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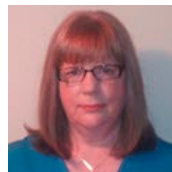
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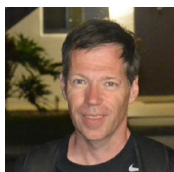
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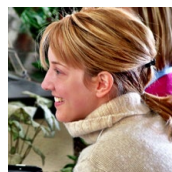
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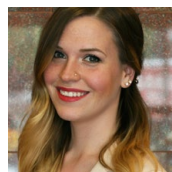
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edition. 2. One who directs
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III From the Editor / De la rédactrice

Law libraries have a surprisingly long history. The ancient library at Alexandria apparently had a law collection. The Inns of Court in London have libraries that have been around for many more centuries than I ever imagined. Gray's Inn had a very small library (of only 6 books) as far back as 1488; Lincoln's Inn had a library as early as 1471; The Inner Temple library goes back to 1506, and the Middle Temple's existed sometime before 1540. It is impressive that the Inns of Court started to build their library collections very shortly after the invention of the printing press in the mid 1400's; clearly even then legal information and resources were a valued commodity. The books at Grey's Inn were so valued in fact that the first librarian there was hired to prevent the books from being stolen. What I find even more impressive is that these libraries are still in operation today. That fact that these libraries have existed for so long speaks to the continuity of the law and of legal information.

Most of what we do in law libraries today has parallels in history, which is why I was delighted to read this issue's feature article, Greg Wurzer's *The Legal Headnote and the History of Law Reporting*. Greg, as part of a recent sabbatical project, travelled to England to look at ancient court rolls and year books with the goal of tracing the history of the legal headnote back to its origins. Even prior to the 14th century, before the invention of the printing press, court proceedings were recorded by scribes, literally on rolls of parchment. These rolls often were subsequently annotated and linked to previous cases by making connections between cases

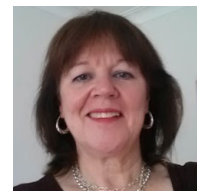
and writing marginal notes. These notes were the earliest of legal headnotes. Today, through the use of metadata, finding tools, citators, digests and other resources we make connections between cases just as those early scribes did.

I was also delighted, as Co-chair of the Committee to Promote Research, to see this article because it was funded in part by the Committee's Research Grant. It is great to see tangible proof of the value of this grant and I encourage members who have an interest in doing research to apply.

In the other news from around the world: in the UK, a student is suing Oxford University for failing to provide a proper standard of legal education; in the US Justice Ruth Bader Ginsberg has taken up opera; in Australia the recent election has caused more confusion than clarity; and of course the political and legal fall-out from the election of Donald Trump and the Brexit referendum continues.

I hope you enjoy this issue. Spring is on its way. I hope to see you all at the conference in May.

EDITOR
SUSAN BARKER



Les bibliothèques de droit ont une histoire étonnamment longue. La bibliothèque ancienne d'Alexandrie avait, semble-t-il, une collection de droit. À Londres, les Inns of Court ont tous une bibliothèque dont l'origine est beaucoup plus ancienne – et ce, de bien des siècles – que ce que je pouvais imaginer. Le Gray's Inn avait une très petite bibliothèque (comptant seulement six livres) dès 1488; le Lincoln's Inn avait déjà une bibliothèque en 1471; la bibliothèque de l'Inner Temple a été créée en 1506 et celle du Middle Temple a été fondée avant 1540. Il est impressionnant de savoir que les Inns of Court ont commencé à se constituer des collections de bibliothèque très peu de temps après l'invention de la presse à imprimer au milieu du XVe siècle; de toute évidence, même à cette époque, l'information et les ressources juridiques étaient des biens prisés. En fait, les livres du Gray's Inn revêtaient une importance telle que le premier bibliothécaire y a été embauché pour éviter qu'ils ne soient volés. Ce qui, à mon sens, est d'autant plus impressionnant, c'est que ces bibliothèques sont encore en usage aujourd'hui. Le fait qu'elles existent depuis si longtemps en dit long sur la continuité du droit et de l'information juridique.

La majorité des activités que nous accomplissons dans les bibliothèques de droit aujourd'hui trouvent leur pendant dans l'histoire, et c'est pourquoi j'ai été ravie de lire dans le présent numéro l'article de fond de Greg Wurzer intitulé *The Legal Headnote and the History of Law Reporting*. Dans le cadre d'un projet récent d'année sabbatique, Greg s'est rendu en Angleterre pour aller voir des almanachs et des rôles judiciaires anciens, le tout dans le but de retracer l'histoire des sommaires jusqu'à leur origine. Même au XIVe siècle, avant l'invention de la presse à imprimer, les procédures judiciaires étaient consignées par des scribes, littéralement sur des rouleaux de parchemin. Il arrivait souvent par la suite que ces rouleaux soient annotés et associés à des affaires précédentes par l'établissement de liens entre les affaires et l'inscription de notes marginales. Ces notes étaient ce

qu'on peut considérer comme les tout premiers sommaires. De nos jours, grâce à l'utilisation des métadonnées, des outils de recherche, des jurilex, des condensés et d'autres ressources, nous établissons des liens entre les affaires tout comme le faisaient jadis ces scribes.

À titre de coprésidente du Comité pour promouvoir la recherche, j'ai été aussi enchantée de voir cet article, car il a été financé en partie par la Bourse de recherche octroyée par le Comité. C'est merveilleux d'avoir une preuve tangible de l'utilité de cette bourse, et j'incite tous les membres qui souhaitent mener des travaux de recherche à déposer une demande en vue de l'obtenir.

Dans les autres nouvelles internationales : au Royaume Uni, un étudiant poursuit en justice l'Université Oxford pour le niveau de qualité insuffisant de l'éducation juridique qui y est offerte; aux États Unis, la juge Ruth Bader Ginsburg s'est mise à l'opéra; en Australie, les élections récentes ont causé plus de confusion que de clarté et, bien entendu, les répercussions politiques et juridiques de l'élection de Donald Trump et du référendum sur le Brexit continuent de se manifester.

J'espère que vous apprécierez ce numéro. Le printemps est à nos portes. Au plaisir de vous voir tous au congrès en mai!

RÉDACTRICE
SUSAN BARKER



Are you a student?

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The CALL/ACBD award of \$250 is given annually to the student author of a feature length article published in the CLLR. Submit an article today to be considered! Articles can be submitted to any of our feature editors.



III President's Message / Le mot de la présidente

I wasn't expecting it. Suddenly the skills of librarians – and especially law librarians – are more relevant than ever, and in increasing demand. We all knew our relevance, of course, but it is the increased acknowledgement that has been surprising.

Consider what has happened in recent months:

When the new United States government administration put in place a travel ban in January, teams of young lawyers stepped in at airports across the U.S. to assist those being turned away by the immigration department. Circumstances were urgent and dire in many cases. Law students – especially those in Canada – stepped up to provide supporting research. And it was our colleagues who provided guidance to those students and lawyers. Kim Nayyar, law librarian at University of Victoria, documented Canadian efforts in the “Research-athon for Refugees” that took place in early February in a posting on [Slaw.ca](#)

Similarly, at the high-profile American Bar Association Midyear Meeting in Miami at the beginning of February where the Law Practice Division's Futures Initiative threw out their agenda to develop a [rapid-response website in response to the immigration order](#), our colleague Sarah Glassmeyer worked behind the scenes to build the initial AILA site and the first draft of the guide for rapid response.

In anticipation of the new government administration in the U.S., Canadian scientists and librarians (in

addition to American counterparts) worked to copy government documentation in the case that it would be removed from websites. Of particular concern were those documents from the Environmental Protection Agency concerning climate change. Having learned from previous experience with our own federal government, a “Guerrilla Archiving” event was held at University of Toronto in December. More discussion about these efforts can be found at [Technology Review.com](#) and [The New Yorker](#).

In a world of “fake news” and “alternative facts” there is an increasing need to help the public figure out what is fact and what is fiction. Librarians across North America have stepped up to provide guidance in the form of help guides and training sessions to their client base. With a quick search I found “[Dis-information and ‘fake news’ in a post-truth world](#)” on the HLWIKI International at UBC, and “[How do I spot fake news](#)” from University of Toronto Libraries.

The federal government is scheduled to update the Copyright legislation. The new Canadian Federation of Library Associations has a Copyright Committee that wants to take a pro-active look at new copyright legislation models to advise the federal government. They are keen to have members of CALL/ACBD involved.

Many of our employer institutions are working to implement the recommendations from the Truth and Reconciliation Commission. The Canadian Federation of Library Associations' ad hoc Truth

and Reconciliation Committee put together a wide-ranging report about the recommendations and other considerations, and a Committee on Indigenous Matters is being established. We have an opportunity to contribute.

Vendors have been looking for more input on their products from us over the past few months as they look to broaden their offerings and develop new types of products. To that end, we sent a letter to CanLII on CALL/ACBD members' behalf following Resolution 2016-1 that was passed at the AGM last year. It suggested the establishment of a CALL/ACBD-based board of advisors to contribute to CanLII's efforts. Beyond that, I don't think I have ever been contacted as often for surveys and focus groups as I have by vendors in the past year. Has anyone else experienced the same?

These developments are – from the point of view of our profile, at least – incredibly encouraging. Libraries and information professionals are needed to help provide guidance across many aspects of our society, playing a foundational role in democracy. I am hopeful we can find ways to translate this so our employer institutions also see our value.

**PRESIDENT
CONNIE CROSBY**



Je ne m'y attendais pas. Du jour au lendemain, les compétences des bibliothécaires – et à plus forte raison, des bibliothécaires de droit – sont devenues plus pertinentes que jamais et sont de plus en plus demandées. Nous savions tous que nous exerçons un métier pertinent, bien évidemment, mais c'est la reconnaissance accrue qui a été sidérante.

Réfléchissez à ce qui s'est produit au cours des derniers mois :

En janvier, lorsque la nouvelle administration américaine a imposé une interdiction de voyager, des équipes de jeunes avocats se sont précipitées dans les aéroports de partout aux États Unis pour prêter assistance aux voyageurs refusés par le Département de l'immigration. La situation était urgente et même terrible dans certains cas. Les étudiants en droit – surtout au Canada – se sont mobilisés pour prendre part aux activités de recherche. Et ce sont nos collègues qui ont prêté conseil à ces étudiants et à ces avocats. Dans un article publié sur le site Slaw.ca, Kim Nayyar, bibliothécaire de droit à l'Université de Victoria, a documenté les efforts menés au Canada dans le cadre du marathon de recherche pour les réfugiés qui s'est déroulé au début de février.

De même, lors de la réunion semi annuelle très médiatisée de l'American Bar Association qui a eu lieu à Miami, au début de février, et au cours de laquelle les représentants de la Law Practice Futures Initiative issue de la Law Practice Division ont présenté leur programme en vue de créer un [site Web d'intervention rapide en réponse au décret sur l'immigration](#), notre collègue Sarah Glassmeyer a œuvré en coulisse à la constitution du site initial de l'American Immigration Lawyers Association (AILA) et à la rédaction de la première ébauche du guide d'intervention rapide.

En prévision de l'arrivée de la nouvelle administration aux États Unis, des chercheurs et bibliothécaires canadiens (en plus de leurs homologues américains) se sont affairés à copier des documents gouvernementaux au cas où ils seraient retirés des sites Web. Au nombre des documents présentant un intérêt particulier, citons ceux de l'Environmental Protection Agency au sujet des changements climatiques. Forts des leçons tirées de leur expérience avec notre propre gouvernement fédéral, ces gens ont tenu une « guérilla d'archivage » à l'Université de Toronto en décembre. Leurs efforts ont été décrits plus amplement sur le site Technology Review.com et sur celui du New Yorker.

En cette ère de « fausses nouvelles » et de « faits alternatifs », le public a de plus en plus besoin qu'on l'aide à faire la distinction entre les faits et la fiction. Des bibliothécaires d'un peu partout en Amérique du Nord ont pris les devants pour offrir une orientation générale à leur clientèle sous forme de guides pratiques et de séances de formation. Par une recherche rapide, j'ai trouvé l'article « [Dis-information and 'fake news' in a post-truth world](#) » (la désinformation et les fausses nouvelles dans une ère postvérité), de HLWIKI International à l'Université de Colombie Britannique, et l'article « [How do I spot fake news](#) » (comment reconnaître les fausses nouvelles), des bibliothèques de l'Université de Toronto.

Le gouvernement fédéral a prévu de mettre à jour la législation sur le droit d'auteur. Le Comité sur le droit d'auteur de la nouvelle Fédération canadienne des associations de bibliothèques souhaite agir en amont et étudier les nouveaux modèles de lois sur le droit d'auteur pour pouvoir conseiller le gouvernement fédéral. Le Comité tient tout particulièrement à obtenir la participation des membres de l'ACBD/CALL.

Bon nombre des établissements qui nous emploient s'affairent à appliquer les recommandations de la Commission de vérité et réconciliation. Le Comité spécial de vérité et réconciliation de la Fédération canadienne des associations de bibliothèques a constitué un vaste rapport à propos des recommandations et d'autres aspects à considérer, et un comité des questions autochtones est actuellement mis sur pied. Nous avons l'occasion d'apporter notre

contribution.

Ces derniers mois, des fournisseurs ont cherché à obtenir davantage de commentaires de notre part au sujet de leurs produits, car ils souhaitent diversifier leurs offres et mettre au point de nouveaux types de produits. À cette fin, nous avons envoyé une lettre à CanLII au nom des membres de l'ACBD/CALL à la suite de la résolution 2016-1 qui a été adoptée à l'AGA l'an dernier. Nous y suggérons d'établir un comité consultatif basé à l'ACBD/CALL qui contribuerait aux efforts de CanLII. Par ailleurs, je crois n'avoir jamais été sollicitée aussi souvent par des fournisseurs pour participer à des sondages et à des groupes de discussion qu'au cours de la dernière année. Avez vous vécu la même chose, vous aussi?

bibliothèques et les professionnels de l'information ont une orientation à offrir sur de nombreux aspects de notre société, et ils assument ainsi un rôle fondamental au sein de la démocratie. J'ai bon espoir que nous pourrions trouver des moyens de traduire cette notion dans les faits, de sorte que les établissements qui nous emploient se rendent compte, eux aussi, de notre valeur.

PRÉSIDENTE
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III The Legal Headnote and the History of Law Reporting *

By Greg Wurzer**

Abstract

This paper examines the origins of the legal headnote in England, which can be traced as far back as the twelfth century. The history of the headnote is tied to the history of how law cases were first reported and to the development of early law reports. Technology played an important part in the development of law reporting and the legal headnote, as handwritten manuscripts produced by monks and scribes gave way to the printing press.

Sommaire

Cet article examine les origines du sommaire en Angleterre, des origines qui remontent jusqu'au XIIe siècle. L'histoire du sommaire est liée à comment les premières décisions judiciaires ont été rapportées et à l'élaboration des premiers rapports juridiques. La technologie a joué un rôle important dans le développement de la publication des rapports juridiques et du sommaire, car les manuscrits produits par les moines et les scribes ont cédé la place à la presse imprimée.

The writing of the legal headnote, as part of a law report, is an academic exercise that summarizes key points of a case. Headnotes contain copyrighted information that is

added by a publisher to cases provided by a court; they are signposts that guide the legal researcher in the quest to find jurisprudence relevant to a legal issue at hand. Law librarians teach students the parts of a reported case, including the headnote, in an effort to help students quickly identify pertinent cases.

Every law student and legal practitioner understands and uses the skill of defining the *ratio decidendi* and applying it to different cases on a daily basis; this is a skill that is learned during the course of one's legal education and continues to be applied throughout one's legal career.¹ The legal headnote acts as a signpost which points the reader to this information.

Today, law students, lawyers and legal researchers access case law through the use of Google or electronic legal databases. Sophisticated search engines enable the legal researcher to zero in on specific text within a case thereby bypassing the headnote altogether. Printed volumes of law reports on whose pages you will find headnotes at the beginning of each case are collecting dust, rarely opened as legal researchers prefer to access case law online. Unless law professors or law librarians impart bits of legal history in

* © Greg Wurzer 2016. This article was peer reviewed.

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¹ Robert Williams & Paul Magrath, eds, *Special Issue: 135 Years of The Law Reports and The Weekly Law Reports*, 4th reprint (London : Incorporated Council of Law Reporting for England and Wales, 2007) at viii.

their courses, law students may be unaware of the history of law reporting, and of the headnote itself.

Are headnotes even noticed by today's law students or legal practitioners? Does the specificity of electronic legal research make headnotes irrelevant? Are headnotes as useful today, or as necessary for discerning relevant cases quickly as they once were before the advent of electronic legal research tools? The prudent legal researcher would read the headnote to a case, regardless of whether it is in print or digital format, to quickly identify cases pertaining to a legal issue at hand.

This paper is the result of a sabbatical project I undertook to examine the origins of the legal headnote by stepping back into legal history. The evolution of the legal headnote is directly tied to the maturation of law reporting. The earliest traces of what would develop into the legal headnote date back to the thirteenth century, when monks and scribes hand wrote legal manuscripts. It was not until the creation of the Incorporated Council of Law Reporting in the nineteenth century that law reporting and the use of headnotes at the beginning of a case became standardized.

I spent a significant portion of research for this project examining original manuscripts of the earliest law reports at the Bodleian Law Library in Oxford, the Cambridge University Manuscript Reading Room, the British Library in London, Lincoln's Inn Library and the National Archives located in Kew, just outside London. I examined dozens of manuscripts including the Year Books, which date back to King Edward I who reigned from 1272 to 1307, and early court rolls. It was in these early documents that marginal notes referring to other cases and traces of the first headnotes appear.



Figure 1: Common Pleas Court Roll, National Archives, Kew

Headnotes and the History of English Law Reporting

Before the nineteenth century, law reporting was chaotic. While some law reporters genuinely did their best to accurately reflect cases that were heard in court, others fell short. The number of entrepreneurs producing law reports increased over time, and many of these were more focused on making a pound or two rather than accurately reflecting what transpired in the court rooms. This is reminiscent of our present digital age and the internet; so much information is available at the stroke of a few keys and yet not all of it is reliable, and what appears in the internet is not controlled. As a colleague pointed out, we know the first pages to be printed on the printing press, those of the Gutenberg Bible, but we do not know which web pages were first created.

Before law reporting became official with the establishment of the Incorporated Council of Law Reporting in 1865, there was a wide range of law reports, many of which lawyers and judges both criticized and avoided as they were not accurate or reliable. Lawyers, judges and serjeants had to be aware of which law reporters sat in court and published their versions of what transpired there as some of them were not accurate in their reporting. These inconsistencies in reporting created similar challenges to the ones we face in the print versus digital world of today. As legal documents in print slowly give way to digital equivalents, the legal researcher must determine whether digital information found on the internet or in legal databases is as reliable or authoritative as its paper counterpart. In light of this, one can imagine the challenge that a lawyer, judge or law student had to deal with two or three centuries ago when preparing for a legal argument.

Having access to a series of law reports may have been a challenge in itself; a set of law reports, which today can be easily be found in any law library, would then have been both expensive and perhaps difficult to find, depending where the serjeant, lawyer or judge practiced law. In addition to being expensive, some publications would be slow to report the most recent cases, depending on where and how often they were printed, bound and published. A lawyer living outside London, for instance, being approached by an entrepreneurial publisher selling law reports might have been unaware that those particular reports were written by a reporter whose product was unreliable. Only judges and lawyers who were familiar with the various reporters would know the differences among them.

The history of English law reporting provides a useful backdrop for understanding the development of the legal headnote. With the coming of the printing press, the legal headnote eventually became a standard feature of case law reporting.

The Rotuli Curiae Regis are unpublished reports preserved in different collections in England, comprising a vast body of manuscripts and records long in existence and containing the legal history of England, the oldest legal history in the world.² In 1800, the British House of Commons presented an address to George III asking that these legal manuscripts

² John Williams Wallace, *The Reporters: Arranged And Characterized With Incidental Remarks* (Buffalo : Dennis, 1959) at 60.

be protected from neglect and preserved. As a result of this request the Records Commission was established. This Commission was given the responsibility of preserving a great number of documents illustrating ancient jurisprudence as well as documents relating to religion, government, topography, genealogies and the history of Great Britain, Ireland and ancient dependencies. By comparison, French archives are complete but English documents go back further in time. English legal and other documents date back to the Norman Conquest, with the only gap being that between the Domesday Book and the Great Rolls of the Exchequer, spanning 1088 to 1130.³

The history of the legal headnote is tied very much to the history of law reporting itself. Unlike today, when electronic legal databases and law reporters enable the legal researcher to access a wide variety of cases at all levels of court, two hundred and fifty years ago the compilers of acceptable or trusted law reports were far more selective in cases to be reported. There was also a direct link between legal precedent, headnoting and which cases appeared in law reports. The legal historian Holdsworth stated that the concept of judicial precedent was settled by the late eighteenth century.⁴ Blackstone mentioned in 1765 that the doctrine of legal precedent existed during his time. Lord Mansfield in *R v Bembridge* (1783) also mentions that “The law does not consist of particular cases, but of general principles, which are illustrated and explained by these cases.”⁵

Against this backdrop the development of the legal headnote was eventually formalized. A few early reporters possessed traces or the beginnings of legal headnotes. Manuscripts of printed law reports were often edited with marginalia or rudimentary headnotes, either indicating the subject matter of a case or referencing other cases. The evidence indicates that copyists, law professors, students and judges devised tools to access information quickly and efficiently.

This fact became very apparent when examining a variety of legal manuscripts, either transcribed by hand or as later products of the printing press. Lawyers, judges and serjeants needed to access cases and precedents quickly and as a result a broad range of publications was created to meet these requirements, including pocket-sized notebooks with summaries or digests of cases. As the body of case law grew and key cases could no longer be recalled solely by memory, various devices were employed, such as obvious and colourful lines drawn within texts to link cases together or marginal notes highlighting certain aspects of a case. Manuscripts dating from the twelfth to the nineteenth centuries have notes within their margins, devices used to help the legal practitioner or teacher organize legal information, briefly summarize pleadings or highlight key points of law. These tools were the seeds of what became the legal headnote. Traces of marginalia within early legal

manuscripts could be seen but were not consistent among different law reports. Headnoting, indexing, digesting or summarizing did not evolve gradually; instead, these different methods of highlighting specific elements of court cases appear randomly. It was not until Burrow’s Reports (described in more detail later in this paper) that the legal headnote as part of the law report became firmly established.

The Earliest Headnote

The very first traces of headnotes can be seen in handwritten legal manuscripts that date as far back as the 14th century; scribes who wrote these very first law reports used visible clues to associate one case or legal principle with another.⁶ The reasons for these annotations would have been very practical; these records of cases were educational and may have taught a law student how to prepare a pleading for a particular principle of law. In many ways these devices were used to organize and access legal information, much as the modern-day case digests or legal headnotes do.

An example of a rudimentary 14th century headnote is a marginal note in a Year Book during the reign of Edward II (1307-1327). In this manuscript from the Michaelmas term in the year 1308, there is a marginal note that says “*Appel ou piert qe le puisne friere auera mye le swte tut seit le eyne chapelein et ou dit fut qil swera après lan*”, etc. The translation of this is “Appeal by which it appears that the younger brother (of the dead man) shall not have the suit, even though the elder brother be in holy orders. And it was said that he (i.e. the appellor) might sue for his deliverance after the year.”⁷

What do these early marginalia signify? They were tools for accessing legal information. They were not intended for the general public or for documents that would be published, but for those literate and educated persons who required access to the law and to these cases: monks or scribes who wrote the text (in Latin, legal French or old English), judges, lawyers, serjeants, students at law, legal clerics and court personnel. As common law grew and the number of cases proliferated, various methods of finding cases and linking similar cases were devised, including coloured lines within legal texts, case digests, marginal notes and head notes. These were all tools to organize and access legal information, not so unlike the tools we use today.

Though it is generally accepted that headnotes became a regular feature of case law reporting in the mid-19th century, the beginnings of headnotes can be seen much earlier. I had expected that elements of early headnotes would be found between the mid-1700s to the mid-1800s, before formats for law reporting became more standardized, just before Burrows’ reports were published with headnotes. Interestingly, however, evidence of the beginnings of headnotes occurring much earlier took me back much

³ *Ibid* at 61.

⁴ WS Holdsworth, *Sources and Literature of English Law* (Oxford: Clarendon Press, 1925).

⁵ *Ibid* at 13.

⁶ For example, see Cambridge manuscript Dd.7.14 (Figure 2)

⁷ CG Moran, *The Heralds of the Law* (London: Stevens & Sons Limited, 1948).

further in time than originally anticipated, as far back as the 13th century.⁸

While examining many original manuscripts, I found clues both within the text and in the marginalia, which indicated from very early on that the scribes of these texts went to great lengths to link cases together through a variety of visual aids that will be discussed. Coloured lines or boxes around texts linked to marginal notes indicate the importance of associating cases with each other. I discovered these clues while examining legal manuscripts in the Cambridge University Library manuscript reading Room. It was fascinating to examine these historic documents, resting on large pillows with “snakes” to hold down the pages, helped along with manuscript guides such as *A Catalogue of English Legal Manuscripts in Cambridge University Library*.⁹

Burrow's Reports

In the late 17th and early 18th centuries law reporting experienced a period of chaos, a time when not all law reports were trustworthy or accurate.

These various freelance productions are now collectively known as the Nominated Reports, and were reprinted in the *English Reports*. Many are still cited and referred to today but the problem was that they varied enormously in coverage, accuracy and reliability. Occasionally cases reported in more than one series even appear with different holdings. Certain reporters were the subject of astringent comments from the Bench. It was said of Espinasse, whose six volumes cover from 1793 to 1807, that he was deaf and that he “heard one half of a case and reported the other.”¹⁰

Sir James Burrow is generally accepted as being the father of the legal headnote as we know it today. His headnotes from the mid eighteenth century state the proposition of law but never the facts of the case. There is little evidence of headnotes in the nominated reports during the seventeenth and eighteenth centuries. C G Moran reports in his book, *Heralds of the Law*, that the first editions of Coke, Plowden and Dyer do not preface their cases with headnotes. In manuscripts of Bulstrode's reports there can be seen catch words and phrases in the margins. Burrow, who worked with Lord Mansfield (1705-1793), the Chief Justice of the King's Bench, established what would become a format for the modern law report, concentrating on those cases that introduced new law.¹¹ Burrow's reports focused on those cases that discussed matters of law and his headnotes were propositional in that they mentioned key elements of law within a case only.

Burrow, during the tenure of Lord Mansfield as Chief Justice, produced law reports that laid the foundation for the format of law reports as we know them today and for the modern headnote. Lord Mansfield resigned from the Office of Chief Justice in 1788. Following Lord Mansfield the reporters of the King's Bench were Lofft (1772-1774), Cowper (1774-1778), Douglas (1778-1785), and Dunford and East (1785-1800). The headnotes of Cowper and Douglas followed the style of Burrow, with digests following the cases.¹² It became accepted that headnotes were not part of a case but were extrinsic to it. At this time it was understood that a headnote attaches a label to a law case to ensure that it is indexed properly in annual digests of a law report.¹³

There was much debate in the mid to late 1700s as to what information a headnote should contain. Lord Lindley, for example, stated that a headnote should contain the “legal pith” of a case and nothing more.¹⁴ Different editors of law reports enunciated different types of headnotes over time, from the propositional to the factual. John Mews, who edited *The Reports* and *The Law Journal Reports* was critical of headnotes that contained too many facts and extracts from documents that would be better suited as a side note.¹⁵ In his view, longer headnotes were approaching information better suited for a case digest.

Medieval Manuscripts

The legal headnote as we know it today evolved with the history of law reporting and eventually the printing press. However, one may ask where the very idea of the headnote originated? The further back in time one travels the more evident it becomes that the origins of headnotes are devices used for keeping track of certain aspects of the law or of specific cases. They are reference points that assist both the scribe and the legal practitioner to find the law and make connections between law cases or legal principles. They are signposts for the reader indicating key elements of a case.

When examining legal manuscripts that date back to the 11th and 12th centuries, I was fascinated to discover that legal researchers 800 or 900 years ago faced many of the same challenges that we do today in our digital and electronic age. Researchers needed to keep and access the mountains of legal information recorded by court scribes, develop ways to highlight key points of the law and make connections with other key points and other similar cases. Technologies have changed but the need to organize and access legal information in many ways has not changed in all these centuries. Seeing and touching the pages of these manuscripts which are historical documents, one can see between the lines and in the margins of immaculately handwritten pages the connections made between key points within the pages and between cases.

⁸ *Supra* note 4 at 76.

⁹ JH Baker, *A Catalogue of English Legal Manuscripts in Cambridge University Library* (Woodbridge, Suffolk; Rochester, NY: Boydell Press, 1996).

¹⁰ *Supra* note 1 at viii.

¹¹ *Supra* note 7 at 76.

¹² *Ibid* at 39-40.

¹³ *Supra* note 4 at 78.

¹⁴ Nathaniel Lindley, “The History of the Law Reports” (1885) 1 *Law Q Rev* 137 at 143-144.

¹⁵ *Supra* note 4 at 83.

It can be observed in the texts of numerous handwritten manuscripts examined dating from the 13th to the 16th centuries that different tools were used to either link similar cases together, or to make marginal notes about a case or digest cases. Medieval monks or scribes would draw red lines from one case to another. Several of the manuscripts studied also had lists of cases at the beginning – very much like a table of contents. It is a bit of a mystery as to who the intended readers of the very early manuscripts that eventually became known as the Year Books were though most likely the Year Books served an educational purpose; perhaps other lawyers, students at law, or judges needed to know how cases are related to each other. These marginal notes, referring to other cases or legal topics, are the beginnings of headnotes – brief references or summaries of what a case was about. It is these marginal notes, summaries or digests of cases in pocket-sized note books, lines drawn in medieval manuscripts linking similar cases together that were devices used to organize information at a time when the body of case law grew and became too unwieldy to rely on memory. Just as today, when there are tools for finding legal information quickly and efficiently, so too in centuries past were marginal notes used for the same purposes. These marginal notes were the tools that eventually became what we know today as headnotes.

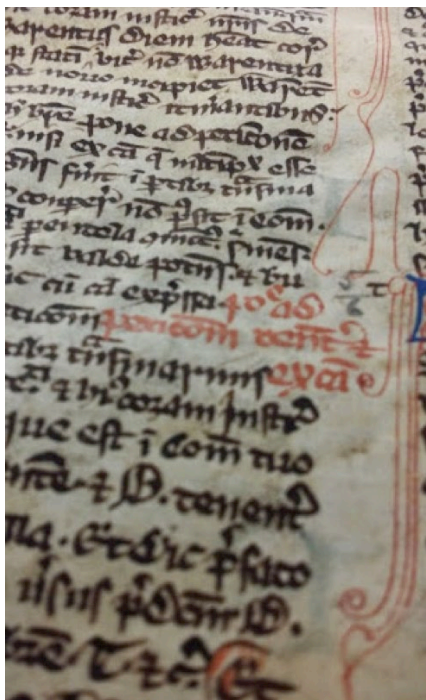


Figure 2: Cambridge Manuscript Dd.7.14 - Year Book from the reign of Edward I, c. 1320

Plea Rolls & Year Books

To fully appreciate the origins of the headnote, it is helpful to understand how legal cases were recorded. During medieval times scribes, copyists, lawyers, judges, students of the law and legal researchers attempted to organize and

access legal cases and legal information using a variety of methods. Just as we, in this digital age, must organize myriads of information and filter out the most relevant cases to a case at hand, so too, in past centuries, organizing and accessing legal information intelligibly was a challenge. Law digests and the legal headnote became important tools for accessing that information.

The history of law reporting can be divided into three categories: the plea rolls, the Year Books, which can be considered to be the first law reports, and finally the named or nominate reports which line the shelves of many academic law libraries today. Paul Magrath in the introduction to the Incorporated Council of Law Reporting's celebration of 135 years of the Law Reports summarizes part of this history:

Regular reporting began with the Year Books, transcribed from the Plea Rolls begun in 1189. The Year Books contained notes of cases written up in Anglo-Norman by apprentices to the law. Early commentators on the law produced authority for their propositions which was often decidedly hearsay or anecdotal. But by the 16th century individual reporters were publishing volumes or series of case reports under their own names. Often there were two of them, sounding a bit like comedy duos: Adolphus & Ellis, Meeson & Welsby, Flanagan & Kelly.¹⁶

The first year of the reign of Richard I, 1189, is the date from which the plea rolls began. Plea rolls were records of court cases written in hand by a person in court. These were transcribed on sheets of parchment that were three feet long and nine or ten inches wide. Unlike Chancery Rolls that were sewn end to end, plea rolls were sewn with ropes or thongs that passed through to the top of each membrane or roll and piled on top of each other. The principal purpose of the plea rolls was to form a record of what had been decided in court.¹⁷ Pleadings at first were formulated orally in court, under the direction of a judge and were read out in court along with a statement of facts of the case. Issues were often discussed in court and entries made by an officer of the court. Oral pleadings continued until the time of Edward III when eventually pleadings from the beginning of a case were entered on a parchment roll so that opponents could have access in preparing an answer. During the reign of Edward IV (1461-1470) it became the practice for a pleader to deliver his pleading already in written form, and entry upon the court role was deferred until a later time.¹⁸

During the reigns of Edward I (1272-1307) and Edward II (1307-1327) reasons and causes for a case were written down. The purpose of plea rolls was to provide a record and to finalize what had been decided. Similar to the minutes of a meeting, the results of a case, rather than the reasons and arguments of the case were recorded. These were written in Latin until the early part of the 18th century. We know that court records in Year Books, another record of

¹⁶ *Supra* note 1 at viii.

¹⁷ J H Baker, *The Common Law Tradition – Lawyers, Books and the Law* (London: The Hambledon Press, 2000) at 134.

¹⁸ *Supra* note 4 at 5.

court cases providing more detail than plea rolls, are quite different from modern court reports. Unlike today when we expect the court report to reflect what happened in a case, what was said, and what the evidence was, cases recorded in the Year Books may have lacked some of these details. Cases recorded in the Year Books were vehicles or tools that conveyed or illustrated what the law actually was.¹⁹ Details and the accuracy of a case were less important than how the efficiently the law was described or illustrated. Cases found in early court rolls and in the Year Books were tools for teaching students and lawyers the law. It was much later that the publication of law reports became a business.

The earliest plea roll entries were very brief. The classical format of the entries was established in the 13th century and included a note of the original writ, the appearance of the plaintiff, the plaintiff's declaration of the case, the defendant's plea and other pleadings, jury selection procedures and the judgment.²⁰ These were, in a sense, the very first law reports. However, during the reign of Edward III (1347-1377) the outcome of cases was not always recorded. Records of trials in common law, plea rolls contained the barest details of a case. Any judgments mentioned indicate whether the plaintiff succeeded and what compensation or relief there might be. Judges' reasons for their decisions or any authorities followed were not mentioned.²¹

The Year Books were produced between the years 1285 to 1537. The purpose of the Year Books is not entirely known; they are thought to be the work of students or practitioners who took notes in court that were sent to a compiler or a publisher to be put into collections of cases. Year Books were not published and their purpose may have been to educate students and lawyers as to how cases were pleaded before the courts. Often the final result of a case is not included, most likely due to the fact that the emphasis may have been more on how to bring an action before the court, rather than the final outcome of a case. Evidence for this is the fact that there are many cases which leave a space for final outcome of the case to be entered, but in fact never was filled out. Scholars have studied the Year Books at great length, and the Selden society has published volumes on these cases.²²

The identity of the compilers of the first law reports that we know as the Year Books remains a mystery. There are three groups thought to be responsible for assembling these first law reports. The reasons for these early compilations are also unknown and appear to vary from group to group. The first group were likely to have been court clerks, whose documents appeared to be both a record of what was said in court and the final plea roll entry of the case. These documents may have been useful to the judges whom the clerks served. It is thought that perhaps these court documents may have been useful to consult rather than relying on memory or when the judge who may have heard

an earlier case was not present to be consulted.²³

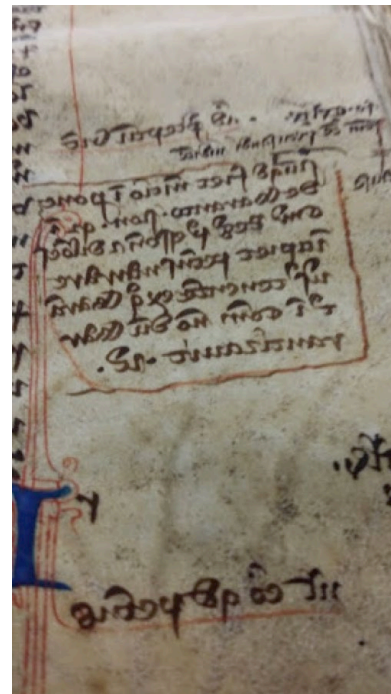


Figure 3: Cambridge Manuscript Dd.7.14 – Year Book from the reign of Edward I, c. 1320

Another group that may have compiled these early law reports were the lawyers who were involved with the cases. These were lawyers involved in litigation that had been pleaded numerous times in the past, and would want to know what had been discussed previously in these cases, so as to avoid any damaging arguments put forth by lawyers before them. Having written records of these earlier pleadings would certainly have aided in this. Plea rolls were not accessible by lawyers and they did not contain all the information that lawyers required to conduct their cases. As a result, by the end of the 13th century, it became apparent that lawyers had to make law reports for themselves. The catalyst for this was a change in the way that men were recruited to the bench. For a very long time the bench was populated by people such as Bracton who had training in civil and canon law, and who were recruited by well-known practitioners in common law courts. Perhaps because it had become more and more difficult to find such people to populate the bench it became necessary to change the rules for recruitment. This method of learning about the law from cases expanded to other courts that were originally outside the common law system and to the decisions of the House of Lords. When the Star Chamber developed into a regular court, lawyers found it necessary to develop reports for their own use that would record the proceedings of the Star Chamber.²⁴

A third group of compilers of law reports could well have been professional lawyers who were not necessarily involved in

¹⁹ *Supra* note 17 at 134.

²⁰ *Supra* note 17 at 135.

²¹ *Supra* note 17 at 135.

²² *Supra* note 4, at 5.

²³ Paul A Brand, ed, *The Earliest English Law Reports*, Volume IV (London: Selden Society, 2007) at xvii-xviii.

²⁴ WS Holdsworth, *Sources and Literature of English Law* (Oxford: Clarendon Press, 1925) at 75.

cases directly but who may have been in court as observers. These serjeants would have been interested to see how their colleagues may have argued or pleaded legal issues in the courtroom. One can also imagine that at this time lawyers and justices were also involved in training new lawyers.²⁵

The Medieval Courtroom

The physical environment of the medieval courtroom also affected early court reporting. Students at the time of Edward I were provided with a “cribbe” – an enclosed, raised platform that provided law students or those observing court proceedings with a place to sit. This enabled students of the law to sit and take notes in court, resulting in dramatic changes to the way that cases were reported.²⁶ Before this time students were required to stand and listen to what was transpiring in a courtroom and then go to a local monastery or a publisher of law books to repeat to scribes or monks information based on the few notes that they might have taken in court.²⁷ A student of law or lawyer would rush from the court and dictate what he had heard in court to a dozen copyists – each of these copies could be slightly different. Editors of these different copies might miss errors made in each one and copies would be made from copies and prepared for serjeants who would present cases in court. Law reporting in the twelfth, thirteenth and fourteenth centuries was a very inexact science. Lawyers or judges relying on such reports would have to be wary of the accuracy and the origins of such reports.

Serjeants and apprentices were present in court and what they said was useful to other lawyers. Their discussions and comments were more in the form of presenting a case. Judges would comment about issues regarding procedure in court which is why the text in the Year Books often appears to be conversation. The final outcome or decision of the case was often not emphasized or often not included at all in the reports of the case. The omission of the outcome of the case was likely due to the fact that these cases were being heard at a time before the concept of precedent and the binding nature of early decisions upon later decisions came into being. The outcome of the case would have been seen as less important than the discussions regarding pleadings. These discussions were recorded so that other lawyers or law students could learn how to plead specific legal issues in court.

18th Century Law Reports and the Printing Press

Regular reports of case law began to appear towards the end of the 18th century. These include the decisions the Admiralty and Ecclesiastical Courts, Privy Council cases and House of Lords judgments. Bartholomew Shower published the earliest decisions of the House of Lords in

1698. However, the introduction to these reports stating that the cases therein would be instructive to nobility was not well received; at the time the entire House of Lords decided cases. The House of Lords decided that such a publication would be a breach of privilege, thus delaying the publication of the House of Lords decisions until 1784.²⁸

Today’s legal researchers, who have access to online tools and search engines, perhaps take for granted the fact that they can access limitless numbers of cases on a legal issue. This was not the case in the mid-18th century, when law reports were expensive, often difficult to acquire from legal publishers in a timely manner and of questionable reliability and accuracy. By the time the use of headnotes became established in reports such as those produced by Burrow during the tenure of Lord Mansfield as Chief Justice, it was very clear that only those cases that introduced new law, very likely many of which were legal precedents and which were reflected in headnotes, were published and many cases went unreported.

The advent of the printing press also influenced the way in which law reports were published and eventually led to greater consistency in the formatting of printed law reports. Interestingly, there was a period when both the traditional manuscripts and printed texts were used at the same time. Eventually the printing press dominated. The development of the legal materials produced by the printing press was not the result solely of the growing printing industry. The law and lawyers were not solely responsible for the production of legal printed materials. Rather, several players were involved, including lawyers, printers, stationers and the state.²⁹

Very early on the state attempted to control the content of printed material. The production of books contrary to the Catholic faith was sparked by John Wyclif’s English translation of the Bible and the rise of the Lollard movement which was considered to be heretical. This proliferation of heretical material led to attempts to control both the content of published works and the dissemination of unorthodox materials as reflected in the 1407 Constitutions of Oxford and the Stationers Guild. The Guild of Stationers was a trade organization that eventually became involved in the development and use of printing technology. Prior to the printing press, books were produced by hand but the production was very slow and the output was manual.³⁰ The purpose of the Stationers Guild was to control the business of printing. There was early resistance to the technology of printing, and it was noted in the 1480s that printing presented a threat to the occupation of handwritten manuscript production. The Crown, however, recognized the importance of printing and legal documents. The dissemination of printed statutes resulted in a legally educated public and ignorance of the

²⁷ *Supra* note 4, at 5.

²⁸ *Supra*, Note 24, at 77

²⁹ David J Harvey, *The law Emprynted and Englysshed : The Printing Press as an Agent of Change in Law and Legal Culture, 1475-1642* (Oxford: Hart Publishing, 2015) at 10.

³⁰ *Ibid* at 18.

³¹ *Ibid* at 22.

³² Laura R Runge, *Producing the Eighteenth-Century Book: Writers and Publishers in England, 1650-1800* (Newark: University of Delaware Press, 2009).

law could not be an excuse for anyone.³¹

It is striking to note that the printing press did not eliminate the manuscript format in law. Manuscripts contained many notes in margins to assist the reader, and this could not be replicated in print. One concern about the new print format of law cases was that if there were errors in the printed report these would be multiplied by the printing press. Circulation and reading of manuscripts allowed them to be changed and added, whereas printed texts later on became static. Printed manuscripts did not eliminate handwritten manuscripts with marginal notes for some time. A handwritten manuscript was considered to be more “alive” – a living document that could be added to when necessary.³² Eventually, however, print versions of cases became accepted.

The production of handwritten legal manuscripts, which had been the source of legal information for centuries, faded into history. The printing press ended the profession of the scribe. In hindsight it is surprising to learn that with the advent of the printing press many handwritten manuscripts were thrown out. Fortunately, efforts were made to preserve legal manuscripts and all manuscripts in England, many of which were housed at universities such as Cambridge and Oxford.

Many of the manuscripts I examined were published around the time of those published by Burrows. It was interesting to see that while many of these reports lacked headnotes, often handwritten notes could be seen in the margins of pages produced on printing presses. Just as their medieval counterparts devised very visible ways to link cases together with lines drawn in texts, lawyers and judges in the 18th and 19th centuries continued to devise ways, by their own hand, to access and organize legal information and to link similar cases together. Both Plowden and the printing press changed the way the law was reported. Whereas the Year Books recorded oral pleadings only, Plowden, whose *Commentaries* are the earliest nominate law reports, added more details of a case making the *Commentaries* a model for subsequent law reporting.³³

The printing press formalized the headnote as a key component of published law cases. The establishment of the legal headnote enabled the readers, whether they were lawyers, judges or commoners, to understand, even before reading a case, what that case was about.

Sitting in the Manuscript Reading Room of the Cambridge University library and having the unique opportunity to turn the pages of a manuscript that was so beautifully handwritten by perhaps a monk 700 years ago was an amazing experience. It is quite a juxtaposition to imagine in our digital age the time it would have taken to have written even a single page. Discovering marginal notes and lines drawn very clearly from a note to specific case written on the page, I could see the efforts made to link cases or legal concepts together. Devices such as these, the seeds of the legal headnote, were used to organize and access legal information quickly and efficiently. These clues, in addition to the delightful cartoonish doodles of people drawn in the margins or at the top of a page that were perhaps drawn by a bored scribe, spoke of the fact that lawyers and legal researchers in the past were not so very different from ourselves.

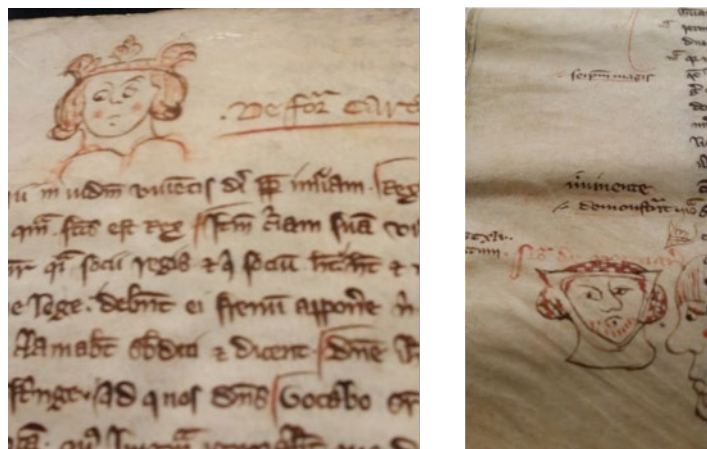


Figure 4: A scribe's doodles, 13th century Year Book (Cambridge manuscript Dd.7.14)

³³ *Ibid* at 140.

Deadlines / Dates de tombée

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III Reviews / Recensions

Edited by Kim Clarke and Nancy McCormack

***Aboriginal Law.* By Thomas Isaac. 5th ed. Toronto: Thomas Reuters Canada Limited, 2016. xxxv, 481 p. Includes maps and index. ISBN 978-0-7798-7252-7 (hardcover) \$120.00. ISBN 978-0-7798-7332-6 (softcover) \$65.00**

Since the publication of the 4th edition of Thomas Isaac's *Aboriginal Law: Cases and Commentaries* in 2012, there has been considerable evolution in the body of aboriginal law. Significant decisions from the Supreme Court of Canada, provincial appellate courts and further legislation have all appeared against a backdrop of increasing political attention on indigenous peoples after the release of the reports of the Truth and Reconciliation Commission of Canada in 2015 and the launch of the independent *National Inquiry into Missing and Murdered Indigenous Women and Girls*. The 5th edition effectively updates the case law and expands on the insightful commentary on relevant jurisprudence.

As with previous editions, this book is not a social commentary or a policy analysis but, rather, it serves as an overview of aboriginal law. The book's scope is made clearly apparent in the new section entitled "Reconciliation" which appears within the opening chapter and, in making minimal mention of the Commission's Report, focusses instead on the courts' approach to the concept of reconciliation and how reconciliation informs an understanding of constitutional protections. This focus continues throughout the book and the reader will not find a contextual discussion of the significant social and political milestones concurrent with decisions of the courts. For example, the book includes excerpts from the Supreme Court of Canada's decision in *Manitoba Metis*

Federation (MMF) discussing reconciliation, but very brief reference to the subsequent *Memorandum of Understanding* between the MMF and the government of Canada. What the reader will find is a thorough and up to date summary of relevant case law, legislation and agreements dealing with a range of topics within the over-arching umbrella of aboriginal law, including the trilogy of aboriginal rights, aboriginal title and historic treaty rights, as well as modern land claims and treaty rights, the division of authority between federal, provincial and territorial governments, the crown's duty to consult, reserve land and related tax matters and Métis rights.

Commentary and excerpts from significant decisions of the courts released in the four years since the last edition was published, are incorporated appropriately to build upon the existing content. For example, with the release of the Supreme Court of Canada's decision in *Tsilhqot'in Nation v British Columbia*, the content addressing aboriginal title and the application of provincial laws to aboriginal rights has been expanded significantly. Similarly, Chapter 4, consisting of a series of concise summaries of modern treaty and land claims agreements, now benefits from a series of decisions released in the past few years in which the courts were tasked with the interpretation of rights and obligations under such treaties. Brief descriptive sections on specific federal Acts have also been added, although the Acts themselves are not new.

The book provides an effective overview and summary of significant cases and legislation and should prove to be a useful resource for practitioners unfamiliar with this area.

Therein lies its true benefit and value. The structure of the book remains more or less similar to the previous edition and in this regard the subheadings continue to be reasonably well organized in a way in which follows the process of analysis that would parallel a court's analysis. For practitioners who may be unfamiliar with aboriginal law generally, but find themselves involved in a process of consultation, Chapter 8 provides a thorough discussion of the origins and nature of the Crown's duty to consult. With several relevant decisions that further explain the nature of this duty being handed down at both the appellate and Supreme courts since the release of the 4th Edition, the discussion of the Crown's duty to consult (in particular, to whom it applies), when it is triggered, the nature of declaratory relief available, and the nature of the honour of the Crown, all have been added or expanded on significantly. Although the book does not lay out a specific process roadmap, the context that the book does provide is valuable. As the body of case law in this subject area continues to evolve with a steady stream of decisions coming from our courts, the 5th Edition of Thomas Isaac's *Aboriginal Law* will provide a relatively up to date and thorough summary that is particularly useful to practitioners who may be new to this field.

**REVIEWED BY
IZAAK DE RIJCKE**

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also of the Yukon Bar
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***Accident Benefits: A Practical Desk Reference.* By Darryl Singer & Andrea Sesum, with Meena Saini. Toronto, ON.: Emond, 2016. Xiv, 361 p. Includes bibliographic references and index. ISBN 978-1-77255-011-5 (paperback) \$75.00.**

With over twenty years of experience dealing with personal injury litigation, Darryl Singer has set out to write what is perhaps the first major textbook on accident benefits. Other books may discuss cases that deal with monetary rewards for specific types of injuries (e.g., Goldsmith); however, as yet there has been no step-by-step guide on how to start an accident benefits claim, or see it through to its conclusion. This book fills that gap. Singer discusses the Ontario accident benefit system and while his main focus is the Ontario system, he also includes cases from provinces other than Ontario.

Singer begins by describing what accident benefits are, and

includes such sub-topics as who can apply for benefits and how to start an accident benefits claim. He then moves on to the procedure for claiming benefits, including the type of benefits available and the forms needed to start the process. Next, he goes into how these benefits are paid, and what one should and should not do to ensure that the benefits are properly paid out. After that, he covers the rights the insurer has and the obligations the applicant has to ensure claims are in order and that everything is correct before the benefits are paid out.

Interestingly, his next few chapters involve other benefits that most of us do not characteristically think about. These include attendant care benefits, income replacement benefits and caregiver and housekeeping benefits. Singer points out that some of these benefits, like caregiver benefits, are “available to be claimed.” However, this is not the same as “entitled to receive.” For instance, benefits may be available as an option on an insurance policy, but are not necessarily something one is entitled to.

In each chapter, Singer gives out “practice tips” which are helpful bits of advice to lawyers on how to counsel clients in areas such as filling out insurance forms. He provides stories as to what has gone wrong in some of his cases and how not to find yourself in the same situation. These are not what you would find in an academic textbook, but are useful in a lawyer's office.

Singer also brings in upcoming changes to the Statutory Accident Benefits Schedule for 2016. These are changes that were not in force when the book was written in late 2015, but have been included there as a “heads-up” notice. This is helpful for lawyers who practice in this area, to keep abreast of the changes.

Singer himself states that this book is not intended as an academic textbook, but only as a reference tool for lawyers, law clerks and judges in practice. He gives several examples to illustrate this. For instance, he devotes an entire chapter to tips on how to make an oral advocacy argument for benefits. This is, again, not something that you would routinely (if ever) see in an academic textbook. Singer also provides copies of the actual Statutory Accident Benefits forms. Similarly, sample statements of claim are provided. At our law school library, we do sometimes get asked for sample statements of claims, but it is not something that comes up regularly, and usually not for such a specific area of law.

Taking into account all of the above, a book like this would be excellent for a law firm library, or courthouse library. It is, however, not intended for an academic setting.

**REVIEWED BY
DANIEL PERLIN**
Reference Librarian
Osgoode Hall Law School Library, York University

Bewigged and Bewildered? A Guide to Becoming a Barrister in England and Wales. By Adam Kramer and Ian Higgins. 3rd ed. Oxford and Portland, Oregon: Hart Publishing, and London: Bloomsbury Publishing Co., 2016. xvi, 216 p. Includes illustrations, bibliographic references, glossary, and index. ISBN 9781 509905362 (softcover) \$29.95, 9781 509905362 (Kindle) US\$21.99.

As a law librarian and (non-practicing) attorney in the United States, I have long enjoyed British television shows with a legal theme, particularly *Broadchurch* and *Silk*. Nonetheless, and despite having been the editor of *Doing Business in the United Kingdom* (as well as *Doing Business in Canada*) when I worked for the law publisher Matthew Bender, now a unit of LexisNexis, the distinction between solicitor and barrister was a bit of a mystery. Was the first a path to the second? How exactly did one become a barrister? What is the relationship among clients, solicitors, and barristers? Thus, the opportunity to read and review *Bewigged and Bewildered?* was one I welcomed.

This brief and reasonably-priced book, available in both print and Kindle format, now in its third edition and written by two barristers, should be read by everyone who has asked the same questions. Packed with information, it answers all of your questions. In addition, it has a detailed table of contents, is very well-indexed, and includes some end matter that is both entertaining and informative, such as references to books and movies about the bar, as well as timetables for routes to the bar, a glossary of terms, and lists of resources for more information. And, for the increasing numbers of global law firms that may have lawyer/solicitor employees desiring to qualify as barristers, Chapter 16 on transferring to the bar should be helpful. The authors have done an excellent job at keeping the contents current, although one imagines the references to the E.U. will have to be changed following Brexit.

Bewigged and Bewildered? offers insights into the daily lives of several barristers, which help with that rather big decision of whether to become a barrister. It also delves into such arcane and fascinating matters as the intricacies of a barrister's attire, including, wigs, bands, gowns, and shoes.

The only known comparable work is Georgiana Wolfe and Alexander Robson's *The Path to Pupillage*, which the authors of *Bewigged and Bewildered?* do recommend for "a read." However, published in 2013 and rather more limited in scope, it is probably in need of an update, and does not appear to cover the wide range of *Bewigged and Bewildered?*, which covers not only life as a pupil, but life as a barrister, including the professional, practical, and social aspects of that life. This book is recommended for students, those who provide guidance to would-be barristers, schools, chambers and law firms, and non-U.K./Wales legal professionals seeking to qualify as barristers.

REVIEWED BY
ELIZABETH A. GREENFIELD
Hewitt, New Jersey, USA

The Burdens of Proof: Discriminatory Power, Weight of Evidence, and Tenacity of Belief. By Dale A. Nance. Cambridge, UK: Cambridge University Press, 2016. xiii, 330 p. Includes charts, bibliographical references and index. ISBN: 9781107124189 (hardcover) \$126.95

The Burdens of Proof: Discriminatory Power, Weight of Evidence, and Tenacity of Belief is the newest work by Dale Nance, an internationally recognized evidence scholar and the John Homer Kapp Professor of Law at Case Western Reserve University in Cleveland, Ohio. Professor Nance's scholarship focuses on evidence, jurisprudence, and legal theory.

His new publication, *The Burdens of Proof*, focuses on two concepts: the Burden of Proof theory and the works of early 20th century scholar John Maynard Keynes (1883-1946). The Burden of Proof theory endeavours to predict judicial decision making in the evaluation of evidence between two parties through the use of statistical formulae. According to this theory, the amount of weight a trier of fact will give to each parties' evidence and testimony can be predicted mathematically. These formulae can, theoretically, forecast whether each party has met their required burden of proof, how much weight the judge will give to each party's evidence, and what conclusions will most likely be reached by the judge about that evidence.

The author starts the text by exploring and then disproving the Decision-Theoretic theory (an alternative theory in this field). He then proceeds to introduce what he has termed the "Keynesian weight of evidence" or "Keynesian weight," whereby he combines the theories of John Maynard Keynes and the Burden of Proof theory. He provides evidence to support this combination, including evaluating national and international tribunals. Nance admits from the beginning that his goal in writing this text is to propose how judicial evidence weighing *should* be understood — he does not look at how it is actually done in either scholarship or by the judiciary themselves.

This text has only six chapters, but they are very dense with theory and details. This is a very difficult read, both from the nature of the writing and subject material, and from the fact that the author works from the assumption that the readers will be well versed in evidence law, evidence theory, and statistical scholarship. Much of the text involves complex numerical formulas and this excludes non-evidence theory scholars from much of the discussion.

Right from the introduction, the author jumps straight into his theories and does not introduce the topic for new readers. One often gets a sense, when reading this text, that perhaps the chapters were conference presentations that have been selected to be published into a book rather than a book that was planned from the start.

The nature of the writing, the lack of diagrams or illustrations (beyond the mathematical formulae), and the absence of an introduction to the concept and relevant theory in this burden of proof analysis indicate that the intended audience of this

work are peers who are well acquainted with this type of evidence law analysis.

This text is most suitable for an academic audience. In particular, it will be best for academic libraries with a high level of evidence law scholarship. The users of this text will mostly likely be graduate students or faculty. Upper year evidence students may be able to use this text, but it would be challenging without the theoretical knowledge required to understand this field of scholarship. Court libraries and general law libraries will find a very limited audience for this text.

REVIEWED BY

JENNY THORNHILL

Manager, Court Library Services
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***Canadian State Trials, volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914-1939.* By Barry Wright, Eric Tucker and Susan Binnie, eds. Toronto: Osgoode Society for Canadian Legal History, University of Toronto Press, 2015. xv, 517 pp. Includes bibliographic references and index. ISBN 978-1-4426-3108-3 (hardcover) \$60.00.**

Canadian State Trials is an authoritative work about the legal issues involving repression of dissent and perceived security threats in Canada between 1914 and 1939 – a time of great social and political upheaval marked by the First World War and the Great Depression. As the fourth volume in the *Canadian State Trials* series, this book chronologically follows three other periods in the formation of the country (1608-1837, 1837-1839 and 1840-1914). With each of its 11 chapters offering detailed commentary about Canadian law, this volume sheds new light on contemporary legal issues against a backdrop of historical data. Overarching themes are the delicate balance between fundamental rights and freedoms and security in the face of real and perceived threats to government, as well as state responses to national emergency crises and the difficult decisions regarding the rights of suspect foreign nationals living in Canada.

The book explores the discriminatory security measures taken by the Canadian government, such as internment and registration of tens of thousands of “enemy aliens” – that is, resident immigrants who came to Canada from countries at war with the British Empire. In connection with this subject, the text offers a comparative legal analysis of how Canada and Australia adopted war measures legislation under the United Kingdom's influence. It also looks at seditious-language prosecutions in Western Canada during the First World War, as well as the examination of conscription under the controversial Military Service Act, 1917, SC 1917, c 19.

The fear that Russia's Bolshevik Revolution would inspire radicalism played a powerful role in how Canada reorganized its domestic and security forces. The text covers this as well as military justice during the First World War – particularly the case of 10 French-Canadian conscripts who faced

charges of mutiny in a Canadian military tribunal outside Vladivostok, Russia. The book also explores the history of the Communist movement in Canada while focusing on Quebec and the efforts to repress communist and left-wing organizations in that province.

The volume includes important contributions regarding labour issues by studying the responses by government and major employers to the Winnipeg General Strike of 1919 – a significant conflict where collective bargaining and the existence of unions were at stake – and by exposing the struggle of unionized workers in Nova Scotia to resist wage cuts and have their unions recognized.

On the subject of labour, *Canadian State Trials, volume IV* also examines the development of section 98 of the *Criminal Code*, SC 1919, c 46, a controversial provision severely penalizing those who were members of an “unlawful organization” – a qualification that has made its mark on labour, legal and immigration history. The book focuses on the use of this provision to arrest and prosecute protesters during the Dominion Day Regina Riot, particularly the leaders of the On-to-Ottawa Trek (a lengthy trip during the Great Depression where men traveled to the capital city to protest miserable conditions in the federal Unemployment Relief Camps in British Columbia).

Collectively, the series lends readers a lens through which to critically evaluate the development and application of Canadian law. In this, the careful work of editors Barry Wright, Eric Tucker and Susan Binnie – all prominent scholars in their fields – is invaluable.

Thoughtfully structured to facilitate referencing, the book contains a detailed historical introduction, an appendix that comprises two short archival essays and supporting documents, as well as a comprehensive index. This latest volume will be highly useful for legal historians and readers interested in the history of Canadian law during the interwar years, making it a highly recommended addition to academic and law libraries.

REVIEWED BY

RICARDO WICKER

MLIS (Western), LL.B./J.D. candidate (Montreal)

***The Careful Workplace: Seeking Psychological Safety at Work in the Era of Canada's National Standard.* By Martin Shain. Toronto: Thomson Reuters, 2016. xiv, 137 p. Includes references, table of cases and index. ISBN: 978-0-7798-7238-1 (hardcover) \$77.00.**

This slim publication offers an insightful and important entry into the literature of psychosocial risks associated with the workplace. Its author is eminently qualified to provide commentary insofar as he was one of the principal researchers involved in the formulation of the new National Standard on Psychological Health and Safety in the Workplace, which is the central focus of this work. With a combined background in law and social science, Dr. Shain

brings an authoritative voice to this topic. The full text of the relevant standard (CAN/CSA-Z1003-13/BNQ 970-802/2013) may be downloaded from the Standards Council of Canada website and was commissioned by the Mental Health Commission of Canada. This review will concentrate on several key elements of the author's counsel relating to this standard.

Shain's stated purpose is to assist "workplace actors" toward the implementation of this standard designed to promote psychological health and safety. Immediately, it is important to note that the standard is, at present, voluntary which means that organizations are not actually required to maintain, measure or monitor the principles or practices outlined in standard's framework. However, as a "performance" standard CSA 1003/BNQ 9700 does stipulate precisely how any corporation might go about structuring the workplace to enhance the mental health and safety of its workers. Shain notes that, beyond the practical level at which this standard may operate in the workplace, there are wider, more profound, impacts of mental health on our families, communities and the larger world. Accordingly, the author argues that what he terms, "the careful workplace" has a pivotal role to play in societal well-being that should not be ignored by organizations.

The author's research in this area is substantive and wide-ranging. Shain notes that European and Scandinavian countries have adopted many of the principles, policies, and practices associated with "the careful workplace" and explores some of the legal and educational approaches to mental health protection developed in the United Kingdom. Based upon principles derived from the foundations of UK law of negligence dating back to 1932, the author cites fifteen propositions that apply to the prevention of mental injury in the workplace.

The author is not unaware of the significant cultural barriers that may exist with respect to the implementation of this standard. Thus, it is not surprising that one of the cases cited (i.e., *Sulz v. Canada (Attorney General)*, 2006 BCSC 99) deals with the harassment of a female RCMP officer by her detachment commander. The pervasive, systemic presence of a harmful workplace environment within this federal agency has resulted in an unprecedented settlement with a number of female RCMP officers and employees in order to avoid a class action lawsuit against the RCMP. Accordingly, Shain argues in favour of a hybrid model for dealing with psychosocial risks within any organization including regulatory and voluntary components.

There are efforts made to calculate the economic impacts of stress in the workplace. For example, estimates from the Mental Health Commission of Canada suggest a figure of \$51 billion for the total costs of lost productivity due to mental disorders of all kinds. And while no workplace could be expected to prevent all psychosocial risks among their workers, there remains a duty of care for corporate authorities to take reasonable precautions in the face of foreseeable harm. Shain outlines several examples of "ongoing intentional

and reckless conduct predictably resulting in mental injury and typically characterized as harassment" and "ongoing negligent conduct creating a climate in which mental injury is often reasonably foreseeable" (p 20) that should be understood in order to create a culture of carefulness in the workplace. Again, the author turns to the UK courts for evidence of an established jurisprudence relating to the application of "reasonable foreseeability" to cases dealing with mental injury.

It may be unreasonable and unnecessary to expect some of the goals of Liideri program funded by the European Workplace Innovation Network (EUWIN) leading to joy in the workplace. The seventeenth century political thinker, John Locke, characterized work as "the joyless quest of joy" and this continues to resonate in the postmodern world. However, people should have a reasonable expectation that they will not be exposed to the kinds of chronic and consistent practices in the workplace that Shain discusses which could lead to mental stress and/or injury. Accordingly, the author asserts that both quantitative and qualitative measures are in order to ensure that our workplaces are capable of assessing and abating psychosocial risks in the workplace.

Dr. Shain has worked to create a "Neighbour at Work" (N@W) initiative to assist in the promotion of mental and physical health in the workplace. He points to the mountain of research which acknowledges, outlines, and establishes a direct connection between certain organizational practices and mental health conditions (e.g., depression, anxiety, and burnout). And, while it may not be possible to accept that mental injuries in the workplace are a preventable social problem, as Shain suggests, it certainly is essential that public and private corporations work to minimize, mitigate and manage these kinds of harm. For example, it is unlikely that the catastrophic mental stress placed upon someone like General Romeo Dallaire, while operating on behalf of the Canadian government in Rwanda, could have been prevented by any form of N@W. Nor is it conceivable that any amount of counselling or employee assistance could completely avoid the mental harm experienced by prosecutors, jurors or court officials who play some part in the courts' adjudication of some of the more horrendous crimes. However, the concept of the careful workplace and the standard that accompanies this notion are aspirational and worthy of implementation insofar as they set an ideal for inspiration and approximation.

In summary, this brief book offers an enlightened, and enlightening, overview of the fundamental importance of psychosocial health. The author has assembled a useful amount of background information, including a draft regulation, to assist employers in their efforts toward fostering "the careful workplace" across Canada. Therefore, this is a worthwhile acquisition for a wide variety of law library collections, from academic to private practice.

REVIEWED BY
PAUL F. MCKENNA

President, Public Safety Innovation, Inc.

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***Clinical Law: Practice, Theory, and Social Justice Advocacy.* By Sarah Buhler, Sarah Marsden, and Gemma Smyth. Toronto: Emond, 2016. xii, 128 p. Includes bibliographic references and index. ISBN 978-1-55239-627-8 (softcover) \$75.00.**

In most Canadian law schools, clinical legal education, which involves law students participating in the delivery of services offered by a legal clinic under the supervision of a lawyer, forms part of students' educational experience. Although much of the discussion around student learning through clinical legal education focuses on the development of practical skills, the educational experience is multifaceted and includes professional identity development and examining preconceptions about how the legal system operates.

Supporting these students with information resources can be challenging, due to the numerous areas of learning that clinical legal education entails for students. Resources, for example, could include materials on the skillset required for clinical work, but also on the broader socio-political environments in which clinics operate. As well, much of the existing literature on clinical legal education is U.S.-focused. However, a recent publication, *Clinical Law: Practice, Theory and Social Justice Advocacy*, by Sarah Buhler, Sarah Marsden and Gemma Smyth, brings together these areas into a single volume, and is a highly welcome Canadian

addition to this field.

The authors' stated intent with the book is to "balance critical theory with practical approaches" (p xi), which is achieved both in terms of how the book is organized and how the authors approach the content. The first two chapters set out the broad context in which clinics operate, focusing on broader socio-economic conditions and critically assessing the role of the law in the lives of marginalized communities. The next two chapters shift from the landscape in which clinics operate to consider issues closer to home for students. Chapter Three, for example, discusses student learning within the clinic experience, while Chapter Four explores ethical issues that arise in clinical practice.

Chapters 5, 6 and 7 focus on practical skills, including client interviewing and counseling, legal writing, and advocacy. Chapters 8 and 9 link the critical theory to clinical practice by situating the work output of the legal clinic within a broader context, including on-going access to justice issues in Canada.

Along with footnotes, each chapter concludes with discussion questions to spark student reflection, and suggestions for further reading. Although there is no index, the book includes a detailed table of contents.

A central theme emerging from the book is that legal clinics

should operate with an understanding of individual clients and communities, and those involved in these clinics should work with their clients and communities as collaborators and allies. This theme is woven throughout the theoretical and more practical chapters. The theoretical chapters are written in accessible language, and the links between conceptual issues and on-the-ground impacts for clients, clinicians and students are made clear. Along with the theoretical chapters, the authors include many practical tips relating to skills development, professional practice, and relationship building, which should be very valuable for students.

The authors articulate a strong commitment to the potential of the legal clinic to advance broader social justice goals, and this is an important consideration throughout the book. The final chapter on systemic advocacy points to the potential for the legal clinic to address social problems in a manner that has real value for clients. I particularly appreciated the “lessons from the field,” a real-world example illustrating the use of collaboration to address the social problems that confront legal clinic clients.

The book’s primary intended audience is students involved in clinical legal education. This book would therefore be an excellent addition to academic libraries and to libraries that support students or community legal clinics.

**REVIEWED BY
GENEVIEVE HILLSBURG**

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BC Ministry of Justice and Attorney General

***Digital Copyright Law.* By Cameron Hutchison. Toronto: Irwin Law Inc., 2016. xiii, 233 p. Includes bibliographical references and index. Issued in print and electronic format. ISBN 978-1-55221-424-4 (softcover) \$75. ISBN 978-1-55221-425-1 (e-book) \$75.**

In this book, Dr. Cameron Hutchison, a law professor at the University of Alberta, addresses recent digital amendments to the Canadian *Copyright Act*, framed by his exposition of the fundamentals of copyright law. The author recently posted “5 Questions about Digital Copyright Law” on Slaw, providing a peek into some prominent issues that are covered in the book, which was released in May 2016.

The book consists of eight chapters with the longest chapters covering fundamental topics: authored works, interpretive dimensions and user rights. Newer developments in digital copyright law receive solid coverage as well, including controversial anti-circumvention tools such as digital locks, and the treatment of Internet intermediaries. Professor Hutchison also touches on issues not yet addressed in the law, including private international rules for ubiquitous infringement and the applicability of exhaustion rules to digital goods.

The chapter on user rights may be of particular interest to librarians as it provides guidance on evolving concepts such as fair dealing. Section 29 of the *Copyright Act* states: “Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.” Additional exceptions are made for criticism and review, and news reporting, with the further requirement that the source be attributed. There are also the exceptions for libraries, archives and museums, permitting copying for the purposes of preserving works, facilitating patron research and facilitating interlibrary loans for the purpose of patron research. Hutchison notes that “Fair dealing is a broadly conceived right whereas the specific exceptions are unusually detailed and condition laden” and goes on to say that “failure to meet the exact terms of these exceptions should not be understood as infringement but as signaling the need to analyze the use in terms of whether it constitutes infringement and if so, whether fair dealing is a defence.” He writes that, in *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, the Supreme Court recast fair dealing as an “integral part of the Copyright Act” and not merely as a defence.

The book’s last chapter examines international dimensions of digital copyright, with discussion of private and public international law including WIPO treaties. Given the worldwide arena of digital works, consideration of jurisdiction, choice of law and enforcement of foreign judgments are also part of this chapter.

The currency of the book is evidenced by its discussion of the 2015 BC Court of Appeal decision in *Equustek Solutions Inc v Jack*, with a note that the Supreme Court of Canada has granted leave to appeal and the hearing is scheduled for November 2016.

The review copy is a paperback, with a thin cover and plain production values, whose substance-over-style approach is arguably appropriate to such a complex topic. The publication is also available as in electronic format at the same price as print. Perhaps the publisher anticipated that a higher proportion of purchasers would prefer the digital format, so best to keep printing costs down?

The book has comprehensive bibliographic elements, such as two tables of contents: one a summary table and the other an expanded table. There are no illustrations and the content is presented in narrative text form, broken up by subheadings and footnotes. There is one chart, entitled “Rights Spreadsheet,” spanning 7 pages of Chapter 3. Appended material includes a table of cases, index and biographical information about the author. However, there is no bibliography – sources are cited in the footnotes only, and with 630 footnotes in total, gleaning a list of sources would be a daunting task for the book’s users. The index is extensive and includes entries to 22 sections of the *Copyright Act*, 39 Supreme Court of Canada decisions, and topical references to Apple iTunes, Facebook, Google Books, MP3s, Pinterest, streaming, and YouTube.

This treatise's academic tone will suit its audience of practitioners and law students. It does not pretend to be a guide for consumers of digital materials. Canadian law-school and other law libraries will find this a useful acquisition, given its up-to-date focus on emerging copyright issues within a Canadian framework. It could also serve as a course textbook, or as a guide in the field for lawyers practicing intellectual property law.

REVIEWED BY
DEBBIE MILLWARD
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***Implied Consent and Sexual Assault: Intimate Relationships, Autonomy, and Voice.* By Michael Plaxton. Montreal: McGill-Queen's University Press, 2015. 280 p. ISBN 9780773546202 (softcover) \$31.46.**

On entend souvent, dans la description d'une course, que tel compétiteur a connu un départ du tonnerre. Cette expression exprime merveilleusement bien le brio avec lequel le professeur Plaxton a entrepris son étude portant sur l'interprétation qui devrait être retenue quant au rôle du consentement « implicite » en ce qui a trait aux rapports sexuels. Il est rare qu'un écrivain réussisse aussi bien son entrée en matière! Le professeur Plaxton, lui, a pu faire état du droit actuel en quelques paragraphes au début de son chapitre introductif, pour ensuite poursuivre son élan en jetant les bases d'une interprétation qu'il prône comme étant non seulement supérieure en droit, mais bien mieux rodée (et, partant, plus prometteuse) afin de rehausser la force morale de la loi en ce sens. Bref, si la lectrice n'a pas le loisir, la faculté, de lire ce livre en entier, le premier chapitre est tellement bien peaufiné qu'il fournit des enseignements précieux.

Qui plus est, la lectrice qui peut consacrer quelques heures à la lecture de ce livre fort bien écrit y puisera matière à réflexion portant non seulement sur la question du consentement en droit criminel canadien, mais aussi quant aux notions connexes du libre arbitre, du droit à l'autonomie et à la mutualité en rapport aux questions intimes. Ce professeur du droit de l'Université de la Saskatchewan puise ses enseignements au sein non seulement de la jurisprudence, mais a même la philosophie, la sociologie et la littérature, tant immortelle que d'époque. Le titre des chapitres fait état de la richesse des discussions, à savoir « Exit, Voice, and Mutuality », « What Is Stereotyping? » et « Overbreadth or Bust? » Au demeurant, il est évident que l'auteur a consacré des milliers d'heures à étudier cette grande question qui défraye les grands titres de nos quotidiens de façon soutenue, et le résultat est un texte hautement peaufiné qui foisonne de leçons insignes en

relation à un sujet qui est d'actualité et qui laisse d'aucuns indifférent.

REVIEWED BY
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***In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession,* Adam Dodek and Alice Wooley, eds. Vancouver: UBC Press, 2016. 272 p. ISBN 9780774830980 (hardcover) \$95.00; ISBN 9780774830997 (softcover) \$34.95.**

So, what are legal ethics? I have much less of an idea how to answer that question than I did before I read this book, but that's okay. On reading this book I have learned that legal ethics can take on multiple meanings depending on the context and the circumstances. When I think of an ethical lawyer, I tend to think of Atticus Finch in *To Kill a Mockingbird*. Atticus was a kindly man; principled and reasonable, a pillar of his community, who firmly believed in justice for all. When I picked up *In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession*, I was expecting to read "stories" that solidified this archetypal view, but instead, I discovered that there is not one single exemplar of the ethical lawyer. There are many different conceptions of what an ethical lawyer is and what legal ethics are and there are tensions among these conceptions that make legal ethics more complex than I had ever imagined.

In this text, Adam Dodek and Alice Wooley, law professors at the Universities of Ottawa and Calgary respectively, have compiled a set of stories that illustrate these diverse aspects of ethical lawyering. As the authors note, these are not the stories of "great men," but rather of "ordinary women and men ... the stories that provide the necessary personal, social and cultural contexts for Canadian legal ethics" (p 5). The stories included in this collection are varied and unique but, fortunately, the authors have grouped them into four themes: *Defending the Guilty*, *Defending the Innocent*; *Lawyers in Social Context*; *Lawyers and Access to Justice*; and *On Being a Lawyer*, thereby enabling the reader to make logical connections among the disparate chapters.

Defending the Guilty, Defending the Innocent focusses on the tension between lawyers' ethical obligations to their clients and their obligations to society as a whole. Adam Dodek kicks off the text with a discussion of *Smith v. Jones*, a Supreme Court case in which solicitor-client privilege and client confidentiality came into conflict with the need for public safety. This chapter highlights the difficult choices that lawyers have to make when their duty of loyalty to their client conflicts with the needs of society as a whole.

These tensions are further illustrated in Allan Hutchison's story of Kenneth Murray, Paul Bernardo's lawyer. Murray, acting on Bernardo's instructions, retrieved a set of video tapes from the Bernardo/Homolka home on which the couple had recorded the rape and torture of their victims. Murray held onto these tapes for 17 months before turning them over to John Rosen who succeeded him as Bernardo's defence lawyer. Rosen turned the tapes over to the police, and Murray was charged and eventually found not guilty of obstruction of justice. In his decision on this case, Justice Gravelly made note of Murray's confusion between his ethical and legal obligations. This section highlights the somewhat grey area between what is ethical and what is legal that lawyers have to continually navigate, especially in the absence of clear guidance from the Law Society of Upper Canada's *Professional Conduct Handbook* (as it was called at the time).

The final chapter in this section is David Asper's personal account of his campaign to have David Milgaard released from prison after being wrongly convicted of murder. This chapter was one of the most interesting in that Asper asks "What happens when the rule of law has failed? What, then, is the duty of the lawyer? Are the usual rules thrown out the window?" (p 78). For Asper, the rule of law failed when the Department of Justice showed reluctance to re-open Milgaard's case, even in the face of new evidence. He was left with the perception that the DOJ was "more interested in preserving the conviction than in accepting our view that it might be flawed" (p 69). At this point, Milgaard's defence team began to argue their case in the media rather than in the courts; to "go to war" (p 70) in order to create public pressure to reopen the case. This tactic was eventually successful, but Asper is very clear that using the media to influence justice presents a number of pitfalls and ethical challenges for the lawyer, including the risk of jeopardizing an individual's right to a fair trial.

Asper is not shy about mentioning mistakes that he made during the time he was working on Milgaard's behalf: almost contaminating the evidence that was eventually used to exonerate Milgaard as one example, missing a key piece of information in his review of the evidence as another. Asper also mentions another important requirement of being an ethical lawyer, self-awareness: lawyers need to examine their motives when taking on a cause like Milgaard's.

The section on *Lawyers in Social Context* looks at the idea of legal ethics in the broader context of social change. The lawyers featured in this section are far from the model that Atticus Finch represented, that of a pillar of the community fighting against injustice from the top down.

Instead, the focus here is on the "insider/outsider" (p 111) dichotomy; the lawyers mentioned here were perceived to be rebels and troublemakers, rather than warriors in the cause social justice. This section starts with a look at the life and practice of Rocky Jones, a pioneering black lawyer in Nova Scotia, who worked for racial justice in his community, but who (amongst other things) was sued for defaming a

white police officer after commenting on her behaviour in the course of an investigation. Fortunately, Jones was found (on appeal) to be acting in accordance with his professional responsibility to "speak out against injustice" (p 100).

The chapter on "Feminist Lawyering" goes on to look at the legal community's response to women entering the profession and at the disproportionately high standards of professional ethics that were imposed on women lawyers and judges. As the author writes, female lawyers were often "punished in different ways for being feminist" (p 121). The final chapter on this theme describes how professionalism and self-regulating codes of conduct have played a role in buttressing existing power structures. As the author, Constance Backhouse, notes, "[t]he history of the Canadian legal profession resonates far more with words such as *power*, *exclusion* and *dominance* than it does with concepts such as *civility* or the extension of community and collegiality" (p 127). Minorities and women were excluded from the profession by the Law Society of Upper Canada and in some cases these trailblazers had to petition the Ontario Legislature to be admitted to the bar. Even after being admitted, they often had difficulties finding work and acceptance as part of the legal community. Shockingly, according to the *Indian Act*, RSC 1876 c 18, upon becoming lawyers (and doctors and university graduates) indigenous people lost their "Indian" status and were then, as the statute calls it, "enfranchised," in other words considered to be assimilated into Canadian society.

Lawyers and Access to Justice looks at the confluence of a lawyer's professional and social responsibilities. Lorne Sossin tackles the issue of pro bono work, which one might believe is intrinsically ethical but which can still raise ethical challenges or questions. Are lawyers who are not being paid for their work still subject to the same ethical constraints as those who are being paid for their services? Reflecting David Asper's observations on motivation, Sossin also touches on "the broader moral question of whether [pro bono work] ought to be viewed as truly altruistic or whether, like other legal work, it is tainted by a lawyer's pursuit of self-interest" (p 11). In the next chapter, Trevor Farrow discusses how professionalism and self-regulation in the profession need to evolve in order to enable lawyers to include the provision of access to justice as part of their professional ethical obligations.

On Being a Lawyer is the hardest section to pigeonhole. Each of its chapters looks at an individual lawyer who has clearly "found purpose and meaning through the practice of law" (p 12). The first chapter in this section looks at the life of a lawyer named Michelle, who, due to illness, is no longer able to practice law. Her identity as a lawyer, whose practice was shaped by the ethics she lived by, is intrinsic to who she is as a person. What happens to lawyers who are no longer able to practice? Do they lose a part of themselves? How do they navigate these changes? This chapter provides no answers, but does illuminate how in many cases being a lawyer is not just an individual's profession but an integral part of that person's identity.

The next chapter features Ian Scott, former Attorney General of Ontario. In many ways, Scott conforms to the Atticus Finch exemplar of the ethical lawyer. Coming from an establishment family with a long history of public service, Scott excelled as a trial lawyer before entering the political arena. As Attorney General, he was able to balance the ethical challenge of upholding the law with supporting the interests of the government that he was representing (p 210). The final chapter ends the book with a discussion of the intersection of ethics and civility and the tensions between those two concepts. Gerry Laaraker is a BC lawyer sanctioned for writing an amusing but not particularly polite letter to an Ontario lawyer in response to a demand letter that he felt was unenforceable and unethical. This experience galvanized Laaraker to make it his mission to take on lawyers who send out these types of demand letters, letters that are not technically unethical but that create undue stress and anxiety for the recipients.

I highly recommend this text. Each chapter is short, and although some chapters are a little dry, the storytelling approach makes the writing sufficiently accessible that this text would be good for members of the public as well as those of us who are involved with the legal profession.

REVIEWED BY
SUSAN BARKER

Digital Services and Reference Librarian

***Ontario Small Claims Court Practice 2016.* By Mr. Justice Marvin A. Zuker & Sebastian Winny. Toronto: Carswell, 2016. 1480 p. ISBN 978-0-7798-6578-9 (hardcover) \$110.00.**

Ontario Small Claims Court Practice 2016, consisting of seven main chapters with various sub-topics, is an indispensable Guide through the process of bringing or defending a claim in the Small Claims Court, setting out options at each of the various stages. This annual publication is a useful tool for lay persons and legal professionals alike. It offers clear insight into how various levels of the courts function and explains the jurisdiction of the Small Claims Courts and judges (as well as that of other specific courts). It also covers the transferring of matters from one court to another, as well as appeals, and the role of court officers. An abundance of case law summaries assists in further understanding the rules and material.

The latest amendments to the rules are covered, including paralegals' scope of practice. All of this is done in plain language, with overviews and a self-help chapter that outlines the practicalities of taking the small claims route.

Detailed commentary and suggestions are given. Topics include: how small claims courts differ from other courts; who can sue and be sued; destitute litigants; waiver of fees; how to make a claim in the small claims court; when

a claim can be divided into two or more actions under the court's jurisdictional rules; preparing and serving pleadings; settlement conferences – ways to avoid a trial; and trials. Additional topics include unrepresented litigants; persons with disabilities; the role of the court clerk; motions; interpretation services; assessments and collections; and *prima facie* limits on costs under section 29 of the *Courts of Justice Act*.

The book also covers how to build a better case, how to be better prepared, and where to find a local court. It provides a checklist for trial; offers a preparation list of dos and don'ts, and provides commentary on when and in what circumstances the court may take judicial notice of facts.

The volume, which contains well over 1000 pages, includes ready-to-use-forms, charts, and the actual text of the Small Claims Court Rules. Included are legislative amendments with case law to illustrate amendments, as well as information covering bankrupt individuals and how to obtain a bankruptcy record. All in all, this book is an indispensable guide for both the seasoned legal practitioner and lay user of the Small Claims Court.

REVIEWED BY
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Barrister, Solicitor & Notary Public

***Prosecuting and Defending Youth Criminal Justice Cases: A Practitioner's Handbook.* Brock Jones, Emma Rhodes, and Mary Birdsell. Toronto: Emond, 2016. xx, 448 p. ISBN: 9781772550733 (softcover) \$99.00.**

Prosecuting and Defending Youth Criminal Justice Cases is the first in a new series that "offers clear, concise guidance on the practical and procedural aspects of criminal law" (back cover). The series editors, Brian H. Greenspan & Vincenzo Rondinelli, are well recognized authorities in Canadian criminal law. The three authors of this first volume (Brock Jones, Emma Rhodes, and Mary Birdsell) all have direct experience either prosecuting or defending youth cases. They are also all involved in education and policy development through various other activities; for example, Jones publishes and teaches on the subject, Birdsell is the Executive Director of Justice for Children and Youth, and Rhodes has sat on the Board for that same organization (p xix-xx).

The authors cover topics you would expect to see in any text on criminal procedure, such as arrest, detention, pre-trials, bail hearings, trials, and sentencing. The book is well annotated, both in terms of the *Youth Criminal Justice Act (YCJA)* and leading case law, and reproduces a copy of the *YCJA* for reference. There are sections that are especially significant in the youth offender context, including "Representing a Young Person," "Extrajudicial Measures," and "Negotiations with the Crown."

The book comes close to a step-by-step guide to procedure

with straightforward answers to practical questions; also, wherever possible, information is presented in the form of checklists and tables. For example, the chapter on bail hearings includes advice on what happens next when parents do not or will not attend bail hearings. It sets out the qualities of a good (in other words, successful) plan of release. Finally, it discusses what makes a good responsible person or surety, and provides a checklist of questions to put to that person at the hearing.

Supplementary information includes a table of the differences between an adult vs. youth bail hearing, and a sample “Undertaking of a Responsible Person and of a Young Person. In addition, this chapter, as well as the chapter on sentencing, include sections on considerations relevant to aboriginal young persons.

Finally, the last three chapters offer supplementary information focusing on special considerations of youth records and privacy, impact on education, and youth who are also involved in the child welfare system. Some of the information throughout the book suffers from being “Ontario-centric,” but an effort is made to summarize information from other provinces, as well.

This title includes a wealth of information, and as mentioned earlier, is aimed directly at practitioners. It has a place in the collection of any lawyer or firm that handles youth justice cases. In addition, it is suitable for courthouse libraries that serve these members of the bar, or the youth and parents themselves who may wish to know more about the process. The book would certainly be a nice to have in an academic collection that supports practical courses in youth justice or criminal procedure. Law students benefit greatly from information that can teach them what the practice of law actually looks like, day to day. In particular, academic institutions supporting clinics that take on youth justice cases should seriously consider purchasing this title.

REVIEWED BY
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Alberta Law Libraries

***Public Interest, Private Property: Law and Planning Policy in Canada.* Edited by Anneke Smit and Marcia Valiante. Vancouver: UBC Press, 2015. 304 p. ISBN 9780774829311 (hardcover) \$95.00, ISBN 9780774829328 (softcover) \$34.95.**

For the average Canadian, private property rights are taken as a given in our legal system, which is why I am continually surprised at how rarely private property principles are referred to by the planners, lawyers and decision-makers in the land-use planning context of my legal practice. How private property informs planning in the public interest is the conversation that few professionals in Canada seem interested in having. This is why I was so interested in this

book which boldly and effectively engages this important conversation.

The book is a collection of writings that grew out of a conference of lawyers, planners and academics held in 2010 at the University of Windsor, and entitled “Private Property, Planning, and the Public Interest.” As the editors, Anneke Smit and Marcia Valiante, law professors at the University of Windsor, write in their introduction, their aim with the conference and this ensuing book was “to encourage a more active debate in Canada on the appropriate parameters of the public planning power and role, the acceptable limitations on the enjoyment of property rights, and the influence of both on the shape of urban Canada.” With this goal in mind, I think the book can be deemed a success.

The book is divided into five parts, with ten papers covering the following topics: (1) the competing theoretical underpinnings of private property and the development of government planning powers in Canada; (2) the strengths and weaknesses of Ontario’s land use planning regime; (3) “smart growth” and “green” strategies for city-scale planning; (4) the intersection of private property, natural resources and planning; and (5) issues in Canadian expropriation law. While these topics may seem familiar, the common thread –thinking deeply about private property rights – sets this collection apart and makes it an engaging read. The introduction alone would be worthwhile reading for any property law or planning law curriculum.

The book has an effective internal organizational logic. Chapter 1, by Harvey Jacobs, “Private Property in Historical and Global Contexts and Its Lessons for Planning,” is an erudite yet efficient overview of private property as a historical, social and legal institution. He effectively makes the case for why advocates of planning would do well to discuss more actively the discrete areas of tension between public interest and private property.

From the perspective of a planning lawyer in Ontario, the stand-out chapters in this volume are Chapter 3, “The Disappearance of Planning Law in Ontario” by Stanley M. Makuch, and Chapter 4, “In Search of the ‘Public Interest’ in Ontario Planning Decisions” by Marcia Valiante. Reading these papers back-to-back gives a reader a sense of the dialogue the book seeks to generate. While Ontario-centric, Makuch makes a compelling case for the necessity of Rule of Law principles and procedural protection for land owners impacted by public planning decisions, and Valiante widens the conversation to help the reader evaluate whether Ontario has an effective, fair and accountable system of land use planning.

Not every paper fulfills the promise of the title of the book. For example, Chapter 5, Transforming Toronto: Implementation and Impacts of Metropolitan-Scale Plans, by Pierre Filion and Anna Kramer, could be accused of losing the private property thread by reducing landowners to one among many “constituencies” in an otherwise excellent overview of urban planning trends.

The book also treads on some familiar ground for the legal reader, with Chapter 9, “Expropriation: the Raw Edge of the Conflict between Public and Private Interests,” by Stephen Waqué and Ian Mathany, pursuing a topic where the interface between private property and public interest is most apparent. But even here, this collection does not disappoint by giving the writers the latitude to explore areas for reform that one hopes may be seriously considered by policy-makers.

One of the reasons the book works so well is that at the heart of the collection is a shared belief among the writers in the value of dialogue as well as a desire to avoid artificially amplifying the public-private rights divide that can stunt public conversation of property rights. As the editors promise in the introduction, the reader of this volume is invited to engage in an important conversation among knowledgeable experts, and one hopes that this volume will spur more research, writing and conferences on the interplay between private property rights and land use planning.

REVIEWED BY
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***Religious Hatred and International Law: The Prohibition of Incitement to Violence or Discrimination.* By Jeroen Temperman. Cambridge: Cambridge University Press, 2016. 373 p. Includes illustration, bibliographic references, and index. ISBN 978-1-107-12417-2 (hardcover). \$143.95.**

In a climate of heated debate over the equilibrium between endorsing free speech and avoiding hatred-based marginalization of religious groups, Professor Jeroen Temperman examines this liberal dilemma through an international law lens. Engaging a wide-ranging audience that includes jurists, academics, international human rights monitoring bodies, courts, and policy and law makers, Professor Temperman explores if and to what extent article 20(2) of the *International Covenant on Civil and Political Rights* (ICCPR) could help achieve this essential and delicate balance.

In this book, Professor Temperman takes the readers on a historical journey that explores the sociopolitical environment and the difficulties surrounding the genesis and drafting of article 20(2) of the ICCPR. Through Socratic questioning, he examines the nature and constituent terms of article 20(2) and compares the prohibition of religious hatred constituting incitement by ICCPR with that by other international law instruments, notably the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) and the *European Convention on Human Rights* (ECHR). In addition, he dissects the salient elements contained in the *mens rea* and *actus reus* of an incitement offence, underscores the key elements of content and context when adjudicating an incitement offence, and canvasses the aggravating factors and sanctions associated with incitement offences.

In considering the prohibition of religious hatred through an international law lens, Professor Temperman compares criminal law and human rights legislation, in addition to the jurisprudence of various state parties to the ICCPR and international human rights adjudicative bodies. In particular, he notes that while numerous states have incitement laws in place, a large number of these national incitement laws do not neatly transpose article 20(2). Unless state parties to the ICCPR have made specific reservations, they are bound by article 20(2) to enact legislation that prohibits any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence.

Furthermore, Professor Temperman observes that although article 20(2) prescribes a prohibition rather than a fundamental right, the United Nations Human Rights Committee has, in its jurisprudence, gradually derived a right to be free from or protected against incitement. However, that “right” is not yet an autonomous right that can be invoked by applicants against their state.

In contrast, Professor Temperman notes that article 4 of the ICERD grants legal standing to persons who claim to be a victim of racist hate speech and who have not been protected by state parties. As the Committee on the Elimination of Racial Discrimination (CERD) offers more robust protection to the right to be free from racist incitement, it has imposed far-reaching state obligations in this regard. However, as religious incitement is not included in CERD’s mandate, CERD will only accept such cases where ethnicity and religion are clearly intersected. Therefore, Professor Temperman opines that the gap in protection shows the importance of article 20(2) ICCPR in protecting victims of religion-based incitement to discrimination, hostility, or violence.

As free speech is unduly threatened by incitement laws that do not require criminal intent or those that require weak forms of *mens rea* such as negligence or recklessness, Professor Temperman maintains that state parties to the ICCPR would do well to ensure that their national incitement laws and jurisprudence contain a strong focus on criminal intent.

Professor Temperman identifies three key elements of the *actus reus*, notably an inciter, an audience, and a target group. Moreover, Professor Temperman underscores that incitement is heavily preoccupied with contingent harm, i.e., the possibility of harm vis à vis the target group. In other words, incitement relates to whether other persons are mobilized to commit acts of discrimination or violence against the target group.

While the content of a speech act and its author’s intentions may help establish whether someone committed an extreme speech offence, Professor Temperman contends that art 20(2) requires an additional context-dependent risk assessment. In particular, the context includes the sociopolitical background to the speech act; the vulnerability of the target group; the immediate surrounding circumstances of the speech act, such as the position, role and status of the speaker; the reach of the speech, and the composition of the audience. As international adjudicative bodies are far from unanimous

on which penalties are generally permitted for speech offences, Professor Temperman calls for a more coherent and principled approach that does justice to the principle of proportionality.

In offering a thorough and critical examination of article 20(2), Professor Temperman provides comprehensive insights regarding the regulations and interpretations of

religion-based incitement offences. Noting the importance of balancing free speech with protection of minority rights that might be undermined by hateful, extremist factions, Professor Temperman urges the international community to consider carefully the above factors in achieving this delicate balance.

REVIEWED BY
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Call for Submissions

Canadian Law Library Review/Revue canadienne des bibliothèques de droit, the official publication of the Canadian Association of Law Libraries, publishes news, developments, articles, reports and reviews of interest to its members. Surveys and statistical reviews prepared by the Association's Committees and Special Interest Groups, regional items and the proceedings of the Association's annual conference are also published.

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Canadian Law Library Review/Revue canadienne des bibliothèques de droit, l'organe officiel de l'Association canadienne des bibliothèques de droit, publie des informations, des nouveautés, des articles, des rapports et des recensions susceptibles d'intéresser ses membres. Des enquêtes et des relèves statistiques préparés par les divers comités de l'Association et par les groupes d'intérêt spécial, des nouvelles d'intérêt régional et les procès-verbaux du congrès annuel de l'Association sont également publiés.

Tous les membres de l'ACBD ainsi que toute autre personne intéressée à la bibliothéconomie et faisant partie du monde juridique sont invitées à soumettre des articles. La revue sollicite également des commentaires bibliographiques d'ouvrages de nature juridique et plus particulièrement de publications officielles et de documents peu diffusés. Les contributions peuvent être soumises en français ou en anglais. Les articles de fond doivent être envoyés à la personne responsable des recensions. Avant d'être publiés, tous les textes seront revus par des membres du Comité de rédaction ou par des spécialistes de l'extérieur. La décision finale de publier relève toutefois du Comité de rédaction. Les articles pourront, sur demande, faire l'objet d'un examen indépendant par des pairs. La priorité sera accordée aux textes se rapportant à la bibliothéconomie juridique. Pour obtenir des exemplaires du Protocole de rédaction, visitez le site web de l'ACBD au <<http://www.callacbd.ca>>.

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III Bibliographic Notes / Chronique bibliographique

By Susan Jones

Dawn Amsberry, "Using Effective Listening Skills with International Patrons" (2009) 37:1 Reference Services Review 10-19.

Excellent communication skills have always been essential to the work of librarians, but even more important today are cross-cultural communication skills. Patrons who are non-native speakers of English are a fixture in all types of libraries and their accented speech can present some challenges for librarians, especially in reference interviews. There are many aspects to successful communication, but this article focuses on the importance of *listening* when communicating with patrons with accented speech. Author Dawn Amsberry, Reference and Instruction Librarian at Pennsylvania State University in University Park, Pennsylvania, begins her article with a literature review on the role of the listener in understanding accented speech. She then applies what she learned from the literature review to offer a few tips to librarians for improving their listening comprehension of accented speech and for developing staff training programs in cross-cultural communication. Although this article is geared to academic librarians, the author's tips will be of interest to any librarian who communicates with non-native speakers of English.

In her review of the literature, the author found that library-related research had little to offer on the topic of how to improve listening comprehension of accented speech. The scholarly literature in the field of linguistics and language teaching, however, proved to be more useful. The research in that field suggests the listener's *attitude*, *experience*, and *prior knowledge* all have an impact on communication, and

that *practice* is the key to improving one's comprehension of accented speech. Each of these elements – attitude, experience, prior knowledge, and practice – is examined in some detail in the article.

As just noted, *attitude* plays an important role in listeners' comprehension of accented speech. The author references studies showing that native listeners' adverse attitudes and biases about accented speech negatively impacts their perceptions of the intelligibility of the accent. Interestingly though, their negative perception doesn't necessarily reflect their actual comprehension. Listeners who rated speakers as highly unintelligible were still able to transcribe the speakers' accented speech, leading researchers to suggest that what they were saying was, in fact, comprehensible. This apparent incongruity is probably due to the fact that listening to accented speech requires more processing time, making it seem like more work and more difficult to understand.

Listeners' *experience* with accents also affects their perceptions of the intelligibility of accented speech. Again, the author references studies showing that listeners' familiarity with a particular accent, or even just non-native speech in general, facilitates their comprehension of accented speech. Knowing this, it won't come as any surprise that ESL teachers are more adept at understanding accented speech than listeners with less exposure to non-native accents. Librarians, though, don't need years of experience to improve their comprehension of accented speech. The studies referenced by the author show that the time required to process accented speech decreases with relatively little practice on the part of listeners.

Even more than attitude and experience, listeners' *prior knowledge* about the topic of conversation impacts their comprehension of the speaker's accented speech. Studies show that when listeners were provided with the speaker's general topic, they were better able to transcribe the accented speech more accurately. The research suggests that understanding the context of the conversation enables listeners to supply the inaudible or misunderstood sounds in the accented speech.

Based on her review of the literature in the field of linguistics and language teaching, the author offers a few suggestions for librarians who frequently communicate with, and would like to improve their interactions among, non-native speakers of English. Her first suggestion is to simply *be aware that attitude and experience affect the listening process*. Listeners who are apprehensive about interacting with non-native speakers may be compromising their own abilities to understand them, so a positive attitude will go a long way to better comprehension of accented speech.

The author's second suggestion is to *listen for meaning, rather than individual sounds*. Instead of focusing on individual sounds, listeners should focus on understanding the gist of what the speaker is saying. Non-native speakers will often carry over sounds from their native language to English (e.g., pronouncing "van" as "ban"), so listeners should resist the natural tendency to focus on the discrete sounds of accented speech and pay attention to the general meaning of what the speaker is saying.

The author's third suggestion is to *identify the topic of communication*. Identifying the subject matter of the speaker's conversation will help listeners to supply any mispronounced or misunderstood sounds. If necessary, refer them to subject specialist librarians who understand the topic of the conversation.

The author's fourth suggestion is to *practice listening*. The more librarians listen to accented speech, the more their comprehension of it will improve. According to the research referenced by the author, even a short period of exposure to accented speech yields beneficial results. And if listeners really want to make an effort to improve their comprehension of accented speech, the author suggests befriending an international student or faculty member, or volunteering at an English-language conversation program for non-native speakers.

In addition to these suggestions for improving interactions with non-native speakers of English, the author also has recommendations for librarians interested in developing a training program in cross-cultural communication for colleagues and staff. Again, the author turned to the research in the linguistics and language teaching field to learn how to develop an effective program. The training programs studied were based on the idea that comprehension improves with *exposure* to accented speech. Moreover, there were two aspects of exposure in particular which proved to be especially effective in improving listeners' comprehension of

accented speech. One aspect was *accent instruction* or the teaching of the specific characteristics of an accent (e.g., the tendency of those with a Vietnamese accent to delete the final consonant of a word or Japanese speakers who may substitute "l" for "r"). The other aspect of exposure which proved particularly effective was *familiarity instruction*. This type of instruction involves listening to recordings of accented speech, and readings and discussions about cross-cultural communication. The studies referenced by the author showed that accent instruction alone improved participants' confidence, but not their comprehension of accented speech. However, when accent instruction was combined with familiarity training, participants show marked improvement in both comprehension and confidence.

With these research findings in hand, the author's first recommendation for a cross-cultural communication training program is to *raise awareness*. Discussions about personal beliefs and biases about accented speech, as well as the impact of attitude, experience, and context upon comprehension are key to any training program in cross-cultural communication. The author also recommends that librarians incorporate readings about accent discrimination into the program. To that end, she offers a few suggestions, including Rosina Lippi-Green's *English with an Accent: Language, Ideology, and Discrimination in the United States* (New York: Routledge, 1997). She also recommends John Twitchin's documentary, *Crosstalk* (London: BBC, 1979), as an effective way to illustrate how misunderstandings can occur in cross-cultural communication.

The author's second recommendation for developing a training program is to incorporate *listening practice*. The studies she reviewed show that listening to accented speech is an important component of improving one's comprehension. To that end, the author suggests that librarians create their own recordings of accented speech, perhaps using the on-campus international community, including students employed at the library or those enrolled in an intensive English-language program. She also notes that examples of accented speech are available online from George Mason University's Speech Accent Archive (<http://accent.gmu.edu/>). Another component of listening practice is instruction on the unique linguistic elements of particular accents. To help trainees develop that awareness, the author recommends the previously-noted Speech Accent Archive, as well as Alleen and Don Nilsen's *Pronunciation Contrasts in English* (New York: Regents, 1973).

Cross-cultural communication skills are essential today and by heeding the author's advice and implementing her suggestions, librarians can continue to provide excellent library service to our international patrons and other non-native speakers of English.

Sarah K.C. Mauldin, "Getting to Practice-Ready: Bridging the Gaps from Law School to Law Firm" (March/April 2016) 20:4 AALL Spectrum 22-25. Available

online: <<http://www.aallnet.org/mm/Publications/spectrum/archives/Vol-20/No-4/Bridging-the-Gaps-From-Law-School-To-Law-Firm.pdf>> (accessed 15 October 2016).

Law students arrive at law firms with varying skill levels in legal research. For some, the first-year legal research class just wasn't a priority in the face of their more credit-heavy substantive law courses, for example contract and torts. But the variability in their skill levels isn't all down to students themselves. Introductory legal research classes differ in content and complexity from school-to-school. Ideally, all law students would take introductory *and* advanced legal research courses and both would be considered just as important as contracts and torts, thus ensuring they graduate with a strong foundation in the essential legal research skills. That would be ideal for sure, but it's not the reality at most schools. The reality is that many law firm librarians are left to fill in the gaps in students' knowledge and skills as they make the transition from law school to law firm. In this article, author Sarah K.C. Mauldin, Director of Library Services at Smith, Gambrell & Russell LLP in Atlanta, Georgia offers nine key lessons for law firm librarians helping students make the transition from law school to law firm.

Before outlining her nine key lessons, the author offers some advice about the "onboarding" process for new hires. At most firms, librarians are given little time with this group, so to make the best use of their 15 to 30 minutes, they should make sure to tell new hires what resources are available and when to use them, along with the firm's policy on billing for electronic resources, tips for efficient and effective research, and when they should ask for help from a librarian.

The first key lesson that law firm librarians can impart to new hires is *how to take an assignment*. In this regard, the author advocates for the use of a model assignment sheet. Although she acknowledges that not all recent graduates will adopt this approach, it's her belief that librarians should share best practices, and model assignment sheets are one way to ensure that new hires gather all the information they need to complete their assigned task. For those librarians who haven't used one before or are looking to update an existing one, the author offers her own model assignment sheet as an example. It's one double-sided page with room for recording notes. It starts off with the name of the person assigning the work, the date the assignment is due, billing information, and the form of answer required (i.e., memo, list of cases, yes or no). There's also room to note any background information, important names and dates, important legal terms and phrases, the parameters of the research (e.g., jurisdictional limits), and the people with whom the research can't be discussed for confidential or ethical reasons. Finally, the author's assignment sheet includes an area to note the resources consulted and search strategies used during the research process.

The full number and array of resources available to students while at law school is a luxury not likely to be replicated at any law firm. A firm's collection of resources is determined by its practice areas and budget, so to that end, the second

key lesson for librarians to impart to new hires is to *work with what you have*. According to the author, the key to dealing with a new and limited mix of print and online resources is flexibility, a willingness to set aside one's own preferences, and effective searching skills that carry across multiple platforms and formats.

The third lesson is *sometimes there isn't a clear answer*. Years of tests and exams at school and university condition students to believe there's always a "right" answer, so it can be difficult and frustrating for new hires when they can't find the statute or case that provides the perfect answer. Librarians can play an important role in these situations by suggesting additional resources or different search strategies, and if all else fails, reminding them that there isn't always an answer, or at least not the perfect one they were seeking.

The author's fourth key lesson for law firm librarians is to remind new hires that *the law is more than a bundle of cases*. There's a heavy emphasis on the study of case law in law school so it's often the first place recent graduates turn in their research. For this reason, it's important for law firm librarians to remind them that the answer to their research question might be found in a statute, ordinance, or regulation. Understanding when to turn to these resources will help new hires become more efficient and effective researchers.

The fifth lesson that recent graduates need to understand as they start their legal careers is that *technological competence is critical*. In addition to understanding the ins-and-outs of new legal research platforms and other resources, new hires also have to master time-tracking tools, document management systems, and even photocopiers and telephones with their systems for tracking client file numbers. They may also find themselves sharing the services of a legal assistant, so it's important they're adept at using word processing and spreadsheet software and that they understand the serious implications that can arise from the track changes and commenting features of those programs.

The author's sixth lesson for new hires to learn is that *help is available and it's okay to ask*. Recent graduates, understandably, want to appear confident and capable and so they may be reluctant to ask for help or admit they don't know or are unsure about something. Law firm librarians can help new hires in their transition from law school to law firm by assuring them there's nothing wrong with asking for help, and by encouraging them to approach librarians with any question, big or small.

The seventh key lesson for librarians to pass on to new hires is that *Google searching isn't without cost*. The cost of using billable legal research tools is a concern for most lawyers, so new hires may turn to Google to find their answers to keep those costs down. It's not that Google isn't a useful tool, but new hires need to understand when to use it. General web searching often leads to fruitless results and wasted time, especially when an efficient, low-cost search of a fee-based resource would likely yield the answer more quickly. Librarians can help new hires save time and money

in their research by suggesting when they might want to turn to Google. General background information about an unfamiliar topic, information about people or companies, and government information might all be found easily online, but even so, new hires should understand that if Googling doesn't yield any leads or answers within ten minutes, they should consider turning their attention to other resources.

The author's eighth lesson is to start with "Who cares?" Law librarians can help new hires plan their research by telling them to ask, "Who cares?" By asking who cares about their research question, new hires can identify the people or bodies with an interest in the issue, which in turn can give them a starting point for their research. For example, by thinking about who cares, new hires can identify whether the issue is local, provincial, or federal. If it happens to be local, then a good place to start their research may be with municipal ordinances or the town's website.

The author's ninth lesson isn't geared only to law firm librarians, but also to the instructors of legal research classes. Her lesson is for instructors to seek opportunities that help law students *understand the realities of real world practice*. The author encourages instructors to reach out to law firm librarians to help them identify people who might be willing to share their day-in-a-life stories with students. Lawyers, information technology staff, accountants, and records managers can help students understand what it's like to work in a law firm, but so can solo practitioners, staff lawyers, and other legal professionals. With a better understanding of the realities of real world practice, students can better prepare for the life they can expect to lead after law school.

The move from law school to law firm can be a bumpy one for many students, but by keeping in mind just a few of the author's tips, librarians can help recent graduates along the way and improve the chance that their transition is a successful one.

Beth Hirschfelder Wilensky, "When Should We Teach Our Students to Pay Attention to the Costs of Legal Research?" (Summer 2016) 24:1-2 Perspectives: Teaching Legal Research and Writing 41-46. Available online: <<http://info.legalsolutions.thomsonreuters.com/pdf/perspec/2016-summer/2016-summer-8.pdf>> (accessed 15 October 2016).

All law librarians probably agree on the importance of teaching cost-effective legal research to law students, but how many have given any thought to *when* to introduce the concept of cost-effectiveness? In this article, author Beth Hirschfelder Wilensky, Clinical Assistant Professor at the University of Michigan Law School in Ann Arbor, Michigan, advocates for postponing the teaching of cost-effective legal research to first-year law students. While she believes students should learn this skill, she doesn't believe they need to learn how to do it right away. In fact, she supports telling students not to

worry about it in their first year of law school. According to the author, concerns about costs negatively impact students' ability to learn how to conduct legal research effectively. In her article, the author offers two reasons why instructors should wait to teach *cost-effective* legal research strategies to first-year students. She then goes on to explain what instructors should focus on teaching in the first year, and finally, offers advice on when students should be introduced to the concept of cost-effective research.

Before outlining the author's reasons for postponing the introduction of cost-effective legal research, it's important to explain what she means by cost-effective. According to the author, cost-effective legal research means taking into consideration the time and money required to carry out the research, understanding how the major legal research platforms charge their users, and knowing how to research efficiently and economically.

The author's first reason for postponing the introduction of cost-effective strategies is that *first-year students need to focus on learning the fundamental skills of legal research*. The author references studies on learning and teaching that suggest students learn best when they acquire the fundamental skills first and then reinforce them upon learning more advanced skills. This principle of effective learning, though, often falls by the wayside in the face of time constraints in the classroom. To elaborate, the author provides just a partial list of the fundamental skills that students need to learn in any first-year legal research class. These skills include understanding the difference between, and the details about, primary and secondary sources; how to use the various online legal research platforms and tools; learning about the available free online resources and when and how to use them; how to approach a legal research question; how to attribute the appropriate weight to legal authorities; and what to do when faced with obstacles that impede the research process. And remember, that's only a partial list of the fundamental skills that first-year students need to learn.

The author then goes on to explain that it's essential for the fundamental skills of legal research to become second-nature to students in order for them to proceed with the research process effectively. Just imagine if you had to grapple with the differences between primary and secondary sources or how to use the major legal research platforms every time you were presented with a research question. Absorbing these fundamental skills and committing them to memory releases students to engage more deeply with the legal research process. When students engage more deeply with the research process, they focus more of their attention on the details of cases, think more meaningfully about the legal issues at play, develop an awareness of the best means to finding answers, and acquire an understanding of the most appropriate resources and tools for their research. The author reminds us that in addition to learning how to carry out the practical tasks of legal research, students also need to learn about the legal system itself, the concept of precedent, and how to read, analyze, and synthesize cases.

They also need some knowledge of the substantive areas of law to perform their research effectively. According to the author, to add the concept of cost-effective legal research to this long list of tasks is simply too much for the first-year law student.

The author's second reason is that emphasizing *cost-effectiveness may encourage first-year students to focus on finding the quick and easy answer*. In an effort to save time and money, students may take shortcuts by turning to what's familiar and to what they already know how to use in order to find an answer quickly. According to the author, this is particularly true for today's students, who seem satisfied to settle with what they can find online using Google. What's more, students' undergraduate experience with research and technology is unlikely to provide them with much advantage when it comes to tackling legal research, which is a time-consuming, rigorous task requiring patience, persistence, and focused attention. Legal research involves pursuing many different paths, testing different approaches to problems, and trying a variety of tools and resources. It also requires deep reading and careful analysis. In other words, legal research is hard graft and students may be unaccustomed to the effort required to tackle legal problems. For that reason, it's important to provide an environment in the first year that encourages and rewards experimentation and the chance for students to learn from their mistakes. Experimentation, in fact, is key to effective learning. It's only through trial and error, free from concerns about time and costs, that students will learn about the value of a good textbook, the benefits of abridgement services, how to select which lines of inquiry to pursue, which tools and resources are likely to provide the best results, and how to construct better, more effective search strategies.

So by now, readers are probably wondering what instructors should cover in their first-year legal research classes. Students are, indeed, interested in the true cost of and time involved in legal research and they're especially keen to know how long it should take them to complete a particular task. For her own part, the author advises her first-year students that legal research will be slow-going at the start, but she tries to satisfy their curiosity by providing general guidelines about the time required to complete an assignment. Otherwise, she makes it clear to her students that they should focus on practicing their legal research skills. She also assures her students that it takes time to acquire new skills, but with practice and experience comes greater efficiency and mastery.

The author offers some advice to legal research instructors about what to focus on doing during the first year. First off, instructors should encourage their students to spend a substantial amount of time conducting research. Instructors should also ensure their assignments and exercises cover a number of substantive subjects and require students to undertake a variety of research tasks that range from the relatively straightforward ones to the more complex tasks that demand in-depth analysis. Students should also be encouraged to explore resources, both fee-based and free, on topics of interest to them as a way to practice their skills.

To that end, the author occasionally sends her students news items and articles accompanied by suggestions for further related research.

In the final part of her article, the author addresses *when* instructors should introduce cost considerations to first-year students. For instructors who want to introduce the concept of cost-effectiveness, the author advises them to wait until the end of the year. By that time, students have had nearly a year's worth of legal research practice and study in the substantive areas of law. But even then, the author questions the need for introducing cost-effective research at all. For one thing, most first-year legal research classes already prepare students to engage in cost-effective research. Students are taught the benefits of consulting secondary sources when beginning their research, the usefulness of indexes and digests in surveying large bodies of case law, and the importance of noting-up services to find additional authorities. Instructors may encourage students to use these types of resources and tools in the name of efficient and effective research, but they also happen to be the means of cost-effective research. As the author notes, there's not much difference between *effective* research and *cost-effective* research.

The author also questions the need to introduce cost-effectiveness because it's probably less important for students' summer jobs than most people realize. She notes that some of the providers of online legal research tools now allow students to use their law school-issued usernames and passwords to conduct research during their summer employment. Even if they don't, the author points out that most law firms now have some type of flat-rate contract with the major fee-based research platforms. When it comes to preparing students for their summer jobs, the author asserts that instructors really only need to do a few things. One thing instructors should do is demonstrate how and when to use free and fee-based services (e.g., use fee-based services to create a list of potentially useful cases, but free ones to read or print them). Instructors should also give students some advice on wasting time with free services in situations when it's more efficient and effective to use fee-based tools. Promoting attendance at end-of-year refresher classes provided by the major legal platforms is also a good idea. Before setting off for the summer, students should be reminded about the value of consulting the firm or organization's librarian, if one is available, as well as the help lines of the major legal research platforms. Finally, instructors should encourage students to ask employers about their pricing structures for fee-based services and their cost-recovery policies. The author closes her article by providing one additional reason for limiting the amount of instruction on cost-effectiveness in the first year and that reason is that students are highly-motivated to seek out that information on their own. Students are determined to make a good impression during their summer jobs and they'll soon learn how to do so even in the absence of any instruction in cost-effective legal research.



III News from Further Afield / Nouvelles de l'étranger

Notes from the UK

London Calling!

By Jackie Fishleigh*

Hi folks,

National moods

While on a group walking holiday in Italy at the end of September I met Suzanna, a very interesting Canadian lady who explained to me how Justin Trudeau was elected largely because voters from different parties joined together to oust the unpopular Conservative Stephen Harper. How very sensible, and of course you now have a liberal Prime Minister, which in my world is a good thing! Of course whether you will get the promised “sunny ways” is uncertain but I sincerely hope so. It is great to see a mass of people collaborating to achieve what they perceive to be the most desirable outcome. By the way, we had a memorable time staying in a Tuscan farmhouse.

Over here, I'm afraid it seems the results of our notorious EU referendum are here to stay. The populist backlash against globalisation, the so called metropolitan elite and, even against unbiased experts has resulted in a strange national mood in which those who didn't want to leave the EU have to bite their tongues or risk being branded as Remoaners. This conflict has now reached the highest Court in the land – the Supreme Court.

The battle over Brexit

A woman called Gina Miller is the lead litigant in this landmark case which looks at whether the Prime Minister can use the Royal Prerogative to trigger the Article 50 clause. Article 50 is the clause by which the UK will start formal proceedings to leave the EU. This may sound quite dry, technical stuff and on one level it is. However it is extremely controversial and has become almost toxic, with the 11 judges being dubbed “enemies of the people” and criticised for being unelected. Meanwhile the Head of the Supreme Court, Lord Neuberger has taken protective measures on behalf of the claimants, their families and children who are interested parties, by ordering that their details are not revealed. Several have received threats of serious violence and unpleasant abuse in emails and other electronic communications. Lord Neuberger stated that: “Threatening and abusing people because they are exercising their fundamental right to go to court undermines the rule of law.”

The Supreme Court was in session for 4 days in early December. The outcome is due in January 2017.

Trump triumphs

And so the impossible has come to pass. A larger than life

billionaire business man with no previous experience in politics has vaulted over the most qualified person for the job i.e. Hillary Clinton to land in the White House. Assuming that he does choose to live there and not at Trump Tower. As a keen viewer of both the UK's Apprentice and also for a time the original US version I feel that I kind of know Mr Trump in some ways. It was clear back then in the mid 2000s that "The Donald" was a mercurial and somewhat domineering personality type. However his more unpalatable views were not on display. Once again the "will of the people" has prevailed although given that Clinton got more votes across the country it seems almost more bonkers than Brexit!

Croydon Tram Crash

On the day of Trump's election, I was shocked and very upset by the breaking news of the Croydon Tram crash. What started as a derailment ended with 7 dying and many injured. The Rail Accident Investigation Branch (RAIB) said the tram, which was carrying about 60 people, was travelling at 43.5mph in a 12mph zone. How this happened is being examined. I went to school in Croydon and recall watching the tram tracks being laid back in the late 90s. This terrible news has hit the town very hard as residents come to terms with the fact that a popular form of transport is not as safe as previously thought. The fact that this bus on wheels became a death trap one stormy morning in November is bewildering and devastating to many, me included.

Siddiqui v Oxford University

This is an unusual and fascinating case in which a student is claiming that poor tuition 12 years previously has ruined his career and life. Mr Siddiqui claims that, because he did not achieve a first in History at Oxford, he missed out on becoming a top commercial barrister. He did, however, train at international law firm Clifford Chance to become a solicitor but now suffers from depression and is unable to hold down a job for any length of time. Many thought that the claim would be struck out but the case continues. The background was laid out as follows in the Guardian:

"The university admitted it had "difficulties" running the module in the year Siddiqui graduated because half of the teaching staff responsible for Asian history were on sabbatical leave at the same time.

Siddiqui has said the standard of tuition he received from Dr David Washbrook declined as a result of the "intolerable" pressure the historian was placed under. In the academic year 1999-2000, four of the seven faculty staff were on sabbaticals and the court heard from Siddiqui's barrister that it was a "clear and undisputed fact" that the university knew of the situation in advance. He told the judge that of the 15 students who received the same teaching and sat the same exam as Siddiqui, 13 received their "lowest or

joint lowest mark" in the subject.

Mallalieu told the court: "This is a large percentage who got their lowest mark in the specialist subject papers. There is a statistical anomaly that matches our case that there was a specific problem with the teaching in this year having a knock-on effect on the performance of students." He added: 'The standard of teaching was objectively unacceptable.'

Siddiqui's legal team claimed he was "only one of a number of students who no doubt have proper cause for complaint against the university in relation to this matter".¹

With Very Best Wishes for 2017!

JACKIE

Letter from Australia

By Margaret Hutchison**

Greetings!

This letter will be somewhat shorter than usual as I have been on long service leave for 3 months, 10 weeks of which were mostly in the US and cruising through the Panama Canal where the rest of the world does not really exist especially around presidential election time. This is me on the roof of the cathedral in Leon, Nicaragua. That's one country I never thought I'd ever visit. We kept passing a "Biblioteca Jurídica" there but I couldn't get a photo!



News from the High Court of Australia

The big news in Australia is that the government has finally appointed a female Chief Justice, Susan Kiefel. Justice Kiefel has been on the High Court bench since September 2007 and is the most senior puisne judge on the High Court

¹ Graduate sues Oxford University for £1m over his failure to get a first", The Guardian, December 4, 2016 online: <<https://www.theguardian.com/education/2016/dec/04/graduate-sues-oxford-university-1m-failure-first-faiz-siddiqui>>

bench. She is the fourth Queenslanders to be appointed Chief Justice, the first being the original Chief Justice, Sir Samuel Griffith in 1903 but there have also been four from New South Wales and Victoria.

Justice Kiefel's replacement as a puisne justice is Justice James Edelman from the Federal Court. Justice Edelman is also based in Brisbane but comes from from Western Australia. Early in his career, Justice Edelman was an associate (clerk) to a previous High Court justice some 19 years ago. Some staff here in Canberra can remember him as an associate, it is making them feel quite old!

Unlike the requirements for Canadian Supreme Court, there are no geographical requirements for the appointment of Justices. There have been eight Queenslanders appointed to the High Court since its creation in 1903, compared to 26 from New South Wales from a total of 53 judges. There's never been a judge appointed from the states of South Australia or Tasmania. No wonder it is sometimes referred to as the High Court of New South Wales and will now be referred to as the High Court of Queensland.

Another politico-legal development was the explosion of the row between the Attorney-General, George Brandis and the Solicitor-General, Justin Gleeson which had been rumbling since 2015. The dispute revolved around whether the Attorney-General, George Brandis consulted Gleeson prior to the issuance of his directive that any requests to the Solicitor-General's office for legal advice from other areas of government should be approved by the Attorney-General. This meant that the Attorney-General would know exactly who had sought advice from the Solicitor-General, whether the Governor-General, the Prime Minister, or heads of government departments and agencies. Senator Brandis told the Senate he did consult. Gleeson has maintained Brandis did not.

Gleeson as Solicitor-General was also unhappy that he was not properly consulted on a controversial citizenship bill that split the previous Liberal cabinet, even though Senator Brandis subsequently claimed that Gleeson had advised it could withstand challenge in the High Court.

The dispute culminated in an extraordinary showdown in front of an opposition-dominated Senate committee, which in its report, found that Senator Brandis had misled Parliament about his earlier statements and recommended that the directive should be repealed.

Legal experts had expressed concern the directive may have meant the Solicitor-General, who holds a statutory office and gives independent advice on matters of national significance, is "frozen out" of advising the government of the day if the government thought it would not like the advice given and would seek more politically friendly views from the legal profession.

The relationship between Senator Brandis and Mr Gleeson had become unworkable and in late October, the Solicitor-

General resigned to break the impasse. In early November, Senator Brandis tabled an amendment repealing the controversial directive. A new Solicitor-General was appointed on 14 December.

The July Election

The repercussions from the federal election in July are still lingering. One unspoken reason for the dissolution of both houses and therefore a full Senate election was to remove the independent senators who were slowing the ability of the government to pass its legislative programme. Unfortunately for the government, the Australian public returned more independent and minor party senators than previously.

There are questions about the eligibility of two senators to sit. One, Senator Bob Day, representing the Family First Party, has already resigned from the Senate to deal with the collapse of his home building companies, which were major names in the construction industry. The High Court will examine whether Mr Day had a pecuniary interest with the Commonwealth as a result of an arrangement involving the lease on his Adelaide electorate office.

Former Senator Day's office was in a building that he has an interest in, and the Commonwealth's contract for the office may therefore be a matter that is a pecuniary interest for Day. If Senator Day is held to have received financial benefit from this lease, he would be ruled ineligible to stand for election and there would be a recount of ballot papers after removing him from the ballots so his seat would go to another candidate from possibly another party. If he was ruled eligible, then his resignation would be accepted and his replacement would come from the same party.

Receiving a financial benefit from the Commonwealth (or office of profit) disqualifies a person from holding a seat in Parliament under the Constitution. This concept of an office of profit applies across all areas, public servants or defence personnel who stand as candidates must resign before the candidacy is made official. They are entitled to return to work if unsuccessful without going through recruitment procedures but not necessarily to the same position.

There will be a special hearing in January involving a trial and witnesses prior to a Full Court hearing in February as part of the case considering Senator Day's election. Having a trial before a High Court Justice is a very rare occurrence, the last proceedings of this type being close to 50 years ago. The other problematic Senator is Senator Culleton from Western Australia. Senator Culleton was elected as a Senator representing the One Nation party. However, Senator Culleton pleaded guilty in August 2016 to a charge of larceny, after he stole the key to a tow truck in 2014, but no conviction was recorded against him.

However, a conviction was recorded against him when he failed to appear in court before the election on the same charge in March 2016 and, according to the Government, that is where the problem arises.

Attorney-General George Brandis sought legal advice from the Solicitor-General at the time, Justin Gleeson which indicated Senator Culleton might have been ineligible to contest the election because under section 44(ii) of the Constitution, a person cannot serve if they have been convicted of an offence that carries a punishment of one year or longer.

The options are that whether the Constitution should be interpreted at the time of the election which means asking if Senator Culleton carried the conviction at the time of the election or, as the original conviction was annulled in August 2016, it has never effectively existed.

Senator Culleton represented himself in a directions hearing before the Chief Justice which was apparently reminiscent of scenes from “[The Castle](#)”, an Australian movie about a home owner acting without representation. During his Full Court hearing, he had counsel and the Court has reserved its decision.

Next letter I hope to write of Victoria’s euthanasia laws and the Australian situation of “zombie sections.” Until then,

Best wishes,

MARGARET

The US Legal Landscape: News from Across the Border

By Julienne Grant***

At the beginning of November 2016, many residents of Chicago (myself included) experienced an emotional roller coaster of sorts. First, on Wednesday, November 2, 2016, the Chicago Cubs won the World Series for the first time since 1908. It was an incredibly fun, exciting, and uplifting event. I attended the victory parade with millions of other Cubs fans; it was a huge party.

Then our spirits crashed. On Tuesday, November 8, 2016, Donald J. Trump became President-elect of the United States. For a city full of Democrats, near where Hillary Clinton was raised, this was a shock and a huge disappointment. I admit that I was one of the US citizens who checked out the “[Immigrate to Canada](#)” website that evening, which had crashed by the time I tried to access it. A Trump presidency, however, is now a reality, so see below for a brief synopsis of how it might impact the US legal landscape, including SCOTUS (Supreme Court of the United States).

There was other US law-related news in the final quarter of 2016 besides the presidential election. SCOTUS heard some big cases, and some of the Justices were out and about, lecturing and performing (yes, on stage). The column also reports on bar exam results, President Obama’s impact on the federal judiciary, popular blawgs, new book titles, and AALL happenings.

AALL News

On October 31, 2016, AALL launched its new brand. The new brand strategy comprises “a visual identity, tagline, and messaging” that will enable AALL “to establish and maintain a clear, unified brand identity within AALL and to the public.”² The new logo is blue and orange, and prominently features the Association’s acronym, “AALL,” followed by a forward slash, then “Your Legal Knowledge Network™.” Check out the new logo on [AALL’s website](#).

A day later, AALL announced the results of the 2016 AALL Executive Board Election for the term starting in July 2017. Thirty-three percent of the membership cast ballots (1,344 members).³ Cornell University Law Library’s Femi Cadus was elected as Vice President/President-Elect. Luís Acosta of the Law Library of Congress will serve as Secretary. New Board members (July 2017-July 2020 term) are Beth Adelman (SUNY Buffalo) and Jean P O’Grady (DLA Piper).

On November 2, 2016, AALL released a digital white paper, “[Defining ROI: Law Library Best Practices](#),” which offers strategies for demonstrating a return on investment (ROI) in law libraries. On November 9, AALL released its “[Public Policy Priorities for the 115th Congress](#),” which articulates the Association’s positions on various issues, such as access to justice, balance in copyright, improved access to government information, government openness, and privacy protection.

Bar Exam News

A recent [Kaplan Bar Review](#) survey indicated that a vast majority of recent US law school grads (91 percent) believe all US jurisdictions should administer the Uniform Bar Exam (UBE).⁴ Survey respondents cited the portability of the exam as the main reason for preferring it (89 percent).⁵ Twenty-six jurisdictions have adopted the UBE, including Massachusetts, New Jersey, and Washington, D.C.⁶ In the process of formally considering the UBE are Illinois, Maine, and North Carolina.⁷

A number of states’ bar exam passage rates for the July 2016 exam have been reported in the press. In New York, where the UBE was administered for the first time, the passage rate for N.Y. law school graduates was 4 percent higher than

² Am. Assoc. of Law Libr., *Debuting Our New Brand*, AALL eBriefing (Oct. 31, 2016).

³ Am. Assoc. of Law Libr., *AALL Executive Board Election Results*, AALL eBriefing (Nov. 1, 2016).

⁴ Kaplan Test Prep, *Kaplan Bar Review Survey: 91 Percent of Law School Graduates Favor Adoption of Uniform Bar Examination, Citing Increased Employment Opportunities* (Dec. 8, 2016), <http://press.kaptest.com/press-releases/kaplan-bar-review-survey-91-percent-of-law-school-graduates-favor-adoption-of-uniform-bar-examination-citing-increased-employment-opportunities>.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

last year (up to 83 percent).⁸ In Illinois, passage rates for the July exam dropped for the third consecutive year, down to 72 percent.⁹ For July 2015, the rate was 76 percent, and for July 2014, 81 percent.¹⁰ Even worse news from California, where the passage rate for the July exam was a dismal 43 percent, down from 46.6 percent in 2015.¹¹ A November 21, 2016 article in the online *ABA Journal*, however, suggested that there was a slight increase in bar exam scores nationally.¹²

“The Blawg 100” & New Analytics Tools

The *ABA Journal* published its tenth Annual “Blawg 100” and its fourth annual “Blawg 100 Hall of Fame” on December 1, 2016. New additions to the “Hall of Fame” include [Dewey B Strategic](#), [LawProse](#), and [Persuasive Litigator](#). DLA Piper’s Jean P O’Grady (recently elected to the AALL Executive Board) is the administrator and contributor for “Dewey B Strategic.” “LawProse” is the blog of well-known legal writing guru, Bryan Garner. “Persuasive Litigator” focuses on jury psychology and behavior.

Bloomberg Law and Ravel Law have both released new analytics tools. Bloomberg’s tool, called “Litigation Analytics,” covers four analytical areas related to judges and tracks which attorneys appear most often before specific judges.¹³ Ravel Law’s “Court Analytics” product analyzes millions of US court opinions to identify patterns in language and case outcomes.¹⁴

NewsFlash: Male Partners Earn More Than Their Female Counterparts

Law360 recently reported on several interesting and revealing studies of US law firms. One article summarized the results of MLA (Major, Lindsey & Africa)’s fourth biennial [Partner Compensation Survey](#), which posed questions to more than 75,000 partners across the US. According to the study, median compensation for law firm partners is \$877,000 US, up 22 percent from 2014.¹⁵ Male partners earn on average 44 percent more than their female counterparts.¹⁶ (Surprise.) *Law360* also summarized a BTI Consulting Group report that predicted the areas of significant growth for firms in 2017: cybersecurity and data privacy; regulatory matters; class actions; bet-the-company litigation; and mergers and acquisitions.¹⁷ Another BTI report, based on surveys of US corporate counsel, named Skadden Arps Slate Meagher & Flom LLP the most arrogant firm for 2016.¹⁸ To be fair,

Skadden also made it to the “[BTI Client-Service A-Team 2017](#)” list, which recognizes firms that offer superior client service.¹⁹

SCOTUS News

An eight-member SCOTUS heard several big cases during its October 2016 term. In [Samsung Electronics Co. v Apple Inc.](#), the Justices considered whether to uphold a \$399 million US damages award for Samsung’s infringement of design patents owned by Apple. SCOTUS ruled unanimously that Samsung need not pay Apple damages for all profits earned from the sale of the infringing Smartphones. Instead, Justice Sotomayor wrote, damages should be determined based on the value of the copied components.²⁰ The Justices sent the case back to the US Court of Appeals for the Federal Circuit to craft a proper remedy.

On November 29, 2016, the Justices heard arguments in [Moore v Texas](#), which examined whether Texas violated the Eight Amendment and earlier SCOTUS precedent by applying outdated medical criteria in determining intellectual disability in the context of a death penalty case. On December 5, 2016, the Court heard a pair of racial gerrymandering cases involving redistricting in North Carolina ([McCroy v Harris](#)) and Virginia ([Bethune-Hill v Virginia State Board of Elections](#)). Heard on January 18, 2017, was an interesting First Amendment case, [Lee v Tam](#). That case involves a challenge to the US Patent and Trademark Office’s denial of a request to trademark the name of an Asian-American rock band, The Slants. The Office denied the request on the grounds that the band’s name disparages people of Asian descent.²¹

On December 14, 2016, the Court granted *certiorari* to [four new cases](#). Two of them stem from convictions in a 1984 murder case in Washington, D.C. where defense attorneys did not have access to certain evidence that could have aided the defendants. The Justices also agreed to hear another patent case, as well as a deportation case involving a non-citizen immigrant who was convicted of a drug crime, but allegedly received poor legal representation.

The Federal Judiciary: Out & About

Richard A. Posner, the outspoken Seventh Circuit appeals

⁸ Paul L. Caron, *July 2016 New York Bar Exam Results: Pass Rate Increases 4% After Adoption of UBE*, TaxProf Blog (Nov. 14, 2016), http://taxprof.typepad.com/taxprof_blog/2016/11/july-2016-new-york-bar-exam-results-pass-rate-increases-4-after-adoption-of-mbe.html.

⁹ Lauren P. Duncan, *Bar exam slide continues; rate now 72 percent*, Chi Daily L Bull (Oct. 28, 2016), at 3.

¹⁰ *Ibid.*

¹¹ Staci Zaretsky, *California’s Bar Exam Passage Rate Reaches 32-Year Low*, Above the Law (Nov. 21, 2016), <http://abovethelaw.com/2016/11/californias-bar-exam-passage-rate-reaches-32-year-low/>.

¹² Stephanie Francis Ward, *Some states see increase in bar pass rates, while others witness declines*, ABA Journal (Nov. 21, 2016), http://www.abajournal.com/news/article/some_states_see_increase_in_state_bar_pass_rates_while_others_witness_decline.

¹³ Victor Li, *Data on judges’ tendencies featured in new predictive analytics tool from Bloomberg Law*, ABA Journal (Oct. 19, 2016), http://www.abajournal.com/news/article/data_on_judges_tendencies_featured_in_new_predictive_analytics_tool_from_bli.

¹⁴ Jean P. O’Grady, *Ravel Law Launches Court Analytics Module: Hosts Launch Webinar Today*, Dewey B Strategic (Dec. 5, 2016), <http://deweybstrategic.blogspot.com/2016/12/ravel-law-launches-court-analytics.html>.

¹⁵ Aebra Coe, *Partner Pay Soaring, But Women Still Make Far Less: Study*, Law360 (Oct. 13, 2016).

¹⁶ *Ibid.*

¹⁷ Aebra Coe, *The 5 Practice Areas Poised For A 2017 Growth Spurt*, Law360 (Oct. 18, 2016).

¹⁸ Aebra Coe, *GCs Say This Firm Is The Most Arrogant*, Law360 (Nov. 28, 2016).

¹⁹ *Ibid.*

²⁰ *Samsung Elecs. v Apple*, 137 S. Ct. 429, 434-36 (2016).

²¹ See <http://tbaivue.uspto.gov/tbaivue/v?pno=85472044&pty=EXA&eno=11>.

court judge and prolific author, is writing a new book, *Strengths and Weaknesses of the Legal System*. At a recent bookstore appearance, Judge Posner quipped that about 10 pages are on the strengths of the federal judiciary, and about 320 are on its weaknesses.²² At the same event, he was quoted as saying, “ I don’t think the judges are very good. I think the Supreme Court is awful. It’s reached a real nadir.” Later, at a University of Chicago symposium held in November, Judge Posner again attacked SCOTUS, accusing Chief Justice John Roberts of being a poor court manager and accusing him of drafting “stupid” opinions.”²³ (Somehow I don’t think Judge Posner will ever be nominated to fill a vacancy on the US Supreme Court.)

SCOTUS Justices have also been out and about. Justice Anthony Kennedy participated in an International Bar Association discussion in September 2016, there suggesting that looking at foreign law can be informative.²⁴ Speaking at the conservative Heritage Foundation in October 2016, Justice Clarence Thomas gave attendees a mouthful – criticizing the politicization of the judicial confirmation process, and labeling the *Affordable Care Act* “misnomer.”²⁵ Meanwhile liberal SCOTUS Justice Sonia Sotomayor spoke at the New York City Bar Association in October, telling attendees that she missed the “free-flowing banter” that characterized her time on the Second Circuit bench.²⁶ And the always glib Justice Ruth Bader Ginsburg, in an interview with *Yahoo*, asserted that national anthem protests (such as those of NFL quarterback Colin Kaepernick) are “dumb and disrespectful.”²⁷

Justice Ginsburg also spoke at another venue – the Kennedy Center for the Performing Arts – on November 12, 2016. Justice Ginsburg made an appearance there with the Washington National Opera as the Duchess of Krakentrop in Gaetano Donizetti’s *La Fille du Regiment*. Justice Ginsburg apparently wowed the audience in her comedic role of the Duchess, for which she edited her own lines to reflect her real-life job as a Justice.²⁸ No matter that Justice Ginsburg didn’t sing a note or speak in French.

The Trump Presidency

For only the fifth time in US history, the US will have a President who did not win the popular vote (last count, Clinton: 65,818,318 votes; Trump, 62,958,211).²⁹ It’s the electoral vote that counts, however (projection is Clinton: 232; Trump: 306).³⁰ Are there efforts to abolish the **Electoral College** system? You bet! And, if this election doesn’t make a good argument for it, I don’t know what would.

Mr. Trump and his new administration will have a transformative effect on our current set of laws. He and a Republican Congress could unravel just about everything that Mr. Obama just spent the past eight years constructing. Immigration law could be the new President’s first hit, then the *Affordable Care Act*. Trade protectionist measures might be imposed, and the list goes on. Then there are Mr. Trump’s picks for Attorney General and Secretary of State (is he kidding?), and there’s also the US-Cuba rapprochement. Don’t forget about Russia; *Saturday Night Live* did a **hilarious skit** on December 17, 2016, with a Vladimir Putin Santa arriving via the fireplace in Mr. Trump’s ostentatious Trump Tower residence.

In terms of SCOTUS, Mr. Trump has promised to appoint pro-life Justices, and Court analysts are already talking about *Roe v Wade* being overturned.³¹ The President-elect released the names of 11 potential Court nominees in May 2016, and then added 10 more to the list in September. Included on the September list were a US Senator, three federal appeals court judges, two federal district court judges, and four state supreme court judges.³² Although Mr. Trump’s May 2016 list included no racial minorities, the September list was more diverse with one African American, a Hispanic, and a judge of Asian descent. One woman was on the latest list – Judge Margaret A. Ryan, US Court of Appeals for the Armed Forces.³³ I just hope they all like opera.

Perhaps the only positive outcome of any of the above will be a boost in the need for lawyers to sort everything out. Legal industry consultant Peter Zeughauser told *Law360*, “We’re going to see a legal industry on steroids,” adding that the Trump presidency would be the “biggest thing in the legal industry since the enactment of the US Constitution.”³⁴

Obama’s Legacy & the Federal Judiciary

In stark contrast to what’s expected with Mr. Trump’s judicial picks, Mr. Obama has spent the past eight years diversifying the federal bench. An article in *Law360* published on October 17, 2016, detailed how Mr. Obama’s judicial nominations have essentially re-imagined the US judiciary. According to the piece, the Obama administration accomplished what no other presidency had in terms of appointing judges who weren’t white males; specifically, this administration seated more female and minority federal judges than any other US President.³⁵ When Obama took office in January 2008, there were 487 white males serving as active federal judges, and that number is now 386.³⁶ During his term, 136 women and 116 minorities were added to the federal bench.³⁷ The article contends:

²² Debra Cassens Weiss, *Posner says Supreme Court is 'awful,' top two justices are OK but not great*, ABA Journal (Oct. 25, 2016), http://www.abajournal.com/news/article/posner_says_supreme_court_is_awesome_top_two_justices_are_okay_but_not_great/.

²³ Andrew Strickler, *Judge Posner Blasts Justice Roberts' 'Stupid' Opinions*, Law360 (Dec. 1, 2016).

²⁴ Jimmy Hoover, *Justice Kennedy Signals A More Globally Minded High Court*, Law360 (Sept. 23, 2016).

²⁵ Jimmy Hoover, *Justice Thomas Denounces Politicization of High Court*, Law360 (Oct. 26, 2016).

²⁶ Pete Brush, *Sotomayor Expresses Nostalgia for Previous 2nd Circ. Gig*, Law360 (Oct. 26, 2016).

²⁷ Debra Cassens Weiss, *Justice Ginsburg: Kaepernick's national anthem protest is 'dumb and disrespectful'*, Law360 (Oct. 11, 2016).

²⁸ Veronica Toney, *Ruth Bader Ginsburg makes her Washington National Opera Debut with a role mirroring her real life*, Wash. Post (Nov. 13, 2016), <https://www.washingtonpost.com/news/reliable-source/wp/2016/11/13/ruth-bader-ginsburg-makes-her-washington-national-opera-debut-with-a-role-mirroring-her-real-life/>.

[mirroring-her-real-life/?utm_term=.bcdadfe317fc](http://www.nytimes.com/elections/results/president).

²⁹ *Presidential Election Results: Donald J. Trump Wins*, N.Y. Times, <http://www.nytimes.com/elections/results/president> (last visited Dec. 19, 2016).

³⁰ *Ibid.*

³¹ David Cray, *Trump win could imperil Roe ruling*, Chi Daily L Bull (Nov. 15, 2016), at 1.

³² *Ibid.*

³³ *Ibid.*

³⁴ Ed Beeson, *Trump Presidency Will Open Floodgates For Law Firms*, Law360 (Nov. 9, 2016).

³⁵ Ed Beeson, *Broadening the Bench: How Obama's Push For Diversity Is Reshaping the Courts*, Law360 (Oct. 17, 2016).

³⁶ *Ibid.*

³⁷ *Ibid.*

“While the effects of such diversity on case outcomes is hard to quantify, experts say the presence of a wider range of perspectives broadens the conversation throughout the judiciary, leading to more robust deliberations on appeals panels, greater awareness of issues affecting diverse communities, and a bench that more closely mirrors the society it serves.”³⁸

House Counsel under President George W. Bush.

James D. Zirin. *Supremely Partisan: How Raw Politics Tips the Scales in the United States Supreme Court.* Lanham, Maryland: Rowman & Littlefield (2016).

New Books

The following new titles may be of interest:

Glenn C. Altschuler & Faust F. Rossi. *Ten Great American Trials: Lessons in Advocacy.* Chicago: ABA Publishing (2016).

Richard Domnarski. *Richard Posner.* Oxford Univ. Press (2016). Note: *Judge Richard A. Posner sits on the Seventh Circuit appeals court in Chicago and is mentioned above under “The Federal Judiciary: Out & About.”*

Ruth Bader Ginsburg. *My Own Words.* New York: Simon & Schuster (2016).

Alberto R. Gonzales. *True Faith and Allegiance: A Story of Service and Sacrifice in War and Peace.* Nashville: Nelson Books (2016). Note: *Gonzales served as Attorney General of the US and White*

Conclusion

Of course the big news this fall in the US was the presidential election. Although the majority of Americans who voted chose Hillary Clinton, the nation is now stuck with “The Donald” for four years. Since I can’t flee the country during this time period, I’m trying to tune out the wacky tweets and crazy Cabinet picks. Perhaps *Saturday Night Live* was onto something, though, when it aired a sketch on November 19, 2016 called “[The Bubble](#).” “The Bubble” is a fictitious community designed for progressive Americans who want to escape the Trump presidency. The way things are going, such a place may already be under development (perhaps by Mr. Trump himself who is a real estate developer by trade). In all seriousness, however, I think the US is in for a rough ride.

That’s it for now. I wish all of my Canadian colleagues a wonderful 2017. As always, if any readers would like to comment on the above, or make suggestions for additional content, please feel free to contact me at jgrant6@luc.edu.

³⁸ *Ibid.*

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Please note that any and all opinions are those of the authors and do not reflect those of their employers or any professional body with which they are associated.

CALL/ACBD Research Grant

Perhaps it is time to start thinking about your next research project. The deadline for the 2017 research grant will be March 15, 2017 and the grant will be awarded in May.

The grant can be applied to research assistance, online costs, compensating time off, purchase of software, travel, clerical assistance, etc.

There is no fixed amount for the grant but in the past years the awards have ranged from \$1400.00 to \$4400.00.

The grant comes with some expectations. Research is to be completed within two years of receipt of the award with a progress report submitted to the Committee after one year. The deliverables are a written report, publication or presentation at the CALL/ACBD conference.

For further information please visit:

<http://www.callacbd.ca/Resources/Documents/Awards/Research%20Grant1.pdf>



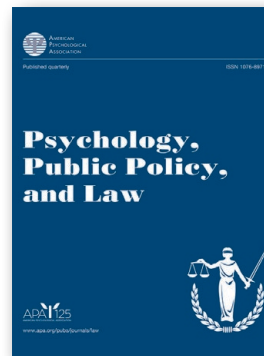
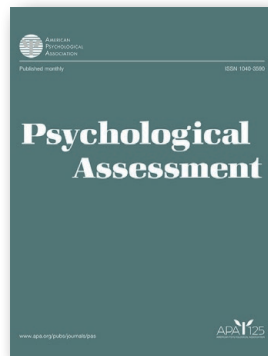
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