

Leaky Boundaries and the Decline of the Autonomous Law School Library*

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Academic law librarians have long insisted on the value of autonomy from the university library system, usually basing their arguments on strict adherence to ABA standards. However, law librarians have failed to construct an explicit and consistent definition of autonomy. Lacking such a definition, they have tended to rely on an outmoded Langdellian view of the law as a closed system. This view has long been discredited, as approaches such as law and economics and sociolegal research have become mainstream, and courts increasingly resort to nonlegal sources of information. Professor Milles argues that continued insistence on total autonomy risks a failure to meet all the information needs of the academic legal community.

¶1 Section 602(a) of the American Bar Association's Standards for Approval of Law Schools states that "[a] law school shall have sufficient administrative autonomy to direct the growth and development of the law library and to control the use of its resources."¹ Law librarians have consistently interpreted this statement as requiring a strict wall of separation from the university library system, and have for years jealously guarded their autonomy and resisted most efforts to reduce it. From the early years of the twentieth century, when the typical law school library consisted of a small collection of case reporters administered as a branch of the university library by a minimal and barely qualified staff, the vast majority of law school libraries fought to achieve administrative autonomy from the university library, until law library autonomy became the standard model. In the 1970s and 1980s the widespread adoption of automated library catalogs brought this model into question and forced many law libraries to defend their hard-won autonomy. In the last several years, continuing budget pressures in higher education and the increasing reliance of university libraries on online full-text resources have again

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1. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS, stand. 602(a), at 45 (2003).

raised questions about the relationship, if any, between the law library and the university library system.

¶2 What is the basis for this insistence on law library autonomy, and what sort of relations with the university library does it require? What do law librarians mean by *autonomy*? The cited authorities are always the American Bar Association (ABA) standards and the Association of American Law Schools (AALS) regulations. However, the idea of law library autonomy was a long time coming and, except for a brief anomalous period from 1959 to 1962, neither the ABA nor the AALS required anything approaching complete autonomy. Nonetheless, law librarians have firmly resisted any perceived encroachment on the law library's autonomy. I hope to show that a blind attachment to autonomy as a goal rather than a means no longer serves the law library's users, and that continued insistence on total law library autonomy may have the effect of seriously compromising the quality of law library service to legal education and scholarship. Fundamental changes in the nature of legal scholarship, the increasingly digital information environment, and the economics of information mean that cooperative and collaborative relationships among law libraries, university libraries, and other information providers will be just as important as autonomy, and should be recognized as such in law library planning and in the ABA standards for law school accreditation.

Defining Law Library Autonomy

¶3 Despite the lengthy history of discussions of law library autonomy, the term autonomy itself has never been clearly defined. It has been used to denote a variety of different arrangements in different contexts: *administrative independence* with regard to policy making (usually from the university library, sometimes from the law faculty); *physical separation* from the central library's collections; and *operational decentralization* with respect to the management of any number of distinct library functions such as budget, acquisitions, cataloging, and hiring. However, rather than attempting to clarify these distinctions and develop a reasoned analysis of what types and degrees of autonomy are appropriate in different circumstances, the predominant approach of law librarians historically has been to fudge distinctions and insist on a vague concept of *total autonomy*.

¶4 The traditional argument for law library autonomy was articulated as early as the 1930s and has progressed little since then. Law librarians argued that "the domination of law library functions by the university librarian operates to impair the service of the law library"² through delays caused by centralized ordering, receipt, and cataloging of law library materials in the general library; the inability of the law librarian to monitor the status of law library funds; and "arbitrary and restrictive

2. Oscar C. Orman, *Autonomy in Law Library Administration*, 32 LAW LIBR. J. 60, 62 (1939).

orders pertaining to the use of materials.”³ Law librarians repeatedly claimed that the complicated and specialized nature of law books, and the unique characteristics of their use by lawyers, were beyond the comprehension of university librarians. “In the law school this involves a highly specialized subject matter, a massive and complicated body of books, the distinctive manner in which many of the books are used and the purposes to which the information acquired are devoted.”⁴

¶5 All disciplines have their specialized research sources, content, and methods. It is in part by its distinct research methods that a discipline is defined.⁵ Law librarians, however, have argued that law is unique among disciplines in the way in which its bibliographic sources constitute a separate body of knowledge accessible and useful only to those within the law school.⁶ Using the sources of legal information requires unique training, and the principles and methods found in other libraries have little if any relevance in law libraries. Law libraries are essentially different in kind from general research libraries; a law library is not really a library, but rather a laboratory. This insistence on the exclusivity of legal research methodology is rooted in a Langdellian view of the scientific nature of the study of law. Christopher Columbus Langdell⁷ famously wrote:

[I]t was indispensable to establish at least two things—that law is a science, and that all the available materials of that science are contained in printed books. . . . [T]he library is the proper workshop of professors and students alike; . . . it is to us all that the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists.⁸

¶6 This theme is reflected in the frequent refrain of law librarians describing the law library as the laboratory—or, more intimately, the heart—of the law school. Marian G. Gallagher asserted that the law library “is not a library in the

3. *Id.* at 63.

4. William R. Roalfe, *Centralized University Library Service and the Law School*, 50 LAW LIBR. J. 2, 4 (1957).

5. See, e.g., JANET DONALD, LEARNING TO THINK: DISCIPLINARY PERSPECTIVES 8 (2002) (“Discipline: A body of knowledge with a reasonably logical taxonomy, a specialized vocabulary, an accepted body of theory, a systematic research strategy, and techniques for replication and validation.”); JULIE THOMPSON KLEIN, INTERDISCIPLINARITY: HISTORY, THEORY, AND PRACTICE 104 (1990) (“The term *discipline* signifies the tools, methods, procedures, exempla, and theories that account coherently for a set of objects or subjects.”).

6. See *infra* ¶¶ 6–9.

7. Christopher Columbus Langdell, appointed dean of Harvard Law School in 1870, published his first casebook, *A Selection of Cases on the Law of Contracts*, in 1871 and is generally considered the originator of the case method of legal instruction. ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 53 (1953) (“The case method, although not an original creation of Langdell’s, became known as his by virtue of his determined and systematic application of the approach.”); ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 52 (1983). Langdell has been memorably described by Grant Gilmore as “an essentially stupid man who, early in his life, hit on one great idea to which, thereafter, he clung with all the tenacity of genius,” GRANT GILMORE, THE AGES OF AMERICAN LAW 42 (1977), and more succinctly as “a loony,” John Henry Schlegel, *Langdell’s Auto-da-Fé*, 17 LAW & HIST. REV. 149, 149 (1999).

8. Christopher Langdell, *Harvard Celebration Speech*, 3 LAW Q. REV. 123, 124 (1887).

ordinary sense, but a laboratory equipped for the research essential to everyday preparation for class or practice. To sever it from the law school of which it is and should be an integral part and place it under the general library system . . . is devitalizing to the law school.”⁹ Similarly, Miles O. Price called the law library “the laboratory of the law school, the repository of source as well as of secondary materials.”¹⁰ Price claimed that the law library was distinguished from other professional school libraries because of “the uniqueness of the law library as a laboratory, with such highly specialized types of books as to require special knowledge and techniques for their effective utilization in serving the clientele.”¹¹

¶7 In 1973 Canadian librarian Guy Tanguay wrote the quintessential Langdellian defense of law library autonomy, “The Case for the Special Status of the University Law Library.”¹² Responding to the then-current trend in Canadian higher education toward consolidation of libraries and elimination of many branch libraries, Tanguay’s argument addresses most directly the *physical* autonomy of the law library. He sought to refute the idea that “law faculties, in the name of efficiency and economy, [could] satisfy themselves with the services of a central or division library, situated away from their premises except for small special collections within the faculty.”¹³ However, Tanguay goes on from there to argue that “because of its special needs, the law library ought not only to be situated on the premises of the law school, but must also enjoy the greatest possible administrative autonomy, under the mixed control of the law school and the law library.”¹⁴ Foremost among the “special needs” Tanguay identifies is the fact that it is “chiefly a reference library and not chiefly a lending library”¹⁵ where “[t]he whole collection is viewed as a reference unit.”¹⁶ This “usually involves the use of a considerable number of books in each one of which only a small portion is of interest”¹⁷ and thus forms an “indivisible whole which must be situated close to its principal users.”¹⁸ Tanguay cites Langdell in support of the idea that the law library is “a laboratory for the almost exclusive use of the law school,” the “workshop *par excellence* of the professors and students of the law school.”¹⁹

9. Marian G. Gallagher, *The Law Librarian's Education and the Autonomous Library*, 47 LAW LIBR. J. 114, 117 (1954).

10. Miles O. Price, *The Place of the Law School Library in Library Administration*, 13 J. LEGAL EDUC. 230, 231 (1960).

11. *Id.*

12. Guy Tanguay, *The Case for the Special Status of the University Law Library*, 66 LAW LIBR. J. 12 (1973).

13. *Id.* at 12.

14. *Id.* at 13.

15. *Id.*

16. *Id.* at 14 (quoting John W. Heckel, *Service to Readers*, 11 LIBR. TRENDS 277 (1962–63)).

17. *Id.* (quoting WILLIAM R. ROALFE, *HOW TO FIND THE LAW* 2 (1965)).

18. *Id.* at 15.

19. *Id.*

¶8 Tanguay argues that “[t]hese concepts . . . are still apt, even if, under the favorable impetus of the new technology, legal documentation is taking new forms.”²⁰ He goes on to point out:

Given the idea that written materials, the principal source of legal information, form the jurist’s sole instrument of work, the law library is a true workshop where professors and students apply themselves to the basic activities of legal science. The professor acquires there all the material he delivers to his students as well as the data that will enable him, after analysis, to propose new legal solutions corresponding to the changing needs of society.²¹

¶9 Thus, the law library is “clearly distinguished from other professional or university libraries . . . because it is made up of highly specialized and very complex works, of which the effective use requires special knowledge and techniques.”²² More importantly, the essentially autonomous nature of the law library is demonstrated by the fact that the sources in the law library constitute a complete and sufficient whole. According to Tanguay, the law library provides the entire universe of information that law scholars need. Furthermore, the law library is unlikely to be used by scholars or students in the university lacking the special knowledge required for entry. “As for interdisciplinary research—that fashionable term of which the counterpart, specialization, is too often forgotten—it will not have the effect, taking all factors into account, of considerably increasing the proportion of use of the law library by professors and students of other faculties.”²³

¶10 Some of the reasons for the distinctive nature of law libraries offered by these authors—for example, the idea that legal research typically requires reference to small, discrete sections of a large number of volumes, such that the law collection is essentially a reference rather than a circulating collection—appear valid today (although the rise of electronic research has significantly diminished the on-site use of the law collection). Others, such as the claim that legal information is so abstruse and specialized that it is of interest only to the law school community, and that interdisciplinary research is a fad with little real impact, are almost certainly untrue. The broad, normative claim of the inherent uniqueness of the law is by now widely recognized as a “long-discredited, nineteenth century Langdelian [*sic*] pseudo-scientific conception.”²⁴ From a purely rational perspective, it should be readily apparent that the idea of “total autonomy” for the law library is nonsensical. Even a law library that strives to avoid any entanglement with the university library system is subject to external institutional pressures—budgetary, political, and so on—like any other part of the university. Nonetheless,

20. *Id.*

21. *Id.*

22. *Id.* (footnote omitted).

23. *Id.* at 16.

24. John S. Elson, *The Governmental Maintenance of the Privileges of Legal Academia: A Case Study in Classic Rent-Seeking and a Challenge to Our Democratic Ideology*, 15 ST. JOHN’S J. LEGAL COMMENT. 269, 275 (2001).

law librarians have repeatedly insisted on, and fought vigorously to maintain, “complete autonomy” from the university library.

¶11 In 1974 James F. Bailey published the first of a series of articles (on his own and with coauthors Mathew F. Dee and Oscar M. Trelles) on law library autonomy and faculty status.²⁵ This initial article remains the most notable attempt in the law library literature to grapple with the problem of definition (or even to recognize that it is a problem). Bailey and Dee observe that the loaded term “autonomy” has contributed to misunderstandings and tensions on both sides of the library divide. Law librarians tended to view the university library as a

bureaucratic, universalist collection of general librarians, the lair of the director of libraries who (if the law library is autonomous) is constantly attempting to bring the stray child back into the fold of the all-encompassing general library system, or who (if the law library is not autonomous) is forever worried that the restive child may wander off into the heretical condition known as autonomy.²⁶

For their part, the other librarians in the university “have been known to resent the ‘selfish’ desire of the law library to withdraw unto itself, shutting out the ‘lay’ world in its desire to attach itself more closely to the narrow world of the law school.”²⁷ Bailey and Dee thus define an autonomous law library as one “that is free, not from *all* outside control, but one that is free from control exercised by the university librarian or director of libraries.”²⁸ A year later, however, Bailey falls back into the language of “total autonomy,” writing that “fully three-quarters of the nation’s law school libraries can already be classified as *completely autonomous*”²⁹ before proceeding to redefine autonomy as “nothing more and nothing less than placement of the law library under the law dean, although the interplay of law dean and library director may yield interesting degrees of autonomous status.”³⁰

¶12 Law library autonomy remains an idea without a clear definition. As the next section will show, this lack of clarity has led to difficulties when law librarians have sought to have it codified into law school accreditation standards.

25. James F. Bailey & Mathew F. Dee, *Law School Libraries: Survey Relating to Autonomy and Faculty Status*, 67 LAW LIBR. J. 5 (1974). For subsequent articles in the series, see James F. Bailey, *The Autonomous Law School Library: What It Can Mean to You*, 68 LAW LIBR. J. 274 (1975); James F. Bailey & Oscar M. Trelles, *Autonomy, Librarian Status, and Librarian Tenure in Law School Libraries: The State of the Art*, 1978, 71 LAW LIBR. J. 425 (1978); Oscar M. Trelles & James F. Bailey, *Autonomy, Librarian Status, and Librarian Tenure in Law School Libraries: The State of the Art*, 1984, 78 LAW LIBR. J. 605 (1986).

26. *Id.* at 5.

27. *Id.*

28. *Id.* at 6. Nonetheless, the authors did acknowledge that “[a] few law librarians at autonomous institutions observe that their dean regards the law library as a low priority item; however, not one of these law librarians expressed a desire to be nonautonomous.” *Id.* at 22.

29. Bailey, *supra* note 25, at 274 (emphasis added).

30. *Id.* at 276.

The History of Autonomy in Law Library Standards

¶13 As we have seen, it is a commonplace notion among law librarians that the law library is the heart of the law school. However, it does not appear that law faculty and administrators have always considered law libraries to be as central to law schools as law librarians would like to believe they are.³¹ For many years, law libraries were an afterthought in the requirements for law school accreditation.³² There was early and long resistance to the idea of requiring a law library at all; after that, there was reluctance to impose requirements of professional staffing or administration of the library. Even with the establishment of standards for law school libraries, neither the ABA nor the AALS maintained a consistent position on the importance to attach to law libraries and to law library autonomy.

¶14 AALS created the first law school library standards in its articles of incorporation, adopted in 1900.³³ These standards were minimal and dealt only with collections and budget. The concept of autonomy did not enter the AALS bylaws until 1952.³⁴ The ABA first mentioned the term “autonomy” in its Factors Bearing on the Approval of Law Schools in 1940, but it was not included in the association’s law school standards until 1959.³⁵

¶15 The 1900 AALS Articles of Incorporation required that a law library “shall own, or have convenient access to during all regular library hours, a library containing the reports of the state in which the School is located and of the U.S. Supreme Court.”³⁶ Subsequent revisions over the next thirty years minimally increased requirements for collections and budget; a 1943 proposal that would have

31. For example, ALBERT J. HARNO, *LEGAL EDUCATION IN THE UNITED STATES* (1953) mentions law libraries on only four of its 211 pages. A more recent history, ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983) lacks even a single index entry on law libraries. Timothy J. Heinsz, dean of the University of Missouri–Columbia law school from 1988 to 2001, notes that “almost all agree that the heart of a law school is its faculty.” Timothy J. Heinsz, *Deaning Today: A Worthwhile Endeavor—If You Have the Time*, 31 U. TOL. L. REV. 615, 617 (2000).

32. “The Council of the ABA Section of Legal Education and Admissions to the Bar is the United States Department of Education recognized accrediting agency for programs that lead to the first professional degree in law.” SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, *THE AMERICAN BAR ASSOCIATION’S ROLE IN THE LAW SCHOOL ACCREDITATION PROCESS*, at <http://www.abanet.org/legaled/accreditation/abarole.html> (last visited Apr. 20, 2004). On the history of the ABA’s role in the accreditation of law schools, see generally James P. White, *The American Bar Association Law School Approval Process: A Century Plus of Public Service*, 30 WAKE FOREST L. REV. 283 (1995).

Unlike the ABA, the AALS has no official role as an accrediting body; rather, it is a voluntary, membership organization of law schools. “Throughout the history of these two associations, the ABA concerns have primarily involved practitioners of the law while AALS interests have concerned the law schools and legal educators.” Jerry L. Parsons, *Accreditation in Legal Education and in Education for Librarianship, 1878–1961*, 68 LAW LIBR. J. 137, 144 (1975).

33. GLEN-PETER AHLERS, *THE HISTORY OF LAW SCHOOL LIBRARIES IN THE UNITED STATES: FROM LABORATORY TO CYBERSPACE* 47 (2002).

34. See *infra* ¶ 22.

35. See *infra* ¶¶ 24–27.

36. Ass’n of Am. Law Sch., *Articles of Incorporation*, art. 6, [§] 4, 23 RPTS. AM. BAR ASS’N 571, 572 (1900), reprinted in AHLERS, *supra* note 33, at 48.

required a law librarian failed to gain AALS approval.³⁷ There was no mention of the concept of autonomy, either explicitly or by implication. Nonetheless, the issue of autonomy was already much on the mind of law librarians. In the 1930s, the relationship between the American Association of Law Libraries (AALL) and the American Library Association (ALA) was the subject of controversy, as many law librarians saw a need to strengthen their own professional organization. AALL President John T. Vance compared AALL's position vis-à-vis ALA to

a law library which is part of a general library and under the control and direction of a general librarian. As all of us know, the law library suffers neglect, because the law is a highly specialized subject and is not usually understood by a general librarian and also because the subject does not have an appeal to the public.³⁸

It was commonly argued that

[f]rom the limited study which has been given to this problem of administrative autonomy there is reason to believe that, with all other factors constant, those law libraries which possess a complete autonomy have progressed farther and have developed in a better way than those in which such autonomous control is either abridged or is lacking in its entirety.³⁹

On the other hand, the dean of Duke University Law School observed in 1937 that “in some schools today the situation is such as to library management that, as has been suggested by a number of schools, the library requirement is considered a useless formality, placing an undue burden of expenditure upon small schools for books which are never used.”⁴⁰ William R. Roalfe noted in 1938 “the almost total absence of reference to law libraries” in “the now quite considerable body of literature on the subject of legal education.”⁴¹ Writing again twenty years later, Roalfe indicated that the situation was largely unchanged:

The record of the Association of American Law Schools as a standardizing agency reveals the fact that, over and over again, either through lack of interest or understanding or because of pressure, the majority have yielded to the pleas of the marginal schools, some of which have never shown any interest in raising their standards of performance or in making the library a significant part of the educational process.⁴²

¶16 Roalfe suggested a number of remedies for this long-standing situation: (1) “an acceleration of the gradually-increasing realization that the library can and should play a vital part in the work of the law school”;⁴³ (2) “placing it under the

37. Joint Committee on Cooperation Between the Association of American Law Schools and the American Association of Law Libraries, *Report*, 1943 ASS'N AM. L. SCH. HANDBOOK 203, *reprinted in* AHLERS, *supra* note 33, at 54.

38. *American Association of Law Libraries Proceedings—Twenty-Ninth Annual Meeting, Montreal, Canada, June 25th to 30th, 1934*, 27 LAW LIBR. J. 51, 62 (1934) (report of President John T. Vance).

39. Arthur S. Beardsley, *Some Phases of Law Library Administration*, 31 LAW LIBR. J. 193, 195 (1938).

40. H. Claude Horack, *The Small Law Library and the Librarian*, 30 LAW LIBR. J. 6, 12 (1937).

41. William R. Roalfe, *The Relation of the Library to Legal Education*, 31 LAW LIBR. J. 141, 141 (1938).

42. William R. Roalfe, *The Law School Library—Facts and Fancies*, 11 J. LEGAL EDUC. 346, 347–48 (1959).

43. *Id.* at 354.

direction of a person with special qualifications for this particular assignment—qualifications that make faculty status follow as a matter of course”;⁴⁴ (3) “providing a supporting staff for the librarian”;⁴⁵ (4) “a general appreciation [by the faculty] of how the library may contribute to the work of the law school, a realization that to be adequate the library must be effectively supported”;⁴⁶ (5) “continuous pressure at the bottom [upon the marginal schools]”;⁴⁷ and (6) “the library must be regarded as an important item in the financial bill of particulars.”⁴⁸ Notable by its absence from this list is mention of law library autonomy.

¶17 As late as 1950, University of Minnesota law professor Edward S. Bade lamented the “incredibly low library standards”⁴⁹ tolerated by the AALS. “The Association of American Law Schools has shown a mild—very mild—interest in the quality of its libraries and library administration. . . . [In 1937], twenty-three schools voted against having even a part-time librarian.”⁵⁰ Bade argued that “the greatest single obstacle in the way of improving our libraries and standards for librarians, is the ignorance of our faculties and deans concerning the necessity of a good library in legal education and what is involved in building and maintaining a good library.”⁵¹

¶18 A sign of the perceived law school neglect of law libraries is that early librarians’ discussions occasionally mentioned the need for autonomy *from the law school* as well as *from the university library*. “[A] prime requisite for the development of a satisfactory law library is the autonomy of the library administration and the independence of the librarian of unreasonable faculty expectations.”⁵² Not all law schools saw the need for a competent librarian. In many law schools, it was felt that “almost any person is qualified to act as librarian, whether such person be an untrained but deserving widow of some professor, a broken down lawyer or teacher who has not made good, or perhaps a regular faculty member who is more or less fully occupied with teaching and other duties.”⁵³ In view of this widespread disregard of the law library by the law school,

44. *Id.* at 355.

45. *Id.*

46. *Id.* at 356.

47. *Id.*

48. *Id.*

49. Edward S. Bade, *Quo Vadimus?* 2 J. LEGAL EDUC. 41, 43 (1949).

50. *Id.* at 50.

51. *Id.* at 51. However, some law faculty did argue for the need for law library autonomy. See, e.g., *Association of American Law Schools Proceedings of the Round Table on Library Problems*, 30 LAW LIBR. J. 1, 19–20 (1937) (remarks of Robert McNair Davis) (“There have been some rather sad experiences in schools where the director of libraries of the university seems to dominate too much the administration of the law library. . . . I wish that the libraries in our law schools could be autonomous and that the librarian were such a person as to be himself or herself autonomous too.”).

52. Judson F. Falkner, *The Function of the Law School Librarian*, 30 LAW LIBR. J. 13, 13 (1937). Cf. Anita L. Morse, *Proposed Amendments to the ABA Standards for the Approval of Law Schools*, 78 LAW LIBR. J. 481, 489 (1986): “Law libraries have long considered themselves to be the ‘laboratory of the law school.’ Law schools, however, sometimes have understood this as a law library’s way of justifying its autonomy from the university library, not as law library participation in the law school programs.”

53. William R. Roalfe, *The Essentials of an Effective Law School Library Service*, 31 LAW LIBR. J. 335, 350 (1938).

[N]either autonomy for the law library, coupled with a satisfactory cooperative working arrangement with the university library system, nor a satisfactory departmental library arrangement, will alone insure the adequate development of the law school library. It must also function smoothly and effectively as a part of the law school itself and there is certainly no merit in substituting an unintelligent attitude in the law school for the probable defects of administration by the head of the general library system.⁵⁴

¶19 Law librarians frequently worked under the supervision of a faculty law library committee, which acted as a constraint on the poorly trained librarian and prevented abuses, such as when “the librarian’s better judgment is overcome by the silver-tongued flattery of the high-pressure salesman with the result that the librarian wakes up later to the fact that he has ordered costly sets of annotated state statutes, state digests, high priced textbooks, etc. . . . Such examples are the best argument possible against complete library autonomy.”⁵⁵

¶20 The AALS gradually began to respond to complaints of inadequate law school support for law libraries. The principal innovation of the 1947 AALS Articles of Incorporation was a reduced emphasis on the detailed quantitative specifications, which had been steadily growing for the past decade, in favor of a more qualitative approach. “[F]or the first time, emphasis was placed on the staff rather than on a purely physical factor such as the book collection, or housing, or equipment.”⁵⁶ In the discussions leading up to these revisions, there was an attempt to face

what has been a burning issue in more than one law school, namely, the relationship of the law library to the general university library or to a centralized library administration. In spite of the fact that a number of persons both within and outside of the Joint Committee [on Cooperation Between the Association of American Law Schools and the American Association of Law Libraries] favored an interpretation requiring that the law library be administered as a department of the law school and independently of the general university library or of any centralized library administration the Joint Committee as such took the position that the formal relationship of the law library to other university libraries is probably a matter that each university should determine for itself and that, in spite of the unsatisfactory conditions found in some schools, there is no necessary correlation between the nature of the formal relationship and the quality of the library service provided.⁵⁷

¶21 Some considered even these standards too stringent. Edward S. Bade noted that “[a]ll the objections had one thing in common—if adopted the objectors would have to do something in the way of improving their libraries. . . . One speaker suggested that in a small school easy access of students to professors is a superior substitute for a library.”⁵⁸

54. *Id.* at 351.

55. Beardsley, *supra* note 39, at 198.

56. William R. Roalfe, *Formulation of the Interpretations to the Library Requirements of the Association of American Law Schools*, 40 LAW LIBR. J. 229, 230 (1947).

57. *Id.* at 236–37.

58. Edward S. Bade, *Library Standards*, 4 J. LEGAL EDUC. 427, 427 (1952).

¶22 The 1952 AALS Standards mark the first appearance of the term *autonomy*. Significantly, though, there is no call for total autonomy, but rather *sufficient autonomy* in specified areas.

Whether the law library is to be under the control of the law school or is to be operated as a part of a centralized library system is a matter for local decision within the university. Under either type of organization, it is essential that the law library have a sufficient autonomy in matters of administration, including finance, book selection and processing, reader service, and personnel, to assure a high standard of service commensurate with the needs of the law school program.⁵⁹

Even this qualified autonomy requirement did not represent a consistent commitment by AALS. Criticisms that “the existing standards ‘tended to coerce a mandatory commitment to petty and often irrelevant matters, and deflected attention away from the prime consideration, which was the ultimate quality’”⁶⁰ led to the elimination of the autonomy standard in 1962 and its replacement by a requirement that “the dean and other members of the law faculty should have an effective voice in giving direction to the library as a central element of the school.”⁶¹ Continuing debates led to the requirement’s restoration in 1968.⁶²

¶23 Like the early AALS requirements, the first ABA Standards of Legal Education and Admissions to the Bar, adopted in 1921, were rudimentary, requiring only “an adequate library for the use of the students.”⁶³ In 1939 the ABA instituted the first of a continuing series of quantitative requirements for the size of the library’s collection, requiring “not less than seventy-five hundred well selected, useable volumes, not counting obsolete material or broken sets of reports, kept up to date and owned or controlled by the law school or the university with which it is connected.”⁶⁴

¶24 In 1940, the ABA’s Council of the Section of Legal Education and Admission to the Bar adopted a list of Factors Bearing on the Approval of Law Schools to include along with the mandatory requirements in the standards themselves.⁶⁵ It was here that “autonomy of library” first appeared, as the final factor on the list of nine.⁶⁶ In 1943, the factors were amended and rearranged, and

59. *Association of American Law Schools Standards*, 1952 ASS’N AM. L. SCH. PROC. 223, 224 (stand. III3.b).

60. AHLERS, *supra* note 33, at 66 (quoting AALS Special Committee on Standards, 1962 ASS’N AM. L. SCH. PROC. 35).

61. *Articles of the Association of American Law Schools*, 1962 ASS’N AM. L. SCH. PROC. 231, 241, reprinted in AHLERS, *supra* note 33, at 68.

62. *Amendment to Articles of Association of American Law Schools*, 1968 ASS’N AM. L. SCH. PROC. 231, reprinted in AHLERS, *supra* note 33, at 72.

63. *Transactions of the Forty-Fourth Annual Meeting of the American Bar Association*, 46 REP. A.B.A. 19, 38 (1921) (resolution of the Section of Legal Education and Admissions to the Bar), reprinted in AHLERS, *supra* note 33, at 88.

64. *Standards of the American Bar Association*, in SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS IN THE UNITED STATES FOR 1939: A SUPPLEMENT TO THE ANNUAL REVIEW OF LEGAL EDUCATION FOR 1938, at 12, 12 (1940), reprinted in AHLERS, *supra* note 33, at 90.

65. AHLERS, *supra* note 33, at 91.

66. *Factors Bearing on the Approval of Law Schools*, in AM. BAR ASS’N, STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION 5–6 (1940), reprinted in AHLERS, *supra* note 33, at 92.

autonomy was promoted from item 9 to item 5.d. In addition to law library autonomy, “other library facilities of the college or university” was added to the factors for consideration.⁶⁷

¶25 The 1959 and 1960 interpretations of the ABA standards by the Council of the Section of Legal Education and Admissions to the Bar expanded on the autonomy requirement with what remains the ABA’s strongest pro-autonomy statement to date. Autonomy (still only vaguely defined) was to be required except in the presence of specified assurances.

The law library should be administered by the law school as an autonomous unit, free of outside control. Exceptions are permissible only where there is preponderance of affirmative evidence in a particular school, satisfactory to the Council of the Section, so that the advantages of autonomy can be preserved and economy in administration attained through centralizing the responsibility for acquisition, circulation, cataloguing, ordering, processing, or for payment of books ordered.

The law librarian should be appointed on recommendation of the dean after consultation with the law faculty. He should be directly responsible to the dean. When the law library is autonomous, the staff should be administratively and fiscally a part of the law school.⁶⁸

¶26 The controversy occasioned by these standards was the subject of a panel at the fifty-third Annual Meeting of the American Association of Law Libraries in 1960, featuring the contrasting views of Dr. William K. Selden, executive secretary of the National Commission on Accreditation; Dr. John G. Hervey, chair of the ABA Council of Legal Education and Admissions to the Bar and “Knight in Shining Armor who has come to the rescue of all these law librarians in having proper autonomy”;⁶⁹ and Dr. Ralph E. Ellsworth, director of libraries at the University of Colorado, representing the Association of College and Research Libraries. According to Selden, the National Commission on Accreditation objected to the autonomy requirement. “We disapprove of any arbitrary requirement indicating that a part of an institution must be organized in a specific way and only in that way. . . . It would be our contention that the method should not be stipulated, but rather the goals of education should be described.”⁷⁰ Selden also questioned the applicability of the term autonomy in view of the necessarily close interrelationship between law schools and the universities of which most of them were a part.

I, the only non-legally trained person in the room was questioning the wording of this statement to a group, all of whom were lawyers, and I stated that no part of an institution—

67. *Factors Bearing on the Approval of Law Schools*, in AM. BAR ASS’N, STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION 7 (1947), reprinted in AHLERS, *supra* note 33, at 93.

68. *Minimum Standards of the American Bar Association for Legal Education*, in SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS IN THE UNITED STATES: 1959 REVIEW OF LEGAL EDUC. 21, 21, reprinted in AHLERS, *supra* note 33, at 95.

69. *Standards for Law Libraries*, 53 LAW LIBR. J. 448, 453 (1960) (remarks of Harry Bitner).

70. *Id.* at 452 (remarks of William K. Selden).

and we are speaking of universities in this case—no part of an institution can be autonomous. If it is autonomous, it is not then a part of the institution.⁷¹

¶27 Hervey, speaking for the ABA Council of Legal Education, replied that “when read in context, the meaning is clear,” and noted that “for two years now the Council has invited suggestions as to a substitute word or substitute verbiage. None has been forthcoming.”⁷² Ellsworth, speaking for the ACRL, took issue with “the idea that Directors of Libraries are a bunch of dopes incapable of understanding the needs of law libraries,” which he attributed largely to “a myth caused by the way in which the American Bar Association’s inspectors do their inspecting of law libraries.”⁷³ He claimed that ABA teams “usually send out professors who lack the background for proper understanding of modern librarianship” and “seldom send out you law librarians,” and that the inspectors “gathered one sided and incomplete information.”⁷⁴ Among his substantive disagreements with the argument for autonomy, Ellsworth noted that the standards “seem[ed] to assume that Law Schools are the only ones in the universities that use libraries as integral components of the teaching process.”⁷⁵

¶28 The strong presumption in favor of autonomy embodied in the 1959 standards did not prevail for long. The AALL Policy Committee reported in 1962:

[A] quantitative study of all law school libraries based on a questionnaire as to staff, salaries, funds, etc. failed to reveal evidence indicating that either autonomy or integration was the preferable administrative set-up. . . .

The one Policy Committee member who objects to the proposed standard believes strongly that “a standard which singles out integrated libraries and makes them suspect, putting them to the proof, while casting a mantle of automatic respectability around autonomous libraries no matter how marginal and primitive and relieving them of being put to the proof, is shockingly unfair.”⁷⁶

¶29 The next new standards, promulgated in 1972, provided that “[t]he law school library may be administered either as part of the University Library, or as an autonomous unit, provided that however administered, its growth, development,

71. *Id.* at 451 (remarks of William K. Selden). Later in the discussion, Hervey noted that “[w]e don’t like the word ‘autonomy’ any better than the National Commission on Accrediting [sic] like autonomy. We would prefer a substitute word, and if any of you have any ideas on it, yes, we would be delighted to have them, and you will find that they will be given full consideration.” *Id.* at 478 (remarks of John G. Hervey). *But cf.* Price, *supra* note 10, at 238 (“Mr. Hervey’s dream of a law school library without ‘outside control’ is, of course, just that. Any agency of a university is subject to control. There is no Santa Claus, and placing the law library under the dean is not going, automatically, to solve all problems in which money is involved, which is about all of them.”).

72. *Standards for Law Libraries*, *supra* note 69, at 461 (remarks of John G. Hervey).

73. *Id.* at 463 (remarks of Ralph E. Ellsworth).

74. Hervey conceded the lack of law librarians on inspection teams, but explained this by pleading poverty on the part of the ABA and claiming that “there are not too many law librarians who would be sufficiently outstanding to be included on a team.” *Id.* at 470 (remarks of John G. Hervey).

75. *Id.* at 464 (remarks of Ralph E. Ellsworth).

76. Policy Committee, Am. Ass’n of Law Libraries, [Annual Report], 55 LAW LIBR. J. 175, 175 (1962).

and utilization are not interfered with or impeded and the best possible service is afforded the law school.”⁷⁷ Finally in 1977 the ABA settled on substantially the same language that still prevails, requiring that “[t]he law school library shall have sufficient administrative autonomy to direct its growth, development and utilization to afford the best possible service to the law school.”⁷⁸

¶30 Thus the current ABA standards call not for “total autonomy,” but merely for “sufficient administrative autonomy.” Even so, faculty, deans, and (occasionally) librarians continue to criticize the standards for law libraries as too stringent or lacking validation.

The most notorious of the unvalidated input requirements are those relating to buildings and libraries. Such requirements obviously facilitate student learning to a degree. It is, however, entirely self-serving, empirically unsupported and illogical for academics to contend that they could not effectively prepare their students for practice with buildings and libraries that are far less expensive than many of those that have resulted from ABA Accreditation Committee pressures.⁷⁹

Law Librarians’ Insistence on Total Autonomy

¶31 Neither the ABA standards nor the AALS membership requirements demand that the law library have total autonomy from the university library. Yet time and again, law librarians have insisted on total autonomy and avoided anything that they viewed as an entanglement with the university library. Justification, where it is given, is based on anecdotal evidence of bad relations with university libraries. Ervin H. Pollack, library director at Ohio State University, wrote in 1961:

[A] conclusive argument in support of autonomy was stated collectively in a 1956 survey of law librarians. A representative sampling was taken of the opinions of these experts—forty-one university-connected law librarians of which seventeen were, to some degree, accountable to a director of libraries—and the results overwhelmingly favored autonomy over centralization. With one exception, which stated no choice, *all* of this group held the

77. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, STANDARDS FOR THE APPROVAL OF LAW SCHOOLS, stand. 604, at 17–18 (1973), *reprinted in* AHLERS, *supra* note 33, at 102.

78. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, STANDARDS FOR THE APPROVAL OF LAW SCHOOLS, stand. 604, at 18 (1977), *reprinted in* AHLERS, *supra* note 33, at 107.

79. Elson, *supra* note 24, at 273. For an extended critique of the ABA standards and their emphasis on ownership of large library collections in preference to reliable access to legal information sources, see Sarah Hooke Lee, *A.B.A. Standards and Law School Libraries*, 2 MASS. SCH. L.L. REV. 65 (1994). Criticisms are not limited to the law library standards. “Some academics complain that sometimes the ABA intermeddles in the affairs of the law school and stifles experimentation.” James P. White, *Legal Education in the Era of Change: Law School Autonomy*, 1987 DUKE L.J. 292, 296. *But cf.* Henry Ramsey, Jr., *The History, Organization, and Accomplishments of the American Bar Association Accreditation Process*, 30 WAKE FOREST L. REV. 267, 267 (1995) (“Elimination of, or even a dramatic change in, American Bar Association (ABA) accreditation would be nothing less than disastrous for the overwhelming majority of American law schools.”).

view that the law librarian should be under the law school dean rather than under the director of libraries.⁸⁰

¶32 Respondents to the Bailey surveys from 1974 to 1984 repeated many of the same comments. “There were repeated comments concerning the ‘mediocrity of general library efficiency and of personnel in general libraries.’ Also, the idea persists that university librarians do not comprehend the problems unique to law librarians.”⁸¹ For example, this representative comment from 1974: “Law libraries receive more sympathetic treatment from their law school deans—especially with reference to budget—for they are aware of the day-to-day problems more so than the University librarian.”⁸² In 1975 Bailey noted “the enduring, pervasive, and vehement disenchantment of law librarians with the integrated law library, as well as with the director and all his works.”⁸³ For Bailey, only total autonomy from the university library is sufficient:

To be blunt, it is the firm conviction of this author, and happily of the great majority of law librarians and law deans, that any so-called benefits that are supposed to accrue from the integrated relationship are more fiction than fact. The unvarnished truth in the great majority of cases would appear to be that any administrative connection with the general library is an unmitigated and chronic pain-in-the-neck, and a condition to be ardently avoided or from which to escape.⁸⁴

¶33 There have always been a few dissenting law librarians who recognized the possibility that a law library might survive, and even thrive, under something less than total autonomy, just as a few law librarians have admitted that the frequently repeated justifications for law library autonomy might not be as strong as supposed.

Organizationally speaking, there is just as much justification for placing the law school library under the direction of the dean of the law school as under the director of libraries, for its function is both an aspect of the educational program and of library service. It does not enhance the educator’s conception of the library profession for librarians to overlook or, in effect, deny this fact.⁸⁵

Some librarians have recognized that degrees of autonomy were possible. Even Bailey and Trelles had to admit, by the time of their final survey in 1984, that the situation with respect to librarians’ understandings of law library autonomy was more complex than they originally envisioned. However, that did not prevent them

80. Ervin H. Pollack, *Autonomy versus Integration in Law Library Administration: A Reply to Dr. Price*, 14 J. LEGAL EDUC. 229, 238 (1961–62) (citation omitted). The opinion of law library directors in this matter, whatever may be said of their expertise, can hardly be considered disinterested.

81. Bailey & Dee, *supra* note 25, at 22.

82. *Id.* at 23.

83. Bailey, *supra* note 25, at 286. Some readers may not catch the pointed reference to the Roman Catholic baptismal vows: “Dost thou renounce Satan? and all his works?” *Baptismal Vows*, in CATHOLIC ENCYCLOPEDIA (1907), available at <http://www.newadvent.org/cathen/02275a.htm>.

84. Bailey, *supra* note 25, at 277.

85. Roalfe, *supra* note 4, at 4.

from insisting on dividing autonomous and nonautonomous law libraries into a binary opposition. “In the past, some libraries responded that, yes indeed, they were autonomous; thereupon, their answers to succeeding questions indicated some fairly strong administrative ties to the university library. . . . [W]e have analysed each questionnaire as a whole and have categorized each library as autonomous or nonautonomous based upon our judgment of each individual situation.”⁸⁶

¶34 Miles O. Price recognized that “very few law school libraries are either entirely integrated or autonomous,”⁸⁷ and that difficulties may arise under either administrative structure.

Most “autonomous” libraries are subject to one or more of the following: book and binding fund allocations by the central library; technical processing controls, university-wide salary regulations, division of librarians’ duties between library administration (paid for by the director) and teaching (paid for by the dean). The principal stigmata of the so-called “autonomous” law school library are closer budget control by the law school, hiring and discharge of library personnel, and book-selection autonomy. It is in the discussions of the exercise of these functions, as between director and dean, that the most significant analytical fallacies occur. . . . With a library-minded dean, conscious of the place of the law library in his scheme of things and willing to fight for it, success within budget limitations is almost assured under either system. On the other hand, if the dean is indifferent to the library needs, or weak, the autonomous library is a mess (and for every unsatisfactory law library in a centralized system, I can show you an autonomous law library just as bad). Contrariwise, in a centralized system, the law library may or may not be a stepchild, depending upon how enlightened the director is and how willing he is to cooperate in solving the peculiar problems of the law library.⁸⁸

¶35 Ervin H. Pollack took issue with Price’s remarks, reiterating the traditional belief of law librarians in the centrality of the law library to the law school enterprise. “The library’s interrelationship with this educational and research program, as a significant extension of academic standards, became a prime concern to accrediting organizations.”⁸⁹ However, as the discussion earlier shows, this estimation of the urgency with which law schools viewed the issue of law library autonomy is an exaggeration. Pollack claimed “the [university library] director usually is incapable of identifying the academic issues with special law library requirements and of reaching a mature, perceptive value-judgment as to law school needs. Nor is it reasonable to expect him to have such an insight into pedagogical criteria.”⁹⁰ Pollack’s statement, with its regrettably condescending tone, reflects the failure of law library directors to educate university librarians as to those claimed special requirements.

86. Trelles & Bailey, *supra* note 25, at 607.

87. Price, *supra* note 10, at 231.

88. *Id.*

89. Pollack, *supra* note 80, at 230.

90. *Id.* at 231.

¶36 Finally, it is worth noting that the scope of the law school dean's responsibilities is much broader than it once was. Deans now have more to do than worry about the library.⁹¹ The dean serves as "mid-level manager, energizer, envoy, advocate, ambassador, arbitrator, counselor, diplomat, fundraiser, intercessor, mediator, planner and representative."⁹² Law schools are larger operations, with more faculty, broader curricula, and larger administrations. The law school clinic, if not the classroom itself, arguably has a better claim for the title of "laboratory of the law school." Most law schools have seen a proliferation of LL.M. programs, research centers, exchange programs, and other initiatives. The increased competition for resources means that the dean's functions in alumni development, fund-raising, and other forms of schmoozing are more important than ever.⁹³ The ever-increasing investment in technology undertaken by almost all law schools means that the law library is no longer the only "money pit" the law school must support. Given the short tenure of most deans—studies report medians ranging from 3.2 to 5.3 years⁹⁴—and the lengthier tenures of most university librarians, it might even be argued that the time spent developing a good relationship with the university librarian is a better long-term investment than that used building a relationship with a new law school dean every few years. Arguably, the law library director has much to gain by working closely with the university librarian, who has a relatively large pool of resources and relatively high status within the university, and who spends much of his or her time thinking about libraries. Notwithstanding Bailey's faith in "the interested and enlightened guidance of the law dean,"⁹⁵ it is not obvious how much interest the dean can or should take in the law library. Even the most library-friendly dean must choose his or her battles, and may reasonably value compromise with regard to library resources over digging in his or her heels to flatter the ego of the law librarian.

¶37 The demand for autonomy, lacking either a textual basis in the ABA standards or an empirical basis in statistically valid studies comparing autonomous and nonautonomous libraries, seems to have taken on an autonomous life of its own.

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91. See, e.g., Jeffrey O'Connell & Thomas E. O'Connell, *The Five Roles of Law School Dean: Leader, Manager, Energizer, Envoy, Intellectual*, 29 EMORY L.J. 605 (1980); Paul D. Carrington, *Afterword: Why Deans Quit*, 1987 DUKE L.J. 342 (1987); Michael J. Kelly, *Afterword: Why Deans Stay*, 51 MD. L. REV. 493 (1992); Roger I. Abrams, *Confessions of a Law Dean*, 31 U. TOL. L. REV. 553 (2000); Teree E. Foster, *Law School Deanship: The Top Ten Reasons and a Tribute to 36 over 10*, 31 U. TOL. L. REV. 587 (2000); Donald G. Gifford, *How Does the Dean Resemble the Islets of Langerhans?* 31 U. TOL. L. REV. 599 (2000); Gerald T. McLaughlin, *The Role of the Law School Dean as Institutional Veteran*, 31 U. TOL. L. REV. 675 (2000); Kent Syverud, *Three Principles of Effective Deaning*, 31 U. TOL. L. REV. 761 (2000); Donald J. Dunn, *From Librarian to Dean to Librarian, or to Hell and Back*, 93 LAW LIBR. J. 391 (2001). None of these writers rank the law library uppermost among their concerns.
92. Heinsz, *supra* note 31, at 616.
93. "It is not unusual to hear a law school dean, particularly one from an elite institution, say that she spends one-half or more of her time on development and other external activities." Gifford, *supra* note 91, at 602.
94. Heinsz, *supra* note 31, at 615.
95. Bailey, *supra* note 25, at 286.

Miles O. Price noted that either autonomy or integration can work, given the right personalities, but that “prima donnas bent more on maintaining their personal prerogatives than on achieving their function of service to the university will wreck any scheme.”⁹⁶ I would argue that in some instances, such as law librarians’ reluctance to engage in cooperative activities with central libraries that could benefit the law library’s primary clientele but are perceived as threatening to the law library’s autonomy,⁹⁷ the self-serving imperatives of the law library profession risk taking precedence over the goal of service to the law school community. The demand for law library autonomy has served as a stand-in for the professional and personal autonomy of the law librarian. The desire for professional autonomy may easily conflict with the needs of the client—here, the law school.⁹⁸

¶38 The self-imposed segregation of law libraries from the larger library community should be recognized as a weakness of the profession and a disservice to law library users.⁹⁹ “[L]ibrarians must be careful to remember their mission of serving the university community. The existence of an integrated online system should be an opportunity to foster cooperation. . . . ‘At last the tools seem to be available to dispel the isolation of collections, alleviate inconvenience to users, and provide faster communication among disciplines of knowledge.’”¹⁰⁰

¶39 Leave aside, for the moment, the law library’s obligation to the larger academic community. The philosophical basis for law librarians’ insistence on law library autonomy is a traditional Langdellian belief in the autonomy of law itself as a science with its own sources, methods, and realms of inquiry. In legal academia, outside of the law library, this view has been discredited for decades.¹⁰¹ Even within law libraries, and despite repeated invocations of the Langdellian ideal, some law librarians have noted

96. Price, *supra* note 10, at 231.

97. See *infra* ¶¶ 52–66.

98. The professional autonomy of the lawyer with regard to decision making in law practice implies a diminution of the autonomy of the client. See Marcy Strauss, *Toward a Revised Model of Attorney-Client Relationship: The Argument for Autonomy*, 65 N.C. L. REV. 315 (1987). For a critique of professional autonomy as paternalism, see Mark Spiegel, *The Case of Mrs. Jones Revisited: Paternalism and Autonomy in Lawyer-Client Counseling*, 1997 BYU L. REV. 307.

99. In this connection, it is suggestive to note the classic 1937 article, Gordon W. Allport, *The Functional Autonomy of Motives*, 50 AM. J. PSYCH. 141 (1937). Allport argued that motivations for actions frequently grow out of adaptive responses to functional needs (such as a sailor’s need to make a living), but eventually take on autonomous status independent of the earlier motive (thus a sailor’s love for the sea may be independent of his or her need to make a living at it). “[D]ynamic psychology . . . regards adult motives as infinitely varied, and as self-sustaining, *contemporary* systems, growing out of antecedent systems, but functionally independent of them.” *Id.* at 43. Problems may arise where a formerly adaptive behavior continues to the point that it becomes maladaptive. “It accounts for the force of delusions, shell-shock, phobias, and all manner of compulsive and maladaptive behavior. One would expect such unrealistic modes of adjustment to be given up as they are shown to be poor ways of confronting the environment. Insight and the law of effect should both remove them—but too often they have acquired a strangle hold in their own right.” *Id.* at 155.

100. Lisa Hermann, *Cooperation Between Law Libraries and University Libraries*, LEGAL REFERENCE SERVICES Q., 1994, no. 3, at 75, 79 (quoting Leon Shkolnik, *The Continuing Debate over Academic Branch Libraries*, 52 COLL. & RES. LIBR. 343, 349 (1991)).

101. See *infra* ¶¶ 42–51.

the increasing interdisciplinarity of legal scholarship in response to complex social needs. Discussions in the literature appear as early as 1947. Harry Bitner wrote:

Achieving an integration of the non-legal and the legal in order that law may effectively play its part in society requires the availability of non-legal material, especially in the social sciences, in law libraries, to an extent not known heretofore. Many important contributions to legal science are made by economists, political scientists, and historians, in non-legal books and periodicals which the law school instructor does not have time to examine regularly, and which are not found in the law library. The law librarian must supply them promptly. It will be necessary for the law library to avail itself as much as possible of the resources of the university library in order effectively to integrate the work of the law school with that of the rest of the university.¹⁰²

¶40 Interest in interdisciplinary approaches increased in the 1960s. “Social science is now, and has always been, a part of the law. The conflict, perhaps, has been that social scientists have not been a part of it.”¹⁰³ Some law librarians saw this trend as an added burden, citing as “[o]ne result of attempts by lawyers to cope with the issues of our times . . . an increasing pressure on law librarians to purchase an array of material that was formerly located in other collections.”¹⁰⁴

As budgets permitted and the need arose, law librarians have always selected carefully in economics, cultural anthropology, the medical sciences, and other fields as dictated by the interests of their own clientele and the policies of the institution. Law firm librarians have long known the need to buy volumes on engineering, chemistry, and geology, . . . in order to represent respective clients with competence.

. . . .

. . . Much of the accent on nonlegal sources is their use as complementary background material for revived techniques in teaching—a renewed emphasis on field work and the empirical method. Such techniques were discussed and tried on a very limited basis in the thirties, but they are now being introduced, for the first time, on an unprecedented scale in law school courses.¹⁰⁵

¶41 Albert Brecht wrote in 1985 that “in many instances . . . [legal scholarship] goes beyond an exclusive concern with legal doctrine to embrace a variety of interdisciplinary approaches to the study of law. Yet, many law libraries continue to provide much the same kind of reference service they were providing when scholarship was less important and involved only doctrinal analysis.”¹⁰⁶ Interdisciplinary research uses not only the tools of traditional legal research and analysis, but also the literature and approaches of the social sciences: economics, sociology, political science, and anthropology, as well as history and philosophy.¹⁰⁷ “The interdisciplinary

102. Harry Bitner, *The Educational Background of the University's Law Librarian*, 40 *LAW LIBR. J.* 49, 51 (1947).

103. Victor G. Rosenblum, *Interdisciplinary Difficulties in Law-Society: A Dialog*, in *LAW AND THE LIBERAL ARTS*, at xxviii (Albert Broderick ed., 1967).

104. Matthew F. Dee, *Law Library Purchasing in an Interdisciplinary Era*, 63 *LAW LIBR. J.* 19, 19 (1970).

105. *Id.* at 19–20, 21.

106. Albert Brecht, *Changes in Legal Scholarship and Their Impact on Law School Library Reference Services*, 77 *LAW LIBR. J.* 157, 158 (1984–85).

107. *Id.* at 158.

researcher . . . needs to find the same legal material used by the doctrinal analyst, plus material from other disciplines that often have their own paper indexes, separate computerized indexing systems, and, for monographs, sometimes a separate card catalog in a separate library.”¹⁰⁸ “Law faculty members will frequently have to look beyond their own library for research materials; their librarians will have to rethink how to satisfy faculty research needs in an environment where those needs cannot always be met with in-house material.”¹⁰⁹ Part of the response to this challenge has been the formation of interdisciplinary partnerships.

Librarians have responded by forging partnerships with their counterparts in other disciplines, by working with clinical faculty to share the teaching of lawyering skills, and by using the Internet to communicate with foreign colleagues as they seek immediate answers to increasingly sophisticated and time sensitive queries.¹¹⁰

The disciplinary autonomy Langdell preached can no longer be assumed.

The Decline of Law as an Autonomous Discipline

¶42 In 1987, Judge Richard A. Posner effectively proclaimed the end of the Langdellian ideal in an influential article, *The Decline of Law as an Autonomous Discipline*.¹¹¹

The idea that law is an autonomous discipline, by which I mean a subject properly entrusted to persons trained in law and in nothing else, was originally a political idea. The

108. *Id.* at 159.

109. *Id.* at 160.

110. M. Kathleen Price, *Technology and Law Library Administration*, 70 ST. JOHN'S L. REV. 145, 146 (1996).

111. Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962–1987*, 100 HARV. L. REV. 761 (1987). The term “autonomous discipline” is widely used in discussion of the disciplines and was not original with Posner. The earliest use of the term I was able to find in the JSTOR database comes from Ernest Nagel, *Impressions and Appraisals of Analytic Philosophy in Europe, II*, 33 J. PHIL. 29, 44 (1936) (“the syntax of mathematics as an autonomous discipline”). The sociological literature on disciplinarity and interdisciplinarity is extensive. See generally, e.g., CENTRE FOR EDUC. RES. & INNOVATION, *INTERDISCIPLINARITY: PROBLEMS OF TEACHING AND RESEARCH IN UNIVERSITIES* (1972); TONY BECHER, *ACADEMIC TRIBES AND TERRITORIES* (1989); JULIE THOMPSON KLEIN, *INTERDISCIPLINARITY: HISTORY, THEORY, AND PRACTICE* (1990); JULIE THOMPSON KLEIN, *CROSSING BOUNDARIES: KNOWLEDGE, DISCIPLINARITIES, AND INTERDISCIPLINARITIES* (1996); LISA R. LATTUCA, *CREATING INTERDISCIPLINARITY* (2001); JANET DONALD, *LEARNING TO THINK: DISCIPLINARY PERSPECTIVES* (2002). On interdisciplinarity in law, see generally J.M. Balkin, *Interdisciplinarity as Colonization*, 53 WASH. & LEE L. REV. 949 (1996); Marc Galanter & Mark Alan Edwards, *Introduction: The Path of the Law Ands*, 1997 WIS. L. REV. 375; Edward L. Rubin, *Law and the Methodology of Law*, 1997 WIS. L. REV. 521; Christopher Tomlins, *Framing the Field of Law's Disciplinary Encounters: A Historical Narrative*, 34 LAW & SOC'Y REV. 911 (2000); Mike Townsend & Thomas Richardson, *Probability and Statistics in the Legal Curriculum: A Case Study in Disciplinary Aspects of Interdisciplinarity*, 40 DUQ. L. REV. 447 (2002); Michael Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 U. ILL. L. REV. 819; Thomas S. Ulen, *A Nobel Prize in Legal Science: Theory, Empirical Work, and the Scientific Method in the Study of Law*, 2002 U. ILL. L. REV. 875 (2002); Kim Diana Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 WASH. U. J.L. & POL'Y 11 (2003).

judges of England used it to fend off royal interference with their decisions, and lawyers from time immemorial have used it to protect their monopoly of representing people in legal matters. Langdell in the 1870s made it an academic idea. He said that the principles of law could be inferred from judicial opinions, so that the relevant training for students of the law was in reading and comparing opinions and the relevant knowledge was the knowledge of what those opinions contained. . . .

This perverse or at best incomplete way of thinking about law was promptly assailed by Holmes, who pointed out that law is a tool for achieving social ends, so that to understand law requires an understanding of social conditions. Holmes thought the future of legal studies belonged to the economist and statistician rather than the “black-letter” man.¹¹²

¶43 The Langdellian view was that “the only thing law students needed to study was authoritative legal texts . . . and that the only essential preparation for a legal scholar was the knowledge of what was in those texts, and the power of logical discrimination and argumentation that came from close and critical study of them.”¹¹³ Certainly, unlike Langdell, law professors by 1987 recognized that law was “a deliberate instrument of social control, so that one had to know something about society to be able to understand law, criticize it, and improve it. The ‘something,’ however, was what any intelligent person with a good general education and some common sense knew. . . .”¹¹⁴ This simplistic belief in the adequacy of general knowledge was sustainable for much of the twentieth century because of a confluence of factors, notably “the apparent inability of other disciplines to generate significant insights about law,”¹¹⁵ together with “the remarkable political consensus of the late 1950s and early 1960s,” such that the “entire respectable band of the professional spectrum agree[d] on the basic political questions that [were] important to law,” and it was possible to believe in the political neutrality of law.¹¹⁶ In the 1960s, “the political consensus associated with the ‘end of ideology’ . . . shattered.”¹¹⁷ Equally significant was “a boom in disciplines that are complementary to law, particularly economics and philosophy.”¹¹⁸ Economics became a dominant perspective in a number of important legal fields. At the same time, “[d]evelopments in Continental philosophy and in literary theory . . . exposed a deep vein of profound skepticism about the possibility of authoritative interpretation of texts.”¹¹⁹ The progress of other disciplines such as public choice theory, legal history, psychology, linguistics, and sociology “has been striking and cannot but undermine the lawyer’s (especially the academic lawyer’s) faith in the autonomy of his discipline.”¹²⁰

112. Posner, *supra* note 111, at 762.

113. *Id.* at 763. Cf. Tanguay, *supra* note 12, at 15 (“written materials, the principal source of legal information, form the jurist’s sole instrument of work”).

114. Posner, *supra* note 111, at 763.

115. *Id.* at 764.

116. *Id.* at 765–66.

117. *Id.* at 766 (citation omitted).

118. *Id.* at 767.

119. *Id.* at 768 (citation omitted).

120. *Id.* at 769.

¶44 In addition to these external factors, “confidence in the ability of lawyers on their own to put right the major problems of the legal system has collapsed.”¹²¹ Many of the legal reforms engineered by lawyers seemed to have failed.¹²² “Whatever the reasons, the performance of the legal profession in responding to the challenges of the past quarter century has undermined confidence that reform of the system can be left to lawyers.”¹²³

¶45 A further reason for the decline of faith in law as an autonomous discipline was the very success of the traditional modes of doctrinal legal analysis. “When a technique is perfected, the most imaginative practitioners get restless.”¹²⁴ The innovations had already been made, and many scholars had little interest in a future of continual tweaking of doctrine to accommodate new cases. “Because of this perception, and also because of the growth of other disciplines, in the 1960s a new type of legal scholarship began to emerge in the leading law schools—the conscious application of other disciplines, such as political and moral philosophy and economics, to traditional legal problems.”¹²⁵

¶46 For Posner, “[r]ecognition that the law is increasingly an interdisciplinary field has many implications”:¹²⁶ (1) “Economists, statisticians, and other social scientists should have a far more prominent role in efforts at legal reform than has been traditional”; (2) “[t]he type of ‘advocacy’ scholarship in which political sallies are concealed in formalistic legal discourse—a staple of modern law review writing—should be replaced by a more candid literature on the political merits of contested legal doctrines”; (3) “[j]udicial decisionmaking must also become more receptive to the insights of social science”; (4) law schools should encourage the development of “legal theory, . . . the study of law not as a means of acquiring conventional professional competence but ‘from the outside,’ using the methods of scientific and humanistic inquiry to enlarge our knowledge of the legal system”; and (5) faculty-edited law reviews, edited by scholars equipped to evaluate articles outside the core of legal doctrinal analysis, will grow.¹²⁷

¶47 Posner’s analysis of the decline of law as an autonomous discipline has spawned a continually expanding literature of its own.¹²⁸ A 1997 panel at Harvard attracted contributions by Steven L. Schwarcz, Cass R. Sunstein, E. Allen Farnsworth, and a response by Posner.¹²⁹ Posner’s position has been expanded beyond its primary focus on law and economics and brought up to date by Brian H. Bix.

121. *Id.*

122. *See id.* at 769–70.

123. *Id.* at 771.

124. *Id.* at 771–72 (citation omitted).

125. *Id.* at 772.

126. *Id.* at 778.

127. *Id.* at 778–79.

128. As of May 7, 2004, the JLR database on Westlaw included 246 articles citing Posner’s original article.

129. Symposium, *The Attraction of Law and Economics: Is Law an Autonomous Discipline*, 21 HARV. J. L. & PUB. POL’Y 83 (1997).

The “autonomy of law” refers to a number of related but distinct claims: (1) that legal reasoning is different from other forms of reasoning; (2) that legal decision-making is different from other forms of decision-making; (3) that legal reasoning and decision-making are sufficient to themselves, that they neither need help from other approaches nor would they be significantly improved by such help; and (4) that legal scholarship should be about distinctively legal topics (often referred to as “legal doctrine”) and is not or should not be about other topics.¹³⁰

According to Bix, Posner’s predictions about the growing influence of perspectives from nonlegal disciplines have proven accurate. “[T]he general trend in both England and the United States, in both legal reasoning and legal education, has been *away from* legal autonomy, towards a more interdisciplinary approach.”¹³¹

Doctrinal [scholarly] work is still done, but it has been overshadowed (particularly in “high status” law journals) by interdisciplinary and theoretical work of various kinds. Economic analysis of various kinds (now including game theory and public choice theory) pervades “legal” analysis in most fields, and sociology, history, moral philosophy, and literary theory make regular appearances in legal scholarship and legal education, and also, if far less frequently, in judicial opinions.¹³²

¶48 The perception of the increasing prevalence of nonlegal disciplines in both legal scholarship and judicial opinions is supported by citation studies. It should surprise no one that, while doctrinal scholarship continues to be published extensively in law journals, law and economics and other “law and” approaches are steadily increasing, especially in the leading law reviews.¹³³ Perhaps more surprisingly, studies by Frederick Schauer and Virginia Wise¹³⁴ and John J. Hasko¹³⁵ demonstrate the increasing use of nonlegal materials in court opinions. Richard H. Fallon Jr. identifies at least four ways in which judges use nonlegal sources: (1) in the form of background assumptions about such matters as what motivates human behavior; (2) “clarificatory or heuristic,” i.e., using theories from philosophy, economics, or political science to

130. Brian H. Bix, *Law as an Autonomous Discipline*, in *THE OXFORD HANDBOOK OF LEGAL STUDIES* 975 (Peter Cane & Mark Tushnet eds., 2003).

131. *Id.* at 976.

132. *Id.* at 981. Larry Alexander identifies five varieties of legal scholarship: *doctrinal*, “which describes legal rules and institutions, explicates their internal logic and their relationship to other rules and institutions, and perhaps urges their reform or extension along certain lines”; *normative*, which “goes beyond the reporting and analyzing that is characteristic of doctrinal scholarship and prescribes doctrinal changes (or the status quo)”; *empirical*, “which emphasizes reporting and predicting the social effects of legal rules and institutions”; *historical*, which “relates legal doctrines and institutions to various historical perspectives”; and *jurisprudential*, “which seeks to answer questions regarding the essential nature of law, legal argument, and legal interpretation.” Larry Alexander, *What We Do, and Why We Do It*, 45 *STAN. L. REV.* 1885, 1886–88 (1993). Doctrinal scholarship may most plausibly be claimed to be autonomous and, in the context of this article, limited to traditional sources and methods of legal research. The other modes of scholarship call in various ways and to various degrees for recourse to nonlegal resources.

133. Robert C. Ellickson, *Trends in Legal Scholarship: A Statistical Study*, 29 *J. LEGAL STUD.* 517, 517 (2000).

134. Frederick Schauer & Virginia Wise, *Nonlegal Information and the Delegalization of Law*, 29 *J. LEGAL STUD.* 495 (2000).

135. John J. Hasko, *Persuasion in the Court: Nonlegal Materials in U.S. Supreme Court Opinions*, 94 *LAW LIBR. J.* 427, 2002 *LAW LIBR. J.* 27.

suggest what law would result from application of such theories; (3) “motivational,” or “to provide a reason to decide a case in a particular way,” such as to promote economic efficiency; or (4) to justify or legitimate decisions reached on other bases.¹³⁶

¶49 An additional reason for the increasing use of nonlegal information sources in scholarship and judicial opinions is the ready availability of such sources through technology in the form of LexisNexis, Westlaw, and the Internet. Schauer and Wise date the increase in such citations from the early 1990s. The changing culture of legal academia and the increased scholarly interest in other academic disciplines might explain the increasing frequency of citation to scholarly journals such as *American Economic Review* or *Journal of Philosophy*, but not citations to daily newspapers or books like *How to Buy and Care for Tires*. “[W]hat likely remains is that the increased ease of access to nonlegal information is a large part of the explanation.”¹³⁷ “Database integration” thus reinforces and facilitates longstanding trends toward breaking down the walls separating legal research from the rest of the world. As Schauer and Wise note:

One of the most important features of law’s traditional differentiation has been its informational autonomy. In many respects legal decision making is highly information dependent and was traditionally dependent on a comparatively small universe of legal information, a universe whose boundaries were effectively established, widely understood, and efficiently patrolled. Yet if, as we have shown here, these boundaries are breaking down, does this suggest that the differentiation between legal information and nonlegal information is itself breaking down? And if this is so, and if the concept of law is itself an informationally soaked concept, then does the breakdown of the line between the legal and the nonlegal with respect to information presage a breakdown in the line between the legal and the nonlegal with respect to the law itself? This is the idea we refer to as the “delegalization of law,” and the changing pattern of citation we have identified seems one sign of this growing phenomenon.¹³⁸

¶50 F. Allan Hanson subjects these observations to an anthropological analysis. He observes that “print-based legal research . . . fosters a view of the law as a self-contained system of facts and doctrines hierarchically organized under general principles.”¹³⁹ Since the early 1980s, however, “[c]lear evidence of increased

136. Richard H. Fallon, Jr., *Non-Legal Theory in Judicial Decisionmaking*, 17 HARV. J.L. & PUB. POL’Y 87, 89–90 (1994).

137. Schauer & Wise, *supra* note 134, at 510.

138. *Id.* at 514–15.

139. F. Allan Hanson, *From Key Numbers to Keywords: How Automation Has Transformed the Law*, 94 LAW LIBR. J. 563, 564, 2002 LAW LIBR. J. 36, ¶ 4. Robert C. Berring has exhaustively demonstrated the influence of print-based classification schemes, particularly the West digest system and the Langdellian emphasis on case law, on American law, and how traditional legal authorities are breaking down under the onslaught of technology. See generally Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 CAL. L. REV. 15 (1987); Robert C. Berring, *Collapse of the Structure of the Legal Research Universe: The Imperative of Digital Information*, 69 WASH. L. REV. 9 (1994); Robert C. Berring, *Chaos, Cyberspace and Tradition: Legal Information Transmogrified*, 12 BERKELEY TECH. L.J. 189 (1997); Robert C. Berring, *Legal Research and the World of Thinkable Thoughts*, 2 J. APP. PRAC. & PROCESS 305 (2000); Robert C. Berring, *Legal Information and the Search for Cognitive Authority*, 88 CAL. L. REV. 1673 (2000).

research activity by academic lawyers is visible in developments in the world of law journals.”¹⁴⁰ Most law schools now publish one or two, or in many cases several, specialized subject-oriented law journals in addition to the main, general law review. “Obviously this development has greatly increased the total amount of published legal scholarship. Moreover, a leaky boundary between the law and other fields is evident from the fact that many of the new journals are explicitly interdisciplinary in focus. . . .”¹⁴¹

¶51 Some might suggest that the decline of law’s autonomy is confined to the ivory tower of law schools and has little impact on the practice of law.¹⁴² In this view, the mainstreaming of interdisciplinary work in legal scholarship is a regrettable development that has marginalized such scholarship with respect to the practical needs of lawyers and judges. In the world of practice, lawyer autonomy and the autonomy of law as a profession continue to prevail. However, the practicing lawyer’s autonomy has undergone a similar demythologizing in recent years. According to the classical definition, a profession is distinguished from other occupations by the autonomy of its practitioners—that is, the control that they have over their work¹⁴³—or the practitioners’ ability to exercise independent judgment based on the values of the profession. Lawyers get a great deal of mileage from their commitment to broader ideals of justice and to the standards of ethics promulgated within the principles of self-regulation. Sociological studies of lawyers in practice, however, find that while adhering to an ideology of autonomy, lawyers “enthusiastically attempt to maximize the interests of clients and rarely experience serious disagreement with the broader implications of a client’s proposed course of conduct.”¹⁴⁴

140. Hanson, *supra* note 139, at 589, ¶ 67.

141. *Id.* at 589–90, ¶ 67.

142. See, e.g., Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992) (attacking the prevalence of what he derides as “impractical” legal scholarship, particularly in “elite” law schools). But see Edward L. Rubin, *Law and the Methodology of Law*, 1997 WIS. L. REV. 521, 552 (“Judge Edwards’ broadside raises more concerns about the quality of his judicial decision-making than about the quality of legal scholarship. A contemporary judge must determine the validity and application of a wide variety of complex statutory schemes, phrased in public policy discourse and drawing on the learning of many nonlegal disciplines. Judge Edwards’ dismissive attitude toward these disciplines indicates a preemptory, unsympathetic approach to our modern legal system that is a truly unfortunate stance for a judge to adopt.”).

143. John P. Heinz, *The Power of Lawyers*, 17 GA. L. REV. 891, 892 (1983). Note, however, that this “classical” understanding of the professions is no longer the prevailing sociological view. “Writers from the late 1960s on, however, emphasized instead the unusually effective, monopolistic institutions of professions and their high status as the critical factor and treated knowledge, skill, and ethical orientations not as objective characteristics but rather as ideology, as claims by spokesmen for professions seeking to gain or to preserve status and privilege.” ELIOT FREIDSON, *PROFESSIONAL POWERS: A STUDY OF THE INSTITUTIONALIZATION OF FORMAL KNOWLEDGE* 29 (1986). See generally ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS* (1988); ELIOT FREIDSON, *PROFESSIONALISM: THE THIRD LOGIC* (2001); ELLIOTT A. KRAUSE, *DEATH OF THE GUILDS: PROFESSIONS, STATES, AND THE ADVANCE OF CAPITALISM, 1930 TO THE PRESENT* (1996); Richard A. Danner, *Redefining a Profession*, 90 LAW LIBR. J. 315 (1998).

144. Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503, 504 (1985).

It has also been argued that “conformance pressures existing within professional practice hierarchies operate to dictate lawyer behavior, reduce autonomy and individual choice in lawyering, and shape, perhaps profoundly, the development of the new professional.”¹⁴⁵ The increasing bureaucratization of law practice, like other professions such as medicine, means that the professions are losing their uniqueness, resulting in a status described variously as “new professionalism,” “deprofessionalization,” or “postprofessionalism.”¹⁴⁶ Recent literature placing a new emphasis on the autonomy of the client rather than the lawyer inevitably questions the traditional view of the lawyer’s role.¹⁴⁷

Technology, Economics, and the Hybrid Library

¶52 Many of the pragmatic justifications long cited for law library autonomy are no longer convincing, if indeed they ever were. In 1954, Marian G. Gallagher complained of the inadequacy of standard library classification schemes.¹⁴⁸ William R. Roalfe in 1957 bemoaned university librarians’ “insistence, for the sake of uniformity, upon the use of a classification scheme long since found inadequate for a large collection of legal materials.”¹⁴⁹ With the completion of the KF schedule and the massive reclassification projects undertaken by almost all law school libraries in the last couple of decades, this complaint no longer bears much weight. As an article on law cataloging noted in 1991, “the reason that was most often given for not joining the [bibliographic] networks [such as OCLC] was the fear that one’s library would lose its autonomy. This fear seems almost ludicrous now.”¹⁵⁰ It appears to be commonly accepted that it is advantageous for law libraries to share the same classification system as other libraries, even if they persist in maintaining a separate physical catalog. Similarly, Gallagher’s comment that “law books cost a great deal more than most other types of books”¹⁵¹

145. Catherine Gage O’Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485, 496 (1998).

146. Herbert M. Kritzer, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Postprofessional World*, 33 LAW & SOC’Y REV. 713, 720 (1999).

147. See, e.g., Strauss, *supra* note 98; William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones’s Case*, 50 MD. L. REV. 213 (1991); Spiegel, *supra* note 98.

148. Gallagher, *supra* note 9, at 118. *But see* Price, *supra* note 10, at 237 (“The principal dangers and disadvantages of the autonomous library are the too frequent lack of interest or aggressiveness on the part of the dean, resulting in a poor technical staff and administration, as opposed to the expertise of the central library and its constant contact with agencies aiming to improve library methods, and its insistence upon high technical standards.”). Arguably, a strong and highly professional central library will strengthen and support the law library, while a weak and inadequate central library will drag it down.

149. Roalfe, *supra* note 85, at 4. See also *Standards for Law Libraries*, *supra* note 69, at 474 (remarks of Julius Marke) (“There are many university libraries where they expect books to be cataloged in the university cataloging system. All this because we have centralization.”).

150. Alva T. Stone & Jessie Tam, *Cataloging and Classification of Law Materials: A Survey of Recent Literature*, 83 LAW LIBR. J. 721, 722 (1991).

151. Gallagher, *supra* note 9, at 116.

would surely be disputed today by librarians in the health sciences.¹⁵² James F. Bailey in 1975 cited as an example of the irrational questioning by university librarians, “Why should the law library have five sets of *Federal 2d*, especially when each set costs so much?”¹⁵³ Why indeed? While that question may have had some validity in 1975, it has little resonance in today’s environment. With the ready availability of cases on Westlaw and LexisNexis, many law libraries already have reduced or eliminated multiple copies of reporters. Many law firm libraries have now discarded print reporters altogether.

¶53 The insistence on autonomy has resulted in the isolation of law libraries from progressive developments in the profession of librarianship. Bailey wrote in 1975:

Functionally, Law Librarians operate quite apart from other librarians and in a world in which professional ties lead to the law school, to other law schools, and to other law librarians far more frequently and far more insistently than to any other objects. An adamant insistence that all librarians must fall into the same basket is little else than an obstinate refusal to recognize the facts for what they are.¹⁵⁴

Today, however, a number of factors are pushing academic law libraries toward working more closely with their university library colleagues. The unprecedented increase in technology over the last twenty years tends to promote integration and break down boundaries. As early as 1974, some law librarians questioned (albeit anonymously) the continued viability of law library autonomy in the age of increasing technology. “[A]utonomy of law school libraries will become increasingly difficult to justify with foreseeable advances in technology—automation, electronic data retrieval, etc. These technological factors, whether actually good or efficient or not, have great appeal to budget analysis, efficiency experts and others of that ilk.”¹⁵⁵ And similarly in 1986:

The years since 1978 also have been a time of rapidly increasing automation for all types of libraries across the nation. Some law libraries have automated on their own; others have participated in university-wide automation projects. In some cases, the law library served as the leader and catalyst for automation on a university-wide basis. Problems have arisen where the university librarian has attempted to employ automation as an argument favoring greater administrative centralization in the central library (although, in reality, some might argue that automation should favor a more decentralized administrative pattern). Problems also have arisen in those cases where the law librarian hesitates to participate in automation projects for fear this step might compromise hard-won autonomy.¹⁵⁶

¶54 By the late 1980s the tone of the debate had begun to shift. The 1989 report of AALL’s National Legal Resources Committee predicted that “[l]aw school

152. The most expensive biomedical journal, *Brain Research*, carried a price tag of \$19,971 in 2003. Health sciences librarians no doubt have office pools riding on when *Brain Research* finally breaks the \$20,000 mark.

153. Bailey, *supra* note 25, at 284.

154. *Id.* at 279–80.

155. Bailey & Dee, *supra* note 25, at 23.

156. Trelles & Bailey, *supra* note 25, at 607–08.

librarians will find themselves forging links to university librarians as online integrated bibliographic control systems become increasingly popular."¹⁵⁷

¶55 It was soon widely recognized that pressures were arising that could force closer relationships among university libraries, including law libraries.

University administrations are now beginning to question assurances that law libraries' independence from the general library necessarily excludes the sharing of utilities, services, staff, and collections. . . . Administrators are now asking (and, in some cases, demanding) that law libraries cooperate with the main library to free up funds for other uses.¹⁵⁸

Thus issues of law library autonomy which some would like to consider finally settled are once again open for debate.

Issues of administrative autonomy for the law library remain alive today, although they are played out (and described) in somewhat different terms from those of the 1950s. On many campuses, shared automated systems for ordering, processing, and circulating materials, as well as for display of holdings in online catalogs, require significant cooperation and communication between the law school library and the university library system, regardless of the reporting relationships. In addition, the development and expansion of campus-wide networks and centralized computing and information services have created new administrative issues for law and other academic libraries.¹⁵⁹

¶56 Not all welcome this trend. "Discounting paranoia, the fact remains that joint automation ventures require more contact and cooperation than most autonomous law libraries have traditionally maintained with other libraries on their campuses."¹⁶⁰ On the other hand, some see this as an opportunity for law librarians to rejoin the "larger information community."

Law librarians need formal studies of how lawyers and legal scholars actually find and use legal information; they must also direct lawyers to more nonlegal materials. To better serve a patron base which is becoming sophisticated in using technology, law librarians—who have been isolated from mainstream librarianship—must put aside their concerns with autonomy to draw upon theory and practice from the management, computer, and library sciences in order to adjust to a changing information environment. Regardless of institutional structure, they need to join the larger information community.¹⁶¹

157. M. Kathleen Price, Am. Ass'n of Law Libraries, *Setting the Legal Information Agenda for the Year 2000: Preliminary Report of the National Legal Resources Committee*, 81 LAW LIBR. J. 349, 353 (1989) [hereinafter *National Legal Resources Committee Report*].

158. William F. Wells, *Avoiding the Dragon in Library Cooperation*, 83 LAW LIBR. J. 333, 334 (1991).

159. Richard A. Danner, *Facing the Millennium: Law Schools, Law Librarians, and Information Technology*, 46 J. LEGAL EDUC. 43, 57 n.24 (1996).

160. Janis L. Johnston, *NOTIS Users' Survey: An Initial Reaction*, 82 LAW LIBR. J. 531, 532 (1990). Of the twenty-one autonomous libraries responding to Johnston's survey, all "reported that their automation efforts have been accelerated by participating in a university-wide system, and twenty reported having received benefits from working with the main library." *Id.* On the other hand, "eleven reported that they have had to accept decisions made by the main library which are contrary to the decisions they would have made if operating independently." *Id.* Johnston noted that "I am not overly sanguine about the long-range implications of this relationship. . . . [S]haring an online system creates a bond that may not be easy to break." *Id.* at 536.

161. *National Legal Resources Committee Report*, *supra* note 158, at 353.

¶57 The trend away from autonomy and toward cooperation does not affect only law libraries. No library can be considered truly autonomous. General academic libraries are under their own pressures—economic, technical, and political, among others—which are diminishing the appeal of autonomy and providing incentives to break down traditional boundaries. Among the greatest of these pressures is the constellation of factors known as “the library crisis.” For years the prices of library materials, particularly in the sciences, medicine, and technology fields, have radically outpaced both library budgets and the general rate of inflation.¹⁶² To try to keep up with these increases, most academic libraries have significantly reduced their purchases of both monographs and serials. A factor contributing to the higher prices of publications in these fields is market concentration resulting from the frequency of mergers among publishers.¹⁶³ At the same time, however, the increasing specialization of these fields has resulted in the publication of an increasing number of specialized journals.¹⁶⁴ These specialized journals have a much lower circulation, leading once again to higher subscription prices.

¶58 Today’s academic library is a “hybrid library . . . where electronic and paper-based information sources are used alongside each other. The challenge associated with the management of the hybrid library is to encourage end-user resource discovery and information use, in a variety of formats and from a number of local and remote sources, in a seamlessly integrated way.”¹⁶⁵ The hybrid library is much less transparent than the traditional library. While finding one’s way in a large research library was always a daunting task, at least the resources available were finite, bounded, and relatively comprehensible. When information is contained in physical form, in books, access is relatively clear: either the library owns a particular book or it doesn’t.¹⁶⁶ In the digital environment, however, nothing is that simple. The library user is restricted on all sides by licensing agreements of which he or she knows nothing. Some materials are licensed by the individual library for all users, some for specified groups of users; some are consortial licenses shared by a group of libraries. “In the print environment, physical evidence of the library having purchased resources is in plain sight, and users generally do not need to have access options explained to them. . . . In the digital environment, the principles governing the ownership and access of resources [are] anything but obvious to the library user.”¹⁶⁷

162. Richard E. Quandt, *Scholarly Materials: Paper or Digital?* 51 LIBRARY TRENDS 349, 350 (2003).

163. *Id.* at 354.

164. *Id.* at 353.

165. Stephen Pinfield et al., *Realizing the Hybrid Library*, D-LIB MAG., Oct. 1998, at <http://www.dlib.org/dlib/october98/10pinfield.html>.

166. In fact, libraries have never truly been autonomous. Libraries of all types have long relied on practices such as interlibrary loan and the establishment of consortia for resource sharing. Improved technology such as e-mail, telefax, Ariel, and ILLiad may make it possible to deliver materials from other libraries in a matter of hours rather than weeks, but this is arguably nothing more than a quantitative difference, not an essential change in the nature of libraries.

167. Catherine Von Elm & Judith F. Trump, *Maintaining the Mission in the Hybrid Library*, 27 J. ACAD. LIBRARIANSHIP 33, 33 (2001).

One of the problems of a “library without walls” is just that—the absence of physical dividing lines that separate the library from the rest of the world, and that also give us some sense of being able to control, or at least see, our collections and our users. Digital libraries, and all libraries that take advantage of digital resources, have to operate in a sometimes-nebulous space that is populated with invisible players, all of whom have some stake in [digital library] activities.¹⁶⁸

Where access to digital library resources is mediated through such technological measures as authentication and proxy servers, “[l]ibrary and information technology staff must work together to facilitate human interaction with digital systems, and differing attitudes toward service must be overcome so that users are able to more intuitively access resources.”¹⁶⁹

¶59 The dilemma of the contemporary academic library has been described as the “decentering of the library.”¹⁷⁰

[T]he library might still have been the symbolic heart of the university, but for several reasons it was losing its central place as a funding priority on many campuses. First, new information technology was creating alternative paths for access to scholarly information, and investments in technical infrastructure and computing centers diverted funding from the traditional library. Second, the decline in arts and sciences and the rise of science and technology programs in universities eroded the power of disciplines that most directly supported the traditional library. Third, the profession of librarianship itself seemed to be in disarray, fraught with uncertainty and anxiety over its future in the computer age. Fourth, libraries were not competitive enough in the new, aggressive environment of higher education. . . . The library could no longer take for granted a special status in the university.¹⁷¹

¶60 Most academic libraries have sought relief in various forms of collaboration or cooperation with other libraries or with other entities on or off the campus. The long history of attempts at cooperative collection development in the post-war world of print resources is one of ambitious efforts and limited results.¹⁷² “The strong political pull of local library autonomy, combined with the technical difficulty of moving print material quickly and economically over geographic distances, tended to make cooperative collection development difficult and impractical.”¹⁷³ “Autonomy remained the collections ideal.”¹⁷⁴ However, coopera-

168. Candy Schwartz, *Digital Libraries: An Overview*, 26 J. ACAD. LIBRARIANSHIP 385, 390 (2000).

169. Von Elm & Trump, *supra* note 167, at 34.

170. John Howe, *Libraries and Funding: The Politics of the Budgetary Process in an Era of Decreasing Resources*, in COLLECTION MANAGEMENT FOR THE 1990s, at 39 (Joseph J. Branin ed., 1993), *quoted in* Joseph Branin et al., *The Changing Nature of Collection Management in Research Libraries*, 44 LIBR. RESOURCES & TECH. SERVICES 23, 25 (2000).

171. Branin et al., *supra* note 170, at 25 (citing Howe, *supra* note 170). These factors, particularly the “uncertainty and anxiety” of the library profession, echo some of the factors cited by Posner as the causes of the decline of the autonomy of law. *See supra* ¶¶ 44–45.

172. *See generally*, Edward G. Holley, *North American Efforts at Worldwide Acquisitions Since 1945*, in RESEARCH LIBRARIES GROUP, INTERNATIONAL CONFERENCE ON RESEARCH LIBRARY COOPERATION 89–111 (1987).

173. Branin et al., *supra* note 170, at 25.

174. Dan Hazen, *Twilight of the Gods? Bibliographers in the Electronic Age*, 48 LIBR. TRENDS 821, 830 (2000).

tive efforts have gained new success in two forms: consortial licensing of electronic resources and shared remote storage facilities.

Reference tools, electronic journals, and digital archives of historical materials now come in a variety of bundled packages. Johns Hopkins University Press, Elsevier, Academic Press, and the American Chemical Society all market their entire line of electronic journals as a complete package to individual libraries, local library consortia, and even to statewide or regional groups of libraries. Libraries are beginning to aggregate themselves by creating "virtual libraries" at the state or regional level to pool resources and services.¹⁷⁵

¶61 The advantages of consortial arrangements for access to remote online resources have become apparent. "Cooperative efforts assume that individual libraries alone cannot satisfy all local demand, that it would be a poor allocation of resources for them to attempt this even if they could, and that clear-cut arrangements to share resources make sense from both economic and service perspectives."¹⁷⁶ Journal aggregator packages offer full-text searching, full-text delivery in HTML or PDF formats, and often archiving of back issues.¹⁷⁷ They also make it possible to acquire large numbers of journals in a wide variety of disciplines. Elsevier Science Direct,¹⁷⁸ JSTOR,¹⁷⁹ and Project Muse,¹⁸⁰ among others, include journals in such disciplines as American studies, anthropology, economics, history, political science, and sociology, areas that are of interest to many academic legal scholars. However, these packages can be enormously expensive and would be out of reach of most academic libraries without the combined buying power of statewide and regional consortia. In fact, some aggregators such as Ideal will negotiate only with consortia.¹⁸¹ The acceptance of consortia and the surrender of autonomy that comes with the necessity of compromise have not, however, come easily.

¶62 Consortia have numerous disadvantages: bureaucracy, time delays, and lack of flexibility, among others.¹⁸² With the rise of systemwide union catalogs in the 1980s, academic libraries had to overcome their attachment to the ideal of self-sufficiency and their initial resistance to including records in their online catalogs for items held at other libraries.¹⁸³ A perhaps more serious objection to both local and consortial purchases of aggregator packages has to do with the decreasing autonomy of the

175. Branin et al., *supra* note 170, at 28.

176. Hazen, *supra* note 174, at 831.

177. "[A]ggregator packages are broadly defined as groups of electronic indexes or journals consisting of up to hundreds of titles, that are bundled together by an aggregator in the form of a web-accessible package that is then marketed to libraries. The package often features a common interface and search commands, and is generally available on a subscription basis." Brian Quinn, *The Impact of Aggregator Packages on Collection Management*, COLLECTION MGMT., 2001, no. 3, at 53, 54.

178. Elsevier Science Direct, at <http://www.sciencedirect.com/> (last visited Apr. 29, 2004).

179. JSTOR: The Scholarly Journal Archive, at <http://www.jstor.org/> (last visited Apr. 29, 2004).

180. Project Muse: Scholarly Journals Online, at <http://muse.jhu.edu/> (last visited Apr. 29, 2004).

181. Quinn, *supra* note 177, at 57.

182. Thomas A. Peters, *Consortia and Their Discontents*, 29 J. ACAD. LIBRARIANSHIP 111, 111-12 (2003).

183. Mary Frances Casserly, *Developing a Concept of Collection for the Digital Age*, 2 PORTAL: LIBR. & ACAD. 577, 579 (2002).

individual academic library in the area of selection. Collection developers no longer have the freedom to select individual journals title-by-title. With aggregate purchases, university libraries select broad topical areas rather than individual journal titles. Academic libraries adopting these aggregate packages must typically accept numerous journal titles they would not otherwise have chosen in order to acquire the titles they do want.¹⁸⁴ On the other hand, electronic access makes it possible to obtain more accurate measures of actual use of specific titles. Where the traditional approach to collection development relied on the individual librarian's subject expertise and a rather paternalistic judgment of the "best" sources for the scholars under his or her care, aggregator packages create at least the possibility of collecting solid empirical data on use.¹⁸⁵ At any rate, most academic librarians have come to accept that "collaboration involving libraries is crucial to the continued success of libraries."¹⁸⁶

¶63 Due in part to the wide acceptance of online journal packages, regional storage of print collections is the other area in which library collaboration has become prominent.

Research librarians, running out of stack space in prime campus real estate for their library's collections and seeing new access opportunities through improvements in document delivery services, are beginning to consolidate their print materials both on and off campus. Regional storage facilities are in operation or under construction both in the United States and Canada. . . . The high cost of maintaining decentralized archives . . . combined with the development of new digital approaches to access are making the complete main library and the traditional departmental library a convenience of the past. Direct delivery of articles to the individual's computer and electronic browsing of titles and tables of contents might help to make up for traditional shelf browsing.¹⁸⁷

¶64 More recent trends in library collaboration include frontal attacks on the library crisis of increasingly costly scholarly publications by creating institutional and disciplinary repositories as alternative forms of scholarly communication. These include such ventures as the Massachusetts Institute of Technology's DSpace¹⁸⁸ and similar projects at other universities promoted by SPARC, the

184. Kenneth Frazier, *The Librarians' Dilemma: Contemplating the Costs of the "Big Deal,"* 7 D-LIB MAG. (Mar. 2001), at <http://www.dlib.org/dlib/march01/frazier03frazier.html>.

185. Thomas A. Peters, *What's the Big Deal?* 27 J. ACAD. LIBRARIANSHIP 302, 303 (2001).

186. Peters, *supra* note 182, at 111.

187. Branin et al., *supra* note 170, at 29. For detailed examinations of several such shared storage projects, see generally David Weeks & Ron Chepesiuk, *The Harvard Model and the Rise of Shared Storage Facilities*, 16 RESOURCE SHARING & INFO. NETWORKS 159 (2002); JUDY LUTHER ET AL., LIBRARY BUILDINGS AND THE BUILDING OF A COLLABORATIVE RESEARCH COLLECTION AT THE TRI-COLLEGE LIBRARY CONSORTIUM (2003), at <http://www.clir.org/pubs/reports/pub115/pub115.pdf>; WILLIS E. BRIDEGAM, A COLLABORATIVE APPROACH TO COLLECTION STORAGE: THE FIVE-COLLEGE LIBRARY DEPOSITORY (2001), available at <http://www.clir.org/pubs/reports/pub97/pub97.pdf>; BERNARD F. REILLY, JR., DEVELOPING PRINT REPOSITORIES: MODELS FOR SHARED PRESERVATION AND ACCESS (2003), available at <http://www.clir.org/pubs/reports/pub117/pub117.pdf>.

188. "DSpace is an open source software platform that enables institutions to: capture and describe digital works using a custom workflow process[;] distribute an institution's digital works over the web, so users can search and retrieve items in the collection[;] [and] preserve digital works over the long term." DSpace, *Introducing DSpace*, at <http://dspace.org/introduction/index.html> (last visited Apr. 29, 2004).

Scholarly Publishing & Academic Resources Coalition;¹⁸⁹ and digital archiving projects such as LOCKSS (Lots of Copies Keeps Stuff Safe),¹⁹⁰ LEDA (Legal Electronic Document Archive),¹⁹¹ and the NELLCO (New England Law Library Consortium) Legal Scholarship Repository.¹⁹²

¶65 Thus, the combined pressures of economics and technology have made interlibrary collaboration both necessary and feasible. “Libraries are no longer self-sufficient, scholarly fields are no longer self-contained, and individuals are mobile as never before.”¹⁹³ “Straitened book budgets, easy mechanisms for inter-library loan, research projects that cut across fields and institutions, and commonly available digital resources all encourage cooperation.”¹⁹⁴ Daniel Greenstein and Suzanne E. Thorin argue for a radical vision of interdependency among libraries and other players in the information realm, both on and off campus.

Indeed, if one were to jettison our cultural and professional baggage and start to conceptualize how to manage and secure access to society’s information outputs in all formats, we might imagine a close network of information services sustained in part by free-market principles of supply and demand and in part by the philanthropic subsidies supplied by universities, libraries, and organizations that maintain access to our heritage. . . . In a rational economic system, one might at a minimum envision the following:

- service points (academic libraries) managing access (online, print-on-demand, and other means)
- digital repositories (managing electronic corpora and ensuring they are available for different service points)
- print repositories that preserve the physical artifacts and make them available to scholars whose research requires that they handle the objects.¹⁹⁵

189. “SPARC, the Scholarly Publishing and Academic Resources Coalition, is an alliance of universities, research libraries, and organizations built as a constructive response to market dysfunctions in the scholarly communication system. These dysfunctions have reduced dissemination of scholarship and crippled libraries. SPARC serves as a catalyst for action, helping to create systems that expand information dissemination and use in a networked digital environment while responding to the needs of scholars and academe.” SPARC, at <http://www.arl.org/sparc/core/index.asp?page=a0> (last visited Apr. 29, 2004).

190. “The LOCKSS model capitalizes on the traditional roles of libraries and publishers. LOCKSS creates low-cost, persistent digital ‘caches’ of authoritative versions of http-delivered content. The LOCKSS software enables institutions to locally collect, store, preserve, and archive authorized content thus safeguarding their community’s access to that content. The LOCKSS model enforces the publisher’s access control systems and, for many publishers, does no harm to their business models.” LOCKSS, *Project Descriptions*, at <http://lockss.stanford.edu/projectdescrip.htm> (updated Aug. 18, 2003).

191. “LEDA, the Legal Electronic Document Archive, is a repository on the web for law-related articles, working papers, theses, moot court briefs, and other legal academic documents. It is being built by a loosely-knit consortium centered around the Cornell Legal Information Institute and the Harvard Law School Library.” Legal Electronic Document Archive, at <http://www.law.cornell.edu/leda/> (last visited Apr. 29, 2004).

192. NELLCO Legal Scholarship Repository, at <http://lsr.nellco.org/> (last visited Apr. 29, 2004).

193. Hazen, *supra* note 174, at 837.

194. *Id.* at 839.

195. DANIEL GREENSTEIN & SUZANNE E. THORIN, *THE DIGITAL LIBRARY: A BIOGRAPHY* 24–25 (2002).

¶66 Libraries today are facing hard choices and fundamental challenges as they try to determine which traditional services are essential and which are unnecessary or even counterproductive. In making these decisions, librarians must face up to the possible conflicts of interest between their own professional autonomy and the actual information needs of the user populations they serve.

One might argue that the library itself is the single greatest obstacle to a more distributed and economically rational provision of information services. It is difficult to cede to third parties responsibility for collections and services that have historically been provided in-house and upon which library patrons rely so heavily. It is especially difficult when those who are forced to consider such fundamental reorganization are encumbered with professional, cultural, and organizational baggage that defines a high-quality library as one that supports in a single place a very wide range of collections and services—a range so wide that it may now be beyond the reach of any single library.¹⁹⁶

Conclusion: Leaky Boundaries and Relative Autonomy

¶67 Miles O. Price argued that the law library can succeed either as an autonomous library under the authority of the law school or as an integrated library reporting to the university library, provided that “prima donnas and empire builders do not interfere.”¹⁹⁷ Fluctuations in the economics of higher education, along with persistent pressures to reduce costs and to justify what may appear to university administrators to be unnecessary duplication of services and personnel, mean that the threat of perceived interference from the university library is not eliminated by so-called autonomous status. The protection from interference afforded by autonomous status is only as good as the political skills and commitment of the director and the law school dean. Price also noted that “[p]aradoxically, the dean is in the position of being able to fight more wholeheartedly for integrated library budget items than if the library were under his complete law school control. It is no skin off his nose if they are granted; whereas if on the law school budget, they might make his total too large and result in cuts for other law school items.”¹⁹⁸ This argument carries even more force today, when traditional law library needs must compete for funding—and for the dean’s attention—with the ever-growing commitment to law school technology. If the law library has been seen with regret by deans as a black hole requiring continually increasing expenditures of law school funds, it now shares that status with the law school’s information technology department. Even in those law schools where both library and technology are under the direction of the law librarian, investments on one side must often come at the expense of the other.

196. *Id.* at 26.

197. Price, *supra* note 10, at 232.

198. *Id.* at 233.

¶68 Law librarians' continued embrace of an ideal of total autonomy from the university library, however, brings with it a significant risk. By using the term "autonomy" so broadly, and by our hidebound resistance even to reasonable calls for library cooperation out of fear of infringement on our autonomy, we have made it difficult for university librarians and senior administrators to take our claims seriously. Law librarians have failed to articulate a rational argument for autonomy and instead have simply relied on the refrain, "The ABA says so." As I have shown, however, this claim of ABA-mandated law library autonomy has no real basis in the ABA standards. It may be true that some ABA inspection teams (or the librarian members of those teams), in applying the standards, have a higher expectation of law library autonomy than explicitly required by the standards. However, it may also be true that law schools, in the interest of their own educational autonomy, increasingly resist the ABA's interference in their own choices of priorities and goals. Thus the ABA is not the determining factor in the relations between the law school and the university that it once was. The result is that the battle over law library autonomy never reaches a resolution. Law libraries have insisted on complete autonomy on the basis of older technologies. With a library collection consisting of hard-copy books, journals, and loose-leaf services, the library was spatially bound and could exist only in one place. Today, with the increasing prevalence of digital online collections and digital access (via imaging and e-mail delivery) of hard-copy collections, the old rules no longer apply. Law librarians have not established a reasoned basis for creating new rules in their place. Lacking a principled basis for defending law library autonomy, disputes are reduced to political fights among the law librarian, the university librarian, and the dean. Whoever wields the greatest political clout within the institution wins.

¶69 Our attachment to total autonomy is based on an obsolete model of how legal research is done and its role in both legal academia and the practice of law. Just as legal scholarship is no longer practiced in isolation from other disciplines, so law librarianship can no longer be practiced in isolation from the broader world of information. Law librarians need to understand this new world of legal information. One source on which we can draw is the emerging research in social informatics—"the interdisciplinary study of the design, uses and consequences of information technologies that takes into account their interaction with institutional and cultural contexts"¹⁹⁹—to understand what our users really need. We must rely on the results of empirical research involving substantial data sets, not "best practices" or the surveys based on trivial samples that have so far passed for research in librarianship. We also need to learn more about the economics of information use—again, not in the trivial sense of cost accounting, but by learning from behavioral economics and studying the information-seeking patterns of our users as the

199. Rob Kling, *What Is Social Informatics and Why Does It Matter?* 5 D-LIB MAG. (Jan. 1999), at <http://www.dlib.org/dlib/january99/kling/01kling.html>.

choices of rational actors.²⁰⁰ Finally, we need a better reasoned understanding of, and a more plausible justification for, the relative autonomy of law libraries. Such an understanding must address specific needs in the context of the individual institution: needs relating to recruitment and development of personnel, budget management, configuration and use of physical space, and more. Law schools, like other professional schools, differ from other academic parts of the university in that they have a responsibility to an identifiable constituency outside the university. Law schools exist largely, but not solely, to train lawyers for private practice and public interest work. Law libraries exist to serve that goal. The autonomy of the law library must be viewed as a means toward achieving that goal, not an end in itself. Consideration must be given to the ways in which autonomous decision-making serves those goals, as well as the ways in which cooperation and collaboration contribute to meeting those needs.

¶70 It no longer makes sense to insist on the dualistic conception of law libraries as either *autonomous* or *branch* libraries, ignoring the range of shading in between. The variety of possible models of law library governance is vast. One model that has proven effective is in place at the University at Buffalo. The law library is considered a nonautonomous library, but has for many years operated under a written governance agreement that defines relationships among the law library, the university library, and the law school.²⁰¹ Under the governance agreement, the law library's budget is allocated at a fixed percentage as part of the university library's budget. On matters of personnel, librarians are fully tenured faculty in the university library, and all faculty and professional staff are governed by a professional union agreement with the state of New York.²⁰² Disputes and disagreements still arise, but as in any contractual agreement among parties interested in maintaining an ongoing relationship, efforts are made to resolve them in the spirit of cooperation among independent partners. The model is transactional rather than litigious. Also, while the law library's budget comes from the university library, the agreement provides that "where the Law School provides financial contribution to Law Library budget, salaries, collection developments [*sic*], capital improvements, or operating expenses, the University Library agrees not to reduce its support."²⁰³ A law library whose budget comes from the university library, and is still able to avail itself of supplemental funding from the law school as needed, may be in the best possible position with respect to fluctuations in funding.

200. As an example, with the vast majority of legal information available online, law school faculty may be more frustrated than ever before at having to walk across campus to retrieve a book from another library. Law libraries could work with other on-campus libraries to develop alternative methods of delivery, whether digital or sneaker-based. The University at Buffalo Law Library's Mercury document delivery service is one such solution. See Charles B. Sears Law Library, State Univ. of N.Y. at Buffalo, Document Delivery: Mercury, at <http://ublib.buffalo.edu/libraries/units/law/faculty.html#document> (last visited Apr. 29, 2004).

201. The most recent version is Law Library Governance Agreement (Sept. 19, 1999) (on file with author).

202. United University Professions Contract, available at <http://www.uupinfo.org/contract.html> (last visited Apr. 29, 2004).

203. Law Library Governance Agreement, *supra* note 201, at 3.

¶71 This argument has implications for revisions in the ABA accreditation standards with regard to libraries. Current standards address the need for “sufficient autonomy” for the law library. The standards should also require appropriate levels of cooperation and collaboration with university libraries and other information providers to meet the educational needs of the law school. In the case of an independent law school that is not part of a university, adequate access to nonlegal resources may entail voluntary consortial agreements with university libraries or public libraries. It is time for the ABA standards to recognize the necessary interrelationships between the law school and the rest of its intellectual environment.

