Whether a law library has embraced this new charge of its own volition or merely in response to the times, the fact is clear that law libraries across Oregon and many areas of the country are now assisting self-represented litigants as much as they assist local attorneys, judges, and chambers and court staff (if not more so).

¶14 Yet the ability of a law library to serve its patrons, support the judicial process, and provide access to justice to all who come through its doors depends on many factors, including local politics, community and library needs, and funding. Important too is a law library's governance and organizational structure, as a law library's configuration will often influence, if not dictate, how it can meet its goals

8. HB 2710, Reg. Sess., 2011 Or. Laws ch. 595.

9. OR. JUD. DEP'T, CHIEF JUSTICE RECOMMENDED BUDGET, 2013–15, at 396 (2013), <http://library.state.or.us/repository/2013/201301141541401/index.pdf>.

10. OR. JUD. DEP'T, CHIEF JUSTICE RECOMMENDED BUDGET, 2015–17, at 358 (2015).

11. Sue Ludington, *Oregon's County Law Libraries: Providing Legal Information and Reference Assistance Across the Miles*, OR. LIB. ASS'N Q., Fall 2017, at 17, 19.

and serve its constituents.¹² Consequently, before discussing self-help center models or possible best practices, it is important to look to existing law library governance models. Toward that end, the county public law library and the private (nonprofit, nonfirm) county law library models will each be briefly analyzed. While other law library models do exist—such as the academic law library, private firm law library, or prison law library model—and while public law libraries can be operated under several different governing bodies—such as via a municipality, judicial district, state government, or independent library district¹³—such libraries service largely different constituencies and are driven by needs different from the Multnomah Law Library’s patrons’. Further, these models have their own inherent operational and access challenges¹⁴ and are different from the basic law library structure authorized by the Oregon Revised Statutes—that is, county-based law libraries or law library services. Thus, they are not discussed in this article.

Public Law Libraries

¶15 Public law libraries are seen as essential to satisfying the public’s need for access to legal information and legal resources.¹⁵ County public law libraries are typically created or authorized by statute and are official parts or divisions of the local county government.¹⁶ The county public law library may also have a board or committee “made up of local attorneys and judges” with either advisory or governing status as determined by the county government or the library itself, unless established by state law.¹⁷ Among its suggested standards for county public law libraries, the American Association of Law Libraries (AALL) recommends that county public law libraries have written mission and goal statements that reflect their statutory mandates.¹⁸ Such law libraries should also have a role and a voice within their governing entity; toward that end, the AALL advises that the lead librarian should be a part of the library’s management team and should report to and receive direction from superiors within the governing agency. Moreover, the AALL recommends that county public law libraries “be conveniently located in or adjacent to the county court building” and be staffed by professional personnel.¹⁹ In addition, the AALL recommends that a county public law library’s budget should be recognized as an integral part of its governing entity’s overall budget process, and the entity that oversees the law library “should be prepared to defend

12. See, e.g., LAURIE SELWYN & VIRGINIA ELDRIDGE, *PUBLIC LAW LIBRARIANSHIP: OBJECTIVES, CHALLENGES, AND SOLUTIONS* 42 (2012) (describing how nearly all public law libraries belong to larger organizations that dictate policies, procedures, and rules that influence and control library operations; though nearly a century-old example, the authors highlight one instance where, due to the organizational structure of one law library, the librarian in charge “reported having to receive approval from at least two of three directors before he could submit the bill to the treasurer for payment”).

13. *Id.* at 43.

14. *Id.*

15. Laureen Adams & Regina L. Smith, *The Evolution of Public Law Libraries*, AALL SPECTRUM, Mar. 2006, at 16.

16. SELWYN & ELDRIDGE, *supra* note 12, at 44.

17. *Id.*

18. *County Public Law Library Standards*, AALL (2009), <https://www.aallnet.org/mm/Leadership-Governance/policies/PublicPolicies/policy-county-standards.html> [<https://perma.cc/8F23-VKUX>].

19. *Id.*

the law library budget as a vital part of its mission” and provide support to the library’s budget administration.²⁰

¶16 In Oregon, Oregon Revised Statutes section 9.815 mandates that each county shall either operate or provide free library services within their respective jurisdictions.²¹ Historically, county public law library funding was tied to court filing fees collected within each library’s jurisdiction;²² however, the 2011 adoption by the Oregon Legislature of Oregon Revised Statutes section 21.005 changed that funding mechanism, mandating all court fees collected “be transferred to the State Court Administrator for deposit in the General Fund.”²³ To provide funding to county law libraries and other services that were funded through court fees, the legislature now is charged with passing appropriations for these programs each biennium.²⁴

¶17 Outside of Oregon, Minnesota’s county public law library regime is a good example of the AALL’s recommendations put into law. For instance, chapter 134A of the Minnesota Statutes grants counties the authority to establish a county law library that is free for all judges, state officials, city and county officials, members of the bar, and county inhabitants to use.²⁵ Law library governance is also established by statute, which mandates that all libraries operate under a board of trustees model, with three, five, or seven members, the composition of which must include a person appointed by the district’s chief judge, a member of the county board, and one county attorney.²⁶ The Minnesota Statutes also require that counties provide suitable space within the courthouse for an established library to use.²⁷

¶18 Similarly, county public law libraries in Washington State are statutorily mandated for all counties with more than 8000 inhabitants,²⁸ with most libraries required to be governed by a board of trustees.²⁹ The Washington State statutes mandate free library access for judges, state and county officials, and members of the state bar, but only counties with populations of 300,000 or more persons are statutorily required to provide free public access.³⁰ Additionally, the Public Law Library of King County (KCLL) in Seattle has made serving the public not just a

20. *Id.*

21. OR. REV. STAT. § 9.815 (2017). Multnomah County, however, is exempted from this requirement under § 9.820 and instead may contract “with any law library association or corporation owning and maintaining a law library in the county at or convenient to the courthouse for the use of the library by the judges of the circuit and county courts, county commissioners, district attorney and all members of the bar.” *Id.* § 9.820 (emphasis added).

22. LAURA J. ORR ET AL., STATE AND COUNTY LAW LIBRARIES, FUNDING AND GOVERNANCE GRID (2011).

23. OR. REV. STAT. § 21.005.

24. *Id.* § 21.007.

25. MINN. STAT. §§ 134A.01–134A.02 (2017); see also REPORT OF THE [MINNESOTA] STATEWIDE LAW LIBRARY/SELF-HELP CENTER PROJECT ADVISORY WORKGROUP 8 (Jan. 17, 2007), <https://mn.gov/law-library-stat/StatewideLLReport.pdf> [<https://perma.cc/Z4TA-YAVQ>] [hereinafter MINNESOTA SELF-HELP CENTER PROJECT REPORT].

26. MINN. STAT. §§ 134A.03–134A.05.

27. *Id.* § 134A.09.

28. WASH. REV. CODE § 27.24.010 (2017).

29. *Id.* § 27.24.020.

30. *Id.* § 27.24.067. However, counties with a population of fewer than 8000 persons may choose to allow others free access to the county law library if so provided by rule. *Id.* § 27.24.068.

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

Private (Nonprofit, Nonfirm) County Law Libraries

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

¶20 The Jenkins Law Library³³ was founded in 1802 and touts itself as the nation's oldest law library.³⁴ Similar to the MLL, the Jenkins Law Library is a 501(c)(3) entity, is governed by a board of trustees, and provides access to the public.³⁵ Yet unlike the MLL, the Jenkins Law Library operates on a membership system, with members charged a daily or yearly fee to access the library's materials and services.³⁶ Membership dues are conditioned on several factors, including whether one is a local, regional, or remote attorney; or whether one is a retired attorney, a county law librarian, an employee of a public agency or nonprofit, or a student. Members of the public can also access the Jenkins Law Library and use its resources, but they must pay a \$5 per day access fee.³⁷ The Jenkins Law Library extends complimentary memberships to courts, governmental agencies, and legal service firms that service the public.³⁸

¶21 The Jenkins Law Library allows members of the public to use, but not to check out, volumes in its collection, and permits up to one hour of access to online databases such as Westlaw and Lexis Advance (which may be extended at the reference staff's discretion).

31. PUB. LAW LIBRARY OF KING CTY., <http://www.pllk.org/wp/> [<https://perma.cc/P3BS-G6ZX>].

32. Adams & Smith, *supra* note 15, at 16. Adams and Smith point out that the Los Angeles County Law Library (now official known as "LA Law Library") was originally a private law library that dissolved, and that its basic collection came from the Los Angeles Bar Association in 1891. *Id.* Adams and Smith tout the institution as "the largest and most esteemed county law library in the country." *Id.*; see also *About Us*, LA LAW LIBRARY, <http://www.lalawlibrary.org/index.php/about-us.html> [<https://perma.cc/BR53-2F8D>] (stating that the LA Law Library is "the second largest public law library in the United States," without identifying which other institution holds the honor of the largest public law library).

33. JENKINS, <https://www.jenkinslaw.org/> [<https://perma.cc/6P8X-3VUJ>].

34. Adams & Smith, *supra* note 15, at 16. However, the Social Law Library makes a similar claim on its website, despite the fact that the Social Law Library states that it was founded in 1803. See *About the Library*, SOCIAL LAW LIBRARY, <http://www.sociallaw.com/about> [<https://perma.cc/GL43-ZDND>]. Despite these competing claims, it is unclear which library definitively enjoys the honor of being the nation's oldest law library.

35. *About*, JENKINS, <https://www.jenkinslaw.org/about> [<https://perma.cc/7P9C-UD3N>]; see also Adams & Smith, *supra* note 15, at 16.

36. *Membership*, JENKINS, <https://www.jenkinslaw.org/membership> [<https://perma.cc/5LR9-A6M5>].

37. *Id.*

38. Adams & Smith, *supra* note 15, at 16.

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

Where Does the MLL Fit?

¶23 The MLL appears to fuse the county-run public law library model and the private nonfirm law library model. Like a public law library, it provides all persons with free access to the library and does not operate on a membership or fee-based system. Further, based on Oregon Revised Statutes sections 9.815 and 9.820, it arguably has a responsibility to serve the public (if not in the words of the statutes, then at least in their spirit), unlike the Jenkins and Social law libraries, which are private libraries.

¶24 MLL’s 501(c)(3) status is more akin to the Jenkins and Social law libraries’ governing structure, however. This nonprofit status appears to give the MLL operational autonomy from the local government it serves, yet that autonomy means that it does not enjoy many of the functional advantages inherent in being a direct part of the county government. For instance, a county public law library, integrated into the county’s government, can rely on county systems to handle the budgeting, accounting, auditing, information technology issues, and other key duties related to the library’s day-to-day operations. In a private law library, the library staff or its board must make these decisions, potentially creating more work for the library staff.

¶25 Alternatively, a private law library model, with effective board members at the helm, may be more nimble and able to respond more efficiently to new developments than can governmental departments. Further, a law library that is allowed to limit access based on membership and require members to pay dues can help relieve some of the library’s financial burdens, particularly in times of reduced budgets. Yet it is unclear whether fee-based memberships are a viable option for the MLL, given the Oregon Revised Statutes’ demand that county law libraries be operated or provided for free and remain open to the public.⁴³

39. SOCIAL LAW LIBRARY, *supra* note 34.

40. Adams & Smith, *supra* note 15, at 16.

41. *Why Is the Social Law Library Not Open to the Public Generally?*, SOCIAL LAW LIBRARY, <http://www.sociallaw.com/services/membership/why-is-the-social-law-library-not-open-to-the-public-generally> [<https://perma.cc/2ZHH-EZK3>]: “As a private institution, access to Social Law and its collection and services is restricted to its Subscriber-members and Governmental members and generally is not available to members of the public.”

42. *Courtesy Pass Policy*, SOCIAL LAW LIBRARY, <http://sociallaw.com/services/membership/policies/courtesy-pass-policy> [<https://perma.cc/69LH-5ZR8>].

43. OR. REV. STAT. §§ 9.815, 9.820 (2017). It should be noted that § 9.820, which authorizes Multnomah County to contract with “any law library . . . for the use of the library by judges . . . , county commissioners, district attorneys and all members of the bar,” lacks both the “free” and the general

Access to Justice: An Increased Need

¶26 Legal scholars and practitioners use the term “Access to Justice” to describe the efforts of the justice system to be fair and accessible to all. Access to justice issues have been a concern for a number of decades, but over the last ten to twenty years officials have become increasingly concerned at the apparent unequal access that was permeating the justice system. The issue caught the attention of the U.S. Department of Justice (USDOJ), which has called it a crisis.⁴⁴ One of the main areas of concern is with the growing number of individuals representing themselves before the court. These self-represented litigants (also known as pro se litigants) represent one of the fastest and largest growing users of county law libraries.

¶27 With the number of pro se litigants on the rise, law libraries across the country are seeing an increase in the general public’s request for legal assistance and advice from county law libraries. Many of these individuals do not know what their rights are, how to obtain legal help, or how to gain access to resources they need. Law libraries are being pressed to fill an important role in assisting individuals with navigating the legal system within a number of legal areas. One of the most notable areas is within family law, but small claims and property law, including landlord-tenant issues and small claims court, are highly represented as well.

¶28 Access to justice is an ongoing legal issue faced by numerous Americans every day. Individuals often cannot get the legal help they critically need, and those who qualify for legal assistance are frequently turned away due to the lack of resources, lack of properly trained individuals, lack of accessibility to legal aid, or statutory restrictions that hinder access. In an attempt to alleviate the issue of access to justice inequality, the USDOJ launched the Access to Justice Initiative (ATJ) in March 2010. The goal of ATJ is to aid the criminal and civil justice systems efficiently deliver fair and accessible outcomes to all individuals regardless of socioeconomic status. “ATJ staff works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers.”⁴⁵

¶29 Three principles guide the ATJ: promoting accessibility by eliminating barriers, ensuring fairness by delivering fair and just outcomes for all involved, and increasing efficiency by delivering fair and just outcomes effectively. To successfully carry out these principles, ATJ supports the development of quality indigent defense and civil legal aid delivery systems at both state and federal levels and promotes legal solutions that are less lawyer- and court-intensive. Furthermore, ATJ aims to expand the research on innovative strategies that will bridge the gap between the need for and availability of resources such as quality legal assistance.

¶30 Currently, thirty states plus the District of Columbia have an Access to Justice commission. ATJ commissions range from nine members up to forty-five members, uniting judges, court representatives, the bar, legal aid, and other key

public availability mandates of § 9.815. However, reading these statutes in tandem, it is conceivable that the MLL would not be permitted to institute a fee-based membership system so long as Multnomah County does not institute a free law library pursuant to § 9.815.

44. *Office for Access to Justice*, ACCESS TO JUSTICE INITIATIVE, <http://www.justice.gov/atj> [<https://perma.cc/LU9P-JR8G>].

45. *Id.*

stakeholders to increase access to justice for individuals from low-income and other disadvantaged communities. Within ATJ commissions there is active engagement and leadership by individuals at the highest level of the state's bar association. Their stature and commitment bring a high level of credibility and visibility to the commission and its initiatives. The primary goal of an ATJ commission is to overcome barriers to justice created by an inability to afford counsel; however, factors such as culture, language, age, and physical or mental disability are also addressed.⁴⁶

¶31 The city of Milwaukee has gone even further in promoting equal access to justice by creating a mobile legal clinic, funded by Marquette University Law School and the Milwaukee Bar Association. The goal of the Milwaukee Justice Center Mobile Legal Clinic is to bring services provided by the Milwaukee Justice Center to isolated neighborhoods where residents have difficulty accessing free legal assistance. Working with the Marquette Volunteer Legal Clinic, the Mobile Legal Clinic offers free, brief legal advice on most civil matters, including family law, landlord-tenant issues, small claims, large claims, and credit-consumer issues. The clinic does not provide ongoing representation, but it does offer information on how to retain an attorney if needed. Also, each individual can be seen only once per legal matter.⁴⁷

¶32 Austin is another city that brings greater access to justice. The Austin case is particularly relevant here because there the law library is used as the access vehicle. Through its law library, Austin's one-stop, self-help center⁴⁸ provides online information and forms as well as a consultation with a library reference attorney who can review paperwork and explain the basic steps in an uncontested family law case.⁴⁹

¶33 Oregon does not currently have an ATJ commission; however, the state does have an ATJ Coalition. Through Oregon's ATJ Coalition which is led by a board of private practice attorneys, backed by the Oregon State Bar and the Multnomah Bar Association, private practice lawyers are encouraged to provide legal services in civil matters to low-income Oregonians at low to no cost. Oregon's ATJ Coalition recognizes the importance of coordinating legal services delivery for those who often are at a disadvantage due to their socioeconomic standing. The Coalition's primary focus is to ensure equal access to legal representation and legal aid in the form of funding. Oregon has long led the way in access to justice reforms, being the second state to adopt court-filing fee funding for legal aid.⁵⁰

Best Practices: Law Libraries and Access to Justice

¶34 When considering whether a "legal resource" or "self-help" center is needed to better serve the self-represented, it is critical to understand at the outset that assisting pro se litigants with how to navigate the sometimes byzantine worlds of

46. *Resource Center for Access to Justice Initiatives*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html [<https://perma.cc/S3WV-FJD2>].

47. *Milwaukee Justice Center Mobile Legal Clinic*, MILWAUKEE JUSTICE CENTER, <http://milwaukee.gov/MJC/MJCMobileLegalClinic.htm> [<https://perma.cc/T3KM-5FN2>].

48. TRAVIS CTY. LAW LIBRARY & SELF HELP CENTER, <https://lawlibrary.traviscountytx.gov/> [<https://perma.cc/T8PL-6BDV>].

49. *Walk-In Case Review*, TRAVIS CTY. LAW LIBRARY & SELF HELP CENTER, <https://lawlibrary.traviscountytx.gov/walk-in-case-review> [<https://perma.cc/8QDV-ESDP>].

50. *Oregon Access to Justice Coalition*, THE LAWYERS CAMPAIGN FOR EQUAL JUSTICE, <http://www.cej-oregon.org/atjcoalition.shtml> [<https://perma.cc/AG3H-VYAV>].

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

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

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

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

51. JOAN M. BELLISTRI ET AL., LIBRARY SELF-HELP PROGRAMS AND SERVICES: A SURVEY OF LAW LIBRARY PROGRAMS FOR SELF-REPRESENTED LITIGANTS, INCLUDING SELF-HELP CENTERS 2 (Apr. 2014) (noting that "[o]f the 153 libraries answering the survey from 33 states and two other countries, 99% provided services to self-represented litigants." (emphasis added)); see also LAW LIBRARIANS' WORKING GROUP, SELF-REPRESENTED LITIGATION NETWORK, DIRECTORY OF LIBRARY-BASED SELF-HELP PROGRAMS (July 2009), <http://www.aallnet.org/sis/sccll/docs/toolkit/directory.pdf> [<https://perma.cc/HX7G-HHSU>].

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

53. BELLISTRI ET AL., *supra* note 51, at 1.

54. *Id.*

55. *Id.*

56. *Id.*; Zorza, *supra* note 52.

increasingly urgent.”⁵⁷ Or as another researcher phrased it, “there is an urgent and unmet need for access to legal help, which is the truism to end all truisms.”⁵⁸ Indeed, research over the past decade has found an explosion in the number of self-represented persons appearing before courts across the country; further, because pro se litigants often are unfamiliar with court procedures and have limited legal knowledge, these litigants “impose major burdens on judges, court staff, and on court processes.”⁵⁹ Ultimately, “[t]he self-represented need to know what to do to protect their rights, and how to move forward with their cases (exactly what lawyers need to know to do their jobs for their clients).”⁶⁰ As a result, it is more important to deliver those services that pro se litigants need rather than being bogged down in definitional differences. The next section will give a general framework for differentiating the services provided by traditional law libraries and legal resource/self-help centers.

¶38 The value of a law library providing self-help services to the public comes from the fact that law libraries are inherently “perceived as neutral locations,” as “[p]atrons feel less intimidated entering a law library where the library’s mission is to help people to the [furthest] extent possible.”⁶¹ In addition, the services provided by public law libraries and self-help centers are not wholly exclusive to one another; instead they are often complementary.⁶²

¶39 However, for the purposes of this article, it is helpful to use the structure that the Law Librarians’ Working Group outlined in its *2014 Executive Summary* as a general guideline of how to differentiate law libraries from legal resource or self-help centers.⁶³ According to the *2014 Executive Summary*, a law library’s reference and general services include (1) traditional and computerized legal research assistance, (2) program referrals, (3) explaining legal/judicial processes, (4) providing legal information websites and collections useful for nonlawyers, (5) offering document delivery of library resources (e.g., fax, scan, and hardcopy delivery), (6) chat reference, (7) providing access to court forms, (8) Internet and general computer access, (9) e-filing support, (10) materials available in multiple languages, and (11) assistance to prisoners.⁶⁴

¶40 Under this schema, self-help centers provide services that supplement those offered by law libraries while giving expanded access to legal resources. Such supplemental services include: (1) legal clinics on specific areas of law, (2) providing

57. SELF-REPRESENTED LITIGATION NETWORK, BEST PRACTICES IN COURT-BASED PROGRAMS FOR THE SELF-REPRESENTED (2008), <https://www.srln.org/system/files/attachments/SRLN%20Best%20Practices%20Guide%20%282008%29.pdf> [<https://perma.cc/XCZ3-V9T4>].

58. ZORZA, *supra* note 1, at 6.

59. John M. Greacen, *Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know 1* (July 20, 2002), <http://www.courts.ca.gov/partners/documents/SRLwhatweknow.pdf> [<https://perma.cc/LGD4-7AL7>].

60. ZORZA, *supra* note 1, at 6.

61. LAW LIBRARIES AND ACCESS TO JUSTICE: A REPORT OF THE AMERICAN ASSOCIATION OF LAW LIBRARIES SPECIAL COMMITTEE ON ACCESS TO JUSTICE (July 2014), <http://www.aallnet.org/mm/Publications/products/atjwhitepaper.pdf> [<https://perma.cc/NHR4-CRW2>] [hereinafter LAW LIBRARIES AND ACCESS TO JUSTICE].

62. ZORZA, *supra* note 1, at 6.

63. Law Library Self-Help Programs and Services Summary: Executive Summary (Apr. 2014), <https://drive.google.com/file/d/0B-vVAXIrw15eGJFd2RESElzYnM/view>.

64. *Id.*

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

Best Practices for Law Libraries and Self-Help Centers

¶41 Much like there is no one model of self-help centers for public law libraries or courts to rely on in serving their pro se constituencies, there does not appear to be any one set of best practices for self-help centers that are universally agreed to by members of the law library, judicial, and legal aid communities. According to Charles R. Dyer, a current law library consultant and former director of the San Diego County Public Law Library, the tools employed and assistance efforts undertaken by self-help centers and public law libraries in different jurisdictions are shaped by the unique conditions on the ground in each community: from local needs, politics, and funding, a multitude of factors will combine to shape how to best meet the needs of self-represented litigants. As a result, the best practices highlighted here should not be seen to represent the entire universe of valuable strategies and practices. Instead, these represent what has been deemed the most essential and basic best practices that should be observed.

¶42 Self-represented individuals turning to law libraries for guidance “need information about the law and how to move forward in the system to get a decision.”⁶⁶ Indeed, as the 2007 report of the Minnesota State Law Library/Self-Help Center Project Advisory Workgroup noted in its report, “of all law library users, the self-represented litigant is the least likely to know how to access legal information, whether in print or online.”⁶⁷ Whether that information comes from the public law library’s materials, the law librarians themselves, or from attorneys and services referred, pro se litigants need both access and help. Accordingly, researchers have outlined possible services that self-help-oriented law libraries/legal service centers should offer their patrons.⁶⁸ Many of these services are inherent to the basic core functions of law libraries and should be emphasized in any self-help center model deployed.

¶43 Richard Zorza points out that currently much of the triage work done in public law libraries, where staff try to guide patrons to resources that will be of use to their legal question, “is based on the instincts of the person doing the triage, and not based on any protocol or system, [and] certainly not grounded by research.”⁶⁹ However, Zorza notes that the knowledge of skilled staff is crucial to effectively triaging and diagnosing the needs of individuals seeking assistance in how to move their matter forward in the legal system.⁷⁰ While various tools such as kiosks, form banks, and self-help websites can assist pro se litigants, the human element in the form of trained and knowledgeable staff is an essential component to assisting individuals who are unfamiliar with the legal system and its resources.

65. *Id.* Despite this schema, it should be remembered that this list of services is by no means exhaustive.

66. ZORZA, *supra* note 1, at 6.

67. MINNESOTA SELF-HELP CENTER PROJECT REPORT, *supra* note 25, at 8.

68. *See, e.g., Id.*; ZORZA, *supra* note 1, at 8.

69. ZORZA, *supra* note 1, at 18–19.

70. *Id.* at 19 (“[T]riage and diagnosis services will have to be provided by *skilled* staff, based on intuition and strong knowledge of available resources, both within and outside the library . . .”).

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

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

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

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

71. *Oregon Revised Statutes (ORS) 2015 Edition*, OR. STATE LEGISLATURE, https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx (last visited Jan. 28, 2018); *2015 Oregon Revised Statutes with 2016 Amendments*, OREGONLAWS.ORG, http://www.oregonlaws.org/oregon_revised_statutes (last visited Jan. 28, 2018).

72. For example, New York Public Law is a free online resource for searching the laws of New York. NEW YORK PUBLIC LAW, <https://newyork.public.law/laws> [<https://perma.cc/7VEE-VNMD>]. Unfortunately, it is somewhat out of date; as of May 2018, it referenced only the 2016 laws.

73. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 57, at 43; *see also* MINNESOTA SELF-HELP CENTER PROJECT REPORT, *supra* note 25, at 8–9.

74. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 57, at 44.

75. ZORZA, *supra* note 1, at 20.

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

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

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

¶50 Indeed, many self-help-oriented law libraries maintain websites that provide easy access to essential court information, forms, and reference to some of the more commonly accessed websites containing information of use to pro se litigants. For instance, the Public Law Library of King County, Washington, and the San Diego Public Law Library of San Diego County, California, have their own highly organized websites containing links to forms and primers on legal topics important to the self-represented.⁸²

¶51 The Public Law Library of King County's website is perhaps one of the best examples of what a self-help-focused website can achieve. King County's website declares on its homepage that "[w]ithout access to information, there is no justice"; toward that end, the site's homepage includes information and resources important to pro se litigants. An incomplete list of such information provided includes access

76. BELLISTRI ET AL., *supra* note 51, at 2.

77. *Id.* at 3, 4, 8.

78. This last point bears elaboration. On a site visit to the Clackamas County Law Library, librarian Jennifer Daghish pointed out that the library had purchased new microfilm/microfiche readers and printers. Daghish noted that while microfilm/microfiche is dated as an obsolete technology, important records such as older versions of the Oregon Revised Statutes are presently available only on these formats. Public law libraries that continue to have microfilm/microfiche readers consequently become one of the few remaining access points for the public to use these legal resources.

79. LAW LIBRARIES AND ACCESS TO JUSTICE, *supra* note 61, at 12.

80. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 57, at 4.

81. LAW LIBRARIES AND ACCESS TO JUSTICE, *supra* note 61, at 13–14 (noting that the Maryland People's Law Library's self-help website "has become a vital resource for Maryland's self-represented litigants" and the local access to justice community).

82. PUB. LAW LIBRARY OF KING CTY., *supra* note 31; SAN DIEGO LAW LIBRARY, <https://sandiego.lawlibrary.org/> [<https://perma.cc/ZS6G-C7V6>].

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

Models of Self-Help Centers

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

Law Library–Based and –Operated Self-Help Centers

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

¶54 According to the Working Group's report, the majority of identified self-help programs were located in and run by law libraries, the key advantage of which was that the centers had access to three of the basic resources that the law libraries

83. PUB. LAW LIBRARY OF KING CTY., *supra* note 31.

84. *Legal Clinics*, PUB. LAW LIBRARY OF KING CTY., <http://www.pllk.org/wp/legal-clinics/> [<https://perma.cc/K7PM-WA5H>].

85. *Classes*, PUB. LAW LIBRARY OF KING CTY., <http://www.pllk.org/wp/classes/> [<https://perma.cc/8328-SWDT>].

86. *Services*, PUB. LAW LIBRARY OF KING CTY., <http://www.pllk.org/wp/services/> [<https://perma.cc/HDY9-H3TN>].

87. *Id.*

88. This article does not examine a third type of self-help model. That system refers to self-help centers run by bar associations, legal aid groups, and other organizations over which neither MLL nor Multnomah County have any direction or control. While these programs are beneficial for self-represented litigants, they should be in addition to, and not in lieu of, any self-help center affiliated with the MLL or Multnomah County.

89. BELLISTRI ET AL., *supra* note 51, at 3–11, 14.

90. *See, e.g., SELF-REPRESENTED LITIGATION NETWORK, supra* note 57.

offered their patrons: (1) triage and referral services, (2) access to technology, and (3) staff assistance and basic library services.⁹¹ Beyond affording access to basic law library benefits to their patrons, law library–based self-help centers most commonly provide clients the following services and resources: (1) forms and instruction packets, (2) coordination of volunteer attorney services in library space, and (3) clinics sponsored by outside organizations held in library space.⁹² Other, less commonly provided services include: (4) providing on-staff attorneys or paralegals to assist patrons, (5) contracting with state legal services staff to provide in-library assistance to patrons, (6) giving procedural assistance, and (7) assisting with filling out and reviewing the completeness of forms.⁹³

¶55 Additional benefits for law library–based self-help centers can emerge when they effectively partner with the courts in their respective jurisdictions. This is true for jurisdictions even where the “county and state law libraries are not part of the court system, [as] the services they provide to the self-represented litigant make them a great referral source for courts.”⁹⁴

¶56 In terms of implementation of effective self-help center programs, the AALL’s Special Committee on Access to Justice divides execution into basic, intermediate, and advanced levels of service. At the most basic level (ideal for a small law library or a facility just creating a law library–based self-help center), a law library with a self-help focus should employ a law librarian; embrace access to justice principles; provide a list of referral organizations to share with patrons in need of additional legal support; develop and provide access to core library collections and the Internet, in accordance with the AALL’s county public law library standards;⁹⁵ develop and maintain access to websites linking to legal resources; track what resources the law library needs and what patrons request/need assistance on; and provide basic library equipment, workspace, and reference information and forms.⁹⁶

¶57 Law libraries in the intermediate level of self-help service expand on these basic services and provide additional programs, often with the help of or in partnership with community members. A partial list of such possible expanded services could include hosting legal clinics developed and offered by outside organizations, such as legal aid or local bar associations; hosting “attorney in the library” programs in library space or out in the community, where pro se litigants can speak and ask questions to licensed attorneys; conducting seminars and continuing legal education courses for the public and attorneys; and developing guides of resources and information for some of the most frequently accessed or requested legal topics.⁹⁷

91. BELLISTRI ET AL., *supra* note 51, at 3.

92. LAW LIBRARIES AND ACCESS TO JUSTICE, *supra* note 61, at 26.

93. *Id.*

94. BELLISTRI ET AL., *supra* note 51, at 7–8.

95. A list of recommended core materials can be found in the AALL’s report on County Public Law Library Standards. *County Public Law Library Standards*, *supra* note 17.

96. LAW LIBRARIES AND ACCESS TO JUSTICE, *supra* note 61, at 29.

97. *Id.* at 29–30. New York’s Judicial District Help Centers “were established to provide self-represented [litigants] access to justice with the tools and resources to help them navigate the court system without hiring an attorney. *Legal information is given rather than legal advice.*” *Id.* at 30 (emphasis added). Unlike legal aid programs, the Judicial District Help Centers do not discriminate based on income: “There are no income restrictions for receiving assistance; anyone seeking help

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

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

¶60 Closer to Oregon and Multnomah County, the Public Law Library of King County (KCLL) employs many similar self-help services for its patrons and serves as a legal resource hub for King County by providing space for seminars, clinics, and related legal education programs. For instance, the KCLL provides space for the King County Bar Association's Young Lawyers Division and the Northwest Justice Project to host their respective weekly walk-in and debt collection defense clinics. According to the KCLL's director, there is definite value for the public to have such seminars and clinics centrally held in the law library and close to judicial depart-

receives it free of charge." *Id.* Finally, Help Centers are governed by local committees, whose members are drawn from court staff and organizations from within the jurisdiction. *Id.* at 31.

98. *Id.* at 31–32.

99. *Id.* at 32–33.

100. ZORZA, *supra* note 1, at 16 (“[T]hose law libraries which have made, or are making the change [in implementing self-help services] have found the process to be one of transition and growth, rather than disruption and conflict. One of the best examples of this impressive transition is in Austin, Texas, where the law library now provides a broad variety of services for people without lawyers, including providing ‘reference attorneys’ in the courtrooms to assist judges with moving their calendars.”).

101. LAW LIBRARIANS’ WORKING GROUP, SELF-REPRESENTED LITIGATION NETWORK, *supra* note 51, at 56; TEXASLAWHELP.ORG, <https://texaslawhelp.org/> [<https://perma.cc/VTJ4-HR5V>].

102. LAW LIBRARIANS’ WORKING GROUP, SELF-REPRESENTED LITIGATION NETWORK, *supra* note 51, at 56.

103. *Id.* at 57.

104. *Id.*

ments, as law libraries are perceived as a neutral place to go for people who often need assistance or access to helpful information immediately.

¶61 Further, the KCLL advances its mission of facilitating access to justice to self-represented litigants by supplying information about non-law-library-based self-help programs and how pro se litigants can navigate the judicial process. Toward that end, the KCLL provides educational brochures and other information relating to the clinics and self-help services that outside legal aid, bar associations, and foundations conduct for members of the public. To help individuals navigate the legal process, the KCLL provides access to a manual written by a former King County extern, appropriately titled *Preparing for Your Day in Court*.¹⁰⁵ The manual has basic court and courthouse information—from courtroom etiquette to state and local rules¹⁰⁶ to descriptions and examples of common forms and documents.¹⁰⁷ Much like Travis County Law Library, the KCLL also maintains a superb website that contains legal and research guides, forms, information on upcoming classes, and seminars and clinics within the library.¹⁰⁸

Court-Based Self-Help Centers

¶62 In addition to the law library-based self-help center model, other jurisdictions employ court-based self-help centers to assist pro se litigants. As noted elsewhere in this article, there is no universal standard for what a self-help center should look like. Curiously, in surveying literature discussing both law library-based and court-based self-help centers, the resources reviewed did not discuss what the fundamental differences between these two models are or what they might be.

¶63 Moreover, in examining various self-help centers across the country, there appear to be no services or benefits that are mutually exclusive to either the law library-based or the court-based self-help center model; instead, many of the resources outlined above could easily be found in a similarly well-designed and well-managed court-based self-help center. Indeed, many of the services described above as hallmarks of the best law library-based self-help services—readily available forms, comprehensive websites, hosting and providing sponsored workshops and clinics—are regarded as essential services for court-based self-help programs as well.¹⁰⁹ As a result, any debate concerning a law library-based or court-based self-help center may focus more on form than substance or, to put it another way, how the essential services of a self-help center are delivered rather than the services themselves.

¶64 Perhaps the greatest difference between the law library-based and the court-based self-help models turns on who manages and runs the center: the law library or the court itself. For instance, Minnesota's Hennepin County employs a court-based self-help center, which the Self-Represented Litigation Network

105. SOFIA SALAZAR-RUBIO, *PREPARING FOR YOUR DAY IN COURT: A HANDBOOK TO SELF-REPRESENTATION IN THE KING COUNTY SUPERIOR COURTS* (Oct. 2010), <https://www.kcba.org/publications/pdf/prosehandbook.pdf> [https://perma.cc/Y7VN-J67F].

106. *Id.* at 11–12.

107. *Id.* at 13–45.

108. PUB. LAW LIBRARY OF KING CTY., *supra* note 31. The services and features of the KCLL's self-help website are discussed in greater detail in the Best Practices section, ¶¶ 41–51, *supra*.

109. See generally SELF-REPRESENTED LITIGATION NETWORK, *supra* note 57.

regards as one of the best and most comprehensive centers in the nation.¹¹⁰ The main website for Hennepin County's self-help center is hosted by the Minnesota Judicial Branch and notes that the Hennepin County District Court has two self-help centers for the public's use.¹¹¹ Delving deeper into the county's self-help site, another webpage notes that court staff service the self-help center and provide the public with legal information.¹¹²

¶65 But beyond these management differences from the law library-based model, Hennepin County's centers bear many of the hallmarks of an effective self-help center, including forms and document assistance, free legal clinics run by volunteer attorneys, attorney referral services, "how-to" videos and tutorials, and information regarding specific areas of law.¹¹³ Similarly, the online self-help center managed by the California courts resembles the KCLL's self-help website in terms of information and forms provided and thoroughness of topics covered.¹¹⁴

¶66 Importantly, court-based self-help centers employing best practices still envision a central role for law libraries in serving pro se litigants. For instance, the Self-Represented Litigation Network, in studying the best practices for court-based services for pro se litigants, regarded law libraries as essential resource centers for the self-represented.¹¹⁵ Additional services useful to pro se litigants that court-based self-help centers can offer include kiosks, or "courthouse concierge desks," staffed by court employees or volunteers, which serve as welcome centers for courthouse patrons.¹¹⁶ Such "concierge desks" can provide not only directions, basic materials, and key information for patrons, but also a human face to the courthouse for those who typically do not venture there by choice.¹¹⁷

¶67 One such example was in Hawaii, where the state judiciary launched the Ho'okele Court Navigation Project in 2000 and provided court concierge desks at both the circuit court and district court buildings in Honolulu.¹¹⁸ Ho'okele (literally "to guide" in Native Hawaiian) was designed to provide the public with issue and problem identification assistance right after crossing the threshold of the courthouse.¹¹⁹ One year after the Ho'okele project's deployment, a firm examined the program and recommended that court service centers and concierge desks be staffed by full-time, professional employees of the court, and that they be supervised by a skilled manager versed in court services, processes, and procedures.¹²⁰ The examiners found that while volunteers might be useful in supplementing con-

110. *Id.* at 10.

111. *Hennepin County District Court*, MINN. JUDICIAL BRANCH, <http://www.mncourts.gov/hennepin> [<https://perma.cc/58GK-ET8F>].

112. *What Court Staff Can and Cannot Do for You*, MINN. JUDICIAL BRANCH, <http://www.mncourts.gov/Help-Topics/What-Staff-Can-Do.aspx> [<https://perma.cc/2SWT-5VUM>].

113. *Id.*

114. *The California Courts Self-Help Center*, CAL. COURTS, <http://www.courts.ca.gov/selfhelp.htm> [<https://perma.cc/BG8E-BLC2>].

115. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 57, at 19.

116. *Id.* at 1.

117. *Id.* at 1–2.

118. *Id.* at 2.

119. News Release, Office of the Administrative Director, Hawaii State Judiciary, Public Affairs Office, Judiciary Opens Court Service Centers and Court Concierge Desk (Aug. 8, 2000).

120. DAVID A. PRICE & BRENDA J. WAGENKNECHT-IVEY, *EVALUATION OF THE HO'OKOLE COURT NAVIGATION PROJECT 47–48* (Dec. 31, 2001), <http://www.centerforpublicpolicy.org/file.php/52136/Evaluation+of+the+Ho%27okele+Court+Navigation+project.pdf> [<https://perma.cc/87VP-X2T2>].

cierge desk staffing, they likely should not be the only staff available. Indeed, one criticism of the concierge desks' early performance was that they were staffed by AmeriCorps members in its initial run, who largely had no court experience and no knowledge on court forms, procedure, or even the location of various legal and judicial offices.¹²¹

¶68 Another concierge desk model is the Travis County courthouse information booth in Austin. Supervised by the Travis County Law Library instead of the court, the information booth combines the services of the concierge desk and the library reference desks and is coordinated by librarians.¹²²

Conclusions About Self-Help Center Models

¶69 Based on the information gleaned from this research, there is no reason to assume that a 501(c)(3)-model library cannot provide both traditional law library and self-help center services effectively, as long as it is willing. The fact that the Jenkins Law Library began instituting self-help services in 2014 denotes evidence that self-help centers are not unique to county public law libraries. However, their success may depend more on an organization's will and sense of self-help mission than any particular library governance model.

¶70 The law libraries of Travis County, King County, and other jurisdictions across the country serve as exemplars of what a county public law library-based self-help center can be. In terms of access to information, services provided directly by the library, and collaboration with outside foundations and legal aid services, these libraries have typically taken the initiative and built the forms, Internet presence, and network of legal aid contacts that make their centers successful.

¶71 While money and resources are critical components to just what a self-help center can achieve, perhaps most crucial is having a center built around the belief that self-represented litigants are equal players in the legal system. According to one law library consultant, the acceptance of the self-represented as equal to licensed attorneys is a hallmark of the more innovative law libraries.

¶72 One advantage of the court-based self-help model is that any center that is run by the court might be better integrated with the court's operations,¹²³ given that both bodies are run by the same administration, making the center more responsive to changes at the court and thus better able to serve patrons. Multnomah County will likely need to assist, provide services to, and coordinate with any self-help center that emerges; exemplary practices urge coordination and partnerships between the counties, courts, and law libraries.

¶73 The services inherent to a self-help center are not just for the indigent or the self-represented; instead they are services that any legal practitioner looking to augment his or her practice could use, as "access to justice" must account for the legal needs of everyone in the community—from the self-represented to the solo practitioner to the big firm's attorneys whose own libraries have scaled down their resources.

121. *Id.* at 47.

122. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 57, at 2-3.

123. *Id.* at 10.

Increasing Access to Justice Through Digital and Online Materials

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

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

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

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

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

124. LaJean Humphries, Oregon County Law Library Consultant Grant: LSTA Peer Evaluation 5 (Feb. 2011), https://www.co.washington.or.us/LawLibrary/upload/TF_LSTA_Evaluator_Report_Feb2011-2.pdf [<http://perma.cc/V34A-BKZH>].

125. *Id.* at 3.

126. *Id.* at 5.

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

¶78 In the legal field, access to such historical materials is vital to the outcome of many cases, particularly when the law changes between the occurrence of the tortious or criminal act and its adjudication.¹²⁸ If individuals are unable to find out what the state of the law was at the time of the events central to their case, their ability to have a fair hearing will be affected.

¶79 Coupled with this reality, one of the most overriding concerns that law librarians expressed during our research was in dispelling the myth that hardcopies of print materials can be eliminated. There remains a need for libraries to embrace document conversion and efforts to turn parts of their collection into digitally accessible formats—whether that be turning to commercial providers who supply access to materials for a fee or trying to convert parts of the library’s collection themselves. Yet the clamor for digitization should not overlook the reality that print and other source material formats still play, and will continue to play, an important role in the mission of law libraries to serve both the public and the legal community.

¶80 Although law libraries used to pride themselves on maintaining a large volume of bound books and materials, some law librarians and persons outside the community now believe that having an expansive hardcopy collection in the digital era is an albatross. Indeed, as individual and industry reliance on digital resources have grown over the past decades in tandem with budgetary constraints,¹²⁹ public and nonpublic law libraries alike have severely reduced the sizes of their print collections out of necessity.¹³⁰ For Oregon’s public law libraries, the pressures of “doing more with less” have only intensified since the Oregon legislature changed the funding model for county public libraries from being tied to county court filing fees to a biannual legislative appropriation to the Oregon Judicial Department.

¶81 Getting rid of print resources may be seen as a cost-savings measure, but digitization raises serious access-to-justice concerns. The persons who typically make up the self-represented population are more likely to be tech-challenged,

127. *Id.* This is an issue that affects public and private law librarians equally. For a private firm law librarian’s perspective regarding what print resources are essential to private practice, see LaJean Humphries, *Cheaper Online? Our Firm Library’s Gradual Move to All Electronic*, AALL SPEC-TRUM, Mar. 2013, at 17, 17 (“State legislative history is a major research topic in our [firm’s] library, and Oregon has limited material available electronically. Librarians use older Oregon laws and regulations on a regular basis. Our local county law library is threatened with closure, and *it would be impossible for us to do our job without historical Oregon legal materials.* Therefore, Oregon statutes, regulations, and older laws were our No. 1 priority to retain in print.” (emphasis added)).

128. Humphries, *supra* note 127, at 17.

129. For example, see the 2010 Oregon’s County Law Libraries Report by Ruth Metz Associates discussing how the growth of online databases has changed law library access by practitioners. RUTH METZ ASSOCS., *supra* note 5, at 14 (“[T]he growth of online databases to which judges, attorneys, and their staff have increasing access from offices and homes has changed patterns of library use. Judges, attorneys, and their staff can access law-related databases online as well as other web-based materials without going to the library itself.”).

130. See, e.g., Humphries, *supra* note 127, at 17–19 (noting how one firm’s decision to reduce the costs associated with its lease included reducing the size of both attorneys’ offices and the space occupied by the firm’s physical library).

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

¶82 The costs of document conversion and digitization are very project specific and hard to quantify in the abstract. When using an outside document conversion vendor, costs can vary greatly depending on a multitude of factors, such as the size of the collection to be converted; the age, quality, and condition of the materials in question; whether the materials need to be returned after digitization or whether they can be cut, unbound, and mechanically scanned; and so forth.¹³³

¶83 Once a law library decides to undertake a document conversion process, it should determine which materials to convert, what format to use, and whether to do it in-house or hire a third-party vendor. When examining what materials to digitize or otherwise convert, the most logical and economical approach is to convert only those portions of the library's collection that are unique and have not been converted elsewhere. To digitize resources that are widely available in another format or via a separate service—such as the court reporters—not only runs into potential copyright issues, but also is redundant and likely an unnecessary use of library funds and energy.

¶84 While digital methods to access information have grown in the past decades, as noted above many people most in need of a law library's services are also technologically challenged. However, the advantages in converting documents into a ubiquitous digital format are numerous. The ease of access and portability of digitally formatted materials means that patrons can easily obtain the files they need either at the library or remotely and save them to a personal computer or

131. Humphries, *supra* note 124, at 5.

132. Interview with Shane Marmion, Vice President, Product Dev., William S. Hein & Co., Inc. (May 28, 2014) (notes on file with authors). While Marmion believes that microfilm and microfiche will probably be out of production within five to ten years, people in the legal industry thought the same thing in 2000 as well. *Id.* But it is important to note that Hein still provides microfilm/microfiche document conversion, perhaps noting the further longevity of the format. See HEINONLINE, DIGITAL SERVICES FOR LIBRARIES, <http://heinonline.org/HeinDocs/DigitalServices.pdf> [<https://perma.cc/WVF5-6RWG>]. However, some libraries now actively refuse to archive their materials in any microform. Interview with Marilyn Moody, Dean, Portland State Univ. Library (May 28, 2014) (notes on file with authors).

133. Interview with Shane Marmion, *supra* note 132. Hein's vice president stated that the standard charge for digital scanning and conversion can be around \$0.03–0.06 per page if the source material can be cut and unbound; if not, the costs generally increase to around \$0.15–0.20 per page. However, Marmion did reinforce that these are just estimates and that it is difficult to give ballpark figures since the costs of every project vary depending upon the above-mentioned variables.

portable device for later use. The ability to search for relevant words and phrases within digital documents allows users to find (or at least narrow down) relevant information quickly.

¶85 However, while the world continues its transition into the digital age, there still remains a place for analog resources. Microfilm and microfiche have declined in use and production in the past decades, yet still remain a viable option for archiving. One advantage for a library focused on archiving is that microfilm and microfiche aid in helping a library downsize and modernize where needed while still retaining access to a physical, tangible copy of its resources. This could be an advantage to those patrons who are more familiar with traditional ways to access archived information. And while microform resources have become rarer in the twenty-first century, the fact that some of the most crucial legal resources remain accessible in some microform format denotes that they are still a valuable archival method.

¶86 The drawback, however, is that microform archiving likely will become rarer in the coming years as more libraries are choosing not to use microform any longer. As more individuals become familiar with how to use computers and access information online or in a digital format, their knowledge of and familiarity with microform is apt to decline. This could lead to a similar situation that law libraries find themselves in today with patrons trying to digitally access information but being unfamiliar with and unable to use the technology.

¶87 Once a law library decides to convert portions of its collection, the next questions to consider are who will handle the project, and how much will it cost? Perhaps the overriding concern when it comes to deciding to convert print materials into another format is the eventual expense. Unfortunately, this is the great unknown for any conversion project. Because the costs for conversion are very project specific, it is likely difficult for a law library to project whether converting part of its collection in the future is cost effective in the present.

¶88 Document conversion vendors bring needed expertise in terms of how to handle, scan, and process print materials into a digital format. Such vendors are also able to include indexing, word search, and metadata functionality with scanned documents, depending on how the materials are converted (e.g., if they are converted into a PDF or other similar format), and can provide hosting services for the library to access the digital copies of its collection.

¶89 Yet these services can be costly, and the exact amount is not readily known until an estimate for a specific project is sought. Some law libraries have decided to purchase scanning equipment and take on digitization projects themselves instead of employing an outside vendor. The Washington County Law Library's efforts to digitize older versions of the Oregon Revised Statutes is a superb example of a law library assuming the initiative for the broader legal community's benefit by filling in the digital gap.

¶90 The disadvantages of this approach are that all of the digitization burdens fall on the shoulders of the adventurous law librarian and likely will take more time than an outside vendor would. Further, if no one at the enterprising law library knows how to digitize such materials, any digitization project may become a laborious frustration, as the vendor's expertise in how to handle and convert the print materials into a digital format is lost.

Legal Needs Assessment of Multnomah County Residents

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

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

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

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

134. REPORT FROM THE OJD/OSB TASK FORCE ON FAMILY LAW FORMS AND SERVICES, at ii (Feb. 2011), <http://www.courts.oregon.gov/Multnomah/docs/FamilyCourt/ReportFromTheOJDOSBTaskForceOnFamilyLawFormsAndServices.pdf> [<https://perma.cc/L9RC-CK38>].

135. D. MICHAEL DALE, THE STATE OF ACCESS TO JUSTICE IN OREGON PART I: ASSESSMENT OF LEGAL NEEDS (Mar. 31, 2000), https://www.osbar.org/_docs/resources/legalneedsreport.pdf [<https://perma.cc/S2B2-2NP4>].

136. Richard Vangelisti, *Equal Justice & Our Profession*, MULTNOMAH LAW, Apr. 2014, at 1.

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

138. *Id.*

“unrepresented litigants negatively impacted the effectiveness and efficiencies of the courts.”¹³⁹

¶95 At least four state-commissioned reports have acknowledged the issues and legal needs of low-income and pro se litigants in Oregon. These include a 2011 report from the OJD/OSB Task Force on Family Law on Forms and Services;¹⁴⁰ a 2007 report from SFLAC’S Self-Represented Legal Services titled *Self-Representation in Oregon’s Family Law Cases: Next Steps*;¹⁴¹ a 2000 report titled *State of Access to Justice in Oregon Part I: Assessment of Legal Needs*;¹⁴² and a report of the Oregon Family Law Legal Services Commission, 1999.¹⁴³ While the need is apparent and widely recognized, it appears that progress toward meeting this need with a systematic, statewide approach has been slow. However, judges, service providers, state officials, librarians, and attorneys in Multnomah County whom the PSU team interviewed had many suggestions on the legal and court-related needs of current and projected library users. Some suggested services are those that the MLL already provides (and stakeholders agree are necessary); however, most are services not currently provided.

Existing Necessary Services

¶96 As previously noted, about half of the users of the Multnomah Law Library are attorneys and half are members of the public. While most large law firms have their own law libraries, most of the attorneys in Multnomah County work for firms with fewer than twenty-five attorneys. These firms are much less likely to have their own law libraries or significant resources and therefore rely on the research materials at the MLL. State Law Librarian Catherine Bowie recommends twenty-two types of collections and resources for a comprehensive law library. In addition to library materials, a law librarian to provide guidance and assistance with the materials is necessary. Library users need access to Internet-connected computers, printing, copies, and online legal research materials, such as LexisNexis, Westlaw, and HeinOnline. The MLL currently provides public computers with access to these resources.

¶97 Zorza notes that law libraries are becoming entry points into the judicial system for more and more individuals. To accommodate that, a “triage, diagnosis, and referral” desk, staffed by skilled, trained people with thorough knowledge of available resources and services in the community is necessary.¹⁴⁴ Such a desk could help many court users identify their problems and determine how to proceed. In the course of this research, the research team learned that many people need basic procedural information on where and how to file paperwork, how to obtain necessary signatures, and how to take the next steps for their case. Others

139. *Id.*

140. REPORT FROM THE OJD/OSB TASK FORCE ON FAMILY LAW FORMS AND SERVICES, *supra* note 134.

141. SFLAC’S SELF-REPRESENTED LEGAL SERVS. SUBCOMM., SELF REPRESENTATION IN OREGON’S FAMILY LAW CASES: NEXT STEPS (Sept. 2007), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/downloads/final_report_on_self_representation_090607.pdf [<https://perma.cc/E3UW-C2LT>].

142. DALE, *supra* note 135.

143. OREGON FAMILY LAW LEGAL SERVICES COMM’N, REPORT TO THE OREGON LEGISLATIVE ASSEMBLY (Jan. 1999).

144. ZORZA, *supra* note 1, at 18.

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

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

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

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

¶101 While some family law forms are available electronically on the Oregon Justice Department's Family Law Forms website¹⁴⁵ or on the Multnomah County Circuit Court webpage for Family Law Forms,¹⁴⁶ many pro se litigants find it challenging to find them online, to determine which form they need, to complete the form, and to file it appropriately. Others were not able to find what they needed online, either due to limited computer proficiency or limited computer or Internet access.

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

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

145. *Forms for Family Law*, OREGON JUDICIAL DEP'T, <http://www.courts.oregon.gov/programs/family/forms/pages/default.aspx> [<https://perma.cc/2F72-C8F8>].

146. *Family Law Forms*, MULTNOMAH CTY. CIRCUIT COURT, http://www.courts.oregon.gov/Multnomah/General_Info/Family/pages/form.aspx [<https://perma.cc/WHF6-XFXV>].

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

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

¶105 Multnomah County has more than 760,000 residents, twenty percent of whom do not speak English at home.¹⁴⁸ About fifteen percent of Oregonians need language assistance to conduct their court business. The Oregon Judicial Department offers court interpretation services in ninety-one languages in all thirty-seven Oregon counties for several situations including in court, at the public court counter, or by telephone to communicate with OJD staff, mandatory court arbitration proceedings, and others. However, language barriers pose significant hurdles to trying to find information or navigate court procedures that, as noted above, are difficult to navigate for native English speakers. Those with limited English proficiency have the same needs for legal/informational workshops, procedural information, assistance with forms, and legal information as native English speakers do. Additionally, they need assistance navigating and using the library resources (such as legal research materials) that already exist. Common languages for those with limited English proficiency include Spanish, Russian, and Vietnamese, among others.

Conclusions

¶106 Due to the complexity of information, trained library staff is critical to an effective self-help center. In addition, much like with triage, diagnosis, and referral, “[l]ibrary staff need to be able to help people actually find the information they need and to understand it. This is different from being the source of legal judgment . . . [but] this function is also more than just pointing at the relevant material and walking away.”¹⁴⁹ Indeed, pro se litigants need help to both find “and make sense” of the law that underlies their legal dispute,¹⁵⁰ a task for which law libraries with trained staff or legal aid centers are naturally suited.

¶107 Best practices show that law library-based or stand-alone self-help centers should develop or provide forms for litigants to use to steer their case through the

147. SFLAC’S SELF-REPRESENTED LEGAL SERVS. SUBCOMM., *supra* note 141.

148. *Multnomah County, Oregon Quick Facts*, U.S. CENSUS BUREAU (data from July 1, 2016), <https://www.census.gov/quickfacts/fact/table/multnomahcountyoregon/PST045216> [https://perma.cc/RH8S-VS2Y].

149. ZORZA, *supra* note 1, at 20.

150. *Id.*

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

¶108 For forms to be of the most use to the public, they need to be readily available beyond the courthouse's doors. Consequently, including forms in a comprehensive self-help website, accessible from one's personal computer, public library, or other remote location, is essential for their usefulness. The most effective self-help websites for the public are developed, structured, and organized with the lay public in mind.¹⁵² Toward that end, effective self-help is designed to be of use to the less literate, is kept up-to-date, is sufficiently funded, and includes information provided by local bars, legal aid organizations, and other essential stakeholders.¹⁵³ In addition, self-help websites that steer pro se litigants toward information based in terms of their specific legal problem and not the laws at issue are effective because they include links to a wide array of support services both within the courthouse and the community at large.¹⁵⁴

¶109 Multnomah County decided in 2017 to adopt a self-help center based within the MLL. The new center is slated to begin operations when the MML relocates to the new courthouse when it likely opens in 2020. While the county has decided to implement the self-help model in principle, the exact structure, staffing, operations, physical layout, and services have not been settled and agreed upon. Multnomah County wanted to find a method to resolve a fundamental problem: namely, that "[l]imited public access to legal information affects us all."¹⁵⁵ Access to justice does not focus exclusively on the self-represented; instead the middle-class litigant and the solo practitioner also need increased access. Even the small-sized law firm on which the litigant relies must be included. The central aim of our investigation was to find a self-help model that best facilitates this access to legal information for as many people as possible and therefore serves the "access to justice" needs of Multnomah County's broader population. The model we concluded that best meets the needs of Multnomah County is the self-help center within the law

151. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 57, at 43. The Self-Represented Litigation Network also suggests that forms are most effective when pro se litigants can have them reviewed by "attorneys, judges and potential litigants for legal problems as well as areas of potential confusion and improvement." *Id.* This point, while true, may raise issues of the proper role of judges as well as the unauthorized practice of law or whether an attorney's review of a litigant's form establishes an attorney-client relationship; these issues consequently limit this suggestion's practicality.

152. *Id.* at 4.

153. *Id.*

154. *Id.*

155. Adams & Smith, *supra* note 15, at 33. Interestingly, this sentiment is expressed by the directors of the two oldest private law libraries in the United States. *Id.*

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

¶110 A law library's natural character as a neutral, nonconfrontational space further marks it as an ideal location for a self-help center.¹⁵⁶ Indeed, for litigants, courts are the seats of judicial power that will be wielded either in or against their favor. For some self-represented litigants, having a self-help center, or even just self-help resources, away from that authority can be important. Further, a law library-based self-help center model is advantageous in that it has physical proximity to the legal information and resources, county clerks, judicial offices, judicial chambers and courtrooms that self-represented litigants will need to access as they steer their case through the court system.

Suggested Services to be Included in the New MLL's Self-Help Center

¶111 While many in the access to justice community speak of resources for self-represented litigants, others have stressed that access to justice cannot be properly addressed without considering the needs of attorneys. Many attorneys need access to legal resources that they cannot afford themselves but that are essential to their practices. According to this view, access to justice must consider the needs of both solo practitioners and small law firms, as these attorneys frequently represent middle-class litigants and depend on public law libraries to support their practices. As the county's working group progresses in designing the functions of the library and the self-help center, we recommend that they strike a balance and strive to meet the needs of both attorneys and self-represented litigants.

¶112 As previously noted, a desk that provides procedural information, assistance with diagnosing legal issues, and referrals to the appropriate offices or departments for next steps in the process is recommended as an important part of a successful self-help center. Having litigants able to acquire information from skilled staff who are trained in court procedures and available resources could alleviate customer service pressure on other court staff and provide consistent information to those in need. It would serve as a gateway into the judicial system and ensure that people receive consistent information. According to Zorza, staff should be trained on or have familiarity with the law, the range of problems that people seek assistance for, existing resources that are appropriate for particular needs and populations, and how to help users find and use resources.¹⁵⁷ Additionally, staff should understand court procedures and be able to help people navigate the system.

¶113 The process of obtaining and accurately completing the correct forms is a significant barrier in the court system, which results in wasted resources such as time for both the court officials and the litigants, and wasted money for already low-income litigants in court and form fees. Multnomah County should work with the Oregon Judicial Department and other partners, such as Turbo Forms or other companies, to develop standardized state forms written in plain language with easily understood instructions. Based on best practices and the public's needs, we recommend the following practices be instituted related to legal forms:

156. ZORZA, *supra* note 1, at 21 (noting that losing parties to an action "may be somewhat reluctant to go to court to get information and run what they perceive is the risk of getting into trouble.").

157. *Id.*, at 23.

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

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

¶115 A comprehensive self-help center should serve not only as an entry point to the judicial system but as a bridge. Though there are several free and reduced-cost legal services available to low- and moderate-income people in Multnomah County, providing these services in the law library/self-help center during designated hours would significantly enhance the efficiency and ease of use of such a center. The self-help center should consider coordinating free, brief legal advice/assistance during designated hours, widely publicizing the hours, and allowing patrons to sign up or drop in on a first come, first served basis.

¶116 Providing comprehensive translation and interpretation services in the self-help center may not be feasible at this time given the resources needed, but staff should know what other community resources are available to help people with limited English proficiency with their legal matters. Legal Aid Services of Oregon has Spanish-speaking staff in most of its offices and arranges interpretive services in most spoken or signed languages. As the self-help center develops and implements these recommendations and begins offering legal assistance, clinics, and referral systems, staff should be aware of the needs of non-English-speaking people in the community and develop services that are inclusive.

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

¶118 Currently, the MLL is designed as a large open space, primarily filled with books and several large tables for reading and research. Most of the individuals the research team interviewed said that their clients do not use the law library, do not know where to find it, or do not know what resources are available. A revamped law library and self-help center should be highly visible to the public, with services and amenities advertised. Further, the physical redesign should take into account the types of services provided. The law library/self-help center should include distinct service areas. The first area that a library/self-help center needs is space for quiet research, which would include books, computers, and desks or tables for document review. Opposite the research end of the library should be an interactive space where patrons could seek assistance, ask for referrals, and request procedural information and forms. Several of the recommended services require private space for legal assistance, intake and assessment, or clinics. The law library/self-help center also could include small conference rooms for one-on-one meetings with attorneys or service providers and a medium conference room that can host legal and informational clinics to small groups.

¶119 The MLL should eliminate duplicates and some print versions of materials that are available online or are no longer used by MLL patrons. Libraries must also consider issues of availability, technology, and cost when determining whether and what materials to convert. It is advisable that law libraries seeking to archive and convert portions of their collection lean toward a ubiquitous digital format and provide access to such materials both within the library and remotely if possible. Further, law library staff should remain available to help technologically challenged patrons with how to use and access such materials.

¶120 There are a variety of ways to integrate technology into existing and recommended law library/self-help center services to meet the needs of users. Nearly all the stakeholders the research team interviewed said that the main law library/legal service center should be in the courthouse, but that with more advanced technology, some services could be available remotely, such as forms, legal guides, video tutorials, and online assistance.

¶121 Basic procedural information in a video tutorial may alleviate some of the customer service pressure in the court, and in the law library or a self-help center. As previously noted, many people lack the basic knowledge on how to start their cases or what materials they need and where to file them. A video available both in the self-help center and online that people could view from home, a public library, or any computer connected to the Internet would provide valuable information and may increase the efficiency of the courts.

¶122 A self-help center with a variety of services geared toward pro se litigants should also consider the needs of litigants in east Multnomah County. Many of the recommended services could be provided to the East County Courthouse via video connection during specific scheduled, advertised, and consistent hours. Services may include basic information, referrals, assistance with forms, and legal assistance.

Keeping Up with New Legal Titles*

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

Contents

<i>Animus: A Short Introduction to Bias in the Law</i> by William D. Araiza	reviewed by Tanya M. Johnson	150
<i>Tennessee Legal Research, Second Edition</i> by Scott Childs, Sibyl Marshall, and Carol McCrehan Parker	reviewed by Jason Murray	152
<i>Kentucky Legal Research, Second Edition</i> by William A. Hilyerd, Kurt X. Metzmeier, and David J. Ensign	reviewed by Vanessa Seeger	153
<i>Environmental Information: Research, Access & Environmental Decisionmaking</i> by Sarah Lamdan	reviewed by Mari Cheney	154
<i>Pleasantville</i> by Attica Locke	reviewed by Jennifer S. Prilliman	155
<i>Windows into the Soul: Surveillance and Society in an Age of High Technology</i> by Gary T. Marx	reviewed by Shannon Roddy	156
<i>Wyoming Legal Research, Second Edition</i> by Debora A. Person and Tawnya K. Plumb	reviewed by Lance Burke	157

* The works reviewed in this issue were published in 2015, 2016, and 2017. If you would like to review books for "Keeping Up With New Legal Titles," please send an e-mail to bkeele@iu.edu and nsexton@email.unc.edu.

** Research and Instructional Services Librarian, Ruth Lilly Law Library, Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana.

*** Clinical Assistant Professor of Law/Interim Assistant Director for Public Services and Head of Access Services, Kathrine R. Everett Law Library, University of North Carolina School of Law, Chapel Hill, North Carolina.

<i>The Federal Judiciary: Strengths and Weaknesses</i> by Richard A. Posner	reviewed by Victoria Szymczak	158
<i>Balancing the Scales</i> directed by Sharon Rowen	reviewed by Sarah K. C. Mauldin	160
<i>Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam, Second Edition</i> by Michael Hunter Schwartz, Sophie M. Sparrow, and Gerald F. Hess	reviewed by Savanna L. Nolan	162
<i>The Wagstaffe Group Practice Guide: Federal Civil Procedure Before Trial</i> by James W. Wagstaffe	reviewed by Sarah Reneker Andeen	164

Araiza, William D. *Animus: A Short Introduction to Bias in the Law*. New York: New York University Press, 2017. 199p. \$25.

*Reviewed by Tanya M. Johnson**

[I]f the constitutional conception of “equal protection of the laws” means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest.¹

¶1 This quote from *U.S. Department of Agriculture v. Moreno* is the beginning of the animus doctrine in modern case law, but, as William D. Araiza describes it in *Animus: A Short Introduction to Bias in the Law*, the idea that government should not enact laws simply because of a “bare . . . desire to harm” stems from much earlier concepts. From James Madison’s discussion of the danger of legislation for the betterment of factions rather than society as a whole, to the judicial ban on class legislation in the nineteenth century, Araiza explains that the idea that law should not promote the interests of one group by impairing the rights of another has been around since the founding of our country. Through an exploration of the U.S. Supreme Court decisions grounded in animus, thorough reasoning and analysis, and analogy to case law related to discriminatory intent, Araiza builds a “coherent structure” (p.173) for the animus doctrine that “can not only serve modern imperatives but can do so by echoing deep traditions of American constitutionalism” (p.180).

¶2 The book is presented in two parts. Part I, “Laying Out the Tools,” first discusses the historical basis for the legal concept of animus and then examines the rationale behind the major Supreme Court decisions related to animus, each of which presents unique features and reasoning. *U.S. Department of Agriculture v. Moreno*² established the modern animus doctrine by holding that a “bare . . . desire to harm” hippies or hippie communes could not be a legitimate governmental

* © Tanya M. Johnson, 2018. Reference Librarian, University of Connecticut School of Law, Hartford, Connecticut.

1. U.S. Dep’t of Agric. v. Moreno, 413 U.S. 528, 534 (1973).

2. *Id.*

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

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

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

3. 473 U.S. 432 (1985).

4. 517 U.S. 620 (1996).

5. 570 U.S. 744 (2013).

6. 429 U.S. 252 (1977).

7. 135 S. Ct. 2584 (2015).

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

*Reviewed by Jason Murray**

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

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

¶7 The detailed table of contents is written in outline style, and the book has a list of tables and figures and an index. The book also has two appendixes: "Where to Find Tennessee Law" and "Selected Bibliography." There is enough coverage of federal legal research in this book to enable a researcher to conduct basic federal legal research. The opening chapter introduces the reader to the research process and legal analysis. Next are chapters on judicial opinions, constitutions and legislative law, legislative history, administrative law, law updating, and secondary sources. The final chapter on developing a research plan and strategy returns to the opening chapter's emphasis on the research process.

¶8 This book is directed toward novice researchers, but even experienced researchers may find it useful for review. The book is well written, and it is written at a level appropriate for first-year law students and pro se patrons. True to its title, this book does a great job instructing the reader on Tennessee-specific legal research. In fact, because of its thoroughness in identifying and explaining the concepts, research strategies, and types of resources used in legal research, this book could be used as a guide for understanding how to conduct research in any U.S. jurisdiction. The authors do an excellent job of blending legal research and legal analysis throughout the book, providing the reader with a greater understanding of how the technical skill required in conducting searches meshes with the intellectual work required for analyzing the information retrieved. Additionally, the authors make great use of the tables and figures throughout the book to provide visual aids. There are also numerous footnotes throughout with helpful information and links to relevant websites.

¶9 *Tennessee Legal Research, Second Edition*, should be in any Tennessee paralegal or solo practitioner's collection as a reference resource. This book is a necessary resource for Tennessee law libraries and Tennessee public libraries that maintain a legal collection. Academic law libraries outside Tennessee that maintain collections for other states should consider this book as well.

* © Jason Murray, 2018. Reference Librarian and Assistant Professor of Law, Euliano Law Library, Barry University School of Law, Orlando, Florida.

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

*Reviewed by Vanessa Seeger**

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

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

¶12 The majority of the guide focuses on print resources, some of which are readily available at academic or public libraries, while others require special access to documents stored in Frankfort, Kentucky. The sections that cover online resources do a good job of covering both proprietary databases like LexisNexis and Westlaw and free resources available on the Internet like FindLaw and the websites maintained by the Kentucky state government. By including the online resources that are available for free, the book makes the law more accessible to the general public, and by only highlighting the websites that are long-standing or government-operated, the book is more likely to remain current and relevant longer, thereby extending its shelf life.

¶13 Helpful screenshots and other graphics make the online information more accessible for the reader who may be trying to follow along on a computer. The majority of the online legal research found in chapter 11 is explained well and is easily navigated, but many of the references to online materials and the instructions to access them found in the preceding chapters are clunky and difficult to follow. Unfortunately, a few of the webpages referenced in chapter 5 had already been updated since the publication of this book, dating the material somewhat.

¶14 The authors do a good job of blending their writing styles so that the book does not seem disjointed, though slight changes in tense and tone from chapter to chapter can be a bit jarring. Some repetition in the early chapters might have been avoided with a closer edit, and undefined jargon in chapters 2, 3, and 5 could cause some difficulty for the novice researcher. The chapter on legislative history, how-

* © Vanessa Seeger, 2018. Outreach Librarian, Hamilton County Law Library, Cincinnati, Ohio.

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

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

*Reviewed by Mari Cheney**

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

¶16 This book, and specifically the chapters on how to locate scientific data, is now more important than ever with agency reports and data disappearing from federal websites. The legal researcher must know how to find this information and, perhaps more important, understand what Freedom of Information Act requests are and how to submit them.

¶17 Another timesaving and helpful tool is the fifty-state survey on state information access laws that includes statewide environmental information access provisions where applicable. Lamdan also provides links to state open meeting laws, websites, and citations to related cases. While citations to state regulations regarding agency compliance with open records and meetings laws are not included in the survey, it is an excellent starting point for finding state-specific information.

¶18 As librarians, we know that Google can be a good starting point for research in unfamiliar areas of law, but with environmental law, unless you know the acronyms or names of datasets, Google is not especially helpful in locating information. Lamdan, however, adds value by providing information about how to find data access points created by the government, as well as by nonprofit and educational institutions. Without knowing that some of this information may be behind a paywall, the researcher could search the Environmental Protection Agency (EPA) website fruitlessly, expecting to uncover a database that in fact is not accessible without a subscription. Lamdan notes what is freely available and what is behind a paywall, saving time for the researcher.

¶19 I found a few other chapters particularly insightful. In chapter 11, Lamdan provides additional resources to consult if scientific language is unfamiliar, and she provides context for the type of data often found in environmental records. In chapter 8, Lamdan provides an excellent list of other potential sources of environmental information outside of the EPA. These sources include other agencies, like the Securities Exchange Commission and the Federal Aviation Administration, as well as congressional, litigation, and settlement documents. These additional resources provide leads for potentially helpful information.

* © Mari Cheney, 2018. Head of Research Services, Boley Law Library, Lewis & Clark Law School, Portland, Oregon.

¶20 If you have an environmental law program at your law school or provide support to lawyers practicing in this area, I recommend this book for its thoroughness in providing numerous access points to hard-to-find environmental data.

Locke, Attica. *Pleasantville*. New York: HarperCollins, 2015. 420p. \$26.99.

*Reviewed by Jennifer S. Prilliman**

¶21 *Pleasantville*, Attica Locke's third novel, is a political thriller that follows attorney Jay Porter, the hero from her first novel, *Black Water Rising*, as he finds himself involved in a murder and election scandal. The reader catches up with Porter fifteen years after his major legal victory in *Black Water Rising*. He is now disillusioned, trying to raise two children after the tragic loss of his wife, and struggling to keep his law practice open, all while he continues to fight to receive a fifteen-year-old, multimillion-dollar class action settlement. It is not necessary to read *Black Water Rising* before reading *Pleasantville*. However, it does enhance the reader's understanding of just how much Porter's life differs from what he anticipated. Porter's back story is compelling, and the reader immediately feels a deep sympathy for Porter, his family, and his clients still waiting for their settlement.

¶22 Locke's first novel earned a number of awards and recognition, including nominations for the 2010 Edgar Award and a 2010 NAACP Image Award. She continued her success with her second novel, *The Cutting Season*, which was a finalist for the Hurston-Wright Legacy Award and an Honor Book by the Black Caucus of the American Library Association. *Pleasantville* received the 2015 Harper Lee Prize for Legal Fiction and was one of the *Wall Street Journal's* best books of the year for 2015. Locke has also worked in television as a writer and producer on Fox's *Empire*.

¶23 The book opens on an election night in 1996 in the Houston neighborhood of Pleasantville. The history of the neighborhood is an interesting and moving story in and of itself. Pleasantville, in both the book and the real world, is a middle-class African American neighborhood and was a critical voting bloc in local Houston elections. It was developed in 1949 as a planned community for wealthy African American families who were excluded from buying homes in other parts of Houston due to segregation.⁸ As Locke explains,

Pleasantville in real life is nicknamed "The Mighty 259th"—that's their precinct in the state of Texas. Pleasantville for decades has voted in higher numbers than almost any other precinct in the entire state. Something happened when these developers created this neighborhood and they dropped in thousands of engaged, educated and monied black folk: It's changed state politics forever because when that neighborhood got its first elementary school, it got a place to vote. And suddenly they became this political powerhouse and knew they were and used that power and have swung many an election.⁹

¶24 On the night of the Houston mayoral election, a young girl goes missing and Porter's office is broken into. At first glance, the two events do not seem to be related, but Porter soon finds himself caught up in the murder investigation and

* © Jennifer S. Prilliman, 2018. Interim Director and Law Library Professor, Oklahoma City University School of Law, Oklahoma City, Oklahoma.

8. *No Demons, No Angels: Attica Locke Aims for Black Characters Who Are Human*, NPR MORNING EDITION (Apr. 21, 2015, 3:51 AM), <http://www.npr.org/2015/04/21/400413486/attica-locke-s-pleasantville-shows-a-changing-america-in-thriller-form>.

9. *Id.*

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

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

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

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

*Reviewed by Shannon Roddy**

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

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

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

* © Shannon Roddy, 2018. Student Services Librarian, Pence Law Library, American University Washington College of Law, Washington, D.C.

care, childcare), “voluntarily” submitting to extensive medical and psychological evaluations, and having a monitoring chip implanted in their skin. While the policy is obviously extreme, it helps illustrate a possible slippery slope of heightened surveillance and reduced privacy in the workplace. Other fictitious examples include a scholarly paper on new unobtrusive research techniques designed to elicit sensitive personal information from the subject, a clinical psychology report of an “off the wall” (p.219) individual who is both the subject and agent of more than one hundred forms of surveillance, and a speech by a surveillance expert in favor of maximum use of new surveillance and security technologies. These examples of new surveillance techniques, however, are scarce. Marx is more concerned with ruminating on high-level definitions of surveillance than giving concrete examples of what twenty-first century surveillance looks like.

¶30 *Windows into the Soul* is a dense read and likely not appropriate for many law libraries. While the issues surrounding surveillance and privacy are certainly intertwined with law, there is little discussion of their overlap. Marx mentions some of the major pieces of legislation related to surveillance and privacy (such as the Federal Video Voyeurism Prevention Act, USA Patriot Act, and Real ID Act), but does not delve into how these laws impact modern surveillance or privacy rights or how the law may change to keep up with innovations in surveillance. Marx claims to be writing for both the general reader and specialist, but this is a purely academic work, and a casual reader would be hard pressed to wade through all 400 pages.

Person, Debora A., and Tawnya K. Plumb. *Wyoming Legal Research, Second Edition*. Durham, N.C.: Carolina Academic Press, 2016. 161p. \$29.

*Reviewed by Lance Burke**

¶31 Continuing its Legal Research Series, Carolina Academic Press has published *Wyoming Legal Research, Second Edition*, by Debora A. Person and Tawnya K. Plumb. The authors draw on their combined thirty-six years of law librarianship and teaching experience at the University of Wyoming’s School of Law to bring us a book that can assist beginners and experts alike as they navigate Wyoming’s legal landscape.

¶32 The preface notes that Wyoming lacks research tools that are common in other states (for example, Wyoming has no state-specific legal encyclopedias or formbooks, and only a limited number of state-specific treatises). Researchers from other states, the preface continues, have expressed surprise at how little Wyoming case law exists. The authors had this brevity of legal sources in mind when writing the book and note that knowing what does not exist can help researchers focus their attention on what is actually available.

¶33 The second edition of *Wyoming Legal Research* contains the features expected of an instructional research book, with a summary of contents, a more detailed table of contents, a list of tables and figures, and an index. The first two chapters cover broad research topics (the branches of government, binding versus persuasive authority, primary versus secondary sources, and search strategies), and chapter 3 (secondary sources) begins the discussion of Wyoming-specific sources.

* © Lance Burke, 2018. Reference Librarian, North Carolina Central University School of Law Library, Durham, North Carolina.

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

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

¶35 I would recommend *Wyoming Legal Research, Second Edition*, to anyone interested in Wyoming-specific legal research, particularly newcomers to the field. It should have a place in academic libraries in Wyoming and neighboring states and could prove useful in firm libraries in the same area.

Posner, Richard A. *The Federal Judiciary: Strengths and Weaknesses*. Cambridge, Mass.: Harvard University Press, 2017. 438p. \$35.

*Reviewed by Victoria Szymczak**

¶36 Richard A. Posner wrote and published *The Federal Judiciary: Strengths and Weaknesses* while he was a judge on the U.S. Court of Appeals for the Seventh Circuit. In the epilogue, Posner admits that he thought he had finished the book in December 2016; however, the polarizing presidential election in November led him to believe that there would be “significant developments of importance to the federal judiciary involving issues central to the book, including though not limited to key judicial appointments . . . tugs of war in the Senate . . . and continued debate, academic and otherwise, concerning a variety of controversial issues of federal (including federal constitutional) law” (p.399). Posner’s reasons for delaying the publication of *The Federal Judiciary* touch on some of the main themes represented in the corpus.

¶37 The book, in general, is about what can be done to improve the federal judiciary at all levels, building on ideas that we have seen in Posner’s earlier publications. Of course, a reader must believe that the federal judiciary needs a major overhaul to buy into Posner’s call for reform in legal education and the federal bench. Posner’s tone throughout the book is often caustic and may offend some groups caught in his crosshairs, yet his practical, commonsense observations can also be viewed as offering sound advice for a discipline about which he obviously cares very deeply.

* © Victoria Szymczak, 2018. Law Library Director and Associate Professor of Law, William S. Richardson School of Law, University of Hawaii, Honolulu, Hawaii.

¶38 The book's arrangement is similar to Posner's *Divergent Paths: The Academy and the Judiciary*,¹⁰ and shares like themes. Following a short preface, *The Federal Judiciary* begins with a relatively long introduction spanning forty-three pages. In his introduction, Posner expresses distress at the growth of interdisciplinary professors at elite law schools. He focuses on top-tier schools because they produce a disproportionate number of judges and law clerks. At first glance, it may appear that Posner derides interdisciplinary legal studies by stating that he is "troubled by the fact that the faculties of the leading law schools are increasingly populated by refugees from the humanities and social sciences" (p.2), but he limits this criticism to those professors who have little or no practical legal experience to bring to the study of law. Posner acknowledges the importance and need of interdisciplinary skills for lawyers and law students, but only when complemented by practical legal experience.

¶39 The failure of the legal academy to keep current with the needs of a twenty-first century judiciary is a major point of discussion in *Divergent Paths*. Posner's view of legal education serves as a basis for the weaknesses he identifies in the federal bench. We see several of his suggestions in this book already playing out in the revision of the American Bar Association accreditation standards. Some examples include providing more clinical experience for students during law school; reducing the costs of textbooks by favoring case assignments that can be retrieved off library databases; reading the briefs and not just the case opinions to provide more context; and, my personal favorite, eliminating the *Bluebook*. In chapter 1, which Posner uses to respond to critics of *Divergent Paths*, readers are treated to his section on citation formatting that he gave to his clerks titled "Addendum: A Miniaturized Substitute for the *Bluebook*."

¶40 Chapters 2 through 4 address the three tiers of the federal judiciary beginning with the U.S. Supreme Court. Chapter 2 on the Supreme Court is itself a miniature book. It has an introduction followed by two parts. A significant percentage of the introduction in this chapter is directed at Michael Dorf, who has written critically of Posner's *Divergent Paths*. Posner also takes several pages to decry the mediocrity he perceives on the current Supreme Court bench. The first part of this chapter identifies the Supreme Court as a political entity by design because politicians nominate the justices, their most important issues are political issues, and the law that they draw on was created by that court. He finds the Supreme Court particularly clumsy with respect to constitutional interpretation and statutory interpretation: the former he claims is more constitutional amendment, and the latter he calls a misnomer.

¶41 This is not new territory for Posner. He has long held the view that constitutional theory does not hold much weight in judicial analysis. He is not a fan of either originalism or a theory of a living constitution. In the second part of chapter 2, he turns his critical eye to individual justices and opinions before expanding his review to more mundane items, such as compulsory retirement, term limits, streamlining the operations of the Court, and allowing oral arguments to be televised. In this chapter and elsewhere in the book, Posner is preoccupied with the accolades for the late Justice Antonin Scalia and reviews Scalia's doctrine of origi-

10. RICHARD A. POSNER, *DIVERGENT PATHS: THE ACADEMY AND THE JUDICIARY* (2016).

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

¶42 Posner takes similar approaches to his review of the circuit courts of appeal in chapter 3 and the district courts in chapter 4, which are both much shorter than chapter 2. His case examples in chapter 3 are, not surprisingly, often from the Seventh Circuit. In these two chapters, he focuses more on the language of the courts and, to a lesser degree, the legislature. The importance of correct and clear use of language is evident throughout the manuscript. The examples he provides in the latter chapters should be assigned as reading to first-year law students to demonstrate why they must labor over choosing the correct words and their sequencing. Given his interest in choosing correct language, I found the opening of chapter 5, *Civil Litigation Revisited*, discussing independent "Internet research" by judges, a bit amusing as librarians would generally roll their eyes at the idea that "Internet research" is a meaningful term.

¶43 In the final chapter, Posner discusses issues related to civil procedure: Internet research, the hearsay rule, forum selection, class actions, judicial review of arbitration awards, and nominal damages. I find his label of "Internet research" to be out of touch with information vocabulary. Technically, most research takes place online. What Posner is referring to is what most of the world calls Googling. Nevertheless, the discussion centers on three aspects of Internet research by judges: judicial notice, providing background and context, and using online material as evidence. It is an interesting discussion for law librarians.

¶44 Posner's latest book is chock-full of examples to support his wide-ranging assertions about the federal judiciary system, judges, and the legal academy. Those familiar with Posner's views will not find new themes in his latest endeavor, yet the examples he gives and the historical context of his proposals are worth exploring. Although I found the tone of the book abrasive at times, I am attracted to his views on legal pragmatism and the need for the federal judiciary to modernize.

Rowen, Sharon, dir. *Balancing the Scales*. Atlanta, Ga.: R&K Productions, 2017. 57 min. Available for screenings (<https://www.balancingthescalesmovie.com/screenings>) and on PBS affiliates through American Public Television.

*Reviewed by Sarah K. C. Mauldin**

¶45 *Balancing the Scales* is a documentary feature film that explores issues of gender equality in law practice through interviews with a range of women who entered the profession from the 1930s to the present day. Interview subjects include household names like Justice Ruth Bader Ginsburg and civil rights attorney Gloria Allred, as well as state and federal judges, law firm partners, associates, and law students.

¶46 The documentary first looks at the history of women in law, introducing viewers to pioneering women who were admitted to the bar before many law schools went coed, who were prohibited from sending legal documents out under their own signatures, and who often were relegated to work in real estate or trust companies. Women in law were such curiosities that twin sisters Ruth and Ruby

* © Sarah K.C. Mauldin, 2018. Director of Library Services, Smith, Gambrell & Russell, LLP, Atlanta, Georgia.

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

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

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

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

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

¶51 While sex discrimination is the focus of the documentary, *Balancing the Scales* also examines issues of racial and ethnic discrimination. Leah Ward Sears, Georgia's first female and first African American Superior Court Judge and Supreme Court Chief Justice, was interviewed extensively, and her insights appear throughout the film. She, as well as other minority interviewees, discuss sometimes not knowing whether the challenges they face in law come from racial or gender bias. The film also touches briefly on issues of sexual orientation but does not dwell on it beyond Therese M. Stewart's observation that being a lesbian was in some ways easier for her male colleagues on the California Court of Appeals to handle because it made her "one of the guys."

¶52 Rowen also examines whether issues of women's participation in law is a universal problem or one that is unique to the United States. To find out she interviews Nina Henningsen, a partner at Danish law firm Horten, about the experience

11. 467 U.S. 69 (1984).

of women in Scandinavian countries, considered by most to be ultra-progressive. While Scandinavian policies on parental leave are far more generous and expectations for work hours are far less, these Northern European countries are having similar trouble retaining female attorneys in private firms. Henningsen suggests that Denmark is on the right track but has not yet found true equality.

¶53 Rowen is a practicing attorney in Atlanta and has been interviewing women in law for more than twenty years. Beyond making the film, she is also a frequent speaker and writer on diversity and inclusion in law.

¶54 The interviews are broad ranging and curated in a way that blends many voices to tell the story. Rowen's interview style elicits genuine and often very funny responses from her subjects, making the nearly hour-long film speed along. Many of Rowen's interview subjects, particularly those from the 1990s, are drawn from the Southeast and, of those, most are from Georgia. Her more recent interviews encompass a larger geographic area and seem more representative of women in law.

¶55 The documentary is available for viewing on local PBS affiliates through American Public Television or as a public or private screening. Screenings include a discussion with locally chosen panelists, a question-and-answer session with the director, or a CLE presentation. When it becomes available for purchase, *Balancing the Scales* would be a worthy purchase for law school libraries and could find a home in law firms and public law libraries.

¶56 I had the opportunity to view the documentary at my firm followed by a panel discussion with Sharon Rowen, Judge Wendy Shoob of the Fulton County Superior Court, and Leah Ward Sears, former chief justice of the Georgia Supreme Court and an interviewee in the film. The panel discussion provided an opportunity to hear from Justice Sears and Judge Shoob about their experiences and to provide advice for other women in law, and to get a sense for why Rowen chose to make the film. The screening and discussion led to a lively question-and-answer session with a highly engaged audience, and the conversation has continued within the firm.

¶57 Librarians considering *Balancing the Scales* would do well to request a screening. A screening could be adapted to work well in a law firm, court or public library, law school, or any other place lawyers are likely to gather. Options for events could include a screening and reception, a brown bag lunch, a CLE program, or a conference session.

Schwartz, Michael Hunter, Sophie M. Sparrow, and Gerald F. Hess. *Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam, Second Edition*. Durham, N.C.: Carolina Academic Press, 2017. 323p. \$44.

*Reviewed by Savanna L. Nolan**

¶58 When viewed in broad strokes, the core idea of the second edition of *Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam* is not terribly complex. By this point, many academics are aware of the basics of the general assessment cycle or perhaps even its more detailed cousin, the Six Sigma DMAIC (Define, Measure, Analyze, Improve, and Control) process. Michael Hunter Schwartz, Sophie M. Sparrow, and Gerald F. Hess have adapted this idea

* © Savanna L. Nolan, 2018. Reference Librarian, Georgetown University Law Library, Washington, D.C.

into the Recursive Course Design Process, a seven-step cycle consisting of setting course goals, assessing the incoming learners, planning the assessment, selecting text(s), designing the course, implementing the design, and evaluating the design. The true benefit of this quick-reading manual, however, is its methodical attention to details and how they relate back to the broad strokes. The plan-do-assess-repeat nature of the Recursive Course Design Process is the core tenet of the book on both a macro and micro level, and the micro level is where the book shines.

¶59 In the preface, the authors indicate they designed the book's chapters to be read singly or in order, largely depending on the reader's level of experience or reason for referring to the book. After the first two chapters, which outline different pedagogical theories and student opinions respectively, the outline of the book follows the Recursive Course Design Process. Chapters 3 and 4 are on class design (planning), chapters 5 through 8 are about the mechanics of teaching (doing), and chapter 9 covers assessment, both for the students and for the effectiveness of the course as a whole. Finally, chapters 10 and 11 focus on ways to address any potential problems before repeating the cycle again.

¶60 Chapter 6 is the linchpin of the book and should not be missed. The authors outline a complete walk-through of a live class, breaking it down into five sections: (1) preparation and attitude, (2) the first five minutes of class, (3) the body of the class, (4) the last five minutes of class, and (5) "ongoing practice, reflection, and evaluation" (p.120). The in-depth discussion of each of these steps shows the practical application of the same type of assessment model as the Recursive Course Design Process, but applied at the scale of a seventy-five-minute class period instead of over the course of semesters. Just like professional golfers or baseball players who study video replay of their swings, this close attention to small adjustments can lead to significant changes in outcomes, and this chapter serves as a reminder of both how minute those decisions can be and how easily they can be overlooked.

¶61 One weakness of the book is its lack of relevant citations. In general, I have no issue with deferring to the authors' expertise and synthesis of legal education scholarship. Among many other pieces of scholarship on teaching the law—many of which are listed at the end of the book—this team also authored *What the Best Law Teachers Do*.¹² Schwartz and Hess are also spearheading Carolina Academic Press's "Context and Practice" casebook series, which sets out to incorporate feedback from the Carnegie Report.¹³ However, the choice to leave out citations stands out in certain places. As just one of a handful of examples, in chapter 5 the authors mention a "series of five studies on law student reading" that finds successful students are more active and engaged readers (p.93). Yet there is no citation to these studies, leaving the curious reader to research it on his or her own. I understand the authors' choice to focus on a more streamlined, manual-type style, and I would not argue in favor of a dense, pedagogical treatise. Still, I found these few instances distracting.

¶62 In contrast, the book's internal cross-referencing, appendixes, and summarizations of material at the end of each chapter are excellent. More experienced teachers or repeat readers could easily refresh their memories with the summaries

12. MICHAEL HUNTER SCHWARTZ, GERALD F. HESS & SOPHIE M. SPARROW, *WHAT THE BEST LAW TEACHERS DO* (2013).

13. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

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

¶63 *Teaching Law by Design* is an excellent introduction for newer law school professors, and with the substantial summarization, cross-referencing, and appendixes, it serves as a good refresher to more experienced teachers as well. I personally plan to review the book again before teaching any legal research classes. I think that it would make a wonderful addition to any faculty support collection.

Wagstaffe, James W. *The Wagstaffe Group Practice Guide: Federal Civil Procedure Before Trial*. Miamisburg, Ohio: LexisNexis Matthew Bender, 2017.

*Reviewed by Sarah Reneker Andeen**

¶64 This review covers the version of *The Wagstaffe Group Practice Guide: Federal Civil Procedure Before Trial* that is available on Lexis Advance. Written by James Wagstaffe, a leading author in federal civil procedure, this publication is an excellent starting point. The material is available in several formats, including a three-volume print set, e-book, and Lexis Advance. The Lexis Advance version includes embedded videos.

¶65 *The Wagstaffe Group Practice Guide* is broken down into eleven units covering subjects such as “Federal Litigation Systems and Milestones,” “Attacking the Pleadings,” “Discovery,” and “Ending the Case Without Trial.” The online version also includes a brief guide at the beginning outlining how to use the publication and how to leverage the other online tools available in Lexis Advance. While the introduction is rudimentary, it should be helpful for beginning practitioners who are not as familiar with legal research tools.

¶66 Each unit contains multiple chapters, and each chapter walks the practitioner through a narrow topic. For example, the first unit covers federal litigation systems, with chapter 1 of that unit covering the federal court system. Other chapters include “State Versus Federal Procedures,” “State Law in Federal Court,” and “Litigation Milestone Checklists.” This structure works well, allowing the user to progress from a wide overview of a topic into practical guidance on how to use the information. In chapter 3 the reader gets an overview of the *Erie* doctrine, why it is important, when it is likely to be encountered, and strategies on how to handle “substantive issues governed by state law in federal court,” as a section in this unit describes it.

¶67 Several videos accompany the text, and these videos do a nice job using nontechnical language and broad examples to clarify the legal points. Some might find the videos a little hokey, but they really do get the job done. For example, to explain procedural rules, Wagstaffe explains how people behave in an elevator. Sounds a bit odd when thinking about whether a case should be tried in state versus federal court, but it works.

* © Sarah Reneker Andeen, 2018. Director of Knowledge and Research Services, Chapman and Cutler LLP, Chicago, Illinois.

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

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

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

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

My Year of Citation Studies, Part 1*

Mary Whisner**

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

Introduction

¶1 Citation runs through the law and librarianship. Much of reference and research is helping people find sources to cite. We also help our professors find sources that cite *them*.¹ And we help people with citation format.² Scholars have studied citation patterns from many angles,³ sometimes using citation counts to form judgments about the quality or influence of journals,⁴ articles,⁵ authors,⁶ or faculties.⁷

* © Mary Whisner, 2018. I am grateful to Ashley Arrington, Gerard Fowkes III, and Matthew Neely for slogging through footnote-heavy articles to extract citations. My thanks also to Todd Wildermuth for asking questions that inspired some of this work. For commenting on a draft, I thank Crystal Alberthal, Anna Endter, Maya Swanes, and Nancy Unger.

** Reference Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law, Seattle, Washington.

1. For tips, see Mary Whisner, *Tracking Citations to Articles*, GALLAGHER LAW LIBR., UNIV. OF WASHINGTON SCH. OF LAW, <http://guides.lib.uw.edu/law/citestoarticles> (last updated July 5, 2017).

2. See, e.g., Mary Whisner, *The Dreaded Bluebook*, 100 LAW LIBR. J. 393, 2008 LAW LIBR. J. 20.

3. In 1999, the West Group sponsored “Interpreting Legal Citations,” a symposium held at Northwestern University. The papers, published in the *Journal of Legal Studies*, 29 J. LEGAL STUD. 317–584 (2000), look at a variety of questions using different methods. (I have that issue of the *Journal of Legal Studies* in print, so I see the introduction and eleven papers as a collection. Readers today would likely download one or more of the articles from this issue along with various articles from other journals, and so would not have that perception.)

4. The impressive online tool that makes it easy to compare citations to law journals is WASHINGTON & LEE UNIV. SCH. OF LAW *Law Journals*, <https://managementtools4.wlu.edu/LawJournals/> (last visited Mar. 1, 2018). See Kincaid C. Brown, *How Many Copies Are Enough? Using Citation Studies to Limit Journal Holdings*, 94 LAW LIBR. J. 301 app. A, 2002 LAW LIBR. J. 20 app. A (compiling rankings from fourteen studies); *id.* at 303 n.6 (listing studies for specialized law journals).

5. E.g., Fred R. Shapiro & Michelle Pearse, *The Most-Cited Law Review Articles of All Time*, 110 MICH. L. REV. 1483 (2012).

6. See, e.g., Fred R. Shapiro, *The Most-Cited Legal Scholars*, 29 J. LEGAL STUD. 409 (2000); see also Robert Steinbuch, *On the Leiter Side: Developing a Universal Assessment Tool for Measuring Scholarly Output by Law Professors and Ranking Law Schools*, 45 LOY. L.A. L. REV. 87 (2011). A scholar’s presence on Shapiro’s all-star list often gets mentioned in tributes. E.g., Katharine T. Bartlett, Foreword, *A Tribute to William W. Van Alstyne*, 54 DUKE L.J. 1355, 1356 (2005); Cynthia Lee, *Honoring Angela Harris: A Review of “Gender, Violence, Race, and Criminal Justice,”* 47 U.C. DAVIS L. REV. 1037, 1037 (2014); Thomas Regnier, *The Legacy of John Hart Ely: A Giant in the Classroom as Well*, 58 U. MIAMI L. REV. 981, 981 (2004).

7. See, e.g., Benjamin H. Barton, *Is There a Correlation Between Law Professor Publication*

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

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

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

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

Counts, Law Review Citation Counts, and Teaching Evaluations? An Empirical Study, 5 J. EMPIRICAL LEGAL STUD. 619 (2008); Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 J. LEGAL STUD. 451 (2000); Gregory Sisk et al., *Scholarly Impact of Law School Faculties in 2012: Applying Leiter Scores to the Top Third*, 9 U. ST. THOMAS L.J. 838, 851–53 (2011); Gregory Sisk et al., *Scholarly Impact of Law School Faculties in 2015: Updating the Leiter Score Ranking for the Top Third*, 12 U. ST. THOMAS L.J. 100, 109–16 (2015) [hereinafter Sisk et al., *Scholarly Impact 2015*]; Steinbuch, *supra* note 6; see also Bernard S. Black & Paul L. Caron, *Ranking Law Schools: Using SSRN to Measure Scholarly Performance*, 81 IND. L.J. 83 (2006) (adding SSRN's data about papers posted and number of downloads to the mix). Patrick Woods observes that a focus on these metrics can skew authors' choice of topic toward the academic and away from the practical. Patrick Arthur Woods, *Stop Counting (or at Least Count Better)*, JOTWELL, <https://jotwell.com/wp-content/uploads/2014/07/Woods-Stop-Counting.pdf> (2014) [<https://perma.cc/CF2J-L8HT>]. Woods presented the paper in November 2017 at a Jotwell symposium, "Legal Scholarship We Like, and Why It Matters" (program available at <https://jotwell.com/legal-scholarship-we-like-and-why-it-matters-program/> [<https://perma.cc/V79F-NB5L>]).

8. People who create citation-based studies are aware of this. They don't claim that citation count is a perfect measure of scholarly quality, just that it is an objective measure that can be used. See, e.g., Sisk et al., *Scholarly Impact 2015*, *supra* note 7, at 116 (making the point that to be useful, citation counts only need to correlate with quality, not precisely parallel it).

coded the articles by subject, position in the issue, and other characteristics. They examined citation counts (from *Social Science Citation Index*) for the articles, using regressions to control for years after publication, journal, and subject. The result⁹ is impressive and interesting. And, because of its scope and sophisticated statistical analysis, it's completely out of my league.

¶6 Sometimes, though, I can poke around in a small sample and observe something interesting—and sometimes even useful. Last June, the faculty member teaching a writing seminar for our school's environmental law journal¹⁰ asked me to find the most-cited student works on environmental law. He thought that this would be a good step in discussing with the student what makes a successful note or comment. I did some digging and gave him lists of the top pieces since 2011 and the top pieces of all time. He found it useful, and one of the students in the seminar has twice told me that he thinks it's really valuable. I will talk more about my methodology later, but for now I'll just assure you that there were no chi-squares, coefficients, or standardized residuals to be found. I later did a similar project when he taught a seminar for a different specialty journal.

The Year of Citation Watching

¶7 A thorough, broad (and yet detail-rich) citation study is more than I can tackle now, even if I knew much more about quantitative research methods than I do. But I think the "Practicing Reference" is a good forum for sharing some small-scale bibliometric explorations. This installment is a start. There will be more, though: I have enough questions—and even tentative findings—to keep going. And so I declare 2018 to be a year of citation watching, at least for purposes of this column.¹¹

The Requested Note and Comment Studies

¶8 Working on the professor's request for the most-cited environmental law student works, I encountered several methodological challenges. First, notes and comments don't always proclaim themselves in their titles. I like the ability in HeinOnline to sort by number of times cited by articles, but I found that HeinOnline's labels—[article], [note], [comment]—were not reliable. Sometimes things labeled notes or comments were commentary by law professors, speeches by judges, or other works that definitely were not by students. The author or journal may even label a piece "comment," even though it is not a traditional student comment.¹² On the other hand, some works HeinOnline labeled as articles were by students (skimming the first couple of pages led to the phrase "this Note" or "this Comment").¹³ Second, I knew

9. Ian Ayres & Fredrick E. Vars, *Determinants of Citations to Articles in Elite Law Reviews*, 29 J. LEGAL STUD. 427 (2000).

10. *The Washington Journal of Environmental Law & Policy*.

11. The "Practicing Reference" column first appeared in volume 91, number 2, so this is the column's twentieth year. Speaking of counting.

12. E.g., Guido Calabresi, *Transaction Costs, Resource Allocation and Liability Rules—A Comment*, 11 J.L. & ECON. 67 (1968).

13. When I came across these mislabeled works, I used HeinOnline's feedback form to tell them about what I saw as an error. Hein has always been responsive to feedback, and I had an e-mail correspondence and an in-person chat with Shane Marmion, now president of William S. Hein & Co., Inc.

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

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

¶10 I did not think to use HeinOnline’s Subject field. Using the subject Environment/Conservation Law (in addition to searching for a common word, like “law,” in the text) would have obviated the need to guess at “environmental-ish” words in the title. But this tool is also both underinclusive and overinclusive. For instance, it misses the most-cited note I found last year.¹⁴ And yet it includes an article about client-centered counseling¹⁵ whose text happens to use the word “environment” a lot.¹⁶ If I were to do this search again, I might do two searches: words in the title *and* subject.

¶11 I gave the professor a list of the twenty-two most-cited student works. I was frank about why I chose twenty-two: I stopped adding to the table when my shift ended. I made a second list with the eleven student works published since 2011 that had been cited at least four times. In the interest of space, just the top five from each list are in tables 1 and 2 here. I note the year of publication to make it easy to see that some of the most-cited works have been around for decades. It’s harder to pile up citations in just a few years.¹⁷ Four out of five of the most-cited works since 2011 were published in 2011. Surely in a few years some of the pieces from more recent years will catch up.

¶12 The same instructor was recruited to teach the writing seminar for the school’s online-only technology journal¹⁸ and asked me for a similar list. This time, I looked for notes and comments on technology and the arts from any journal.¹⁹ I limited the search to works HeinOnline had tagged as notes or comments. I knew that the tags were often inaccurate, but this time I chose not to invest the time it would take to skim author affiliations.

¶13 I also created a separate list for student pieces from online technology journals. I started with a list of online-only law journals and skimmed for relevant topics. That gave me seventeen journals, fifteen of which were available on HeinOn-

14. Rachel D. Godsil, Note, *Remediating Environmental Racism*, 90 MICH. L. REV. 394 (1991). It also misses number two in the list: Palma Joy Strand, Note, *The Applicability of Traditional Tort Analysis to Environmental Risks: The Example of Toxic Waste Pollution Victim Compensation*, 35 STAN. L. REV. 575 (1983).

15. Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997).

16. *E.g.*, *id.* at 349 (“law school environment”); *id.* at 352 (“legal services environment”); *id.* at 358 (“predominantly black environment”); *id.* at 366 (“cultural environment”).

17. See Ayres & Vars, *supra* note 9, at 430 (“The number of citations an article receives is obviously related to how many chances it has had to be cited.”). Ayres and Vars used a regression analysis to make up for this bias in older articles on citation studies. I just invite you to eyeball the lists.

18. *The Washington Journal of Law, Technology & the Arts*.

19. My search was **art OR music OR tech* OR computer* OR digital* OR cyber* OR patent* OR robot* OR drone* OR automation** in the title.

Table 1

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

Year	Student Work	Times Cited in Journals	Times Cited in Cases
1991	Rachel D. Godsil, Note, <i>Remedying Environmental Racism</i> , 90 MICH. L. REV. 394 (1991)	157	2
1986	E. Joshua Rosenkranz, Note, <i>The Pollution Exclusion Clause Through the Looking Glass</i> , 74 GEO. L.J. 1237 (1986)	97	56
1983	Palma Joy Strand, Note, <i>The Inapplicability of Traditional Tort Analysis to Environmental Risks: The Example of Toxic Waste Pollution Victim Compensation</i> , 35 STAN. L. REV. 575 (1983)	129	6
1970	J.Y.P., Jr., Note, <i>Toward a Constitutionally Protected Environment</i> , 56 VA. L. REV. 458 (1970)	90	0
1981	Note, <i>Tort Actions for Cancer: Deterrence, Compensation, and Environmental Carcinogenesis</i> , 90 YALE L.J. 840 (1981)	78	2

Table 2

Most-Cited Student Works in Environmental Law Since 2011 (June 2017)

Year	Student Work	Times Cited in Journals	Times Cited in Cases
2011	Melanie J. Wender, Comment, <i>Goodbye Family Farms and Hello Agribusiness: The Story of How Agricultural Policy Is Destroying the Family Farm and the Environment</i> , 22 VILL. ENVTL. L.J. 141 (2011)	15	0
2011	Brian J. Smith, Comment, <i>Facing the Environment?: An Examination of the Effects and Regulation of Hydraulic Fracturing</i> , 18 TEX. WESLEYAN L. REV. 129 (2011)	12	0
2013	Jason T. Gerken, Comment, <i>What the Frack Shale We Do? A Proposed Environmental Regulatory Scheme for Hydraulic Fracturing</i> , 41 CAP. U. L. REV. 81 (2013)	9	0
2011	Emily Sangi, Note, <i>The Gap-Filling Role of Nuisance in Interstate Air Pollution</i> , 38 ECOLOGY L.Q. 479 (2011)	8	0
2011	Beren Argetsinger, Comment, <i>The Marcellus Shale: Bridge to a Clean Energy Future or Bridge to Nowhere? Environmental, Energy and Climate Policy Considerations for Shale Gas Development in New York State</i> , 29 PACE ENVTL. L. REV. 321 (2011)	7	0

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

20. The *N.Y.U. Journal of Intellectual Property & Entertainment Law* is now available. The *Syracuse Journal of Science & Technology Law* is not.

21. I did not check to see whether a given journal was online-only at the time of a piece’s publication.

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

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

- John Miller, “Beyond Biotechnology: FDA Regulation of Nanomedicine,” *The Columbia Science and Technology Review*, 2003, Vol. IV, p.24.²²
- John Miller, *Beyond Biotechnology: FDA Regulation of Nanomedicine*, 4 COLUM. SCI. & TECH. L. REV. 5 (2002).²³
- John Miller, *Beyond Biotechnology: FDA Regulation of Nanomedicine*, 4 COLUM. SCI. & TECH. L. REV. 1-2 (2002).²⁴
- J. Miller, “Beyond Biotechnology: FDA Regulation of Nanomedicine,” *Columbia Science and Technology Law Review* 4 (2003): 1-35.²⁵
- John Miller, *Beyond Biotechnology: FDA Regulation of Nanomedicine*, 4 Colum. Sci. & Tech. L. Rev. 2, 2, 5, 16, (2002/2003), available at <http://www.stlr.org/cite.cgi?volume=4&article=5>.²⁶
- J. Miller, “Student Notes, Beyond Biotechnology: FDA Regulation of Nanomedicine,” *Columbia Science and Technology Law Review* 4, no. 5 (April 23, 2003), also available at <http://www.stlr.org/cite.cgi?volume=4&article=5> (last visited August 28, 2006).²⁷
- John Miller, *Note, Beyond Biotechnology: FDA Regulation of Nanomedicine*, 4 COLUM. SCI. & TECH. L. REV. (2003), available at <http://www.stlr.org/html/volume4/miller.pdf> (last visited November 17, 2005).²⁸

22. Abu Bakar Munir & Siti Hajar Mohd, *Nanotechnology in Healthcare: Are Existing Laws Adequate?*, 14 EUR. J. HEALTH L. 261, 270 n.49 (2007).

23. Giorgia Guerra, *A Model for Regulation of Medical Nanobiotechnology: The European Status Quo*, 3 NANOTECH. L. & BUS. 84, 87 n.16 (2006); Diana M. Bowman & Graeme A. Hodge, *A Small Matter of Regulation: An International Review of Nanotechnology Regulation*, 8 COLUM. SCI. & TECH. L. REV. 1, 9 (2007). (By 2007, the journal was consecutively paginated.)

24. Susan Bartlett Foote & Robert J. Berlin, *Can Regulation Be as Innovative as Science and Technology? The FDA’s Regulation of Combination Products*, 6 MINN. J.L. SCI. & TECH. 619, 622 n.10 (2005).

25. Linda F. Hogle, *Concepts of Risk in Nanomedicine Research*, 40 J.L. MED. & ETHICS 809, 822 n.47 (2012).

26. Shalyn Morrison, Comment, *The Unmanned Voyage: An Examination of Nanorobotic Liability*, 18 ALB. L.J. SCI. & TECH. 229, 231 n.10 (2008).

27. Ahson Wardak & Michael E. Gorman, *Suing Trading Zones and Life Cycle Analysis to Understand Nanotechnology Regulation*, 34 J.L. MED. & ETHICS 695, 703 n.72 (2006).

28. Lisa C. Ikemoto, *Race to Health: Racialized Discourses in a Transhuman World*, 9 DEPAUL J. HEALTH CARE L. 1101, 1113 n.59 (2005).

Table 3**Most-Cited Student Works on Technology & Art Law (Sept. 2017)**

Year	Student Work	Times Cited in Journals
2006	James F. McDonough III, Comment, <i>The Myth of the Patent Troll: An Alternative View of the Function of Patent Dealers in an Idea Economy</i> , 56 EMORY L.J. 189 (2006)	124
1990	Steven R. Englund, Note, <i>Idea, Process, or Protected Expression: Determining the Scope of Copyright</i> , 88 MICH. L. REV. 866 (1990)	102
1983	Note, <i>Copyright Protection of Computer Program Object Code</i> , 96 HARV. L. REV. 1723 (1983)	102
1984	Howard Root, Note, <i>Copyright Infringement of Computer Programs: A Modification of the Substantial Similarity Test</i> , 68 MINN. L. REV. 1264 (1984)	93
2005	Note, <i>The Disclosure Function of the Patent System (Or Lack Thereof)</i> , 118 HARV. L. REV. 2007 (2005)	92

Table 4**Most-Cited Student Works in E-Only Technology & Entertainment Law Journals (Sept. 2017) (Journals might have been print at the time of publication.)**

Year	Student Work	Times Cited in Journals
2007	Laura C. Marshall, Note, <i>Catwalk Copycats: Why Congress Should Adopt a Modified Version of the Design Piracy Prohibition Act</i> , 14 J. INTELL. PROP. L. 305 (2007)	35
2002–2003	Richard Seth Gipstein, <i>The Isolation and Purification Exception to the General Unpatentability of Products of Nature</i> , 4 COLUM. SCI. & TECH. L. REV. 1 (2002–2003)	34*
2002–2003	Jeremy Friedman, <i>Prying Eyes in the Sky: Visual Aerial Surveillance of Private Residences as a Tort</i> , 4 COLUM. SCI. & TECH. L. REV. 1 (2002–2003)	34*
2002–2003	John Miller, <i>Beyond Biotechnology: FDA Regulation of Nonmedicine</i> , 4 COLUM. SCI. & TECH. L. REV. 1 (2002–2003)	34*
1996	Jo-Ann M. Adams, Comment, <i>Controlling Cyberspace: Applying the Computer Fraud and Abuse Act to the Internet</i> , 12 SANTA CLARA COMPUTER & HIGH TECH. L.J. 403 (1996)	34
2007	Kevin McLaughlin, Note, <i>The Fourth Amendment and Cell Phone Location Tracking: Where Are We?</i> , 29 HASTINGS COMM. & ENT. L.J. 421 (2007)	32
1996	Adam P. Segal, <i>Dissemination of Digitized Music on the Internet: A Challenge to the Copyright Act</i> , 12 SANTA CLARA COMPUTER & HIGH TECH. L.J. 97 (1996)	31

* See ¶ 14 *supra*.

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

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

Table 5

Citation Counts for Student Works in 4 COLUM. SCI. & TECH. L. REV.

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

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

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

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

Variant Citation Form Examples

- R. Godsil, “Remediating Environmental Racism” (1991) 90 Michigan L. Rev. 394.²⁹
- Rachel D. Godsil, “Remediating Environmental Racism” (1991) 90:2 Mich L Rev 394.³⁰
- Godsil, Rachel. 1991. “Remediating Environmental Racism.” *Michigan Law Review* 90:394-425.³¹

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

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

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

- Godsil, Rachel D. 1991-1992. Remediating Environmental Racism. *Michigan Law Review* 90 (2): 394-427.³²

Jumbled OCR Examples

- 90 MicH. L. R-v. 394³³
- 90 MICH. L. Rnv. 394,400³⁴

Typo in Citing Reference

- Rachel Godsil, Note, *Remediating Environmental Racism*, 90 Mich. L. Rev. 393 [wrong page]³⁵

¶20 I draw several lessons from this project. First, it is possible to use tools we have to develop lists of frequently cited works. Second, it's wise to look beneath the surface to check the results, as when I noticed that some articles were tagged as notes or comments and vice versa. Third, researchers should be aware of ways that algorithms can provide results that are inaccurate. Being aware of the inaccuracies should not prevent us from using the tools we have: they are great helps, even if with their inaccuracies. And, for most projects, we shouldn't feel compelled to do multiple searches to scour away the inaccuracies. Precision has costs. Double-checking each citation in the lists I gave the professor would have taken ages, diverting me from my other work (not to mention making me either nuts or resentful). And the product would not have been more useful to the professor and his students.

What Do Authors Cite?

¶21 I am curious about what authors cite. What is the balance of law review articles, notes and comments, books, cases, statutes? To explore this, I thought I'd take a small sample of works—say, five articles and five student pieces—and look. I created two lists, the twenty most-cited articles (table 6) and the twenty most-cited

32. Carmela Murdocca, "There Is Something in That Water": Race, Nationalism, and Legal Violence, 35 LAW & SOC. INQUIRY 369, 399 (2010).

33. I don't know how to cite the OCR for Andrew J. Yamamoto, *The Fight for Environmental Justice: New Skirmishes in the Battle Against Injustice*, 14 CHICANA-LATINO L. REV. 30, 32 n.14 (1994). Here's a snip (Nov. 12, 2017):

Turn to page

Risks to Minorities, WASH. PosT, Mar. 9, 1992, at A15. 14. See, e.g., Rachel D. Godsil, Note, **Remediating... Environmental Racism**, 90 MicH. L. R-v. 394, 399 (1991) (discussing various explanations for the dispropor

34. Adam Swartz, *Environment Justice: A Survey of the Ailments of Environmental Racism*, 2 HOW. SCROLL: SOC. JUST. REV. 35, 57 n.46 (1993-1994) (snip from Nov. 12, 2017):

Turn to page

Color, in VoicEs, supra note 1, at 179-94. 44 Id. 45 Id. 46 Rachel Godsil, **Remediating... Environmental Racism**, 90 MICH. L. Rnv. 394,400 (1991). 47 Memorandum from Cerrell Associates on Political

35. Luke W. Cole, *Environmental Justice Litigation: Another Stone in David's Sling*, 21 FORDHAM URB. L.J. 523, 538 n.70 (1994).

Table 6
Twenty Most Cited Articles from 2017

Rank	Article Identifier	Citation	Cited by Articles (HeinOnline)	Other Counts
1	1	Jody Freeman & Jim Rossi, <i>Agency Coordination in Shared Regulatory Space</i> , 125 HARV. L. REV. 1131 (2012)	160	WS: 100 SH: 168 KC: 176
2	2	Jerry Kang et al., <i>Implicit Bias in the Courtroom</i> , 59 UCLA L. REV. 1124 (2012)	146	WS: 62 SH: 153 KC: 159
3	3	Curtis A. Bradley & Trevor W. Morrison, <i>Historical Gloss and the Separation of Powers</i> , 126 HARV L. REV. 411 (2012)	144	WS: 82 SH: 142 KC: 159
4	4	Myriam Gilles & Gary Friedman, <i>After Class: Aggregate Litigation in the Wake of AT&T Mobility v. Concepcion</i> , 79 U. CHI. L. REV. 623 (2012)	123	WS: 43 SH: 132 KC: 138
5 (tie)	5	C. Steven Bradford, <i>Crowdfunding and the Federal Securities Laws</i> , 2012 COLUM. BUS. L. REV. 1	121	WS: n/a SH: 110 KC: 134
5 (tie)	6	Colleen V. Chien & Mark A. Lemley, <i>Patent Holdup, the ITC, and the Public Interest</i> , 98 CORNELL L. REV. 1 (2012)	121	WS: 37 SH: 75 KC: 90
7	7	Mark A. Lemley, <i>The Myth of the Sole Inventor</i> , 110 MICH. L. REV. 709 (2012)	113	WS: 48 SH: 112 KC: 121
8 (tie)	8	Alexandra Natapoff, <i>Misdemeanors</i> , 85 S. CAL. L. REV. 1313 (2012)	101	WS: 53 SH: 97 KC: 106
8 (tie)	9	Henry E. Smith, <i>Property as the Law of Things</i> , 125 HARV L. REV. 1691 (2012)	101	WS: 57 SH: 89 KC: 95
8 (tie)	10	Orrin S. Kerr, <i>The Mosaic Theory of the Fourth Amendment</i> , 111 MICH. L. REV. 311 (2012)	101	WS: 50 SH: 157 KC: 141
11	11	Rebecca Tushnet, <i>Worth a Thousand Words: The Images of Copyright</i> , 125 HARV. L. REV. 683 (2012)	93	WS: 30 SH: 85 KC: 97
12	12	Nathan S. Chapman & Michael W. McConnell, <i>Due Process as Separation of Powers</i> , 121 YALE L.J. 1672 (2012)	88	WS: 45 SH: 91 KC: 90
13 (tie)	13	Rainier Elias, <i>Identity, Law, and Essentialism: What's Love Got to Do with Same-Sex Marriage?</i> , 6 CRIT 1 (2012)	85	WS: n/a SH: n/a KC: 0
13 (tie)	14	John C. Coffee, Jr., <i>Political Economy of Dodd-Frank: Why Financial Reform Tends to Be Frustrated and Systemic Risk Perpetuated</i> , 97 CORNELL L. REV. 1019 (2012)	85	WS: 47 SH: 93 KC: 92

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

notes and comments from 2012, based on HeinOnline's ranking. Why 2012? I figured that five years was a good length of time to get cited³⁶ but wasn't so far back in time that I wouldn't see any citations to YouTube or Twitter.³⁷

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

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

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

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

38. Shepard's and KeyCite include some IRS materials in the Table of Authorities for law review articles. For example, the Shepard's and KeyCite tables of authorities (both accessed Nov. 13, 2017) for Note, *Taxing Private Equity Carried Interest Using an Incentive Stock Option Analogy*, 121 HARV. L. REV. 846 (2008), each list seven authorities: three Revenue Procedures, two Revenue Rulings, and two Notices. The Note has ninety-four footnotes and does not cite a single case. Now I'm curious about how many law review pieces cite no cases. Perhaps that's a rabbit hole to go down another time.

of Science enables one to generate a list of cited references in a work, but it doesn't include statutes or cases.

¶24 I decided to tackle the problem with brute force. I downloaded the top article in the list from Westlaw.³⁹ I love HeinOnline's PDFs, but I wanted a Word version. When I'm reading an article, I find it annoying that Westlaw puts all the footnotes at the end, but that positioning was perfect for this task because I could copy and paste just the footnotes into another document. From there, I could start creating a table of authorities by harvesting citations from the footnotes and sorting them into groups. I disregarded all the *id.* and *supra* references because I wanted only one citation for each source. I compared my harvest with the lists generated by Shepard's and Web of Science and decided it was worthwhile to use the labor-intensive but more thorough method.⁴⁰

¶25 I enlisted the help of three of our law librarianship students. They found that the project was as tedious as I'd said when I recruited them,⁴¹ but they hung in there and generated tables of authorities. An outlier within this small sample of articles was the one that weighed in at 150 pages with 722 footnotes.⁴² Harvesting the authorities from that giant was more grueling than either the intern or I expected.

¶26 It will take me some time to sort through the tables of authorities the interns created, but even a surface look is enough to notice quite a range in citation choices. For example, an article on implicit bias cites more than three times as many articles as does an article on a civil procedure topic, and more than half are from journals outside law.⁴³ This is not terribly surprising—you'd hope that people writing about a social science topic would use social science scholarship—but I think there's some value in being able to pin a number on it.

Shepard's does not appear to include administrative decisions in tables of authorities. For example, Michael D. Moberly, *Striking a Happy Medium: The Conversion of Unfair Labor Practice Strikes to Economic Strikes*, 22 BERKELEY J. EMP. & LAB. L. 131 (2001), cites many NLRB decisions, but they are not in the Table of Authorities (accessed Nov. 13, 2017). KeyCite does list the NLRB decisions in its Table of Authorities. The "Type" column labeled authorities either "Case" or "Administrative Decision & Guidance."

Another article, Pooja Shethji, Note, *Credit Checks Under Title VII: Learning from the Criminal Background Check Context*, 91 N.Y.U. L. REV. 989 (2016), cites three EEOC decisions, *id.* at 996 n.32, 998 n.46, 1005 n.78. One shows up in the Table of Authorities (accessed Nov. 13, 2017), but the reader can't tell it's an EEOC decision. The author's citation to "EEOC Decision No. 72-427, 4 Fair Empl. Prac. Cas. (BNA) 304, 1971 WL 3943," *id.* 989 n.46, appears in the Shepard's Table of Authorities under "Other Federal Decisions" as "4 Fair Empl. Prac. Cas. (BNA) 304." KeyCite's Table of Authorities (accessed Nov. 13, 2017) lists all three, with full citations.

39. Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 HARV. L. REV. 1131 (2012).

40. One oddity: I found two cited cases that Shepard's missed. Shepard's found one case that I missed. But, upon examination, it turned out that Shepard's listed a case, *San Luis Obispo Mothers for Peace v. Hendrie*, 11 ENVTL. L. REP. 20455 (D.D.C. 1980), that the article hadn't cited at all.

41. It's a wonderful thing when I send out an e-mail message asking for one or two interns to work on a tedious project and get four volunteers!

42. C. Steven Bradford, *Crowdfunding and the Federal Securities Laws*, 2012 COLUM. BUS. L. REV. 1.

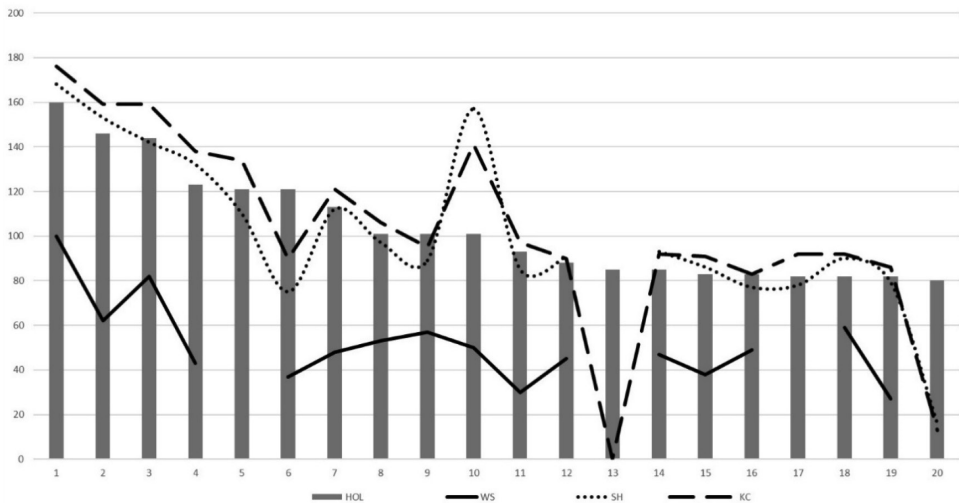
43. Compare Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012) (citing 132 articles, 69 from outside law), with Myriam Gilles & Gary Friedman, *After Class: Aggregate Litigation in the Wake of AT&T Mobility v. Concepcion*, 79 U. CHI. L. REV. 623 (2012) (citing 37 articles, 2 from outside law).

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

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

Figure 1

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



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

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

¶29 Why would the systems vary so much? First, Web of Science just doesn't include as many law journals as the other three systems, so it misses citations. It has no entries at all for the articles that were published in the *Columbia Business Law Review*, *The Crit: A Critical Studies Journal* (University of Idaho College of Law), the *Oregon Law Review*, or the *Stanford Technology Law Review*. KeyCite and Shepard's often show more citing references than HeinOnline because they include treatises and encyclopedias. They both fell short on *The Crit*, though: KeyCite had an entry that showed zero citing references, while Shepard's had no entry at all.

Running Out of Steam, Running Out of Time

¶30 Obviously there is more to be explored, even in the data I've already assembled. But I am running out of steam and I really ought to send along this piece to my long-suffering editor. So I will recap by saying that I've demonstrated some ways to gather interesting material from HeinOnline and other tools, even without sophisticated data analysis tools. I'll note that it's useful to be aware of the limits of the tools (e.g., the ways that HeinOnline's algorithm can miss citations or that Web of Science does not include all law journals). And I'll close for now with the promise that I will write more later. This is just the first issue of 2018.

