

# Keeping Up with New Legal Titles\*

Compiled by Amy Atchison\*\* and Laura Cadra\*\*\*

## Contents

<i>Reflections on Constitutional Law</i> . . . . .	831
<i>Law Librarianship in the Twenty-First Century</i> . . . . .	833
<i>The Judge in Democracy</i> . . . . .	834
<i>The Development of Human Rights Law by the Judges of the International Court of Justice</i> . . . . .	835
<i>Concise Introduction to EU Private International Law</i> . . . . .	836
<i>Issues in Internet Law: Society, Technology, and the Law</i> . . . . .	837
<i>The Pursuit of Justice: Supreme Court Decisions that Shaped America</i> . . . . .	838
<i>Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis</i> , 3rd ed. . . . .	840
<i>Native Americans and the Criminal Justice System</i> . . . . .	841
<i>The Little Book of Plagiarism</i> . . . . .	842
<i>Patriots and Cosmopolitans: Hidden Histories of American Law</i> . . . . .	844

## List of Contributors

Aslihan Bulut Reference Librarian Columbia University The Arthur W. Diamond Law Library New York, New York <i>The Development of Human Rights Law by the Judges of the International Court of Justice</i> . . . . .	835
--	-----

---

\* © Amy Atchison and Laura Cadra, 2007. The books reviewed in this issue were published between 2006 and 2007. If you would like to review books for "Keeping Up with New Legal Titles," please send an e-mail to [atchison@law.ucla.edu](mailto:atchison@law.ucla.edu) or [laura.cadra@lls.edu](mailto:laura.cadra@lls.edu).

\*\* Acting Director, Reference & Research Services & Williams Institute Librarian, Hugh & Hazel Darling Law Library, UCLA School of Law, Los Angeles, California.

\*\*\* Head of Reference Services/Foreign & International Law Librarian, William M. Rains Law Library, Loyola Law School, Los Angeles, California.

- A. Hays Butler  
Associate Professor & Librarian  
Rutgers University Law Library-Camden  
Camden, New Jersey  
*The Judge in Democracy* . . . . . 834
- Lucy Cox  
Foreign, Comparative and International Librarian  
Rutgers University Law School Library-Camden  
Camden, New Jersey  
*The Pursuit of Justice: Supreme Court Decisions that Shaped America* . . . . . 838
- Christopher C. Dykes  
Reference Librarian  
O'Quinn Law Library  
University of Houston Law Center  
Houston, Texas  
*Issues in Internet Law: Society, Technology, and the Law* . . . . . 837
- Jill Fukunaga  
Collection Development Librarian  
University of San Francisco School of Law  
Doraine Zief Law Library  
San Francisco, California  
*Patriots and Cosmopolitans: Hidden Histories of American Law* . . . . . 844
- Faye Hadley  
Native American Resources/Reference Law Librarian  
Mabee Legal Information Center  
University of Tulsa College of Law  
Tulsa, Oklahoma  
*Native Americans and the Criminal Justice System* . . . . . 841
- Dennis Kim-Prieto  
Reference Librarian  
Rutgers University Law School Library-Newark  
Newark, New Jersey  
*Law Librarianship in the Twenty-First Century* . . . . . 833

Kathleen McLeod  
 Associate Law Librarian for Public Service and  
 Adjunct Associate Professor of Law  
 Leo T. Kissam Law Library  
 Fordham University School of Law  
 New York, New York  
*Concise Introduction to EU Private International Law* . . . . . 836

Shawn G. Nevers  
 Research Librarian  
 Howard W. Hunter Law Library  
 Brigham Young University  
 Provo, Utah  
*Reflections on Constitutional Law* . . . . . 831

Laurence Seidenberg  
 Reference Librarian  
 Syracuse University College of Law  
 H. Douglas Barclay Law Library  
 Syracuse, New York  
*The Little Book of Plagiarism* . . . . . 842

Annmarie Zell  
 Reference Librarian  
 New York University School of Law Library  
 New York, New York  
*Essential Lawyering Skills: Interviewing, Counseling, Negotiation,  
 and Persuasive Fact Analysis*, 3rd ed. . . . . 840

Anastaplo, George. *Reflections on Constitutional Law*. Lexington, Ky.: University Press of Kentucky, 2006. 269p. \$24.95.

*Reviewed by Shawn G. Nevers*

¶1 *Reflections on Constitutional Law* reveals that George Anastaplo's constitutional law courses are different from most: his students actually study the United States Constitution (p.3). Readers of *Reflections* soon discover that this is not the only area in which Anastaplo, professor of law at Loyola University of Chicago, differs from other constitutional law scholars. In fact, Anastaplo notes that *Reflections* is an attempt "to suggest aspects of [constitutional] cases and of the relevant constitutional provisions that are not generally noticed by jurists and scholars" (p.x-xi). The author's original and often unique views on constitutional law, coupled with his ability to integrate history, literature, philosophy, and law, captivated my interest and made this an enjoyable and educational read. While I did not always agree with Anastaplo's assertions, his ideas were thought provoking and caused me to engage the subject and reaffirm or reevaluate my prior interpretations.

¶2 Anastaplo's principle proposition is that a student of constitutional law must be intimately familiar with the Constitution itself. He argues that constitutional case law is "ever-transitory" and only a "proper grasp of the Constitution" can put it in perspective (p.6). Such a grasp of the Constitution, Anastaplo suggests, comes by studying the text itself, analyzing the documents that preceded and shaped the Constitution, and even by studying the Confederate Constitution. After examining these documents and their place in constitutional law, Anastaplo demonstrates how his interpretation of the Constitution affects or should have affected landmark Supreme Court cases. For example, he suggests that the Constitution does not support the Court's current power of voiding congressional acts deemed unconstitutional and that the Constitution demands a lesser role for the judiciary and a greater role for the legislature.

¶3 Anastaplo presents *Reflections* in a free-flowing style that establishes a much different feel than most scholarly works. In fact, Anastaplo calls his chapters "constitutional sonnets" (p.x). The first few "sonnets" discuss Constitution-related documents and are arranged chronologically. The remaining "sonnets" are grouped roughly by subject, but organization seems to be related more to the author's train of thought than anything else. This is useful to the reader attempting to glean information as it comes, but may be frustrating to someone looking for a more formal and exhaustive treatment of constitutional law. Anastaplo readily admits that this book is not the latter (p.x).

¶4 *Reflections* contains a comprehensive index, which is valuable to readers wanting to get directly to Anastaplo's ideas about a particular case or constitutional topic. *Reflections* also includes an eighty-page appendix that provides the full text of the major Constitution-related documents that are discussed in the book. About the only thing missing are footnotes, of which there are none. To Anastaplo's credit, he does provide a "Roster of Cases and Other Materials Drawn On" and, admittedly, to him most of this is common knowledge. However, my training as an attorney and a librarian caused me to want to investigate further some of the information provided, and I found the "Roster" insufficient for this purpose.

¶5 The theoretical nature of *Reflections* makes it an appropriate choice for academic law libraries, especially heavy collectors of constitutional law materials. Because of the more practical focus of firm, state, and court libraries, I would not recommend this book to them (although Anastaplo would most likely argue that practicing attorneys and judges are the ones who should really be reading this book). Those selecting *Reflections* should keep in mind that it is not for novices or those seeking an exhaustive review of constitutional law. It should, however, be of interest to students and scholars of constitutional law, especially those teaching constitutional law courses.

Balleste, Roy, et al., eds. *Law Librarianship in the Twenty-First Century*. Lanham, Md.: Scarecrow Press, 2007. 229p. \$55.

*Reviewed by Dennis Kim-Prieto*

¶6 Through thoughtful essays penned by some of the more authoritative and oft-cited law librarians in our profession, *Law Librarianship in the Twenty-First Century* remarkably encompasses in one relatively slim volume the complex world of current law library practice. As such, it is a critical acquisition for any law library that focuses on teaching or training.

¶7 As a newer law librarian, I must confess that reviewing this volume has proven invaluable. Although it can never replace the experience gained in one's first professional law library position, its insight, wisdom, and observations will certainly help soften the occasional lumps one collects in an entry-level position. While helpful to newer law librarians, more experienced law librarians will also find it a useful reference for historical information, operational overviews, and as a general source of best practices.

¶8 One highlight of this title is the access that it provides to the everyday work materials and documents of the profession. For example, chapters on administration and collection development include sample forms and documents typically used in these areas. For the benefit of aspiring and future law librarians, later editions will hopefully include even more sample work documents, such as workflow charts, policy language, and the like. Similarly, future editions may want to counterbalance the implicit, yet tangible, focus on academic law libraries by highlighting distinctions between academic, governmental, and firm law libraries.

¶9 *Law Librarianship in the Twenty-First Century's* ten chapters cover the gamut of our professional lives, ranging from Bob Berring's comprehensive "Brief History of Law Librarianship" and Karl Gruben's "Working at the Law Library: A Practical Guide," to Roy Balleste's granular exploration of "Technology Trends in Law Libraries" and Tracy Thompson's cogent explanation of and musings upon "The World of Library Consortia: Collaboration and Resource Sharing in the Twenty-First Century." The table of contents reads much like an organizational chart for a large academic law library. In addition to those mentioned, this volume also contains chapters bearing the following titles: "Administration"; "Public Services"; "Collection Development, Licensing, and Acquisitions"; "Technical Services"; and "Foreign, Comparative, and International Law Librarianship."

¶10 In short, *Law Librarianship in the Twenty-First Century* manages to be both thorough and accessible. While it cannot (and does not try to) replace landmark volumes in the literature of law librarianship, it does provide a new and useful resource for newer law librarians as well as for those who are teaching (or studying) law librarianship.

Barak, Aharon. *The Judge in a Democracy*. Princeton, N.J.: Princeton University Press, 2006. 332p. \$29.95.

*Reviewed by A. Hays Butler*

¶11 One of the great classics of twentieth-century legal literature is Benjamin Cardozo's *Nature of the Judicial Process*,<sup>1</sup> in which Justice Cardozo explained the process by which he decided cases. *The Judge in a Democracy*, by Judge Aharon Barak, current president of the Supreme Court of Israel, is an outstanding addition to this genre of legal literature pioneered by Cardozo. Barak's analysis, however, is much broader than Cardozo's. In addition to addressing his own approach to deciding cases involving questions of common law, Barak explores his philosophy of interpreting statutes and his method for deciding constitutional issues.

¶12 Barak's analysis is relevant to American audiences because Israel, like the United States, is a common law jurisdiction. While he frequently quotes from his own decisions, he is well versed in the American legal system and discusses issues faced by American courts, citing to both U.S. legal decisions and articles from U.S. law journals.

¶13 One of the most interesting facets of *The Judge in a Democracy* is Barak's contribution to the literature on statutory interpretation. He calls his approach "purposive interpretation," meaning courts first determine a statute's purpose and then interpret the statute in a manner consistent with this purpose (p.7). Legislative history plays a central role in the search for statutory purpose. Another aspect of purposive interpretation is what Barak calls the "dynamic" interpretation of statutes, meaning that a court's interpretation of a statute evolves over time (p.7). With dynamic interpretation, a court may depart from the original intent of the legislature to take into account changes over time.

¶14 Barak's approach to statutory interpretation is in marked contrast to that of U.S. Supreme Court Justice Antonin Scalia, who follows a strict constructionist method of interpretation. Basing interpretation on the text of the statute, Scalia rejects the use of legislative history as a vehicle for determining legislative intent. Strongly disagreeing with this approach, Barak states that Scalia's "textualism does not sit well with the idea of democracy. No aspect of democracy justifies it. . . . One must differentiate between the text—which was enacted by the legislature—and the standard for its understanding" (p.153).

¶15 *The Judge in a Democracy* also provides an interesting perspective on the concept of standing. Barak analyzes the standing requirement in U.S. federal courts, which mandates that a party demonstrates an "injury in fact" in order for a court's jurisdiction to apply. An important consequence of the law of standing, he notes, is that it prevents individuals and groups, such as human rights organizations, from initiating lawsuits. According to Barak, "[I]f we liberalize the tests for standing, we will usher in a new era for judicial decision making whose ramifica-

---

1. BENJAMIN N. CARDOZO, NATURE OF THE JUDICIAL PROCESS (1921).

tions are far greater than the issue of standing itself. This is the case because liberal rules of standing enable courts to hear matters that ordinarily would not find their way before a court” (p.190).

¶16 Because of the unique viewpoints presented in *The Judge in a Democracy*, its inclusion in academic law library collections is recommended. It will provide a valuable perspective on the American legal system to law students, law faculty, and practicing lawyers.

Bedi, Shiv R.S. *The Development of Human Rights Law by the Judges of the International Court of Justice*. Portland, Ore.: Hart Publishing, 2007. 488p. \$130.

*Reviewed by Aslihan Bulut*

¶17 In *The Development of Human Rights Law by the Judges of the International Court of Justice*, author Shiv R.S. Bedi, head of the Archives Division of the International Court of Justice (ICJ), has concocted the term *judgislation* to describe the phenomenon that “judges develop and create law from within the existing law, and/or when judges legislate from within the existing enacted legislation” (p.17). Bedi provides numerous historical and current examples of judgislation with particular emphasis, in chapter 2, on the decisions of the European Court of Justice, the European Court of Human Rights, and the ICJ. Subsequent chapters are devoted to the ICJ and its role in human rights law and provide an expansive and critical examination of the cases decided by the ICJ.

¶18 With a historical narrative tone that seizes the reader from the first page, author Bedi, in a brilliant arrangement of topics, builds the argument that indeed “judges do legislate” and that “there is an indissoluble ideological link between human rights and international law” (p.354–55). Central to this argument is Bedi’s discussion of the concept of human dignity: “Respect for human dignity and protection of human rights are the two great hall-marks of any ideal democratic society worth its name” (p. 353).

¶19 Bedi intertwines court decisions from throughout history to successfully build this central theme. Similar works have been published for other international courts, two in particular are J.G. Merrill’s *The Development of International Law by the European Court of Human Rights*<sup>2</sup> and Dinah Shelton’s *International Crimes, Peace, and Human Rights: The Role of the International Criminal Court*.<sup>3</sup>

¶20 I highly recommend *The Development of Human Rights Law by the Judges of the International Court of Justice* as an indispensable and valuable addition to any academic library collection with a human rights or an international law focus. Scholars researching the vast body of literature on human rights and courts will

- 
2. J.G. MERRILL, *THE DEVELOPMENT OF INTERNATIONAL LAW BY THE EUROPEAN COURT OF HUMAN RIGHTS* (1988).
  3. DINAH SHELTON, *INTERNATIONAL CRIMES, PEACE, AND HUMAN RIGHTS: THE ROLE OF THE INTERNATIONAL CRIMINAL COURT* (2000).

find the last hundred pages of this monograph particularly useful. Bedi includes several bibliographies, one of which is a list of works by the ICJ judges. The twenty-one page index and the detailed table of contents also provide easy access points for anyone researching this area of scholarship.

Bogdan, Michael. *Concise Introduction to EU Private International Law*. Groningen, Netherlands: Europa Law Publishing, 2006. 220p. 32€ (\$52).

*Reviewed by Kathleen McLeod*

¶21 *Concise Introduction to EU Private International Law*, by Michael Bogdan, professor of comparative and private international law at the University of Lund, Sweden, is billed by the publisher as an “introduction to the rules of private international law” for the member states of the European Union. They advertise it as a course book for law school introductory courses in private international law. While *Concise Introduction to EU Private International Law* may well meet this need in European law schools, it assumes a level of understanding of EU structure, including its treaties, directives, regulations and other instruments, that is not generally found in American law students prior to completing several classes in EU law.

¶22 That said, it is an excellent resource on EU choice of law issues, but researchers should not be misled by the title. *Concise Introduction to EU Private International Law* is neither introductory nor concise but rather a detailed discussion of the current state of choice of law and jurisdiction in EU member states. Subject analysis follows the same approach regardless of the issue, and the consequences of cases and rules are examined from a number of angles and include exhaustive references to EU statutory, regulatory, and case law authority. For example, on the topic of nationality, Bogdan examines the case of *Avello v. Etat Belge*,<sup>4</sup> detailing its facts, the rulings, and the factual changes needed to support a different outcome.

¶23 A major flaw of *Concise Introduction to EU Private International Law* is that the text is organized by instrument rather than broad subject area, so that a specific subject area may appear in several chapters. This arrangement will hamper the beginning EU researcher who is unfamiliar with the subject content of individual instruments,<sup>5</sup> but will not be a problem for more experienced researchers. A comprehensive index would easily have compensated for this arrangement. The current index, however, offers limited or no entry points for topics discussed. For example, it contains no entries related to foreign judgments, but this topic receives substantial coverage in the text.

---

4. Case C-148/02, *Garcia Avello v. Etat Belge*, 2003 E.C.R. I-11613.

5. Some of the instrument's subjects are self-evident, such as in chapters 10 and 11, titled “Insolvency Regulation” and “Service of Documents, Taking of Evidence and Legal Aid.” I anticipate confusion as to content in chapters 3 and 5, titled “Regulation Brussels I” and “Regulation Brussels II.”

¶24 *Concise Introduction to EU Private International Law* will, nonetheless, be invaluable for research in this quickly evolving area of law, both now and in the future, and should prove useful to libraries with active practitioners or faculty in the area of private international law.

Darrell, Keith B. *Issues in Internet Law: Society, Technology, and the Law*. Boca Raton, Fla.: Amber Book Co., 2006. 336p. \$34.95, paper.

*Reviewed by Christopher C. Dykes*

¶25 *Issues in Internet Law: Society, Technology, and the Law* provides a general overview of the major topics pertaining to Internet law. Author Keith B. Darrel, an attorney and Web site designer, explores such legal issues as online contracts, intellectual property, identity theft, cybercrimes, and privacy. A nonscholarly, practical compilation designed for laypersons, Darrel's book provides clear and concise legal information and explains to the less technologically saavy such basics as chat rooms, e-mail, and blogs.

¶26 *Issues in Internet Law's* seventeen chapters are grouped into seven parts for easy access, aided by a table of contents and three indexes. Major topics include an overview of Internet law, privacy, intellectual property, the First Amendment, and issues of the future. The section on copyright discusses the Digital Millennium Copyright Act of 1998,<sup>6</sup> focusing on its penalty provisions for online infringement and its safe harbor provisions for Internet service providers (ISPs). A section titled "Uninvited Guests" discusses e-mail spoofing, spyware, and spam, among other potential intrusions.

¶27 The section devoted to privacy is most interesting. Readers will cringe when they find out that employers often monitor personal e-mail, not to mention that hackers and law enforcement can also retrieve this information. The larger surprise is that the Electronic Communications Privacy Act<sup>7</sup> allows ISPs to access stored e-mails. The online availability of public records and the rise of identity theft are also discussed. Parents will want to read the chapter on protecting children's privacy online, which offers tips on avoiding online predators and cyber bullying.

¶28 *Issues in Internet Law* also examines free speech issues, particularly defamation of character, and the common misperception that Internet communications are anonymous. Included is a retelling of the Classmates.com case,<sup>8</sup> involving an attorney who was reprimanded by the Oregon Supreme Court for creating an account on the service in his former high school teacher's name and then confessing to an affair with a student (p.182–83).

¶29 *Issues in Internet Law: Society, Technology, and the Law* will be a welcome addition in both academic and public law libraries. While not a substitute for

---

6. Pub. L. No. 105-304, 112 Stat. 2860 (1998) (codified in scattered sections of 17 U.S.C.).

7. 18 U.S.C. §§ 2510–2711 (2006).

8. *In re Carpenter*, 95 P.3d 203 (Ore. 2004).

casebooks or scholarly treatises dealing with Internet law, it should be acquired by libraries for its concise overview of Internet-related legal issues.

Hall, Kermit L., and John J. Patrick. *The Pursuit of Justice: Supreme Court Decisions that Shaped America*. New York: Oxford University Press, 2006. 256p. \$40.

*Reviewed by Lucy Cox*

¶30 Interesting and well written, *The Pursuit of Justice: Supreme Court Decisions that Shaped America* convincingly demonstrates the central role that the Supreme Court has played in the historical and cultural development of the United States. While intended as an introductory work of civic education, particularly for secondary school students, more sophisticated audiences will nonetheless enjoy *The Pursuit of Justice's* lucid descriptions of landmark Supreme Court decisions.

¶31 Author Kermit L. Hall, who passed away as this book neared completion and to whom it is dedicated, was formerly president and history professor at the State University of New York at Albany. His writings include the *Oxford Companion to the Supreme Court of the United States*.<sup>9</sup> Coauthor John J. Patrick is an emeritus education professor at Indiana University and is the author or editor of many publications on American government and democracy, including the *Oxford Guide to the United States Government*.<sup>10</sup>

¶32 In the introductory chapter, the authors provide a brisk history of the Supreme Court, including the Founding Fathers' reasons for creating a national court, descriptions of the Court's many homes, its varying number of judges, and how it gradually increased its influence over matters of public policy. They also explain that each case selected had to meet one of the following criteria: it responds to a pivotal public issue that deeply impacted American history; it contains enduring constitutional principles; or it expresses a definitive response to an issue of American constitutionalism, such as federalism, separation of powers, or civil rights.

¶33 It is hard to quarrel with the selection of cases set out in *The Pursuit of Justice's* twenty-three chapters. The title of each chapter reflects the major theme of the case or, in some instances, two cases; the book begins with "The Rise of Judicial Review: *Marbury v. Madison* (1803)" and ends with "The Judicial Path to the White House: *Bush v. Gore* (2000)." In between are other landmark cases addressing such issues as slavery, desegregation, substantive due process, freedom of speech, separation of church and state, affirmative action, and abortion.

¶34 Each chapter begins with a fact box that gives the official name of the case, the U.S. Reports citation, the date of the decision, the authors of the major-

---

9. OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES (Kermit L. Hall et al. eds., 2d ed. 2005).

10. JOHN J. PATRICK, RICHARD M. PIOUS & DONALD A. RICHTIE, THE OXFORD GUIDE TO THE UNITED STATES GOVERNMENT (2001).

ity and dissenting opinions, and other information, such as a judge who did not participate in an opinion. The full text of opinions is not included, but a few eloquent excerpts are, such as Justice John Marshall Harlan's dissent in *Plessy v. Ferguson*.<sup>11</sup> Additional background material offers interesting behind-the-scenes glimpses of the Justices' thought process when considering a case, such as Chief Justice Warren's preliminary notes made in preparation for his opinion in *Miranda v. Arizona*.<sup>12</sup>

¶35 Careful explanation of the legal issues within each case convey how long-familiar principles were first enunciated within a world full of political intrigue, infighting, and bitter ideological conflicts. Chief Justice John Marshall's towering and lasting impact is apparent in the first three chapters. Analysis of *Marbury v. Madison*,<sup>13</sup> *M'Culloch v. Maryland*,<sup>14</sup> and *Gibbons v. Ogden*<sup>15</sup> convey the subtle, careful craftsmanship of Marshall's opinions, which granted courts the power of judicial review, established federal supremacy over state law, and granted broad powers to Congress. The rocky relationship between politics and law, a theme that runs throughout this book, also is first introduced in these chapters with the description of the ideological divide between Marshall's strong federalism and President Thomas Jefferson's belief in states' rights, a divide exacerbated by the personal disdain between these two men.

¶36 Reading *The Pursuit of Justice* is ultimately a journey through America's social and cultural history, as the legal issues described in each chapter are set within a vividly evoked background. *Scott v. Sandford*,<sup>16</sup> for instance, is set against the history of slavery and the discord over the Missouri Compromise; *West Coast Hotel v. Parrish*<sup>17</sup> is placed within the context of the economic bleakness of the Depression; and the chapter on *Roe v. Wade*<sup>18</sup> traces the history of abortion in the United States.

¶37 A remarkable selection of illustrations, cartoons, photographs, and documents accompany the narrative and vividly place the cases within their sociopolitical context. A letter written by President Jefferson to Abigail Adams complaining about Marshall's decision in *Marbury*, a leaflet advertising a mass meeting against conscription, and a 1942 photograph depicting Japanese-Americans signing up for work in a California relocation camp are just a few examples.

¶38 Superbly written, *The Pursuit of Justice: Supreme Court Decisions that Shaped America* will appeal to a diverse audience, from students and nonlawyers interested in United States history and government to scholars with a background

- 
11. 163 U.S. 537, 552 (1896) (Harlan, J., dissenting).
  12. 384 U.S. 436 (1966).
  13. 5 U.S. (1 Cranch) 137 (1803).
  14. 17 U.S. (4 Wheat.) 316 (1819).
  15. 22 U.S. (9 Wheat.) 1 (1824).
  16. 60 U.S. (19 How.) 393 (1856).
  17. 300 U.S. 379 (1937).
  18. 410 U.S. 113 (1973).

in legal history. It is recommended for school, college, public, university, and law school libraries.

Krieger, Stefan H., and Richard K. Neumann, Jr. *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis*. 3rd ed. New York: Aspen Publishers, 2007. 377p. \$61, paper.

*Reviewed by Annmarie Zell*

¶39 In *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis*, Hofstra law professors Stefan H. Krieger and Richard K. Neumann, Jr. offer advice on the four key lawyering skills. As I thought back on my own years as a practicing attorney, I found the book's advice to be both accurate and helpful.

¶40 Divided into five parts, the first part of *Essential Lawyering Skills* discusses a number of introductory lawyering concepts. The second part covers the key parts of interviewing both clients and witnesses. It includes questions to ask; ways to encourage communication; and how to handle lies, distraught interviewees, and clients who want immediate answers to their legal problems.

¶41 Lamenting that law schools do not devote sufficient time to this task, the authors devote the third part of the book to how lawyers can organize and present facts to best support their legal arguments. They summarize three ways to organize facts: by legal requirements (such as the elements of a prima facie case), by chronology, and by story approach. Choosing one or a combination of these methods, the authors advise, will help lawyers emphasize, or de-emphasize, certain facts when writing briefs and making arguments.

¶42 The fourth part covers counseling clients, that is, how to help clients make decisions about their legal problems. Included are tips on how to prepare for and conduct a counseling meeting and how to discuss potential solutions and associated risks with a client. The final part concludes with advice on how to develop and execute negotiation strategies from both adversarial and problem-solving perspectives.

¶43 The overall thrust of *Essential Lawyering Skills* is that good lawyering requires competence and care when dealing with people and their problems. With this overarching principle in mind, the authors encourage an empathetic and collaborative approach to client consultations. Newly minted attorneys, especially those who, like me, shied away from practice-oriented classes in law school, will benefit from this advice. For seasoned attorneys, *Essential Lawyering Skills* will likely encourage self-evaluation and provide inspiration.

¶44 I highly recommend *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis* to law firm and academic law libraries. In its third edition, the core content does not differ from that of previous editions. It is still, budget permitting, a valuable addition for libraries that own earlier editions. For libraries that do not yet own a copy, it is a worthwhile purchase.

Ross, Jeffrey Ian, and Larry Gould, eds. *Native Americans and the Criminal Justice System*. Boulder, Colo.: Paradigm Publishers, 2006. 288 p. \$35.

*Reviewed by Faye Hadley*

¶45 Why is the rate of alcohol-related deaths for Native Americans between the ages of twenty-five and thirty-four thirteen times the rate for the general population (p.87)? Why do “American Indians have the highest victimization rate for crimes of violence—including rape, sexual assault, robbery, and aggravated assault—of any minority in the United States” (p.145)? Why are the rates of incarceration disproportionately high among Alaska Native Americans compared to the general population (p.218)?

¶46 In its sixteen essays, *Native Americans and the Criminal Justice System* addresses these and many other questions. It is an excellent starting point for exploring the confluence of Native American life and the criminal justice system in the United States. Written by scholars from many disciplines, the essays cover a wide range of topics, all of which relate to the historical impact European colonization has had on the indigenous peoples of this country. The introductory chapter presents the overall theme of this book:

In order to understand the relationship between the Native American and the U.S. criminal justice system (typically law enforcement, courts, corrections, and juvenile justice) it is necessary to appreciate the complexities of the European approach to deviance, justice, and social control. In short, the European system rests on punishment and retribution, whereas the Native American more often relies on cooperation and consensus building. One must also recognize the changing Native American responses to these processes, both before and after their contact with Europeans (p. 3).

¶47 Aside from the introduction and conclusion, essays are divided into two parts: “Theoretical Issues in the Area of Native Americans and Criminal Justice” and “Current Policy Issues Affecting Native Americans and Criminal Justice.” About a third of the essay authors identify themselves as Native Americans (in the spirit of full disclosure, both of the editors are non-Native American, as is this reviewer). Each essay includes endnotes; a twenty-two page bibliography and a two-page cursory index are included as well.

¶48 The essays echo the theme presented in the introduction—that the colonization and subsequent attempts to assimilate Native Americans into the dominant and oppressive European-based culture not only criminalized or banned many of the traditions that various Native nations employed to assert control over their members’ behavior, but also introduced many practices that were foreign to Native nations and complicated tribes’ abilities to prescribe behavior of their members. These methods took many forms, a few of which are covered in depth in individual essays, such as the removal of children from their families to be sent to boarding schools, sometimes never to return to their homes; and the banning of religious practices, such as the use of peyote, worshiping at sacred sites, and the practice of the Ghost Dance. Criminalizing these traditional practices struck at the very heart

of Native American life and caused many problems that continue to plague Native American communities today.

¶49 Among the more notable essays are those by James Zion, “Justice as Phoenix: Traditional Indigenous Law, Restorative Justice, and the Collapse of the State,” which distinguishes restorative justice from traditional (customary) law; and Larry Gould, “Alcoholism, Colonialism, and Crime,” which discusses the role of alcohol in Native American communities. Other essays range across topics at the forefront of Native American studies and investigations in Indian Country, such as the Indian Child Welfare Act of 1978,<sup>19</sup> the role of the police in off-reservation communities, the access of incarcerated Native Americans to traditional methods of healing, treaty fishing rights among the Chippewa in the Great Lakes, Indian gaming, juvenile crime in the Navajo Nation, and juvenile justice issues. One essay also discusses Alaska Native Americans’ loss of autonomy.

¶50 *Native Americans and the Criminal Justice System* is a significant contribution to issues growing out of the intersection of Native American studies and the criminal justice system. As the editors explain in the conclusion: “Whether the issue is resources, law, crime, punishment, definitions, sovereignty, or education, it is always related to cultural definition. Most Native peoples understand this; it is more often than not individuals from the dominant European-based society who do not” (p.241). *Native Americans and the Criminal Justice System*, if read across the spectrum, will do much to remedy this situation.

Posner, Richard A. *The Little Book of Plagiarism*. New York: Pantheon Books, 2007. 116p. \$10.95.

*Reviewed by Laurence Seidenberg*

¶51 Plagiarism is a cultural phenomenon that has blossomed across a variety of mediums yet has deep historic roots. In *The Little Book of Plagiarism*, the subject is examined from historic, legal and cultural vantage points by Richard A. Posner, a judge of the federal Seventh Circuit Court of Appeals who also is a senior lecturer in law at the University of Chicago Law School. This brief text is a gem well worth acquiring by law, business, and general academic libraries for its eloquent, engaging, and informed examination of the amorphous concept of plagiarism and its interplay with the larger area of intellectual fraud.

¶52 Within the confines of a surprisingly small volume, Posner succinctly delves into several high profile instances of plagiarism spanning centuries—Shakespeare’s borrowing of *Romeo and Juliet*; T.S. Eliot’s *The Waste Land*, a “tissue of quotations (without quotation marks) from earlier literature” (p.55); Edouard Manet’s painting *Olympia* (1863), which recast Titian’s *Venus d’Urbino* (1538); and, more recently, the accusations of plagiarism against writers Stephen Ambrose, Doris Kearns Goodwin, and Jason Blair.

---

19. Pub. L. No. 95-608, 92 Stat. 3069 (codified at 25 U.S.C. §§ 1901–1963 (2006)).

¶53 Posner begins in the near present with the debacle of nineteen-year-old Harvard author Kaavya Viswanathan's "chick-lit" book, *How Opal Mehta Got Kissed, Got Wild and Got a Life*,<sup>20</sup> that plagiarized passages from established author Megan McCafferty's books. We learn, however, that many literary works have been technically plagiarized and yet end up as nonobjectionable "creative imitations" (p.64). For example, in *Lolita*,<sup>21</sup> Nabokov plagiarized a short story by Heinz von Eschwege that decades earlier had the same storyline and title. It is well known that *My Fair Lady*<sup>22</sup> was really a remake of Ovid's tale of Pygmalion, also a play by George Bernard Shaw,<sup>23</sup> and so on through to the present with the common use of ghostwriters.

¶54 It is a literary treat to follow the tour of plagiarism's history and of literary theft by this informed writer who has also written books on a host of contemporary issues, from the Clinton impeachment<sup>24</sup> and September 11<sup>25</sup> to more classic legal texts such as *Economic Analysis of Law*<sup>26</sup> and *The Economics of Justice*.<sup>27</sup> This tour shows us the cultural relativism underlying plagiarism and the many gradations of plagiarism that are permissible, such as by fair use or attribution. Double standards for plagiarism abound and are acceptable in one field but not another. Judges routinely sign off on opinions written by law clerks, and professors use the scholarship of research assistants without attribution. Yet average students who plagiarize a term paper and are discovered by detection software, such as Turnitin, are subject to serious sanctions.

¶55 Posner shows us that plagiarism wasn't always considered a bad practice, as evidenced in the Elizabethan era when conservative borrowing or creative imitation was politically safer than wholesale originality in literary works. The rise of universal literacy, mass-produced books, relative affluence, and individualism spawned a market for original products and a desire to differentiate and identify individual authors.

¶56 Posner then takes us through the advent of copyright law and shows us that, unlike the idea/expression distinction that limits copyright, plagiarism has different, somewhat lower thresholds, including negligent copying, intentional misrepresentation or fabrication, and "unconscious plagiarism," where the plagiarist "read something and he remembers it without remembering that he had read it" (p.97).

¶57 The colorful spectrum of ideas, examples, and theories presented in *The Little Book of Plagiarism* make it a worthwhile library acquisition. While lacking

---

20. KAAVYA VISAWANTATHAN, *HOW OPAL MEHTA GOT KISSED, GOT WILD AND GOT A LIFE* (2006).

21. VLADAMIR NABOKOV, *LOLITA* (1955).

22. *MY FAIR LADY* (Warner Bros. Pictures 1964).

23. GEORGE BERNARD SHAW, *PYGMALION* (1913).

24. RICHARD A. POSNER, *AN AFFAIR OF STATE: THE INVESTIGATION, IMPEACHMENT AND TRIAL OF PRESIDENT CLINTON* (1999).

25. RICHARD A. POSNER, *PREVENTING SURPRISE ATTACKS: INTELLIGENCE REFORM IN THE WAKE OF 9/11* (2005).

26. RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* (7th ed. 2007).

27. RICHARD A. POSNER, *THE ECONOMICS OF JUSTICE* (1981).

an index, table of contents, and chapter headings, the book's seven numbered parts do correspond to discernible topics. In addition, a short bibliography lists a few dozen scholarly works and suggested readings. Although there are no footnotes, I think it is fair to say the author is a trusted source.

Witt, John Fabian. *Patriots and Cosmopolitans: Hidden Histories of American Law*. Cambridge, Mass.: Harvard University Press, 2007. 406p. \$29.95.

*Reviewed by Jill Fukunaga*

¶58 *Patriots and Cosmopolitans: Hidden Histories of American Law* is not just another legal history book. Author John Fabian Witt, a professor of law and history at Columbia, offers instead an extraordinary story about “nationhood,” a scholarly account of which he says in his introduction is “long overdue” (p.10). The concept of nationhood, according to Witt, encompasses both “the institutions of the *nation-state* and the sentimental attachments of identity and ideology that many call *nationalism*” (p.7).

¶59 From the American perspective, the institutions of the nation include the federal structure, the court system, and separation of powers, while nationalism is exemplified by products such as the United States Constitution, the Bill of Rights, and the history of Anglo-American liberty. Throughout U.S. history, nationhood has been both a source of patriotic motivation and a subject of disdain, and in this book, Witt successfully provides a balanced and engaging record of it in relation to the development of American law.

¶60 Rather than tackle the entirety of such a broad subject, Witt takes a literary approach. He focuses on the evolution of nationhood and the American legal system through biographical portraits of five lesser-known historical figures whose names many readers—even legal scholars—may not recognize. Through these profiles, he is able to discuss important junctures in U.S. history where the concept of nationhood significantly influenced, or was influenced by, some of its most colorful patriots and critics.

¶61 *Patriots and Cosmopolitans* is composed of four parts that Witt weaves together with insightful commentary in his introduction to each section. Part One, “Creations,” profiles James Wilson, a prominent Philadelphia lawyer who was one of only six men who signed both the Declaration of Independence and the United States Constitution. As Witt argues, however, Wilson is often left out of the annals of revolutionary history because he ultimately became disillusioned with the fundamental purpose of the new Constitution and role of lawyers in society. “Wilson developed an elaborate, idiosyncratic, and grandiose vision of the place of the United States in world history” and, as a result, he “failed to grasp the distinctive promise that the institutions of the American nation-state held out to lawyers like himself” (p.13).

¶62 Part Two, “Exits,” tracks the later life of Elias Hill, a freed slave who, during the Reconstruction period following the Civil War, led a group of freed people from the Clay Hill precinct of South Carolina to Liberia on the West African coast.

Hill and his followers were a small fraction of the thousands of rural southern blacks who expressed interest in emigrating from the United States to Africa to start a new black nationhood after Emancipation. However, very few blacks actually made the journey, and even fewer considered their departure from the United States a success.

¶63 Part Three, “Critiques,” details the life of Crystal Eastman, an outspoken female lawyer who was a sharp critic of nationalism and became an important figure in the American internationalist movement in the early twentieth century. Interestingly, as Witt explains, it was this cosmopolitanism that eventually gave rise to the beginnings of the modern civil liberties movement. In 1917, Eastman, along with Roger Baldwin, cofounded the organization that preceded today’s American Civil Liberties Union.

¶64 Witt concludes the book in Part Four, “Reactions,” with the intertwined biographies of the great legal scholar, Roscoe Pound, who was the dean of Harvard Law School from 1916 to 1936, and Melvin Belli, the “most flamboyant, outlandish, self-aggrandizing, and scandal-plagued American lawyer” of modern times (p.211). Unlikely as it may seem, these two men became friends and together became powerful advocates of trial lawyers—in particular, the plaintiff’s personal injury bar—and defenders of the legal institutions (e.g., jury trials and the common law system) that were increasingly under threat by the ever-expanding administrative state.

¶65 While highly entertaining and informative, *Patriots and Cosmopolitans* is by no means an easy read. Witt, who received his Ph.D. in history from Yale the year after receiving his law degree, is a serious scholar, and this book reflects that. His research is meticulous and extensive; there are 443 endnotes, some of them quite long. But despite numerous references to arcane legal and political theories and historical events throughout, this work is not out of reach to anyone interested in nationhood and the foundations of the American legal system. *Patriots and Cosmopolitans: Hidden Histories of American Law* refreshingly adds a human dimension to our understanding of the history of American law, and it would be a respectable addition to any academic law library collection.