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Data-Driven Empirical Research Costing: Using Scholarly Literature, Open Government Data, and Formative Case Studies to Plan Projects*

Sarah E. Ryan, ** Mohotarema Rashid, *** and Irhamni Ali†

This article analyzes scholarly literature, open government data, and formative case studies to determine what factors drive costs and/or funding for empirical legal research, focusing on corpus projects. We find 14 factors drive costs and funding. We suggest using multiple sources of information to estimate empirical legal research project costs.

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Introduction

¶1 Digital work is a staple of 21st century law libraries.¹ Law librarians have robust processes for digitizing print book collections and archival materials.² They help faculty navigate landscapes of digital content, teaching, and scholarly communication.³ Law librarians publish analyses of algorithmic and machine-driven research platforms⁴ and open access primary source platforms.⁵ As such, the profession is well positioned to support an emerging area of empirical legal studies (ELS) research: corpus analysis. This article offers a roadmap to assist law librarians in planning, budgeting, and supporting empirical projects such as large corpus analyses.

¶2 We begin with a four-part literature review: (1) historical and emerging ELS research methods; (2) sample corpus studies from nonlegal fields; (3) early developments and techniques in legal corpus studies and three factors driving their project costs; and (4) research budgeting best practices from the nursing field. Following our literature review, we analyze project-funding data from two U.S. federal agencies that support large corpus research projects, and we present two case studies of recent legal librarianship corpus projects. Finally, we offer recommendations for law library support of large corpus projects.

1. Richard A. Danner et al., *The Twenty-first Century Law Library*, 101 LAW LIBR. J. 143 (2009); Michelle M. Wu, *Why Print and Electronic Resources Are Essential to the Academic Law Library*, 97 LAW LIBR. J. 233 (2005).

2. Femi Cadmus & Fred Shapiro, *Leveraging a Library Collection through Collaborative Digitization Ventures*, 20 TRENDS L. LIBR. MGMT. & TECH. 15 (2010); Jason Eiseman et al., *Litchfield Unbound: Unlocking Legal History with Metadata, Digitization, and Digital Tools*, 34 LAW HIST. REV. 831 (2016); Lesliediana Jones & Jennie C. Meade, *Five Years On: The GW Law Library LLMC Digitization Project*, 20 TRENDS L. LIBR. MGMT. & TECH. 21 (2010); see also Rebecca Chapman, *Protecting Our Spaces of Memory: Rediscovering the Seneca Nation Settlement Act Through Archives*, 113 LAW LIBR. J. 173, 202 (2021) (“Librarians . . . should consider creating an archival memory space as a means to further access information and engage the community in the concept of information completion.”).

3. John R. Beatty, *Citation Databases for Legal Scholarship*, 39 LEGAL REFERENCE SERVS. Q. 56 (2020); Jessie Wallace Burchfield, *Tomorrow’s Law Libraries: Academic Law Librarians Forging the Way to the Future in the New World of Legal Education*, 113 LAW LIBR. J. 5 (2021) (discussing online education services); Connie Lenz, *Affordable Content in Legal Education*, 112 LAW LIBR. J. 301 (2020) (discussing open educational resources, including faculty incentives and library support for OER textbooks); Bonnie Shucha, *Representing Law Faculty Scholarly Impact: Strategies for Improving Citation Metrics Accuracy and Promoting Scholarly Visibility*, 40 LEGAL REFERENCE SERVS. Q. 81 (2021).

4. Paul D. Callister, *Law, Artificial Intelligence, and Natural Language Processing: A Funny Thing Happened on the Way to My Search Results*, 112 LAW LIBR. J. 161 (2020).

5. Lisa von Wiegen & Shannon M. Oltmann, *A Different Democratic Divide: How the Current U.S. Online Court Record System Exacerbates Inequality*, 112 LAW LIBR. J. 257 (2020).

Literature Review

Empirical Legal Studies: Historical and Emerging Research Methods

¶3 ELS owes much to the law and economics movement.⁶ Given the influence of economics on ELS research, “[c]ausal inference has always been central to the enterprise of empirical legal studies.”⁷ That is, ELS scholarship has focused on quantifiable, real-world outcomes such as the size of accident settlements or length of criminal sentences and tried to determine what factors influence those outcomes.⁸

¶4 But while causal studies offer an elevated view of our justice and governance systems, they have three main weaknesses. First, causal studies often employ post hoc analysis of aggregated data. Many ELS scholars hew their research to the data collected, assembled, and disseminated by organizations not involved in the legal research. Second, experimental legal studies, which have been conducted for decades,⁹ maintain a small foothold within ELS.¹⁰ Third, most causal studies lack granularity. Because they focus on high-level data, they do not show the particular language or motivations that prompted legal outcomes. As a result, causal researchers often speculate about why litigants, legislators, and other legal actors elect one choice over another.¹¹ Qualitative ELS research fills some of this gap by providing actors’ explanations for their choices. But much qualitative ELS research features case study data that can be difficult to generalize to broader populations.¹²

6. Daniel E. Ho & Donald B. Rubin, *Credible Causal Inference for Empirical Legal Studies*, 7 ANN. REV. L. SOC. SCI. 17, 18 (2011); William M. Landes & Richard A. Posner, *The Influence of Economics on Law: A Quantitative Study*, 36 J.L. & ECON. 385, 385 (1993); R.H. Coase, *Law and Economics at Chicago*, 36 J.L. & ECON. 239 (1993); James R. Hackney, Jr., *Guido Calabresi and the Construction of Contemporary American Legal Theory*, 77 LAW & CONTEMP. PROBS. 45 (2014); cf. Mark C. Suchman & Elizabeth Mertz, *Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism*, 6 ANN. REV. L. SOC. SCI. 555, 557 (2010) (demonstrating that empirical legal research is rooted in the legal realist movement and fields beyond economics).

7. Ho & Rubin, *supra* note 6, at 20.

8. E.g., Theodore Eisenberg, *Four Decades of Federal Civil Rights Litigation*, 12 J. EMPIRICAL LEGAL STUD. 4, 11 (2015) (analyzing data reported to the Administrative Office of the U.S. Courts, assembled by the Federal Judicial Center, and disseminated via the Inter-University Consortium for Political and Social Research); Crystal S. Yang, *Free at Last? Judicial Discretion and Racial Disparities in Federal Sentencing*, 44 J. LEGAL STUD. 75, 78 (2015) (data sources include the U.S. Sentencing Commission, the Transactional Records Access Clearinghouse, and the Federal Judicial Center).

9. Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817, 823 (1991) (reporting experiences of racially diverse individuals and dyads).

10. See, e.g., Yonathan A. Arbel & Andrew Toler, *ALL-CAPS*, 17 J. EMPIRICAL LEGAL STUD. 862 (2020) (reporting on multiple consumer contract understanding experiments run via Mechanical Turk); Kevin L. Cope & Charles Crabtree, *A Nationalist Backlash to International Refugee Law: Evidence from a Survey Experiment in Turkey*, 17 J. EMPIRICAL LEGAL STUD. 752 (2020).

11. Christina L. Boyd et al., *Mapping the Iceberg: The Impact of Data Sources on the Study of District Courts*, 17 J. EMPIRICAL LEGAL STUD. 466 (2020) (arguing that focusing on published opinions misses intermediate choice making, as evidenced in filings).

12. E.g., Erin Adamson et al., *The Impact of Adjacent Laws on Implementing Violence against Women Laws: Legal Violence in the Lives of Costa Rican Women*, 45 LAW & SOC. INQUIRY 432 (2020); Anya Bernstein, *Porous Bureaucracy: Legitimating the Administrative State in Taiwan*, 45 LAW & SOC. INQUIRY 28 (2020).

¶5 Original¹³ analysis of large document collections is in short supply in ELS journals.¹⁴ But with advancements in machine reading,¹⁵ content analysis software (e.g., NVivo, MAXQDA),¹⁶ and other research technologies—along with the ebbing influence of economics on ELS¹⁷—this corpus research is more feasible and likely than in the past. Accordingly, law librarians can now develop project management practices for this emerging ELS research area. We can derive good practices from fields with long corpus research traditions.

Corpus Studies in Nonlegal Fields: Anthropology and Historical Sociolinguistics

¶6 Several fields, including anthropology and historical sociolinguistics, have long traditions of corpus research. In these fields, corpus denotes a collection of data used to tackle specific research questions.¹⁸ Researchers often subdivide corpora into two types: private and public.¹⁹ Private corpora include audio recordings, photos, and video recordings used for personal purposes. This data is useful for case studies or biographical projects. Public corpora are data found in the public sphere. Anthropologists study public corpora to understand broad social and political trends. Their public corpus research preceded the computer age.

¶7 In the 1960s, sociologist Shaoxing Chen and anthropologist Morton H. Fried manually processed millions of census sheets and produced a book with nearly 1,000 pages of typed data tables on the distribution of family names in Taiwan.²⁰ Nearly 50 years later, a team led by cultural anthropologist Oliver Streiter digitized the Chen and Fried data and united it with nearly 90,000 digital tombstone images—collected by

13. For example, research that begins with hypotheses (Hs) or research questions (RQs) created by the researcher, who also conducts the study.

14. Keith Carlson et al., *The Problem of Data Bias in the Pool of Published U.S. Appellate Court Opinions*, 17 J. EMPIRICAL LEGAL STUD. 224, 228 (2020) (“Methodologically, ours is the first work to engage in a large-scale computational text analysis of the corpus of federal appellate court opinions.”).

15. See, e.g., Carlson, *supra* note 14; Kevin Kwok-yin Cheng et al., *Judicial Disparity, Deviation, and Departures from Sentencing Guidelines: The Case of Hong Kong*, 17 J. EMPIRICAL LEGAL STUD. 580 (2020) (using machine reading of opinions published to the web to extract judges’ reasons for sentence).

16. See, e.g., Marco Brydolf-Horwitz, *Risk, Property Rights, and Antidiscrimination Law in Rental Housing: Toward a Property-in-Action Framework*, 45 LAW & SOC. INQUIRY 871 (2020) (using NVivo qualitative analysis software); Mark Fathi Massoud & Kathleen M. Moore, *Shari ‘a Consciousness: Law and Lived Religion among California Muslims*, 45 LAW & SOC. INQUIRY 787 (2020) (using NVivo software).

17. Suchman & Mertz, *supra* note 6, at 560.

18. Oliver Streiter et al., *Building a Corpus in Linguistic Anthropology: The Example of Thakbong*, in WORKSHOP ON THE RELATIONSHIP BETWEEN THE DISTRIBUTION OF LANGUAGES OR DIALECTS IN TAIWAN AND RACIAL MIGRATION, 2008, <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.476.2557&rep=rep1&type=pdf> [https://perma.cc/YKM3-PM3H].

19. Judith Nobels & Marijke van der Wal, *Linking Words to Writers: Building a Reliable Corpus for Historical Sociolinguistic Research*, in LANGUAGE AND HISTORY, LINGUISTICS AND HISTORIOGRAPHY: INTERDISCIPLINARY APPROACHES 343 (Nils Langer et al. eds., 2012).

20. 1 SHAOXING CHEN & MORTON H. FRIED, THE DISTRIBUTION OF FAMILY NAMES IN TAIWAN, THE DATA (1968); see also Oliver Streiter et al., *Matching Digital Tombstone Documentation to Unearthed Census Data: Surveying Taiwan’s Family Names, Ethnicities and Homelands*, 6 INT’L J. HUMAN. ARTS COMPUTING 57 (2012) (digitizing and computer analyzing the Chen and Fried dataset).

Streiter's team—to learn more about ethnicities and families in Taiwan.²¹ The tombstone dataset consisted of geo-referenced photos and Extensible Markup Language (XML) annotations of family name, location, life and death data, tombstone symbology, and estimated ethnicity.²² The researchers estimated ethnicity from the offerings left at gravesites by family members (such as certain food).²³ Streiter and colleagues noted that names are collective community traits that preserve history.²⁴ They found that the combined census and tombstone datasets offered richer evidence of ethnic migrations than the census data alone²⁵ and advised that corpora could be linked to enrich each other.²⁶ The researchers cautioned, however, that the work was complicated. Streiter's project required external funding, which was awarded by the Taiwan National Science Council and administered under the Taiwan e-Learning and Digital Archives Program.²⁷ The team's geo-tagged photos totaled two terabytes of data and were difficult to share.²⁸ Further, humans had to take the photos in a consistent manner.²⁹ A team of Dutch historical sociolinguists, discussed next, faced similar issues.

¶8 Historical sociolinguists can discern the development of language over time from corpora. During the past century, these researchers have debated the best methods for selecting and analyzing texts.³⁰ Today, they can employ artificial intelligence (AI) to analyze trends. Still, their research involves great human effort.

¶9 For 15 years, historical sociolinguists at the University of Leiden have been analyzing a trove of more than 1,000 boxes of Dutch documents,³¹ including 15,000 private letters confiscated by the English fleet and private sailors “during the frequent warfare between England and the Netherlands, from the second half of the seventeenth century to the early nineteenth century.”³² Prior corpora had featured the private documents of higher-class Dutch men. The seized letters were written or dictated by men, women, and children of all social ranks, including “lower classes which have otherwise left very few written traces[.]”³³

21. Streiter et al., *supra* note 20, at 57.

22. *Id.* at 58; Streiter et al., *supra* note 18, at 14.

23. Streiter et al., *supra* note 20, at 67; Duncan DeAeth, *A Taiwan News Guide to the ‘Do’s and Don’ts’ of Tomb Sweeping Day*, TAIWAN NEWS (Apr. 1, 2018).

24. Streiter et al., *supra* note 20, at 59.

25. *Id.* at 68.

26. *Id.*

27. *Id.* at 69.

28. Oliver Streiter et al., *ThakBong, Digitizing Taiwan’s Tombstones for Teaching, Research and Documentation*, TELDAP INT’L CONF. 9 (2010), https://www.academia.edu/210375/ThakBong_Digitizing_Taiwans_Tombstones_for_Teaching_Research_and_Documentation [https://perma.cc/GDZ2-XZZQ].

29. *Id.* at 10 (“[D]uring fieldwork [we] set visual clues to mark the beginning of the sequence of photos belonging to one tomb: With larger tombs we mark the onset of a new tomb with a photo of the global front view and the global side view.”).

30. See Arja Nurmi, *Recent Advances in Historical Corpus Linguistics*, 102 NEUPHILOLOGISCHE MITTEILUNGEN 90 (2001).

31. GIJSBERT RUTTEN & MARIKE J. VAN DER WAL, LETTERS AS LOOT: A SOCIOLINGUISTIC APPROACH TO SEVENTEENTH- AND EIGHTEENTH-CENTURY DUTCH xi (2014).

32. *Id.* at 1; see also Nobels & van der Wal, *supra* note 19.

33. RUTTEN & VAN DER WAL, *supra* note 31, at 2.

¶10 The Leiden researchers, led by Marijke van der Wal, faced a host of challenges in developing a letters corpus. For one, the physical letters needed to be selected and digitized. The researchers analyzed and photographed letters during frequent trips to the National Archives in Kew, United Kingdom.³⁴ Also, the digital images needed to be transcribed. The researchers assembled a team of volunteers to draft transcriptions, which the researchers reviewed and adopted.³⁵ Additionally, the images and transcriptions needed to be organized and accessible. The research team created a metadata structure and database.³⁶ Then, the authors of the letters had to be identified. The researchers used handwriting tools to link letters written by the same hand, syntax tools to demarcate autobiographical letters, and other methods in what became known as the Leiden Identification Procedure (LIP).³⁷ A research consultant then modified an existing AI forensics program, the Groningen Automatic Writer Identification System (GRAWIS),³⁸ into a system suitable for historical sociolinguistics research. This is but some of the work performed by van der Wal's team. The work was funded from 2008 to 2013 by the Netherlands Organization for Scientific Research.³⁹ The projects overseen by Streiter, van der Wal, and other nonlegal scholars offer a vantage point for viewing the emerging field of legal corpus studies.

Legal Corpus Studies: Early Developments and Techniques

¶11 Since the 1930s, jurists and legal scholars have experimented with linguistic and social scientific analysis of legal corpora.⁴⁰ Early empirical corpus projects were coded by hand⁴¹ and often failed to fully integrate nonlegal disciplines and methods.⁴² Manual

34. *Id.* at 6; Nobels & van der Wal, *supra* note 19, at 344.

35. Nobels & van der Wal, *supra* note 19, at n.7.

36. RUTTEN & VAN DER WAL, *supra* note 31, at 6, n.8.

37. Nobels & van der Wal, *supra* note 19, at 349.

38. *Id.* at 351.

39. *Id.* at xi.

40. Oliver E. Williamson, *Revisiting Legal Realism: The Law, Economics, and Organization Perspective*, 5 INDUS. CORP. CHANGE 383, 390 (1996) ("Legal Realism was unusually eclectic, appealing to economics, sociology, psychology, anthropology, linguistic theory, and statistics."); LAURA KALMAN, *LEGAL REALISM AT YALE 1927-1960*, at 15-20 (1986); Mark A. Hall & Ronald F. Wright, *Systematic Content Analysis of Judicial Opinions*, 96 CALIF. L. REV. 63, 67 (2008) (pointing to political scientist Fred Kort's 1957 content analysis of roughly 30 Supreme Court opinions as an early example of legal content analysis); Fred Kort, *Predicting Supreme Court Decisions Mathematically: A Quantitative Analysis of the "Right to Counsel" Cases*, 51 AM. POL. SCI. REV. 1, 2 (1957).

41. *E.g.*, Kort, *supra* note 40.

42. Williamson, *supra* note 40 at 384 (arguing that law and economics needed to more fully integrate organizational theory and methods to answer key research questions); Francis J. Mootz, III, *Desperately Seeking Science*, 73 WASH. U. L.Q. 1009, 1009-10 (1995) ("I sense that the [Law and Linguistics Conference] participants must have viewed this first effort as falling far short of the mark they had set. I fully expect that sustained interdisciplinary efforts will grow out of this conference[.]"); William K. Ford & Elizabeth Mertz, *Introduction: Translating Law and Social Science*, in *TRANSLATING THE SOCIAL WORLD FOR LAW: LINGUISTIC TOOLS FOR A NEW LEGAL REALISM* 1, 2 (Elizabeth Mertz et al. eds., 2016) (noting that interdisciplinary research has been slow to infuse legal scholarship and practice and citing six seminal legal-linguistic studies, five of which were published after 2000).

coding and disciplinary siloing slowed the development of robust corpus research.⁴³ But the past 15 years have produced several noteworthy studies.

¶12 In 2007, Evans and colleagues published an early application of machine learning to legal text classification in the *Journal of Empirical Legal Studies*.⁴⁴ Using amicus briefs from the *Bakke* (1978) and *Bollinger* (2003) cases, the team demonstrated how legal researchers could employ a two-step method to train computers to count subtle words and phrases indicating, for example, liberal and conservative stances.⁴⁵ The Evans article has been cited as a noteworthy development in computerized legal content analysis by a number of legal scholars.⁴⁶ But while the Evans article set the stage for large corpora studies, its corpus comprised just 150 documents.

¶13 In 2018, Lee and Mouritsen analyzed more than 5 billion words contained in two corpora developed at Brigham Young University.⁴⁷ The authors applied three corpus linguistics methods—frequency, collocation, and keyword in context⁴⁸—to perennial legal teaching and practice questions such as “what constitutes a vehicle?”⁴⁹ The authors reported findings such as a lack of empirical support for golf carts as vehicles in common vernacular.⁵⁰ More broadly, the study demonstrated both the potential and limitations of large corpora to demonstrate ordinary meaning reliably and validly (i.e., for adjudication purposes). The Lee and Mouritsen study is likely the largest number of words analyzed by legal scholars to date. However, the corpora were existing and developed over many years with the support of numerous grants.⁵¹ So the study cannot teach us how to develop a large corpus project.

¶14 Four recent, original corpus studies better demonstrate the support needed for this work. These studies show that resource requirements vary based on a host of

43. Hall & Wright, *supra* note 40, at 65 (“Legal scholars developed their uses of content analysis organically, similar to the way that judges develop the common law. Many legal content analysts designed their studies without referring to other examples of this method, and only in retrospect did a set of methodological principles start to emerge.”); see, e.g., Richard A. Posner, *A Theory of Negligence*, 1 J. LEGAL STUD. 29, 34 (1972) (“I read every published accident opinion of an American appellate court (state or federal, final or intermediate) issued in the first quarter of 1875, 1885, 1895, and 1905. . . . I abstracted the information in the opinions and then tabulated that information [n=1,528].”).

44. Michael Evans et al., *Recounting the Courts? Applying Automated Content Analysis to Enhance Empirical Legal Research*, 4 J. EMPIRICAL LEGAL STUD. 1007, 1036 (2007).

45. *Id.* at 1024–34; Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978); Grutter v. Bollinger, 539 U.S. 244 (2003); Gratz v. Bollinger, 539 U.S. 206 (2003).

46. E.g., Hall & Wright, *supra* note 40, at n.226; Ryan J. Owens & Justin P. Wedekind, *Justices and Legal Clarity: Analyzing the Complexity of U.S. Supreme Court Opinions*, 45 LAW & SOC’Y REV. 1027, 1028 (2011); Justin Wedekind, *Supreme Court Litigants and Strategic Framing*, 54 AM. J. POL. SCI. 617, 629 (2010).

47. Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 YALE L.J. 788, 833–35 (2018) (the corpora were News on the Web and Corpus of Historical American English).

48. *Id.* at 831–32 (explaining the frequency, collocation, and keyword in context strategies).

49. *Id.* at 836–44.

50. *Id.* at 859.

51. See ENGLISH-CORPORA.ORG, <https://www.english-corpora.org>, [<https://perma.cc/7FGC-GTXT>] (the parent site for the corpora); FAQs, ENGLISH-CORPORA.ORG, <https://www.english-corpora.org/faq.asp#x1> [<https://perma.cc/M9PH-JGDQ>] (information about the origination of the corpora, including the main creator, Mark Davies); *Mark Davies: Professor of Linguistics*, MARK-DAVIES.ORG [curriculum vitae], <https://www.mark-davies.org/> [<https://perma.cc/6WHX-SNY3>] (listing grants for corpora development).

factors, including whether the research materials were born digitally or in print; whether materials are now housed on the web, in print, or in a database; and whether the researchers want to perform automated, semiautomated, or unautomated/manual analysis. In short, the factors driving project costs include material origin, retrieval method, and analysis type.

Born-Digital, Web-Based Materials with Automated Analysis

¶15 In 2019, Uri Benoliel and Shmuel I. Becher examined the sign-in-wrap contracts of 500 popular websites.⁵² Benoliel and Becher deployed common readability tests—Flesch Reading Ease and Flesch-Kincaid⁵³—on a more heterogeneous sample of agreements than prior studies.⁵⁴ They found that “firms often utilize unreadable texts as their contracts.”⁵⁵ Benoliel and Becher employed at least three research assistants and received “generous financial support” from their respective business and law schools.⁵⁶ They shared their dataset with Yonathan A. Arbel and Andrew Toler, who “developed a script that algorithmically detected the case of words, sentences, paragraphs, and headers” and also detected whether those words were capitalized.⁵⁷ Arbel and Toler found that three-quarters of often-unreadable contracts contained at least one paragraph in all caps, a practice meant to alert consumers.⁵⁸ They employed at least six research assistants.⁵⁹ Altogether, the two studies employed at least nine research assistants to analyze a corpus of 500 documents using three tests/methods. These studies demonstrate the research assistance needed for a small corpus of born-digital documents, retrieved from the web, using automated analysis methods.

Print Materials, Database- and Print-Based, with Semiautomated Analysis

¶16 In 2018, Wolfgang Alschner, Julia Seiermann, and Dmitriy Skougarovskiy analyzed the text of 448 preferential trade agreements (PTAs) submitted to the World Trade Organization (WTO) by member states.⁶⁰ The PTAs spanned 1948 to 2015, and involved 202 parties.⁶¹ Alschner, Seiermann, and Skougarovskiy obtained most of the PTAs from a WTO database but had to manually search for PTAs with broken database links.⁶² They “transformed treaties from their widely diverging original formats into a unified and machine-readable marked-up text format (XML)”⁶³ and performed both machine

52. Uri Benoliel & Shmuel I. Becher, *The Duty to Read the Unreadable*, 60 B.C. L. REV. 2256, 2256 (2019).

53. *Id.* at 2272.

54. *Id.* at 2269.

55. *Id.* at 2296.

56. *Id.* (thanking three research assistants).

57. Arbel & Toler, *supra* note 10, at 873.

58. *Id.* at 874.

59. *Id.* at 862 (thanking six research assistants).

60. Wolfgang Alschner et al., *Text of Trade Agreements (ToTA)—A Structured Corpus for the Text-as-Data Analysis of Preferential Trade Agreements*, 15 J. EMPIRICAL LEGAL STUD. 648 (2018).

61. *Id.* at 650.

62. *Id.*

63. *Id.* at 651.

and manual work to systematize the structure of the PTAs. Their 2018 *Journal of Empirical Legal Studies* article reported summary statistics on the PTAs.⁶⁴ It also described a seven-step semiautomated process for creating the Text of Trade Agreements (ToTA) corpus from the PTA agreements.⁶⁵

¶17 The PTA project was organizationally complex. Alschner and Skougarevskiy were academic researchers at two universities, whereas Seiermann was an associate economic affairs officer at the U.N. Conference on Trade and Development (UNCTAD).⁶⁶ The PTA research was part of a larger text analysis project supported by a \$433,159 grant from the Swiss National Science Foundation (SNSF)⁶⁷ and conducted with the assistance of UNCTAD and the WTO. Two research assistants contributed to the Alschner, Seiermann, and Skougarevskiy article,⁶⁸ and seven project staff were listed on the SNSF grant.⁶⁹ The Alschner, Seiermann, and Skougarevskiy study demonstrates the resources needed to analyze a larger corpus of print documents, retrieved from a database and print storage, using semiautomated analysis methods.

Print Materials, Print-Based, with Unautomated and Semiautomated Analysis

¶18 In 2019, Hanjo Hamann published an introduction to the German Federal Courts Dataset (GFCD) in the *Journal of Empirical Legal Studies*.⁷⁰ The GFCD covered nearly 40 years of federal judicial decisions, many of which had to be digitized, made machine readable, and coded.⁷¹ The dataset linked:

- (1) 2,006 senate decisions, (2) 3,284 different proceedings referred to the German Federal Constitutional Court (GFCC) between 1972 and 2010, (3) legislative data and information from the political environment, as well as (4) public opinion data.⁷²

¶19 Hamann estimated that the database held over 3,000 pages of judicial documents.⁷³ He demonstrated the utility of the dataset for exploring topics such as the gender composition of the German federal bench.

¶20 Though some aspects of the data transformation were semiautonomous, Hamann's research assistants performed extensive manual coding.⁷⁴ The larger GFCD

64. *Id.* at 664.

65. *Id.* at 662–63.

66. *Id.* at 648.

67. *Id.* at 648 (citing grant number 162379); Pauwelyn Joost [Applicant], *Convergence versus Divergence? Text-as-Data and Network Analysis of International Economic Law Treaties and Tribunals*, Swiss NAT'L SCI. FOUND., <https://data.snf.ch/grants/grant/162379> [<https://perma.cc/J32K-FY3N>].

68. Alschner et al., *supra* note 60, at 648.

69. Joost, *supra* note 67.

70. Hanjo Hamann, *The German Federal Courts Dataset 1950–2019: From Paper Archives to Linked Open Data*, 16 J. EMPIRICAL LEGAL STUD. 671 (2019).

71. *The Project*, CONST. CT. DATABASE, <https://ccdb.eu/about-the-project/> [<https://perma.cc/95RP-C6YZ>].

72. *Id.*

73. Hamann, *supra* note 70, at 678.

74. *Id.* at 679 (“Extracting data from digitized allocation plans was a labor-intensive manual task that had to be restricted to only a part of the docuset in the funding phase of the project. . . . Research assistants manually transcribed these into an Excel sheet[.]”).

project was funded by a foundation, two private associations, the German government, and several universities and research institutes.⁷⁵ Approximately seven faculty/research associates and more than 20 research assistants contributed to the GFCD.⁷⁶ Hamann's article provides a roadmap for undertaking similar work, including digitization of mid-twentieth century primary sources. It demonstrates the resources needed for research on a larger corpus of print documents, retrieved from print storage, using unautomated/manual and semiautomated analysis methods.

¶21 Of course, Hamann's work—like each of the featured legal corpus studies—had unique challenges and needs that belie a three-factor schema and simplistic budget calculation. Unfortunately, neither ELS nor law librarianship journals seem to have tackled the issue of empirical project costing. For additional insight on research budgeting, we turn to the field of nursing.

Research Budgeting: Examples and Best Practices from Nursing

¶22 Law librarians understand how resource shortages harm research. When faculty submit complex project requests, librarians strive to estimate resource needs as accurately as possible, based on local and outside expertise.⁷⁷ But large corpus projects differ from many projects of the past. They require significant upfront planning and research budget development. While law library administrators have extensive experience in operations and capital budgeting,⁷⁸ empirical research budgeting is a newer skill for many law librarians and faculty.⁷⁹ Fortunately, the nursing field offers useful guidance on research budgeting.⁸⁰

¶23 In 2004, Joseph Higdon and Robert Topp published a research grant budgeting article in the *Western Journal of Nursing Research*.⁸¹ Higdon and Topp defined key terms and proposed a multistage grant planning method.⁸² Research grant budgets, they explained, contain two main cost categories: direct and indirect.⁸³ Direct costs depend on the research and include project personnel, consultants, subcontractors, and equipment.⁸⁴

75. *Id.* at 671; CONST. CT. DATABASE, *supra* note 71.

76. *The Team*, CONST. CT. DATABASE, <https://ccdb.eu/team/> [<https://perma.cc/25KW-JVFF>]; *Former Members & Assistants*, CONST. CT. DATABASE, <https://ccdb.eu/team/formermembers/> [<https://perma.cc/79GZ-LZQ5>].

77. See Eiseman et al., *supra* note 2; Jones & Meade, *supra* note 2.

78. E.g., Virginia J. Kelsh, *Build It Right and They Will Come: The Librarian's Role in Library Construction*, 98 LAW LIBR. J. 269 (2006).

79. See Margaret Middleton et al., *Lessons Learned by an Inter-disciplinary Research Team Evaluating Medical-Legal Partnership with the Department of Veterans Affairs*, 68 S.C. L. REV. 311 (2016) (reporting one of the first grant-funded medical-legal research studies); Robert M. Jarvis & Phyllis Coleman, *Dog Days in the Law Library: Philosophical, Financial, and Administrative Issues Raised by Faculty Summer Grant Programs*, 37 NOVA L. REV. 309 (2012) (describing an internal research grants program).

80. Joseph Higdon & Robert Topp, *How to Develop a Budget for a Research Proposal*, 26 W.J. NURSING RSCH. 922 (2004); Marti Rice et al., *Implementing the Research Budget*, 28 W.J. NURSING RSCH. 234 (2006).

81. Higdon & Topp, *supra* note 80.

82. *Id.*

83. *Id.* at 927–28.

84. *Id.* at 924.

In corpus research, direct costs can also include items such as document retrieval fees, for instance, charges to a researcher's Public Access to Court Electronic Records (PACER) account. Indirect costs cover general facilities and administrative overhead.⁸⁵ Indirect cost rates are set by individual funders or negotiated between funding organizations and recipient institutions.⁸⁶ If the funder allows, indirect costs can include office space, laptop computers, and even malpractice insurance.⁸⁷ Both direct and indirect costs are driven by the needs of the project, researcher, and home institution. As a result, Higdon and Topp urge grant writers to use the planning process to strategize cost efficiencies.⁸⁸ Rice and colleagues offered similar advice in a 2006 *Western Journal of Nursing Research* article.⁸⁹

¶24 Rice and colleagues suggested 10 ways to control direct costs, including reducing the amount of time, or percentage effort, that the lead researcher, staff, and consultants spend on a project.⁹⁰ Researchers can rein in costs by decreasing the number of research variables, limiting the number of study sites, reducing travel, and negotiating cost sharing of salaries and other expenses.⁹¹ "Cost sharing," according to the Rice article, "requires the unit to absorb some of the cost of conducting the research (usually in the form of salary supplementation)."⁹²

¶25 For law faculty, cost sharing will mean that the law school or university agrees to match some of the external grant funding so that the project budget can be fully funded. As Rice and colleagues noted, cost sharing can be problematic for schools that are not used to providing certain funds, services, or staff such as shared data managers.⁹³ Further, cost sharing implicates school and university resources beyond the research team, so it requires additional planning, administrative review, and relationship management. The collaborative process involved in all externally funded research—with or without cost sharing—will be newer to faculty who have worked autonomously or on nonfunded research projects.

¶26 Law librarians can assist researchers in connecting with the appropriate law school and university finance personnel, as well as university grants and contracts staff.⁹⁴ Librarians can also suggest that junior faculty seek faculty mentors with track records of grant-funded projects. Several nursing studies suggest that senior mentors

85. *Id.* at 928.

86. *Id.* at 927; e.g., *ACLS Sustaining Public Engagement Grants*, AM. COUNCIL OF LEARNED SOCIETIES, <https://www.acls.org/competitions/acls-sustaining-public-engagement-grants/> [https://perma.cc/N7YP-EYXA] (capping indirect costs at 10 percent).

87. E.g., *Frequently Asked Questions: Policy Clarification Notice (PCN) #15-01*, HEALTH RES. & SERVS. ADMIN., RYAN WHITE HIV/AIDS PROGRAM (May 15, 2015), <https://ryanwhite.hrsa.gov/sites/default/files/ryanwhite/grants/faq-policy-clarification-notice-15-01.pdf> [https://perma.cc/LG2H-XJEP].

88. Higdon & Topp, *supra* note 80, at 923.

89. Rice et al., *supra* note 80.

90. *Id.* at 236.

91. *Id.*

92. *Id.*

93. *Id.*

94. In addition, law librarians can connect research faculty to intellectual property and technology transfer staff and human subjects research management staff. See Sarah E. Ryan, *Human Subjects Research Review: Scholarly Needs and Service Opportunities*, 108 LAW LIBR. J. 579 (2016).

can bolster junior mentees' grant-writing skills, increase the number of submitted proposals, and possibly enhance the likelihood of funding.⁹⁵ Similarly, sharing best practices among law librarians should contribute to more successful shepherding of proposal development and grant-funded projects, including empirical legal corpus research.

¶27 In sum, our literature review uncovered important factors in corpus costing, including material origin, retrieval method, and analysis type. But our literature review has two main weaknesses. First, most of our articles feature a single project or dataset—a case study approach—that obscures broader cost and funding trends. Second, the articles reveal little about the researchers' struggles to launch large projects. Our articles, like most published studies, feature completed, successful projects rather than the formative work that paved the way for success. As a result, we developed two additional research questions:

RQ1: Could grant award data demonstrate useful information?

RQ2: Could lessons be learned from uncompleted research case studies?

Methodology

¶28 We selected two U.S. federal agencies known for awarding grants for corpus projects: National Endowment for the Humanities (NEH) and National Archives and Records Administration (NARA). NEH supports research, preservation, and programming at colleges, museums, libraries, and other organizations with the goal of advancing knowledge and understanding of the humanities.⁹⁶ NARA is the recordkeeper of the United States.⁹⁷ NARA focuses on preserving and disseminating documents that have legal and historical significance.⁹⁸ NARA primarily provides grants through the National Historical Publications and Records Commission (NHPRC); Congress allocates at least \$10 million for these grants annually.⁹⁹ Since our main aim was to have insights about NEH and NARA grant data, we chose an official open data source of federal spending information, USASpending.gov ("USA Spending") to retrieve data.

¶29 Using the Award Search feature of the USASpending website,¹⁰⁰ we obtained data on grants made to higher and public education institutions for corpus research. Using the columnar search boxes, we specified "corpus" as the keyword, "2011-21" as the period covered, "higher education" as the recipient type, and "NARA" and "NEH"

95. Thóra B. Hafsteinsdóttir et al., *Leadership Mentoring in Nursing Research, Career Development and Scholarly Productivity: A Systematic Review*, 75 INT'L J. NURSING STUD. 21, 30 (2017).

96. *Divisions and Offices*, NAT'L ENDOWMENT HUMAN., <https://www.neh.gov/divisions-offices> [https://perma.cc/X4JN-6RXV].

97. *What Is the National Archives and Records Administration?*, NAT'L ARCHIVE REC. ADMIN., <https://www.archives.gov/about> [https://perma.cc/YC55-ZD9S].

98. *Id.*

99. *Grant Program*, NAT'L HIST. PUBLICATIONS REC. COMM'N., <https://www.archives.gov/nhprc/apply/program.html> [https://perma.cc/2CUH-E6KL].

100. *Award Search*, USASPENDING.GOV, <https://www.usaspending.gov/search> [https://perma.cc/H7P6-FL5V].

as the agencies, respectively. To clean the data, we used OpenRefine (previously known as Google Refine).¹⁰¹

¶30 To run exploratory analysis, we used Python language and Natural Language Processing (NLP) techniques in Excel. First, the doctoral student authors wrote Python code and used NLP techniques to analyze the data in Excel. Then they employed data analysis and visualization tools. We employed a multistep process because exploratory data analysis can yield filters, insights, and operations to use in the visualization of the data.¹⁰²

¶31 For instance, we discovered that the narrative award descriptions contained a significant amount of nonsubstantive verbiage, or noise. So we deployed an NLP algorithm called Bidirectional Encoder Representations from Transformers (BERT) to further analyze the award description.¹⁰³ “[T]he power of BERT-like representations comes from the use of context to provide the signal for [machine] learning . . . context-dependent representations.”¹⁰⁴ The BERT algorithm helped remove noise from the award descriptions. Additionally, we trimmed several words such as “year” and “project” to make the data more succinct and substantive for topic modeling. Then we performed exploratory data analysis (EDA) techniques on the corpus to generalize trends in the NEH and NARA research. The EDA technique is a best practice in exploring a corpus as a set of word occurrences that are data objects.¹⁰⁵ Through word counting, we began to see trends in the NEH and NARA data.

¶32 Separately, the lead researcher gathered documents from two of her current corpus projects, including employee timesheets, research meeting notes, grant applications, and data license requests. Using these materials, she wrote case studies describing formative research processes and issues, including strategies developed to overcome challenges. The case studies report on research in progress, including a project that might result in publications years from now, if at all. We report our data analysis first followed by the case studies.

101. OPENREFINE, <https://openrefine.org/> [<https://perma.cc/KG4Q-DU9K>] (“OpenRefine (previously Google Refine) is a powerful tool for working with messy data: cleaning it; transforming it from one format into another; and extending it with web services and external data.”).

102. Andrea Batch & Niklas Elmquist, *The Interactive Visualization Gap in Initial Exploratory Data Analysis*, 24 IEEE TRANSACTIONS VISUALIZATION COMPUT. GRAPHICS 278, 279 (2018).

103. *Demystifying BERT: A Comprehensive Guide to the Groundbreaking NLP Framework*, ANALYTICS VIDHYA, <https://www.analyticsvidhya.com/blog/2019/09/demystifying-bert-groundbreaking-nlp-framework/> [<https://perma.cc/79J9-GYSC>].

104. Zhenzhong Lan et al., *ALBERT: A Lite BERT for Self-Supervised Learning of Language Representations*, ARXIV 1, 3 (2020), <https://doi.org/10.48550/arXiv.2005.08575> [<https://perma.cc/4ED6-T9DY>].

105. Andrew Hardie, Keynote Address at the Ninth Int'l Corpus Linguistics Conf.: Exploratory Analysis of Word Frequencies Across Corpus Texts: Towards a Critical Contrast of Approaches (July 24–28, 2017), <https://www.birmingham.ac.uk/documents/college-artslaw/corpus/conference-archives/2017/keynote/andrew-hardie.pdf> [<https://perma.cc/9DGN-FVUC>].

Findings

¶33 We retrieved 2,990 NEH grants and 359 NARA grants from USA Spending. We reviewed the data and discovered total funding amounts that were zero or negative, and unspecified or zero-year project time periods. We removed these anomalies. We also removed entries that were extreme outliers, such as a project that lasted more than 12 years. This resulted in a loss of approximately 10 percent of the NEH entries and 33 percent of the NARA entries. These figures are shown in table 1.

TABLE 1
Retrieved and Analyzed Grants, 2011–2021

Agency	Retrieved	Analyzed
NEH	2,990	2,671
NARA	359	225

National Endowment for the Humanities (NEH) Data

¶34 Our NEH dataset contained relevant information about corpus grant recipients and the agency.¹⁰⁶ First, the data showed grant recipient trends, including (1) a possibly statistically significant difference in grants to public versus private recipients, (2) a concentration of grants among a few states, and (3) a small group of highly successful universities. Second, the data showed agency and project trends for corpus grants, including (1) top-funding divisions/programs, and (2) a set of keywords in funded projects.

¶35 From 2011–2021, 63 percent of NEH corpus grant funding went to private institutions. The remaining 37 percent went to public institutions, including museums. Private institutions received larger average grants, with \$158,000 being the average amount for private institutions and \$139,000 for public institutions, a possibly statistically significant difference¹⁰⁷ (table 2).

106. Our data reflect a portion of the agency's funding and do not permit inference to non-corpus trends.

107. We ran an independent T test to determine whether there was a significant difference between the average amount of funding to private and public institutions. Our test showed a statistically significant difference with a *p* value <0.001. However, our data was not normally distributed. It was unimodal, but right-side, or positively, skewed. As a result, we report possible statistical significance.

TABLE 2

NEH Summary Statistics by Institutional Type and Grant Amount, 2011–2021
(in USD, million)

	Total Amount	Average Amount	Min. Amount	Max. Amount	Skewness
Private institutions	244.5734	0.158	0.001	3.131	6.325
Public institutions	144.0895	0.139	0.001	1.122	2.078
Overall agency	388.6629	0.145	0.001*	3.131	5.22

*This grant amount of \$1,000 was approved by NEH for traveling exhibitions to support an ancillary public humanities program. Details can be found at <https://nehforall.org/projects/neh-on-the-road> [<https://perma.cc/S39N-FX5M>].

¶36 The data also showed a nonstatistically significant difference in the average funded project length, with public institution projects lasting approximately three weeks longer than private institution projects, but an average grant length of just over two years across institution types.¹⁰⁸

¶37 From 2011–2021, nearly 40 percent of NEH corpus grants went to institutions in five states: New York, California, Massachusetts, Virginia, and Pennsylvania (table 3).¹⁰⁹ Though New York institutions received far more grants than other states, the average amount for Virginia institutions was largest. The overall average amount awarded to institutions in these five states was \$155,591.

TABLE 3

Total Amount, Number of Grants, and Average Grant Size for Most-Awarded States, 2011–2021 (Sorted by Number of Grants)

State	Total Amount (USD, million)	Number of Grants	Average (total/n rounded)
New York	42.52	284	\$149,700
California	42.39	257	\$165,000
Massachusetts	23.24	153	\$151,900
Virginia	24.64	148	\$166,500
Pennsylvania	19.22	132	\$145,600
	152.01	n=974	

¶38 In addition to state trends, the data yielded a list of highly successful universities, each of which obtained more than 25 grants over the 10-year period: University of Virginia; University of California, Berkeley; George Mason University; University of Wisconsin, Madison; and University of Maryland, College Park (table 4).

108. The mean for public recipients was 763 days, whereas the mean for private recipients was 740.

109. Of approximately \$390 million awarded from 2011–2021, \$152 million went to institutions in five states.

¶39 These public universities captured nearly 9 percent of NEH grants from 2011–2021.¹¹⁰ They received 36–53 percent higher awards than other public institutions (i.e., \$139,000).

TABLE 4

Total Amount, Number of Grants, and Average Grant Size for Most-Awarded Universities, 2011–2021 (Sorted by Number of Grants)

University	Total Amount (USD, million)	Number of Grants	Average Grant (total amount/n)
University of Virginia	9.87	52	\$189,800
U. California, Berkeley	7.76	40	\$194,000
George Mason U.	6.06	30	\$202,000
U. Wisconsin, Madison	5.96	28	\$212,900
U. Maryland, Coll. Park	5.05	26	\$194,200
	34.70	<i>n</i> =176	

¶40 In addition to recipient trend information, the dataset revealed agency information. First, more than 75 percent of the agency's corpus funding was awarded via five of its seven major divisions and offices,¹¹¹ each of which awarded more than \$40 million over the 10-year period (table 5). Those same five units also awarded more than 75 percent of the total number of grants (2,084 of 2,672). The Division of Preservation and Access (DPA) awarded one-quarter of the grants; the average amount was \$127,274.

TABLE 5

Total Amount and Number of Grants Funded by NEH Program/Division, 2011–2021

Program/Division	Total Amount (USD, million)	Number of Grants
Division of Preservation and Access	85.910	675
Division of Research	74.470	355
Division of Education	63.330	472
Office of Digital Humanities	43.930	360
Office of Challenge Programs	41.062	222
<i>Totals</i>	308.702	2,084

¶41 The DPA supports cultural resource repositories at “libraries, archives, and museums” and elsewhere.¹¹² One of its focuses is “to preserve diverse formats of materials that are threatened by factors inherent in their physical structures or by the

110. These universities were likely in competition with hundreds of others.

111. NAT'L ENDOWMENT HUMAN., *supra* note 96.

112. *Division of Preservation and Access*, NAT'L ENDOWMENT HUMAN., <https://www.neh.gov/divisions/preservation> [<https://perma.cc/YP9X-8Q7T>].

environments in which they are housed[.]”¹¹³ DPA is now concerned with “Web-based resources . . . such as encyclopedias, dictionaries, descriptive catalogs, and digital archives.”¹¹⁴ A word analysis revealed additional information about the NEH’s corpus project priorities.

¶42 The final piece of relevant information in the NEH dataset was a set of keywords in funded projects. We ran a text analysis using BERT and then produced a word cloud of results (figure 1). The word cloud depicts a number of frequent terms, including “humanities,” “collection,” “history,” and “university.”



Figure 1. Word Cloud of Keywords in NEH-Funded Corpus Grants

National Archive and Record Administration (NARA) Data

¶43 Our NARA dataset also enabled us to discover relevant pieces of information about grant recipients and the agency. First, the data showed grant recipient trends, including (1) a nonstatistically significant difference in grants to public versus private recipients, (2) a concentration of grants among a few states, and (3) a single, highly successful recipient institution. Second, the data showed a trend in the agency's corpus funding: a focus on digital projects involving documents, papers, and correspondence.

¶44 From 2011–2021, just over 64 percent of NARA corpus funding went to public institutions (table 6), and the remaining 36 percent went to private institutions. Public institutions also received larger average grants, with \$156,000 being the average amount for public institutions and \$127,000 for private institutions. Neither difference was statistically significant.¹¹⁵

113, *Id.*

115. *Iu.*

115. Note that our NARA sample size (i.e., $n = 225$) was much smaller than our NEH sample size ($n = 267$), and sample size is a key driver of statistical significance.

TABLE 6

NARA Summary Statistics by Institutional Type and Grant Amount, 2011–2021
(in USD, million)

	Total Amount	Average Amount	Min. Amount	Max. Amount	Skewness
Private institutions of higher education	10.48	0.156	0.017	1.55	6.21
Public controlled institutions of higher education	19.85	0.127	0.010	0.604	2.13
Overall agency	30.88	0.137	0.010	1.55	6.926

¶45 The data also showed a nonstatistically significant difference in the average funded project length, with public institution projects lasting one week longer than private institution projects, but with a typical grant length of approximately 16 months.¹¹⁶

¶46 From 2011–2021, nearly 54 percent of NARA corpus grants went to institutions in five states: Virginia, New Jersey, California, New York, and Tennessee (table 7). Though Virginia institutions received far more grants than other states, the average amount for New Jersey institutions was largest. The overall average amount awarded to institutions in these five states was \$140,752.

TABLE 7

Total Amount, Number of Grants, and Average Grant Size for Most-Awarded States, 2011–2021 (Sorted by Number of Grants)

State	Total Amount (USD, Million)	Number of Grants	Average Grant (total amount/n rounded)
Virginia	5.526	41	\$134,800
New Jersey	4.132	21	\$196,800
California	2.657	20	\$132,900
New York	2.487	19	\$130,900
Tennessee	1.844	17	\$108,500
	16.646	n=118	\$140,752

¶47 In addition to state trends, the data demonstrated a single highly successful university: the University of Virginia, which obtained 28 grants totaling close to \$4 million over the 10-year period.¹¹⁷ A word analysis revealed additional information about NARA's corpus project priorities.

¶48 The final relevant information in the NARA dataset was keywords in funded projects. We ran a text analysis using BERT and produced the word cloud, shown in

116. The mean for public recipients was 484 days, whereas the mean for private recipients was 476.

117. Of the top five grant-obtaining institutions, only the University of Tennessee also received a double-digit number of grants (n=11). George Washington University had the second-highest total amount of NARA funding (\$1.68 million).

figure 2. The word cloud depicts a number of frequent terms, including “digital,” “document,” “papers,” and “correspondence.”



Figure 2. Word Cloud of Keywords in NARA-Funded Corpus Grants

Case Study 1: Changes to State Veterans Laws, 2010–2020

¶49 Our project on changes to state veterans laws faced issues of material origin, retrieval method, and analysis type. Our solutions required additional time, methodological flexibility, and the addition of a new co-lead researcher.

¶150 The veterans study began as a qualitative analysis of state session laws containing the word “veteran.” Our applied research questions focused on how veterans were defined under the law and what sorts of entitlements lawmakers were affording veterans via new state laws. The broader goal of the research was to make contributions in two fields: law and rhetoric. Our analysis would enable us to determine whether advocacy¹¹⁸ for expanded statutory definitions of veteran—for example, classifying service members with other than honorable (OTH) discharges as benefits-eligible veterans—was working. Our work would also demonstrate how the term “veteran” was being politically and legally operationalized, a subject of interest to rhetorical scholars.¹¹⁹

¶51 Our first step was document collection. We believed that relevant session laws might be retrievable from state legislature sites. This approach seemed to provide two benefits: first, the public sites generally did not include private laws, and second, the work would enable us to update links to publicly available resources for our law librarianship courses. Document retrieval for the first alphabetical state, Alabama, was efficient and straightforward. Each session law file was marked with a legislative adoption date, transmission to governor date, and governor's signature date. The only downside was the material type: PDFs. But since there were only 41 documents, human-reading

118. See the work of the two leading veterans legal services organizations, Connecticut Veterans Legal Center (<https://ctveteranslegal.org/> [<https://perma.cc/QQ7Q-GE4F>]) and Swords to Plowshares (<https://www.swords-to-plowshares.org/> [<https://perma.cc/FA6M-55JL>]).

¹¹⁹ M. Linda Miller, *Public Argument and Legislative Debate in the Rhetorical Construction of Public Policy: The Case of Florida Midwifery Legislation*, 85 Q.J. SPEECH 361 (1999); Catherine L. Langford, *On Making <Person>s: Ideographs of Legal <Person>hood*, 52 ARGUMENTATION ADVOC. 125 (2015).

seemed feasible. Our lead researcher was comfortable reading and hand-coding approximately 2,000 laws over a one-year period. She developed an Excel coding sheet and commenced qualitative analysis. Then the problems started.

¶52 The Alaska site was not user-friendly, and we could not determine how to retrieve a valid set of state session laws. After that, the state idiosyncrasies began adding up. Some states lagged years behind. Other states worked with proprietary vendors, which increased the number of steps needed to retrieve laws. The number of laws varied dramatically across states, suggesting that Alabama's 41 laws and our presumed corpus of 2,000 laws might be vast underestimates. By Georgia, we realized that our retrieval method would not work.

¶53 After Georgia, we had to change course. Our research strategy had two fatal flaws: likely underinclusion of state session laws and an unreliable research process.¹²⁰ We decided to explore the feasibility of bulk data download of state session laws.

¶54 The federal government facilitates downloading of bulk data, including some agency data and federal publications. Law schools and nonprofits in the "free law" movement maintain bulk download sites; most focus on judicial documents or federal law.¹²¹ As a result, we discovered new resources for empirical research but could not find a nonproprietary source of current state session laws searchable by keyword and limited to a specific date range. So we turned to a commercial source we typically use for state session laws.

¶55 No-cost, bulk downloading was not available via that source, as it is in some commercial databases.¹²² We ran a search in the source and retrieved more than 7,000 results—as opposed to our estimate of 2,000 session laws—in part because the results included private laws. The commercial-site corpus was beyond what our qualitative researcher could handle. As a result of the size and the desire to algorithmically eliminate private laws,¹²³ we decided to add a machine-learning approach. We invited a colleague with AI and machine-learning expertise to join the team as co-lead researcher. We also broadened the scope of our research questions to include items of interest to her and relevant for the fields of computational linguistics, information retrieval, and machine learning. We found a database suited for her text and data-mining (TDM) approaches and submitted a TDM request to the vendor. The company granted us a

120. Dominic B. Dwyer et al., *Machine Learning Approaches for Clinical Psychology and Psychiatry*, 14 ANN. REV. CLINICAL PSYCHOL. 91 (2018) (providing a useful overview of the "replication crisis" in quantitative research); Rivka Tuval-Mashiach, *Is Replication Relevant for Qualitative Research?*, 8 QUALITATIVE PSYCHOL. 265 (2021) (discussing how qualitative researchers can leverage the quantitative replication debate to improve qualitative research).

121. E.g., Legal Information Institute, CORNELL L. SCH., <https://www.law.cornell.edu/> (last visited Feb. 16, 2023). Note that the Legal Information Institute maintains an extensive collection of state code resources and useful links to state legal sites. Unfortunately, these resources did not meet our specific needs (keyword search of session laws over a specific 10-year period).

122. Empirical Legal Research Resources, STAN. L. LIBR., <https://guides.law.stanford.edu/c.php?g=685018&p=5822311> [<https://perma.cc/ET48-ASPD>].

123. We are exploring the feasibility of a machine approach that would eliminate text segments with high concentrations of names and pronouns, such as individual service member commendations, a typical private law.

data license for a fee.¹²⁴ The bulk data approach has already required additional time, flexibility, and expertise. We are now writing grant applications to support the broader project, with the new co-lead researcher as co-principal investigator (co-PI).

¶56 The veterans laws project seemed straightforward. Issues with material type and retrievability forced us to abandon a research plan that was neither feasible nor reliable. As a result, we had to expand our analysis types and research methods. While our final project should be richer and valuable to more fields, it will take longer, require more personnel, and be more costly than we had planned. It will require ongoing patience, flexibility, and technical expertise that some faculty lack. Our second project will require similar flexibility. It involves “free law” issues familiar to many law librarians.

Case Study 2: Federal District Court Cases Brought by Transgender Plaintiffs

¶57 Our second project began in a law school clinic and remains an aspiration. Our lead researcher worked as a student assistant on an *amicus curiae* brief and research article in an Americans with Disabilities Act (ADA) case involving a transgender plaintiff. The experience piqued her interest in novel civil rights classes¹²⁵ and the experiences of transgender plaintiffs. She wrote a law school paper analyzing 20 court opinions involving transgender plaintiffs. The cases were too factually and legally idiosyncratic to permit valid conclusions about the plaintiff class, such as the demographic composition of the class and the various forms of discrimination they face. Further, some court opinions did not sufficiently detail who the plaintiffs were or what they experienced. The researcher determined that the best way to analyze the class was to collect litigation documents from federal cases filed by transgender plaintiffs.

¶58 The first step was to develop a list of cases. To ensure full inclusion, the researcher trained an undergraduate research assistant (RA) to review cases in Westlaw, our sampling frame. The RA spent approximately 80 hours skimming every federal case returned by a keyword search for “transgender” in the WestlawNext Campus Research database. The RA’s task was to identify cases brought by transgender plaintiffs. Her work resulted in a list of roughly 800 unique federal district court cases.

¶59 The second step was to develop a cost estimate for the project through pilot testing. For the first pilot test, the researcher taught the undergraduate RA how to retrieve documents from PACER. Then the researcher identified three cases of increasing complexity and docket length. The RA spent 40 hours retrieving and tagging relevant documents from the cases. The associated PACER fees were approximately \$175 for 1,750 pages. The researcher felt that the pilot test permitted accurate PACER fee costing. If the full corpus was assembled via PACER retrieval,¹²⁶ the document costs

124. Our license agreement includes a confidentiality clause.

125. Transgender people are not a new class of human beings, but their status under U.S. law is still evolving, making them a newer class of civil rights litigants. See SUSAN STRYKER, TRANSGENDER HISTORY: THE ROOTS OF TODAY’S REVOLUTION (rev. ed. 2017).

126. The researcher understood that document retrieval for some cases might be possible via free law sites such as the Civil Rights Litigation Clearinghouse (CRLC). In discussions with CRLC, the researcher

would be approximately \$45,000 (that is, approximately 800 cases at around 575 pages per case). However, the first pilot test did not permit accurate RA costing. The undergraduate RA repeatedly focused on the analytical content of each document rather than its title or function within the case. Further, she struggled to correctly tag the documents. The researcher realized that a second pilot test, using an attorney enrolled in a law librarianship program, was necessary. She wrote an internal, university grant application to cover the costs of the second pilot test.

¶60 While the internal grant application was under review, the researcher tackled another issue: document storage, retrieval, and dissemination. A corpus of 450,000 documents would require dedicated storage and a retrieval interface. Further, the researcher hoped to disseminate the documents to the public immediately as a separate contribution to publicly engaged humanities, law, and social science research. That effort required a public-facing platform. The researcher consulted with our university librarians. They determined that the corpus did not align with existing digital humanities projects or funding streams, the largest of which funded preservation of our state's history documents. The librarians suggested a potential partner at another university. That partner was interested in housing the document collection, and our universities collaborated on a \$250,000 nonprofit federation grant application to cover retrieval, tagging, document storage, API development, local source code, and more.

¶61 For our second project, roughly \$7,500 will be needed for pilot testing and an additional \$250,000 to make the documents accessible and useful for research. Neither our internal, pilot testing grant proposal nor our external, nonprofit federation grant proposal was funded in spring 2022. We have not had time to find new funders or write new proposals. If we were to undertake this grant-writing in fall 2023 and receive funding by fall 2024, then the document collection might be useful in 2025. Given the cost and complexity of this foundational work, our team has not begun to wrestle with issues of material type or research methodologies. Resolving those issues will take additional time and resources.

Discussion

¶62 Our research demonstrates the value of using multiple sources of information to estimate the resources required for an empirical legal research project, including but not limited to a corpus study. Law librarians can develop more robust project estimates by analyzing scholarly literature, open government data, and formative case studies (figure 3). Scholarly literature from nonlegal and legal journals offers interesting but incomplete pictures of the time, staffing, and budgets required for corpus projects. Open government data offers insights into the current priorities and patterns of funding agencies. Formative case studies demonstrate the stop-and-start nature of research, particularly when external funding is needed, and illuminate possible project roadblocks.



Figure 3. Data Sources Useful for Empirical Research Project Costing and Planning

¶63 Our combined data sources suggest that at least 14 factors drive resource needs and/or funding for corpus projects: (1) material origin; (2) retrieval method; (3) analysis type; (4) institution type (e.g., public or private university); (5) institution location (e.g., Virginia); (6) institution name (e.g., University of Virginia); (7) project alignment with broad funding agency priorities (e.g., preservation); (8) project alignment with narrow funding agency preferences (e.g., preservation of born-digital materials); (9) current project stage (e.g., sample frame identified, a reliable document-collection process developed); (10) availability of technical partners (e.g., machine learning experts, scholars with existing datasets or databases); (11) willingness of vendors to sell needed data; (12) capacities and interests of research assistants; (13) availability of data storage, sharing, and/or dissemination infrastructure; and (14) flexibility and commitment of the lead researcher(s).

¶64 Our open government data research revealed trends that could inform corpus proposal submissions to national funding agencies such as the NEH and NARA. For instance, the average corpus grant period for the NEH was greater than for NARA.¹²⁷ The average NEH corpus grant was larger than a comparable NARA grant (\$145,000 and \$137,000, respectively). But the NEH also funded small projects (\$1,000). As a result, the NEH is a target funder for complicated projects and very small projects.

¶65 Additionally, the NEH funds more private university corpus projects, whereas NARA funds more public institution projects. All things being equal, a researcher at a state law school with a less complicated corpus project might fare better submitting to NARA than to the NEH. Of course, research projects are not equal. Our word analysis suggests that a corpus project with a strong connection to the humanities—collecting 19th century legal philosophy manuscripts, for instance—would fare better at the NEH (e.g., project words: humanities, collections). By contrast, NARA would be more receptive to a research project on contemporary government emails (e.g., project words: digital, correspondence).

¶66 More broadly, certain states and institutions appear to have a foothold with certain funders. The University of Virginia rose to the top of both of our datasets, for instance. This could indicate strong relationships with agency program officers or a track record of projects aligned with the agencies' priorities. In any event, open government data can reveal whether an institution has a track record of success with a particular agency. The data can also show agency and divisional priorities and funding trends (e.g., an increase in grants for corpus digitization).

127. The average grant period for NEH is 748 days and for NARA is 487 days.

¶67 Of course, data can be misleading. Our data cannot be used to infer trends in non-corpus NEH and NARA funding, for instance. Also, we had to perform more cleaning and trimming to the NARA data because of missing information and anomalies, such as grants for negative dollar amounts. Beyond our reported data, our background reading highlighted key funding terms, including outright funds, federal matching funds,¹²⁸ and supplemental grants.¹²⁹ As a result, an agency's number of grants could be impacted by how often the agency splits costs with states.¹³⁰ That is why open government data is just one piece of the puzzle.

¶68 External funding is also just one piece of the puzzle. As our literature review demonstrates, corpus project timelines are far longer than typical NEH or NARA grants. In most cases, an NEH or NARA grant would fund a portion of a project. The project would likely have formed at an institution and developed from seed investment, such as a law professor's funding for an annual research assistant. Once the project was sufficiently formed, the researcher would submit a proposal to an external funding agency. The researcher might need a second grant from the agency or another funder to complete the project. This funding might expire before the researcher presented findings at conferences or finished publishing all the resulting scholarship. Either the home institution or yet another funder would need to cover scholarly communication costs (e.g., conference travel funding). As a practical matter, law librarians should advise researchers to cost various phases of empirical projects.

¶69 We suggest that law librarians schedule at least two formative project planning meetings with empirical researchers. Reference questions for the first meeting could include: (1) What is the nature of the project? (2) What types of data, documents, or people will be studied? (3) Where are the data, documents, or people currently located? (4) How will you access the data, documents, or people? (5) If your project involves data or documents, what form are they currently in and who owns them? and (6) What types of analysis do you plan to do (e.g., narrative analysis using NVivo software)?

¶70 At the conclusion of the first meeting, law librarians could ask researchers to prepare for a second meeting by (1) compiling answers to any questions they could not answer at the first meeting; (2) creating a list of potential co-researchers and collaborators, including the names and locations of their institutions; (3) specifying needed technical or infrastructure support; (4) describing how the research will begin and progress before external funding commences; and (5) identifying potential external funding sources. Following two meetings, and with the assistance of grants and contracts staff, law librarians could assist researchers in creating timelines, cost estimates, and long-term plans for their empirical research projects.

128. *Types of Funding*, NAT'L ENDOWMENT HUMAN., <https://www.neh.gov/grants/manage/types-funding> [<https://perma.cc/67RK-8DFJ>].

129. *State and National Partnership Projects*, NAT'L ARCHIVE REC. ADMIN., <https://www.archives.gov/nhprc/announcement/partnership.html> [<https://perma.cc/G9ZX-EFMX>].

130. Because of federal-state matching grants, we encourage corpus scholars to talk with state stakeholders and program officers and research existing state projects and state agency priorities.

Conclusion

¶71 Like digital work, empirical research support is a staple of 21st century law libraries. Law librarians know the idiosyncratic nature of research, research funding, and the research support process. Every project is a unique journey. In this article, we have offered tools for bringing more order to that journey. But our toolkit is neither exhaustive nor invulnerable to the chaos of the research process. As a result, we offer one final recommendation and a note about our future research.

¶72 We recommend that law librarians share their formative empirical research and their formative research support experiences. As we note above, agency data and scholarly literature feature funded, successful, completed projects. But we often need insight on how to dislodge a jammed project or chart a new course from a dead end. Our listservs, blogs, and conferences offer spaces for this sharing. For instance, formative case studies of particular projects (e.g., building a historical letters corpus) could be shared among law librarians on the Academic Law Librarians Special Interest Section (ALL-SIS) listserv long before the successful projects are reported in *Law Library Journal*, *Legal Reference Services Quarterly*, or other scholarly journals. Though we did not survey law librarians for this study, the law library literature and our own experience show that law librarian knowledge is a key source of formative information.

¶73 As we move forward, we plan to continue our research in two directions. First, we want to know more about total time frames and costs for corpus projects. Using our NEH list of top-funded universities, we will identify lead researchers, or PIs, and analyze their curricula vitae. We seek to identify the total amount of external funding obtained for the projects in our dataset and the span of time from first to final publications for these projects.

¶74 Second, we want to understand how terms of art like “corpus” function as keywords in government-funding databases such as USASpending. For our current project, we initially obtained data for three funders: NEH, NARA, and NSF (National Science Foundation). We selected NSF because it maintains a Law and Science Program that has funded excellent empirical legal research for decades. We thought that the term “corpus” might produce a manageable level of noise in the NSF data. We were wrong. “Corpus” means a host of things to scientific researchers. The noise was too great for our methods. But the noise piqued our interest in studying research-related keywords and the results they produce in open government databases. We hope that this future study will shed light on better search strategies for government-funding research and metadata for open government databases.

Teaching Advanced Legal Research: Using the Inside-Out Prison Exchange Pedagogy*

Rhea Ballard-Thrower** and Amy Lopez***

This article describes how the Inside-Out Prison Exchange pedagogy was used to educate students in a correctional facility. The authors, a law librarian and a department of corrections educator, discuss the challenges and benefits of designing and teaching Advanced Legal Research to both law school and incarcerated students.

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Introduction

¶1 Legal research can be a social justice tool. Teaching those unfamiliar with the skills needed to perform legal research can be a powerful means for restoring fairness in our society. In fall 2017, 10 Howard University School of Law Advanced Legal Research (ALR) students participated in a pilot legal research course using the Inside-Out Prison

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Exchange pedagogy. During the semester, the ALR students took their classes with incarcerated residents at a District of Columbia correctional facility. The law students are referred to as Outside students, while the incarcerated students are referred to as Inside students. Both groups of students learned legal research theories and techniques, but their education often exceeded only this technical knowledge. The perspectives and skills they gained through their participation likely impacted their lives in ways they never expected.

Inside-Out Overview

¶2 Service-learning pedagogy has the power to turn things inside-out and upside-down for those engaged in it. It provokes one to think differently about the world and to consider one's relationship to the world in a new way. This approach to learning captures and communicates a dynamism that inspires everyone involved to explore, inquire, and analyze. For students, spending time and sharing a space with people struggling with issues of injustice can cultivate a passion for social justice concerns. Thus, "service-learning provides both an incubator for and impetus toward social change. It is transformative education at its best."¹

¶3 The Inside-Out program was created in 1997 by Lori Pompa, a Temple University criminal justice faculty member.² In 1992, she began to take her Temple students on day-long visits to area Pennsylvania and New Jersey jails and prisons.³ Three years later, Paul Perry,⁴ an incarcerated resident, approached Pompa with the idea of expanding the one-time visits into a semester-long course.⁵ Within a few weeks, the Inside-Out Prison Exchange Program: Exploring Issues of Crime and Justice Behind the Walls, was created.⁶ The first Inside-Out class was held in fall 1997. Using an experiential education model, Pompa designed a program where her 15 Temple University students attended classes inside a correctional facility with 15 incarcerated residents. Inside-Out is a form of experiential education where the instructor and students engage and collaborate with incarcerated residents. Essential to that process is consistent student reflections on growth and lessons learned.⁷ For the collegiate-level course, the class consisted of the instructor and the same number of Inside and Outside students. The purpose of the

1. Lori Pompa, *Service-Learning as Crucible: Reflections on Immersion, Context, Power, and Transformation*, 9 MICH. J. CMTY. SERV. LEARNING 67, 75 (2002).

2. Gina Benigno, *Faculty Focus: Lori Pompa*, TEMPLE UNIV. (Feb. 26, 2014), <https://news.temple.edu/news/2014-02-26/faculty-focus-lori-pompa> [https://perma.cc/V9LY-WKUD].

3. Pompa, *supra* note 1, at 67.

4. Paul Perry, *Death of a Street Gang Warrior*, in TURNING TEACHING INSIDE OUT 35 (Simone Weil Davis & Barbara Sherr Roswell eds., 2013).

5. Lori Pompa, *Drawing Forth, Finding Voice, Making Change: Inside-Out Learning as Transformative Pedagogy*, in TURNING TEACHING INSIDE OUT 13, 14–15 (Simone Weil Davis & Barbara Sherr Roswell eds., 2013).

6. *Id.*

7. Simon Priest, *A Program Evaluation Primer*, 24 J. EXPERIENTIAL EDUC. 34, 34 (2001).

class was not for the Outside students to research their Inside classmates⁸ but for them to learn and discuss criminal justice issues.

¶4 Today, Inside-Out has a week-long certification instruction program where faculty participants learn the Inside-Out philosophy and pedagogy.⁹ Pre-pandemic sessions were held inside a correctional facility with incarcerated residents providing instruction. Thus, faculty participants can experience being Inside students themselves. Pompa and her team have instructed over 1,100 faculty scholars representing 350 colleges and universities throughout the world. By teaching faculty to develop partnerships, over 200 correctional institutions now have Inside-Out collaborative programs. Although initially designed as a criminal justice course, Inside-Out classes now encompass criminal justice, social science, and humanities.¹⁰

¶5 In 2014, Bahiyyah Muhammad, a member of Howard University's Sociology and Criminology Department and founding director of Howard's Higher Education in Prison programming, introduced the Inside-Out pedagogy at the campus.¹¹ A certified Inside-Out instructor, she was the sole Howard University professor teaching classes at the District of Columbia's Department of Corrections for a few years. Since then, Muhammad has encouraged other Howard faculty to obtain Inside-Out certification and offer Inside-Out courses. Through Muhammad's vision and efforts, Howard University students participate in the Inside-Out program from four Howard schools or departments: Criminology and Sociology, Communications, Divinity, and Law.

DC Department of Corrections' Division of College and Career Readiness

¶6 The District of Columbia Department of Corrections' (DOC) Division of College and Career Readiness (CCR) was launched in 2017.¹² Prior to that year, the agency had very limited educational programming for its residents. With the appointment of Quincy Booth as the new director and subsequent appointment of Amy K. Lopez as the deputy director of CCR and Professional Development,¹³ the agency began building a robust system designed to provide college and career readiness programs for the incarcerated individuals within the DOC.

8. Matthew J. DelSesto & David L. Sellers, *Inside-Out as Humanistic Pedagogy*, 46 HUMAN. & SOC'Y, 665, 669 (2022).

9. Sarah L. Allred, *The Inside-Out Prison Exchange Program: The Impact of Structure, Content, and Readings*, 60 J. CORR. EDUC. 240, 244 (2009).

10. *The Inside-Out Prison Exchange Program: About Inside-Out*, INSIDE-OUT CTR., <http://www.inside-outcenter.org/about-inside-out.html> [https://perma.cc/249V-LC3J].

11. *Bahiyyah Muhammad*, HOWARD UNIV., <https://profiles.howard.edu/bahiyyah-muhammad> [https://perma.cc/W3TG-2Z97].

12. *District of Columbia Department of Corrections 2020 Inspection Report*, D.C. DEP'T CORR. 16 (Oct. 8, 2020), https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/%25DOC%20Inspection%20Report%20FY20_Final%20Draft%20%282%29.pdf [https://perma.cc/ZKN2-46XA] [hereinafter *Inspection Report*].

13. *Mayor Bowser Names Quincy Booth Interim Director of DC Department of Corrections*, D.C. DEP'T CORR. (Nov. 4, 2016), <https://doc.dc.gov/release/mayor-bowser-names-quincy-booth-interim-director-dc-department-corrections> [https://perma.cc/G5QF-YTAW].

¶7 Literacy instruction for DOC students was implemented in three course levels (Literacy I for nonreaders to emerging readers, Literacy II for numeracy and literacy instruction for students functioning between second-grade and fifth-grade levels, and Literacy III for instruction in four core subjects for students functioning between sixth- and ninth-grade levels).¹⁴ Preparation for the high school equivalency exams is also offered.¹⁵ These courses are offered in English and Spanish in a blended learning model with in-class instruction and supplemental coursework offered on a mobile learning device designed for secure environments.¹⁶

¶8 Career and Technical Education (CTE) includes industry certification courses in food handling, hospitality, and tourism career pathways. Deputy Director Lopez expanded CTE offerings based on job market research in the District of Columbia, Maryland, and Virginia regions to include a cohort of courses in the telecommunications pathway.¹⁷ Telecommunications, copper-based network cabling, grounding and bonding of copper-based systems, fiber optic network cabling, home entertainment installation technician, and ASI wireless connectivity courses offer students the opportunity to earn nationally recognized industry certifications.¹⁸ Other CTE courses include local certificate-bearing subjects around employability soft skills.¹⁹ CTE students have the opportunity to participate in career fairs, mock interviewing workshops, and a variety of CTE courses on mobile learning devices.

¶9 In 2018, CCR launched a journalism class that produces a monthly newspaper written, edited, and curated by DOC students called *The Inside Scoop*.²⁰

¶10 The DOC and its CCR department have cultivated community and global partnerships to enhance the educational and reentry experience for students. A weekly lecture series hosts top-name celebrities, researchers, designers, reformers, artists, authors, scientists, and activists.²¹ Master classes that invite area industry leaders to interview potential candidates for open positions ensure that some students have jobs waiting for them upon reentry, and other Master classes provide assistance with activities such as completing Free Application for Federal Student Aid (FAFSA) forms, creating workforce portfolios, and meeting with leaders in the industry and in higher education.²²

¶11 CCR students also participate in a course series titled Learning Unlocked, which pairs them with DOC cadet officers for instruction in topics such as cultural

14. *Inspection Report*, *supra* note 12, at 14.

15. *Id.*

16. *Id.* at 16.

17. This information is based on research I did in 2017 as a practitioner. *United States' Forgotten Middle*, NAT'L SKILLS COALITION, https://www.ecwdb.org/doc_download.php?num=136.

18. *Inspection Report*, *supra* note 12, at 24–25.

19. *Id.* at 17.

20. *Id.* at 20.

21. *Id.* at 19.

22. Amy Lopez, D.C. Department of Corrections Division of College and Career Readiness Course Catalog (2020).

diversity, implicit bias, and culturally inclusive communication.²³ As part of the DOC's officer training program, cadets meet with their resident counterparts as students in the same classroom, participating in group projects and discussion circles.²⁴

¶12 Postsecondary opportunities are offered via agency partnerships with five higher education institutions.²⁵ Ashland University offers students who are eligible for the Second Chance Pell Grant the opportunity to earn associate's or bachelor's degrees.²⁶ Coursework is delivered via distance learning on mobile learning devices.²⁷ Georgetown University provides instruction in non-credit-bearing courses covering a myriad of topics.²⁸ The Georgetown University Prison Scholar's Program in the DC Jail provides tuition-free coursework for accepted individuals in credit-bearing courses.²⁹ The university's law school also partners with the DOC to offer a Street Law program through which law students earn professional development credits by teaching DOC students a course that guides them through legal procedures and culminates in a mock trial.³⁰ The University of the District of Columbia provides industry certification training courses in the hospitality and tourism pathway.³¹

¶13 Howard University and American University provide numerous courses in partnership with the international Inside-Out Prison Exchange Program. In a partnership with a UCLA professor, Howard law students and professors volunteer in the DOC's CCR Legislative Theatre, a course that combines improvisational theatre with a brain-storm discussion around advocacy for and against policies and statutes that might affect criminal justice reform, culminating in a presentation to policymakers for discussion.³²

¶14 In 2019, two years after the creation of the division, CCR offered over 132 programs and courses (excluding college courses) and served approximately 3,000 students in closed-enrollment courses and approximately 12,000 in other CCR programs.³³ The department continues to forge new partnerships and expand its offerings. In fall 2017, the Howard University School of Law became one of its newest partners.

23. *Id.*

24. *Id.*

25. *Inspection Report, supra* note 12, at 17.

26. *Id.* at 9.

27. *Id.*; *Ashland University Correctional Education Program*, ASHLAND UNIV., <https://www2.ashland.edu/ce/> [<https://perma.cc/QQL3-FPLX>].

28. *Inspection Report, supra* note 12, at 14.

29. *Prison Scholars Program*, GEORGETOWN UNIV. PRISONS & JUST. INITIATIVE, <https://prisonsandjustice.georgetown.edu/programs/scholarsprogram/> [<https://perma.cc/ZAU4-X2UT>].

30. *Georgetown Street Law Program*, GEORGETOWN LAW, <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/dc-street-law-program/> [<https://perma.cc/M3HH-DGLK>].

31. *Services Offered to Persons Housed in DC DOC Facilities*, D.C. DEP'T CORR., <https://doc.dc.gov/page/services-offered-persons-housed-dc-doc-facilities> [<https://perma.cc/G2AF-NVPE>].

32. *Inspection Report, supra* note 12, at 23.

33. Amy Lopez, DOC Department of Corrections Division of College and Career Readiness Annual Report FY19 (2020).

Teaching Advanced Legal Research Inside-Out at Howard University

¶15 All first-year Howard law students are required to take Legal Research Labs (Research Labs), which is an introductory one-credit legal bibliography course. Students learn legal research strategy, search vocabulary, Boolean logic, secondary sources, online case law research, statutory and regulatory research, and an introduction to online legal databases. ALR, however, is a three-credit elective course. The class first reviews the subjects covered in the Research Labs and then continues with more advanced legal research techniques and topics. Typically, the ALR class is composed of third-year students who have completed some type of legal employment during their second year.

¶16 In fall 2017, Howard ALR students participated in the pilot legal research course using the Inside-Out Prison Exchange pedagogy at the DOC. Muhammad agreed to co-teach the course with Rhea Ballard-Thrower, a tenured professor at Howard University School of Law who earned her Inside-Out certification in January 2018. The sections that follow describe Howard University's inaugural Inside-Out ALR course.

Student Selection

¶17 Over the summer months, Muhammad and Ballard-Thrower met to discuss student selection, the syllabus, course materials, and assessment. At the time, both instructors agreed to develop ALR using the Inside-Out methodology, even though fall registration for courses had already been completed. Thus, the law students who had already registered for the fall course were not aware that the course would be Inside-Out. The instructors agreed that this was a regrettable circumstance that would be rectified the next semester the class was taught. However, they decided to proceed with the new format for the fall 2017 session.

¶18 In selecting which students would participate in the ALR/Inside-Out course, the instructors agreed that the Inside students needed to have completed high school or passed the General Education Development (GED) test. As a seminar course, registration was capped at 15 Inside students. An equal number of Outside students would be selected, totaling 30 possible students in the course. To encourage female empowerment, Muhammad and Ballard-Thrower decided that the first ALR course would include only female Inside students. Since 2018, however, Inside student selection is co-ed.

¶19 Over the summer 2017 break, the instructors tried to contact the law students via email to inform them of the changes to the course. The law students received the same three credits for the course as expected. Changes included (1) that the class would be held inside the DC jail, and (2) they would have to submit to drug and TB testing. On the first day of class, Muhammad provided an overview of the Inside-Out aspect of the course. For the law students who did not want to participate in the classes held at the DOC, two options were provided. One option was to remain in the course but participate only in ALR classes held at the law school. The second option was to use the Drop/Add period to select another course.

¶20 Of the total number of law students registered, 10 participated in the full Inside-Out program, while four chose to attend classes only at the law school. One student dropped the course explaining that she had a formerly incarcerated parent and was therefore uncomfortable attending classes at a correctional facility. Ten Inside students were selected to participate in the class, which had a total of 19 students. Today, when law students register for the ALR Inside-Out course, the course description clearly explains the class details and prerequisites. Law students are also interviewed to determine any concerns they may have about being inside a correctional facility. Since 2018, law students who do not wish to participate in the DOC portion of the class are not permitted to remain in the ALR course. All ALR law students are required to attend scheduled classes held at the correctional facility.

¶21 To attend classes at the DOC, all Outside participants (including the instructors) must test negative for tuberculosis and illegal drugs,³⁴ as well as complete a DOC orientation.³⁵ The drug tests are time sensitive, so forms for the drug testing are provided by the DOC and must be completed within a set number of days. These requirements can be a major challenge for law students. They must find time to not only complete the tests but also have negative results. During the first Inside-Out course offering, some students privately admitted their concerns about passing the urinalysis due to summer marijuana use. Other students indicated a familial relationship with the criminal justice process. Thus, they could not tolerate the necessary inconveniences to participate in the program. Sadly, every Howard law student who has taken the course has indicated that a family member has been incarcerated at one time or another. Teaching this course has demonstrated that mass incarceration impacts us all.

Orientation

¶22 Before attending classes at the correctional facility, each student must attend orientation, while instructors attend orientation on an annual basis. The purpose of orientation is to prepare students and instructors for working in a secure environment. Designed specifically for higher education partners, the DOC Academic Volunteer training includes topics such as the agency and division's mission, purpose, and scope; organizational structures; and core principles; as well as the postsecondary opportunities offered to CCR students. For instructors, the training provides information on the DOC's expectations for instructional content and delivery, logistical instructions for taking attendance, what materials can be brought into the facility, and how to obtain approval for such items. Institutional information is also covered for all participants, including policies covering nonfraternization, working with incarcerated individuals, safety and security plans, dress code, contraband, entrance and exit procedures, the

34. At the height of the COVID-19 pandemic, Inside-Out classes could not be held at the facility. Once classes resumed in the spring semester, Outside students were required to have a negative COVID test to enter the facility.

35. After several months, the DOC was closed to outside visitors, but classes resumed via Zoom. The DOC began with a limited reopening for family members. Today, all in-person classes have resumed. Negative COVID test results and vaccinations are still required by the university.

Prison Rape Elimination Act (PREA),³⁶ sexual harassment and misconduct, emergency response plans, and other related topics. Students and instructors participate in a policy scavenger hunt, ensuring that all policies pertaining to their time spent with DOC students are introduced and discussed. All volunteers are given DOC CCR staff contact information at orientation as well.

Classes

¶23 Classes were held on Tuesdays and Thursdays from 11:10 A.M. to 12:25 P.M. for a total of 2.5 hours per week. By midsemester, the Outside students were expressing a need for extended time to travel to and from the DOC. The students often found it challenging to arrive at the DOC on time because a previous law class had run long. Or they experienced the reverse challenge of having to get back to the law campus on time for a class held after the Inside-Out course. Another complication was the extra time needed for entering the facility, which included X-ray and metal detector screening, signing in, and exchanging government-issued identification cards for DOC identification badges. After class ended, another 15 minutes was needed to be escorted from the classroom, sign out, and exchange badges for IDs.

¶24 Based on these travel and time concerns, the Inside-Out course is now held for 2 hours and 30 minutes one day per week. With only one class session, a break is held midway. Students cannot leave the classroom, except when escorted by a correctional officer to go to the restroom. The break is used for the students to stretch and chat with their classmates or for the instructor to prepare for the next class topic.

Student Expenses

¶25 An unintended Outside student expense was that the law students were not reimbursed for their transportation costs. A few who did not attend classes at the DOC stated that they had not budgeted for that extra expense. The correctional facility was approximately 11 miles from the law school, which amounted to 40 minutes travel time. Most students either drove to the facility (which had limited free parking) or opted to take the Metro (the DC rapid transit system). If driving, the students would have to pay for gas and the amount varied based on their driving distance to the facility. If taking the Metro, transportation costs for the semester amounted to \$50 (\$5/class multiplied by the number of classes held at the facility). Inside the facility, lockers were provided for items not permitted beyond the waiting room, such as backpacks, computers, and cell phones. The lockers cost \$0.75 per use, which amounted to \$7.50 for the semester for the students (or a dollar or two more because the students would often forget to put something in the locker and would have to reopen it and pay again to lock it closed). Students were allowed to take writing utensils and notepads to class. The instructor was permitted to take additional items (such as flash drive, books, and photocopies) if previously authorized by the CCR administration.

36. Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972, <https://www.congress.gov/108/plaws/publ79/PLAW-108publ79.pdf> [<https://perma.cc/U27D-MVKB>].

DOC Libraries

¶26 Ballard-Thrower was pleasantly surprised to learn that the DOC had two libraries, a small staff of law librarians, a great book collection, computers, and a Lexis account. The libraries were available to all DOC residents for at least two hours weekly. Each housing unit was scheduled for law library time, which residents reserve for a designated period. The libraries were open Monday through Friday. Each library (one in each building) employed two to three resident law clerks, who were paid monthly as detail workers and trained to assist residents and law librarians.

¶27 The ALR/Inside-Out course was not held in the law library but in one of the facility's classrooms in the CCR school area. The CCR consisted of two floors of large classrooms. Each classroom had a SMART board and an instructor computer connected to the internet. Residents, however, did not have access to the internet. The ALR/Inside-Out classroom was bright, with sunshine streaming in a large window, student pictures and work on the walls, and a paint scheme that made the interior less like a jail and more like a place of learning. The school area was adorned with display cases showcasing student successes and motivational quotes by students. On the first day of class at the facility, the law students remarked that they felt the classroom reminded them of any other classroom space. It was not what they expected to see inside a correctional facility.

Syllabi

¶28 Creating the ALR syllabus was a challenge. Ballard-Thrower and Muhammad recognized that not all Inside students would have the foundational knowledge needed for some aspects of the ALR course (e.g., the *Bluebook* citation system). After many discussions and iterations, it became apparent to the instructors that they would have to create two syllabi—one for Inside students and one for Outside students. However, a requirement of the Inside-Out pedagogy is that the classes are not diluted for the Inside students. Thus, the instructors considered ways to follow the Inside-Out curriculum while addressing the syllabi challenges. For example, the instructors agreed to have sessions with the incarcerated students on the American legal court system and *Blueboook* citation. These additional sessions provided the incarcerated students with some basic background information. Also, Ballard-Thrower met with the DOC law librarians and provided them with an overview of the course. Thus, the DOC students were able to visit the library and ask the law librarians for assistance with their assignments.

¶29 The Inside-Out program developed by Pompa recommends certain class topics to be taught during the semester. Such topics include creating guidelines for dialogue, developing icebreakers and community-building activities, and addressing identity and diversity issues.³⁷ In following the Inside-Out format, it is critical that the Inside and Outside students have an equal voice. Following the prescribed Inside-Out class guidelines on how to lead the first few classes is essential.³⁸

37. LORI POMPA, THE INSIDE-OUT PRISON EXCHANGE PROGRAM INSTRUCTOR'S MANUAL 24 (2018).

38. *Id.* at 17.

¶30 As one icebreaking example, Muhammad had the Inside and Outside students participate in the wagon wheel exercise. The wagon wheel is where two circles are created. The Inside students sit next to each other and arrange their chairs into a circle. The Outside students do the same with their chairs but form their circle facing the Inside students' circle. Thus, each Inside student faces an Outside student. Students introduce themselves and address each other by first name only.³⁹ All students are then given a few minutes taking turns answering a fun or silly question with their partner. For example, *If you were a vegetable, which one would you be and why?* After answering the question, each Inside student moves to the next chair so that each student faces a new classmate. Participating in this getting-to-know-you process enables all students to have fun with what could possibly be an uncomfortable first meeting. Students commented on learning about their many similarities, which is the activity's desired outcome.⁴⁰

¶31 The Inside and Outside student syllabi were similar for many of the class sessions. Both syllabi covered case law, statutory law, secondary sources, and federal regulatory research. They also included sessions for the group project overview, practices, and presentation. However, because some resources (e.g., Westlaw) were unavailable at the DOC and four of the law students did not attend classes at the facility, the syllabi differed in certain aspects. For example, the law students had two Westlaw certification sessions, during which the Inside students did not have class. On the days when most of the law students attended classes at the DOC, Ballard-Thrower provided a guest law librarian lecturer to teach the law students who were not at the facility. Thus, the same legal research topic was presented simultaneously—at the law school library and at the DOC. For example, if federal regulatory research was taught at the DOC, then the same topic was taught at the law school library by a guest lecturer. This dual-class coordination was offered only for the fall 2017 session because those law students were not provided with an adequate course description prior to registration. Today, all Outside students must attend scheduled class sessions at the DOC.

Course Materials

¶32 The ALR/Inside-Out course used Amy Sloan's *Basic Legal Research: Tools and Strategies* for instruction. The Outside students were already familiar with the text because it was used for the law school's first-year Research Labs. Ballard-Thrower believed it would be a good text for the Inside students as well. In keeping with the correctional facility's policy, the textbook was previewed and approved by the DOC administration. The Howard Law Library purchased 15 copies of the text and donated them to the facility's law library. Thus, the Inside students were able to read the assigned pages and prepare for class. For her lectures, Ballard-Thrower allotted 45 to 55 minutes for topic presentation and 20 minutes for questions and discussion, which proved to be a

39. The Inside-Out practice of addressing each other by first name typically includes the instructors as well. However, as HBCUs are traditionally more formal environments, both Dr. Muhammad and Professor Ballard-Thrower were addressed by their titles.

40. LORI POMPA, THE INSIDE-OUT PRISON EXCHANGE PROGRAM INSTRUCTOR'S CURRICULUM: SESSION TWO (2018).

good distribution of the 75-minute class time.⁴¹ Although the residents were prohibited from accessing the internet, with adequate notice (typically one week), the instructors could request a computer for class. For some classes the instructors had PowerPoint presentations, which they were permitted to bring on a flash drive. At the end of the class sessions, the Inside students were given print copies of the PowerPoint presentations for later review.

Assessment

¶33 As indicated by the syllabi, all students were assessed via assignments, a group project, and class discussions. The instructors created assignments for each presented legal research topic. Weekly assignments were scored and returned the following week. Assignments for the Inside students were distributed during class time. Assignments for the Outside students, as well as other course information, were posted to the ALR/Inside-Out course on the Howard University's Blackboard platform, chosen because Muhammad did not have access to Westlaw's TWEN learning management system. Assignments were created by Ballard-Thrower using current events on topics that were in accordance with facility guidelines. Inside students used their weekly two-hour library time, including access to Lexis, to complete their assignments. If the Inside students could not access the materials in the library or via Lexis, Ballard-Thrower provided photocopies. The photocopies consisted of legal resource pages from free government websites, which were then used to answer the questions. Photocopied pages could be stapled together, but metal binder clips were prohibited by the DOC.

¶34 The group project was the major assignment for the ALR course. Students who did not attend classes at the DOC were assigned as a group and did their group presentation at the Howard Law Library. At the DOC, the Inside and Outside students were divided into two groups with an equal number of Inside and Outside students on each team. The purpose of the group project was for the students to research a legal issue and present their search methodology and recommended outcome to their other classmates. Current lawsuits covering such topics as the First Amendment and prison newspapers, banned books, product infringement, and deceptive product labeling were provided to students, who then met in their groups to devise a presentation. Over the next two class sessions, the students would assign research tasks and practice. Group project presentations were impressive and a highlight of the course. The students did an excellent job, and the collaborative aspect of the group project was consistent with the Inside-Out pedagogy.

¶35 In addition to the weekly assignments and the group project, the law students had other assessments: a reflective journal, legislative history, and memo. For each class, the Outside students were required to write their thoughts and feelings about the classes held at the facility. Reflective journaling is one of the Inside-Out experiential learning techniques. Journaling gave the Outside students the opportunity to take the time to

41. For the one-day-a-week, 2.5-hour class, ALR has two presentation and discussion periods with two breaks. Typically, two legal research topics (e.g., statutes and regulations) are covered in one day.

think about their class experiences. Before the semester ended, an Inside-students-only class was held in which they were also given a chance to express their thoughts and feelings about the course. A similar Outside-students-only session was held at the Howard Law Library.

10 Final Recommendations

¶36 Here are a few recommendations for those interested in launching their own Inside-Out programs.

1. Read *Turning Teaching Inside Out: A Pedagogy of Transformation for Community-Based Education* by Simone Davis & Barbara Roswell. It provides an extensive description of how to start an Inside-Out program, various teaching techniques, assessment suggestions, and articles from Inside students and instructors.
2. Do extensive preliminary work so you are prepared to present the course proposal to your university and law school administration. Discussions should include your university signing a memorandum of understanding with the correctional facility. Be sure to request funding for the Inside-Out instructor certification program, as well as funding for law students' travel expenses to and from the correctional facility.
3. Become a certified Inside-Out instructor. The National Instructor Training Institute is a seven-day, 60-hour intensive training course held at a correctional facility.⁴² The course provides the community-based learning techniques needed for effective teaching in a correctional facility. The price for the training is approximately \$2,300, which includes housing and meals. Travel expenses are an additional cost. Since the COVID-19 pandemic, some of the Inside-Out certification courses are now offered remotely, which reduces travel, housing, and meal expenses.
4. Network with other Inside-Out instructors. More than 1,100 trained faculty use the pedagogy, and they can be excellent resources.
5. Sweat the small stuff, which includes reminding the students that they need to have their government-issued photo identification to enter the facility and quarters for the lockers, and that notebooks with a spiral edge are prohibited. Teaching in a correctional facility is a complex undertaking. It requires that you consider the complicated dynamics of teaching law students and incarcerated students in the same classroom.
6. Develop a good working relationship with the correctional facility administration. You must know facility rules and abide by them. One mistake could jeopardize not just the one course but other Inside-Out programs at that facility. Correctional facilities require consistency, and last-minute changes are disruptive.

42. *The Inside-Out Prison Exchange Program: Training Institutes*, INSIDE-OUT CTR., <https://www.insideoutcenter.org/training.html> [https://perma.cc/8XKT-BLXM].

7. It is OK to start at a gradual pace. First, you can begin by offering to teach a few sessions or a course at the facility for Inside students only. The goal would be for you to gain familiarity with the facility's operations and personnel before adding Outside students. Second, you could launch a modified Inside-Out course in which students participate remotely (if the technology is available at your facility). While the Outside students would not attend classes at the facility, they would still gain the experience of working with their Inside classmates. Third, you may be ready to offer the ALR Inside-Out course, but only for a few sessions and not the whole semester. Thus, the Outside students would have some classes at the facility with their Inside classmates, but the majority of the ALR classes would still be at the law school. There are many different approaches to be implemented with the facility's approval.
8. Be flexible. The correctional facility may need to change the schedule on short notice. The Inside students may be late to class, leave in the middle of class, get transferred to another facility, or be discharged. Breathe and keep moving forward.
9. Recognize that the class can have an emotional toll. By the end of the semester, the instructors and students have bonded, and they are often sad when the class ends.
10. One of the unexpected benefits of teaching ALR at the DOC is not the impact that it has on the students but the effect it has on the teaching faculty. During the 2019 AALL Annual Meeting program, "The Inside-Out Prison Exchange Program: Teaching Legal Bibliography to Change Lives,"⁴³ Ballard-Thrower became very emotional about describing what teaching this course means to her. She expressed that teaching this course has given her a new opportunity. She can teach incarcerated residents legal research skills that they can use for possible employment. She believes this is a small way for her to help reduce the cycle of recidivism. Yes, legal research can be a social justice tool.

Conclusion

¶37 Can Inside students rise to the challenge of completing classes at the collegiate and professional school level? Yes, resoundingly so. Oftentimes, Inside ALR students have more practical knowledge about the criminal justice process than Outside ones. Inside students have been to hearings, filed motions pro se, and worked with parole officers, social workers, and attorneys. Also, instructors have found that many Inside students have a voracious thirst for legal knowledge. Inside students are frequently better prepared for class than their Outside classmates. We know that Inside students can

43. *The Inside-out Prison Exchange Program: Teaching Legal Bibliography To Change Lives*, AM. Ass'n OF LAW LIBR., <https://elearning.aallnet.org/products/the-inside-out-prison-exchange-program-teaching-legal-bibliography-to-change-lives>.

perform on an equal level because they have done exactly that since 2017, when Howard University School of Law began its Inside-Out program.

¶38 Three aspects in particular make the ALR Inside-Out course a success. First is the positive working relationship between the Howard faculty and the DOC's Division of College and Career Readiness. Muhammad had the vision to start the program at Howard and did not hesitate to think that incarcerated residents could take a law school course. Second, DOC Director Booth and Deputy Director Lopez formed a team that has developed an amazing education program for the incarcerated residents. And third, the Inside students who eagerly attend class each week are well prepared and anxious to learn. The synergy of all these components is why teaching this course has worked so well.

¶39 In his seminal work, *Discipline and Punish: Birth of the Prison*, Michel Foucault begins with a gruesome description of a French prisoner's execution.⁴⁴ Part of the prisoner's flesh was to be torn away, his right hand burned with sulfur, molten lead poured into his wounds, he would be drawn and quartered by four horses, and ultimately have his limbs and body set on fire.⁴⁵ A horror movie could only be more gruesome. And yet, this was an actual prison execution description from late 1700s France.⁴⁶ It would take 100 years before the public spectacle of torture disappeared from prison executions.⁴⁷ By the 1800s, rather than torture the body, the focus moved to saving the soul.⁴⁸ Eastern State Penitentiary, the first of its kind in the United States, would open in 1829 in Philadelphia as a way of *restoring our fellow creatures to virtue and happiness*.⁴⁹ Guided by the Eastern State philosophy for over a century, restoration was considered the norm for many American prisons, including vocational training and even some college courses.⁵⁰ Such was the experience for the incarcerated until a rise in violent crime led to the country's more punitive path and the subsequent war on drugs.⁵¹ With the creation of the Violent Crime Control and Law Enforcement Act of 1994,⁵² rehabilitation was drastically reduced, the private prisons birthed, and federal Pell grants for incarcerated residents were eliminated.⁵³ Twenty-four years later, as the economy improved and crime rates decreased, the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act of 2018 (First Step Act) would herald a return to prison

44. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON*, 3 (2d. ed., Alan Sheridan, trans., 1995).

45. *Id.*

46. *Id.*

47. *Id.* at 14.

48. *Id.* at 16.

49. BILL KELLER, *WHAT'S PRISON FOR? PUNISHMENT AND REHABILITATION IN THE AGE OF MASS INCARCERATION* 17–18 (2022).

50. *Id.* at 19.

51. *Id.*

52. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, <https://www.congress.gov/103/statute/STATUTE-108/STATUTE-108-Pg1796.pdf> [<https://perma.cc/2Z53-PUQJ>].

53. ANTHONY MARCUS, *Some Notes on Prisoner Education and the Anthropology of Reentry: A Report from the Field*, 45 DIALECTICAL ANTHROPOLOGY 169 (2020).

reform and education programs.⁵⁴ Today, there are about 1.2 million people incarcerated in America's prisons.⁵⁵ Unfortunately, most of those facilities do not have higher education programs.⁵⁶ But for those few facilities that offer education programs, research shows that people who take courses while they are incarcerated are 28 percent less likely to return to prison.⁵⁷ As scholars debate the abolition of mass incarceration in this country,⁵⁸ law librarians do not have the power to end the system we now know. But law librarians who accept the challenge to teach legal research in carceral facilities using the Inside-Out pedagogy can accomplish much. One, they serve as a bridge between law and incarcerated students, providing a unique and valuable experience for all involved. Two, by teaching legal research, law librarians help incarcerated students not only develop new skills, but also build confidence that they can successfully complete college-level courses. And three, by bringing *outside* students inside, law librarians can help law students understand how they can be social justice advocates for change. Legal research can be a social justice tool.

54. Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act of 2018, Pub. L. No. 115-391, 132 Stat 5194, <https://www.congress.gov/115/plaws/plubl391/PLAW-115publ391.pdf> [<https://perma.cc/2B5E-FE26>].

55. E. Ann Carson, Bureau of Justice Statistics, NCJ 305125, Prisoners in 2021 – Statistical Tables (2022).

56. Rebecca Ginsburg, *Introduction*, in CRITICAL PERSPECTIVES ON TEACHING IN PRISON: STUDENTS AND INSTRUCTORS ON PEDAGOGY BEHIND THE WALL (Rebecca Ginsburg ed., 2019).

57. Robert Bozick et al., *Does Providing Inmates with Education Improve Post Release Outcomes? A Meta-Analysis of Correctional Education Programs in the United States*, 14 J. EXPERIMENTAL CRIMINOLOGY 389, 407 (2018).

58. TOMMIE SHELBY, THE IDEA OF PRISON ABOLITION, 4–5 (2022).

OK, Zoomer: Teaching Legal Research to Gen Z*

Olivia R. Smith Schlinck**

Generation Z has entered law school. With each new generation comes new education preferences. While research on Gen Z in the legal academy has grown over the past few years, to date none deal explicitly with teaching legal research to Gen Z. This article connects Gen Z's childhood and resulting peer personality to 10 tangible pedagogical changes for teaching legal research to Gen Z.

The children now love luxury; they have bad manners, contempt for authority; they show disrespect for elders and love chatter in place of exercise. Children are now tyrants, not the servants of their households. They no longer rise when elders enter the room. They contradict their parents, chatter before company, gobble up dainties at the table, cross their legs, and tyrannize their teachers.¹

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1. Plato. *Or Socrates. Nobody knows.*

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Introduction

¶1 People love to categorize: animals into classes (then orders, families, genera, and species); learning into subjects (language arts, history, philosophy); nourishment food groups (fruits, vegetables, grains, protein, dairy); music into genres (classical, jazz, blues, pop, country, alternative, rap, hip-hop, rock); and so on. Categories help us organize, navigate, and make sense of the world. This is not a modern phenomenon but rather a human one; one of Aristotle's greatest works is on categories.² People especially love categorizing themselves: assigning people to social groups based on their race, gender, class, and religion. One of these well-analyzed categories of people is the generation, a group of similarly aged people.

¶2 People often use generational categories to make assumptions about an individual's attitudes, beliefs, habits, and values. For example, the Baby Boomers, born 1946–1964, have a strong work ethic, buy wholeheartedly into the American Dream, and are raised to believe that “hard work is the path to success.”³ Gen Xers, a “relatively small, jaded generation”⁴ born 1965–1980 were the “latchkey kids,” considered cynical and “lost” as young adults and are often overlooked as a cohort today.⁵ The Millennials, born 1981–1994, are often painted as lazy, entitled, and self-centered;⁶ blamed for

2. See ARISTOTLE, CATEGORIES (Harold P. Cooke ed. & Trans., Harvard University 1996) (1938).

3. Robert Minarcin, *OK Boomer—The Approaching Disruption of Legal Education by Generation Z*, 39 QUINNIPAC L. REV. 29, 36 (2020).

4. Alex Williams, *Move Over, Millennials, Here Comes Generation Z*, N.Y. TIMES, Sept. 18, 2015, at 1.

5. See, e.g., Paul Taylor & George Gao, *Generation X: America's Neglected "Middle Child,"* PEW RSCH. CTR., June 5, 2014, <https://www.pewresearch.org/fact-tank/2014/06/05/generation-x-americas-neglected-middle-child/> [<https://perma.cc/28JF-B3WX>] (“This overlooked generation . . . bookended by two much larger generations”).

6. See, e.g., Willem Gravett, *The Generational Traits of Millennial Law Students*, 83 TYDSKRIF VIR HEDENDAAGSE ROMEINS-HOLLANDSE REG [J. CONTEMP. ROMAN-DUTCH L.] 67, 72 (2020) (“[T]hey more accurately fit the stereotype of the disengaged, entitled student customer, expecting high marks without

“killing” every industry under the sun;⁷ and mocked as the “participation trophy” generation.⁸

¶3 Setting aside these (often negative) stereotypes, generational categories can be useful for pedagogical purposes. Professors who understand their students’ generational attributes are better educators.⁹ Students arrive in the classroom with preexisting traits, attributes, and attitudes, all of which are informed by their generation.¹⁰ Like other educators, law librarians considered the Millennial generation’s unique characteristics and adapted their instruction accordingly, providing advice to their colleagues across the profession for teaching the first generation of “digital natives.”¹¹ It is time to do the same for Gen Z students.

¶4 Generation Z, referred to simply as Gen Z or the Zoomers,¹² is the group of people born between 1995 and 2012.¹³ Today, these roughly 11- to 28-year-olds make up nearly a quarter of the U.S. population—about 85 million people.¹⁴ In the context of

significant effort and often just for showing up to class; demanding comfort more than a rigorous education; seeing themselves as consumers and expecting services and personal attention on demand; having little respect for authority and showing disdain for collegial and social rules of conduct; failing to differentiate between civil exchange of reasoned ideas and shouting personal beliefs, yet growing defensive when faced with constructive criticism; and having a naive sense of the future.”).

7. See, e.g., Kate Taylor, “*Psychologically Scarred*” Millennials are Killing Countless Industries from Napkins to Applebee’s—Here are the Businesses They Like the Least, BUS. INSIDER (Oct. 31, 2017, 2:18 P.M.), <https://www.businessinsider.com/millennials-are-killing-list-2017-8> [https://perma.cc/DAU6-3RDP] (listing the industries Millennials allegedly “killed,” including diamonds, cereal, banks, and football).

8. Jeffrey Zaslow, *The Most-Praised Generation Goes to Work*, WALL ST. J. (Apr. 20, 2007, 12:01 A.M.), <https://www.wsj.com/articles/SB117702894815776259> [https://perma.cc/LBS7-ET5T] (“[S]ome researchers suggest that inappropriate kudos are turning too many adults into narcissistic praise-junkies.”).

9. See Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. LITTLE ROCK L. REV. 29, 36 (2018) (“Put simply, everyone and no one is to ‘blame’ for the attributes of Gen Z law students, good or bad. Our focus should be on understanding them more fully, so we can educate them more effectively.”).

10. *Id.* at 39.

11. See, e.g., Aliza B. Kaplan & Kathleen Darvil, *Think and Practice Like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM'C & RHETORIC 153 (2011) (calling for curriculum change to adapt to incoming Millennial law students); Kari Mercer Dalton, *Bridging the Digital Divide and Guiding the Millennial Generation's Research and Analysis*, 18 BARRY L. REV. 167 (2012) (discussing strategies for teaching information literacy and legal research to Millennials); Jessica Haseltine, *Yes, You Can: A Millennial on Millennials*, AALL Spectrum, Nov. 2014, at 8. (describing the Millennial generation and suggesting approaches to teaching them legal research).

12. See Michael Dimock, *Defining Generations: Where Millennials End and Generation Z Begins*, PEW RSCH. CTR., Jan. 17, 2019, <https://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z-begins/> [https://perma.cc/6GWF-CU83] (“[W]e hesitated at first to give them a name . . . but over the past year, Gen Z has taken hold in popular culture and journalism.”); see also *Words We're Watching: “Zoomer,”* MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/words-at-play/words-were-watching-zoomer-gen-z> [https://perma.cc/T4KZ-EP6F]. Interestingly, the nickname “Zoomer” predates the use of “Zoom” for education during the COVID-19 pandemic. See *Zoomer Wojak*, KNOW YOUR MEME, <https://knowyourmeme.com/memes/zoomer-wojak> [https://perma.cc/6DBD-QPBF].

13. See *infra* “An Overview of Generational Theory.”

14. United States Census Bureau, American Community Survey S0101 Age and Sex 2021: ACS 1-Year Estimates Subject Tables, <https://data.census.gov/table?tid=ACSSST1Y2021.S0101> [https://perma.cc/WT85-QJRT] (showing 87,128,678 people in the U.S. ages 10–29 in 2021).

legal education, Gen Z students have been in law school for at least the last six years,¹⁵ but only a handful of articles discuss their impact on law school pedagogy.¹⁶ To date, none focus specifically on legal research instruction for Gen Z law students. Given their ever-growing population in law schools, legal research professors must pay serious attention to Gen Z students, their characteristics, and how they learn, to make the changes required to best teach them.

¶5 This article uses the frame of generational characteristics to meet its larger goal of better equipping legal research professors to effectively teach Gen Z students. Moreover, it focuses on Gen Z in a positive light and encourages other educators to do the same. After all, if complaints about the younger generation’s “tyranniz[ing] their teachers” dates back to ancient Greece, then it may be time to see our students as occupying a glass half full.

¶6 It is important to note several assumptions before beginning. First, this article assumes that categorizing by generation is a useful endeavor and that persons falling within a generation share some characteristics. Second, it assumes that most law students fall within the same age range and that some number of current law students are part of Gen Z.¹⁷

¶7 The article begins with a brief overview of generational theory. It then discusses the Gen Z cohort, first exploring the societal context of their upbringing and then their resulting traits and characteristics. Finally, it applies Gen Z’s traits to offer 10 tangible suggestions on how to best instruct Gen Z students in the legal research classroom.

15. Born in 1995, the oldest Gen Z law students would be 28 as of this writing. Zoomers who entered law school immediately after graduating college would have enrolled in 2017 and graduated in 2020.

16. As of February 2022: Elizabeth A. Cameron & Marisa Anne Pagnattaro, *Beyond Millennials: Engaging Generation Z in Business Law Classes*, 34 J. LEGAL STUD. EDUC. 317 (2017) (discussing Gen Z’s “three major learning styles”); Graham, *supra* note 9 (exploring Gen Z’s personality and learning characteristics and providing suggestions on how to adjust legal education to fit Gen Z’s needs); Minarcin, *supra* note 3 (examining Gen Z’s personality and traits and suggesting changes to curricula to meet their learning characteristics); Mark D. Janis & Norman J. Hedges, *Training Post-Millennial IP Lawyers: A Field Guide*, 11 LANDSLIDE MAG. (2019) (providing guidance on how to train law students to be intellectual property practitioners); Carolyn V. Williams, #CriticalReading #WickedProblem, 44 S. ILL. U. L.J. 179 (2020) (discussing the problem of critical reading” skills for Millennials and Gen Z in law school); Tiffany D. Atkins, #ForTheCulture: *Generation Z and the Future of Legal Education*, 26 MICH. J. RACE & L. 115 (2020) (advocating for structural changes to the law school curriculum to increase diversity and social justice initiatives); Sha-Shana Crichton, *Teaching in the Time of Disruption: A Case for Empathy and Honoring Diversity*, 25 LEGAL WRITING 4 (2021) (discussing approaches to educating Gen Z law students to appeal to their desire for equal justice under the law); Laura P. Graham, “*Safe Spaces*” and “*Brave Spaces*”: *The Case for Creating Law School Classrooms That Are Both*, 76 U. MIAMI. L. REV. 84 (2021) (advocating for changes to the law school environment to foster dialogue about racial and social injustice with Gen Z students).

17. The average age of a 1L at the top 50 law schools, ranked by U.S. News, is 24. Many members of the class of 2026, entering law school in fall 2023, will be born between 1999 and 2001. See Barbara Vargo, *Later-Than-Most to Law School*, ABA STUDENT LAW, Jan. 1, 2020, <https://abaforlawstudents.com/2020/01/01/later-than-most-to-law-school/> [<https://perma.cc/EAY2-P8YM>] (“According to LSAC, 1L students average between 22–24 years old.”).

An Overview of Generational Theory

¶8 Several sociologists contributed to the categories we now call “generations,” what the public thinks of when they call someone a “Boomer” or a “Gen Xer” or a “Millennial.”¹⁸ A generation is a group of similarly aged people spanning about two decades, although most scholars today agree that the cutoff date for a generation has some fluidity.¹⁹ Generational membership is involuntary, permanent (unlike age, which is involuntary but ever-changing), and finite; “after its last birthyear, a cohort-group can only shrink in size.”²⁰ Because the members of a generation are born between two fixed points, all members of a generation experience “the same national events, moods, and trends at similar ages,” leading to a distinct peer personality.²¹

¶9 The generations alive today are as follows: the G.I. Generation (also known as the Greatest Generation), born 1901–1924; the Silent Generation, born 1925–1946;²² the Baby Boomers, born 1946–1964;²³ Gen X, born 1965–1980;²⁴ the Millennials, born 1981–1994;²⁵ Gen Z, born 1995–2012;²⁶ and Generation Alpha, born after 2013.²⁷

¶10 The end of the Millennial generation and the span of the Gen Z generation is not necessarily a fixed date. But the imprecision of the beginning and end of a generational cohort should not impact its usefulness as an analytical tool.²⁸ Those born at the

18. See Karl Mannheim, *The Problem of Generations*, in ESSAYS ON THE SOCIOLOGY OF KNOWLEDGE (1952) (outlining the structure of generations); see also NEIL HOWE & WILLIAM STRAUSS, GENERATIONS: THE HISTORY OF AMERICA’S FUTURE (1992) (describing generation theory and describing the generations of American history beginning in 1584).

19. HOWE & STRAUSS, *supra* note 18, at 34; see also Dimock, *supra* note 12 (“[G]enerational cutoff points aren’t an exact science.”).

20. HOWE & STRAUSS, *supra* note 18, at 48.

21. *Id.*

22. *Id.* at 8.

23. See generally the “Baby Boomer” generation is the only generation officially recognized by the U.S. Census. SANDRA L. COLBY & JENNIFER M. ORTMAN, THE BABY BOOM COHORT IN THE UNITED STATES: 2012 TO 2060 (2014).

24. Dimock, *supra* note 12.

25. *Id.*

26. The birth year range for Gen Z varies by source. The leading researchers on Gen Z as college students, Corey Seemiller and Meghan Grace, use the span of 1995–2010. The Pew Research Center uses 1997–2012. I have chosen 1995–2012 to encompass the widest range. COREY SEEMILLER & MEGHAN GRACE, GENERATION Z GOES TO COLLEGE (2015); see also Dimock, *supra* note 12.

27. Gen Alpha are the children of Millennials and older Gen Zers. See MARK MCCRINDLE ET AL., GENERATION ALPHA: UNDERSTANDING OUR CHILDREN & HELPING THEM THRIVE (2021) (describing Gen Alpha’s birth years between 2010 and 2024); see also Joe Pinsker, *Oh No, They’ve Come Up with Another Generation Label*, ATLANTIC (Feb. 21, 2020), <https://www.theatlantic.com/family/archive/2020/02/generation-after-gen-z-named-alpha/606862/> [<https://perma.cc/ARG2-KTVM>] (“What comes after Z? Alpha, apparently. That’s the (Greek) letter that the unofficial namers of generations—marketers, researchers, cultural commentators, and the like—have affixed to Gen Z’s successors, the oldest of whom are on the cusp of turning 10.”).

28. “Like most other social categories—religion, political party, income, occupation, race—generations can be imprecise at the boundaries. We define generational boundaries by calendar year—and, of course, some people born on just one side may really belong on the other. But a little ambiguity does not keep us from distinguishing Catholics from Protestants, Democrats from Republicans, or the middle class

beginning or end of the date range may associate more with the common traits and stereotypes of a generation other than their own. For example, some people born between 1995 and 2000 describe feeling stuck between the Millennial and Gen Z generations, dubbing themselves the “Zillennials.”²⁹ The preciseness of the date is immaterial when the importance is in shared experiences, or “generation defining moments.”³⁰ By “living through certain historical events” with similarly aged people, worldviews and values emerge.³¹

¶11 Not all members of a generation exhibit all—or any—of the traits of their generation.³² Instead, generational theory allows us to uncover a “peer personality,” common beliefs and behaviors as informed by age and perceived generational membership.³³ Put differently, peer personality is “a caricature” of a generation’s “prototypical member.”³⁴ While not every member of a generation will fit into this caricature, and indeed some members may have no generational traits at all, “even those who differ from the peer norm are generally *aware* of their nonconformity,”³⁵ like a person born in 1987 steadfastly refusing Millennial traits and insisting they fit more with Gen X.

¶12 By learning a generation’s peer personality, we can begin to tailor pedagogy to fit those preferences. What follows is a look inside the upbringing and characteristics of Zoomers in America.

Gen Z’s Peer Personality

¶13 Today, Gen Z, born between 1995 and 2012, are aged roughly 11 to 28. Since birth, Zoomers have lived in a world of perpetual crisis, beginning with the terrorism attacks on September 11, 2001.³⁶ Whereas even the youngest Millennial would have a memory of the day, the majority of Zoomers were not alive when the towers fell, and those who were alive are unlikely to remember it. While Millennials experienced a world

from the poor.” HOWE & STRAUSS, *supra* note 18, at 59.

29. *Urban Dictionary* defines Zillennial as “a microgeneration consisting of persons born three years before the end of Millennials and/or three years after the start of Generation Z.” *Zillennial*, URBAN DICTIONARY, <https://www.urbandictionary.com/define.php?term=Zillennial> [https://perma.cc/5F56-427G]. See also Alicia Lansom, *Too Old for Gen Z, Too Young for Millennials: Life as a Confused Zillennial*, REFINERY29, Mar. 9, 2021, <https://www.refinery29.com/en-gb/generation-zillennial> [https://perma.cc/ZXN8-9V5P] (describing the confusion of identifying which generation someone born in 1996 belongs to).

30. GEN HQ, STATE OF GEN Z 2020: GEN Z AS EMPLOYEES AND EMERGING LEADERS 5 (2020), <https://genhq.com/generation-z-employee-research-2020/> [https://perma.cc/W7N9-32VR] (available for free download).

31. JOHN DELLA VOLPE, FIGHT: HOW GENERATION Z IS CHANNELING THEIR FEAR AND PASSION TO SAVE AMERICA 1 (2022).

32. HOWE & STRAUSS, *supra* note 18, at 8–9.

33. *Id.* at 64.

34. *Id.*

35. *Id.* at 66.

36. See ROBERTA KATZ ET AL., GEN Z, EXPLAINED: THE ART OF LIVING IN A DIGITAL AGE 125 (2021) (“[A] perpetual atmosphere of crisis, whether local, regional, or global, has been brought right into their bedrooms through their internet feeds.”).

before the hyper-surveillance of the Patriot Act state, Zoomers have grown up almost entirely in a post-9/11 world. They have always taken their shoes off at the airport.³⁷ It is normal to them.

¶14 To paint a picture of the “average” Gen Z law student, I use descriptions from the Mindset List,³⁸ as Laura P. Graham does.³⁹ As an example, the undergraduate class of 2019—students largely born in 1997 and entering law schools after 2019—“have never licked a postage stamp, have assumed that Wi-Fi is an entitlement, and have no firsthand experience of Princess Diana’s charismatic celebrity.”⁴⁰ For the undergraduate class of 2023—largely born in 2001 and yet to walk the law school halls—“the primary use of a phone has always been to take pictures.”⁴¹

¶15 Studies of Gen Z thus far describe them as cautious, pragmatic,⁴² confident,⁴³ and self-reliant.⁴⁴ As college students, Zoomers were found to be loyal, compassionate, thoughtful, open-minded, responsible, and determined.⁴⁵ They are motivated by making a difference⁴⁶ even if “deeply pessimistic about the problems they have inherited” like climate change, racial injustice, and economic issues. Constantly connected to technology,⁴⁷ Gen Z “values ‘information, stimulation, and connection.’”⁴⁸ They are entrepreneurial and motivated by the prospect of future financial security. When it comes to the classroom, Zoomers want “an education they can apply.”⁴⁹

37. In December 2001, Richard Reid boarded a flight from Paris to Miami with bombs hidden in his shoes, which led to the requirement that all passengers remove their footwear to be screened by the Transportation Security Administration (TSA) before boarding a flight. *See Artifact of the Month: December 2020: Richard Reid’s Shoes*, FBI, <https://www.fbi.gov/history/artifact-of-the-month/december-2020-richard-reids-shoes> [https://perma.cc/5RNS-ZRRX].

38. “The Mindset list has delighted millions for over a decade about what has ‘always’ or ‘never’ been true for entering college students.” MINDSET Lists, <http://themindsetlist.com/lists/> [https://perma.cc/4DFN-DPSG].

39. Graham, *supra* note 9, at 38.

40. Tom McBride & Charles Westerberg, *The Mindset List for the Class of 2019*, MINDSET Lists, <http://themindsetlist.com/lists/the-mindset-list-for-the-class-of-2019/> [https://perma.cc/W3PB-QXU4].

41. *Read the Marist Mindset List for the Class of 2023*, MINDSET Lists, <https://www.marist.edu/mindset-list> [https://perma.cc/65TJ-GDSQ].

42. See Hedges & Janis, *supra* note 16 (“They’re pragmatic. Millennials may be idealists; post-millennials are projected to be more hard-headed, valuing long-term job security.”); see Williams, *supra* note 16, at 190 (tracing Gen Z’s pragmatism to their Gen X parents’ parenting and values); see also Williams, *supra* note 4 (“I think I can speak for my generation when I say that our optimism has long ago been replaced with pragmatism.”).

43. *See KATZ ET AL.*, *supra* note 36, at 191; *see also* Crichton, *supra* note 16, at 7 (“this visibly bold and strikingly confident group”).

44. KATZ ET AL., *supra* note 36, at 127.

45. SEEMILLER & GRACE, *supra* note 26, at 7–13.

46. *Id.* at 15.

47. *See id.* at 29 (“[O]ne study found that 100 percent of all Generation Z students indicate being online at least one hour per day with nearly three-quarters of those within one hour of waking up.”).

48. Cameron & Pagnattaro, *supra* note 16, at 318 (internal citations omitted).

49. JEFFREY J. SELINGO, THE NEW GENERATION OF STUDENTS: HOW COLLEGES CAN RECRUIT, TEACH, AND SERVE GEN Z 26 (2018).

¶16 Of course, we can no longer talk about a generation's peer personality without considering the impact of the COVID-19 pandemic. Before COVID-19, Gen Z were on track to "inherit a strong economy with record-low unemployment," setting their adulthood off on the right foot.⁵⁰ When COVID-19 arrived, Gen Z was among the hardest hit by job loss and pay cuts,⁵¹ causing the steepest decline in college enrollment in recorded history,⁵² and driving many Zoomers living on their own to move back in with their parents.⁵³

The Tech Factor

¶17 For Gen Z, technology is central to their being. It is an "extension of themselves."⁵⁴ Zoomers are comfortable and confident technology users, learning at a young age "how to find their own answers to questions . . . and navigate networks and use tools that confounded their elders."⁵⁵ *They never get off their dang phones* is a common complaint, often made by older adults in their lives: parents and grandparents, bosses, and strangers who see them on the streets, buses, and trains. As two researchers aptly note, it becomes apparent who is Gen Z and who is not when a question arises in conversation that nobody can answer; whoever immediately "reaches for a smartphone to query Google, Bing, or Yahoo for the answer" is a Zoomer.⁵⁶

¶18 Some call people who grow up using technology—like Millennials and Zoomers—"digital natives."⁵⁷ Born throughout the 1980s and early 1990s, many Millennials attended primary school and some high school without computer and

50. Kim Parker & Ruth Igielnik, *On the Cusp of Adulthood and Facing an Uncertain Future: What We Know About Gen Z So Far*, PEW RSCH. CTR. (May 14, 2020), <https://www.pewsocialtrends.org/essay/on-the-cusp-of-adulthood-and-facing-an-uncertain-future-what-we-know-about-gen-z-so-far/> [https://perma.cc/9ZP5-JPSX].

51. Richard Fry et al., *A Majority of Young Adults in the U.S. Live with Their Parents for the First Time Since the Great Depression*, PEW RSCH. CTR. (Sept. 4, 2002), <https://www.pewresearch.org/fact-tank/2020/09/04/a-majority-of-young-adults-in-the-u-s-live-with-their-parents-for-the-first-time-since-the-great-depression/> [https://perma.cc/GBM2-JKQH].

52. JEFFREY J. SELINGO, *THE FUTURE OF GEN Z: HOW COVID-19 WILL SHAPE STUDENTS AND HIGHER EDUCATION FOR THE NEXT DECADE 5* (2022) ("Never before had colleges experienced a one-year decline in enrollment as steep as the one they witnessed between the high-school graduating classes of 2019 and 2020. In that one-year period, the number of students enrolling directly in college from high school dropped by some 700,000 students, or nearly 7 percent.").

53. Fry et al., *supra* note 51 ("The share of 18- to 29-year-olds living with their parents has become a majority since U.S. coronavirus cases began spreading early this year, surpassing the previous peak during the Great Depression era.").

54. SELINGO, *supra* note 52, at 17.

55. KATZ ET AL., *supra* note 36, at 191.

56. TOM KOULOPOULOS & DAN KELDSEN, *THE GEN Z EFFECT: THE SIX FORCES SHAPING THE FUTURE OF BUSINESS 3* (2014) ("In fact, many children born into Gen Z have an annoying habit of constantly fact-checking their parents during conversations.").

57. This term was coined by Marc Prensky in 2001. See Marc Prensky, *Digital Natives, Digital Immigrants*, 9 ON THE HORIZON 1, <https://www.marcprensky.com/writing/Prensky%20-%20Digital%20Natives,%20Digital%20Immigrants%20-%20Part1.pdf> [https://perma.cc/H7CW-GL7U] ("the most useful designation I have found for them is Digital Natives. Our students today are all 'native speakers' of the digital language of computers, video games, and the internet.").

internet access. Their technology education focused less on information literacy (outside of an ever-present warning to Never Use Wikipedia Ever) and more on physical skills like typing. Millennials might remember being in high school when MySpace, the “original” social media site, became popular and in college when Facebook first emerged. Perhaps the more accurate way to describe Millennials is that they were the first generation to *grow up* with computer and internet technology.

¶19 Gen Z have since taken Millennials’ place as “digital natives,” being the first generation *born into* technology. The vast majority of Zoomers were children—or not yet born—when social media gained popularity.⁵⁸ The oldest Gen Z members were barely in the double-digits when the first iPhone was released⁵⁹ and adolescents when the iPad hit the shelves.⁶⁰ Zoomers might not remember a time before smartphones were the norm and laptops in classrooms were commonplace. By 2017, when the eldest Zoomers were graduating college, “more than half the nation’s primary- and secondary-school students” used Google education apps and tools like Chromebooks.⁶¹

¶20 Zoomers use their devices to scroll and post on social media, browse the internet, play games, shop, watch videos, and do schoolwork. Zoomers *love* YouTube,⁶² and their social media platforms of choice are Instagram, Snapchat, and TikTok.⁶³ The shorter format of this media, sometimes called “snack media” or “bite-size communications,” appeals to this generation, who have short attention spans.⁶⁴ Zoomers stay current on news and politics largely through social media and have no qualms about admitting this oft-taboo format for news consumption,⁶⁵ with 9 in 10 reporting using

58. While various social media—like messaging services and blogs—existed throughout the 1990s, the “first” social media site, MySpace, launched in 2003, followed by Facebook in 2004, YouTube in 2005, Reddit in 2005, Twitter in 2006, Tumblr in 2007, Pinterest and Instagram in 2010, and Snapchat in 2011. *See Jose van Dijck, THE CULTURE OF CONNECTIVITY: A CRITICAL HISTORY OF SOCIAL MEDIA* 7 (2013); *see also* Jolie O’Dell, *iPhone Photo App Instagram Nabs 100K Users in One Week*, MASHABLE (Oct. 13, 2010), <https://mashable.com/archive/instagram-100k-users#e8nU0D3CAaqb> [<https://perma.cc/32SW-GSKW>].

59. The first iPhone was released in the United States on June 29, 2007.

60. The first iPad was released in the United States on April 3, 2010.

61. Natasha Singer, *How Google Took Over the Classroom*, N.Y. TIMES (May 13, 2017), <https://www.nytimes.com/2017/05/13/technology/google-education-chromebooks-schools.html> [<https://perma.cc/QD8E-YP8K>].

62. PEARSON, BEYOND MILLENNIALS: THE NEXT GENERATION OF LEARNERS 11 (2018), https://www.pearson.com/content/dam/one-dot-com/one-dot-com/global/Files/news/news-annoucements/2018/The-Next-Generation-of-Learners_final.pdf [<https://perma.cc/MC6K-9KDQ>].

63. Brooke Auzier & Monica Anderson, *Social Media Use in 2021*, PEW RSCH. CTR., Apr. 7, 2021, <https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/> [<https://perma.cc/Z4YT-TE4W>] (“In fact, a majority of 18- to 29-year-olds say they use Instagram (71 percent) or Snapchat (65 percent), while roughly half say the same for TikTok.”).

64. Cameron & Pagnattaro, *supra* note 16, at 318.

65. *See* Kim Parker et al., *Generation Z Looks a Lot Like Millennials on Key Social and Political Issues*, PEW RSCH. CTR., Jan. 17, 2019, <https://www.pewsocialtrends.org/2019/01/17/generation-z-looks-a-lot-like-millennials-on-key-social-and-political-issues/> [<https://perma.cc/PJG6-N2MW>] (“Gen Z ... are much less likely than older generations to say the fact that more people are getting their news from social media is a bad thing—39 percent of Gen Zers hold this view, compared with about half among each of the older generations.”).

their phones to check the news, and three-fifths getting news from social media directly.⁶⁶

¶21 Zoomers spend a *lot* of time looking at screens. In 2018, nearly half of U.S. teens reported using the internet “almost constantly.”⁶⁷ One study found that Zoomers struggle “to go even fifteen minutes without checking their [phones] for new messages.”⁶⁸ Some estimate that Gen Z’s social media usage is as high as 11 hours per week.⁶⁹ To put this in perspective, per day American adults check their phones around 50 times⁷⁰ and spend about three and a half hours on their phones.⁷¹

¶22 Introducing Zoomers to digital technologies at an early age certainly impacts the way they interact with and use technology as adults. But their comfort with digital technology does not necessarily equate to proficiency in the way the “digital natives” moniker implies.⁷² Simply growing up using digital technologies and using them more frequently than older people does not make Zoomers *better* at using technology than any other generation.⁷³ The ability to use a smartphone to text, tweet, film content for TikTok, and take and share photos on Instagram or Snapchat is very different from using a computer to conduct legal research or draft and edit a written work product using a word processing program.⁷⁴

¶23 Students who grew up using digital technologies “often substitute gathering a high volume of information—something they can do quickly online—for critically evaluating the information;” they may struggle to understand that a large *quantity* of

66. Niaz Ahmed, *Perception of Fake News: A Survey of Post-Millennials*, 10 JOURNALISM & MASS COMM'N 1, 12 (2020).

67. SELINGO, *supra* note 49, at 38.

68. Lauren A. Newell, *Rebooting Empathy for the Digital Generation Lawyer*, 34 OHIO ST. J. DISP. RESOL. 1, 50 (2019) (internal citations omitted).

69. ELLEN BARA STOLZENBERG ET AL., THE AMERICAN FRESHMAN: NATIONAL NORMS Fall 2018, at 9 (2019).

70. Todd Spangler, *Are Americans Addicted to Smartphones? U.S. Consumers Check Their Phones 52 Times Daily, Study Finds*, VARIETY (Nov. 14, 2018), <https://variety.com/2018/digital/news/smartphone-addiction-study-check-phones-52-times-daily-1203028454/> [https://perma.cc/3FPB-MUJA].

71. Rani Molla, *Tech Companies Tried to Help Us Spend Less Time on Our Phones. It Didn't Work.*, Vox (Jan. 6, 2020), <https://www.vox.com/recode/2020/1/6/21048116/tech-companies-time-well-spent-mobile-phone-usage-data> [https://perma.cc/9QNT-BMND].

72. Paul A. Kirschner & Pedro De Bruyckere, *The Myths of the Digital Native and the Multitasker*, 67 TEACHING & TCHR. EDUC. 135 (2017); see also Bernd W. Becker, *Information Literacy in the Digital Age: Myths and Principles of Digital Literacy*, 7 SCH. INFO. STUDENT RES. J. 1, 2 (2018) (“Another myth that is important to address is the idea that digital natives are by default, digitally literate. The term digital natives is a categorization of a person born or brought up during the age of digital technology. In many ways this leads them to be familiar with computers and the internet from an early age. The problem is that being familiar and being literate are not necessarily the same thing.”).

73. See, e.g., Kaplan & Darvil, *supra* note 11, at 175 n.131 (“It is important to mention that though these students were born into a world of technology and it is second nature to them, it doesn't necessarily mean that they understand how to use all of the tools appropriately or effectively.”).

74. See, e.g., Susan Azyndar, *Work with Me Here: Collaborative Learning in the Legal Research Classroom*, 1 LEGAL INFO. REV. 1, 3 (2015–2016) (“Although Millennials are born-digital and have been exposed to technology for much or all of their lives, these students are not necessarily experts in the use of technology or electronic-based research.”).

information does not necessarily equate to *quality* information.⁷⁵ And while being a “digital native” does not mean they have more advanced digital skills, some Zoomers nonetheless assume they are naturally gifted technology users and researchers.⁷⁶

¶24 Because Zoomers get so much of their news and current events knowledge from social media, some older generations voice concerns that Gen Z will struggle with separating fact from misinformation.⁷⁷ Gen Z are confident technology users, many of whom have taught their parents and older relatives how to use the internet and how to identify misinformation online.⁷⁸ And to some extent, this confidence and skill does protect them from “fake news”: a 2018 study found that “younger Americans are better than their elders at separating factual from opinion statements in the news.”⁷⁹ Zoomers are “generally very apt at being able to trace the origins of stories or discern the authenticity of a vital storyline.”⁸⁰ Instead, the issue for Gen Z lies in the pure *volume* of information they can access.⁸¹

¶25 In terms of research, Zoomers are “skilled at non-linear and selective reading, keyword spotting, scanning behaviors, and ‘power browsing,’ but less skilled at ‘careful study of word choices and sentence structure,’ which is imperative to critical reading.”⁸² As early Googlers, Zoomers often “prioritize relevance” in search results, meaning they often dismiss “information that does not immediately appear pertinent.”⁸³ Gen Z’s computer and digital skills, such as using word programs or creating spreadsheets, may be self-taught, particularly those older Zoomers who had less technology in their schools.

¶26 Because of their familiarity with the digital world, Zoomers indicate a preference for learning via video. Almost 60 percent describe YouTube as their “number one preferred learning method,” and 55 percent say YouTube has contributed to their

75. Williams, *supra* note 16, at 199.

76. Melissa Correll, *What Do High School Students Know About Information Literacy? A Case Study of One University’s Feeder Schools*, 7 PA. LIBR. 25, 32 (2019).

77. See, e.g., Jennifer Neda John, *Why Generation Z Falls for Online Misinformation*, MIT TECH. REV. (June 30, 2021), <https://www.technologyreview.com/2021/06/30/1026338/gen-z-online-misinformation/> [<https://perma.cc/63FJ-W2C2>] (“Young people are more likely to believe and pass on misinformation if they feel a sense of common identity with the person who shared it in the first place.”); see also Matthew Choi, *When Gen Z Is the Source of the Misinformation it Consumes*, POLITICO (Oct. 11, 2020), <https://www.politico.com/news/2020/10/11/gen-z-misinformation-politics-news-conspiracy-423913> [<https://perma.cc/MTP5-V6RL>] (“With an inundation of information, a penchant for picture-based platforms that can obfuscate nuance and an emotional media landscape rife with conflicting and dubious accounts, Gen Zers can and do fall into pitfalls with serious implications on their political outlook.”).

78. Choi, *supra* note 77 (“The sharing of fake news stories still tends to be the domain of older generations. . . . [Y]ounger social media users are often quick to call out in the comments of problematic posts when something is misleading or flat-out false.”).

79. Jeffrey Gottfried & Elizabeth Grieco, *Younger Americans Are Better Than Older Americans at Telling Factual News Statements from Opinions*, PEW RSCH. CTR., Oct. 23, 2018, <https://www.pewresearch.org/fact-tank/2018/10/23/younger-americans-are-better-than-older-americans-at-telling-factual-news-statements-from-opinions> [<https://perma.cc/Z4LA-7UAY>].

80. Choi, *supra* note 77.

81. *Id.*

82. Williams, *supra* note 16, at 198.

83. KATZ ET AL., *supra* note 36, at 23.

education.⁸⁴ Whereas the majority of Millennial students indicate a preference for print books, less than half of Zoomers say the same.⁸⁵ This preference does not mean that Gen Z want entirely online or virtual learning experiences—the COVID-19 pandemic has made that clear.⁸⁶ Instead, they “favor a mix of learning environments and activities, both face-to-face and online.”⁸⁷

Zoomers Are Diverse

¶27 Zoomers are the “most diverse generation in modern American history”⁸⁸ with just over half of Gen Z members identifying as non-Hispanic White.⁸⁹ One in four Zoomers are Hispanic, 14 percent are Black, and 6 percent are Asian.⁹⁰ They are less likely to be immigrants than Millennials⁹¹ but more likely to have one foreign-born parent.⁹²

¶28 Zoomers are also the gayest generation yet. About 1 in 5 Gen Z adults identify as LGBTQ—“nearly double the proportion of Millennials who do so.”⁹³ About 2 percent of Zoomers identify as transgender,⁹⁴ and 35 percent know someone who uses gender-neutral pronouns (as compared to 25 percent of Millennials, 16 percent of Gen Xers, and 12 percent of Boomers).⁹⁵

Zoomers Are Pragmatic and Money Conscious

¶29 The Great Recession was “formative” for Gen Z,⁹⁶ leaving them “debt averse” and apt to prioritize financial security.⁹⁷ Their childhoods were plagued by the

84. PEARSON, *supra* note 62, at 15.

85. *Id.* at 14 (“Notably, while 60 percent of Millennials prefer printed books for learning, only 47 percent of Gen Zers prefer books for learning.”).

86. See, e.g., Learning Network, *What Students Are Saying About Remote Learning*, N.Y. TIMES (Apr. 9, 2020), <https://www.nytimes.com/2020/04/09/learning/what-students-are-saying-about-remote-learning.html> [https://perma.cc/3D3L-J4K9] (describing the struggles facing students during remote learning).

87. SELINGO, *supra* note 49, at 25.

88. *Id.* at 9.

89. Richard Fry & Kim Parker, *Early Benchmarks Show “Post-Millennials” on Track to be Most Diverse, Best-Educated Generation Yet*, PEW RSCH. CTR., Nov. 15, 2018, <https://www.pewsocialtrends.org/2018/11/15/early-benchmarks-show-post-millennials-on-track-to-be-most-diverse-best-educated-generation-yet/> [https://perma.cc/Z5WX-ZTXR].

90. *Id.*

91. *Id.* (“[S]ome 7 percent of post-Millennials are foreign born, as were 8 percent of Millennials in 2002.”).

92. *Id.* (reporting that 22 percent of Gen Z have at least one foreign-born parent, compared to 15 percent of Millennials).

93. Jeffrey M. Jones, *LGBT Identification in U.S. Ticks Up To 7.1%*, GALLUP (Feb. 17, 2022), https://news.gallup.com/poll/389792/lgbt-identification-ticks-up.aspx?utm_source=twitterbutton&utm_medium=twitter&utm_campaign=sharing [https://perma.cc/62AN-V9FK] (“Roughly 21 percent of Generation Z Americans who have reached adulthood—those born between 1997 and 2003—identify as LGBT.”).

94. *Id.*

95. Parker et al., *supra* note 65.

96. SELINGO, *supra* note 49, at 18.

97. *Id.* at 19.

economic crash and a plummeting employment rate. Zoomers are turning out to be like the Silent Generation, born around the Great Depression, in their spending and saving habits.⁹⁸ They are mindful about spending money⁹⁹ and are pragmatic, valuing job security and looking to achieve “financial security in an uncertain future.”¹⁰⁰

¶30 As children and young teens, living through the Great Recession meant Gen Z watched their parents lose their jobs and perhaps their homes.¹⁰¹ The recession of 2007–2009 “eliminated 20 percent of the net worth from four in every five American families.”¹⁰² In 2008, about one-fifth of all households with children were food insecure,¹⁰³ and by 2009, approximately a year and a half into the recession, the child poverty rate was 20.7 percent—an increase of 33.4 percent since the beginning of the millennium.¹⁰⁴ In 2010, 1 in 9 children and teenagers in the United States had an unemployed parent.¹⁰⁵

¶31 The impact of a childhood marked by such economic instability cannot be overstated. Low socioeconomic status and economic anxieties can have profound impacts on children, like an increase in psychiatric disorders and behavioral problems.¹⁰⁶ Children whose parents experienced financial hardship may face a “cognitive tax on psychic resources such as attention, self-control, and patience,”¹⁰⁷ undoubtedly impacting their learning and development. Children whose parents lost their jobs are more likely to end up on unemployment or some sort of social assistance as adults.¹⁰⁸

¶32 The Great Recession also had severe consequences for education overall. Spending per student fell across the country,¹⁰⁹ and student achievement declined.¹¹⁰

98. Bruce Tulgan, *Meet Generation Z: The Second Generation Within the Giant “Millennial” Cohort 5* (RainmakerThinking white paper, 2013), <https://web.archive.org/web/20141219164513/http://rainmakertesting.com/assets/uploads/2013/10/Gen-Z-Whitepaper.pdf>.)

99. Atkins, *supra* note 16, at 126.

100. KATZ ET AL., *supra* note 36, at 161.

101. Seemiller & Grace, *supra* note 26, at 41; *see also* Atkins, *supra* note 16, at 126 (“Gen Zers saw their hard-working parents suffer job loss, foreclosure, and other hardships during the Recession, and developed a financially conservative attitude as a result.”).

102. VOLPE, *supra* note 31, at 37 (internal citations omitted).

103. Charles N. Oberg, *The Great Recession’s Impact on Children*, 15 MATERNAL & CHILD HEALTH J. 553, 554 (2011).

104. *Id.* at 553.

105. Nancy Cook & Nat'l J., *What Happens to the Children of the Unemployed?*, ATLANTIC (Oct. 13, 2012), <https://www.theatlantic.com/politics/archive/2012/10/what-happens-to-the-children-of-the-unemployed/429054/> [https://perma.cc/JG75-TDJ7].

106. *See generally* Franziska Reiss, *Socioeconomic Inequalities and Mental Health Problems in Children and Adolescents: A Systematic Review*, 90 SOC. SCI. & MED. 24 (2013) (finding consistently low or declining socioeconomic status as a predictor for the onset of mental health problems for children and adolescents).

107. Ariel Kalil, *Effects of the Great Recession on Child Development*, ANNALS AM. ACAD. POL. & SOC. SCI. 232, 238 (2013).

108. Cook & Nat'l J., *supra* note 105.

109. C. Kirabo Jackson et al., *Do School Spending Cuts Matter? Evidence from the Great Recession*, 31 AM. ECON. J. 304, 304 (2021) (“[P]ublic school per-pupil spending fell by roughly 7 percent nationally.”).

110. *See* Kenneth Shores & Matthew P. Steinberg, *The Impact of the Great Recession on Student Achievement: Evidence from Population Data* 4, 17 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3026151 [https://perma.cc/Q9VT-X3PB] (reporting that students in areas hit hardest by

Existing inequalities were exacerbated: schools serving low-income and minority students were more likely to show adverse effects of the recession on educational achievement.¹¹¹ Approximately 300,000 teachers lost their jobs during the recession, while school enrollment rose; thus, the recession eliminated over a decade of reductions in pupil/teacher ratios in classrooms in just three years.¹¹² Gen Z children whose parents lost their jobs during the Great Recession struggled academically, increasing the likelihood that they would need to repeat a grade.¹¹³

¶33 The recession put pressure on Gen Z children to attend the best college, the golden ticket to ensuring future financial security. College education was often described as the Ultimate Goal;¹¹⁴ educators stressed that test success could lead to Ivy League admissions and merit scholarships (necessary to combat the rising prices of college tuition). Pressure to excel academically to get into selective schools has become one of the main sources of stress for high school students.¹¹⁵

¶34 Prior to the Great Recession, the main reason to go to college was to learn about an area of interest.¹¹⁶ Today, Gen Z's top priority in higher education is to get a better job.¹¹⁷ But Zoomers, always haunted by the ghost of the Great Recession, are wary of student debt and take it on reluctantly only to achieve future economic security. They are aware of the financial struggles that await them and are thus focused on getting a job after graduation.¹¹⁸ Focusing on "sensible" careers,¹¹⁹ Gen Z wants an education that is relevant and will give them skills they will use in their jobs.¹²⁰ This means that Zoomers want to know, at the outset, how a skill or tool will help them in their careers (and to achieve future financial stability).

the recession fared worse in math and ELA achievement).

111. *Id.* at 29.

112. William Evans et al., *The Great Recession & Public Education*, 14 EDUC. FIN. & POL'Y 298 (2019).

113. See Ann Huff Stevens & Jessamyn Schaller, *Short-Run Effects of Parental Job Loss on Children's Academic Achievement*, 30 ECON. EDUC. REV. 289, 290 (2011) ("Our results show that a parental job loss increases the probability that a child repeats a grade in school by nearly 1 percentage point per year, or roughly 15 percent.").

114. See, e.g., Alexandra Robbins, *Kids Are the Victims of the Elite-College Obsession*, ATLANTIC (Mar. 12, 2019), <https://www.theatlantic.com/ideas/archive/2019/03/college-bribe-scandal-shows-elite-college-obsession/584719/> [<https://perma.cc/GE6C-QS87>] (describing the intense pressure put on teenagers to attend "name brand" universities).

115. Noelle R. Leonard et al., *A Multi-Method Exploratory Study of Stress, Coping, and Substance Use Among High School Youth in Private Schools*, 6 FRONTIERS PSYCH. 1, 2 (2015) ("The pressure to gain admission to a selective college or university is one of the main factors identified in the popular and empirical literatures as driving the conditions that lead to high rates of chronic stress among high-achieving youth.").

116. SELINGO, *supra* note 49, at 21.

117. *Id.*

118. SELINGO, *supra* note 52, at 18.

119. Williams, *supra* note 4.

120. See Minarcin, *supra* note 3, at 54 ("The Great Recession and the evolving economy has shown this generation that traditional careers, even steady ones like accounting and law, lack the security they once had; thus, Generation Z students are demanding education that is relevant and useful in obtaining employment.").

Zoomers Are Motivated by Making a Difference

¶35 Gen Z want to change the world,¹²¹ and they want their education to help them do so.¹²² Zoomers have spent most of their lives exposed to “considerable human suffering” in real life and online,¹²³ following police violence, racism and white supremacy, protests, war, and climate change live on social media.¹²⁴ They are a “generation forged by trauma and loss.”¹²⁵ The reality of the world is not lost on Gen Z; “for them, America at times has resembled a dystopia.”¹²⁶ As a result, this generation is anxious, driven, pragmatic, money conscious, and motivated by making a difference.

¶36 Gen Z are politically progressive¹²⁷ and politically engaged.¹²⁸ The social and political issues they care about are deeply personal. A childhood surrounded by “rising inequality, discrimination, an endangered environment, and fractured politics”¹²⁹ has created a generation ready to engage and fight for the country they were promised but not given.¹³⁰ Already this generation has seen vocal activists fighting for political, economic, social, and human rights; take, for example, the recent wave of unionization at Starbucks across the country led by Gen Z baristas.¹³¹ Zoomers are passionate about fighting racism, economic inequality, and climate change,¹³² of which they are particularly anxious about regardless of political affiliation.¹³³

121. See Time Video, *How Generation Z Will Change the World*, TIME (Apr. 23, 2018, 11:36 A.M.), <https://time.com/5250542/generation-z/> [<https://perma.cc/54FG-TLSG>].

122. SEEMILLER & GRACE, *supra* note 26, at 203.

123. KATZ, *supra* note 36, at 192.

124. SELINGO, *supra* note 49, at 8; see VOLPE, *supra* note 31, at 20 (“[A]s a consequence of an unfolding climate crisis, economic upheaval, gun violence, civil unrest, and increasingly brazen displays of intolerance, white nationalism, and hate, Zoomers have endured more adversity than any generation of young Americans in at least seventy years.”).

125. David Hogg, *Introduction to VOLPE*, *supra* note 31, at 1.

126. VOLPE, *supra* note 31, at 20.

127. See *id.* at 28; see also Parker et al., *supra* note 65 (describing Gen Z as liberal); Laura Barrón-López, *The Rise of Gen Z Could Foretell the Fall of Trumpism*, POLITICO (Oct. 11, 2020, 5:00 A.M.), <https://www.politico.com/news/2020/10/11/gen-z-fall-trumpism-gop-realignment-424171> [<https://perma.cc/TKJ3-56YQ>] (describing Gen Z as leaning left in their political opinions).

128. VOLPE, *supra* note 31, at 15 (“In November 2018, Generation Z and other young Americans exceeded even the rosiest expectations and turned out in historic fashion to vote Trumpism out of office, though they would have to wait two more years to do the same for its namesake. Voters under age thirty doubled their participation.”).

129. *Id.* at 17.

130. See *id.* at 20 (“The failure of older generations to resolve [challenges of economic upheaval, civil unrest, and racism] weighs heavy on them.”).

131. Liz Garone, *How Gen Z Baristas Are Spreading the Starbucks Unionization Effort*, TIME (Feb. 18, 2022, 12:39 P.M.), <https://time.com/6148475/starbucks-union-organizers-gen-z/> [<https://perma.cc/TZ6W-QZPJ>].

132. See Barrón-López, *supra* note 127 (“They rank climate change, racism, and economic inequality consistently in their top issues.”).

133. Alec Tyson et al., *Gen Z, Millennials Stand Out for Climate Change Activism, Social Media Engagement with Issue*, PEW RSCH. CTR., May 26, 2021, <https://www.pewresearch.org/science/2021/05/26/gen-z-millennials-stand-out-for-climate-change-activism-social-media-engagement-with-issue/> [<https://perma.cc/E4G5-ENA3>] (“[N]early seven-in-ten Gen Zers (69 percent) say they felt anxious about the future the most recent time they saw content about addressing climate change.”). In fact, *among*

¶37 Gen Z's diversity makes them more "attentive to inclusion," and they expect the same of higher education institutions.¹³⁴ Polls from the Pew Research Center show two-thirds of Zoomers believe Black people are treated "less fairly" than White people in the United States, and a majority approved of the NFL kneeling protest in support of Black Lives Matter.¹³⁵

¶38 A common criticism of Gen Z is that they are "intolerant," disrespectful, easily offended youths—"snowflakes"—who require "safe spaces" and "trigger warnings."¹³⁶ This critique has also been lobbed at Millennials and, more broadly, liberals regardless of their age.¹³⁷ Studies have shown that Zoomers are more likely to "support limits such as free-speech zones, speech codes, and prohibitions on hate speech" when faced with speech challenging their values.¹³⁸

¶39 Instead of characterizing this generation as entitled or intolerant, we could interpret Gen Z as devoted to creating positive social change. What older generations perceive as snowflake-ism could instead be seen as the Zoomers' demand for equitable and decent treatment. Gen Z isn't intolerant. They are *demanding tolerance*. They are seeking a more equitable, competent, antiracist world. To perceive this demand as entitlement, intolerance, or disrespect would be a mischaracterization. Despite being admitted to law schools over only the last five or so years, Gen Z has already demanded change in the academy. For example, in the summer of 2020, admitted 1Ls at the University of Michigan wrote to the law school administration "expressing disappointment at the lack of institutional response to incidents of violence and oppression in the Black community at large, and reported incidents of bias by the Black students on campus."¹³⁹

Republicans, generational differences in views are often quite pronounced. For example, 49 percent of Gen Z and 48 percent of Millennial Republicans (including Republican leaners) say action to reduce the effects of climate change need to be prioritized today, even if that means fewer resources to deal with other important problems; significantly fewer Gen X (37 percent) and Baby Boomer and older (26 percent) Republicans say the same.¹³⁴

134. SELINGO, *supra* note 49, at 9.

135. Parker et al., *supra* note 65.

136. See, e.g., CLAIRE FOX, I FIND THAT OFFENSIVE! (2016) (describing college students as "generation snowflake"); see also KATZ ET AL., *supra* note 36, at 160 ("[S]ome critics of postmillennials have proposed that Gen Z . . . is a fragile, coddled, or snowflake generation."); U.S. Dep't of Justice, *Attorney General Jeff Sessions Delivers Remarks to Turning Point USA's High School Leadership Summit* (July 25, 2018) ("Rather than molding a generation of mature and well-informed adults, some schools are doing everything they can to create a generation of sanctimonious, sensitive, supercilious snowflakes.").

137. See, e.g., Gravett, *supra* note 6, at 74 ("Besides narcissism, what the millennial generation is most (in)famous for is the effect thereof: entitlement. I and other law teachers increasingly experience a sense of entitlement among our millennial students—a sense that they deserve what they want, because they want it, they want it all and they want it now.").

138. SELINGO, *supra* note 49, at 40.

139. Atkins, *supra* note 16, at 140.

Zoomers Struggle with Critical Thinking

¶40 Gen Z's primary and secondary education failed to adequately teach them the critical thinking, reading, and analytical skills necessary for succeeding in law school. Their primary education revolved around "test-driven accountability policies,"¹⁴⁰ leaving students well equipped to memorize and regurgitate information but less able to critically think, read, or write. Because of federal education policy throughout the 2000s and 2010s, Zoomers have taken more standardized tests than any previous generation.¹⁴¹ They started school in the era of the No Child Left Behind Act of 2001 (NCLB),¹⁴² most notable for its introduction of regular standardized testing into America's public schools.¹⁴³ The NCLB Act's strategy was to regularly test children and hold their teachers responsible for improving their test scores in order to make every student "proficient" by 2014.¹⁴⁴ The law "more than doubled the number of federally required standardized tests," requiring annual tests in grades three through eight for reading and mathematics.¹⁴⁵

¶41 In 2015, when the oldest Zoomers were already in college but the majority remained in primary and secondary school, NCLB was "effectively repealed" and replaced by the Every Student Succeeds Act (ESSA).¹⁴⁶ Under the ESSA, states must submit annual plans to the U.S. Department of Education to receive funding for education.¹⁴⁷ The ESSA retained the standardized testing requirements from its predecessor; to receive federal money for education, a state must administer standard examinations in math and English Language Arts (ELA) every year for grades three through eight plus once in high school and a science assessment once per set of three grade spans (3–5, 6–9, and 10–12).¹⁴⁸ As a result, in the 2018–2019 school year, all 50 states and the

140. KEVIN G. WELNER & WILLIAM J. MATHIS, REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT: TIME TO MOVE BEYOND TEST-FOCUSED POLICIES 2 (2015), <https://nepc.colorado.edu/sites/default/files/nepc-policymemo-esea.pdf> [https://perma.cc/3F7F-WHVD].

141. "A typical student takes 112 mandated standardized tests between pre-kindergarten classes and 12th grade." Lyndsey Layton, *Study Says Standardized Testing Is Overwhelming Nation's Public Schools*, WASH. POST (Oct. 24, 2015), https://www.washingtonpost.com/local/education/study-says-standardized-testing-is-overwhelming-nations-public-schools/2015/10/24/8a22092c-79ae-11e5-a958-d889faf561dc_story.html [https://perma.cc/P2QA-WVQG].

142. The No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2001).

143. Schools began administering standardized tests like the Iowa Basic Skills Test and the California Achievement Test in the 1980s. In 1998, Marc Tucker, the president of the National Center on Education and Economy, wrote to then-First Lady Hillary Clinton a four-part plan for education reform that included a "national system of... examinations." 144 CONG. REC. 22,326 (1998). In 1994, President Bill Clinton signed the Improving America's Schools Act, reauthorizing the Elementary and Secondary Education Act (ESEA) first passed in 1965, and included the first federally mandated tests to "be administered at some time during grades 3 through 5; grades 6 through 9; and grades 10 through 12." Improving America's Schools Act, Pub. L. No. 103-382, § 1111, 108 Stat. 3518, 3525 (1994). For a history of standardized testing in America, see ANYA KAMENETZ, THE TEST: WHY OUR SCHOOLS ARE OBSESSED WITH STANDARDIZED TESTING: BUT YOU DON'T HAVE TO BE 39–112 (2014).

144. WELNER & MATHIS, *supra* note 140, at 2.

145. KAMENETZ, *supra* note 143, at 85.

146. Every Student Succeeds Act, 20 U.S.C. § 6301 note; Pub L. No. 114-95, 129 Stat. 1802 (2015).

147. *Id.* § 6311.

148. Under the ESSA, a state must implement "a set of high-quality student academic

District of Columbia administered some form of standardized testing beginning in grade three.¹⁴⁹

¶42 Spoiler alert: the standardized testing strategy failed. Instead of “proficient” students, today we have a generation whose education revolved around being told “what to learn and how to learn it.”¹⁵⁰ Students learned material without the necessary context, taught by teachers who faced potential career-ending consequences for students who failed.¹⁵¹ A decade or more removed from their early education, the legacy of the enormous pressure standardized tests put on children as young as eight endures, evidenced by Gen Z’s focus on achieving eventual educational and financial success.¹⁵²

¶43 Because of widespread standardized testing, Gen Z students were taught to ace the test, not necessarily to think critically.¹⁵³ Millennials and Zoomers joke, “I can tell you the mitochondria is the powerhouse of the cell, but I can’t tell you how to file your taxes.”¹⁵⁴ It’s a joke, sure, but it gets to the heart of the problem with test-focused education systems: those who attended primary and secondary school after 2002 were taught to learn specific facts to answer questions correctly on standardized tests. Critical thinking, reading, analysis, and other skills moved to the backburner in favor of rote memorization.

Zoomers Are Wary of Experts

¶44 Gen Z see their professors as “guides rather than authorities”¹⁵⁵ whose job it is to facilitate, not lecture. This professor-as-facilitator role requires good communication between the professor and student. It also requires guidance and feedback on assignments. Zoomers want a “helpful, responsive, practical educational environment” and look to their professors to create that space.¹⁵⁶ Professors can be a source of motivation, particularly if they are enthusiastic and involved.¹⁵⁷ Studies show that Gen Z students who believe their professors “care about them” are more motivated to engage with the

assessments” that are “administered to all public elementary school and secondary school students in the state.” These assessments must be administered according to a specific timeframe. 20 U.S.C. § 6311.

149. Catherine Gewertz, *What Tests Does Each State Require?*, EDUC. WEEK (Mar. 7, 2018), <https://www.edweek.org/teaching-learning/what-tests-does-each-state-require> [<https://perma.cc/C8RS-J5LU>].

150. Emily Grant, *Helicopter Professors*, 53 GONZAGA L. REV. 1, 16 (2017).

151. AMY L. KELLY, THE HIGH STAKES OF TESTING: EXPLORING STUDENT EXPERIENCE WITH STANDARDIZED ASSESSMENT THROUGH GOVERNMENTALITY 23–24 (2019).

152. *Id.* at 69–75 (describing children’s responses to standardized testing).

153. Grant, *supra* note 150, at 16.

154. See “*Mitochondria is the Powerhouse of the Cell*,” KNOW YOUR MEME, <https://knowyourmeme.com/memes/mitochondria-is-the-powerhouse-of-the-cell> [<https://perma.cc/AL9G-3Z7M>]; see also Logan (@LJD31), Twitter (Oct. 17, 2017, 6:36 P.M.), <https://twitter.com/LJD31/status/920418311246139393> (“You’re almost 22, you should have learned about taxes in high school? First of all, the mitochondria is the powerhouse of the cell.”).

155. KATZ ET AL., *supra* note 36, at 197.

156. Amy Chasteen Miller & Brooklyn Mills, “*If They Don’t Care, I Don’t Care*: Millennial and Generation Z Students and the Impact of Faculty Caring, 19 J. SCHOLARSHIP TEACH. & LEARNING 78, 80 (2019).

157. SELINGO, *supra* note 49, at 27.

work.¹⁵⁸ Zoomers value feedback from their professors and want to receive it as quickly as possible.¹⁵⁹

¶45 Professors often complain that their Millennial and Gen Z students are incapable of receiving negative feedback, reacting “with confusion and hostility” to constructive criticism.¹⁶⁰ But Zoomers, educated during the era of the NCLB Act and the ESSA, which rewarded correct answers and not process or strategy, have little experience receiving negative feedback. In fact, their entire educational upbringing made them see failure as a “catastrophe rather than an opportunity for learning and growth.”¹⁶¹ If Gen Z students have negative responses when faced with feedback, professors need to teach their students how to “receive constructive criticism well”¹⁶² and how to frame failure as an educational opportunity.¹⁶³

¶46 Perhaps the most common criticism of the Millennial and Gen Z generations is their so-called entitlement and disrespect for authority figures. One professor writes, “Millennial students see professors less as intellectual leaders who are to be respected and more as simple gatekeepers—even impediments—on students’ path to education completion.”¹⁶⁴ But what professors may perceive as entitlement and disrespect from their Gen Z students could instead be a manifestation of their pragmatism and economic anxiety. Zoomers need to see the value in their education and want to ensure their money spent on tuition and other expenses serves a purpose.¹⁶⁵ They view higher education as a service they pay for and should therefore have some control over (in terms of what they are taught, when they are taught, and how they are treated).

Zoomers Are Anxious and Depressed

¶47 Gen Z are very open about their mental health challenges, which appear to be more prevalent than in older generations—almost half of Zoomers are being treated for symptoms of depression.¹⁶⁶ More than 1 in 4 undergraduate and graduate students

158. Miller & Mills, *supra* note 156, at 80.

159. SELINGO, *supra* note 49, at 27.

160. Gravett, *supra* note 6, at 75.

161. SELINGO, *supra* note 49, at 39 (“Students rarely see good models of failure in their daily lives because parents and teachers often hide their mistakes.”).

162. Graham, *supra* note 9, at 83. *But see* GEN HQ, *supra* note 30 (“[I]n 2018, we discovered that 2/3 of Gen Z need feedback from their supervisor every few weeks or more often in order to stay at their job.”).

163. See Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959 (2018) (describing the importance of teaching students to be resilient in the face of failure); *see also* Catherine Martin Christopher, *Normalizing Struggle*, 73 ARK. L. REV. 27 (2020) (advocating for the normalizing of struggle and describing how law professors can do so in their classrooms).

164. Gravett, *supra* note 6, at 75.

165. Regina Pefanis Schlee et al., *From Millennials to Gen Z: Changes in Student Attitudes About Group Projects*, 95 J. EDUC. BUS. 139, 145 (2020).

166. VOLPE, *supra* note 31, at 23.

report mental health challenges,¹⁶⁷ with 1 in 3 first-time, full-time freshmen in 2018 reporting feelings of anxiety.¹⁶⁸ Nearly 90 percent of Zoomer undergraduates report education as a significant stressor.¹⁶⁹ Even before COVID-19, Zoomers were more likely to report poor mental health than any other generation,¹⁷⁰ and youth suicide rates had increased by almost half.¹⁷¹

¶48 Gen Z's mental health challenges may stem partially from a lifetime of "an unprecedeted information overload about traumatic and disturbing events."¹⁷² Take, for example, the impact of school shootings on Gen Z's mental health. These tragic events, once rare, are now so common that kindergarteners learn how to quietly hide from an active shooter before they learn how to tie their shoes.¹⁷³ School shootings have increased in frequency over the course of Gen Z's lifetime: the eldest of the Gen Z generation were toddlers when two high schoolers murdered their classmates and a teacher in the 1999 Columbine shooting¹⁷⁴ and, in the 24 years since, there have been over 350 shootings in America's public and private K-12 schools and universities¹⁷⁵ (and hundreds more in other public and private settings, like concert venues, grocery stores, and the like).¹⁷⁶ At least 338,000 children have experienced gun violence at school since Columbine, with at least 191 children and educators killed and over 414 injured in school shootings.¹⁷⁷

167. Sara Lipka, "*I Didn't Know How to Ask for Help*: Stories of Students with Anxiety," 64 CHRON. HIGHER EDUC. 14 (2018).

168. STOLZENBERG ET AL., *supra* note 69, at 10.

169. AM. PSYCH. ASS'N, STRESS IN AMERICA 2020: A NATIONAL MENTAL HEALTH CRISIS 4 (2020), <https://www.apa.org/news/press/releases/stress/2018/stress-gen-z.pdf> [https://perma.cc/933T-3LSD].

170. AM. PSYCH. ASS'N, STRESS IN AMERICA: GENERATION Z (2018), <https://www.apa.org/news/press/releases/stress/2018/stress-gen-z.pdf> [https://perma.cc/N5WB-8CCN] (citing gun violence, immigration, and sexual harassment as major causes of stress for Gen Z young adults). *But see* KATZ ET AL., *supra* note 36, at 162 ("The clear articulation of mental health issues raises the question as to whether this generation has greater mental health issues or is simply much better at naming their problems and seeking care.").

171. VOLPE, *supra* note 31, at 23 ("From an eight-year period of stability (2000 to 2007), the suicide rate began increasing as Gen Z aged into adolescence. When government researchers compared the period of 2007–2009 with 2016–2018, they found that suicide rates among youths increased by 47 percent.").

172. KATZ ET AL., *supra* note 36, at 164.

173. See, e.g., ALICE Age-Appropriate Elementary School Training, ALICE TRAINING, <https://www.alicetraining.com/our-program/alice-training/k12-education/age-appropriate/> [https://perma.cc/K6HK-LHMD] (describing a training program for elementary school children to respond to active shooters).

174. On April 20, 1999, two shooters killed 15 people at Columbine High School. See RALPH W. LARKIN, COMPREHENDING COLUMBINE 1 (2007).

175. John Woodrow Cox et al., *More Than 338,000 Students Have Experienced Gun Violence at School Since Columbine*, WASH. POST (Feb. 14, 2023), <https://www.washingtonpost.com/education/interactive/school-shootings-database/> [https://perma.cc/C254-NFVW].

176. At least 2,000 people have been killed or injured in a mass shooting in the United States since 1999. Chris Canipe & Travis Hartman, *A Timeline of Mass Shootings in the U.S.*, REUTERS GRAPHICS (Mar. 23, 2021), <https://graphics.reuters.com/USA-GUNS/MASS-SHOOTING/nmvardgrpa/> [https://perma.cc/E99E-TA59].

177. Cox et al., *supra* note 175.

¶49 Gen Z grew up watching these shootings play out on the national stage: first the initial news coverage, then the listing of the injured and dead, then the inevitable political fight to “do something” about America’s gun problem that would eventually come to a dead end with no solution.¹⁷⁸ School shootings have drastic psychological effects on those who live through them and can have an even wider impact—causing fear and anxiety—for those outside of the impacted community.¹⁷⁹ In 2018, around the time of the Parkland shooting,¹⁸⁰ 3 in 4 Zoomers were stressed because of mass shootings.¹⁸¹

¶50 The pandemic impacted everyone’s mental health, but Zoomers have been hit particularly hard. A recent study by the American Psychological Association found that Gen Z adults have had some of the highest stress levels during the pandemic and nearly three-quarters of Gen Z adults reported symptoms of depression.¹⁸² Half of Gen Z teens “report that the coronavirus pandemic makes planning for their future feel impossible,”¹⁸³ and almost 50 percent report that the pandemic has made pursuing “educational or career goals more difficult.”¹⁸⁴

¶51 More aware of the importance of mental health than previous generations, Gen Z prioritize self-care. For example, Zoomers were likely to consider quitting their jobs during “the Great Resignation,” leaving if they felt burned out, stifled, unproductive, or unappreciated.¹⁸⁵ In 2020, about one-third of Zoomers reported taking time off work because of stress or anxiety.¹⁸⁶ In school, Zoomers prioritize their mental health over their schoolwork, risking lower grades and late work in return for self-care.¹⁸⁷

¶52 The mental well-being of their peers is important, too. “Safe spaces” and “trigger warnings,” while often ridiculed, are “elements of mental self-care and consideration of others.”¹⁸⁸ Trigger warnings alert students to upcoming content that might activate a

178. See, e.g. KATZ ET AL., *supra* note 36, at 164 note 14 (“I don’t understand why adults are so worried about social media. I’m much more likely to get killed at school than I am on Instagram.”).

179. Valentina Cimolai et al., *Effects of Mass Shootings on the Mental Health of Children and Adolescents*, 23 CURRENT PSYCHIATRY REPS. 1, 5 (2021) (“[D]irectly exposed survivors are not the only ones affected by mass shootings. The [communities] in which they occur get profoundly shaken and immediate response can include mass panic, loss of cohesion, and widespread anxiety.”).

180. On Valentine’s Day in 2018, a gunman opened fire at Marjory Stoneman Douglas High School in Parkland, Florida, killing 17 people, including 14 students. See Audra D.S. Burch & Patricia Mazzei, *Death Toll Is at 17 and Could Rise in Florida School Shooting*, N.Y. TIMES (Feb. 14, 2018), <https://www.nytimes.com/2018/02/14/us/parkland-school-shooting.html> [https://perma.cc/26CE-N2VF].

181. VOLPE, *supra* note 31, at 71.

182. AM. PSYCH. ASS’N, *supra* note 169, at 3.

183. *Id.* at 4.

184. *Gen Z and the Toll of the Pandemic*, AP (Dec. 6, 2021), <https://apnorc.org/projects/gen-z-and-the-toll-of-the-pandemic/> [https://perma.cc/8VJL-YC4N].

185. See Raisa Bruner, *Young People Are Leaving Their Jobs in Record Numbers—And Not Going Back*, TIME (Oct. 29 2021), <https://time.com/6111245/young-workers-quitting/> (describing Gen Z and Millennials leaving their jobs because of poor treatment, low wages, and burnout).

186. Sophia June, *Could Gen Z Free the World From Email?*, N.Y. TIMES (July 10, 2021), <https://www.nytimes.com/2021/07/10/business/gen-z-email.html%20/> [https://perma.cc/73HT-53SP].

187. See KATZ ET AL., *supra* note 36, at 167 (“Owning your vulnerability and inability to cope extends to the classroom, and students increasingly prioritize self-care over their studies, even if that means accepting lower grades because of incomplete or late assignments.”).

188. *Id.*

trauma response in those who have experienced or witnessed some catastrophic event, like “combat, violent crimes, sexual assault, kidnapping, natural disasters, car accidents, and imprisonment.”¹⁸⁹

Zoomers Are Independent and Self-Reliant

¶53 Zoomers are an individualistic generation. Perhaps a result of their access to an unprecedented amount of information and resources via the internet, they prefer intrapersonal learning where they can “learn independently and at their own pace.”¹⁹⁰ They appreciate time to “puzzle through” or reflect on the material on their own before discussing it with their peers.¹⁹¹

¶54 Preferences for working with others is one of the greatest differences between the Millennial and Gen Z generations. Millennials famously enjoy collaboration,¹⁹² and higher education has adapted to this preference, incorporating group projects and assignments and focusing on group discussion as a pedagogical tool.¹⁹³ Zoomers, “highly collaborative and social,”¹⁹⁴ often “prefer to work alone rather than in groups.”¹⁹⁵ These two preferences might appear contradictory, but collaboration for Gen Z just looks *different* from collaboration for Millennials.

¶55 When collaborating in school, Zoomers rely on digital tools; Google Docs and GroupMe allow them to work together without necessarily working *alongside* their peers.¹⁹⁶ For example, “instead of collaborating on the project verbally, they work independently next to each other on the same Google Doc.”¹⁹⁷ Zoomers may want time to obtain foundational information independently before coming together as a group to discuss.¹⁹⁸ While often preferring to work alone, they “enjoy group work when it

189. Francesca Laguardia et al., *Trigger Warnings: From Panic to Data*, 66 J. LEGAL EDUC. 882, at 886–87 (2017).

190. SEEMILLER & GRACE, *supra* note 26, at 178; see Minarcin, *supra* note 3, at 51 (“This technological presence in their educational environment, along with Generation Z’s trait for self-reliance, contributes to their preference to work alone and makes intrapersonal learning one of the most preferred learning methods of this new generation of students.”).

191. SELINGO, *supra* note 49, at 28.

192. See, e.g., Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 11 (2013) (“Millennial students prefer to learn in networks or teams.”); see also Kaplan & Darvil, *supra* note 11, at 180 (“Millennials do not want a passive learning environment. They want assignments that are hands-on and exploratory. In addition to using technology, legal research instructors should incorporate collaborative learning into their lessons. Collaborative work suits this generation’s style; because Millennials have grown up working in groups and playing on teams, they enjoy working with their peers.”).

193. See, e.g., Benfer & Shanahan, *supra* note 192, at 24–25 (“[I]ndependent learning elements and experiences should be integrated into group work so that independent thinking skills are developed in a comfortable setting.”).

194. KATZ ET AL., *supra* note 36, at 195.

195. Graham, *supra* note 9, at 67.

196. KATZ ET AL., *supra* note 36, at 17–18.

197. *Id.* at 181.

198. Minarcin, *supra* note 3, at 51–52.

involves creativity and applying new lessons.”¹⁹⁹ And when working in groups, Gen Z collaboration tends to be amorphous and leaderless.²⁰⁰

¶56 For Gen Z, group work can be a source of stress and anxiety. Students worry that other group members might not pull their weight in the assignment.²⁰¹ When it comes to grading, this pragmatic generation might balk at group work that impacts their grade.²⁰² Additionally, Zoomers must see the educational value in collaborative learning to take it seriously.

Zoomers Are Easily Distracted

¶57 Some call Gen Z excellent multitaskers. But experts have debunked the myth of multitasking; in reality, no person is ever really able to multitask.²⁰³ If anything, Zoomers are good at “task-switching”²⁰⁴ or “dividing their attention between tasks.”²⁰⁵ Where Millennials are accustomed to switching between two screens, Zoomers toggle between five.²⁰⁶

¶58 Task-switching or multitasking has an impact on the attention span; the average Gen Z attention span is about eight seconds.²⁰⁷ This results in students who struggle to focus on long lectures or complex problems²⁰⁸ and may leave students struggling to prioritize their work.²⁰⁹ Zoomers might “power-browse,” or skim complex reading material in the way they skim social media.²¹⁰ Some new research suggests Gen Z’s brains are “wired to complex, sophisticated, visual imagery,” meaning they may prefer visual instruction.

Zoomers Prefer In-Person Communication

¶59 Some older generations are concerned about Gen Z’s communication skills, especially given their technological saturation from an early age. For Gen Z, online and offline interactions are “interchangeable.”²¹¹ Zoomers prefer texting over many other forms of

199. *Id.*

200. See KATZ ET AL., *supra* note 36, at 129 (“In collaborative work, Gen Zers ‘cannot understand why officers are needed if the organization can get its work done without such formality.’”).

201. Schlee et al., *supra* note 165, at 145 (explaining that Gen Z students are anxious that their group members will not produce quality work and do not enjoy the camaraderie in team projects).

202. *Id.* at 145.

203. See, e.g., Kirschner & Bruyckere, *supra* note 72, at 138 (“In general, research has shown that when thinking or any other form of conscious information processing is involved in carrying out a task, people are not capable of multitasking and can, at best, switch quickly and apparently seamlessly from one activity to another.”).

204. *Id.*

205. Graham, *supra* note 9, at 53.

206. *Id.*

207. Cameron & Pagnattaro, *supra* note 16, at 318.

208. Minarcin, *supra* note 3, at 53.

209. Kurt Meyer, *Teaching Legal Research to Today’s Digital Natives*, AALL Spectrum, Mar.-Apr. 2017, at 12, 14.

210. Graham, *supra* note 9, at 52 (internal citations omitted).

211. KATZ ET AL., *supra* note 36, at 12–13.

communication, and over one-third report sending “three thousand text messages per month—roughly one hundred messages a day.”²¹² They find email “burdensome”²¹³ and voice calls anxiety inducing. But they still seek interpersonal connections, with over 80 percent of Zoomers preferring “face-to-face communication [that allows] them to connect better and read the other person.”²¹⁴

Leveraging Gen Z’s Traits for More Effective Legal Research Pedagogy: 10 Strategies

¶60 Understanding Gen Z’s upbringing and characteristics can help educators adjust their teaching strategies to better train Gen Z lawyers. Infusing pedagogy with a generational framework allows professors to “anticipate the challenges our students will face when entering our classrooms.”²¹⁵ Of course, generational theory is intentionally *general*; while this blanket approach to discerning the traits of a group is useful for informing pedagogy, “meeting the diverse needs of diverse students requires an individualized approach.”²¹⁶ Professors should tailor their courses in ways that make the most sense for their individual students.

¶61 Law schools began matriculating Gen Z students in fall 2017; today, most law students are Zoomers.²¹⁷ A handful of articles discuss Gen Z law students, identifying the following suggestions for Zoomer-focused pedagogy:

- Incorporating critical reading instruction into each course²¹⁸
- Using technology in the classroom thoughtfully²¹⁹

212. Minarcin, *supra* note 3, at 48. *But see* Salma Alaa, *Gen Z Hates the Full Stop*, WRITING COOP. (Oct. 2, 2020), <https://writingcooperative.com/gen-z-hates-the-full-stop-47dde5ec2b5c> [https://perma.cc/R2WP-CTL5] (discussing the use of paragraphs versus sending sentences separately in individual text messages).

213. KATZ ET AL., *supra* note 36, at 15 (“For Gen Zers, emails, like business letters in the past, are for formal communications that require care over content and grammar, such as exchanges with professors and employers. Some students expressed an intense dislike of emailing, finding the composition of an email message—to a faculty member, for example—burdensome in its formality and too time-consuming.”).

214. SEEMILLER & GRACE, *supra* note 26, at 61.

215. Atkins, *supra* note 16, at 123.

216. Rebecca Flanagan, *Better by Design: Implementing Meaningful Change for the Next Generation of Law Students*, 71 ME. L. REV. 103, 118 (2018).

217. The average age of a 1L is between 22 and 24. Many members of the class of 2026, entering law school in fall 2023, will be born between 1999 and 2001. Gregory Yang, *How Age Affects Your Law School Application*, TIPPING THE SCALES (Apr. 3, 2019), <https://tippingthescales.com/2019/04/how-age-affects-your-law-school-application/#:~:text=According%20to%20numbers%20by%20LSAC,is%20between%2022%20and%2024> [https://perma.cc/R LH7-LFMU].

218. Graham, *supra* note 9, at 72–75 (describing ways for law professors to incorporate critical reading into all law school courses); *see also* Williams, *supra* note 16, at 219–23 (advocating for the buy-in of legal education stakeholders to address the problem of critical reading skills in law schools).

219. Graham, *supra* note 9, at 80–85 (advocating for more careful use of technology in law classrooms because of Gen Z’s attention span issues); *see also* Minarcin, *supra* note 3, at 59–63 (discussing multimedia learning and incorporating technology into the classroom).

- Offering opportunities for collaboration with a purpose²²⁰
- Providing opportunities for experiential learning²²¹
- Focusing on “active learning” and moving away from the traditional lecture model of legal instruction²²²
- Committing to teaching lawyers skills in all courses, including providing the chance to practice legal writing across the curriculum²²³
- Providing individualized feedback²²⁴
- Creating space for students to practice mindfulness and self-care²²⁵
- Supporting students of color by creating “identity-safe” institutions and classrooms²²⁶

¶62 Those useful suggestions are not necessarily made with legal research instruction in mind. Below, I identify 10 tangible strategies for teaching Gen Z *research* better, supplementing the existing strategies outlined above.

1. Explain How Each Skill, Topic, or Resource Will Be Used in Legal Practice

¶63 Zoomers are motivated by financial security, by getting a good job after graduation. They enter law school with an average of \$30,000 in student loan debt from their undergraduate education alone²²⁷ and will almost certainly take on more given the ever-increasing cost of attending law school.²²⁸ Facing these financial burdens means

220. Graham, *supra* note 9, at 85–89 (explaining that unlike Millennials, Gen Z do not like collaboration and describing changes law professors can make to their collaborative learning pedagogies); *see also* Minarcin, *supra* note 3, at 64–66 (encouraging adding collaborative elements to law classes for Gen Z students).

221. Minarcin, *supra* note 3, at 69–70 (arguing for more experiential learning to appeal to Gen Z students); *see also* Atkins, *supra* note 16, at 164–67 (suggesting experiential learning as a useful pedagogical mode for Gen Z students).

222. Minarcin, *supra* note 3, at 60 (“To accommodate Generation Z, law professors will need to throw out long lectures, ‘surrender the soapbox,’ and make active learning the hallmark of classes.”).

223. Graham, *supra* note 9, at 75–80 (“Gen Z students have not grown up having the kind of rigorous writing experiences in their secondary and post-secondary education that many of their law professors had. . . . [T]hus, teaching critical writing across the curriculum must be a top priority for legal educators moving forward.”).

224. Janis & Hedges, *supra* note 16 (“[A]n effective training program for post-millennial lawyers should . . . [include] high-quality individualized feedback.”).

225. *See* Graham, *supra* note 9, at 89–94 (advocating for providing student services because of Gen Z’s mental health struggles).

226. *See* Atkins, *supra* note 16, at 160 (explaining how to identify safe classrooms after changing legal education on an institutional level).

227. *See* Emma Kerr & Sarah Wood, *See 10 Years of Average Student Loan Debt*, U.S. News (Sept. 14, 2021, 9:00 AM), <https://www.usnews.com/education/best-colleges/paying-for-college/articles/see-how-student-loan-borrowing-has-risen-in-10-years#:~:text=College%20graduates%20from%20the%20class,in%20the%20amount%20students%20borrow> (“[C]ollege graduates from the class of 2019 who took out student loans borrowed \$30,062 on average. That’s around \$6,300 more than borrowers from the class of 2009 had to shoulder—representing a more than 26 percent increase in the amount students borrow.”).

228. *See Law School Costs*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/tuition/> [<https://perma.cc/PD5N-KPR6>] (“[L]aw school tuition increases exceed the inflation rate between 1985 and 2019. . . . In other words, private law school was 2.76 times as expensive in 2019 as it

that Gen Z law students want to connect what they are learning with how it applies to future careers.

¶64 Meeting this demand in the classroom is as simple as explaining your pedagogy to your students. Gen Z “want their teachers to get to the point, immediately.”²²⁹ Before teaching *how* to research in a particular area, explain *why* students are learning that research skill. Luckily, this should not be difficult for a class like legal research because legal research “underpins virtually everything that an attorney does.”²³⁰

¶65 To tap into Gen Z’s pragmatism, discuss the cost of legal research, both in terms of the amount paid to database vendors and the amount charged to clients for time spent researching. Emphasize the value of efficient research. Explain to students concerned with speed that internalizing various legal research strategies will make them more efficient and faster researchers, which will save them time and their clients’ money. Then, give students the opportunity to practice using secondary sources to underscore their importance as a time-and-money-saving strategy. Remind students that efficient researchers are more effective advocates. By appealing to students’ pragmatism in this way—by explaining why a skill will be useful in the “real world”—Gen Z law students will be more engaged in their learning.²³¹

2. Use Short, Prerecorded Lectures to Flip Your Classroom

¶66 Zoomers have short attention spans—approximately eight seconds.²³² They were “born into a world where algorithms keep them clicking, scrolling, and swiping at a frenetic pace.”²³³ When it comes to in-class instruction, shorter lectures are probably best. Even better? Eliminate your lectures and flip your classroom.²³⁴

¶67 In a flipped classroom, students learn the content on their own time and use in-class time to practice applying that material.²³⁵ The modern flipped classroom

was in 1985 after adjusting for inflation. . . . Public school was 5.92 times more expensive in 2019 as it was in 1985 after adjusting for inflation.”).

229. Janis & Hedges, *supra* note 16.

230. Barbara Bintliff, *Introductory Essay*, in *THE BOULDER STATEMENTS ON LEGAL RESEARCH EDUCATION: THE INTERSECTION OF INTELLECTUAL AND PRACTICAL SKILLS* (Susan Nevelow Mart ed., 2014).

231. See, e.g., Crichton, *supra* note 16, at 11 (“It also requires us to show and tell students how the research, analysis, writing, and advocacy skills they are learning in the legal writing course are transferrable and can help them to create legal documents to effect positive legal and social change.”).

232. Cameron & Pagnattaro, *supra* note 16, at 318.

233. Nicholas Mancall-Bitel, *How Can a Distracted Generation Learn Anything?* BBC (Feb. 20, 2019), <https://www.bbc.com/worklife/article/20190220-how-can-a-distracted-generation-learn-anything/> [<https://perma.cc/T7VQ-VUGS>].

234. See, e.g., Minarcin, *supra* note 3, at 49–50 (“Generation Z students will not learn as effectively from sitting at their desks reading or listening. . . . This new group of students also have a marked preference for learning visually through instructional videos and by acquiring hands-on experience.”); see also SELINGO, *supra* note 49, at 25 (“Some innovations in teaching, like the flipped classroom . . . suit the habits of incoming students.”).

235. JONATHAN BERGMANN & AARON SAMS, *FLIP YOUR CLASSROOM: REACH EVERY STUDENT IN EVERY CLASS EVERY DAY* (2012); see also Alyson Drake, *The Need for Experiential Legal Research Education*, 108 LAW LIBR. J. 511, 530–31 (2016) (“A flipped classroom is one where most or all the lecture components of the course takes place prior to class. The information that the students would get in the lecture

involves students watching prerecorded lectures on a topic before coming to class. This model is well suited to Zoomer law students, who prefer learning via video and turn to YouTube to supplement their education.

¶68 Flipped classrooms have many benefits. First, prerecorded lectures are flexible and give typically overworked and overbooked law students more control over their schedules because they can watch videos anytime and anywhere. Students can watch a video as many times as necessary to understand the key concepts²³⁶ and have the option to watch videos on faster or slower speeds depending on their preferences.²³⁷ Students appreciate this flexibility and enjoy having more control over their learning.

¶69 If not carefully designed, a flipped classroom is not necessarily effective.²³⁸ For example, poor audio and video quality reduce the effectiveness of prerecorded lectures,²³⁹ so instructors should take care to produce high-quality content. Students engage less with videos when they are too long; researchers recommend each video be no longer than 20 minutes.²⁴⁰ Embedding formative quiz questions throughout or at the end of a video may encourage students to pay attention to the content. The nature of video lectures means that students with content-based questions are unable to immediately ask questions. To remedy this, professors can utilize discussion boards to provide feedback or at least to track student questions that can be answered during class time.²⁴¹

3. Rethink Group Work

¶70 Zoomers enjoy collaborative work but “on their own terms,” preferring time to learn independently before working with others.²⁴² When adapting to the Millennial preference for collaboration, “many law professors put students in pairs or groups for class presentations, drafting exercises, peer editing, and a host of other teaching and learning strategies.”²⁴³ Despite the prevalence of Zoomers in law classrooms, professors, so accustomed to Millennials, have not yet changed their strategies. Now is the time to rethink group work in the legal research classroom.

¶71 This does not mean that professors should abandon group work altogether; indeed, collaboration and communication in a team setting are important lawyering

during a traditional research course is conveyed through some combination of their textbook, videos, and pre-class assignments. This format frees up most of the class time for skills practice.”).

236. See Daniel Ferguson, *The Gamification of Legal Education: Why Games Transcend the Langdellian Model and How They Can Revolutionize Law School*, 19 CHAP. L. REV. 629, 648 (2016) (“If students fail to understand material the first time around, they can watch a lecture again without having to ask the professor to repeat the material in class and using other students’ time.”).

237. Some students prefer to watch prerecorded lectures at double or triple speed to remove temptations to multitask and force them to pay closer attention. KATZ ET AL., *supra* note 36, at 22.

238. Gökçe Akçayır & Murat Akçayır, *The Flipped Classroom: A Review of Its Advantages and Challenges*, 126 COMPUTS. & EDUC. 334, 338 (2018).

239. *Id.* at 341.

240. *Id.*

241. *See generally id.*

242. SEEMILLER & GRACE, *supra* note 26, at 207.

243. Graham, *supra* note 9, at 85.

skills. Instead, provide “adequate time to work on the task solo first”²⁴⁴ to allow Zoomer students to become comfortable with the material, and then have students meet in groups later. This method, commonly referred to as “pair and share,” can facilitate conversation and “increase Gen Z students’ comfort level for working together.”²⁴⁵

¶72 Long-term group projects, especially those that will impact grades, are anxiety-producing. Zoomers worry that group members might not carry their weight for the team.²⁴⁶ To remedy this anxiety, “make each student responsible for a fraction of the project” to encourage accountability.²⁴⁷ Alternatively, consider making group work ungraded to encourage students to focus on practicing their collaborative skills without the added pressure of an assessment.

¶73 Lastly, the flipped classroom model provides Zoomer law students the chance to learn independently before collaborating or discussing with their classmates. By omitting the traditional lecture portion of class, professors can demonstrate research strategies and assist students with honing their research skills, which appeals to Gen Z’s “preferences for experiential learning as well as collaborate and intrapersonal learning.”²⁴⁸

4. Incorporate Low-Stakes Writing Assignments to Practice Communicating Research Findings

¶74 Communicating research findings is an important yet often underdeveloped lawyering skill. A 2016 ethnographic study of junior law firm associates found that in contrast to the first-year legal writing class, which teaches formal brief writing, junior associates “more often summarized research findings in informal email communications to supervising attorneys.”²⁴⁹ This skill can be practiced in legal research classes. Students sometimes respond with confusion when asked to write in a “research” class; they see the skills as separate, divorced from one another. But legal research and legal analysis are intertwined,²⁵⁰ and students need to be able to succinctly communicate their research findings to their supervisors and colleagues.

¶75 Zoomers do not like to email, finding it burdensome and time-consuming.²⁵¹ Some professors and supervisors find Zoomers’ email communications unprofessional.²⁵² While not “writing” courses, legal research classes can nonetheless fill this gap by

244. *Id.* at 86.

245. *Id.*

246. See Schlee et al., *supra* note 165, at 145 (“Gen Z students are less likely than Millennials to trust others with matters important to them. . . . Gen Z is more likely to believe that ‘Group projects bring out the worst in people’ than Millennials.”).

247. SELINGO, *supra* note 49, at 29.

248. *Id.* at 50.

249. Ann Sinsheimer & David J. Herring, *Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals*, 21 L. WRITING J. 63, 99 (2016).

250. See Alyson M. Drake, *Building on CREAC: Reimagining the Research Log as a Tool for Legal Analysis*, 52 U. MEM. L. REV. 52, 60 (2021) (“There are a number of research tasks unique to the law that are inherently analytical.”).

251. KATZ ET AL., *supra* note 36, at 15; see also June, *supra* note 186 (“[M]embers of Gen Z do seem to agree with their elders on one thing: Email. Ugh.”).

252. See, e.g., Brittney Cooper (@ProfessorCrunk), TWITTER (Jan. 12, 2021, 10:17 AM), <https://>

requiring students to draft emails that summarize their research findings after completing a short research task. Students can learn strategies for formatting emails so that they are easy to digest and quick to read.²⁵³

5. Give Regular Individual Feedback

¶76 Zoomers need and want regular feedback.²⁵⁴ Law professors grumble that their students react poorly when provided with constructive criticism. But Zoomers were not taught how to receive negative feedback and learned—through unrelenting standardized testing—that failure is catastrophic. They must be given the opportunity to respond to feedback in the classroom to become better at receiving constructive criticism. To prepare students for gracefully accepting feedback in the workplace and to meet their need for regular feedback in the classroom, instructors should make high-quality, structured, individualized feedback a priority. And they should give this feedback as quickly as possible.²⁵⁵

¶77 Zoomers may prefer formative assessment given their preference for face-to-face conversations where they can connect to the other speaker.²⁵⁶ Formative assessment focuses on “student learning, primarily through feedback” and helps students learn how to improve their research skills.²⁵⁷ The typical feedback law students receive in their doctrinal courses is summative.²⁵⁸ Importantly, the American Bar Association (ABA)’s Standards and Rules of Procedure for Approval of Law Schools requires *both* modes of feedback.²⁵⁹

twitter.com/ProfessorCrunk/status/1349012729936412676?s=20&t=NYg1H30X1RQVdIT-MywZmg [https://perma.cc/X93S-RE8B] (“Why don’t modern college kids know how to send a formal letter/email? I thought everyone knew to begin Dear Prof. X or Dear Dr. X. Instead, these kids stay emailing me Hello There! Or Hello (no name): Why are they like this?”); *see also* James Goodnow, *Resistance Is Futile: Millennial Lawyers Are Invading and Are Ready to Eat Your Lunch—With a Latte*, 54 ARIZ. ATT’Y 14, 18 (2017) (“Millennials also typically communicate in a more casual manner than people from previous generations, which often gets misinterpreted as disrespectful or unprofessional.”).

253. For example, students can read articles about drafting effective emails or read sample emails and identify what is and is not effective about them. Readings to consider include: CHRISTINE COUGHLIN ET AL., *A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS* 295–304 (2d ed. 2013); Joe Regalia, *A Young Attorney’s Most Important Writing: Emails*, ABA STUDENT LAW. (Sept. 14, 2017), <https://abaforlawstudents.com/2017/09/14/young-attorneys-important-writing-e-mails/> [https://perma.cc/WS7N-YRMR].

254. See GEN HQ, *supra* note 30, at 18 (“. . . 2/3 of Gen Z need feedback from their supervisor every few weeks or more often to stay at a job.”).

255. SELINGO, *supra* note 49, at 27.

256. SEEMILLER & GRACE, *supra* note 26, at 61.

257. Shawn G. Nevers, *Assessment in Legal Research Education*, in THE BOULDER STATEMENTS ON LEGAL RESEARCH EDUCATION: THE INTERSECTION OF INTELLECTUAL AND PRACTICAL SKILLS 81, 82–83 (Susan Nevelow Mart ed., 2014).

258. “Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student’s legal education that measure the degree of student learning.” ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 314 (2021–2022) [*hereinafter ABA STANDARDS*].

259. *Id.*

¶78 One strategy for providing the kind of individualized, structured, immediate feedback that Gen Z crave is through “live critique,” wherein a professor gives feedback to a student’s work as they review it together.²⁶⁰ This face-to-face interaction makes for an “active and personal” learning experience in which each student learns *why* something is or is not correct and how to improve in the future, not simply *if* the answer is right.²⁶¹ Live critique may function best without grades to reduce the stress associated with negative feedback.²⁶²

¶79 In the legal research classroom, a “live critique” assignment could have students meet their professor individually, researching while the professor observes and gives immediate feedback and suggestions for improvement.²⁶³ This kind of formative assessment has the added benefit of teaching Zoomers uncomfortable with criticism “how to interact with a superior in a professional setting.”²⁶⁴

6. Connect Class to the Causes Gen Z Cares About by Partnering with Local Legal Organizations

¶80 Zoomers respond to and care about real-world events; nearly 3 in 4 Zoomers report that they are motivated by their passions.²⁶⁵ And because they spend money as an “extension of their activism,”²⁶⁶ they want to see their tuition money connected to the causes they care about. Professors can tap into this desire by structuring their course to “appeal to students’ social justice values and interests.”²⁶⁷

¶81 “Skills” courses like legal research are the ideal space for real-world immersive learning. To connect to Gen Z’s values and appeal to their pragmatic, how-will-this-help-me-in-my-career worldview, legal research professors should consider the public interest partnership model of legal education.²⁶⁸ Public interest partnerships allow law students to work directly with nonprofit legal organizations, completing legal research

260. See Amanda L. Sholtis, *Say What?: A How-to Guide on Providing Formative Assessment to Law Students through Live Critique*, 49 STETSON L. REV. 1 (2019) (outlining how live critique could work in a law school classroom).

261. *Id.* at 7.

262. SELINGO, *supra* note 49, at 39.

263. The Cardozo School of Law has utilized this formative assessment approach for the last year and has seen great success.

264. Sholtis, *supra* note 260, at 8.

265. SEEMILLER & GRACE, *supra* note 26, at 57.

266. Atkins, *supra* note 16, at 124.

267. SEEMILLER & GRACE, *supra* note 26, at 203.

268. See, e.g., Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public-Interest Partnership*, 8 LEGAL COMM. & RHETORIC 191 (2011) (outlining a plan wherein 1Ls work with local nonprofits during their first-year writing class); see also Mary Nichol Bowman, *Engaging First-Year Students Through Pro Bono Collaborations in Legal Writing*, 62 J. LEGAL EDUC. 586 (2013) (describing a program wherein 1Ls work with a local legal services organization during their legal writing class); Alyson Drake & Brie Sherwin, *Service-Learning in the First Year Research and Writing Classroom*, in INTEGRATING DOCTRINE & DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM 287 (Nicole P. Dyszlewski et al. eds., 2021) (describing a partnership between social justice legal organizations and 1L legal research and writing courses).

tasks that aid the organizations' work.²⁶⁹ In addition to appealing to students' social justice values, this kind of course would satisfy an experiential learning requirement, of which the ABA requires at least six credit hours per law student.²⁷⁰

¶82 Using the public partnership model, professors contact local nonprofits or public interest organizations and offer to have their students research legal authorities and analyze legal issues relevant to ongoing projects at the organization. The professor then creates a fact pattern based on a legal issue the organization needs answering and assigns the problem to students. The students research and draft a written response and present their findings to the organization.²⁷¹ This exercise lets Zoomer students "engage in the kind of work that drew them to law school in the first place"²⁷² by giving them the opportunity to research law in a way that is more impactful. Connecting legal research skills to the issues Gen Z cares most about will make students more invested in their coursework and "create powerful, effective advocates and future lawyers who are trained and ready to take on social justice issues upon graduating."²⁷³

7. Embrace Google

¶83 While instructors should never assume preexisting foundational knowledge, they should also not discount the fact that their law students are adults with nearly two decades of formal education and life experiences, who enter the classroom with histories and backgrounds in various fields and skills. Professors should teach from an understanding of what their students already know.²⁷⁴ For Gen Z, that is Google.

¶84 Discounting Google is futile; professors who tell students not to trust internet resources are typically ignored (or worse, thought of as technologically inept). By disparaging Zoomer students' internet and technology skills, professors perpetuate a kind of "generational arrogance" that holds the old tools as the most important ones.²⁷⁵ Zoomers are *going to use Google* for legal research, no matter how many times they are told not to. Google is familiar. It is comfortable. And it is free. Instead of shouting into the void about the problems with Google, professors must embrace Google. After all, doesn't the instinct to use Google indicate the kind of curiosity we want to foster in our students: "asking new questions, seeking new answers"?²⁷⁶

¶85 Part of encouraging Gen Z's existing skills is helping them to become better, more critical Googlers. Gen Z's education prepared them for memorization and standardized test taking; skills like critical thinking and reading were deprioritized. Assuming "digital natives" are technologically gifted based purely on their age obscures

269. Ruan, *supra* note 268, at 193.

270. ABA STANDARDS, *supra* note 258, Standard 303.

271. Ruan, *supra* note 268, at 204–08.

272. Atkins, *supra* note 16, at 166.

273. *Id.* at 157.

274. See generally Haseltine, *supra* note 11, at 8–9 (explaining the importance of recognizing Google's usefulness to Millennial law students).

275. See, e.g., TOM KOULOPULOS & DAN KELDSEN, THE GEN Z EFFECT: THE SIX FORCES SHAPING THE FUTURE OF BUSINESS 56 (2016).

276. Mancall-Bitel, *supra* note 233.

their need for support in developing information and digital literacy skills. Zoomers often value finding the “quick answer [rather than the] correct one.”²⁷⁷ With assistance from their professor, Zoomers can become better at analyzing and selecting sources of information online.

¶86 In creating better Googlers, professors and students should discuss the usefulness and drawbacks to keyword scanning in a text. Zoomers tend to read in a nonlinear manner and are excellent at keyword spotting and browsing.²⁷⁸ When researching, they are likely to gather a long list of possible sources and then skim for an obvious answer.²⁷⁹ For example, Zoomers might “power browse,” opening dozens of possible resources in multiple tabs to review. This behavior can result in the researcher missing a relevant piece of authority from the long list of potential sources.²⁸⁰

¶87 Legal research professors should discuss power browsing behaviors with their students. There are benefits to keyword spotting and scanning when researching, like quickly identifying a relevant authority by skimming for keywords. But there can be drawbacks, too, like when the researcher is scanning for keywords that are not used in a source. Research classes should discuss these two potential outcomes and brainstorm together about when power browsing is a tool and when it might be a hurdle.

¶88 Finally, encouraging smart online searching may help students to recognize the importance of legal research as a skill. Upon entering law school, Zoomers might think that “the skills necessary to conduct a Google search are the same skills needed to conduct thorough and accurate legal research.”²⁸¹ Confident in their Google skills, they may see research instruction as a waste of time. When professors embrace Google, Zoomers can reframe their view of the importance of the course. After all, a client can Google the law. It is lawyers’ specialized research knowledge and skill that make them professionals (and pay their bills—remember, Zoomers are pragmatic).

8. Teach Research Process, Not Database Mechanics

¶89 The organization of legal information online can be confusing to those who have not conducted legal research in print.²⁸² Some scholars theorize this is because legal information is now accessed almost entirely online, meaning law students of the past few years and foreseeable future rarely, if ever, perform book-based legal research.²⁸³

277. Ellie Margolis & Kristen Murray, *Information Literacy for the Next Generation*, 23 *LEGAL WRITING* 11, 12 (2019).

278. Williams, *supra* note 16, at 198.

279. *Id.* at 199.

280. Dalton, *supra* note 11, at 182, citing Nicholas Carr, *Is Google Making Us Stupid? What the Internet Is Doing to Our Brains*, ATLANTIC (July–Aug. 2008), <http://www.theatlantic.com/magazine/archive/2008/07/is-google-making-us-stupid/306868/> [https://perma.cc/MF5B-MCGR]; see also Williams, *supra* note 16, at 199 (describing the issues with power browsing when conducting legal research).

281. Kaplan & Darvil, *supra* note 11, at 163–64.

282. See Patrick Meyer, *The Google Effect, Multitasking, and Lost Linearity: What We Should Do*, 42 OHIO N.U.L. REV. 705, 706 (2016) (“The online environment lacks the structure necessary for students to learn and understand the legal system, which impedes their ability to properly choose the legal sources they need to access for research purposes.”).

283. See generally *id.* (describing the challenges students face when learning about the structure

Understanding the organization of legal information is crucial to the task of legal research and can make researching more organized and efficient. A common response to this problem is to teach print-based research to ensure students understand the structure of the legal system.²⁸⁴ But focusing on print sources that are so rarely used in real life by practicing attorneys²⁸⁵ is unnecessary and, at worst, a waste of precious in-class instruction time. Instead, teach the format and layout of legal information *without* returning to book research by reframing the goal of instruction to create “technologically resilient” graduates—lawyers who can “use existing technology successfully” and “approach new technology thoughtfully and with an open mind.”²⁸⁶

¶90 Technologically resilient legal researchers need to know how to navigate legal research databases on their own. Because Gen Z law students have some familiarity with search engines and strategies, we can let them learn for themselves where to click in a database and focus class instruction on understanding legal authority and sources of legal information.²⁸⁷ Shifting our focus away from teaching the mechanics of the databases will result in technologically resilient graduates for a few reasons. First, the databases are arguably “designed to be self-taught.”²⁸⁸ Second, the functionality of legal research databases changes quite regularly,²⁸⁹ meaning that law students taught the mechanics of Westlaw in 2022 may find themselves relearning the mechanics of a new Westlaw in 2027. This is not to say that research demonstrations should fall by the wayside, but instead they should be reserved for the more complicated aspects of online research.²⁹⁰

¶91 Research instruction should focus more on research *strategy* than database function. A common first step of an inexperienced legal researcher on the hunt for case

of legal information using online sources).

284. *Id.* at 710 (“In order to most effectively teach new students’ legal structure, there will be instances when we should teach print-based research.”).

285. Less than 1 percent of attorneys reported *not* working primarily on computers in 2020. ABA, 2020 LEGAL TECHNOLOGY SURVEY REPORT, VOL. III: LAW OFFICE TECHNOLOGY 12 (2020).

286. Iantha M. Haight, *Digital Natives, Techno-Transplants: Framing Minimum Technology Standards for Law School Graduates*, 44 J. LEGAL PROF. 175, 216 (2020).

287. See *Boulder Statement on Legal Research Education: Signature Pedagogy Statement*, in THE BOULDER STATEMENTS ON LEGAL RESEARCH EDUCATION: THE INTERSECTION OF INTELLECTUAL AND PRACTICAL SKILLS 255, 256 (Susan Nevelow Mart ed., 2014) (“We teach an intellectual process for the application of methods for legal research by: . . . (2) showing the relationship of legal structure to legal tools and evaluating the appropriate use of those tools.”).

288. Toree Randall, *Meet Me in the Cloud: A Legal Research Strategy That Transcends Media*, 19 LEGAL WRITING 127, 134 (2014).

289. See Susan Nevelow Mart, *Teaching the Benefits and Limits of Human Classification and Machine Algorithms: Theory and Practice*, in THE BOULDER STATEMENTS ON LEGAL RESEARCH EDUCATION: THE INTERSECTION OF INTELLECTUAL AND PRACTICAL SKILLS 153 (Susan Nevelow Mart ed., 2014) (“In the realm of legal research resources, because they change so quickly, it is not sufficient to teach students how to use the interface or resources they see today. The interface will be different tomorrow. One legal publisher will be purchased by another. The format for accessing a particular resource will change. A tool available online in law school might only be available in print at the workplace.”).

290. For example, students mostly know how to use a search bar for natural language searches and do not need in-class instruction on this use of a database. They could instead be directed on how to use advanced search features, how to browse by content type, and how to use Boolean searching.

law, for example, is to search for case law directly on Westlaw or Lexis using keywords and perhaps a jurisdictional filter. Seasoned researchers and librarians know that this kind of direct case law search is among the less productive ways a researcher can begin.

¶92 Consider, as an example, teaching students about statutory research. Before class, students watch a recorded lecture that explains the format of the U.S. Code, the process of deciding which statute is placed where in the Code, and the way different statutes codified in a chapter function together. In class, the professor briefly highlights the various strategies for locating statutes and performing statutory research. Equipped with this information, students begin an exercise, independently navigating the Code on Westlaw, Lexis, or whatever other research tool they want to use. After several minutes of working independently, students discuss with a partner their strategies for locating relevant statutes. At the end of class, students can demonstrate their research strategies and discuss the best ways to navigate the databases.

¶93 If our goal is technological resilience, we want our students to gain transferrable research skills: skills that they can adapt over time “so that they can refine and iterate the research process to completion.”²⁹¹ This kind of adaptability is difficult²⁹² but important to teach to help Gen Z students be more efficient and creative legal researchers and attorneys in the long term.

9. Intentionally Teach Critical Legal Research

¶94 It remains essential that legal research professors teach “critical perspectives about information.”²⁹³ In particular, professors should devote class time to Critical Legal Research theory (CLR).²⁹⁴ CLR, law librarianship’s response to other forms of critical theory like Critical Race Theory and Critical Legal Studies, encourages the deconstruction and questioning of the arrangement and accessibility of legal information.²⁹⁵ For Zoomers who struggle with critical skills and information literacy because of their early education, class discussions about CLR will help them better evaluate sources and hone their analytic and metacognitive skills “in a practical and realistic context.”²⁹⁶

291. Mart, *supra* note 289, at 153–54.

292. See Haight, *supra* note 286, at 217 (“Adaptability is a difficult skill to teach, but legal educators can cultivate curiosity and help students gain confidence, both of which help develop adaptability.”).

293. Julie Krishnaswami, *Critical Information Theory: The New Foundation for Teaching Regulatory Research*, in THE BOULDER STATEMENTS ON LEGAL RESEARCH EDUCATION: THE INTERSECTION OF INTELLECTUAL AND PRACTICAL SKILLS 175, 178 (Susan Nevelow Mart ed., 2014).

294. See, e.g., Nicholas F. Stump, *Following New Lights: Critical Legal Research Strategies as a Spark for Law Reform in Appalachia*, 23 AM. U. J. GEN. & SOC. POL’Y L. 573, 600–21 (2015) (providing an overview of Critical Legal Research theory). See generally Richard Delgado & Jean Stefancic, *Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited*, 99 LAW LIBR. J. 307 (2007) (analyzing the impact of computer-assisted legal research on law reform).

295. See, e.g., Stump, *supra* note 294; see also Nicholas Mignanelli, *Critical Legal Research: Who Needs It?*, 112 LAW LIBR. J. 327 (2020).

296. Krishnaswami, *supra* note 293, at 178.

¶95 Critical Legal Studies argues that legal doctrine is indeterminate and incoherent, and that legal reasoning is a myth.²⁹⁷ In response, CLR's purpose is to make visible the underlying decisions and biases that inform the structure of legal information and research tools. CLR encourages the researcher to question the amount of control our "research tools assert over research practice and legal thinking"²⁹⁸ and how these tools can serve to "stifle legal innovation and law reform."²⁹⁹

¶96 Doctrinal law classes teach law *and* legal theory. There is no reason that skills classes like legal research cannot do the same. And there are practical reasons for teaching CLR. Researching within a CLR context will encourage Zoomers to not have "blind faith or an uncritical reliance on technology"³⁰⁰ and to continue to rely on self-learning (which, in turn, can create technologically resilient, adaptable lawyers). Professors should explain that Westlaw's and Lexis's algorithms, while proprietary, are different from the search algorithms they are already comfortable with (Google), and that search results may not appear in a logical order. With this insight, students will think more critically about the results they select in their searches.

¶97 CLR can help students "develop comfort with the unknown or unforeseeable" by forcing them to grapple with the idea that "history produces unforeseeable outcomes."³⁰¹ This kind of instruction involves stressing to students that the sources they find are "not equivalent to a whole universe of information or even a random subset, but rather to that particular universe found economically, politically, and/or personally expedient or essential to publishers, editors, and librarians."³⁰² Zoomers look for the quick, obvious answer in their research. Of course, legal research has no quick or obvious answer. This results in student frustrations when researching. With CLR insights, students can contextualize their search results and begin to understand why they might not find the answer to a particular legal inquiry.

¶98 Some legal research instructors might already use a CLR or similar framework in their instruction. This article is advocating for *explicitly* teaching about CLR in the classroom, not just teaching the skills and theory without naming CLR. As previously mentioned, Zoomers are pragmatic; they want to know *what* they are learning and *how* it connects to their careers.

¶99 Following discussions about the control that tools like Westlaw and Lexis assert over legal research, students may be better able to understand why they get a particular set of search results and to question their research strategies along with the results themselves. They will be more aware of the impact of their online searching on legal

297. Steven M. Barkan, *Deconstructing Legal Research: A Law Librarian's Commentary on Critical Legal Studies*, 79 LAW LIBR. J. 617, 618 (1987) ("Much of the [Critical Legal Studies] enterprise has focused on three interrelated subjects: the incoherency and indeterminacy of legal doctrine, the myth of legal reasoning, and the nature and effects of categorizing legal problems.").

298. *Id.*

299. Mignanelli, *supra* note 295, at 331.

300. Krishnaswami, *supra* note 293, at 182.

301. *Id.*

302. Jill Anne Farmer, *A Poststructuralist Analysis of the Legal Research Process*, 85 LAW LIBR. J. 391 (1993).

innovation and be encouraged to research offline or in nonlegal spaces. With a base understanding of CLR, law students can be encouraged to, for lack of a better phrase, think outside the search box.

10. Make It Clear That You Care

¶100 Zoomers arrive in the classroom with certain expectations. They expect a diverse, inclusive environment that is respectful of all.³⁰³ They expect to engage with the outside world and talk about their passions. They expect their professors to encourage them to do their best work. They expect flexibility and recognition of their humanity. All of this can be summed up in one word: caring. Zoomers want to see that their professors *care*.

¶101 The idea of professors “caring” in academia is often considered “motherwork”: work that is often unpaid and relegated to women and minorities.³⁰⁴ While a valid concern that is beyond the scope of this article, consider that studies of Zoomers in higher education have found that “caring” does not necessarily mean unpaid labor, emotional or otherwise.³⁰⁵ In fact, Zoomers perceive their professors as “caring” largely based on their classroom teaching strategies, favoring those who are engaging, responsive, and empathetic.³⁰⁶

¶102 Exciting classrooms are engaging classrooms; bell hooks herself wrote, “The classroom should be an exciting place, never boring.”³⁰⁷ Subjects often perceived as boring—legal research included—can be engaging if the professor is excited about the material and the class. One way to show your excitement with the material is to be prepared for class: “those who seemed to be reading prepared lectures, not interacting with students, or not curious about student learning [are seen by their students] as not really putting forth effort and thus not caring if students [do] well or not.”³⁰⁸ Additionally, Gen Z see professors who adapt to their students’ needs and feedback as caring. Professors who seek feedback from their students about their understanding and then adjust their strategy in response are seen as caring, as are professors who use different teaching methods and monitor whether all students are learning.³⁰⁹

¶103 Being responsive to student needs can be as simple as being flexible with your students. During the pandemic, many advocated for using more flexible learning policies, eliminating grades, and offering extensions on assignment deadlines.³¹⁰ Continuing

303. See SELINGO, *supra* note 49, at 9 (“[T]oday’s students are attentive to inclusion across race, ethnicity, sexual orientation, and gender identity, and want colleges to live up to those ideals as well.”).

304. See Sharon M. Varallo, *Motherwork in Academe: Intensive Caring for the Millennial Student*, 31 WOMEN’S STUD. IN COMM’N 151 (2008) (describing the way academics “mother” their students).

305. See generally Miller & Mills, *supra* note 156 (finding that students look to their professor’s time spent teaching in class when determining whether they “care” or not).

306. *Id.* at 82.

307. BELL HOOKS, *TEACHING TO TRANSGRESS* 7 (1994).

308. Miller & Mills, *supra* note 156, at 84.

309. *Id.* at 84–85.

310. See Nicole Else-Quest et al., *How to Give Our Students the Grace We All Need*, CHRON. HIGHER EDUC. (Jan. 18, 2022), <https://www.chronicle.com/article/how-to-give-our-students-the-grace-we-all-need>

this practice of flexibility will show students that your goal is that they learn, and that their goal should not be simply earning a good grade.³¹¹

¶104 Lastly, students want an empathetic classroom environment and perceive their empathetic professors as caring professors. Be sure that your students know their presence is valued and their experiences are valid.³¹² This is especially important for students of color, who “report feeling out of place in law schools.”³¹³ Atkins recommends creating “identity safe” law schools wherein harmful stereotypes are “neutralized” with positive social cues to ensure all students feel like they belong.³¹⁴ Being empathetic in class requires acknowledging life outside the classroom. During the pandemic, teachers were encouraged not to go on as normal, pretending the world outside was not in the midst of chaos.³¹⁵ Acknowledging the complexities of life and providing space for students to talk about what they are feeling and experiencing shows students that you care about them as whole people. You might consider checking in with your students using an anonymous system like a Google Form or Poll Everywhere.³¹⁶

¶105 Overall, be sure that your students know that your “ultimate goal is to see them succeed in law school and have a successful career”—and *tell them* as much instead of assuming they already know.³¹⁷

Conclusion

¶106 When Millennials matriculated, legal educators jumped through hoops to make law school more appealing to the digitally connected, collaboration-obsessed generation. After six years of Gen Z law students roaming the halls, it is past time we do the same to better educate the new generation of future attorneys. The 10 suggestions above are intended as starting points for engaging Gen Z in the legal research classroom as well as in law school instruction more broadly.

¶107 Zoomers are complex. They prefer to learn alone but enjoy collaborating on creative projects with their peers. They feel lost without their cell phones but prefer face-to-face communication. They are confident technology users but struggle with legal and academic research. They are deeply pessimistic about the America they have inherited but dedicated to fixing the nation’s problems.

[<https://perma.cc/2LLS-9GXW>] (providing ideas for interacting with students with kindness and grace during the pandemic).

311. SELINGO, *supra* note 52, at 29.

312. HOOKS, *supra* note 307, at 8.

313. Atkins, *supra* note 16, at 141 (internal citations omitted).

314. *Id.* at 142.

315. See, e.g., Learning Network, *48 Pieces of Advice from Educators on How to Survive This Challenging Time*, N.Y. TIMES (Dec. 14, 2021), <https://www.nytimes.com/2021/12/14/learning/48-pieces-of-advice-from-educators-on-how-to-survive-this-challenging-time.html> [<https://perma.cc/Y3RZ-L6Z2>] (providing advice to educators about teaching during the pandemic, including taking care of students).

316. Else-Quest et al., *supra* note 310.

317. Crichton, *supra* note 16, at 10.

¶108 With every new generation comes new opportunity to adjust how we teach. And with each new generation comes an opportunity to see our students through a positive and open-minded lens rather than a belittling and critical one. We have the choice: treat Zoomers as we did Millennials by disparaging their skills, calling them lazy and entitled, and blaming them for educational missteps made when they were literal children, or learn about their peer personality to adjust our view and treat them with respect. We can play to their strengths instead of bemoaning their weaknesses.³¹⁸

¶109 Gen Z believe they will change the world.³¹⁹ They are resilient and “channeling their energies into holding themselves and others accountable.”³²⁰ They will come to law school looking to learn the skills needed to do just that. If we “evolve our pedagogy”³²¹ to their preferences, we can help them learn how to change the world and perhaps even learn something from them in the process.³²²

318. Christopher, *supra* note 163, at 39.

319. Time Video, *supra* note 121.

320. DELOITTE, DELOITTE GLOBAL 2021 MILLENNIAL AND GEN Z SURVEY 2 (2021), <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/2021-deloitte-global-millennial-survey-report.pdf> [<https://perma.cc/EY6N-8WX7>].

321. Christopher, *supra* note 163, at 39.

322. VOLPE, *supra* note 31, at 5 (“By listening carefully to what [Zoomers] are saying, we can appreciate the lessons they have to teach us: be real, know who you are, be responsible for your own well-being, support your friends, open up institutions to the talents of the many not the few, embrace diversity, make the world kinder, live by your values.”).

Keeping Up with New Legal Titles*

Compiled by Chava Spivak-Birndorf** and Matt Timko***

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* If you would like to review books for "Keeping Up with New Legal Titles" please send an email to book review editors Chava Spivak-Birndorf (cys28@drexel.edu) and Matt Timko (mtimko@niu.edu).

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Bartholomew, Mark. *Intellectual Property and the Brain: How Neuroscience Will Reshape Legal Protection for Creations of the Mind*. New York: Cambridge University Press, 2022. 194p. \$39.99.

Reviewed by William W. Geeslin*

¶1 This is a short, accessible book that deftly summarizes the intricacies of intellectual property (IP) law and emerging neuroscientific research in ways that challenge judicial wisdom, which arose from early IP litigation. Professor Mark Bartholomew makes a compelling case that many aspects of judicial analysis baked into the IP juridical cake by luminaries such as Learned Hand and Oliver Wendell Holmes are based on assumptions that are questioned by modern neuroscience. The book suggests that neuroscience can help shed light on previously obscure elements of IP causes of action that have evolved to be substantively non-justiciable because of the inherent unknowable “magic” of either the creative process or audience/consumer reaction. The unknowable

* © William W. Geeslin, 2023. Associate Director of Operations & Collections and Adjunct Professor of Law, NSU Shepard Broad College of Law, Pam Maurer Law Library, Fort Lauderdale, Florida.

suggests Bartholomew can become known (to some extent) through the expansion of neuroscientific theory and practice.

¶2 The ephemeral notion of “beauty” is an illustrative example of the book’s claim that neuroscience can help clarify many areas of IP law long thought sacrosanct. “Beauty” is relevant to a copyright infringement claim’s substantial similarity analysis (the subjective test of whether one’s work is so like an earlier work that an ordinary person would view it as resulting from misappropriation). The book discusses how neuroscience can provide measurable insight into whether a person is reacting with disgust or pleasure when listening to a piece of music, allowing us to measure the aesthetic valence of whether a work is beautiful and debunking the historic assumption that beauty is limited to the eye of the beholder. A court could use this data “as a supplement to, not a substitute for, the current substantial inquiry” (p.78), the ordinary observer test, which asks whether an ordinary person would view the aesthetic appeal of two works as the same in a way that overrides surface discrepancies.¹ With current copyright law’s view that aesthetic experiences are unmeasurable, the contribution of neuroscience that contradicts this could allow for an expansion of cases where substantial similarity issues can be resolved at the pre-trial stage rather than reflexively punted to the jury.

¶3 Bartholomew argues that the idea that creativity is comparable to being struck by lightning with a Eureka moment that cannot be explained gave rise to a “substantively impotent” creativity test that is both contrary to the organic intent of IP to encourage creation as a social good and inconsistent with neuroscientific research that shows that creativity is a skill that is developed. He cites a modern example of a selfie taken by a macaque monkey. The creativity test was met by the non-human, but copyright protection was denied the selfie taker on the grounds that the Copyright Act’s definition of “author” did not include non-humans (p.144).² Courts “presume creativity in all but the rarest of cases” (p.29) in no small part because of the 1903 opinion in *Bleistein v. Donaldson Lithographing Co.*, in which Justice Holmes said “it would be a dangerous undertaking” for judges to assess artistic value, because they lack expertise in emerging art or a good grasp of populist appeal of works that may not tickle the particular judge’s fancy.³

¶4 Bartholomew discusses neuroscientific methods that can measure creativity, undermining *Bleistein*’s presumption that creativity is unknowable and the century of jurisprudence that flowed from it. Objective measurements of alpha waves, mental imagery, and inter-network connectivity can remove the *Bleistein* scales from the eyes of IP by showing the act of creating something is substantively different than merely organizing names in a phone book, thereby restoring meaning to the creativity test.

¶5 From a reader’s perspective, I felt the book does not review the neuroscience research sufficiently. It contains an extensive and admirably concise description of black

1. Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F.2d 487, 489 (2d Cir. 1960).

2. Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018).

3. 188 U.S. 239, 251-52.

letter IP law and the cases that created that jurisprudence. However, the promised payoff that neuroscience can measure brain activity in a way that can meaningfully transform and improve various aspects of IP litigation does not feel borne out in the book. Bartholomew hedges the significance of the improvements that neuroscience can make in IP litigation in a way that feels sometimes underwhelming. For example, the book says that fMRI scans can show cognitive activity that can help distinguish brief initial moments of opaque brand perception in a trademark dilution action that is cleared up within milliseconds. It brackets this area of neuroscientific insight off from the higher standard of consumer confusion in a trademark infringement case in a way that felt like it was marginalized into unsatisfying insignificance.

¶6 As a matter of style and readability, Bartholomew's concise writing and clear sentence and paragraph structure reject the norm of dense, obtuse unreadability of the standard law review article model. Bartholomew's work is reminiscent of Bryan Garner's, and this book may be usable in legal writing classes in addition to its primary (and stated) function as valuable supplemental reading for IP classes. This book would be a useful addition to academic law libraries at schools where upper-level IP courses are taught. I anticipate that many IP faculty would find it useful to incorporate into their classes.

Crawford, Bridget J. and Waldman, Emily Gold. *Menstruation Matters: Challenging the Law's Silence on Periods*. New York: New York University Press, 2022. 275p. \$39.00.

*Reviewed by Nick Harrell**

¶7 Through their introduction to the menstrual equity movement, *Menstruation Matters*, Professors Bridget J. Crawford and Emily Gold Waldman make a compelling case that the law can do more to support people who menstruate. As explained by Crawford and Waldman, the menstrual equity movement aims to enable full participation in society by those who menstruate by mitigating the stigma, embarrassment, and financial burden of menstruating. The substantive content of *Menstruation Matters* weaves the history of the menstrual equity movement within its introduction to courtroom and political advocacy for menstrual equity. Throughout their book, Crawford and Waldman weigh in on the relative prospects of litigation and political advocacy—typically concluding that the two approaches work best in tandem.

¶8 The text begins with a discussion of tampon taxes. A tampon tax generally refers to a sales tax applied to menstrual products, when other necessities (e.g., food, bandages) are exempt from such a tax. The authors describe the political and litigation advocacy efforts that have led to the repeal of state and national tampon taxes. They highlight and chronicle the usefulness of social media in advancing political solutions. At the same time, the authors describe litigation strategies and arguments under current federal laws that might nullify tampon taxes; again, this highlights the complementary nature of litigation and policy advocacy.

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¶19 Turning to the subject of schools and menstruation, the authors describe myriad ways menstruating students face obstacles to education. They suggest implementing some relatively simple policy changes (e.g., avoiding light-colored pants for dress codes) as well as addressing complicated cultural perceptions of menstruation that can prohibit menstruating students from receiving an education. Buttressing the authors' claims is research reporting how shame, embarrassment, and financial concerns related to menstruation may prevent students from receiving an education. Highlighting possible solutions under Title IX⁴ or regulatory change, the authors make clear that the law can do more.

¶10 Moving from the classroom to the public at large, the authors emphasize the outsized impact period poverty (a term used to describe lack of access to menstrual products and education, exacerbated by stigma and shame) may have on people experiencing homelessness. In particular, the authors laud recent responses from grassroots nonprofits to collect and disseminate menstrual products to those in need. They also discuss legislative efforts to shield donors from potential liability, because some laws still categorize menstrual products as medical supplies.

¶11 Next, the work addresses vulnerabilities of people who are incarcerated and menstruate. While the First Step Act⁵ now guarantees menstrual products to all federal prisoners who menstruate, it does not apply to state and local prisons. The authors relay patterns of prison officials restricting access to menstrual products to shame and control incarcerated people. They also describe terrible accounts of prison officials throwing boxes of tampons among inmates to fight over, and how such abuses have led to oversight and legislative changes. Beyond physical control, former inmates convey that limited access to menstrual products causes psychological harm and is regularly used by prison officials to exercise psychological control over inmates. Here too advocates levied litigation and political lobbying to improve situations in prisons.

¶12 Other topics in the work include the law's role regarding menstruation and the workplace, transgender men, health and the environment, capitalism, and international perspectives. Through all these topics Crawford and Waldman demonstrate how advocates can leverage sometimes-shocking personal accounts and data in their efforts to change laws.

¶13 Lawyers and non-lawyers alike will find *Menstruation Matters* to be an excellent primer on the subject. It will likely find the most use in an academic library or firm library with an active civil rights litigation or lobbying practice. While competently and consistently footnoted, *Menstruation Matters* lacks the detail and legal analysis of a treatise. A researcher looking for deeper legal analysis of this book's themes would be well served to consult the legal scholarship found in law journals and reviews. To that end, the authors participated in and cite to a *Columbia Journal of Gender & Law* symposium on these subjects titled "Are You There Law? It's Me, Menstruation."⁶ *Menstruation*

4. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (2021).

5. First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (codified as amended in scattered sections of 18, 21, 34, and 42 U.S.C.).

6. *Thirtieth Anniversary Symposium: Are You There Law? It's Me, Menstruation*, 41 COLUM. J. GENDER & L. 1 (2021), <https://journals.library.columbia.edu/index.php/cjgl/issue/view/795> [https://perma.cc/4W7T-QVE4].

Matters remains the only monograph about menstrual equity that I could find centered around the legal aspects of the movement. Researchers might consider the open-access ebook *The Palgrave Handbook of Critical Menstruation Studies*⁷ or Anita Diamant's 2021 collection of essays, *Period. End of Sentence: A New Chapter in the Fight for Menstrual Justice*,⁸ which explores menstrual equity while not focusing solely on the law. Through their multi-faceted approach, Professors Crawford and Waldman successfully argue that the subject of menstrual equity and the law is worthy of further development from scholars, advocates, and litigators. I look forward to the progeny of *Menstruation Matters* and the growth of this area of law.

Forrest, Katherine B. *When Machines Can Be Judge, Jury, and Executioner: Justice in the Age of Artificial Intelligence*. London: World Scientific, 2021. 134p. \$21.00.

*Reviewed by Stacy Fowler**

¶14 In *When Machines Can Be Judge, Jury, and Executioner*, former federal judge Katherine Forrest raises concerns over the pervasive use of artificial intelligence (AI) in the American justice system to produce risks and need assessments (RNA) regarding the probability of recidivism for citizens charged with a crime. Forrest's argument centers on AI's primary focus on utilitarian outcomes when assessing liberty for individual citizens. This approach leads Forrest to the conclusion that in its current form, AI is "ill-suited to the criminal justice context" (p.xv). Forrest contends that AI should instead be programmed to focus on John Rawls' concept of justice as fairness, the expectation that "certain natural rights will be protected at an individual level" (p.1).

¶15 The author begins with the basics of how AI works: algorithms provide the methods for AI to analyze and use data. AI creates these algorithms by selecting and weighting inputs and data sets. This "determines how useful an AI tool will be, how accurate it can be, and whether it embeds explicit or implicit bias" (p.13). It is these biases, along with the lack of transparency most companies have regarding inputs and data sets, that most concern Forrest about the accuracy and fairness of RNA recommendations.

¶16 The next chapters consist of case studies—frequently drawing on personal experience from Forrest's seven years on the bench—to compare human and machine outcomes, assessing how each group makes predictions and decisions using the risk assessment tools available. For AI, the algorithms provide the data; for judges that input primarily comes from presentence investigation reports and sentencing guidelines. She points out that although many believe AI will "produce results that are both more objective and more accurate than humans can produce" (p.49), this is generally an erroneous

7. PALGRAVE HANDBOOK OF CRITICAL MENSTRUATION STUDIES (Chris Bobel et al. eds., 2020), <https://link.springer.com/book/10.1007/978-981-15-0614-7> [<https://perma.cc/25WC-SWP8>].

8. ANITA DIAMANT, PERIOD. END OF SENTENCE: A NEW CHAPTER IN THE FIGHT FOR MENSTRUAL JUSTICE (2021).

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assumption since humans are the ones compiling the datasets that are used as inputs and deciding which factors AI will focus on to produce results.

¶17 In the final section, Forrest discusses proprietary AI systems currently in use for RNA, primarily focusing on the Correctional Offender Management Profiling for Alternative Sanctions system (COMPAS), which is the “best-studied and most widely utilized AI assessment tool now on the market” (p.65). Using available statistics for determinative factors and accuracy rates, Forrest shows that most AIs exhibit an accuracy rate of 68–71 percent, with the federal government’s home-grown system producing the highest levels of accuracy, falling between 75–78 percent. Every system surveyed, however, consistently has lower accuracy rates for minorities when compared with White offenders. She also offers up statistics that humans on the bench are often more accurate than AI and, more importantly to the author, take the individual person into consideration as a major factor when making decisions.

¶18 Academic and public libraries will find *When Machines Can Be Judge, Jury, and Executioner* useful for providing an understanding of the basics of AI and risk assessment tools currently being used by the American justice system, and how various input factors can affect recommendations and accuracy. Forrest’s analysis and commentary are both informative and passionate as she advocates for a bottom-up redesign to work toward an ideal balance between utilitarianism and individual liberty.

Houser, Kimberly A. *Legal Guide to Social Media: Rights and Risks for Businesses, Entrepreneurs, and Influencers, Second Edition*. New York: Allworth Press, 2022. 186p. \$19.99.

*Reviewed by Adam Z. Harness**

¶19 *Legal Guide to Social Media: Rights and Risks for Businesses, Entrepreneurs, and Influencers* is a book that should be on the bookshelf of anyone interested in social media and business. Professor Kimberly Houser does an amazing job of laying out all the information needed to make informed decisions regarding the legal pitfalls that surround using social media or the internet to advertise products, not only for the corporations involved but also for the influencers and website designers that help to advertise products.

¶20 The book is split into 10 chapters, each covering a different topic and consisting of multiple subtopics. It is quite easy to look at the table of contents and gauge which chapter would be the most helpful to you. Houser covers almost everything one could think of regarding online advertising: defamation and other tort risks; advertising laws; name, image, and likeness protection; how to avoid infringement on copyrights and trademarks; enforcing IP rights; data security; privacy laws; things to consider when setting up websites; and many other topics.

¶21 Each chapter is organized into multiple subsections with headers formatted as a question that a person may have regarding something happening in their everyday

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life. For example, Chapter 1 is about defamation and other torts that may arise from something the reader may have posted online; subsection 1.3 is titled “Don’t I Have the Right to Anonymity on the internet?” (p.7). By using questions the reader may have or encounter as an attorney, Houser makes it easy to locate and understand the focus of each chapter and subsection.

¶22 Another aspect that makes this book enjoyable is that Houser uses simple-to-understand language to educate the reader on the topic presented. Whenever Houser does have to use legal terminology, she defines and explains the term well. It was easy to understand the answers to many questions without having to break out a dictionary. Houser uses a very informal tone, similar to a lecture, to convey the answers to the subsection questions. The tone was informative without being condescending.

¶23 For those who want to find more research about a topic, or to double-check the author, Houser includes a list of endnotes at the end of the book, sorted by chapter, so that the reader can locate and read the sources she used to create this book. Houser has also included an index and a list of cases so that the reader can quickly and efficiently search the book without having to browse the contents.

¶24 This book would be a great addition to any library, especially law libraries. This is the second edition of this book, so it has been updated to account for more recent cases and statutes. Public law libraries would greatly benefit from this book due to the simplicity of the language and the clear layout of the chapters and subsections. The index uses a little more legal jargon and terminology that may be a little difficult for laypeople to understand, but most of the information is readily available. Overall, this book would be very helpful for anyone looking for an overview of the laws, policies, and regulations affecting social media.

Josephson, Tristan. *On Transits and Transitions: Trans Migrants and U.S. Immigration Law*. New Brunswick, NJ: Rutgers University Press, 2023. 198p. \$29.95.

*Reviewed by Laura M. Scott**

¶25 In *On Transits and Transitions: Trans Migrants and U.S. Immigration Law*, Tristan Josephson traces how transgender has been constructed as a cognizable legal category in U.S. immigration law and policy over the last 20 years. Josephson explores three key areas related to immigration law—migrants’ asylum declarations, immigration through marriage, and immigration detention—to show how the state classifies trans⁹ immigrants, who is (and is not) recognized as transgender in these contexts, and how rights and citizenship are distributed accordingly. Within each of these key areas, Josephson considers how the roles and competing priorities of the various players (including trans migrants, their legal advocates, and activists on the one hand, and

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9. Josephson uses the term *trans* “to refer to the range of gender-variant expressions, identities, and practices of gender nonconforming subjects, and to theorize processes of change and movement as well as the collisions that occur when trans subjects interact with legal institutions” (pp.5-6).

immigration officials, judges, and lawmakers on the other) affect the legal construction of transgender. Throughout the book, he also reflects upon the effects of gender norms, race, socioeconomic status, and the relative mobility and immobility of the state and migrants on transgender as a legal category.

¶26 While the scholarly project of *On Transits and Transitions* is “tracing the emergence of trans subjects as legal subjects in immigration law and policy” (p.72), Josephson’s respect for trans migrants as individuals is also evident throughout the book. In conducting his research, Josephson collected case files and interviewed trans migrants’ attorneys to understand the personal truth of their cases, rather than simply relying on more readily available published materials; at the same time, he also recognizes the importance of case documents for migrants from Central and South America in his archive of research materials. As a point of contrast, Josephson draws the reader’s attention to the disappearance of the human being in many immigration proceedings. Over the course of the asylum process—from the asylum seeker’s personal appearance in immigration court to an eventual appeal before a federal circuit court in which only their attorney appears—the individual becomes less central. A parallel disappearance occurs in the written texts produced in the various stages of a case. Josephson mourns this “disappearing of the applicant from her own case, so that the asylum seeker becomes a disembodied, abstracted legal subject . . . This abstraction is significant given that trans asylum claims are based on the experiences of violence and persecution trans migrants have experienced because of their embodiment, namely, their gender and sexuality” (p.39).

¶27 The book is anchored in immigration law, but Josephson, a scholar of queer theory, trans studies and politics, transnational feminist studies, and critical legal studies, has created a thoroughly interdisciplinary work. The book draws upon contemporary philosophy, cultural theory, political science, sociology, and anthropology, among other disciplines. While the breadth of the references might make this a challenging read for those who come to the book with primarily a legal frame of reference, its interdisciplinary reach would make it a valuable addition to many university libraries.

¶28 *On Transits and Transitions* also has much to offer readers who are more focused on legal research, especially on critical legal research. Within each of the three key areas of immigration law that Josephson explores, he closely reads a variety of legal texts, including appellate court and administrative decisions, a collection of trans Latina migrants’ asylum declarations, a treatise for immigration practitioners, federal immigration detention standards, and an administrative manual. In critically analyzing these central texts, Josephson shows how their customary structures and narrative conventions, along with the priorities of their authors, have influenced the construction of the trans migrant as a legal subject in immigration law. He also explains how (in conjunction with other factors) the practice of selective publication of decisions and the obscurity of the final substantive outcomes of many asylum cases limit the law’s ability to protect marginalized migrants. This thought-provoking work is recommended for university and academic law libraries.

Kelly, Kate, art by Nicole LaRue. *Ordinary Equality: The Fearless Women and Queer People Who Shaped the U.S. Constitution and the Equal Rights Amendment*. Layton, UT: Gibbs Smith, 2022. 231p. \$27.99.

*Reviewed by B. Austin Waters**

¶29 *Ordinary Equality: The Fearless Women and Queer People Who Shaped the U.S. Constitution and the Equal Rights Amendment*, written by Kate Kelly and illustrated by Nicole LaRue, is exactly what it seems to be. Rather than taking a macro approach to the text and history of the Equal Rights Amendment (ERA), *Ordinary Equality* tells that history through the lens of the people who were essential to its formulation. Starting from just after the United States declared its independence and running through 2018, *Ordinary Equality* feels more biopic than historical treatise.

¶30 The ERA was originally introduced in Congress in 1923, then reintroduced in every Congress until it was finally passed in 1972, before being sent to the states for ratification. It has had a difficult history since then, facing much opposition and failing to achieve the necessary ratifications by the 1982 deadline. The ERA was figuratively dead in the water until it was revived by a handful of supporters, led by Nevada state Senator Pat Spearman, who introduced a bill to ratify the amendment in 2015. With new ratifications in Nevada, Illinois, and Virginia, followed by the first hearing held by Congress about the ERA in 36 years, *Ordinary Equality* is especially timely.

¶31 Kelly begins with a quick overview of the ERA and her relationship with the proposed amendment. Her distinct style is clear not just in this introduction, but in the text as a whole; she states early on, “I am not a historian; I’m a storyteller” (p.xx). Her clear narrative voice makes the entirety of the book feel genuine, much like having a conversation with a friend: a friend with a JD who happens to be a bit of an expert on the ERA. Her candor feels novel for a historical book, and she is upfront about her goals: to bring attention to the women and queer people left out of historical accounts and to strengthen awareness of the ERA as new moves are made to ratify it across the country.

¶32 Focusing on individuals allows Kelly to highlight important figures in the history of the ERA. She includes some well-known women such as first lady Abigail Adams, co-founder of the NAACP Mary Church Terrell, and the first woman of color in Congress, Patsy Takemoto Mink. She also includes some lesser-known figures such as Phillis Wheatley, the first African American author to publish a book of poetry, and Pauli Murray, a lawyer, activist, and professor. The book is well-researched with an easy to navigate collection of endnotes. There are 12 in-depth chapters about the personal history of specific people and their work toward women’s rights and the ERA. The chapters include short interludes about figures related to either the previous chapter or their work for (and sometimes against) the ERA. Every chapter is paired with the eye-catching work of artist Nicole LaRue, whose stylized typography leads to a dynamic layout not usually seen in a standard historical text.

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¶33 The book concludes with a positive and sometimes critical look at the struggle for equal rights since the founding of the United States. Rather than offering a recitation of the accomplishments of only White women, Kelly takes care to give a nuanced look at some famous women's rights leaders whose work furthered the cause of equal rights but purposefully left out non-White and queer women in the process. Kelly does an excellent job of reflecting the myriad of voices and work leading toward equality.

¶34 Overall, the book is a fun and interesting read. Although some of the figures depicted in *Ordinary Equality* will be familiar, many may be unknown to readers. Regardless, there is something new to be learned about all of them. Kelly's background in podcasting shines throughout the text in the way she depicts the story of each person's life, and in her easy transitions from subject to subject. Although it feels like a light read, it is engaging and never feels patronizing. It does what it sets out to do, directing a spotlight on the people who have done the work to get us to where we are today.

¶35 *Ordinary Equality* would be a great summer read for a law student or professional, an easy first step into this area of the law for an undergraduate, or an entry point for someone interested in the history of equal rights, women's history in America, or the ERA.

Lamdan, Sarah. *Data Cartels: The Companies That Control and Monopolize Our Information*. Stanford, CA: Stanford University Press, 2023. 224p. \$26.00.

*Reviewed by Sara Bensley**

¶36 Sarah Lamdan dedicates her book, *Data Cartels: The Companies That Control and Monopolize Our Information*, to "library workers everywhere," which is reason enough for librarians to take note of it. Yet be forewarned: the topics addressed are hot-button issues, especially for those of us in the information services profession, and the book is likely to stir up strong feelings of frustration and even anger. You may need to read it in small increments to keep your emotions in check.

¶37 Lamdan, a law professor at CUNY School of Law and former law librarian, was motivated to write *Data Cartels* after discovering in 2017 that RELX and Thomson Reuters, the parent companies that own Lexis and Westlaw respectively, sell data to the U.S. Immigration and Customs Enforcement (ICE) for use in surveillance programs. The discovery led Lamdan to investigate RELX and Thomson Reuters's connections to ICE, which in turn revealed to her the "hidden informational world of data analytics" (p.xi). As she dug into her research, she found myriad ways that RELX and Thomson Reuters's business interests permeate virtually every aspect of the information ecosystem with sobering consequences. From data brokering and academic research to legal information, financial information, and the news, Lamdan found that if there is a dollar to be made from information, you can be sure that RELX and Thomson Reuters are profiting. Moreover, RELX and Thomson Reuters, through their sprawling corporate networks built up through grassroots development and by way of acquisitions of other

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companies, tend to be oligopolists in the markets (or siloes) where they operate, giving them great power over so many areas of our lives.

¶38 Lamdan's findings will come as no surprise to librarians. Presumably all law librarians—and lawyers, too, for that matter—are aware of the stranglehold that Lexis and Westlaw have over legal information in the United States. But seeing that control carefully documented, alongside RELX and Thomson Reuters's far-reaching interests in other information fields, is nevertheless eye-opening.

¶39 The book further portrays RELX and Thomson Reuters's control over academic publishing and legal information as especially unfair and exploitative. For example, RELX's Elsevier, a giant academic publisher, earns a 19 percent profit margin for streaming academic journals, more than double Netflix's profit margin for streaming on-demand movies and TV shows. Lamdan also gives a detailed—and chilling—description of how both Westlaw and Lexis deploy special legal information platforms for use in prisons that allow wardens to closely track the precise research conducted by inmates. The arguments about abuses in the academic publishing and legal information ecosystems are very well researched and the harmful effects are undeniable.

¶40 The last two information siloes addressed in the book—financial information and news—present somewhat less compelling arguments. For one thing, the criticism of the Securities and Exchange Commission's online database of company filings, known as EDGAR, seems overblown considering recent technological changes that the SEC has implemented to make EDGAR more user-friendly, which in turn makes EDGAR far more accessible to non-experts than it was even a few years ago. There is also the argument that financial information is not equally available to everyone, in part, because not everyone has the sophistication to understand complex financial instruments and schemes. While this is certainly true, it is hard to see how equal access is feasible if it requires considerably boosting the financial literacy of an entire population, or how that burden should be shifted to EDGAR and the SEC.

¶41 The discussion of the news information market presents many indisputable arguments about the current news landscape in which there is great concentration of news outlets owned by very few corporate entities. But the chapter feels quite different from the rest of the book. RELX and Thomson Reuters do not feature as prominently in the news chapter as in the earlier chapters. Social media platforms, along with Section 230 of the Communications Decency Act, emerge here as prime targets for criticism. Lamdan posits, "In online platforms, access to high-quality, verified news reports are more important than ever" (p.126). Perhaps that is true, and it certainly has an appealing ring to it, but the arguments in this chapter feel more tenuous than much of the rest of the book.

¶42 *Data Cartels* is a thorough review of the hidden ways in which two large, profit-driven multinational corporations control access to information and the harmful consequences that can and do flow from that control. It is an unsettling read, but the content is important and relevant to everyone who consumes information, making the book an excellent addition to any library.

Mystal, Elie. *Allow Me to Retort: A Black Guy's Guide to the Constitution*. New York: The New Press, 2022. 270p. \$26.99.

*Reviewed by Jacquelyn McCloud**

¶43 “Our Constitution is not good” (p.1), states Elie Mystal in the introduction to his debut, *Allow Me to Retort: A Black Guy's Guide to the Constitution*. Lawyer-turned-journalist Mystal, justice correspondent for *The Nation* magazine, legal editor of the *More Perfect* podcast, Alfred Knobler Fellow at the Type Media Center, and former writer and editor at *Above the Law*, draws on his knowledge and experience to “expose what the Constitution looks like from the vantage of a person it was designed to ignore” (p.3).

¶44 Beginning with the Bill of Rights, Mystal deftly guides readers, amendment by amendment, through the Constitution from the point of view of a Black man. He writes with acerbic wit and provides straightforward explanations of constitutional law and history, making this book an effortless read, despite its complicated topic. Throughout the text he discusses landmark legal decisions, humanizing the stories behind the laws and their harmful effects. He also shares with readers his personal experiences, as well as concerns about raising his Black sons in the United States. The importance of this book cannot be emphasized enough; it is a must-read for social justice advocates.

¶45 The main theme of the book centers on Mystal’s “argument for what the Constitution is, versus what it should be and must be for us to live in a just society” (p.6). While nearly 236 years have passed since the drafting of the Constitution in 1787, the document’s design “to create a society of enduring white male dominance” (p.1) continues to suppress people of color and women in the United States. Mystal’s take-down of modern conservative constitutional interpretations exposes the vile motives and flawed rationales underpinning these efforts. Mystal’s call to action is clear, a more just and inclusive country is possible, and he explains to readers how to get there.

¶46 Mystal’s examination of conservative efforts to maintain White male dominance demonstrates how the courts have been key to undermining guaranteed rights. He provides many examples of how constitutional rights have been manipulated and distorted so that the protections are lost. The First Amendment’s Free Exercise Clause has been “twisted and weaponized” (p.29) by the Court, making it possible to impose religious beliefs in a secular sphere. U.S. Supreme Court decisions interpreting the Fourth Amendment’s protections against unreasonable searches and seizures serve to uphold systemic racism in our justice system. Mystal argues that the implicit and explicit biases of police officers influence *Terry* stops, offering for readers his personal experience with *Terry* stops—including being told by an officer, “We just don’t get a lot of people who look like you around here” and another experience he describes as “terrifying” (p.41).

¶47 He scrutinizes the “monopoly of force” given to officers by the government (p.55) and how the “[c]ourts have turned qualified immunity into a license for cops to act on their racial prejudices with impunity” (p.68). He further explains that *Miranda*

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warnings were the Court's creation under the Fifth Amendment that did not go far enough, giving officers "a pathway to violate rights" (p.81). Similarly, he contends that *Batson v. Kentucky*¹⁰ does not go far enough to protect the right to an impartial jury under the Sixth Amendment because courts "are inclined to accept any old allegedly 'race-neutral' reason for excluding Black jurors" (p.107). He further argues that the Eighth Amendment's protection against cruel and unusual punishment is vague and subjective, and he rejects originalist arguments.

¶48 Mystal's discussion of the Reconstruction Amendments (the Thirteenth, Fourteenth, and Fifteenth Amendments) and voting rights examines how the U.S. Supreme Court has and continues to undermine these rights. He points to the Court's use of judicial review tests that result in "subjectively outcome determinative" (p.161) decisions. Mystal argues that the Court is dismantling laws designed to protect against the disenfranchisement of racial minorities through voter suppression and illegal gerrymandering. "We have not lived one day in this nation, we have not passed through one election, where all four of the voting rights amendments were made real by Congress and enforced by the executive branch to their fullest potential" (p.205).

¶49 Mystal offers solutions throughout the book to combat the degradation of rights. To fix police brutality, he suggests, "Make stopping people because they're Black an 'unreasonable search.' Make shooting people because they're Black an 'unreasonable seizure.' Make 'shall not be violated' include actually prosecuting cops and holding them personally accountable when they violate these principles" (p.73). To fix the broken Electoral College, he recommends constitutional amendment. He offers South Africa as an example of a country that got it right. South Africa chose to address its apartheid constitution by writing "an entirely new document, in a constitutional convention that represented all of the people...[T]he South African Constitution now stands as a model for the world" (p.127).

¶50 Mystal's debut is a timely and compelling work. His perspective and voice offer an incisive retort to conservative efforts to eliminate critical race theory from higher learning. This is a must-read book recommended for public and academic libraries.

Strum, Philippa. *On Account of Sex: Ruth Bader Ginsburg and the Making of Gender Equality Law*. Lawrence, Kansas: University Press of Kansas, 2022. 206p. \$21.95.

Reviewed by Tang (Cindy) Tian*

¶51 Enacted in 1868 following the Civil War, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution forbade the state from discriminating based on race or color, but for more than a century, the court turned away from using it to strike down statutory gender inequality. Despite the ratification of the Nineteenth Amendment in 1920, which gave women the right to vote, discrimination against women was still reflected in statutes regulating multiple aspects of life. In her new book

10. 476 U.S. 79 (1986).

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On Account of Sex: Ruth Bader Ginsburg and the Making of Gender Equality Law, Philippa Strum relies on interviews she held with Ginsburg over more than four decades and impeccable research to detail how Ginsburg and her allies pioneered litigation for women's rights and gender equality in the United States, featuring landmark cases that changed the meaning of the Fourteenth Amendment and the subsequent constitutional landscape.

¶52 Chapter 1 describes Ginsburg's early life and the start of her legal career in the context of women's evolving social and legal status. It examines developments in women's participation in the public sphere since the latter half of the 19th century which began to change the political and civil status of women but, according to Ginsburg, "stimulated no dynamic change in constitutional interpretation" (p.20). Following a vibrant civil rights movement in the 1960s, Ginsburg began developing a course on women and the law but discovered that scholarship on the topic was minimal, with Supreme Court decisions largely denigrating the idea of gender equality. It became clear to Ginsburg that she needed to work not only to teach about gender and the law, but to change the legal situation that had long contributed to gender inequality.

¶53 Through the remainder of the book, Strum uses richly researched details to outline Ginsburg's efforts to advance women's rights, both as a litigator and as an educator. Ginsburg firmly believed that gender stereotypes embodied in the law hurt both men and women (an assertion that is explored in depth with three cases: *Taylor v. Louisiana*, *Schlesinger v. Ballard*, and *Weinberger v. Wiesenfeld*),¹¹ and she argued in briefs for groundbreaking gender discrimination cases *Moritz v. Commissioner* and *Reed v. Reed* that the Court must treat gender-based classifications the same as race-based classifications and hold differentiation on the basis of gender unconstitutional.¹² The victory in *Reed* was a significant step forward for gender equality in the law. Ginsburg worked with American Civil Liberties Union (ACLU) on more gender discrimination cases in the 1970s to further revolutionize constitutional law, the most prominent being *Frontiero v. Richardson*.¹³

¶54 Though Ginsburg made strides as a litigator fighting to achieve constitutional protections for gender equality, change did not come as steadily or quickly as she hoped. Chapter 4 begins with the Justices' reactions and ruling in *Frontiero*. Despite winning the case, Ginsburg lamented the Court's refusal to treat gender as a suspect classification, which meant "the battle for constitutional gender equality would still have to be fought on a time- and resources-consuming, case-by-case basis, with no certainty as to the outcome" (p.79). Her loss the following year in *Kahn v. Shevin* was a serious blow to Ginsburg's efforts to educate the Justices to achieve constitutional gender equality.¹⁴ At the same time, the 1970s saw a society in transition to burgeoning women's studies and greater demand for equality, with many legislative changes in place. Strum thoroughly

11. *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Schlesinger v. Ballard*, 419 U.S. 498 (1975); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

12. *Moritz v. Comm'r*, 469 F.2d 466 (10th Cir. 1972); *Reed v. Reed*, 404 U.S. 71 (1971).

13. 411 U.S. 677 (1973).

14. 416 U.S. 351 (1974).

presents how these changes to the societal framework contributed to the success of Ginsburg's litigation.

¶55 Chapter 6 focuses on tackling women's reproductive freedoms, a major obstacle to gender equality in employment. As the chapter title suggests, the Supreme Court's diverse rulings in pregnancy-related cases in the 1970s spoke to the Court's difficulty grappling with the reality of pregnant women. Strum illustrates the combined efforts to attack pregnancy discrimination and reaffirms Ginsburg's deeply held belief in the " inching along" approach—the idea that "in order for social change to be lasting, it had to be achieved as evolution rather than revolution" (p.123). Strum goes on to discuss how this litigation strategy is reflected in Ginsburg's cases combating discriminatory provisions of the Social Security laws and the pervasive legislative assumption that women depend on men but not vice versa, then wraps up with the last case Ginsburg argued before the Supreme Court, *Duren v. Missouri*, which challenged gender-based exemption from jury service.¹⁵

¶56 Gender equality and women's constitutional rights have come a long way through the course of American history, especially after Ginsburg and her allies entered the fight. Standing alongside Ginsburg, Strum presents in this rigorously researched book the progress that has been made and the battles that continue to be fought. While focused on the impact Ginsburg had in altering the legal status of women in the United States, Strum also recognizes the important efforts of other women, men, and organizations in making gender equality law and remedying the historical discrimination faced by women. "Ginsburg, as she would have been the first to say, did not do it alone" (p.2). Therefore, this book serves not only as a biography of Ginsburg, but also as a celebration of the progression of legal gender equality throughout American history. It is not to be missed by anyone who is interested in the advancement of women's equality under the law or in Ruth Bader Ginsburg's story and her timeless legacy to today's legal world.

Voigt, Eric P. *Legal Research Demystified: A Step-by-Step Approach, Second Edition*. Durham, NC: Carolina Academic Press, 2022. 338p. \$74.00.

Reviewed by Jocelyn Stilwell-Tong*

¶57 Professor Eric Voigt returns with a second edition of *Legal Research Demystified: Step-by-Step Approach*, designed to be used in first-year legal research and writing classes. This book creates a step-by-step method for instructing students in how to do legal research, with a framework designed for students who are just beginning to wrap their heads around big legal concepts while simultaneously learning to research and write. This book was designed to be used with online research tools and includes an online component on Carolina Academic Press's "Core Knowledge for Lawyers" platform, offering auto-graded end-of-chapter questions and Lexis and Westlaw research exercises. There is also a teacher's manual available for instructors.

15. 439 U.S. 357 (1979).

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¶58 The book is divided into four parts, walking students through the legal research process and how to analyze research results. The first part is an introduction to the world of legal research, including materials on the three branches of government, binding and non-binding authorities, and the publication process for cases and statutes, as well as how cases and statutes are usually structured. Part Two (new in the second edition) is on initial steps in researching either common law or statutory issues, such as building a research plan and researching secondary sources. Part Three is devoted to researching common law issues. Part Four deals with researching statutory issues.

¶59 On the positive side, this book is designed for online instruction, giving teachers many tools for remote students. The paperback version of the book is weighty and comes in a trade paperback size, which might be frustrating to students who want to leave it open as they research (the book springs closed easily); interestingly, it's also available as an e-book for a lower cost. I think that the paperback version is worth the extra investment, as there are a lot of tables, flow charts, and "anatomy of" diagrams within the book, which are useful. Frankly, some of the tables may be confusing to students without a professor's explanation. However, with proper instruction, I think that these visual aids would be helpful tools for students to refer to during their 2L and 3L years to refresh their memory about covered concepts. The online questions and research exercises further support remote instruction, and include a virtual print research exercise, allowing students to learn about print resources without going to the physical library (as a librarian, I have mixed emotions about that!).

¶60 On the negative side, there are limitations inherent to a step-by-step approach. Voigt makes sure to point out that legal research is a recursive process, that you need to analyze your results and adjust course as you learn. However, by laying out the step-by-step process, some students will feel like they must hit every step, every time. For a first-year student, this may be appropriate, but as the student progresses through their legal education, I hope that they will expand beyond the rote research process outlined in this book. I would also like to see a little more nuance in the treatment of citators and good versus bad law. Sometimes cases that are no longer strictly followed still have an important influence on current jurisprudence, even when you would not cite to them directly.

¶61 The first edition of this book was reviewed by Margaret Butler for the Research Instruction & Patron Services Special Interest Section (RIPS-SIS) Legal Research Text Review,¹⁶ and I agree with Butler's overall conclusions. This is a good text for remote instruction, for a 1L full-year research and writing combined class. It's certainly worth reviewing for materials and to consider the approach to training new students on a methodology for legal research. It would not be appropriate as a text for an advanced legal research class or other research-focused class.

16. Margaret Butler, Book Review, RIPS-SIS *LEGAL RSCH. TEXT REV.* (2019) (reviewing ERIC P. VOIGT, *LEGAL RESEARCH DEMYSTIFIED: A STEP-BY-STEP APPROACH* (2019)), https://www.aallnet.org/ripssis/wp-content/uploads/sites/15/2020/03/LegalResearchDemystified_BookReview_MButler.pdf [<https://perma.cc/K4G7-FYXJ>].

Wright Jr., Isaac. *Marked for Life: One Man's Fight for Justice from the Inside*. New York: St. Martin's Press, 2022. 316p. \$29.99.

*Reviewed by Staci J. Pratt**

¶62 In this legal memoir, Isaac Wright Jr. traces his heroic journey fighting a wrongful conviction on drug-dealing conspiracy charges. Wright opens the story with a portrait of his success as a young music producer and the manager of his wife Sunshine's career. He is seated in a red modified AMG Hammer when he is framed by a local drug dealer who throws a brick of cocaine in his direction. The waiting police swarm Wright, and he begins to drown in the systemic corruption and misconduct of the local police and district attorney. He is eventually sentenced to Trenton State Prison for life, plus 70 years, in 1991.

¶63 Against this tide, Wright found solace in the prison law library. "The law library would begin as a curiosity, but as the months bled together, as my hopes for a true legal advocate dissolved, that place would become my lifeline" (p.55–56). Even though the "law library was equal parts inadequate and intimidating" (p.56), it offered Wright the opportunity for empowerment and the tools to eventually obtain freedom. "Those musty books were deceptively powerful . . . when I opened them, it was like lifting the hood on society itself, like getting a peek at the spark plugs and shafts of the larger system" (p.58).

¶64 Wright became his own lawyer, appearing pro se at a 1996 post-conviction relief hearing that eventually led to his freedom. He also assisted fellow inmates in asserting their legal rights, using information gained from the law library. However, the value of his knowledge and his willingness to teach other inmates made him a target for the guards' aggression. "It offended [another prisoner's] sense of fairness that there were murderers and rapists in there, but I was picked on because I was learning the law and helping out my fellow inmates" (p.105).

¶65 The law library Wright accessed while incarcerated at Trenton existed due to previous litigation by the prison inmates. Relying on the U.S. Supreme Court decision in *Bounds v Smith*,¹⁷ the Trenton inmates successfully argued that the constitutional right to meaningful access to the courts meant prison officials must provide inmates with a law library or assistance from persons trained in the law. As a result, the Inmates Legal Association (ILA) "at Trenton was a huge legal and administrative machine, with multiple offices of desks, fax and copy machines, typewriters and word processors, a full law library with updated treatises rivaling any you could find in the average courthouse" (p.194). Wright's work there and his tenacity in document review brought him to the smoking gun in his case, a prosecution memo demonstrating a conspiracy to cover up police misconduct.

¶66 A lasting question remains, however. What will happen to others like Isaac Wright Jr. in the future? Since the *Bounds* decision, the Court has sharply curtailed an

* © Staci J. Pratt, 2023. Head of Student Services & Outreach and Teaching Assistant Professor, Wise Law Library, University of Colorado School of Law, Boulder, Colorado.

17. 430 U.S. 817 (1977).

inmate's right to access a law library. In *Lewis v. Casey*,¹⁸ the Court rejected the existence of a free-standing right to a law library or legal assistance for correctional inmates. *Lewis* arose from a Ninth Circuit decision requiring the Arizona Department of Corrections to significantly upgrade their law library facilities. Justice Scalia reversed the decision, requiring a demonstration of "actual injury" prior to recovery. In addition, the right of access is only guaranteed for certain claims: direct and collateral attacks upon a conviction or sentence and civil rights actions challenging conditions of confinement. Finally, in *Kane v. Garcia*,¹⁹ the Court held that a pro se individual housed in jail before trial did not have a clearly established right under federal law to access to a law library, even when asserting claims for habeas relief.

¶67 Changes in technology also complicate access. According to the Prison Policy Institute, "Prisons and jails are increasingly turning to electronic law libraries, moving from traditional book collections to databases accessed via shared kiosks or tablets. As of 2018, 88% of states have transitioned to electronic-only legal research tools."²⁰ Many inmates struggle with literacy, however, both for printed and electronic resources. For example, one New Jersey inmate sued when he could not navigate Lexis.²¹

¶68 Wright's story highlights not only his personal determination, but the incredible value of access to a prison law library. Without legal knowledge, individuals lack the ability to resist injustice. According to Wright, "The criminal justice system was destroying Black people . . . with impunity. And they were using what was ostensibly the glue of a functioning society—the law—to do it. Through complex procedures, deceptive phrases, and indecipherable rules, the law has been wielded like a weapon, sharpened and pointed at those who can't afford to learn or buy it" (p.55). A system of justice depends on meaningful access and its legitimacy. Wright's memoir is a call to action for all who care about our institutions. "In a place where nothing made sense, the library was a sanctuary, a dusty temple, a well-lit path" (p.65). It is natural to pray that no one else falls into Isaac Wright Jr.'s predicament. However, we must strive to ensure that if someone does, the doors to the law library remain open.

18. 518 U.S. 343 (1996).

19. 546 U.S. 9 (2005).

20. Stephen Raher & Andrea Fenster, *A Tale of Two Technologies: Why "Digital" Doesn't Always Mean "Better" for Prison Law Libraries*, PRISON POL'Y INST. (Oct. 28, 2020), <https://www.prisonpolicy.org/blog/2020/10/28/digital-law-libraries/> [https://perma.cc/7GBW-JLCR].

21. *Brown v. Hopper*, 2010 WL 3210697, 2010 U.S. Dist. LEXIS 82100 (D.N.J. Aug. 11, 2010).

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