Supporting Scholarship: Thoughts on the Role of the Academic Law Librarian

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I. INTRODUCTION

[Law students] go to the library and they begin to study and we hope they encounter what Holmes called 'the secret joy of isolated thought' . . . . In the Commons, the students discuss the ideas of the law, the concept of justice, the meaning of freedom, with students from other disciplines, other backgrounds, from other countries. And so it goes — from library to commons.

—Justice Anthony M. Kennedy

There are presently 200 U.S. law schools fully and provisionally accredited by the American Bar Association.2 U.S. law schools spend on average over $2,750,000 annually on their libraries, about 11.6 percent of their total annual budgets. Academic law libraries hold on average over 277,000 volumes and spend nearly $2,000 annually on library

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materials per FTE JD student. They employ an average of 20.1 FTE librarians and other staff members.³

In November 2008, the Duke Law School celebrated the reopening of its new, fully renovated law library. The newly named J. Michael Goodson Law Library had been closed, its collections in storage, its staff in temporary quarters, for fifteen months before it reopened on the eve of the fall 2008 term. In addition to Justice Kennedy’s remarks at the dedication ceremony for the library and a new commons building,⁴ the week-long celebration featured a panel discussion at which three law library directors discussed the role of the academic law library in the twenty-first century law school.⁵

Just prior to that discussion, a member of the Law School board of visitors asked, “Why do we have law libraries anymore?,” implicitly raising the question of why Duke Law and its donors had invested in rebuilding what appeared to be serviceable library space that had worked well for over forty years.

Discussing the law library’s role in legal education is necessary and essential, not only because of the tremendous challenges that law libraries face as the information they collect and organize has moved largely from print to digital formats. Libraries impose large costs on increasingly tight law school budgets and consume large amounts of space that might be used for other programs. Yet, asking whether the library is needed at all is a question of another sort from asking what kind of law library is needed in the twenty-first century. Why should we care about books and libraries when so much of the information that lawyers, law students, and legal scholars use and need is online, accessible anytime, anywhere, and in many instances to anyone? Do we need law libraries and librarians in this new cash-strapped digital world?

The Duke Law discussion focused first on the continuing importance of the law library as a place for students to work and study, then on the value of the instruction that law librarians offer to students faced with an increasingly complex and perhaps bewildering legal information envi-

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³ See American Bar Association, Section of Legal Education and Admissions to the Bar, Comprehensive Law Library Statistical Table – Data from Fall 2008 Annual Questionnaire, May 5, 2009, May 6, 2009, June 26, 2009. With the Fall 2009 Annual Questionnaire, the ABA eliminated several questions from its survey, making it impossible to to update these data.

⁴ See generally Norman, supra note 1.

ronment. However, when the conversation turned to the role of the law librarian in the scholarly enterprise, the topic posed at the November 2008 University of South Carolina Colloquium, where this paper was first delivered, the discussion at Duke was less satisfying. This paper explores the roles of academic law librarians in supporting faculty scholarship within the context of the forces affecting libraries, librarians, and legal education in the (still early) twenty-first century. Although it has been more than thirty years since the widespread adoption of the legal research databases, Lexis and Westlaw, in the 1970s, the legal information environment continues to be seen as changing and uncertain, roiled by such new developments as working paper services providing pre-publication looks at new articles, growing interest in blogs and other varieties of short form legal scholarship, and the potential for open access publishing to reduce or eliminate reliance on printed law journals. As these developments continue to affect the processes of legal research and scholarly communications in law, what implications do they have for the role of law librarians in those processes?

II. LAW LIBRARIANSHIP

Those people who reminisce about the 'good old days' when AALL could meet in an elevator . . . are completely misguided. If we do not professionalize, we will end up small enough to meet in an elevator again . . . ." —Robert C. Berring


9. See Durham Statement on Open Access to Legal Scholarship, http://cyber.law.harvard.edu/publications/durhamstatement (last visited Sept. 29, 2009) (calling for "all law schools to stop publishing their journals in print format and to rely instead on electronic publication coupled with a commitment to keep the electronic versions available in stable, open, digital formats").

10. Robert C. Berring, Dyspeptic Ramblings of a Retiring Past President, 79 Law Libr. J. 345, 347 (1987). Berring’s comment regarding professionalization and elevators was actually a call to expand and improve the staff of the American Association of Law Libraries, but remains apt in discussions of law librarianship as a profession.
Since the mid-1980s, law librarians and other writers have speculated about the impacts of information technologies on legal education and law libraries.\(^{11}\) By the late 1990s, legal information was widely accessible to law students and professors, lawyers, judges, and other legal professionals via Lexis, Westlaw and other databases, and increasingly available to wider audiences through the Internet and World Wide Web. The information needed for both practical and scholarly research in law was no longer only to be found in books in law libraries, or accessed through dedicated legal research computer terminals, but through desktop and laptop computers provided and serviced not by law librarians, but by the growing numbers of information technologists being hired in law schools.

In working to improve access to legal information, the new legal information technologists were beginning to do some of the work traditionally done by law librarians and were positioned to do more as the benefits of desktop access became more apparent. What were the implications for law librarians? How would the relationships between these two groups play out? Were they separate professions or branches of a larger “information profession?” What made either a profession?

In *The System of Professions: An Essay on the Division of Expert Labor*, Andrew Abbott, a University of Chicago sociologist, emphasizes the overriding presence of competition among professional groups in the workplace.\(^{12}\) Published in 1988, Abbott’s book could not fully anticipate the impacts of desktop computing and network communications on what he called “the information professions.”\(^{13}\) Yet, his approach to classifying the professions and his identification of “the information professions” as a group worthy of study are particularly helpful to thinking about librarianship and law librarianship.\(^{14}\)

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14. *Id.*
Abbott argues that even well-established professions such as law and medicine, with elaborate licensing and regulatory mechanisms controlling entry into their ranks, still must compete with other groups for jurisdiction over who does what work in the workplace. In some areas of their work, doctors compete for jurisdiction with nurses and physician's assistants, lawyers compete with paralegals, just as librarians compete with information technologists.

Librarians face additional challenges because of the nature of their work. They face competition in both the real and the virtual library not only with technologists or other information professionals, but also with the primary users of library services. Librarians can easily find themselves competing for jurisdiction with other professionals—lawyers and doctors and others—who do their work using the same information held and organized by librarians. Who knows more about legal information: the law librarian or the law professor? Who should select books for the collection or databases for licensing: the librarian or the professor? Now, in a time of constant and ubiquitous electronic access to legal and other information, many of the same questions can be asked about law librarians' relationships with students and other clients as they might about relationships with credentialed professionals and others in the workplace.

Abbott also criticizes what he called the "textbook sociology" approach to studying the professions, which examines all knowledge-based occupations aspiring to professional status in light of the characteristics of law and medicine, then categorizes many of those occupations as "semi-professions," perhaps at some stage of professionalization, moving toward being full professions like the two prototypes.

15. Id. at 15.
16. Id.
17. In introducing an American Association of Law Schools workshop for law librarians, John Garvey, dean of the Boston College Law School and president of the AALS, noted that as a young law professor he would never ask the help of law librarians—certainly, he knew more than they did about the law. Later in his career, however, he said he would not dream of not asking for a librarian's help in dealing with legal information. John H. Garvey, Welcoming Remarks at the AALS Workshop for Law Librarians (June 1, 2008).
19. Abbott (1998), supra note 12, at 431-432. He notes as well that "the conceptual difference between profession and semi-profession probably has more to do with the difference between men and women than anything else." Id. at 431. On the impacts of being considered a "woman's profession" on librarianship's professional culture, see Richard A Danner, Redefining a Profession, 90 LAW LIBR. J. 315, 352 (1998) and sources cited therein.
For Abbott, "[t]he professions all exist on one level," and "[w]hat really matters about an occupation—librarianship or any other—is its relation to the work that it does." This approach provides a professional grounding for librarianship and other information professions without forcing them to share the same characteristics as law and medicine in order to be considered professions. In a 1998 article, I argued that, freed from the need to aspire to be like the traditional professions, librarianship could be looked at as "as a service-oriented, client-centered profession: one in which meeting the client's needs as the client sees them was of more importance than the expertise of the professional."

This was neither a new nor an earth-shaking conclusion: the idea of the "service profession" is common in the literature of the professions and the literature of librarianship. In an article titled What is an Information Professional?, SMU management professor Richard Mason points out that all information professionals are mediators, whose job is "to get the right information from the right source to the right client at the right time in the form most suitable for the use to which it is to be put and at a cost that is justified by its use." Jesse Shera wrote in 1968: "Librarianship, admittedly, is a service profession, and its internal variants are shaped by the nature and character of the group served."

My own article was intended to suggest that, despite differences in skills and training, law librarians and legal information technologists share a common orientation toward service, and both work to provide a context in which information can be used productively to develop new knowledge. I argued that law librarians had the opportunity to take a leadership role in developing a new technology-savvy profession of legal information professionals.

In 2008, I revisited some of these questions when I was asked to respond to a new paper with a somewhat different perspective on what makes librarianship a profession. That article, by James Donovan of the

21. It is not in conflict with writers such as Talcott Parsons, who have defined the professions in terms of the characteristics of professional work (e.g., knowledge, skills or competencies, shared values). See Talcott Parsons, Professions, in 12 INT'L ENCYCLOPEDIA SOC. SCI. 536, 536 (1968).
22. Redefining a Profession, supra note 19, at 352 (emphasis in the original).
University of Georgia Law Library, does not acknowledge the kinds of distinctions among the professions employed by Abbott, but argues that, to be a profession, librarianship must be like law or medicine. As he puts it: "The conclusion that librarianship is not a real profession is then implicitly endorsed when Danner seeks to dissociate librarianship from the prototypical professions of law and medicine."27

Donovan doesn’t accept the idea that a librarian’s professional work can be based in service or in meeting the needs of library users as users define them. In fact, he argues that the concept of “service profession” is itself a contradiction because it “invokes an external locus of control. Important decisions are made outside the librarian’s sphere of influence,”28 denying librarians the autonomy necessary to be considered professionals.

Donovan seems to link his own claim to professional status for librarians to the traditional “essential tasks” of libraries, as described by Walt Crawford and Michael Gorman: “Libraries exist to acquire, give access to, and safeguard carriers of knowledge and information in all forms and to provide instruction and assistance in the use of the collections to which their users have access.”29 For Donovan, these activities create for the librarian “independent obligations toward collection development and the organization and preservation of knowledge and information in all its forms.”30

From this perspective, too much emphasis on service allows the client to define the librarian’s work, and possibly disconnects it from the professional values and essential tasks of libraries. At a time when users of library services are heavily influenced by popular culture, Donovan suggests that “[t]rends in both popular culture and public expectations have grown at odds with the long-term responsibilities of librarians, who seem unable to resist being pulled along.”31 As evidence, he cites libraries emulating Google’s search engine in their online catalogs, the Library of Congress “dumbing down” its cataloging practices, and products like Google Book Search effectively encouraging their users “to

27. Id., at 101.
28. Id. (emphasis in original).
31. Id. at 102.
think in digestible, keyword-accessible bytes at the expense of complex ideas.\textsuperscript{32}

But, what does the future offer librarians if their professional status is grounded in activities (selecting, organizing, and preserving knowledge and information) that might no longer be as essential in the new digital environment as they were in the print library? Ten years ago, an American Association of Law Libraries committee took a different tone, defining the mission of the profession as "serving the information needs of the legal profession and the legal information needs of the public," noting that the other things librarians do: "acquiring, collecting, organizing, retrieving, and disseminating legal and related information are only subsets of that basic mission."\textsuperscript{33} Certainly, the purpose behind law librarians' long-standing efforts to select, organize, and preserve legal information must be to enable those who need that information to find it and use it effectively.

I closed my written response to Donovan with a 1958 quotation from one of my professional heroes, William R. (Bob) Roalfe, who developed the law libraries at the University of Southern California, Duke and Northwestern, and is well-known for his contributions to U.S. and international law librarianship. Writing in 1958, Roalfe observed that the complexities of the legal information environment as they appeared at the time would in future require even higher levels of service from the law library.\textsuperscript{34} But, in order for service to provide a viable model for the profession, it is necessary to know what services users of legal information will require in the future digital environment and whether librarians are likely to be positioned to provide them.

\textsuperscript{32} Id. at 103. He finds what he calls a postmodernist foundation for the weak, service-based model in sources such as Laura Cohen's "A Librarian's 2.0 Manifesto," a list of "affirmations" that emphasize the need for librarians to learn the "information culture" of their users and to shape [library] services to reflect users' preferences and expectations." See Laura B. Cohen, A Manifesto for Our Times, AM. LmR., Aug. 2007, at 47-48. As Donovan points out, "nowhere does [Cohen] mention heretofore traditional skills such as collection development, evaluation, or preservation." Donovan, supra note 26, at 98.


\textsuperscript{34} William R. Roalfe, Law Library Service from the Administrator's Point of View, 51 Law Libr. J. 349, 353-54 (1958), quoted in Danner, supra note 25.
III. THE FUTURE

I've seen the future, brother: it is murder.\textsuperscript{35} — Leonard Cohen

Most prognosticators on the future of libraries and librarians offer less gloomy views than the dire straits Leonard Cohen sees for all of us in his 1992 song, “The Future.” Yet, most also suggest that there is little reason for librarians to be complacent regarding their future roles in a changing information environment. Some examples:

A. A New Digital Order

Nicholas Joint of the University of Strathclyde describes the future challenges librarians will face in what he calls “a new digital order.”\textsuperscript{36} At present, Joint notes, we remain in a “largely hybrid information environment,” where, regardless of format, information objects (books, journals, web pages, pdfs) are describable, collectable (and must be put into ordered collections), and preservable (and need to be preserved to maintain the continuity of knowledge).\textsuperscript{37} In this hybrid environment, digital libraries are in many ways “merely reincarnations of old media, repressing the intrinsic nature of new digital media in order to make change manageable.”\textsuperscript{38} Joint suggests that librarians and other creators of “interim digital libraries” fail to recognize that digital information is not the same as print—despite the attraction initially of pretending that it is.\textsuperscript{39}

In contrast to this interim environment, Joint describes the features of a new digital order in which there are no traditional information objects with determinate formats or determinate qualities and hypertext collections cannot be selectively collected. Although much digital data is ephemeral, its loss is not necessarily catastrophic. He concludes:

\textsuperscript{37} Id. at 13.
\textsuperscript{38} Id. at 14.
\textsuperscript{39} Id. at 15.
Thus, there is no such thing as a traditional library in a postmodern world. Postmodern information sets are just as accessible as traditional libraries, but without possessing any of the traditional features of a library: there are no formats, no descriptions, no hope of collection management, no realistic possibility of preservation. And they work fine.\(^\text{40}\)

Whether that future is reached soon or ever, it seems risky for librarians to bet their own futures on the continued primacy of their traditional roles in collection development, and the organization and preservation of knowledge and information, all of which are based in the print environment. Certainly the direction of movement within the present “hybrid information environment” is toward the all-digital information future Joint envisions, when those roles may have much less importance.

**B. The Library is Dead, Long Live the Library!**

Joint’s points regarding librarianship’s failure to fully adopt new technologies are echoed in a 2008 paper by Lyman Ross and Pongaricz Sennyey, who note that “the profession has reached a point of diminishing returns as it continues to tinker with its traditional protocols and services, while emerging technologies are improving at an exponential rate.”\(^\text{41}\)

For Ross and Sennyey, librarians have:

- Underestimated the importance of web search techniques;
- Failed to acknowledge the significant research collections being built online;
- Not recognized that students’ information seeking habits are formed well before they arrive on campus;
- Not realized that the Internet’s impact on the costs of finding information has dramatically diminished the value of local collections and services\(^\text{42}\)

Following Abbott’s earlier work on the professions,\(^\text{43}\) Ross and Sennyey argue that librarians have failed to recognize and respond to the

\(^{40}\) Id. at 17.


\(^{42}\) Id. at 146.

\(^{43}\) See *supra* text accompanying notes 11-16.
competitive environment in which they work: "Until the advent of the Internet, academic libraries had no competition and their patrons were a captive audience. Students and faculty either learned the protocols and organizational principles of the library, no matter how esoteric or complex, or did without." The questions asked at today’s reference desk are driven by structural barriers that libraries themselves impose between the patron and information, e.g., poorly designed and inconsistent computer interfaces, confusing buildings, and professional jargon—many of which were meant to add value to the information held in the print library. In a digital environment, the obstacles, or friction, to the transmission of information are significantly lower than in an analog environment, making the library’s barriers more obvious and troublesome to researchers. This observation has two implications for library services:

- Services that lowered friction in an analog environment do not necessarily have the same effect in a digital environment;
- The Internet, by definition, is a distributed and universally accessible medium; and therefore efforts to centralize information miss the point.

Although librarianship was built upon an ethos of service, the services librarians offer can no longer be delivered effectively without the application of technology. In the digital environment, librarians must harness computing expertise to deliver effective services that give the library a competitive advantage over other providers of information and services. Without that goal firmly in mind, "a misplaced service ethos tethers librarians to services no longer desired by the majority of library users."

C. Falling off the Radar Screens of Faculty

How has greater direct electronic access to information—to the stuff of scholarship—affected faculty use of the library and perceptions of its

44. Ross & Sennyey, supra note 41, at 146.
45. Id. at 147. For a similar perspective, see Redefining the Law Librarian’s Profession: A Town Meeting on the Future of Law Librarianship, July 22,1996, in TOWARD A RENAISSANCE IN LAW LIBRARIANSHIP, supra note 26, at 27 (comments of Harry S. (Terry) Martin).
46. Ross & Sennyey, supra note 41, at 147.
value? A 2008 Ithaka report suggests a growing disconnect between faculty and librarian perceptions of the role the library plays in support of research and scholarship.47

Based on surveys conducted in 2000, 2003, and 2006, the Ithaka study found that while university faculty continue to value library services, they also “perceive themselves to be decreasingly dependent on the library for their research and teaching and they anticipate that dependence to continue to decline in the future.”48 The surveys tested the importance to faculty of three library roles: purchaser of resources, archive for resources, and gateway to information.49 The most recent found that (with some variations by discipline clusters50) faculty continue to rate all three roles highly, but view the library’s gateway role as likely to become less important over time and into the future.51

Significantly, the report suggests that faculty perceptions of the library’s importance as a gateway to information stand “in stark contrast” to librarians’ sense of the importance of that role. Over ninety percent of librarians surveyed in 2006 saw the gateway role as “very important” and almost as many expected it to remain so. The report asks: “if librarians view this function as critical, but faculty in certain disciplines find it to be declining in importance, how can libraries, individually or collectively, strategically realign the services that support the gateway function?”52

The Ithaka study emphasizes that faculty perceptions of the library’s importance and reliance on library resources for their scholarship differ by discipline, with humanities scholars continuing to place more importance on the library’s gateway role than those in the hard sciences, with social scientists (including legal scholars) between the two. Law profes-

48. Id. at 5.
49. The survey instrument described the purchaser role by stating “the library pays for resources I need, from academic journals to books to electronic databases,” the archive role by “the library serves as a repository of resources—in other words, it archives, preserves, and keeps track of resources,” and the gateway role by “the library is a starting point or ‘gateway’ for locating information for my research.” Id. at 5, n. 6.
50. Id. at 5, n. 5.
51. Id. at 9, Figure 3.
52. Id. at 6.
sors are long-used to the rich electronic resources of the legal information databases, accustomed to desktop delivery of the scholarly literature of their discipline through electronic working papers services like SSRN or the vast journal repository provided by Hein Online, and are increasingly interdisciplinary in their research. Is it not likely that this "important lesson" from the Ithaka report applies to law?

[T]he library is in many ways falling off the radar screens of faculty. Although scholars report general respect for libraries and librarians, . . . researchers no longer use the library as a gateway to information, and no longer feel a significant dependence on the library in their research process. . . . In short, although librarians may still be providing significant value to their constituency, the value of their brand is decreasing. 53

IV. ROLES AND PLAYERS IN THE SCHOLARLY ENTERPRISE

You say you want collaboration…
Well, you know, we all want to change the world. 54
— John Lennon (slightly modified)

A. The Chimera of Collaboration

Duke Law School’s 2008 Dedication Week public conversation about the role of the 21st century academic law library was unhearsed, but the comments of both speakers and audience members were stimulating and at times compelling. It was easy for all to agree on the continuing value of the law library to students as a place for individual and group study, as well as on the role of librarians in teaching students to do effective legal research not only in the classroom but less formally in the library itself. (Yale Law Librarian Blair Kauffman talked about creating teachable moments through “assertive reference” interventions. 55) But the discussion foundered a bit when it turned to the library’s role in sup-

53. Id. at 30.
54. THE BEATLES, Revolution 1, on THE BEATLES (Capitol Records 1968) (with apologies to John Lennon).
55. Danner, Kauffman & Palfrey, supra note 5, at 146.
Supporting research and scholarship in a world where faculty and other researchers see less need to use the library than when the materials they needed were only in print formats.

Harvard Law School Vice Dean of Library and Information Resources John Palfrey noted the law library’s continuing core role in supporting doctrinal scholarship, but also the difficulties of sustaining that role for all faculty as legal scholarship becomes more interdisciplinary and international. Increasingly, librarians must work with faculty whose approach to research differs from that of the traditional legal scholar. The Duke discussion considered the need to collaborate with the faculty in their research, a matter that librarians have talked about forever, but which has proven to be something much easier for librarians to discuss among themselves, than to put into practice. How often do efforts to develop ongoing relationships between faculty and reference librarians end up as little more than fetching services, providing little more than contacts for faculty members to call to find items they need. This makes faculty happy, but is it the best that librarians can do to support their scholarship? Is this professional work? Is it truly collaborative?

In July 2009, about fifty law librarians participated in a day-long workshop preceding the annual meeting of the Association of American Law Libraries on the topic: “The Academic Law Library of 2015: Predicting the Future and Making It Happen.” In these discussions, many of the panelists and participants predicted a future of greater collaboration with faculty scholars in their research. Yet, the question of how actually to work collaboratively with faculty remained largely unanswered.

To be creative in finding new ways to support faculty research law librarians must know more than a professor’s current research interests: they need to be knowledgeable about how faculty work. As a start, librarians need to understand the cultural differences between themselves and faculty, and how the Internet has impacted relationships

56. Id. at 149
57. Id. at 148-149
59. For descriptions of the culture of today’s law faculty members, see id. at 195-197; Sheri H. Lewis, A Three-Tiered Approach to Faculty Services Librarianship in the Law School Environment, 94 Law Libr. J. 89, 90-92 (2002).
between the two groups. Experienced scholars learn about new sources of information from their own reading and research and in discussions with their colleagues, within the discourse space of their discipline or other fields in which they are interested. The Internet has transformed this process not only by bringing a wealth of published and unpublished information to the desktop, but by allowing scholars to move easily and seamlessly from source to source, paper to paper, article to article, conversation to conversation.

Research on faculty perceptions of librarians has consistently suggested that the barriers to librarian collaboration with faculty are significant.\(^6\) Recent research indicates that, despite their potential for interaction and collaboration in the academic workplace, "there is an asymmetrical disconnection . . . between librarians and faculty."\(^6\) Citing organizational explanations for the disconnection, Christiansen, Stombler, and Thaxton note differences in the subcultures of the two groups, finding that while the culture of libraries encourages "sharing, cooperation, and collaboration," faculty are more likely "to value solitary work [more] highly and to maintain exclusive control over teaching and research projects." When they think of collaboration, it is in terms of working with other faculty in other fields.\(^6\) They are not disposed to think of librarians as fellow faculty members, nor to consider librarianship a field of study, or discipline, like their own or those of faculty in other academic departments. Librarians are not seen as having the kinds of expertise faculty have or thought of as likely collaborators. Collaborators are likely to be co-authors of published research papers; librarians more likely to be acknowledged for their contributions in a footnote.

Like other library users, faculty have been trained to think less about what librarians do than to think about the library itself and its collections of print resources. Faculty views of librarians have always been strong-

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60. A recent review of the literature on librarian-faculty relations notes that most studies on the subject are in the literature of librarianship; there has been little interest in the social sciences. See Lars Christiansen, Mindy Stombler, & Lyn Thaxton, A Report on Librarian-Faculty Relations from a Sociological Perspective, 30 J. ACAD. LIBRARIANSHIP 116, 116 (2004). See also Wade R. Kotter, Bridging the Great Divide: Improving Relations between Librarians and Classroom Faculty, 25 J. ACAD. LIBRARIANSHIP 294 (1999) (for a comprehensive review of the literature on librarian-faculty relations).

61. Christiansen, Stombler & Thaxton, supra note 60, at 117.

62. Id. at 118-119 (such as physical and temporal separations on campuses, differences in organizational power, measures of work success).

63. Id. at 119.
ly colored by what they observe librarians doing. What they see is reference librarians practicing their profession, not doing research to advance knowledge or teaching what they know to others. "[F]aculty see librarians as a resource (in some cases, a last resort) for gaining access to materials, not as experts who may play a central role in the preparation and execution of a research project." Christiansen and his colleagues conclude that the disconnection between librarians and faculty is based in a faculty view of librarians' work as service-oriented, while their own work "focus[es] on the production and dissemination of knowledge." Because they usually encounter librarians providing reference services, they have little sense of other types of library work: "research projects and publishing, creating new systems and techniques for searches, the development of collections, the development of courses, and so forth," and little reason to think of librarians in roles beyond providing services in support of their own research and teaching. Anticipating Donovan, Christiansen and his colleagues write: "[C]ontemporary society generally views service-oriented work as being of lesser importance than production, primarily due to the implicit subordinate-subordinate relations that appear inherent in service. Ours is not a society that considers service an honored form of labor . . . ."

B. Disciplinary Matters

It is well-established that the concept of academic discipline is crucial to the way that faculty members think about matters of status and relationships within the university. When they think about research, faculty members have in mind a fundamental process aimed at advancing the

64. See generally Richard A. Danner, From the Editor: Who We Are and What We Do, 80 LAW LIBR. J. 1 (1988), and sources cited therein.
65. Rebecca Kellogg, Faculty Members and Academic Librarians: Distinctive Differences, 48 C. & RES. LIBR. NEWS 602, 605 (1987) ("the very 'practice' of librarianship makes it the application of knowledge and not the advancement of knowledge").
66. Christiansen, Stomblper & Thaxton, supra note 60, at 119. Kotter's review of the literature on librarian-faculty relations found "classroom faculty often rate librarians that one of the least likely sources to which they would turn when seeking information." Kotter, supra note 60, at 296 (citing reasons why faculty might not turn to librarians for assistance).
67. Christiansen, Stomblper & Thaxton, supra note 60, at 119.
68. Id.
69. Id.
70. See, e.g., Kellogg, supra note 65, at 602.
body of knowledge within their discipline. Law professors understand the research process in their own field and know that something similar takes place in other disciplines. They understand that interdisciplinary research may provide powerful new insights into their own research interests. As a result, they increasingly seek collaborative relationships with scholars from other disciplines, who they see as peers in the scholarly enterprise. From this perspective, what potential for scholarly collaboration does the law librarian bring to the table?

In the academy, law is itself a recognized discipline, a field of study like many others. In addition, the standard subjects taught in law school courses, as well as areas of specialized legal practice or scholarly research, are themselves often referred to as “legal disciplines.” Applying this rubric, constitutional law is a discipline, as is intellectual property. Do law librarians have a discipline? Do they have a field of study, an area in which there is a body of knowledge to be learned, developed, and nourished?

It has been argued that legal research is the discipline of law librarianship. However, not only law librarians, but also law professors, attorneys, paralegals, and other legal professionals engage in legal research, write about it, and teach it. These groups might not readily cede the discipline (even if it were recognized) to law librarians. Also, if legal research provides the disciplinary basis for law librarianship, must it be mastered by all law librarians? Are librarians working in law libraries who have not studied the law or legal research not law librarians?

In 1975, Peter Nycum introduced his paper “Legal Research—The Unrecognized Legal Discipline” with the comment that “legal research is not unrecognized as existing, but rather is unrecognized as being of any consequence to the profession . . . .” Much of Nycum’s paper provides a still-valuable recounting of reasons why the importance of legal research is not recognized either by legal educators or by the practicing bar. He closed by describing the development of the then-new field of legal research.


73. Peter S. Nycum, Legal Research—The Unrecognized Legal Discipline, in RONALD A. MAY, ed., SENSE & SYSTEMS IN AUTOMATED LAW RESEARCH 81, 82 (1975).
information science, referencing an article by Jesse Shera, which argued that information science will provide "the theoretical base for the practice of librarianship." Nycum then called for the blending of "the two disciplines, law and information [in] the creation of a unified specialized discipline of legal information science." In sketching out what would be needed to develop the new discipline, Nycum stated that "the leadership for such a development will have to come from either the law schools, the practicing bar or zealous individuals." Noticeably absent from the list were law librarians, who Nycum believed would not take leadership in the effort for three reasons: 1) their "lack of initiative, understanding and creativity with information science," 2) the administrative responsibilities involved in running a library, and 3) the fact that at the time he wrote, only 15 percent of law librarians held degrees in both law and library or information science, a figure suggesting that the number of law librarians "who can contribute to the intellectual and theoretical base . . . of legal information science is very small." Nycum's paper was written for the American Bar Association's Second National Conference on Automated Law Research. Like many attempts (then and since) to predict the impacts of newly emerging technologies on the practice of law and legal research, those early papers could not anticipate either the rapidity or the extent to which those technologies would impact legal research and legal information. Recognition of a new discipline of legal information science did not accompany these developments, but in the mid-1980s, they did foster the beginnings of a rich literature on the role of legal information on the development of the law. Spurred by the writings of Robert C. Berring and other law librarians, as well as those of law professors and scholars in the information sciences, this literature is both interdisciplinary and international in scope.

74. Shera, supra note 24, at 64.
75. Nycum, supra note 73, at 98.
76. Id.
77. Id.
78. For the conference proceedings, see May, supra note 73.
79. In his introduction to the proceedings of the second ABA conference on automated law research, Ronald May lamented the lack of progress in the area since the first conference the year before, noting that "automated law research itself does seem to have progressed slowly," still employing the same search strategies "that existed fifteen years ago and are, in the context of a twenty-five year history, medieval." See Ronald E. May, Introduction, in May, supra note 73, at 1-2.
80. See Danner, supra note 11, for a review of the works of Berring, his contemporaries, and more recent writers.
In 2009, the Social Science Research Network (SSRN)’s Legal Scholarship Network, which notifies and makes available new scholarship in their areas of interest to law professors added a new working papers series on the topic of Legal Information & Technology to its list of “subject matter ejournals.” By May 2010, the e-journal archive held over 500 papers and articles, indicating a growing recognition of the importance of legal information alongside the other legal disciplines listed by SSRN. Many of those papers were written by law librarians, belying Nycum’s doubts that the profession would make meaningful contributions to the development of its own knowledge base. Further evidence of a growing interest in legal information scholarship is seen in programs featuring presentations of new papers by law librarians at recent annual conferences of the Association of American Law Schools, and the existence of three established U.S.-based journals publishing scholarship on topics of legal information.

It seems clear that the discipline Peter Nycum called for in the 1970s, based not in legal research, but in legal information scholarship, is emerging. Whether it is a discipline recognized by scholars in other legal disciplines, and seen as suitable for collaboration in the ways they might collaborate with other faculty is less clear.

V. SUPPORTING LEGAL SCHOLARSHIP IN THE DIGITAL AGE

Digital scholarship is almost by definition collaborative. . . . Digital scholars are . . . co-makers and end-makers rather than end-users of technology and information in this new environment. Now, this is a chal-


82. One reason for this is presumably the growth since 1975 in the number of law librarians with advanced degrees in both law and library or information science. The most recent data compiled by the American Association of Law Libraries indicates that 30.1 percent of academic law librarians hold both law and library science degrees. AALL BIIENNIAL SALARY SURVEY & ORGANIZATIONAL CHARACTERISTICS 2009 at 11.

83. See, e.g., Law Librarian as Scholar: Legal Authority and Research in an Age of Accessibility, in ASSOCIATION OF AMERICAN LAW SCHOOLS 2010 ANNUAL MEETING PROGRAM: TRANSFORMATIVE LAW 43 (2009).

lenge to the humanities tradition of lonely scholarship; it is also the tra-
dition that has been dominant in law schools.85

—Stanley Katz

If scholarship in the digital age is by definition collaborative, the col-
laborative space where scholars work and knowledge is created is where
librarians must be in order to work productively with the scholars whose
work they support. But what do librarians do within that space; what is
their role? The 2009 American Association of Law Libraries workshop
on the future of the academic law library discussed the need for librari-
ans to articulate a “value proposition” making clear the unique or dis-
tinctive value they bring to the workplace in a time when the value of
libraries and library services is being questioned.86 The workshop dis-
cussions suggested how difficult it is to construct value propositions that
rise behind platitudes or restatements of the things law libraries have tra-
ditionally done to support the missions of their institutions.87

Recent writings suggest a number of significant roles, some traditional,
some emerging, for law librarians to play in support of faculty scholarship
in the digital environment.88 The faculty liaison programs and faculty serv-
ices librarian positions established at many law schools can serve to de-
velop and maintain regular contacts between faculty members and the librar-
ians who support their research. Sophisticated electronic current aware-
ness services can be provided to those faculty members who will benefit
from up-to-date information about developments in their fields. Perhaps
most importantly, the library can also provide resources for faculty support
in new areas of need that might not normally be considered part of library
services. Examples include empirical research programs utilizing the
skills of empirically-trained graduate students from other disciplines, pro-

85. Stanley Katz, Keynote Address, The Law Librarian’s Role in the Scholarly Enterprise
Colloquium, University of South Carolina School of Law, Columbia, South Carolina (November
21, 2008), http://law.sc.edu/scholarly/.

86. See, e.g., DAVID ULRICH ET AL., RESULTS-BASED LEADERSHIP (1999) (for discussion of
value propositions generally). The book treats both “[t]he anchor value proposition [which] must
be sufficiently strong to lend the organization distinctiveness in the eyes of its desired cus-
tomers,” and areas in which to develop potential subsidiary value propositions, including: low
cost, quality, speed, service, and innovation. Id. at 40. See also Lyn Bosanquet, Transforming the

87. See Bosanquet, supra note 86.

88. See generally, Schilt, supra note 58; Lewis, supra note 59; Danner, Kauffman & Palfrey,
supra note 5.
viding greater exposure to faculty scholarship by developing open access repositories of faculty publications, and providing assistance with copyright agreements for books and articles going into publication. These things and others all recognize the specialized skills that reference librarians trained in law and information can bring into the digital space where scholarship is produced. All involve providing considered access to information and sources of knowledge, but also recognize that legal scholars increasingly will also require assistance in employing and manipulating information relevant to their projects, and in exposing the results of their research to world-wide audiences.

In developing new services to support the creators of legal scholarship, law librarians must realize that they do themselves no good by expressing willingness to do some work for faculty, but disdaining other work as appropriate only for student research assistants or faculty secretaries. The librarian's traditional distinction between reference and research means nothing to scholars and researchers who may welcome librarians who can contribute their skills to the development of new knowledge, but feel stymied if a librarian says "I can do this, but not that," when asked for help. A much better model is one proposed by Barbara Bintliff in which "law librarians are more like the professional research associates that you find everywhere in the sciences and social sciences." Under this model, librarians are not expected to be collaborators with faculty scholars, but to contribute their specialized knowledge about legal information to researchers within the collaborative space where scholarly discourse takes place and new legal knowledge is developed. The professional research associate model should also provide a firm basis for law librarians to efficiently organize and coordinate the efforts of student research assistants and other law school staff in supporting faculty research projects.

The continuing value of law librarians in Nicholas Joint's new digital order will come both from acknowledging that what they offer the legal scholar must change and from their being able to articulate clearly why the services they provide will contribute to the development of new knowledge. Most importantly, law libraries must hire bright and talented born-digital law librarians, unfettered by the trappings of old tools and desires for relationships with faculty scholars that may not be pos-

89. Barbara Bintliff, Context and the Role of the Law Librarian in the Scholarly Enterprise, The Law Librarian’s Role in the Scholarly Enterprise Colloquium, University of South Carolina School of Law, Columbia, South Carolina (November 21, 2008), http://law.sc.edu/scholarly/.
sible, but armed with new understandings of what library support for legal scholarship means in the digital environment. And law library directors must be prepared to set them free.