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Deconstructing the Law Library: The Wisdom of Meredith Willson

Robert C. Berring†

"He left River City the library building, 
But he left all the books to her!"¹

The topic of this symposium is "Law, Information and Freedom of Expression." This Article will examine the first two of these topics but will only touch upon the third in the sense that I will speak without fear. Given the fact that the addition of the one millionth volume to the collection of the University of Minnesota Law Library is the catalyst for this proceeding, an examination of the soul of the law library is appropriate.

The law library is a mom and apple pie type of institution. Mom and apple pie institutions are those that are much honored and praised but largely taken for granted. As a testament to this status, libraries often are lauded but are seldom studied. Neither Lawrence Friedman's A History of American Law,² the definitive study of the subject, nor Robert Stevens's Law School,³ the seminal study of legal education, devotes space to law libraries. In neither volume is "library" even an entry in the index. This is not the place to recount the long battles for funding and independence that mark the history of law libraries. Those battles will continue as long as law libraries exist. Instead of focusing on immediate problems of funding, however,

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2. See generally LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW (2d ed. 1985).

the goal of this Article is to determine what a law library is in 2005.

Libraries, books, and librarians are intertwined in our consciousness. The word library itself is derived from libro, the Latin word for book. The *Oxford English Dictionary* defines "library" first as "a place set apart to contain books for reading, study or reference" and also as a "building, room or set of rooms containing a collection of books for the use of the public or some particular portion of it." The idea of a library is inextricably linked with books and a physical place. The word also carries with it a heavy load of emotional and cultural baggage.

One must add to this fact the symbolic value of the book in our culture to realize how powerful this blend can be. Considerable scholarship has been devoted to the role of the book in modern culture. Much of it explores the transition from the old world, in which the very structure of life was shaped by the culture of the book, to a new milieu in which digital information presented on a screen defines reality. The transition is a difficult one that involves both generational and deeply important cognitive issues. For many who grew up in the old mind-set, the book stands for the life of the mind and for high culture. For those who are immersed in the digital world, the book is a remnant of a universe that is fast receding and which is clung to by those who cannot see past their own roots. The stridency of the positions set out by commentators testifies to the depth of the divide. It is impossible to truly understand such profound

4. 8 *Oxford English Dictionary* 888–89 (2d ed. 1989). Definitions are offered that include other three dimensional objects, such as the charmingly styled "gramophone records," and even one that discusses "libraries" of files in a computer system, but the point is valid. One might object that the *Oxford English Dictionary* lags behind popular culture, but it is the deeply rooted conception that we seek.

5. Others have explored the more abstract meanings of the library. See UMBERTO ECO, *Between La Mancha and Babel*, in ON LITERATURE, at 104, 104–17 (Martin McGlaughlin trans., Harcourt 2004). Eco discusses different conceptualizations of libraries from Cervantes to Borges. "There are many stories of libraries." *Id.* at 105.


change while it is occurring, but the fact that we are in the midst of enormous change is clear enough.

Other than serving as a convenient battleground for the disputes between lovers of the book and adherents of the computer chip, libraries have played a small role in this discussion about transitioning to the new age. Exploring the essential elements of libraries beyond their accepted nostrums is a necessary endeavor. Carefully sorting through the question of whether libraries will transform into something greater or will wither into vestigial social institutions can add to our understanding of the forces at work. We will seek to understand the soul of the law library.

The profession of librarianship is named after the building in which librarians work, which is, of course, named after the aforesaid book. Separating the role of librarians from the powerful tropes of the library and the book is no easy matter. The profession of librarianship has consciously devoted itself to guarding, preserving, and distributing information. As such, librarians have become inextricably bound to the library and the book. The profession has fought a vigorous battle to change its public image, but it has been a hard slog to replace the image of the librarian ensconced in an idealized library surrounded by shelves of books with anything more dynamic. Within the profession, there is a raging but unsolved debate over changing the name from librarian to some newer term that would be both more accurately descriptive and more appealing.8

The quotation at the outset of this Article captures the point. In the classic Broadway musical The Music Man, author Meredith Willson creates a story of a small Iowa town.9 While it is a love story and fable about life in the Midwest as set out in River City, one foundation of the story is based upon the

End of Books, LIBR. J., Feb. 15, 1992, at 140 (firing a futurologist’s shot across the bow of those who love the book); Sven Birkerts, The Gutenberg Elegies: The Fate of Reading in an Electronic Age 118 (1994) (presenting a lyrical defense of the book and reading set against the reality that “[t]he printed word is part of a vestigial order that we are moving away from—by choice and by societal compulsion”). In the end Birkerts worries for our “soul.” Id. at 210.

8. In June 2003, the Special Libraries Association voted down a proposal to change its name to “Information Professionals International” or SLA (initials only). They voted to retain the name Special Libraries Association. There is a lot of information about this proposal available at http://www.sla.org/division/dsoc/Bulletins/Winter2003/branding.htm. The Web site provides insight into the problem of reconstituting professional identity.

town's library dilemma. A wealthy old man who was an intellectual, and who thus was held in disregard by the small-minded residents of River City, loved the library and the dedication of its librarian. He wanted to leave a library to the town, but he foresaw problems with the small-minded townspeople. In his will he was wise enough to leave the library structure to the city but to leave all of the books therein to the librarian. This arrangement guaranteed her a job: she was there to help the townspeople despite themselves. In one of the show's songs we learn that the town does not really approve of the librarian, an unmarried woman who is entranced with the classics. The townspeople see these books as dangerous and scandalizing—"Balzac" is spit out as a disgusting example in the song—but they want the library. Gossip abounds. When a con man comes to town, he learns from the town gossips the much distorted story of the scheming librarian who gained control of the books by nefarious means from a wealthy old man. Hearing the librarian portrayed as a cold-hearted gold digger, the con man thinks that he has found a kindred spirit. In the spirit of the Broadway musical, of course, she only cares about the life of the mind, and is selflessly devoted to the library. Intricacies of plot aside, the song explicates the very real distinction between libraries as buildings and the collections within them. Add in the crusading librarian, and one has it all.

How then to disentangle the notions of the law library as physical structure, the information inside the structure, and the function of the librarian? This may be a mission impossible.

10. See id.
11. Id.
12. Id.
13. Id.
14. See id.
16. Id.
17. WILLSON, supra note 1.
18. Id.
19. See id. At the symposium where this Article was presented, Professor Frederick Schauer observed that there is nothing worth knowing about life that cannot be learned from a close reading of the Broadway musical The Music Man and the Hollywood movie The Hustler. I concur.
20. Fairness demands that another song from The Music Man, Marian the Librarian, in WILLSON, supra note 1, be noted. The phrase "Marian the Librarian" has entered into popular consciousness, though the image of Shirley Jones in that role has not.
Yet, the recent death of the great French theorist of the deconstruction of meaning, Jacques Derrida, tempts me to say that the time has come to deconstruct the law library. If the process grows muddled, Derrida's words should comfort us: "The fact that there is no single meaning does not mean that there is no meaning." Even muddying the waters can be useful if it dispels entrenched mistakes.

To make the enterprise at all possible I will keep our focus on the law library. This will introduce its own complications. Law libraries carry their own problems, yet they are part of the great societal image of the "library." Further, we will have to examine the transition from paper to digital formats in the world of legal information. Indeed, the first-level problem is to disentangle the notion of a library as nothing more than a building from the reality of what actual libraries entail. The second-level problem will concern the notion of libraries as consisting of nothing more than the information that they contain.

Part I of this Article deconstructs the general proposition that libraries, and specifically law libraries, are simply physical structures. Part II examines the information contained within the law library with some care in an attempt to parse out the reality from the myth. Finally, Part III considers the law librarian's role in the future.

I. LIBRARY AS STRUCTURE

The library building is a powerful symbol in our culture. For many the library stands as a metaphor for knowledge and wisdom. For many years, entering a library carried with it the implicit search for knowledge. In the American consciousness libraries were open to the public, willing to serve anyone who was interested in learning. The fact that deep into the twentieth century libraries were often segregated is a terrible truth, but it did not disturb the myth. The image of Thomas Edison, our most famous autodidact, working away in the public library, retains power. The library was a temple of knowledge open to all; a portal to self-betterment. There is also a tradi-

22. See generally MATTHEW BATTLES, LIBRARY: AN UNQUIET HISTORY (2003) for a detailed history of the library and its role. Chapters 2 and 3 offer both a historical perspective and one that spans numerous world cultures. The careful research offers a variety of taking-off points for further study.
23. Id. at 179–84.
tional feeling about a library, one that is not necessarily linked to reality: a solemn atmosphere. Walking into a library for many is akin to entering a church. Different behavior is expected; different rules apply. For some this aura is rooted in physical experience; the touch and smell of books can trigger certain feelings, but there is a mystique here as well. Libraries are secular temples where the cultural heritage is preserved. Where does the building fit into this image?

The physical structure of the library could be seen as a fortress, which indeed at certain points in history it was, protecting the books and serving as a safe haven for those who wished to use them. The ideal library was open to anyone who wished to use it and it contained the cultural heritage of mankind. Libraries were safe spaces; while many found them slightly intimidating, many gloried in the library.

In law schools the library plays an even more central symbolic role. Ever since Dean Christopher Langdell, the creator of the modern law school at Harvard, declared that the law library was the laboratory of the law, the image of legal scholars working like chemists as they extract legal principles from volumes of judicial reports has held the field. In this scenario, the law library has notionally been at the center of legal education.

Beyond its pedagogic and theoretical value, which will be explored below, the law library was a powerful physical symbol. Great law schools built grand law libraries—buildings that garnered architectural awards. Sometimes such buildings were constructed without the advice or counsel of librarians and thus were built for form and style, not function. Any group of librarians can be counted on to recount stories of gorgeous build-

24. Jamie Frederic Metzl, Searching for the Catalog of Catalogs, DAEDALUS, Fall 1996, at 147, 147 (writing “[m]y primary experience of libraries, the starting point of my deep love for them, begins in the predawn of thought, in the realm of the senses”). Metzl, a student at Harvard Law School at the time of the writing, presents some unique takes on the relation of books and digital information.

25. Libraries have been attacked by censors for sins both moral and political. I recommend a reading of T. Coraghessan Boyle, We are Norsemen, in THE DESCENT OF MAN 25 (Penguin 1987) (1979), for perspective.

26. E.g., Alfred Kazin’s lovely reminiscence of the Chicago Public Library quoted in BATTLES, cited above in note 22, at 201-03.

27. “The library is to us what the laboratory is to the chemist or the physicist and what the museum is to the naturalist.” HARVARD LAW SCH. ASS’N, THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL, 1817–1917, at 97 (1918) (quoting Langdell).
ings that produced grotesque acoustics or which impeded use of the collection. Add to this the fact that on occasion the new library is the result of the donation of funds by a prominent alumnus. It is not unknown for such a donor to wish a gorgeous edifice that may be unrelated to library operation.28

This separation of the function of the library from the role it played as an artistic statement is not limited to law libraries. The controversy over the construction of the new Bibliothèque de France in Paris in 1992 caused such *sturm und drang* that conferences were held throughout the world to discuss it.29 The resultant battle of thinkers from a variety of disciplines and viewpoints produced a stimulating book.30 The building was seen as a metaphor for the book, scholarship, and learning.31 The French intelligentsia took the issue as a serious intellectual question; for them the symbolic value of the new library was paramount.32

The reconstruction of the Harvard Law Library is a happier case. The Harvard Law Library is the epicenter of legal scholarship; the very collection that Dean Langdell lionized. When the vicissitudes of time and the changing nature of legal education dictated that Harvard modify its law library, large questions appeared. Should the library be remodeled to remain the traditional bastion of legal research? Should an entirely new edifice be created? What was the world's greatest law library to look like anyway? Would anyone have the chutzpah to change the famous entrance to Langdell Hall?

28. See generally Stephen G. Margeton, *Law Library Design Bookshelf: An Annotated Bibliography*, 97 L. LIBR. J. 77 (2005) (studying issues surrounding law library physical plants). When St. John's Law School dedicated its new library it held a symposium that was memorialized in 70 ST. JOHNS L. REV. 121 (2000). The symposium presented a range of viewpoints and ideas. Professor George Grossman of the University of California, Davis, is the leading expert on law library construction. He retains a collection of notes from the annual Bricks and Bytes Conference on law library construction that date back to when it was a Bricks and Books Conference.

29. See FUTURE LIBRARIES 1 (R. Howard Bloch & Carla Hesse eds., 2003).
30. Id.
The solution was to gut the old building and rebuild its in-
nards. The grand reading rooms of Langdell Hall were retained
and beautifully crafted wooden carrels were installed that
would have met with Langdell's approval. Within those carrels,
however, the latest in high-speed Internet connections also
were installed. Study spaces were created that fit the needs of
the modern law student within a structure that was recogniza-
bly a great law library. The façade of the building was retained,
but computer labs and comfortable study areas were created as
well.\textsuperscript{33}

The financial strength to afford such a law library and the
will to spend the necessary funds to build it are a rare combina-
tion. Important questions remain: How long will an architect-
urally magnificent statement in the form of a law library be
important to a law school? How long will it confer status? The
lesson to be learned from the shrinking of law firm libraries
may be instructive. Where once large law firms built beautiful
libraries at their core—both as work places and as status sym-
bols—law firm libraries today are shrinking in size.\textsuperscript{34} Because
law firms are money-making enterprises, symbolic questions
inexorably give way to economic concerns. Can books pay the
rent? Increasingly law firms are choosing to cut back on books
in favor of offices and conference room space. It may be that the
perception of clients has changed as well. The modern client
may no longer be comforted by ranks of books on walnut
shelves consuming the central space in a law firm office; she
may want to see the latest in computing capacity instead.

While one reasonably asks how long a large, traditional
law school library will represent greatness, the law library is
more than an edifice: it is a place. Law libraries serve as the
common areas in many law schools. For the inevitable intervals
between classes, and for evenings poring over notes and writing

\textsuperscript{33} There are several accounts of this incredible project. See John Har-
www.harvardmagazine.com/issues/nd97/jhj.law.html (telling the story from
the inside). For a bit of distance, see generally Harry S. Martin, III, Can You
Really Store a Library in Cyberspace? Renovating Langdell Hall & Other Tales,
3 AUSTL. L. LIB. 57 (1995). Professor Martin, librarian and professor of
law at Harvard Law School, is the best source, as the complete story of the li-
brary reconstruction resides in his brain.

\textsuperscript{34} Ashby Jones, The Incredible Shrinking Law Library, 168 N.J. L.J.
1126, 1126 (2002) (writing "[s]urprise: The central theme of AmLaw Tech's
first survey of law librarians is that books are becoming historic relics at the
nation's largest law firms"). Subsequent issues of the annual survey of law li-
brarians reinforce this trend.
papers, the law library is a study hall for the student body. Always hungry for good publicity, law librarians everywhere were delighted when the story of former President William Clinton and Senator Hillary Clinton meeting in the Yale Law Library became public. In this case, the media coverage did not distort reality; many marriages, friendships, and future contacts have been made in the law library. So as long as students are required to physically attend classes there will be a role for the law library structure as meeting place and study hall.

Those who love law libraries will no doubt recoil at the thought that they are but study halls. Dean Langdell did not envision a great reading room filled with people reading e-mail and making dates, but pause a minute to appreciate the power of a law school commons in the law library. Safe spaces where no one individual holds sway are important to a law school. Unless one is a member of a law review or a similar organization, the library may be the one large space in the law school that is neutral. There is value in such space. But it would not be enough for lovers of the library. This is not the law library as generations of lawyers have imagined it.

Nor does the answer to the library's identity lie in the law library housing elements of the digital future. The law library may contain the law school's computer labs. It may have wireless capability and wired workstations for students. It should have both. Neither of these fit, however, with the grand concept of the law library. Nor will they provide a long-term answer. Proponents of the law library cannot ground its future around its functioning as home base for those who wish to use digital information. As more and more such information becomes available to anyone with a personal computer and the price of admission, the necessity of being in the law library to carry out research will lessen. How can any law library compete with the convenience of working on a personal computer from home?

The library building, that edifice that the old man left to River City, is not the library that we hold in our mind's eye. "Library" is a metaphor for a bundle of ideas that include a building, its content, and the activity that goes on within its walls. The physical reality of the library is important, but it is just a part of what a library is and what it should be. If we reach a stage where the library is only a building or only a

study hall, a great deal will be lost. To give full credit to the li-
brary and to appreciate the disconnect between the myth of the
library and its emerging reality we must be careful to disen-
tangle the library from its physical structure. We must step
outside the building.

II. LIBRARY AS SUBSTANCE

Having separated out the question of the library as a
physical structure we now turn to the second half of Meredith
Willson's line, "He left all the books to her." Does the true na-
ture of the library lie within the material that it contains? Is a
law library defined by its collections?

For the past century and a half, legal information has been
found in printed form and stored in libraries. Issues of storage,
classification, and location of printed information were once
central to the professions of both law and librarianship. This
Article contends that legal information in the traditional form
of primary source material long ago ceased occupying the cen-
tral mission of great law libraries. Second, the Article will dis-
cuss the fact that the digitization of legal information allowed
for a renaissance in the use of primary sources, but that the use
made of them was profoundly different than most commenta-
tors assumed. Finally, the question of the nature of primary
authority will be examined, not so much in order to develop a
coherent theory, but rather to pose a series of questions that
should be considered in any discussion of the future of legal in-
formation.

A. LAW LIBRARIES AND BOOKS

While educators who work in most disciplines could safely
contend that the collection of materials in the library is central
to their work, law is distinctive in its conceptualization of the
role of the library in the pedagogical enterprise. Specifications
for what a law school library must contain as well as rules con-
cerning aspects of library policy continue to be a major part of
the American Bar Association's Standards for Accreditation. Indeed, a law librarian is a part of the team that works with a
new school to help it gain accreditation, and each sabbatical in-
spection team includes a librarian. The American Bar Associa-

37. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR
ASS'N, ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 45–49 (2003 ed.).
tion has long required that the law librarian be a member of the faculty and that the law library be autonomous from any university library system.\textsuperscript{38}

The profession of law librarianship has grown up because of the supposed centrality of the law library. While the issue of faculty status for law library directors has never been peacefully resolved, the fact that it continues to fester indicates the power of the law library in the academy. Legal research instructors and clinicians have never fared as well as librarians in matters of compensation and status,\textsuperscript{39} a fact that can only be explained by the librarian's relation to the hallowed status of the library itself.

The law library that Langdell had in mind has little to do with the law library that we know today. Putting aside the issue of computers, the books held in a contemporary law library would have struck Langdell as oddly chosen. His library contained volumes of judicial reports, with some of the most valuable ones originating in England.\textsuperscript{40} Langdell believed that the law had a grand structure that could be found by reading cases, and that all else was peripheral.\textsuperscript{41} There is no dearth of analysis of Langdell's approach, but his view of legal information is often overlooked by those who look to his view of libraries.

Langdell also read cases in a manner quite different than we read cases today. In the Langdellian world, cases were organic wholes.\textsuperscript{42} To grasp the structure of the law one should read each case in each volume that entered the library. While we search for cases that are "on point," Langdell would have felt the necessity of reading each case to see how it fit into the great mosaic of the common law. A modern legal scholar might find the many laments of her nineteenth-century contemporar-

\textsuperscript{38} Id. at 45–46. The fact that these regulations are often honored in the breach, with many law schools not making the law library director a full member of the faculty, is lamentable, but it does not cut against the symbolic value of the rule. Rules that are retained despite the fact that they are not totally honored take on a special symbolic gravamen.

\textsuperscript{39} Jenny B. Davis, \textit{Writing Wrongs: Teachers of Legal Prose Struggle for Higher Status and Treatment}, A.B.A. J., Aug. 2001, at 24, 24 ("Legal writing instructors have long been considered the stepchildren of law faculties . . . ").

\textsuperscript{40} See \textit{Grant Gilmore, The Death of Contract} 12–14 (1974) (providing insight into Langdell's views of which legal sources were important).

\textsuperscript{41} See generally \textit{William P. La Piana, Logic and Experience: The Origin of Modern Legal Education} (1994) (providing excellent insight into Dean Langdell and his ideas).

\textsuperscript{42} See id. at 22–28.
ies over the explosion in legal publication as quaint, but one must recognize that the nineteenth- and early twentieth-century legal scholar was reading every case. I will always recall my father's reaction when I gave him a tour of the law library at the University of Illinois where I had my first job. He was impressed by the many shelves of law books there. When he inquired about my duties, I told him that in addition to working as a reference librarian I was in charge of acquiring new books. Puzzled, he looked at me and asked if we had read all of the ones that we already had. At the time, I saw his remark as reflecting his lack of formal education and his inability to grasp the scholarly enterprise. In retrospect, I believe that Langdell might have asked me the same question.

Not that a Langdellian scholar had to read all of the existing books. One had to read and understand judicial decisions. This meant that the universe of what needed to be read was far more contained than the panoply of materials familiar to the modern lawyer. But others believed grasping the law could be a simpler task than reading every case ever written. Oliver Wendell Holmes, for example, was no proponent of much of Langdellian thought and saw the law as cabined in a discreet set of volumes. As Holmes put it in the opening pages of his essay, *The Path of the Law*:

> It is a great mistake to be frightened by the ever-increasing number of reports. The reports of a given jurisdiction in the course of a generation take up pretty much the whole body of the law and restate it from the present point of view. We could reconstruct the corpus from them if all that went before were burned.43

It is unfair to underestimate the skill needed in 1900 to assemble a library that contained all cases. In Langdell's world, and during the first years of Holmes's, publication of judicial decisions was irregular and at times unreliable. Few libraries could boast comprehensive collections of published cases. Only the great research libraries of today contain complete collections of early judicial reports in the original. But the rise of the West Publishing Company and a nimbus of related legal publishers solved this problem early in the twentieth century.44

The publication stream became so sophisticated that most large


law firms had libraries of current judicial decisions that would have awed legal researchers of one hundred years ago.

This enhanced distribution system developed as the volume of judicial decisions dramatically grew. The symbiotic relationship between growth in the number of new opinions and their efficacious publication might defy reliable parsing, but the result is apparent. I am old enough to remember the day when legal information experts wondered if a series of judicial reports could ever reach a volume count of one thousand.

Therefore the law's laboratory that sprung from Langdell's vision is quite different than the law library of today. The profusion of judicial opinions, even if limited to those available in print, would defeat any researcher bent upon reading every case. Besides, the great majority of the volumes in a large academic law library are not judicial reports at all. Nor are they volumes of statutes and codes. The shelves are filled with commentaries based in many disciplines and books on a wide range of topics. These are not Langdell's primary source material but are instead secondary sources, the work of scholars, judges and lawyers. They represent the borderland where the Venn diagrams of law library collections and other research libraries overlap. It may be hard to believe that including such volumes on law library shelves was once seen as revolutionary.

The centrality of libraries to the profession of the law extends far beyond the walls of academe. In popular culture lawyers are creatures of the book. The image of the lawyer at work framed by ranks of legal tomes is a fixture in novels and movies. From The Paper Chase\textsuperscript{45} to The Pelican Brief\textsuperscript{46} to Legally Blonde,\textsuperscript{47} a library is the setting that communicates the mes-


\textsuperscript{46} JOHN GRISHAM, THE PELICAN BRIEF (1992). Warner Brothers made a movie of the book in 1993. \textit{See THE PELICAN BRIEF} (Warner Bros. 1993). In the movie, Julia Roberts has several crucial scenes in libraries, though it must be admitted that she makes extensive use of computers. \textit{See id.} John Grisham has been a generous supporter of the library at Mississippi State University, \textit{see The John Grisham Room, at http://library.msstate.edu/grisham_room/room/room.htm} (last visited Feb. 28, 2005), and he reputedly wrote his first book in the law library at the University of Mississippi.

\textsuperscript{47} LEGALLY BLONDE (Metro-Goldwyn-Mayer Pictures 2001). Reese
sage that legal work is being done. This trope will change, but the law and its popular image move at tectonic speed and resist recasting. But change is in the air. Westlaw appears in *Legally Blonde* and in *The Pelican Brief*, and mentions of Westlaw are sprinkled through such television shows as *The Practice* and *Law & Order*. Popular culture is catching up to legal reality.

There is danger in conflating the concept of the library with the concept of the book. Debates over the future of the book and the sea change in culture now transpiring in our lives because of telecommunications and the Internet should remain separate from the inquiry about the future of libraries. But despite the danger, it is important to see how entwined the concept of the book is with our societal concept of law. Lawyers were once viewed as men of the book. From the lyrics of rock and roll classics such as:

> From out of the east a stranger came,
> A law book in his hand,
> A man. The kind of a man the west would need
> To tame a troubled land

...to the delicious bobble heads of sitting U.S. Supreme Court Justices that are being created by the editors of *The Green Bag*, each of which is holding a book, lawyers and books are linked.

Witherspoon has several important library scenes. See id.

48. When I worked at the Tarlton Law Library in the late 1970s, I arranged several sales to a restaurant chain of duplicate sets of case reporters that had been donated by alumni when they retired. We sold the books by the foot. The restaurant owner told me that the books created “a classy atmosphere.”


50. So far bobble heads of Chief Justice Rehnquist, Justice Stevens, and Justice O’Connor have been produced. See *The Green Bag: Eclectica*, at http://www.greenbag.org/eclectica.htm (last visited Feb. 28, 2005).

51. As this Article was being edited, the Google library initiative was announced. See Press Release, Google, Google Checks Out Library Books, at http://www.google.com/press/pressrel/print_library.html (last visited Apr. 1, 2005). Google plans to digitize the collections of five major libraries: Stanford University, University of Michigan, Harvard University, University of Oxford, and the New York Public Library. *Id.* Michigan (seven million books) and Stanford (eight million) plan to digitize their entire collections. *Id.* Stanford is initially committing two million volumes, but will eventually commit all eight million. *Id.* The Harvard, Oxford, and New York Public Library contributions are smaller. *Id.* Google staff will scan the books on-site at the libraries (except Stanford, which will send its volumes to Google’s offices in Mountain View, California) using a proprietary, nondestructive, high-speed scanning process. *Id.* The entire project is expected to take up to ten years, with costs estimated at $150 million to $200 million. *Id.*
B. LAW LIBRARIES AND COMPUTERS

Echoing this relationship between the lawyer and the book, a family of tools grew up to help the lawyer find the information that was in case books. In the typical library of the past, the main finding tool was the card catalog. Since books are three dimensional objects, each book can only exist in one unique location. Finding the correct book was the secret to success for a researcher. If one could not read and memorize each volume, one could still master methods for finding the needed information. In James Boswell's classic tome on the life of Samuel Johnson52 the following colloquy occurs when Johnson is challenged as to what he can learn from looking at the spines of books:

Sir, the reason is very plain. Knowledge is of two kinds. We know a subject ourselves, or we know where we can find information upon it. When we enquire into any subject, the first thing we have to do is to know what books have treated of it. This leads us to look at catalogues and at the backs of books in libraries.53

Johnson reveals the secret mantra of all librarians: knowledge consists of knowing where to look for what one needs.

The card catalog was a great breakthrough, as it allowed one to find the needed book remotely with various entry points. One could find a book by its title, by its author, or by its sub-

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Larry Page, Google co-founder and president of products, stated: "Even before we started Google, we dreamed of making the incredible breadth of information that librarians so lovingly organize searchable online. Today we're pleased to announce this program to digitize the collections of these amazing libraries so that every Google user can search them instantly. Our work with libraries further enhances the existing Google Print program, which enables users to find matches within the full text of books, while publishers and authors monetize that information." ... Mary Sue Coleman, president of the University of Michigan, said, "We believe passionately that such universal access to the world's printed treasures is mission-critical for today's great public university."

Barbara Quint, Google and Research Libraries Launch Massive Digitization Project, INFO. TODAY, Dec. 20, 2004, at http://www.infotoday.com/newsbreaks/nb041220-2.shtml. If this initiative is successful it will forever alter the role of library buildings, library collections, and librarians. It makes the consideration of these questions even more pressing.

52. Samuel Johnson (1709–1784) created the first great dictionary of the English language. See generally JAMES BOSWELL, THE LIFE OF JOHNSON (Christopher Hibbert ed., Penguin Books 1979) (1791). He was renowned for his scholarship and his conversation. See id. James Boswell's The Life of Johnson remains a classic, credited as the first modern biography. Johnson has long been a culture hero of mine and I highly recommend him to you.

53. BOSWELL, supra note 52, at 186.
ject. Through the vehicle of the card catalog one could overcome some of the limitations of the book's physical existence in one location. The profession of librarianship devoted itself to developing more efficient, more perfect ways of creating subject headings and cross-references so that the researcher would have the best possible chance of finding what was desired.\(^{54}\) As the number of books held in the library increased, the organizational system of the card catalogs became increasingly complex.\(^{55}\) By 1980 the card catalogs at large libraries became so complex that only experts could navigate through them. When I taught graduate students who were studying to be librarians in that era, we would spend considerable amounts of time trying to master the Library of Congress subject headings. In the effort to create complete and accurate subject tracings we had created Byzantine rules and structures that were arduous to manipulate. One might form a postulate that the more a system tries to devise methods for making searching easier the more complicated such searching will be. To test this postulate, consider the last time that you read the directions that came with a new appliance.

Libraries also developed shelving schemes that allowed the books to be placed in logical order. Since most twentieth-century libraries in the United States were open stack, i.e., open to the researcher for browsing, the placement of each volume was important. The three dimensional nature of the book meant that it could only be in one place. Intuiting how to group books by the ideas in them was a great challenge.\(^{56}\) As most books cover more than one subject there was unavoidable arbi-

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54. See generally JENNIFER ROWLEY & JOHN FARROW, ORGANIZING KNOWLEDGE: AN INTRODUCTION TO MANAGING ACCESS TO INFORMATION (3d ed. 2000) (providing a popular guide to the current state of the art).

55. For perspective on the expansion of published materials consider, Washington Irving's lament, written in 1820: "The stream of literature has expanded into a torrent—augmented into a river—expanding into a sea." BATTLES, supra note 22, at 114 (quoting Irving). What would Irving think of the library of today?

56. See generally GEOFFREY C. BOWKER & SUSAN LEIGH STAR, SORTING THINGS OUT (2000) (presenting a broad-ranging study of the power of classification and categorization). Though the authors use the field of medicine as their subject the general observations on the power and problems of ordering information are valuable. See also Daniel P. Dabney, The Curse of Thamus: An Analysis of Full-Text Legal Document Retrieval, 78 L. LIBR. J. 5 (1986) (remaining through almost two decades the best study of indexing and classification of legal ideas). It is worth noting that Dabney went on to be one of the architects of the Keycite System.
trariness in any such arrangement. Choices had to be made. Decades of careful thought went into creating shelving schemes that were themselves magnificent intellectual statements of the structure of knowledge. The ideal was for a researcher to go in search of a desired book on the topic at hand and to find other books on the same topic that would be of help.

Law libraries went much further. Since the Langdellian library was built on the reading of judicial decisions, and since a volume of judicial reports contains many cases, the card catalog was of little use. Finding tools that penetrated deeper into the volume, indeed into the cases within the books, were needed. The West Publishing Company's American Digest System met this need. The Digest System created a subject index that was not keyed to the volume but that was instead keyed to the points of law discussed in each case. Editors at the West Publishing Company matched the headnote in each case to the subject index, which was called the Key Number System. The resulting Digest System allowed the legal researcher to go to a specific paragraph in the desired volume. This level of specificity in indexing, at least in a large database, was unknown to other fields in the age of paper. The following diagram of the depth of the layered indexing involved is illustrative.

<table>
<thead>
<tr>
<th>Libraries in General</th>
<th>Law Libraries</th>
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<tbody>
<tr>
<td>Catalog Card</td>
<td>Headnote</td>
</tr>
<tr>
<td>Card Catalog</td>
<td>Topic and Key Number</td>
</tr>
<tr>
<td>Book</td>
<td>Paragraph in Opinion</td>
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<td></td>
<td>Opinion</td>
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<td>Book</td>
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While the Digest System would not have pleased Langdell because it abandoned the organic reading of cases and broke each judicial opinion into small components, it was nevertheless a natural offspring of his ideas. Cases remained the heart of the system. Because West Publishing Company also published statutory materials and a wide variety of practice tools, the headnote system could cross-reference into them as well. Other legal publishers clustered around the system and supported it. Over the decades, an incredibly articulated system for finding points of law was developed.

Just as the subject headings in the card catalogs of major research libraries became so layered and particular that they could only be used by experts, the Digest System became so
complicated that few could truly use it. When I began teaching Advanced Legal Research in 1979, I would spend considerable time teaching law students and lawyers how to use the Digest System, realizing that few could grasp it. But it functioned well enough to serve.

The Digest System rendered the law library unlike a regular academic library. Its heart lay in the arrangement of judicial decisions and the many sources that annotated, commented upon, and rearranged them. Law libraries had card catalogs, but they were used by only a few. It was the Digest System that guided the vast majority of researchers. Those who researched in the law had a far more sophisticated research apparatus than any other discipline. It went as far as one could go in the environment of the printed book. The relevant question is whether the law library became so closely identified with this system that it could not survive the system's atrophy.

C. LAW LIBRARIES AND DIGITAL INFORMATION

The systematic implementation of digital information came to law first. Part of law's leadership in the realm of digital information can be explained by simple economics. The legal profession is large and it presents a desirable demographic for any enterprise to draw upon. More than that, law was uniquely ready to accept the advantages of digitized information. Using the Digest System, with its deep, layered indexing, prepared legal researchers for online systems that employed Boolean search parameters. Legal researchers were already trained to look deep into a volume and to use headnote tags to navigate among sources. A law student doing research using key numbers and moving between digests and volumes of the National Reporter System (NRS)57 is approximating in three dimensions the search process that Boolean operators would produce.

Not all was beer and skittles of course. Weaning legal researchers away from books was no simple task. The problem of

57. This comparison invokes the folk image of John Henry battling the steam hammer, pitting old fashioned handwork against mechanization. A traditional researcher using paper sources can touch one source, pick up a cross-reference and move to another source. The contemporary researcher does the same thing via embedded links. Older researchers still complain that only with books can one spread sources out on a table for skimming. The new generation would contend that only by hypertext links can one move quickly enough. The point is that the way one learns to carry out research when young becomes in one's mind the only legitimate way to do it.
those who refused to accept information printed by a computer as legitimate presented a formidable hurdle. Today's law student may find it quaint, but generations of scholars trusted only words printed on a page. Nor did great integrated systems like LexisNexis and Westlaw spring to life fully developed. The early systems were mistake prone and incomplete. The quality of the systems grew incrementally, which worked in tandem with the growing acceptance of the computer in society.

A generation of legal researchers had to learn to use computer keyboards and terminals. Recall that in 1975 personal computers did not exist, and many students came to law school not even knowing how to type. But while the logic of searching through the bodies of cases for particular points of law was not entirely new, it was the logical endpoint of the paper system. As the usage of personal computers became common, and full-text and free-text searching became familiar, students arrived at law school pretrained not just in using computers but in using search engines. My two adolescent sons know how to type without ever taking a typing class; for them it is the equivalent of what handwriting was for me. It is just something that everyone knows how to do. The same could be said of their use of search engines. The change is complete.

One must not underestimate the different theoretical structures that drive the Key Number System and a free-text search system based on Boolean operators. They are profound. But at the surface there are similarities. The fact that traditional case reporters already broke cases into component parts and that the Digest System had trained legal researchers to think far deeper than the level of the book when using abstracts and indexes made acceptance easier.

This predisposition to use Boolean systems probably pales in light of the massive investment made by the owners of Westlaw and LexisNexis. These two vendors, locked in a great market battle royale for decades now, created a generation of users through the kind of infusion of funds that only the private sector can produce. Each law student attending an accredited American law school receives extensive training and support. Through deeply discounted sales of services to law libraries, the two vendors provide twenty-four-hour system usage that ap-

appear to the law student to be free. In early iterations students had to use dedicated terminals installed within the law library space. Once the personal computer became ubiquitous these students were allowed to work on their own home machines, obviating the necessity to come to the library. As one who consulted for both LexisNexis and Westlaw over the years, I can testify to the enormous size of the investment involved in providing these services, and to the fact that it was money well spent. Riding the wave of, first, personal computing and, then, the Internet, LexisNexis and Westlaw were perfectly positioned. Elsewhere, I have contended that to the law student of 2005 these two databases represent "real" legal information just as books do for those who came before.59

The law library now teeters on the edge of losing its position as the center of legal information for the typical legal researcher. It can house a computer lab that attracts students or, like the Harvard Law Library, it can build a comfortable study environment where one can jump onto the Internet, but those functions are far removed from the central role as a repository of information. The question presses: Are academic law libraries to morph into wired study halls? Will the law library be defined by comfortable chairs and broadband connectivity?

D. THE AMBIGUITY OF PRIMARY SOURCES

A great debate currently rages over the nature of precedent.60 The question of what constituted a judicial decision had been put to rest in the early twentieth century. At the risk of undervaluing any academic debate on process, the fact was that if a case appeared in the NRS, it was a real case. Many jurisdictions retained official reports, but all cases that appeared in official reports also appeared in the NRS. Law students were not taught to parse out legitimate cases from unfit ones. The cases that counted were in the books on the shelf.

59. See generally Berring, supra note 44 (exploring this issue in some depth); see also id. at 190–95 (discussing the “Tinkerbell” metaphor in terms of actual credibility stemming from the perception of credibility). This article also sees one of the rare appearances of the word “zits” in a law review article. See id. at 200.

60. The stage was set by the opinion of Judge Richard Arnold in Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000), which attacked the idea that a judicial opinion can exist but cannot be cited as precedent. An intellectual firestorm resulted. Judge Alex Kozinski’s opinion in Hart v. Massanari, 266 F.3d 1155 (9th Cir. 2001), not only comes out the other way, it provides a stimulating history of judicial precedent and legal authority. See id.
The decision to print a case followed an algorithm that could be discovered. It involved the rules of the jurisdiction and the editorial policy of the West Publishing Company. But the operative reality was that once a decision was made to print a case, it existed. Since it existed in three dimensional form, it could be touched and read. If a case did not make it into the volumes, then it did not exist. A judicial opinion might resolve the issue at hand between the parties, but if it did not enter into the NRS information stream it had no precedential life. The barriers to competition for any alternative printed form of systematic case publication were enormous. The NRS had served this function for so long that it had become part of the woodwork. Specialists might have joined battle over the criteria of selection, but for the vast majority of legal researchers it was what it was.\(^6\)

Westlaw and LexisNexis revolutionized this stable world by escaping the trap of three dimensional information. New cases—huge numbers of them—could be added at will. Opinions that might have resided in hanging files in a clerk's office were now available to the world. Problems of a costly printing process and limited shelf space evaporated. It is hardly surprising that the information vendors saw an advantage in printing more cases. Suddenly, lower federal court cases that had never been destined for print bloomed like daisies in spring. Unpublished cases from states such as California appeared in profusion after a long dormancy.

This was just the beginning. What were all of these new judicial opinions? Which should count? The battle rages in the courts and in the literature.\(^6\)\(^2\) In a sense the problem of legal information has been reduced to its most basic elements. What is a primary source and what is not, a question that had not been relevant for a century, is now taking center stage.

The impact of this debate on libraries is direct. So long as the collection of books on the shelf, the NRS, was a print representation of the known universe of authority, then the competi-

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62. See Martha Dragich Pearson, Citation of Unpublished Opinions as Precedent, 55 HASTINGS L.J. 1235 passim (2004). Pearson's article is a comprehensive treatment of the current state of judicial opinions and precedent. See id. Her voluminous footnotes are a treasure trove of sources on this still hot topic.
tion for primacy between the library and cyberspace was fair. So long as the library possessed a true copy of relevant information, it had strong ground upon which to base its claims of legitimacy. However, if digital information sources, which can be delivered to the laptop of the law student sitting in Starbucks, include primary source information that is not only equal to that in the books but ranges beyond it, then the value of the library decreases.

The revolution in digital information threatens the core role of the library as bastion of legitimate information. How the current questions will be resolved is open to debate, but surely there will be no going back. Can the law library any longer ground its identity in being the sole complete repository of valid information? Not if the law library is to remain vital.

III. LIBRARIES AND LIBRARIANS

If law libraries can no longer be defined as buildings, and can no longer be viewed as synonymous with the collections of information that they contain, and are no longer the institutions that define legitimate information, then what is their true nature? What is it that lies at the chewy center of law libraries? The answer is that the soul of law libraries consists of law librarians.

The future of academic law libraries lies in the hands of law librarians. From Langdell's days onward it has been librarians that animated libraries and made them work. Librarians have long played the role of the intermediary between information and the person who needed it. It was the librarian who explained how to use the card catalog, how to find the desired information, where to find the needed book, and how to use and understand it once it was in hand. The low status of librarianship in society and the dedication of the profession to the ideals of service to the public have obscured the pivotal role that librarians play. I once had a conversation with the new dean of a school of information management systems. Built on the ashes of a closed library school, this new school was to train a new breed of professional that would understand telecommunications and digital information. The new dean, a famous economist, said to me, "I see a great need. We need to develop people who can stand between the information user and the information system. Someone who can understand user needs and translate complex systems." I fixed him with a jaundiced stare and replied, "Hey, I know thousands of folks like that—
librarians." He thought I was joking. He could not see the function through the myth. He misunderstood librarians as much as the con man misunderstood the librarian in Willson's River City. Librarians are the glue that has held libraries together throughout the ages. As they sort through the avalanche of information that crashes down from the Internet and fight to maintain a balance between books and digital information, librarians become the information system. Only they can sort through levels of authority; only they can keep the enterprise stable and moving forward.

The fact that librarians are living, flexible human beings, means that librarians have always adapted to changing circumstances. Of course, I speak here of the Platonic librarian. Like all professions, librarianship has had its share of pompous troglodytes, but they do not detract from the whole. For as long as there have been libraries, librarians have assembled the collection of books and protected them. Librarians devised methods of arranging the materials and helped both neophyte and seasoned researchers find desired information. Librarians helped introduce LexisNexis and Westlaw to skeptical patrons. Librarians have toiled long and hard to bring the Internet into the lives of legal researchers. Librarians have served as the intermediary between information entrepreneurs and lawyers and law students. Much as I genuinely admire the great information vendors, they are profit-making enterprises who have responsibility to shareholders first and foremost. Armed with inadequate budgets and lacking institutional support, law librarians have struggled to balance the ease of use offered by new forms of media with the quality of the content that they contain. Only the librarians have invested themselves in the quality of the information and its equitable distribution. It is no small irony that librarians have received even less systematic attention from legal scholarship than law libraries. Librarians are the heroes of legal information.

The librarian, the living vital bridge between information and the user is still there and will remain there. Westlaw and LexisNexis, though now established dowagers in the field, con-

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63. See generally RICHARD POWERS, THE GOLD BUG VARIATIONS (Harper Perennial 1992) (1991) (providing an alternative and insightful view of the profession). Powers's protagonist is a librarian who sets out her view of the profession: "Librarian is a service occupation, gas station attendant of the mind. In an earlier age I might have made things. Now I only make things available." Id. at 35.
stantly reconfigure themselves. Only one that focuses on them diligently has a prayer of keeping up. Indeed, the databases fall into the same bizarre whipsaw that the card catalogs once did. As they add more and more sophisticated search protocols they outpace the skill and patience of the users. The librarian can teach and cajole the student into learning to use the systems at a level deeper than surface.

This is to say nothing of the Internet, where innovative new products for legal research pop up constantly. Sorting out legitimate information sources will be the major challenge of the next generation. Only librarians can help to do that. As a profession they possess the skill and the integrity to pull it off.

Disentangling the ideas of law libraries, legal information, and librarians can help to clarify the questions that face those who use legal information in the twenty-first century. Separating myth from reality can move us toward finding answers.

IV. THE LIBRARY IN THE GRAND MANNER

The above discussion has dealt with the abstract ideal of libraries, information, and librarians. It would be a good idea to take a moment to address more concrete realities. Separate from the problems of the typical law library there are a handful of wondrous exceptions. There will always be a handful of libraries, guided by dedicated librarians, that perform in what Holmes called “the grand manner.” These are libraries that possess not just collections of books and other materials, but which are national treasures. Such collections hold historical documents, archives, books, digital information, and whatever other forms of information may be useful. Taking no ideological position on the materials, they will collect and preserve legal information. This can range from preserving fragile manuscripts to making the latest Internet sources available. More important, such institutions represent a commitment to the future. The commitment to preserve the intellectual heritage of our culture is fulfilled by these grand libraries. They are not easy to create, and they are not easy to maintain. Such an institution needs constant support and great leadership.

The University of Minnesota Law Library is such an institution. Built over the decades by a series of great librarians like Arthur Pulling,64 George Grossman,65 Kathy Price,66 and now

64. Arthur Pulling was director of the University of Minnesota Law Library from 1912 to 1942. See Robert A. Stein, In Pursuit of Excellence—A His-
Joan Howland, the Law Library has become a resource of great intellectual gravitas. How brilliantly the 999,999th, 1,000,000th and 1,000,001st volumes were chosen. Thomas Paine's *Common Sense*, a pamphlet that changed the course of the history of the United States, will be carefully preserved. It stands in its original form, capable of being touched and read in the very same form as it was read in colonial America. Then the papers of Clarence Darrow were selected. Handwritten letters from another era that will serve as lasting testimony to the thinking of one of our greatest advocates will await scholars now and into the future. Finally, there is an online database of Darrow materials that will be available to all who wish to use it no matter where they might be. A book, an archive of letters,

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and a digital product make the perfect triumvirate. The University of Minnesota Law Library is equipped to handle each of them. Each speaks to a different audience, each will be protected from the ravages of time, and each will be made usable through the efforts of librarians. Even grand libraries stay vital through the ministrations of law librarians. Law libraries, even the grandest, are no more than the law librarians that animate them.

The future holds only uncertainty, but the collection of the University of Minnesota Law Library, now in excess of one million volumes in size, guarantees that it will forever be a great resource. It is a library in that grand manner.