

# Law Libraries and the Scholarly Mission\*

Susan Westerberg Prager\*\*

*Professor Prager sees law libraries playing critically important roles in supporting the work of legal scholars, but worries that without a concerted effort to preserve digital information while ensuring access, the future of academic legal research may be jeopardized.*

¶1 As I have reflected on the role and direction of the law library in supporting legal scholarship, I have found myself recalling those simple but remarkable first twelve words that Dickens crafted to draw us into *A Tale of Two Cities*: “It was the best of times, it was the worst of times. . . .”<sup>1</sup> And while the topic is not one of the dramatic historical moment and impact of the French Revolution, the idea of a particular time encompassing the best of times *and* the worst of times may provide some organizational glue for this short essay on the excitement and the large concerns that face the leadership of libraries and the leadership of universities today.

¶2 It is the best of times because technology has made possible the “acquisition” of material from widely distributed databases to our desktops, and because, in a related development, a proactive expanded model of service has begun to

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\* © Susan Westerberg Prager, 2004. This article is a revised version of a speech made during a program titled “What Faculty and Directors Should Expect from a Twenty-First Century Law Library in Order to Support Legal Scholarship,” presented by the Section on Law Libraries at the Annual Meeting of the Association of American Law Schools (AALS), Atlanta, Georgia, Jan. 5, 2004.

\*\* Arjay and Frances Fearing Miller Professor of Law, UCLA School of Law, former Dean, UCLA School of Law, and former Provost, Dartmouth College. At the outset, my thanks go to Frances Fearing Miller and Arjay Miller for their longstanding and very special encouragement.

Many were helpful to me as I prepared for the AALS panel discussion from which this essay grew. I especially thank Richard Lucier who led the creation of the California Digital Library (and with whom I was privileged to work at Dartmouth); the UCLA law library’s expert and thoughtful Adrienne Adan; and Myra Saunders, associate dean at UCLA, who has taught me most of what I know about law libraries and a lot more as well. UCLA law librarians Pauline Aranas, Jennifer Lentz, and Cynthia Lewis provided perspective and concrete research help; Ryan Tilder helped me think about evolving computer science perspectives on preservation; and Tal Grietzer expertly produced the final product. Of course, none of these individuals should be held responsible for the issues raised or my perspectives on them. As I recently returned to the role of full-time faculty member, my California legal history seminar students and I have experienced many of the ways that an activist library can contribute to exceptional student research productivity. Jennifer Lentz and Laura Cadra have taught us a great deal about the expansion of access made possible through technology, as well as the excitement of work in original materials and special collections. Their work with my students has been a significant part of the inspiration for my remarks in the first section (¶¶ 3–12) of this commentary.

Finally, I thank the UCLA Academic Senate for supporting my travel to the AALS Annual Meeting to participate in the panel discussion; Carol Roehrenbeck, associate dean of the Rutgers Center for Law and Justice in Newark, for bringing us together for this discussion; and Frank Houdek, law library director at Southern Illinois University and editor of *Law Library Journal*, for his extraordinary patience and sound editorial suggestions.

1. CHARLES DICKENS, *A TALE OF TWO CITIES* 1 (Oxford Univ. Press 1949) (1859).

flourish in a number of law libraries. It also is the worst of times because we have not as yet addressed the enormous practical problem of how to prevent information losses of material published only in digital form. Law schools and their libraries acting in isolation from the university as a whole, or universities acting in isolation from one another and important other actors such as government entities, cannot address the challenges adequately.

### **The Best of Times—A Vibrant Concept of Service**

¶3 Recent years have seen exciting scholarly expansion in the law school world. As Tom Jackson, president of the University of Rochester, pointed out in his association luncheon address, one of the centerpieces of the 2004 AALS Annual Meeting, this era has been one of scholarly excitement in U.S. law schools. Jackson specifically elaborated on the rise and growing breadth of interdisciplinary approaches to scholarship and teaching. I would add that there has also been a growth in faculty size that has enabled a greater coincidence between an individual faculty member's scholarship and that person's teaching subjects. Growing depth in abilities and interests of our law student populations has aided our scholarly capacities as well. Increasing diversity of scholarly traditions has contributed to a reassessment of appropriate faculty size, moving law schools from having the worst faculty/student ratios in all of graduate and professional education to a modestly improved position. At the same time, small increases in diversity on law faculties have contributed to the emergence of new scholarly efforts, with Critical Race Theory scholarship standing as an important recent example.<sup>2</sup> In addition, year after year, for more than a decade now, the entry-level teaching market has been overflowing with highly talented candidates. And of course, technological advances have transformed the ways in which faculty and students conduct research, teach, and learn. All of these developments have combined to reinforce the research mission of an increasingly large percentage of our American Bar Association (ABA) approved law schools.

¶4 This climate of scholarly intensity and excitement has been the hothouse for expanding library services, placing those library staffs and leadership who are ambitious, determined, and creative more and more at the center of faculty support. While I am very proud of the accomplishments of our UCLA law librarians, I do not engage in any delusion that they or we are unique. Many in the law library world have been transforming expectations of the role of the library and its staff, taking pride and pleasure in expanding the scholarly capacities of faculty and students. These library professionals have contributed to the increasing research output of faculty and students. Not surprisingly, faculty appreciation runs passionately high.

¶5 For the past three academic years, I have been experimenting with a seminar designed to help students appreciate the ways in which our social and political

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2. See, e.g., Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993).

history has shaped important public policy choices in the past and can inform those we face today. It has been a great benefit that each year one of our professional librarians has assisted me and my students in researching California legal history.<sup>3</sup> This assistance has enabled a number of the students to move quickly into a productive mode, enabling them to produce excellent work in the short period of a fifteen-week semester. Two student publications have already emerged, with more likely from the most recent group of dedicated researchers.

¶6 Rather than leaving the faculty on their own to identify and work with their research assistants, at UCLA our law librarians hire, train, match, and supervise the faculty research assistants. The results have been clear. Student research assistants are far better trained in research skills. Faculty receive help in using student assistance, as well as the direct benefit of having a skilled professional librarian on the research team. This arrangement also assures communication of faculty research programs, which is then translated more broadly to the law library staff who can be vigilant in search of material that a particular faculty member might like to see. Not that many years ago, each of us on the faculty would have been largely on our own in this entire realm.

¶7 In thinking about the library needs of law professors in the twenty-first century, Professor Robert Jarvis has suggested that law libraries and librarians will soon become obsolescent.<sup>4</sup> My reality is certainly not his reality, and that may well be because we are focused on somewhat different things. Jarvis's perspective seems to be shaped by three things: his view that only a small fraction of law faculty engage in research or much research,<sup>5</sup> his belief that librarians will not add value to the research enterprise because individuals will do everything for themselves using technology,<sup>6</sup> and his implicit perception that the law library is unrelated to the teaching program.

¶8 My experience and that of many colleagues is that we are more dependent on our librarians than ever before; they have become our true colleagues. As Professor Dorothea Beane of Stetson University pointed out in her remarks during

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3. Jennifer Lentz and Laura Cadra have each been spectacularly successful in this role.

4. See Robert Jarvis, *What Law Professors Will Want from Law Librarians in the Twenty-first Century*, 96 LAW LIBR. J 503, 505, 2004 LAW LIBR. J. 29, ¶¶ 14–17.

5. *Id.* at 503, ¶ 2. This is not my experience as a person who was involved in the administration of the AALS membership standards and the ABA accreditation standards for a number of years. Over the last thirty years there has been a broader acceptance of scholarship as an expectation of faculty across the different tiers of law schools. One factor contributing to this shift was the fact that the scholarly mission became an increasingly prominent qualification for AALS membership during the 1970s. Another has been the growing popular concern about tenure, and universities' responsive moves to institute post-tenure review of faculty. Today it is not uncommon for discussions to occur about whether teaching loads should be greater for those faculty who are not pursuing scholarship. In addition, teaching loads in many law schools enable faculty to concentrate on a related set of areas, and thus teaching feeds more easily into research productivity. While it is true that some faculty are far more prolific, that does not translate into a corollary that all the others are unproductive and thus do not need research support from the library, a leap that Professor Jarvis appears to be making. And finally, I hope we will not fall into the habit of thinking that quantity equals quality, although there are certainly individual faculty members who produce large amounts of high quality scholarship.

6. See *id.* at 504–05, ¶¶ 12–13.

our AALS panel, the research skills of her librarians are simply far more advanced than her own, an experience that I can echo.<sup>7</sup> For most of us on the faculty, as the digital environment continues to become more complex, our professional library mix of strengths will become more and more important to the quality and reach of faculty research.

¶9 Furthermore, the trend toward activist, service-oriented law libraries will become more common in the law school world. Before this becomes the norm, library service will provide a key edge for some schools in faculty recruitment and retention. Even after high levels of service pervade the many academically ambitious law schools, the particular effectiveness of library professionals at specific libraries will have recruitment and retention advantages or will drive faculty demands for expert library service—much in the way that physical collections had such impacts in the twentieth century. I have no doubt that individual schools will find ways to use these service strengths to their advantage in the faculty recruitment and retention wars.

¶10 Another transformation that has taken place is an about-face in our attitudes toward borrowing materials from other institutions. Our growing comfort level with borrowing and lending, and the speed with which transactions are effectuated, has enabled libraries to allocate more funds to other needs such as technology support and digital collections.

¶11 As a separate related development, the best led law libraries are likely to become the sites for the consolidation of many realms of faculty support. Indeed, in a world of limited resources, some institutions have added staff to libraries but not in other realms of faculty support. In many law schools, library and technology staffs work under the same leadership, usually under the law library director. When the unification of technology and library support works at its best, more sensitive choices tend to be made about computer support for students, faculty, and staff, just as such combinations support and perhaps accelerate the library's digital sophistication.

¶12 Space limitations do not allow a full chronicle of all of the contributions that service-oriented staffs are making to the research and teaching core. For now, I will only emphasize that librarians' engagement with the research agendas of faculty and students has been growing dramatically, and this reality has contributed to the scholarly culture and the research productivity of our law schools. The librarians' enhanced role has been fed in no small part by technological breakthroughs which have made possible the development of diverse digital sources. The law library of today functions for many faculty and students as the "laboratory of the law school" in a more activist way than at any time in law school his-

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7. Our AALS panel colleague Professor Barbara Bintliff reinforced this view with a related point. "[S]earching for information in electronic formats requires ever-increasing knowledge and sophistication." Barbara Bintliff, *What Can the Faculty Expect from the Library of the Twenty-first Century?* 96 LAW LIBR. J. 507, 510, 2004 LAW LIBR. J. 30, ¶ 12.

tory. In this fundamentally important respect, this has certainly been *the best of times*. From my vantage point, I believe that more and more schools will move to the enhanced service models of the law library, and that our new-era librarians will be increasingly treasured and respected by faculty and students.<sup>8</sup>

### The Worst of Times—Information Losses in the Digital Era

¶13 The concept of “service” has always had a twofold meaning in the library context. I have described the recent dramatic growth in the facilitating kind of service, but historically the most important service was the judgment and work that amassed collections of materials which could be used on-site by individuals who came to the library. I now turn my focus to this collection development aspect of service and particularly to the revolution in acquisitions—a concept that is being transformed by technology.

¶14 On the one hand, information is literally at our fingertips. Near-instantaneous access is facilitated by powerful search engines, in practical terms opening up far broader access to far more information than we could have imagined.<sup>9</sup> However, inherent in our current framework is a somber fact: some information available electronically is there one day and gone the next, and an increasing amount of that material was available *only* in digital form. In the course of a semester, a student can locate a site, and then, when finalizing his or her paper, be frustrated by a “page not found” message. Faculty have no way of evaluating the material independently and cannot point other researchers to it. Consider where this phenomenon leaves a reader trying to assess a piece of work years or decades later. The idea of scholarship has been built on our ability to assess the work of others and to build upon or alter the conclusions earlier scholars have reached. Without question, this impact reaches well beyond information that we may feel is so transient that its loss is trivial. Foundational public documents, ones created only in nonprint format, are being lost. For example, it is not unusual for a newly elected public official to remove his or her predecessor’s material from a government Web site, as the administration of Governor Gray Davis did in California when content provided by the predecessor Pete Wilson administration was eliminated from the state Web site.

¶15 Given the explosion of Internet-based content, and the increasing reliance of so many in society on digital materials for information, those who are concerned

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8. For those who are bringing about such a transformation, one of the surprising challenges is how to convey to faculty and students that they should regard seeking librarians’ assistance as appropriate, a process that some of us have found takes repeated emphasis and acculturation.
  9. Much material is available without charge, can be reviewed on the screen, and provides the ability to download or print those portions that the reader wishes to retain. What could in the past have taken days or even weeks to obtain now is available in digital form almost instantly; in some cases we are able to consult material that could have been difficult or even impossible to review not many years ago.

about the preservation of information face enormous challenges over the next decades. Our expanding technological capacity is accelerating widespread access to more and more materials, making it increasingly important that we develop systems for preservation<sup>10</sup> and organization of electronic materials. If we do not confront this challenge, we can expect to have ongoing information losses, as individual actors decide that certain materials are no longer important or current and remove them from their Web sites. This will happen in many unnoticed ways, from the government official who decides that a particular document is now out of date, to the nongovernmental entity that ceases to exist (along with its Web site), to the corporate site that changes dramatically when the corporation is acquired or management changes.

¶16 A November 2003 article in the *Washington Post*<sup>11</sup> highlighted the extent of the problem by describing a study of disappearing content in three important science publications, the *New England Journal of Medicine*, *Science*, and *Nature*. The study's authors found Internet references included in footnotes had become inactive at astonishingly high rates: 3.8% at three months post-publication, 10% at fifteen months, and 13% at twenty-seven months.<sup>12</sup> Another study published in January 2003 analyzed two computer science journals and found 40 to 50% of the referenced URLs inaccessible.<sup>13</sup> An estimated 25% of British government Web sites change their URL during a year's time.<sup>14</sup> One highly knowledgeable computer scientist and entrepreneur places the average life span of a Web page today at one hundred days.<sup>15</sup> Peter Lyman found an average Web page lifespan of only forty-four days.<sup>16</sup>

¶17 The problem is not confined to Internet-based content. It potentially reaches any digital-only content. Some of the digital losses arise because of the decisions of electronic publishers who have taken the position that a subscriber only buys access to the current data set. Thus, content is changed, often leaving no historical record of the earlier content. Concern has been growing in the academic community about the control being exerted by for-profit publishers, and we are seeing a backlash growing out of a confluence of budget pressures in private and public universities alike,<sup>17</sup> and a concern from discrete disciplines about the impli-

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10. I use the term "preservation" in this commentary in the fullest sense, meaning it to encompass the idea of utility and access. I do not regard "preservation" as setting the preserved things apart from the world, but rather as something designed to enable them to be a part of the current and future intellectual life of our cultures.

11. Rick Weiss, *Research Work Proves Ephemeral: Electronic Archivists Are Playing Catch Up in Trying to Keep Documents from Landing in History's Dustbin*, WASH. POST, Nov. 24, 2003, at A8.

12. Robert Dellavalle et al., *Going, Going, Gone: Lost Internet References*, 302 SCI. 787, 787 (2003).

13. Weiss, *supra* note 11.

14. *Id.* (quoting David Worlock, Electronic Publishing Services, Ltd., London).

15. *Id.* (quoting the highly knowledgeable Brewster Kahle, digital librarian, Internet Archive, San Francisco). See *infra* ¶¶ 21–22.

16. Peter Lyman, *Archiving the World Wide Web*, in COUNCIL ON LIBRARY & INFO. RES., BUILDING A NATIONAL STRATEGY FOR DIGITAL PRESERVATION: ISSUES IN DIGITAL MEDIA ARCHIVING 38, 38 (2002) (using 2000 data).

17. The University of California has been spending \$8 million annually in purchasing the products of one publishing entity, Elsevier.

cations of nonscholarly control of publishing.<sup>18</sup> A wide range of concerned individuals and groups share an interest in bringing the costs of publication down: scientific authors, librarians who would like to devote more resources to service and to addressing the stability of digital information, faculty and administrators, the many concerned about the costs of higher education, and federal and other funders of research. Perhaps this confluence of interests will stimulate more collective action to redirect our approaches to publication.

¶18 The problem of lost material has another dimension shaped by technology as well. Even documents that people believed to be “saved” are being lost. As the Task Force on Archiving of Digital Information stated in its important 1996 report:

Reading and understanding information in digital form requires equipment and software, which is changing constantly and may not be available within a decade of its introduction. . . . We cannot save the machines if there are no spare parts available, and we cannot save the software if no one is left who knows how to use it.<sup>19</sup>

¶19 The practical impact of this point is illustrated when we think of the loss in accessing e-mail communication over time. Electronic records that are “saved” only in their digital form may ultimately not be readable. Since e-mail has become the most common form of business and professional communication, with its counterpart communications residing in paper files in an earlier era, the loss is that of significant historical records and information.<sup>20</sup> More dramatic examples of the problem make the same point: “Satellite observations of Brazil in the 1970s, critical for establishing a timeline of changes in the Amazon basin, are . . . lost on the now obsolete tapes to which they were written.”<sup>21</sup>

¶20 Some efforts are underway to address aspects of the problem of information losses. Some of these attack a single specific undesirable phenomenon, such as the “page not found” problem. For example, the Internet Archive indicates that a number of initiatives exist that are beginning to make available pages that have

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18. See, e.g., Brock Read, *Editorial Board of Scientific Journal Quits, Accusing Elsevier of Price Gouging*, CHRON. HIGHER EDUC., DAILY REPORT, Feb. 9, 2004, at <http://chronicle.com/daily/2004/02/2004020904n.htm>. We are likely to see more discipline-based efforts to oversee academic publishing. Even in the discipline of law with its inherently historical approach, librarians have recently worried: “The downside to reliance upon commercial operations is the necessity for profit and the lack of guarantees of permanence.” Legal Educ. Preservation Alliance, Conference Report, *Preserving Legal Information for the 21st Century: Toward a National Agenda* 8 (May 2003).
  19. TASK FORCE ON ARCHIVING OF DIGITAL INFORMATION, COMM’N ON PRESERVATION & ACCESS AND RESEARCH LIBRARIES GROUP, *PRESERVING DIGITAL INFORMATION: REPORT OF THE TASK FORCE ON ARCHIVING OF DIGITAL INFORMATION 2* (1996).
  20. The National Archives and Records Administration appears quite concerned about this issue in the context of government communication and the implications for democratic values. See U.S. Nat’l Archives & Records Admin., *Electronic Records Challenge*, at [http://www.archives.gov/electronic\\_records\\_archives/about\\_era.html#challenge](http://www.archives.gov/electronic_records_archives/about_era.html#challenge) (last visited May 17, 2004).
  21. TASK FORCE ON ARCHIVING OF DIGITAL INFORMATION, *supra* note 19, at 3.

been removed from their original Internet site.<sup>22</sup> Others have attempted to mark out a more comprehensive plan of attack. Of these, the most impressive is widely regarded to be the 1996 report of the Task Force on Archiving of Digital Information.<sup>23</sup> While there has been some progress in advancing preservation of some discrete categories of information,<sup>24</sup> the larger progress on the implementation of the ideas in that report has not been forthcoming.<sup>25</sup> And even the federal government does not have something as basic as its own government documents arena fully protected.<sup>26</sup> The National Archives and Records Administration appears to have done considerable work in resolving technology issues, but it is not pro-

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22. "A few services—UC Berkeley Digital Library Project, the Online Computer Library Center and Alexa Internet—are starting to offer access to archived versions of Web pages when those pages have been removed from the Web. This means that if you get a '404—Page Not Found' error, you'll still be able to find a version of the page." About the Internet Archive, at <http://www.archive.org/about/about.php?> (last visited May 17, 2004). Dellavalle et al., *supra* note 12, at 788, report that Google also attempts to cache Web pages, but in a small sample found the Internet Archive provided recoverable information for 31 of the 60 inactive Internet references while Google only provided recoverable information for two. Since these samples were taken nearly two years ago, the recapture rate may well have improved since then.
  23. TASK FORCE ON ARCHIVING OF DIGITAL INFORMATION, *supra* note 19.
  24. For example, Wisconsin has addressed the issue of state and local government documents by statutorily defining standards for "accessibility of electronic public records from creation through active use, long-term management, preservation and disposition." WIS. ADMIN. CODE §§ ADM 12.01–ADM 12.06 (2001). The California Digital Library has made progress on capturing state government information and archiving it. "Counting California's single interface enables users access to public use data compiled by federal, state, and local agencies. . . . Counting California also addresses the serious preservation dilemma posed by ever-changing technology and data formats, insuring easy and continuous access to historical and current information." Cal. Digital Library, Counting California, at <http://countingcalifornia.cdlib.org/about.html> (last visited May 17, 2004)). The "Counting California" initiative may well have been a direct result of the removal of Governor Wilson's administration documents from the state Web site. As Richard Lucier points out, to be assuredly successful any archive project must catch the information on its creation because the digital life of the information may be quite short. Telephone Interview with Richard Lucier, former executive director, California Digital Library (Dec. 2003). Otherwise the judgments are in the hands of government employees who are not necessarily considering the desirability of long-term access.
  25. Dr. Amy Friedlander's short article published in 2002 is a good short summary of some of the progress that has been made in pulling entities and people together to address the digital preservation challenge under the National Digital Information Infrastructure Program, funded by the Congress at the request of the Library of Congress. It also conveys the nature and complexity of the technical problems. See Amy Friedlander, *Digital Preservation Looks Forward: What We're Learning at the Library of Congress*, INFO. OUTLOOK, Sept. 2002, at 12. "This initiative sets out to evolve a national strategy for the long-term preservation of digital content in collaboration with representatives of other federal, research, library and business organizations." *Id.* at 12. It is certainly good news that an attempt to define and coordinate a preservation effort is underway and that there is a federal funding commitment. However, there is a requirement of matching money, and the federal dollars committed of approximately \$100 million, appear small in relation to the extent and nature of the problem.
  26. In a speech presented just days after the AALS panel presentation on which this article is based, Judith Russell, the U.S. Superintendent of Documents, indicated that important collaborations have been agreed upon to bring about a "national digitization plan, so that we can coordinate our efforts to digitize a complete legacy collection of U.S. government documents and make sure that the documents are available, in the public domain, for permanent public access." However, even something as basic as this does not appear to be achievable for "a few years." Judith C. Russell, U.S. Superintendent of Documents, Remarks at American Library Association Midwinter Meeting, San Diego, California 6 (Jan. 10, 2004), available at <http://www.gpoaccess.gov/about/speeches/>

jecting a demonstrated completion of a segment of electronic archives until the year 2007.<sup>27</sup> In the meantime, the National Archives points out: “The rate of technological obsolescence is such that records created and accessed even two years ago may now be unreadable. Unless this challenge is confronted and surmounted, there will be no National Archives for the digital era.”<sup>28</sup> Recently, an excellent major report, stimulated by the Mellon Foundation, has evaluated the broad arena of Web-based government information from a preservation perspective.<sup>29</sup>

¶21 There is one massive and farsighted action that covers a vast amount of digital memory—Brewster Kahle’s Internet Archive, a public nonprofit project, which he leads from space at the Presidio in San Francisco. Its foundational premises are highly important:

Without paper libraries, it would be hard to exercise our “right to remember” our political history or hold government accountable. With much of the public’s business now moving from paper to digital media, Internet libraries are certain to become essential in maintaining that right.<sup>30</sup>

In addition to trying to capture as much content as possible, the archive is collaborating with other institutions on some focused projects, for example, with the Smithsonian Institution to preserve the 1996 official and unofficial presidential campaign Web sites. And Kahle also has a goal of putting more quality material on the Web, recognizing that it is the medium that people are using today. He has argued:

Instead of trying to whip students to go back to the physical library, let’s put the good stuff on the Net. Otherwise, we could have a whole generation learning from ephemeral content collections, as opposing [sic] to learning from the books of ancients. And a lot of materials are not [available on the Web] yet.<sup>31</sup>

¶22 The archive’s broad goal is to capture and store in a useable format as much of the content of the Internet as possible. Kahle’s theory, with which I am in strong agreement, is that we cannot prejudge what will be interesting or ultimately valuable about currently available information. “Libraries exist to preserve society’s cultural artifacts and to provide access to them,”<sup>32</sup> he emphasizes. However,

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01102004\_ALA.pdf. In the meantime, more digital-only material is likely to be created, particularly given the GPO’s financial crisis produced by sharply declining print copy sales, a reality attributed to rapid rises in use of Internet access to government documents.

27. See U.S. Nat’l Archives & Records Admin., ERA Status, at [http://www.archives.gov/electronic\\_records\\_archives/about\\_era.html#status](http://www.archives.gov/electronic_records_archives/about_era.html#status) (last visited May 17, 2004). For a sense of the scope and challenges, see Kenneth Thibodeau, *Building the Archives of the Future*, 7 D-LIB MAG. (Feb. 2001), at <http://www.dlib.org/dlib/february01/thibodeau/02thibodeau.html>.
28. U.S. Nat’l Archives & Records Admin., Electronic Records Challenge, at [http://www.archives.gov/electronic\\_records\\_archives/about\\_era.html#challenge](http://www.archives.gov/electronic_records_archives/about_era.html#challenge) (last visited May 17, 2004).
29. PATRICIA CRUSE ET AL., CAL. DIGITAL LIBRARY, WEB-BASED GOVERNMENT INFORMATION: EVALUATING SOLUTIONS FOR CAPTURE, CURATION, AND PRESERVATION (2003), available at [http://www.cdlib.org/programs/Webbased\\_archiving\\_mellon\\_Final.pdf](http://www.cdlib.org/programs/Webbased_archiving_mellon_Final.pdf).
30. About the Internet Archive, at <http://www.archive.org/about/about.php?> (last visited May 17, 2004).
31. Richard Koman, How the Wayback Machine Works (Jan. 21, 2002) (interview with Brewster Kahle), at <http://webservices.xml.com/pub/a/ws/2002/01/18/brewster.html>.
32. About the Internet Archive, at <http://www.archive.org/about/about.php?> (last visited May 17, 2004).

at present it appears that the skill needed to access the Internet Archive's stored material far exceeds that of most of us. Nonetheless, preservation is being accomplished, and the archive contemplates periodic migration at frequent intervals to ensure ongoing access.

¶23 My own students' work has confirmed my conviction that we can enhance our public policy-making capacities by understanding the social, political, and historical contexts of the problems we are addressing. The discipline of law is among those that have especially strong interests in understanding previous vantage points. Not only is our legal system inherently historically based, law is inherently "interdisciplinary"—it is the embodiment of public policy choices that affect all realms of our social structure. Thus, we are one of those academic disciplines with the most to lose if comprehensive efforts are not implemented to ensure preservation and enable future access to digital information.

### **Considerations Specific to Law Schools**

¶24 There are two issues specific to law schools that I want to mention in connection with the implications of technology for libraries. The first relates to the future of staffing our law libraries. The collection development, collection access, and preservation issues associated with the digital environment suggest that law libraries will need deep ranks of professionals who are adept and adaptable in the realms of law and modern information science in the context of libraries. There is a need for some universities to come forward with educational programs that bridge the worlds of law, computer science, and academic libraries. Should your school be among those that shape the law library of the future by training these multidisciplinary pioneers?

¶25 At the AALS discussion, one librarian in the audience indicated that there were concerns among law librarians about further lengthening training, which would increase costs and make the professional choice more unattractive to prospective students. Reflecting on this concern, I think we in law schools may need to lead the way in giving up a part of our curricular requirements to make room for the computer science aspect of the educational program aimed at training the law library professionals of the future. Keeping in mind that we are developing professional staff who will live full-time in the law school world and thus will have a built-in avenue of continuous legal education as a part of their ongoing work, we could require somewhat less on the legal educational side in order to encourage the technology expertise and facility that we will need in the ensuing decades of law library development. We have been willing to compromise some of our own curricular requirements for some of our joint degree programs in business and other fields, and arguably we have quite compelling reasons to be willing to do so for that small cohort of candidates who have the interest and capacity for integrating library science and law with computer science. Perhaps the American Association of Law

Libraries and AALS should seek seed funding to encourage the development of such programs at two or three institutions, using the model of Ford Foundation activity that successfully encouraged the development of law school clinical programs during the 1960s.<sup>33</sup>

¶26 While the challenges of true interdisciplinary training are formidable ones, there is some significant common ground between many of the individuals attracted to the discipline of law and many of those who are the creative pioneers in computer science. There is one critical overarching value that should draw these disciplines together—and that is the role of free and uncensored information access in our democratic society.<sup>34</sup> This value should help identify candidates who will be attracted to the combination of law and computer science. Other common values include emphasis on the rights of individuals and a healthy distrust of government control.

¶27 My second observation grows out of my concern that our tradition of law library autonomy may impede the ability of law schools to effectively address the implications and challenges of the digital environment for preservation. Law libraries have tended to function with considerable and, in most universities, complete formal autonomy from their university library system. Yet collaboration is particularly important today for several reasons. The digital format materials that are being lost over time are relevant to multiple disciplines. Public policy is informed by the work and perspectives of many disciplines, and scholars from diverse areas can be expected to have an interest in common in particular materials. To illustrate with just one concrete example, an urban planner, an engineer, a lawyer, an architect, a public health scientist, and an environmental scientist might all have an interest in the preservation of and access to materials relating to the development of policy and structures for the handling of sewage and other wastes in the Los Angeles region—a problem that has plagued the Los Angeles Basin for more than a century.

¶28 But beyond the utility of materials across disciplines, there is the sheer practical problem that preservation is a large and costly activity and as such does not lend itself to solution by smaller actors like individual law schools which historically could build their library collections acting on their own. Thus, law

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33. See Orison Marden, *CLEPR: Origins and Program*, in *CLINICAL EDUCATION FOR THE LAW STUDENT* 3, 5–9 (1973).

34. Libraries and librarians have historically served the goal of democratic access, a fact reflected in Andrew Carnegie's massive efforts to seed the construction of libraries in the English-speaking world. Carnegie spent \$56 million to construct 2509 libraries between 1881 and 1917. See *CARNEGIE CORP. OF NEW YORK, BIOGRAPHY OF ANDREW CARNEGIE*, at <http://www.carnegie.org/sub/about/biography.html> (last visited May 17, 2004). As Vartan Gregorian has emphasized: "The library is central to our free society. It is a critical element in the free exchange of information at the heart of our democracy." *Quoted in PUBLIC INFO. OFF., AM. LIBRARY ASS'N, QUOTABLE QUOTES ABOUT LIBRARIES*, at <http://www.ala.org/ala/pio/availablepiomat/quotablequotes.htm> (last visited May 20, 2004). Gregorian, among his many accomplishments, headed one of the nation's great libraries, the New York Public Library from 1981 to 1989. Fittingly, he now leads the Carnegie Corporation of New York, one of the nation's great philanthropic entities.

schools face a choice of where to forge effective collaborations. One possibility is to form a law school-wide approach, but that has the drawback of failing to recognize the inherently interdisciplinary character of information. Furthermore, it cuts us off from some of those who may be more capable of thinking creatively about designing solutions. While I am not suggesting that we abandon the concept of law library autonomy, I am strongly advocating that it will be essential for law schools to become more collaborative, active players in the investigation of how preservation and collection development can best be addressed in an era so profoundly shaped by new technology. My explorations of this subject thus far have convinced me that efforts to address the issues from within the law school world will not be sufficient.

### Conclusion

¶29 There is no more important issue as we think about the future of academic legal research than the preservation of information with ensured ongoing access. The problem is so big that we cannot use our historic “each school is its own realm” approach nor, given the fact that law is about everything, can we be discipline-specific in our approaches. Furthermore, the explosion of information made possible by technology means that preservation solutions will be costly. All of this means that we must develop collaborations on multiple levels, and that universities and other large institutional actors such as foundations must play a leadership role in bringing these about.<sup>35</sup> If we cannot address these issues, and address them with a greater sense of urgency than we have seen over the last decade or so, we may well look back on this era as “the worst of times” despite all of the important positive developments that we have experienced.

¶30 Access that is a transient phenomenon will impoverish our understanding of the policies and social forces that have shaped legal frameworks and the rationale for particular legal solutions. Preservation and access are essential if we are to illuminate the law and wisely effect its ongoing dynamic reform.

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35. We will have to think hard about cost and cost-sharing if we are to build the consensus to address the problems, particularly at a time when public and private university budgets are under such strain, and foundations experiencing lower endowment income have less money to devote to meritorious projects.