

Legal Information, the Informed Citizen, and the FDLP: The Role of Academic Law Librarians in Promoting Democracy*

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Academic law librarians play an essential role in promoting democracy through participation in the Federal Depository Library Program. Ms. Pettinato explores democratic conceptions of the “informed citizen,” how the partnership between law school libraries and the FDLP fosters that ideal even in the digital age, and why academic law librarians should embrace that role.

¶1 The concept of the “informed citizen” has a long history in American democratic theory.¹ Beginning with the founding fathers and gaining strength throughout the nineteenth and twentieth centuries, the importance of citizen access to information has become a cornerstone of the democratic vision. Yet questions remain about what it means to be informed and how government information is to be understood and accessed by its intended users—the nation’s citizens.

¶2 One response to these questions is the partnership between the federal government and libraries, known as the Federal Depository Library Program (FDLP). Established at the height of citizen education movements in the late nineteenth century, the FDLP was originally based on a geographic model of information access.² The goal of this model was to ensure that no matter how far a citizen lived from the seat of power, he or she could gain knowledge of the inner workings of the government through the wide dispersal of the information it produced.³ Academic law libraries were added to the FDLP in 1978,⁴ and many have taken advantage of their depository status to focus specifically on making law-related government documents more accessible to their patrons. In recent years, however, this model has been called into question by law librarians and others as more and

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1. See generally, John Spencer Walters, *Whose Vision Fulfilled? Toward a Rightful Ideological Progenitor for the U.S. Federal Depository Library Program*, 26 J. GOV'T INFO. 347 (1999) (tracing the historical roots of the idea that democracy requires open government information).
2. See James A. Jacobs, James R. Jacobs & Shinjoung Yeo, *Government Information in the Digital Age: The Once and Future Depository Library Program*, 31 J. ACAD. LIBR. 198, 199 (2005).
3. See Sheila M. McGarr, *Snapshots of the Federal Depository Library Program*, FDLP DESKTOP (Aug. 22, 2000), http://www.access.gpo.gov/su_docs/fdlp/history/snapshot.html.
4. See 44 U.S.C.A. § 1916 (2006).

more government information has become available online.⁵ If government documents are readily available on the Internet, are libraries still needed as mediating institutions?

¶3 This question presupposes that *access* to information is the key to becoming informed. There are a number of problems with this premise. First, how accessible does an online presence make government information? Is the posting of documents online enough to ensure that those who need them will be able to find them? Even more importantly, how does accessing and reading government documents translate into a true understanding of government and one's place in the political system? Do librarians add anything to the government-to-citizen equation that makes the continuing presence of the FDLP worthwhile? More specifically, in the face of budget constraints and other obstacles, do the librarians in academic law libraries contribute anything essential to the ideal of the informed citizen that obligates them to retain the depository status of their libraries?

¶4 In this article, I argue that the FDLP continues to be necessary to the ideal of the informed citizen and that academic law librarians, as a key resource for ensuring that citizens are able to access and understand law-related government information, have a duty to remain active in the program.⁶ Law-related documents are perhaps the most essential form of government information, yet they are also one of the most difficult for both ordinary citizens and experts to access and understand. As service-oriented experts in legal research, academic law librarians are particularly suited to helping people navigate the complicated terrain of such government documents. Participation in the FDLP ensures both that this valuable human resource will be accessible to the general public and that the institutions in which academic law librarians work will have the documents necessary for both scholarly and practical research. I further argue that a commitment to helping citizens become truly informed about law and government does not inherently conflict with academic law librarians' primary mission to serve their law school and legal communities.

¶5 In the first section, I offer both historical and contemporary accounts of the informed citizen in American democratic theory. I argue that the pressure on citizens to be informed participants in democracy is greater than ever, even as

5. See, e.g., Elizabeth M. McKenzie, Elizabeth Gemellaro & Caroline Walters, *Leaving Paradise: Dropping Out of the Federal Depository Library Program*, 92 LAW LIBR. J. 305, 307–08, 2000 LAW LIBR. J. 27, ¶¶ 7–10 (noting that the increased presence of government documents online and associated costs of new technology played a role in the Suffolk University Law Library's decision to drop its FDLP status); Jacobs, Jacobs & Yeo, *supra* note 2, at 199–201 (describing GPO's proposed changes to the FDLP in light of an increasing technological presence); David Durant, *The Federal Depository Library Program: Anachronism or Necessity?* 62 N.C. LIBR. 30, 37–38 (2004) (arguing that to remain relevant as access to government documents through the Internet becomes the norm, libraries in the FDLP must change their focus to user services).

6. I focus here solely on academic law librarians because of the particular challenges they face in participating in the FDLP. Law firm libraries are not eligible for the program, and most government law libraries are typically required by their particular missions to house certain government documents.

government information grows more diffuse and complex. In the second section, I discuss what it means to be informed and argue that mere access to government information is not enough. I further show how the librarian-patron interaction creates social capital that can ease the task of becoming informed. In the third section, I give an overview of the FDLP and discuss contemporary challenges facing the program. I argue that contrary to making the FDLP an anachronism,⁷ the digital environment makes librarians more necessary than ever as mediators between citizens and government. In the fourth section, I argue that academic law librarians play an essential role in the FDLP by ensuring that law-related government information is not simply accessible but comprehensible. I highlight the importance of government information to legal research and show how academic law librarians contribute to the ideal of the informed citizen both directly through their help to public patrons and indirectly through their contribution to the scholarly and professional missions of their institutions. Finally, in the last section, I argue that the public access requirements of the FDLP do not necessarily detract from the institutional mission of academic law libraries and can, in fact, contribute to it. I close with a call to academic law librarians to embrace their special role in the democratic mission by staying active in the FDLP.

The Role of the “Informed Citizen” in American Democratic Theory

Historical Accounts

¶6 In an oft-quoted letter from 1822, James Madison wrote: “A popular government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps, both. Knowledge will forever govern ignorance; and a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”⁸ Yet as John Spencer Walters has pointed out, the Madison quoted above did not necessarily agree with the Madison who participated in the Constitutional Convention.⁹ Indeed, many of the founding fathers, Madison included, were wary of an overly active public, subscribing instead to a form of representative government that restricted the public’s role to that of voter. Madison, in particular, originally feared that too much public access to government information would impede the ability of elected officials to act in a disinterested manner and risked destroying the concept of the “common good.”¹⁰

¶7 Instead, Walters sees the roots of the concept of an informed citizenry in the first Pennsylvania constitution, written in 1776, which required the state government to keep citizens apprised not only of the laws but of the reasoning that

7. Durant, *supra* note 5, at 30.

8. Letter from James Madison to W.T. Barry (Aug. 4, 1822), in *THE COMPLETE MADISON* 337, 337 (Saul K. Padover ed., 1953).

9. Walters, *supra* note 1, at 349.

10. *Id.* at 350.

went into them.¹¹ Walters also notes the contribution of constitutional convention delegate Elbridge Gerry, who ultimately decided not to sign on to the federal constitution in part because of “the power of the House of Representatives to ‘conceal their journals.’”¹² As a representative, Gerry later introduced a bill that would have required Congress to publish its debates, and he believed that “an American republic could not survive without [political information].”¹³

¶8 Thus, though arguably traceable to the founding fathers, the idea of an informed citizenry did not initially receive widespread acceptance in American democracy. In fact, according to theorist Michael Schudson, the ideal of the “informed citizen” first took hold in the United States near the end of the Progressive Era,¹⁴ which he dates as roughly 1865 to 1920.¹⁵ Prior to that, citizenship, particularly during election time, was associated with party affiliation. Citizens trusted their political parties to choose appropriate candidates, and it wasn’t considered necessary, or even virtuous, to have a solid grasp of particular issues. However, with the rise of the mass media and pushes for universal education, a new concept developed—the informed citizen. According to Schudson, “[t]he model citizen, in the reform vision, would be disciplined enough to register, educated enough to read, thinking enough to choose candidates with little or no party guidance, and docile enough to leave many matters to the expert.”¹⁶ Not coincidentally, this development coincided with both the publication of the *Congressional Record*, which began on March 5, 1873,¹⁷ and the development of the FDLP in its current incarnation, which dates from 1895.¹⁸

¶9 Yet with the rise of the ideal of the informed citizen, another problem arose. How was a citizen to become informed enough to make intelligent choices? This was a central problem in what has become known as the Dewey-Lippman debates. In 1922, Walter Lippman published *Public Opinion*,¹⁹ in which he argued, according to Schudson,

that human beings have limited attention spans; that on the rare occasions when they do turn their attention beyond their immediate, personal worlds, they are guided more by emotion, transitory circumstance, and mood than by reason; and that a vast new machinery of institutionalized persuasion was all too willing and able to exploit the situation for selfish ends.²⁰

Members of the public relied on newspapers to get their government information, a secondhand source of knowledge that left people the possibility of response only

11. *Id.* at 354.

12. *Id.* at 355.

13. *Id.*

14. MICHAEL SCHUDSON, *THE GOOD CITIZEN* 182 (1998).

15. *Id.* at 144.

16. *Id.* at 185.

17. Walters, *supra* note 1, at 355.

18. Durant, *supra* note 5, at 31.

19. WALTER LIPPMAN, *PUBLIC OPINION* (1922).

20. SCHUDSON, *supra* note 14, at 212.

to what Lippman called “pseudo-environments.”²¹ Lippman found this especially problematic since he was critical of journalists’ ability to report accurately when they had to interpret, as opposed to simply report, information.²² He saw the development of a class of “experts” as a partial solution to this problem; trusted experts would get government information first-hand and translate it for journalists, who would then report to the public, using the experts as sources instead of trying to interpret the information themselves.²³

¶10 In *The Public and Its Problems*,²⁴ John Dewey’s response to Lippman’s work, Dewey agreed with much of Lippman’s central argument. However, he feared that relying solely on a class of experts could harm democracy “on the grounds that experts as rulers will, like any class of rulers, speak for their own private interests rather than for the public interest.”²⁵ Dewey instead argued that democracy relies on face-to-face discussion, and that local community interaction must be supported.²⁶ One sees here the seeds of the theory of “deliberative democracy” later developed more fully by Jurgen Habermas and others, which stresses the importance of informed, rational conversation to democracy.²⁷

¶11 Thus, by the beginning of the twentieth century, the ideal of the informed citizen was firmly rooted in conceptions of American democracy, yet questions remained about how informed a citizen was required to be, whether complete information was possible, and what it meant to be informed, as well as the role of experts in providing information. As the following section illustrates, these questions have been somewhat clouded in recent years as, for better or for worse, the ideal of the informed citizen became an almost unquestioned maxim of the democratic ideal.

Contemporary Accounts

¶12 In spite of their differences, both Lippman and Dewey accepted the contention that becoming fully informed is difficult, if not impossible, for the ordinary

21. *Id.* at 213.

22. *Id.*

23. *Id.* at 213–14.

24. JOHN DEWEY, *THE PUBLIC AND ITS PROBLEMS* (1927).

25. SCHUDSON, *supra* note 14, at 214.

26. *Id.* at 214–15.

27. See generally Jurgen Habermas, *Three Normative Models of Democracy*, in *DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL* 21 (Seyla Benhabib ed., 1996) (contrasting deliberative democracy to liberal and republican visions); Joshua Cohen, *Procedure and Substance in Deliberative Democracy*, in *DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL*, *supra*, at 95 (discussing the importance of democratic procedures to deliberative interactions). But see generally Iris Marion Young, *Communication and the Other: Beyond Deliberative Democracy*, in *DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL*, *supra*, at 120 (arguing for a more open conception of what constitutes appropriate dialogue in deliberation); Michael Schudson, *Why Conversation is Not the Soul of Democracy*, 14 *CRITICAL STUD. MASS COMM.* 297 (1997) (arguing that the deliberative democracy focus on face-to-face communication underestimates the importance of print).

citizen. This concern has arisen with new force in the digital age as the problem of information overload has taken center stage. Yet, if anything, citizens are expected to be more informed today than they were in the past.

¶13 In “The Opacity of Transparency,” legal scholar Mark Fenster notes that “[b]y any commonsense estimation, governmental transparency, defined broadly as a governing institution’s openness to the gaze of others, is clearly among the pantheon of great political virtues.”²⁸ Citing philosopher John Rawls, among others, Fenster accepts the ideal of the informed citizen as a given while questioning the ability of current open information laws to meet that ideal.²⁹ Other writers have also accepted the notion of the informed citizen as central to accountability and full democratic participation. Writing on the importance of the FDLP, Jacobs, Jacobs, and Yeo say, “In the United States, there are deeply rooted values that a democracy requires an informed citizenry, that government must be accountable to its citizens, and that citizens therefore must have full, free, easy access to information about the activities of their government.”³⁰

¶14 Political and legal scholar Ilya Somin has also written about the importance of an informed citizenry, while going further in both exploring its necessity and considering what it means to be informed.

Democracy demands an informed electorate. Voters who lack adequate knowledge about politics will find it difficult to control public policy. Inadequate voter knowledge prevents government from reflecting the will of the people in any meaningful way. Such ignorance also raises doubts about democracy as a means of serving the interests of a majority. Voters who lack sufficient knowledge may be manipulated by elites. They may also demand policies that contravene their own interests.³¹

¶15 In defining what makes an “informed citizen,” Somin first outlines the conclusions of *The American Voter*,³² a seminal 1960 book by a group of University of Michigan researchers which found that, at a minimum, “for voters to be able to exert meaningful influence over a given issue: 1. Voters must be aware of the issue’s existence. 2. They must have a position on the issue. 3. They must know the positions on the issue of the opposing candidates in a given election.”³³ Somin argues that these criteria do not go far enough in ensuring that citizens are truly informed. “[I]nformed voters must have at least substantial understanding about which of the available policy options are most likely to advance their goals.”³⁴

28. Mark Fenster, *The Opacity of Transparency*, 91 IOWA L. REV. 885, 888 (2006) (citation omitted).

29. *Id.* at 895–97, 941–45.

30. Jacobs, Jacobs & Yeo, *supra* note 2, at 198.

31. ILYA SOMIN, WHEN IGNORANCE ISN’T BLISS: HOW POLITICAL IGNORANCE THREATENS DEMOCRACY 1 (Cato Institute Policy Analysis No. 525, 2004), available at <http://www.cato.org/pubs/pas/pa525.pdf>.

32. ANGUS CAMPBELL ET AL., *THE AMERICAN VOTER* (1960).

33. SOMIN, *supra* note 31, at 3 (citing CAMPBELL ET AL., *supra* note 32, ch.8).

34. *Id.*

For Somin, this includes an understanding of the “basic tradeoffs between alternative policies,” as well as the knowledge to avoid drawing false connections “between policies and outcomes that informed observers would consider obviously absurd. . . .”³⁵

¶16 A notable exception to the unquestioned acceptance of the importance of the informed citizen is Michael Schudson. In *The Good Citizen*, Schudson argues for a more open conception of citizenship and questions both the ability and the necessity of citizens being entirely informed on every political issue. “Walter Lippman was right: if democracy requires omnicompetence and omniscience from its citizens, it is a lost cause.”³⁶ Schudson argues instead for what he calls a “monitorial” citizenship.³⁷ Under this conception, being informed is still essential, but the definition of “informed” is more fluid and doesn’t require the kind of sustained commitment argued for by Somin and others. Schudson sees citizens “monitoring” their government in a variety of ways, from scanning headlines and relying on experts to participating more actively in particular issues about which they care deeply.³⁸ Rather than each citizen becoming a mini-legislator on all issues, they will “scan (rather than read) the information environment” and mobilize around certain issues when they see their rights, or the rights of others, being violated.³⁹

¶17 Overwhelmingly then, the ideal of the informed citizen remains intact in American democratic theory. The disputes are concentrated not on whether an informed citizenry is necessary, but rather on the meaning of “informed” and the extent to which each citizen must fit into that meaning for democracy to function. While I do not attempt to resolve the latter question in this article, in the following sections I do offer some suggestions on what it means to be informed and how the FDLP, and more particularly law librarians, can contribute to this ideal.

The Meaning of Information and the Importance of Social Capital

The Meaning of Information

¶18 In *The Opacity of Transparency*, Fenster criticizes “transparency theory”—the theory that open access to the inner workings of government is a virtue in democracy because it allows the government to hold citizens accountable—for presuming a simplified model of communication that fails to hold up in reality.⁴⁰ Although Fenster’s article is a critique of freedom of information laws, it applies equally well as a general critique of the concept of an informed citizenry.

35. *Id.*

36. SCHUDSON, *supra* note 14, at 310.

37. *Id.*

38. *Id.* at 310–11.

39. *Id.* at 310.

40. *See generally* Fenster, *supra* note 28.

¶19 Fenster argues that transparency theory is flawed because of its simplistic assumption that for citizens to become informed, the government must merely release its information.

These errors arise from transparency theory's positing of a set of discernible and coherent actors and entities involved in the production and reception of information: first, a producer and sender of messages, the state, that can be forced to divulge information that it would otherwise seek to hoard; second, messages, whether in the form of documents or meetings, whose existence and meaning are self-evident; and third, receivers, in the form of an audience or public, who are able and motivated to understand disclosed messages and their significance.⁴¹

Yet, as Fenster notes, a wide variety of factors exist that make this theory untenable.

¶20 Fenster suggests that it is not entirely clear that the public is interested in becoming informed. He notes the absence of research indicating that the public cares about political information and points to large body of research showing that most members of the public are, in fact, woefully uninformed about the workings of government.⁴² He argues, following public choice theory, that this lack of knowledge can actually be explained rationally because the difficulty of impacting government decisions at the individual level creates a lack of incentives to gain "sufficiently reliable information about the effects of any political decision by an elected official given the relative inability to interpret the meaning of the available information."⁴³

¶21 The difficulty of interpreting government information is echoed by Daniel C. Barkley. "As one recent analysis described the situation: 'Identification of and access to all publications and publicly-available information that the U.S. government produces, maintains or holds, and disseminates are difficult, if not impossible, tasks for any one access channel to accomplish.'"⁴⁴

¶22 The point here is that understanding government information, and thus becoming informed, is not an easy task. Neither is creating an effective program between government and citizen that can and will meaningfully inform the public about the inner workings of government. Since his focus is on open information laws, Fenster highlights the disconnect between the "time and manner" of public disclosure and the ability of citizens to make use of this information.⁴⁵ Yet his concern, particularly as to how government information is presented to the public, is central to the function of the FDLP. Fenster's arguments suggest that, contrary

41. *Id.* at 914.

42. *Id.* at 928.

43. *Id.* at 928 n.190.

44. Daniel C. Barkley, *Public Service Guidelines in an Electronic Environment*, 15 GOV'T INFO. Q. 73, 73 (1998) (quoting Peter Hemon & John A. Shuler, *The Depository Library Program: Another Component of the Access Puzzle Shifting to Electronic Formats*, in FEDERAL INFORMATION POLICIES IN THE 1990S: VIEWS AND PERSPECTIVES 259 (Peter Hemon et al. eds., 1996)).

45. See Fenster, *supra* note 28, at 934–35.

to popular belief, the increased availability of government information through the Internet will not automatically result in a more informed citizenry. Rather, the ability of citizens to understand this information will rely heavily on how it is presented and the access citizens have to interpretive frameworks. Recognizing this, Schudson says that “[w]e should have in view plausible aims that integrate citizenry competence with specialized expert resources.”⁴⁶ In the next section, I build on this view to argue that librarians, as information experts, can act as a form of social capital in ensuring that citizens can not only access, but also understand, government information.

Librarians and Social Capital

¶23 As noted previously, the traditional mission of the FDLP, rooted in the ideal of the informed citizen, was to provide geographically dispersed access to government information. As more and more government information becomes available online, the need to physically disperse information around the country becomes questionable. Yet noted in the previous section, mere access to information is not enough to ensure that citizens will become informed. The complexity of government information requires that citizens have better ways of understanding and interpreting what they find. As John Schuler has written, “[t]rue government information will depend on how society’s institutions, especially libraries, enable individuals to find and use it to make a difference in their lives and make contributions to their communities.”⁴⁷ In this view, libraries and librarians provide a powerful resource for informed citizenship. An important reason for this is the social capital created in the interactions between experts (librarians) and citizens.

¶24 In their article, “Social Capital, Social Networks, and Political Participation,” Ronald La Due Lake and Robert Huckfeldt note the many ways in which the concept of social capital has been used in sociological and political science literature. They ultimately adopt the view that social capital is “an aspect of social structure that facilitates particular forms of action and cooperation.”⁴⁸ Similarly, in their recent article in *Law Library Journal*, Virginia J. Wise and Frederick Schauer also offer this helpful definition: “social capital is not the idea of cooperation, nor is it the principle of reciprocity, but it is rather the preexistence of human resources and institutions—hence ‘capital’—that will facilitate this cooperation and reciprocity.”⁴⁹

¶25 Wise and Schauer argue that the availability of legal information has an important role to play in developing social capital. “Legal information . . . and

46. SCHUDSON, *supra* note 14, at 311–12.

47. John Shuler, *The Political and Economic Future of Federal Depository Libraries*, 31 J. ACAD. LIBRARIANSHIP 377, 382 (2005).

48. Ronald La Due Lake & Robert Huckfeldt, *Social Capital, Social Networks, and Political Participation*, 19 POL. PSYCHOL. 567, 569 (1998).

49. Virginia J. Wise & Frederick Schauer, *Legal Information as Social Capital*, 99 LAW LIBR. J. 267, 269, 2007 LAW LIBR. J. 16, ¶ 5 (citations omitted).

especially the legal information available to citizens and not just to legal professionals like lawyers and judges, can be seen to have an important but rarely appreciated function in facilitating the creation of social capital, and at times being itself a form of social capital.”⁵⁰ They contend that public legal information draws communities together, both literally and figuratively, by acting as a focal point for individuals to work together on specific policy issues of interest or as a starting point for discussion and debate.⁵¹ Yet as the previous section makes clear, simply making legal information available is not enough to ensure that its potential for creating social capital is realized. The connection must be made between the information and the public, and the FDLP is one important way of achieving that aim.

¶26 Shuler argues that the FDLP successfully integrates several different types of capital, the human and physical, as well as the social.⁵² For Shuler, the social capital of the FDLP lies in the relationships formed between the government and depository libraries as well as between the libraries themselves. Taking this a step further, I believe that the relationship created between *librarian* and patron is also a valuable form of social capital, essential to creating an informed citizenry in light of the complexity of the information. In making this argument, I conflate knowledge of legal information with political awareness; I will more explicitly make the connection between the two later in this article.

¶27 Lake and Huckfeldt delineate the connections between political knowledge as a form of human capital that transforms into social capital as this knowledge is spread through interpersonal networks. They call this “politically relevant social capital” and define it as “a particular type of social capital that is produced as the consequence of political expertise and information that is regularly communicated within an individual’s network of social relations.”⁵³ They further argue that politically relevant social capital increases civic participation and helps to create human capital in the form of political knowledge in individuals.⁵⁴

¶28 Discussions of the politically relevant social capital potential of libraries tend to fall into two categories: those, like Shuler, who argue that the social networks between libraries and, in the case of the FDLP, the government are a form of social capital, and those who see libraries as a kind of civic organization in and of themselves.⁵⁵ Yet Lake and Huckfeldt’s analysis supports the contention that the library-citizen interaction itself also creates a form of politically relevant social capital. When librarians specializing in government information interact with citizens, they create a social bond in which the librarians learn more about citizen needs, and the citizens, in turn, benefit from the librarians’ knowledge of how

50. *Id.* at 268, ¶ 3.

51. *Id.* at 271–72, ¶¶ 9–11.

52. John Shuler, *Civic Librarianship: Possible New Role for Depository Libraries in the Next Century?* 23 J. GOV’T INFO. 419, 421 (1996).

53. Lake & Huckfeldt, *supra* note 48, at 570.

54. *Id.* at 581.

55. For a discussion of libraries as civic organizations, see, e.g., Jean Preer, WHERE ARE LIBRARIES IN BOWLING ALONE? 32 AM. LIBR. 60 (2001).

government works and how government information is organized. This further creates the potential to increase the human capital of citizens, transferring some of the expertise of the librarian to the individual patron.

¶29 Furthermore, this conception of librarian-citizen interactions as a form of social capital is enhanced by the other conceptions discussed earlier. As Shuler notes, the participation of libraries in the FDLP benefits both the government and the libraries by creating networks of shared information and duties. The citizen then benefits from this pre-existing social capital by becoming a third point in the network. Additionally, the possibility for political discussion that occurs in some libraries further enhances the library as a location for the development of politically relevant social capital. The ultimate result is a more politically engaged citizenry and a more responsive government, with the library acting as a mediating influence.

¶30 Of course, all of this depends on the politically relevant physical capital and human capital that is present in individual libraries and librarians. Physical capital can be thought of as the print and technological resources available to librarians and the public, as well as an environment conducive to accessing these materials. Human capital can be thought of as the skills, training, and knowledge about government information, structure, and function of individual librarians—in other words, the expertise of the librarian. As I will argue later, providing such expertise is a central benefit of the partnership between government and libraries, particularly law libraries. But first, I provide an overview of the FDLP and contemporary challenges facing the program.

The FDLP

A Brief Overview of the Program

¶31 The seeds of the FDLP were planted in 1813 when Congress passed a resolution that for the first time allowed distribution of government documents to nongovernmental bodies.⁵⁶ The responsibility for distribution was originally held by the librarian of the Library of Congress, but concerns about cost and corruption caused it to be transferred to the secretary of interior in the 1850s.⁵⁷ However, the FDLP as we now know it was not created until 1895 when, with the passage of the General Printing Act,⁵⁸ the office of the Superintendent of Public Documents, housed in the Department of Interior, was recreated as the Superintendent of Documents under the auspices of the Government Printing Office (GPO), which had been created in 1860.⁵⁹ This Act expanded both the types of documents distributed and the librar-

56. PETER HERNON ET AL., UNITED STATES GOVERNMENT INFORMATION 340 (2002).

57. *Id.*

58. An Act Providing for the Public Printing and Binding and the Distribution of Public Documents, ch. 23, 28 Stat. 601 (1895).

59. HERNON ET AL., *supra* note 56, at 340–41.

ies eligible for centralized distribution, and government information began to be systematically cataloged for the first time.⁶⁰

¶32 As noted previously, the creation and expansion of the FDLP coincided with the rise of the informed citizen and, not coincidentally, the 1895 reforms reflected three core beliefs:

- A well informed citizenry, cognizant of the policies and activities of its representative Government, is essential for the proper functioning of democracy; information provided by government documents is a primary means for citizens to keep informed;
- The public has a right to information contained in Government documents, which have been published at public expense; the Government has an obligation to ensure availability of, and access to, these documents at no cost. These documents are a permanent source of Federal information; and
- The Federal Government benefits by realizing efficiencies afforded by a centralized distribution system, such as the Federal Depository Library Program, which ensures wide availability of Government publications; individual agencies are able to satisfy much of the public demand for their publications without incurring the costs associated with responding to individual requests for free copies.⁶¹

The partnership between the government and libraries also recognized the unique skills that librarians have in making information more accessible. According to Jacobs, Jacobs, and Yeo, “[t]he traditional mission of FDLP libraries has been to select, acquire, organize, preserve, and provide access to and services for government information in conjunction with information from other sources. The effect of the existence of the FDLP has been a secure, authentic, permanent network of local collections of government information, provided to the public without charge and preserved for the future.”⁶²

¶33 Beginning in the 1960s, Congress sought to increase the number of libraries in the program in “the belief that there was a correlation between the number of depository libraries and public access.”⁶³ This concern was further reflected when, in 1978, Congress amended the statutes governing the FDLP to allow accredited law schools to participate in the program.⁶⁴ Allowing law libraries into the program under a special “law” designation freed up congressional designations for nonlaw libraries⁶⁵ while having the added benefit of greatly reducing

60. *Id.* at 341.

61. McGarr, *supra* note 3.

62. Jacobs, Jacobs & Yeo, *supra* note 2, at 200.

63. HERNON ET AL., *supra* note 56, at 344.

64. Pub. L. No. 95-261, § 1, 92 Stat. 199 (1978) (codified at 44 U.S.C. § 1916 (2006)).

65. HERNON ET AL., *supra* note 56, at 345.

the costs to law libraries of collecting government documents.⁶⁶ This legislation reflected the increasing awareness of the importance of government documents to a well-rounded law library collection⁶⁷ and the unique role of law libraries in adding value to government information.⁶⁸ Indeed, it has been argued that “law school libraries were brought into the depository program in specific recognition of the extra value that law-trained librarians could bring to the public use of government documents.”⁶⁹ I will take up this contention further in the last two sections of this paper.

Contemporary Challenges

¶34 When the FDLP was created, government information was solely paper-based, and ensuring that citizens had access to information had a significant geographic component. Times have changed. “Today Congress, government agencies, and the courts increasingly are relying on state-of-the-art technologies to create and disseminate government information through the Internet.”⁷⁰ This increased digitization has the potential to vastly increase access to government information, but it is not without significant drawbacks. Electronic information is subject to authentication and preservation problems that have not yet been satisfactorily solved.⁷¹ Although GPO and the National Archives and Records Administration have taken steps to address some of these issues, sufficient technological and political safeguards are not yet in place to make a complete move away from print documents practical or advisable.

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66. Indeed, the reduced cost to law libraries was considered both a pro and a con in the debate over whether to include them in the program. *See* Letter from Senator Frank Church to Senator Howard Cannon, Chairman, Senate Rules Committee (Oct. 31, 1977), *in* S. REP. NO. 95-670, at 4 (1978), *reprinted in* 1978 U.S.S.C.A.N. 553, 556 (supporting P.L. 95-261 and noting that the legislation would ease the budgetary burdens at a law school in his district); *see also* 123 CONG. REC. 35,000 (1977) (statement of Representative Bauman arguing that the legislation would merely be a costly subsidy to law schools).
 67. *See* Letter from Senator Birch Bayh to Senator Howard Cannon, Chairman, Senate Rules Committee (Oct. 31, 1977), *in* S. REP. NO. 95-670, at 4, *reprinted in* 1979 U.S.S.C.A.N. 553, 556 (supporting P.L. 95-261).
 68. H.R. REP. NO. 95-650, at 2 (1977) (arguing that the supporting “materials and personnel” available in law libraries “enhance both the use of government documents and the interpretation of their contents”).
 69. McKenzie, Gemellaro & Walters, *supra* note 5, at 309, ¶ 12 (citing H.R. REP. NO. 95-650, at 2).
 70. *Oversight Hearing on the Government Printing Office: Hearing Before H. Committee on House Administration*, 108th Cong. (2004) (statement of Janis L. Johnston, Director of the Law Library and Associate Professor of Law, School of Law, University of Illinois at Urbana-Champaign, on behalf of American Association of Law Libraries and other library associations) [hereinafter Johnston Statement], *available at* <http://www.ala.org/ala/washoff/WOissues/governmentinfo/GPO042804test.pdf>. Durant also notes that “[j]ust 10 years ago, the FDLP distributed 100% of its items in tangible format (print, microfiche, and CD-ROMS). . . . In Fiscal Year (FY) 2003, 65% of the titles ‘distributed’ by the FDLP were items located on the World Wide Web. Within five years, this figure is expected to rise to 95%.” Durant *supra* note 5, at 30.
 71. *See* Johnston Statement, *supra* note 70, at 6–8.

¶35 Further complicating this issue, some libraries have chosen, for various reasons, to drop their FDLP status.⁷² In fact, “from August 1998 to August 2001, the number of libraries dropping out of the depository library program increased by more than a third over the previous three-year period.”⁷³ This is unfortunate since depository libraries have the potential to play an essential role in developing solutions to the preservation and authentication problems, as well as others, posed by online documents. Libraries have already achieved success in working with the government to provide access to valuable print collections. “As cultural institutions dedicated to public access, libraries are proven and effective partners in providing broad public access to physical collections.”⁷⁴ The death of the FDLP would mean that the government would become the central clearinghouse for access to its publications, both print and digital, and the institutional knowledge of nearly two centuries of government information librarianship could be lost.

¶36 Yet most print publications can be replaced, if at significant cost, through commercial vendors. There are deeper problems with the shift toward reliance on the government’s online publications as a replacement for the FDLP. First, any time information is stored in a single place or by a single entity, there is an increased risk of loss.⁷⁵ This might be due to technical snafus—if, for example, a central server went down. There is also the very real risk that information could be intentionally “lost.” As Jacobs, Jacobs, and Yeo note, “[l]ibrarians and the public are . . . increasingly aware of the potential for information abuse when the government has complete control over the only authentic copy of government information.”⁷⁶ Furthermore, there has long been concern over what have been deemed *fugitive documents*—“government publications that should be included for distribution by the depository library program but for whatever reason are not”⁷⁷—and the increasing reliance on Internet dissemination only exacerbates the problem. The FDLP could play a central role in addressing this problem, but for this to happen GPO and the depository libraries must work together to develop solutions; any library that drops out of the FDLP could lose its voice in this ongoing conversation.

The Role of Law Librarians

¶37 Thus far, I have discussed the importance of access to government information to a thriving democracy and the general benefits of having the information available in libraries. Now, I turn to the more specific topic of why academic law

72. *Id.* at 5.

73. Durant, *supra* note 5, at 35 (citation omitted).

74. Johnston, *supra* note 70, at 7.

75. Jacobs, Jacobs & Yeo, *supra* note 2, at 202.

76. *Id.* at 204.

77. Durant, *supra* note 5, at 36.

librarians are especially suited to the task of ensuring that government information gets to those for whom it is intended—the citizens.

¶38 Perhaps more than any other field, law is dependent on government documents. Though much legal research material, such as cases and statutes, is now available in commercial sources, government-published documents remain essential to comprehensive legal research. As Dennis Stone points out, “[government] documents can serve as primary sources of legislative intent. They can have substantive value as legal analysis, and, of course, they can provide interdisciplinary information in the nature of policy statements and statistical data.”⁷⁸ Thus, legal research is inextricably tied to the use of government documents. Law students use these documents as they learn to read and analyze statutes, cases, and regulations. Law professors use them both in teaching and in valuable research, current and historical, that often has a profound impact on both the legal community and the public’s understanding of our legal system. Members of the legal community use them to formulate arguments in assisting their clients or furthering their own understanding of the legal practice areas in which they work. Finally, citizens use these resources to learn about their rights and to participate in the legal and democratic processes of our government.

¶39 The importance of the interconnection between government information and legal research to democratic theories of the informed citizen cannot be overstated. When theorists discuss the virtues of freely available information, the information that is most essential is that associated with the law—how it is made, whom it helps (and hurts), and why it is the way it is. Understanding the legal-government structure is how citizens begin to take control of their public lives; access to law-related government information is, in essence, what makes them sovereign. As John N. Gathegi points out, “[t]he availability of legal information, the rule of law, good governance, political stability, and economic development are closely intertwined.”⁷⁹

¶40 Thinking in this way, the importance of law libraries to the mission of the FDLP is obvious. While in no way disparaging the role of nonlaw-trained government documents librarians who bring a wealth of valuable knowledge to their institutions, I believe that law librarians have particular skills that make them especially suited to work with law-related government documents. Additionally, academic law libraries have significant resources that can add value to government information for the legal researcher.

78. Dennis J. Stone, *Government Documents*, in *LAW LIBRARIANSHIP: A HANDBOOK* 387, 388 (Heinz Peter Mueller & Patrick E. Kehoe eds., 1983).

79. John N. Gathegi, *Democracy Through Access to Legal Information for Newly Democratizing Nations: The Kenyan Perspective and Lessons from the American Experience*, 22 *GOV'T INFO. Q.* 108, 109 (2005).

¶41 More and more, academic law libraries are requiring their reference librarians to obtain a JD degree as well as an MLS.⁸⁰ However, even those law librarians with only one degree or the other develop specialized knowledge over the course of their careers that makes them expert legal researchers. Very few nonlaw libraries are likely to have the human capital related to knowledge of legal bibliography and how the legal structure fits within the government that law libraries have.⁸¹

¶42 Of course, being trained in the law does not automatically make one a specialist in law-related government documents. However, the particular environment and research needs of academic law libraries ensures that law librarians in these settings will develop a level of proficiency that will benefit their patrons. In fact, it is essential that law librarians strive to become adept at using government documents. As Stone points out:

The need for every law librarian to be familiar with government documents is made doubly important by the fact that unlike commercially produced materials, government documents can be complex in their organization and their access points are constantly changing. The law librarian who fails to maintain a proficiency in the use of documents quickly loses the ability to meet patron needs and thoroughly tap the wealth of material available.⁸²

¶43 Stone highlights several types of sources beyond the traditional cases and statutes in which government documents are important to legal research, especially those that show evidence of legal intent such as agency and congressional committee reports, policy statements, and certain types of statistical data.⁸³ Collecting such materials allows law librarians to help researchers put information in context. According to Stone, “[w]ith a thoroughly comprehensive collection of legal materials from a given government agency or organization, one can quickly grasp the importance of particular documents and identify those needed by the researcher.”⁸⁴ Along these same lines, both the secondary resources and the technical resources available in academic law libraries prove invaluable to both experienced and inexperienced legal researchers. As two officers of the American Association of Law Libraries (AALL) noted, “law depository libraries play a crucial role within the FDLP in the specialized cataloging of legal materials and in providing access to historical materials that other depository libraries are not obligated to retain permanently, such as the *Code of Federal Regulations*.”⁸⁵ Additionally, the special-

80. See Serena Brooks, *Educating Aspiring Law Librarians: A Student's Perspective*, 97 LAW LIBR. J. 517, 518, 2005 LAW LIBR. J. 29, ¶ 9.

81. See *id.* at 519 (noting that law librarianship requires special skills and knowledge in legal research and bibliography).

82. Stone, *supra* note 78, at 387–88.

83. *Id.* at 388–89.

84. *Id.* at 390.

85. Letter from Frank Houdek, President, American Ass'n of Law Libraries, and Robert L. Oakley, Washington Affairs Representative, American Ass'n of Law Libraries, to William M. Thomas, Chairman, Committee on House Oversight (Jan. 10, 1997), available at <http://www.ll.georgetown.edu/aallwash/lt011097.html>.

ized collections of law libraries help to put law-related government information in context. Barbara Garavaglia, head of reference at the University of Michigan Law Library, believes that housing law-related government documents in the law library makes sense because it has a vast quantity of secondary material, such as legal encyclopedias and treatises, that supplements these documents and increases their usability.⁸⁶

¶44 Furthermore, the assistance provided by law librarians is crucial to both the public and the law school community. “Government documents is an area where the law library patron knows little and is therefore extremely dependent upon the law librarian in doing legal research.”⁸⁷ This statement is true not only of public patrons, who may need to access these materials to better understand their rights, but even of some of the most well-trained legal minds, such as professors. In a letter to the editor published in *Law Library Journal*, Kevin Gerson, then a reference librarian at the Hugh and Hazel Darling Law Library at UCLA, listed several recent research requests the library had received from UCLA law faculty, nearly all of which would likely benefit from information contained in government documents not easily found without librarian assistance.⁸⁸ Garavaglia also noted that faculty often make use of the University of Michigan’s faculty research services to locate government information.⁸⁹

¶45 The fact that more and more government information is now available online has not lessened the need for law librarians to provide these services. Indeed, Gerson’s letter to the editor was written in response to just such a contention.⁹⁰ Although the traditional need for depository libraries based on a geographic model of access is dwindling, the increased distribution of information does not necessarily mean that users will be able to find what they need or understand what they find. As a 2000 AALL action alert warned, “[i]ncreased public use of electronic Government information requires more support for libraries, not less.”⁹¹

86. Interview with Barbara Garavaglia, Head of Reference, University of Michigan Law Library, in Ann Arbor, Mich. (Nov. 6, 2006).

87. Stone, *supra* note 78, at 387.

88. “Has the Ninth Circuit established that criminal defendants have a constitutional right to appointed counsel for bail determinations? Is a defendant who is held on a warrantless arrest for more than forty-eight hours entitled to recover civil damages? What were the appropriations for the Environmental Protection Agency and the Department of the Interior in 1990? What congressional committees have oversight authority over the National Environment Policy Act of 1969? Find data that shows trends in public attitudes toward environmental issues during the past forty years. Find the leading articles discussing the costs and benefits of secrecy and classification schemes in science that has potential military uses. Trace the history of section 503 of the Uniform Housing Code. Provide citations to all state laws that ban possession of silencers. Have there ever been any prosecutions of publishers for publishing betting odds on sporting events? How many cases are disposed of each year through plea bargaining at the state and federal levels?” Kevin Gerson, *Law Librarians Provide More than Mere Access to Information*, 98 LAW LIBR. J. 205, 205–06, 2006 LAW LIBR. J. 10, ¶ 3.

89. Interview with Barbara Garavaglia, *supra* note 86.

90. Gerson, *supra* note 88, at 205 (responding to Robert M. Jarvis, *What Law Professors Will Want from Law Librarians in the Twenty-First Century*, 96 LAW LIBR. J. 503, 2004 LAW LIBR. J. 29).

91. Washington Affairs Office, Am. Ass’n of Law Libraries, Fact Sheet on the FDLP, <http://www.aallnet.org/aallwash/attachmnttwo.html> (last visited June 27, 2007).

Indeed, “with most FDLP electronic materials available to all libraries anywhere, the unique role of depository libraries is increasingly defined by provision of services as opposed to access to collections.”⁹² Such services are exactly what academic law librarians are trained to provide.

¶46 By participating in the FDLP and using their legal research skills to identify, collect, catalog, and provide user services for government documents, academic law librarians contribute to a more democratic society. This is true not only for the aid they give public patrons, but more indirectly for their contribution to their law school and legal communities. The primary mission of most private law school libraries and many public ones is to serve law professors and students, with the local bar, the rest of the university community, and the public being secondary and even tertiary patron groups.⁹³ Yet, as I will argue in the next section, claiming that this mission contradicts the democratic potential of the FDLP would be a mistake. As noted earlier, citizens get government information in a variety of ways and from a variety of sources. While most may not regularly read law journals, all are affected by what is written within them because academic writing may have a profound impact on legal interpretation and policy.⁹⁴ Attorneys and judges serve as the chief intermediaries between citizens and the state on legal issues, and their ability to navigate complicated government information is a major factor in determining who will get justice. Students, as future attorneys, also contribute to the democratic mission as they perfect their legal research skills in preparation for their later work.

¶47 Yet the direct help that law librarians give to public patrons is not to be overlooked. As noted previously, social capital is created in the librarian-citizen interaction that eases the information burden on citizens trying to become informed. There is a level of trust built into academic law libraries that can help citizens to gain confidence in both the government and the legal system. Additionally, every time a law librarian teaches a citizen to find and use complicated government information, some of the human capital stored in law librarians is transferred, making the citizen better equipped to deal with a complex government information landscape. This may be as simple as learning how to look up employee rights on the Department of Labor Web site or as complicated as researching legislative intent for a pro se case. This spreading of the ability to perform legal research and understand government information is precisely what is needed if the ideal of the informed citizen is to be met.

92. Durant, *supra* note 5, at 34.

93. See, e.g., Univ. of Mich. Law Library, Law Library Mission Statement, <http://www.law.umich.edu/library/libinfo/mission.htm#mission> (last visited June 27, 2007); Hugh & Hazel Darling Law Library, UCLA School of Law, Policy and Procedure on Access to the Library Facility (Oct. 2006), <http://www.law.ucla.edu/home/index.asp?page=1180>; Harvard Law Sch. Library, Admission to the Library, <http://www.law.harvard.edu/library/about/admissions/index.php> (last visited June 27, 2007).

94. See Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 22–24 (1997) (discussing the importance of law review articles to courts and legislatures as sources of new legal theory).

¶48 Now that I have shown the importance of law librarians to the mission of the FDLP, one more question, perhaps the most important of all, remains. Should academic law librarians embrace this role in the face of possibly conflicting obligations to their home institutions?

Should Academic Law Librarians Be Concerned about Public Access to Legal Information?

¶49 The responsibility to provide public access to legal information has long been a topic of debate among law librarians.⁹⁵ This question is especially challenging in the academic arena because, as noted previously, many, if not most, academic law libraries consider the law school community to be their primary patrons, with public patrons as secondary or even tertiary concerns. Those who come down against holding academic law librarians responsible for this important task make strong arguments in favor of supporting access through public and government libraries.⁹⁶ Indeed, they make these arguments not with an eye toward abrogating responsibility, but with express affirmations of the responsibility of academic law librarians to participate in training and outreach toward these other libraries to help them meet the public need.⁹⁷

¶50 I agree with many of these arguments, but as a new member of the academic law librarian profession, I am distressed by their implications. Part of what attracted me to law librarianship was a strong belief in the rights of citizens to be informed about the inner workings of their government and especially the law. I chose to pursue an academic career because I particularly enjoy research and working with law students, professors, and lawyers. Nonetheless, I believe that all law librarians, including those in academic institutions, ought to be committed to the democratic purpose of making legal information more accessible to the public.

¶51 According to the AALL Ethical Principles, a law librarian is obliged to “promote open and effective access to legal and related information.”⁹⁸ Another provision acknowledges, however, “the limits on service imposed by our institutions. . . .”⁹⁹ The question for academic law librarians is, do these two principles conflict?

95. Compare Richard A. Danner, *From the Editor: Public Access to the Law*, 79 LAW LIBR. J. 163 (1987) (arguing that law librarians have a responsibility to help members of the public gain access to the law), with *Legal Information to the People*, 72 LAW LIBR. J. 612, 620 (1979) (remarks of Robin K. Mills) (arguing that public libraries have a greater obligation to ensure public access to the law than law libraries).

96. See, e.g., *Legal Information to the People*, *supra* note 95, at 620–23.

97. *Id.* at 623.

98. Am. Ass’n of Law Libraries, *Ethical Principles* (Apr. 5, 1999), reprinted in Am. Ass’n of Law Libraries, *AALL DIRECTORY & HANDBOOK 2006–2007*, at 420 (46th ed. 2006), available at http://www.aallnet.org/about/policy_ethics.asp.

99. *Id.*

¶52 In the case of those law libraries that participate in the FDLP, the answer must be no. The FDLP requires all participating institutions to provide a comparable level of service for both its regular collection and its government documents collection.¹⁰⁰ For those institutions that choose to be a part of the FDLP, then public access becomes a part of their mission, and law libraries that fail to comply risk being dropped from the program.¹⁰¹ Considering the mission of the FDLP to be the provision of greater access to government information, this is as it should be. Yet, understanding this fact does not solve the problem for academic law librarians. Indeed, many law libraries cite the stringent public access requirement as one of the most significant downsides to participation in the FDLP.¹⁰² Some have even chosen to drop out of the program for precisely this reason.¹⁰³

¶53 So for law libraries considering dropping FDLP status, we must return to the original question of whether there is a conflict between providing open access to legal information and the limits on service imposed by their institutions. On its face, there does seem to be a conflict, but I propose that we reframe the question. Instead of creating a dichotomy between professors/students and the public, we might ask how participating in the FDLP, with its consequent public access requirements, contributes to the traditional missions of academic law libraries to support faculty research and to train future lawyers. In other words, is there something to be gained by the legal profession in democratizing access to certain parts of academic law library collections?

¶54 I believe that the answer is yes. To begin with, participating in the FDLP provides academic law libraries the opportunity to select and collect a large number of important law-related and, if they so choose, interdisciplinary government documents. I have already noted the importance of government information to legal research but it bears repeating. Law professors and students alike depend on government information to thoroughly research a variety of legal issues. In recent years, certain types of law-related government documents such as presidential signing statements have been highlighted in both academic and popular literature for their increasing importance to statutory interpretation.¹⁰⁴ Furthermore, law pro-

100. Wayne P. Kelly, *Access to Depository Materials*, 85 LAW LIBR. J. 413, 413 (1993).

101. *Id.* at 414.

102. *See, e.g.*, McKenzie, Gemellaro & Walters, *supra* note 5, at 306–07, ¶¶ 3–6.

103. *Id.* at 310, ¶¶ 15–16.

104. *See, e.g.*, Note, *Context-Sensitive Deference to Presidential Signing Statements*, 120 HARVARD L. REV. 597, 618 (2006) (“The original and primary justification offered by proponents for use [of signing statements] is that these statements are part of ‘legislative’ history because a bill must be signed by the President before it can become law.”); Stephen G. Calabresi & Daniel Lev, *The Legal Significance of Presidential Signing Statements*, 4 FORUM, no. 2, art. 8, at 5 (2006), <http://www.bepress.com/forum/vol4/iss2/art8> (“The President’s understanding of what a bill means when he signs it is just as legally important as is Congress’s understanding when it passes either the House or Senate.”); Adam Liptak, *Presidential Signing Statements, and Alito’s Role in Them, Are Questioned*, N.Y. TIMES, Jan. 14, 2006, at A11.

fessors also rely on historical materials in their research, and any library dropping FDLP status risks losing this material.¹⁰⁵

¶55 On a related note, participating in the FDLP helps to ensure that academic law librarians remain well versed in government documents research. Though dropping FDLP status obviously does not mean giving up all government document collections, inevitably certain information will be lost. Relying on outside institutions for such information would not only cause delays in research but could also lessen incentives for academic law librarians to understand those materials, thereby decreasing their effectiveness in this important area. Furthermore, these law librarians would lose the valuable social capital associated with the government-library partnership, including training and the ability to influence ongoing discussions of how government information will be presented and distributed in the future.

¶56 The social capital created by the librarian-citizen interaction would also be lost. As noted previously, when librarians help citizens learn about their legal structure, everyone benefits from a more democratic society. Perhaps more importantly, the legal profession benefits by the increased trust that develops in the legislative and judicial process.¹⁰⁶ When citizens understand how their legal system works, they are less likely to blame lawyers and other legal professionals for “ruining” society.¹⁰⁷ Instead, they begin to understand how and why lawyers do what they do, which raises the status of the profession as a whole.

¶57 On the flip side, the profession also gains a chance to understand those whom it serves. Too often, those who “know” the law live in vastly different universes from those who are affected by it.¹⁰⁸ This can promote elitism which can, in turn, leave large swaths of the population without adequate access to justice.¹⁰⁹

105. When a library drops depository status, its regional depository determines what happens to the documents that have already been distributed as part of the program. This may include recalling documents for its own collection or sending the documents to other depository libraries in the region. See SUPERINTENDENT OF DOCUMENTS, U.S. GOV'T PRINTING OFFICE, INSTRUCTIONS TO DEPOSITORY LIBRARIES 2 (2000), available at http://www.access.gpo.gov/su_docs/fdlp/pubs/instructions/instruct.pdf; see also McKenzie, Gemellaro & Walters, *supra* note 5, at 314.

106. And there is a great need at this time in our history to increase such trust. According to Robert F. Blomquist, “[T]he public’s trust of American lawyers, in general, and of the civil and criminal justice systems, in particular, are at an all-time low.” Robert F. Blomquist, *The Phoenix Project: (Seriously) Renewing Public Trust in the American Justice System*, 44 S.D. L. REV. 41, 43 (1999) (citing statistics to support this assertion).

107. See *id.* at 47 (suggesting that increased public education is one factor in increasing the status of the legal profession).

108. See generally Thomas W. Church, *The Mansion vs. The Gatehouse: Viewing the Courts From a Consumer’s Perspective*, 75 JUDICATURE 255 (1992) (discussing the correspondence between diminished public confidence in the legal system and the disconnect between judges/lawyers and citizens).

109. See JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 12 (1976) (“The professional elite bears a special responsibility for this maldistribution [of justice]. Its members, absorbed with selective client-caretaking for a restricted clientele, have preserved social and economic inequality.”).

While I do not propose that allowing citizens access to government documents on the same grounds as legal professionals will somehow magically close this social divide, it is certainly a start. A world in which law students study the law side by side with ordinary people could ultimately lead to a legal profession that is more socially aware and that views its clients as its equals.

Conclusion

¶58 Academic law librarians are specially equipped to ensure that law-related government documents are both accessible and understandable. Because of this, they play a valuable role in democracy by contributing to the ideal of the informed citizen. Membership in the Federal Depository Library Program means that academic law librarians and their patrons will have the resources necessary to work together in creating a more democratic society. The increasing availability of government documents online does not negate this necessity, but instead makes law librarians more valuable and necessary than ever before.

¶59 I encourage any academic law librarians who are considering dropping the depository status of their libraries to think long and hard about their special role as experts in legal research and how that role contributes to the democratic experiment. Helping citizens become informed about their legal rights, either directly or indirectly, is a high calling, and one that should not be abrogated without serious thought about its long-term repercussions to democracy. Law-related government information is vital to an informed citizenry, yet navigating it is a daunting journey, especially for those who do not already have a clear understanding of the legal/government structure and legal/government information resources. Helping people find and use this information is the professional mission of law librarians, and few others are equipped to take their place. While I understand and accept the complications that come with depository status, any law library that has the option of remaining in the program should not drop it without a fight. Now, more than ever, law librarians are necessary to ensure that “information to the people” becomes and remains more than just a theory.

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