

U.S. Supreme Court Current Awareness and Legal Blogs in the Law Library

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AND LEGAL BLOGS IN THE LAW LIBRARY

“[W]ho will tell the American people what their Supreme Court is, what it's doing, where it's going, who's on it? Who will be paying attention? I'm not sure I know the answer to that.”

– Lyle Denniston¹

You probably have never heard of *Niles' Weekly Register*, but *SCOTUSblog* is likely a name you recognize. The *United States Reports* memorialized the early reporters—Dallas, Cranch, Wheaton, Peters, and Howard;² *Niles' Register* was not so fortunate. This does not diminish its importance. The *Weekly Register* was the first news organization to cover the U.S. Supreme Court [hereinafter “the Court”] consistently and accurately.³ It did so without advertisements, and its coverage was uniquely nonpartisan and intended for a national readership.⁴ “It was and is a unique repository of information pertinent to the judicial branch.”⁵ *SCOTUSblog* shares these characteristics; with its detailed and consistent coverage of the Court, *SCOTUSblog* is today's *Weekly Register* in blog form.⁶

For law libraries in the United States, above all forms of legal news coverage, coverage of the Court is the most important.⁷ The Court is the final authority to say ‘what the law is.’ “It is critical to understand the institution of the Court itself as well as those who sit on its bench to predict the manner in which the Court will interpret the Constitution.”⁸ An essential characteristic of the Court is its inaccessibility. Coupled with the necessity of current awareness to understand the Court, the constitutional design of American society requires a union between the

¹ C-SPAN, *THE SUPREME COURT: A C-SPAN BOOK FEATURING THE JUSTICES IN THEIR OWN WORDS* 271 (Brian Lamb et al. eds., 2010).

² MORRIS L. COHEN ET AL., *HOW TO FIND THE LAW* 26 (9th ed. 1989) (describing the ‘nominative’ reporters).

³ Jeffrey B. Morris, “*No Other Herald*”: *Niles' Register and the Supreme Court*, 1978 Y.B. SUP. CT. HIST. SOC'Y 50, 51 (1978).

⁴ *Id.* at 53.

⁵ *Id.* at 59.

⁶ Barry Friedman, *The Wages of Stealth Overruling (with Particular Attention to Miranda v. Arizona)*, 99 GEO. L.J. 1, 36 (2010) (“Only the Court-and-law-savvy *SCOTUSblog* saw Patane as the big story, which assuredly it was”).

⁷ “Because of the preeminent role of the United States Supreme Court, both in practical and jurisprudential terms, its decisions will be discussed first and in some detail.” MORRIS L. COHEN ET AL., *supra* note 2, at 26.

⁸ STEVEN M. BARKAN ET AL., *FUNDAMENTALS OF LEGAL RESEARCH* 128 (10th ed. 2015).

Court and the media in order for the opinions of the Court to reach the citizenry. Legal blogs have become one of the leading current awareness sources for the Court. Among legal blogs covering the Court, *SCOTUSblog* is an exemplary resource.

It is difficult to define a current awareness tool that exists digitally.⁹ For example, *SCOTUSblog* shares many characteristics with legal newspapers.¹⁰ Legal newspapers are current awareness resources, and the vitality of a current awareness resource is dependent on its relevance. Law librarians ought to view current awareness resources as serving a dual purpose in law libraries. First, naturally, current awareness resources provide coverage of imminent events and those recently resolved. Unless the current awareness resource is highly specialized, a library is not the first place one will look for it.¹¹ Nonetheless, libraries exist as an option. For example, copyright law limits the free availability of an author's intellectual property; and when copyright law does not interfere with access (i.e. the item is in the public domain), the availability of a resource depends on one initiating its availability. A library will act as a communal proxy and acquire books and other items in order to make them available for public use. Some people prefer owning books rather than borrowing them. Others cannot afford to purchase them. There are many reasons why libraries exist as an option. The option made available by libraries is significant as it shows the integral role of libraries in a just society's checks and balances. The need for this option extends to resources providing information about current events.

Beyond its use for present purposes, current awareness resources have historical value. By informing the public about the news, current awareness resources leave an impression that historians can use to make inferences about a moment in time. Dated information is of a limited availability; journalists and specialists create current awareness resources for a certain point in time, and when this point in time passes, it is more difficult for researchers to find the then-dated material. This predominately represents a print-based framework, where people discard consumed news and supplant outdated loose-leaf material. However, the

⁹ The Internet "does not impose the space and time constraints of newspapers, radio, or television." Natalie J. Stroud & Ashley Muddiman, *Exposure to News and Diverse Views in the Internet Age*, 8 I/S 605, 606 (2013).

¹⁰ "Legal newspaper" itself has a squishy definition. See Carleton W. Kenyon, *Legal Newspapers in the United States*, 63 LAW LIBR. J. 241, 241 (1970) ("It is difficult to make a demarcation between legal periodicals, advance sheets, and other forms of current legal awareness publications and legal newspapers since many of these publications combine features common to each other.")

¹¹ If someone wants to read the news, the Internet is an appropriate destination to turn to. The Internet is often an easily accessible option to find the news (evaluating the media for bias is a different topic altogether); and if a person prefers reading the news in print, librarians should not be surprised if buying the paper at Starbucks is a person's first choice.

Internet poses its own problems: users upload information atop a digital graveyard. Once information passes its moment of relevance, creators may neglect to preserve it; with new forms of communication in constant creation (e.g. WordPress, Twitter, LegalPad, etc.), information is piling at an exponential rate. Digital items can exist in a single location with many people consuming them, unlike physical materials that someone must reproduce for many people to access the item simultaneously. This is a blessing, but it has its drawbacks; a person is more capable of deleting widely consumed digital material than its print analogues—often making digital content fleeting. In either form, information of historical value is in danger of being lost and increasingly more difficult to find in the expanding information universe. This is the case, at least, without intervention. When it comes to current awareness resources, the law librarian’s dual purpose, if they choose to accept it, is to make these resources available and to preserve them for future use. For physical materials, this practice is widely accepted, but digital material has not received the same treatment from law librarians.

This paper is about new opportunities for law librarians and proposes preserving U.S. Supreme Court current awareness data to enhance the legal research enterprise. This paper begins by discussing the role of the press’s coverage of the Court in American history and the implications the Court’s limitations on information flow has for researchers. Next, this paper describes the role journalists and law librarians respectively have in producing and preserving coverage of the Court and, in doing so, making this coverage meaningful for its recipients. Third, it explores blogging and discusses the role law librarians can have in preserving blogs that disseminate legal news and scholarship. It concludes by using *SCOTUSblog* as an example to discuss law librarianship.

1. HOW THE COURT’S DECISIONS ARE HEARD

“Perhaps the most remarkable aspect of volume 1 of *Dallas’ Reports* ... is its virtual novelty as an art form in American law.”¹² In the Court’s early history, lawyers considered the *U.S. Reports* and its earlier incarnations to be a current awareness resource.¹³ These early reporters functionally acted like early newspaper

¹² Craig Joyce, *The Rise of the Supreme Court Reporter: An Institutional Perspective on Marshall Court Ascendancy*, 83 MICH. L. REV. 1291, 1296 (1985).

¹³ Today, this is clearly not the case. Richard J. Lazarus, *The (Non)Finality of Supreme Court Opinions*, 128 HARV. L. REV. 540, 543-44 (2014) (“Five years is a long time to wait for the ‘final’ and ‘official’ version of a Supreme Court ruling. Since modern technology creates a public expectation of

reporters;¹⁴ sometimes opinions were “butchered” and the headnotes occasionally included political commentary.¹⁵ “The unavailability of accurate and full newspaper accounts of the decisions of the Supreme Court made the prompt publication of *Cranch's Reports* essential.”¹⁶ Notably, Cranch failed to deliver, but the important takeaway is that the *Reports* filled a void left by the newspapers.¹⁷ The government intervened following legal disputes between these early reporters that left the private reporting industry on poor financial footing.¹⁸

“The reaction of the people to judicially declared law has been an especially important factor in the development of the country; for while the Judges’ decision makes law, it is often the people’s view of the decision which makes history.”¹⁹ The justices speak through their opinions,²⁰ but it is at a very low—practically inaudible—volume.²¹ The press echoes these decisions, increasing the volume, allowing the public to hear the Court.²² The founding fathers enshrined the freedom of the press in the Constitution.²³ Subsequently, the Internet has become a “megaphone” for all

receiving information at lightning speed, a five-year delay might well be the psychological equivalent of a decades-long delay a half century ago.”

¹⁴ “The individual reporter compiled the decisions (often from his own observations and notes, rather than from texts submitted by the judges), summarized the oral arguments, and often added his own analysis.” COHEN ET AL., *supra* note 2, at 17. *See Reporter of Decisions*, BLACK'S LAW DICTIONARY (10th ed. 2014) (“The position began historically — in the years before systematic reporting of decisions was introduced — when lawyers attended the sessions of particular courts, were accredited to them by the judges, and reported the decisions of that court. Today, the reporter of decisions holds an administrative post as a court employee. The reporter often has duties that include verifying citations, correcting spelling and punctuation, and suggesting minor editorial improvements before judicial opinions are released or published.”)

¹⁵ CLARE CUSHMAN, *COURTWATCHERS: EYEWITNESS ACCOUNTS IN SUPREME COURT HISTORY* 217-18 (2011).

¹⁶ Joyce, *supra* note 12, at 1311.

¹⁷ *Id.* (describing how Cranch’s “chronic inability to accomplish this objective became a source of considerable dismay to leading members of the profession, including the Justices themselves.”)

¹⁸ *See* Craig Joyce, *Wheaton v. Peters: The Untold Story of the Early Reporters*, 1985 SUP. CT. HIST. SOC'Y Y.B. 35. *See also* COHEN ET AL., *supra* note 2, at 28 (describing the commercial reporters, which have “been in existence since 1882”).

¹⁹ CHARLES WARREN, 1 *THE SUPREME COURT IN UNITED STATES HISTORY* 3 (1922)

²⁰ “Reference sources are useful for historical and general background, but they are no substitute for reading the opinions of the Supreme Court.” KENT C. OLSON, *PRINCIPLES OF LEGAL RESEARCH* 212 (2d ed. 2015).

²¹ Todd A. Collins & Christopher A. Cooper, *Making the Cases "Real": Newspaper Coverage of U.S. Supreme Court Cases 1953-2004*, 32 POL. COMM. 23, 24 (2015). *See also* Joyce, *supra* note 12, at 1310 (explaining that delay in releasing a decision reduced the impact the decisions would otherwise have).

²² *Id.* at 1304 (describing how both Dallas Reports and the press communicated jurisprudence).

²³ *See generally* Floyd Abrams, *The Press Is Different: Reflections on Justice Stewart and the Autonomous Press*, 7 HOFSTRA L. REV. 563 (1979).

citizens.²⁴ Before the Internet, scholars believed newspapers were the most important source of U.S. Supreme Court news for the public,²⁵ but this is not necessarily the case any longer.

During the Court's formative years, the media was limited to newspapers and pamphlets. Early court coverage appears to be predominately political and focused on controversial cases.²⁶ Then, the press coverage advanced in scope and credibility, by reporting "more or less straight accounts of the facts."²⁷ The radio broadcast ancestors of National Public Radio's Nina Totenberg emerged during the New Deal.²⁸ However, "radio news accounts tended to lose in detail what they gained in immediacy, leaving newspapers and specialized legal journals as the principal source of information about all but the simplest cases decided by the Court."²⁹ Subsequently, as the Court's decisions touched more lives, press coverage grew in intensity.³⁰

Increased press coverage benefits the Court. The Court's relationship with the press is one of institutional feedback loop.³¹ The Court uses the press to improve its decision-making and needs the press to represent it fairly, lest its authority is undermined.³² For example, the media's selective coverage of the Court can make the Court seem "more political and polarized."³³ Individual justices, increasingly so in the 21st century, use the media to defend the Court as an institution.³⁴ Until recently, "Supreme Court justices have rarely done broadcast interviews—or interviews in the print media, for that matter—eschewing the limelight whenever possible."³⁵ When Justice Scalia, a longtime holdout, entered the limelight, he said: "I've sort of come to

²⁴ Lyle Denniston, *Argument Preview: Social Media as a Crime Scene*, SCOTUSBLOG (Nov. 29, 2014), <http://www.scotusblog.com/2014/11/argument-preview-the-social-media-as-a-crime-scene/>.

²⁵ Collins & Cooper, *supra* note 21, at 39.

²⁶ DAVID G. SAVAGE, 2 GUIDE TO THE U.S. SUPREME COURT 815 (4th ed. 2004).

²⁷ *Id.* at 826.

²⁸ *Id.*

²⁹ *Id.* Television suffers from the same problems, and the added difficulty of the U.S. Supreme Court preventing access to cameras in the courtroom.

³⁰ *Id.* at 829.

³¹ "[T]hrough the press the Court receives the tacit and accumulated experience of the nation and—because the judgments of the Court ought to instruct and to inspire—the Court needs the medium of the press to fulfill this task." William J. Brennan, Jr., *Why Protect the Press?*, 1980 COLUM. JOURNALISM REV. 59 (1980).

³² WARREN, *supra* note 18, at 3 ("[Law] reaches the people of the country filtered through the medium of the news columns and editorials of partisan newspapers and often exaggerated, distorted and colored by political comment.")

³³ ERIC N. WALTEBURG & RORIE SPILL SOLBERG, *THE MEDIA, THE COURT, AND MISREPRESENTATION* 106 (2014); *see also* ELLIOT E. SLOTNICK & JENNIFER A. SEGAL, *TELEVISION NEWS AND THE SUPREME COURT—ALL THE NEWS THAT'S FIT TO AIR* 238 (1998).

³⁴ RICHARD DAVIS, *JUSTICES AND JOURNALISTS: THE U.S. SUPREME COURT AND THE MEDIA* 181 (2011).

³⁵ Tony Mauro, *Glasnot at the Supreme Court*, in *A YEAR AT THE SUPREME COURT* 194 (Neal Devins & Davison M. Douglas eds., 2004).

the conclusion that the old common law tradition of judges not making public spectacles of themselves and hiding in the grass has just broken down. It's no use, I'm going to be a public spectacle whether I come out of the closet or not."³⁶

The Court controls the flow of legal information it transmits to the press and public.³⁷ "The product should be transparent, but the process should not be' has been the mantra for maintaining the Court's power."³⁸ Paternalism notwithstanding, this is why the press does not feel like "part of the Court family."³⁹ Because the flow of legal information affects one's ability to do legal research, law librarians should be aware of the historical restrictions on access imposed by the Court; those doing research on the public response to the Court's decisions will likely be interested in the extent the public knew about the decisions.⁴⁰

Advances in communications technologies pressure the press to release information as quickly as possible, and this can degrade the quality of reporting. A lack of quality reporting harms the press, the Court, and the public. The Court has made a number of accommodations to make the press's job easier. However, whenever the Court makes an accommodation, the Court does so in its best institutional interests. Perhaps this is why the Court still does not allow the media to televise oral arguments.⁴¹

Today, decisions are available on the Court's website⁴² the day they are decided.⁴³ Same-day distributions of opinions became standard practice in the late-

³⁶ C-Span, *Justice Antonin Scalia, Q&A* (May 8, 2008), <http://www.q-and-a.org/Transcript/?ProgramID=1178>.

³⁷ Citizen journalists and other lay audience members only recently received permission to take notes during oral arguments. 2002-03 Term, *see* Mauro, *supra* note 35, at 200 (referencing Ronald K.L. Collins & David M. O'Brien, *At the Whim of the Court*, WASH. POST A19 (Aug. 18, 1997).)

³⁸ DAVIS, *supra* note 34, at 195.

³⁹ Linda Greenhouse, *The Day Anthrax Came to the Supreme Court*, 77 N.Y.U. L. REV. 867, 869 (2002).

⁴⁰ *See, e.g.*, SAVAGE, *supra* note 26 (describing irregular and inaccurate coverage, alongside assemblage of official reports).

⁴¹ There are no cameras in the courtroom. Barry Friedman, *Mediated Popular Constitutionalism*, 101 MICH. L. REV. 2596, 2633-34 (2003) ("If in fact less information is better (for the Court), then televising arguments is a risk."). *Cf. Estes v. Texas*, 381 U.S. 532, 574-75 (1965) (C.J. Warren, concurring) ("The sense of fairness, dignity and integrity that all associate with the courtroom would become lost with its commercialization.")

⁴² <http://www.supremecourt.gov>. The opinions appear as PDF files and are a facsimile of the original printed slip opinion.

⁴³ *See also* JOE MATHEWSON, *THE SUPREME COURT AND THE PRESS: THE INDISPENSABLE CONFLICT* 362 (2011) ("For more than a century the Court failed to provide as a regular practice printed copies of its opinions on the day those decisions were announced from the bench. Newspaper stories, therefore, had few quotations and almost no details, usually nothing of the legal reasoning leading to the decision.")

1920s.⁴⁴ To accommodate the “demands of the news day” the Court moved the starting time of its announcements to 10 a.m. in 1961.⁴⁵ Until 1965, the Court met exclusively on Mondays.⁴⁶ Spreading out decisions allows the press to give “greater attention to important decisions.”⁴⁷ This practice of spreading out decisions is particularly important at the end of a term, which is when the most newsworthy decisions of the term pile up.

Perhaps the most impactful information accommodation in the Court’s history came is the timing of the syllabus’s release.⁴⁸ “Writers of morning newspapers had enough time to read the decisions and break them down, but TV, wire, radio, and evening papers had to translate them so fast that their descriptions often shortchanged their complexity.”⁴⁹ The syllabus is a summary of the major holdings in the majority opinion and was traditionally included with the official version of the case in the *U.S. Reports*. The Court could not release the syllabus at the same time as the decision without providing the Reporter of Decisions with early access. Some justices resisted the proposal, but Chief Justice Warren Burger convinced the Court to change its procedure.⁵⁰

In these examples, the Court deliberately acted to accommodate the press, but in other instances, the Court does not have a say. For example, the Internet removed barriers to access legal information; in addition to the Court’s decisions, briefs⁵¹ and arguments⁵² are widely available. Law librarians have advocated for increasing the accessibility to the Court’s records and briefs long before the Internet. The recorded proceedings of the 26th Annual Meeting of the American Association of Law Libraries includes a letter written on behalf of law librarians to the Court about this very issue.⁵³ As for oral arguments, even though the Court initiated the practice of taping

⁴⁴ *Id.* It took until 1935 for the Court to hand its decision to journalists at the commencement of the Court’s oral reading (when the decisions become official and public). *Id.*

⁴⁵ It was originally at noon. ELLIOT E. SLOTNICK & JENNIFER A. SEGAL, *supra* note 33, at 49.

⁴⁶ *Id.*

⁴⁷ MATHEWSON, *supra* note 43, at 363.

⁴⁸ While lacking the opinion’s authority, for the purposes of reference it is reliable. *Cf.* Gil Grantmore, *The Headnote*, 5 GREEN BAG 2D 157 (2006).

⁴⁹ CUSHMAN, *supra* note 15, at 219.

⁵⁰ *Id.*

⁵¹ *See, e.g.,* *Preview of United States Supreme Court Cases: 2015-2016 Supreme Court Term Briefs*, http://www.americanbar.org/publications/preview_home/2015_2016_briefs.html; *SCOTUSblog: Merits Cases October Term 2016*, <http://www.scotusblog.com/case-files/terms/ot2016/>.

⁵² *Oyez*, <http://www.oyez.org>.

⁵³ *See* Am. Ass’n L. Libr., *Proceedings of the 26th Annual Meeting of the American Association of Law Libraries Held in New Haven, Connecticut, June 22-26, 1931*, 24 LAW LIBR. J. 131, 164-65 (1931) (letter exchange between Harvard Law School Librarian Eldon R. James to Chief Justice Charles Evan Hughes requesting increased access to records and briefs in cases before the Supreme Court of the United States. The Court denied the law librarian’s request.)

oral arguments in 1955, when a law professor first attempted to make them available to the public the Court attempted to stop him.⁵⁴

The Internet allows experts to comment on the Court's actions, which can assist with the editorial decisions of reporters.⁵⁵ Newspapers remain an important resource to this day, but online communication technologies draw from the press and influence it. This diminishes the role of the press as a gatekeeper.⁵⁶ "People are no longer simply consumers of prepackaged content from mass media companies that are controlled by a limited number of speakers."⁵⁷

Legal news is more specialized than general news, therefore the audience is smaller and it is more expensive to pay for the knowledge capital producing it. The sacrifice in time and resources on law libraries is greater than all-purpose libraries when it comes to current awareness, but law librarians take on this burden because the benefit for their patrons are greater. American constitutional law ingrains the law deeply into everyone's life. At the same time, a law firm and academic law library's primary patrons (i.e., respectively, lawyers and law professors / students) benefit the most from legal news. For these patrons, current awareness means regularly monitoring developments so "that your knowledge has no significant gaps."⁵⁸

2. PRESERVING THE COURT'S DECISIONS AND THE DECISION'S RECEPTION

Since the 1800s, law libraries have made the Court's opinions accessible to researchers.⁵⁹ Law libraries preserve the Court's opinions for posterity.⁶⁰ Organizing and maintaining access to the news is a traditional responsibility librarians take on.⁶¹

⁵⁴ See generally David R. Fine, *Lex, Lies and Audiotape*, 96 W. Va. L. Rev. 449 (1993).

⁵⁵ SAVAGE, *supra* note 26, at 838.

⁵⁶ Jack M. Balkin, *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, 79 N.Y.U. L. REV. 1, 9-10 (2004).

⁵⁷ *Id.* at 21.

⁵⁸ OLSON, *supra* note 20, at 358.

⁵⁹ See Christine A. Brock, *Law Libraries and Librarians: A Revisionist History; or More than You Ever Wanted to Know*, 67 LAW LIBR. J. 325, 329 (1974) ("The libraries that resulted were not so important in themselves as they were in what they symbolized and what they became. The lawyer needed this collection of law books, no matter how small, to function.")

⁶⁰ Unlike the freedom of the press, preserving government information is not enshrined in the Constitution; "This line from the Constitution, however, expresses the opposing forces in play in the early days of government information." ERIC J. FORTE ET AL., *Fundamentals of Government Information* 9 (2011) (referring to U.S. Const., art. 1, sec. 5)

⁶¹ SHANNON E. MARTIN & KATHLEEN HANSEN, *NEWSPAPERS OF RECORD IN A DIGITAL AGE: FROM HOT TYPE TO HOT INK* 89 (1998) ("Libraries are among the most important institutions by means of which

When it comes to current awareness in law libraries, the Internet has replaced the loose-leaf service as “the most important tool in legal literature.”⁶² Databases operated by Westlaw and Lexis increasingly supplant and absorb loose-leaf equivalents. Similarly, the Internet is displacing libraries as the first stop for researchers looking for the Court’s recent decisions.⁶³ In fact, the displacement is greater; unlike specialized legal commentary, the Court’s decisions are open-access. Law librarians should specifically be mindful of the actions of the Court that do not appear in the *U.S. Reports* and where to find such information.⁶⁴ If law librarians are in the business of preserving history, they must keep in mind that history comes with its nuances.⁶⁵

Web results often “only scratch the surface,”⁶⁶ so the disintermediation occurring here threatens the profession only if law librarians are unwilling to add value to the legal research enterprise. Law librarians, not oblivious to disintermediation, recognize the value of continuing the tradition of collecting and preserving the Court’s opinions. This gives the option to researchers to conduct their research in print, and to take advantage of print-based finding tools. A more challenging task for law librarians is preserving the public knowledge associated with the Court’s decisions. Nonetheless, law librarians should not decouple the Court’s words from the law library’s management of public knowledge,⁶⁷ even though this makes the legal information management more challenging.⁶⁸ Linking the Court’s

‘a society remains in contact with and in possession of its accumulated stock of recorded knowledge.’”)

⁶² Robert C. Berring & Valerie Wedin, *Looseleaf Services: A Subject Bibliography*, 1 LEGAL REFERENCE SERVICES Q. 51, 51 (1981).

⁶³ Chief among websites that do this is the U.S. Supreme Court’s website, *supra* 42. *Cf.* OLSON, *supra* note 20, at 211 (noting “[*SCOTUSblog*] often has the first reports of new decisions and developments in pending cases”).

⁶⁴ Mauro, *supra* note 35, at 193 (“The 2002-03 term, more than most, was full of meaningful messages from the Court to the public that cannot be found in the U.S. Reports.”)

⁶⁵ “Sometimes a justice will ad-lib a colorful phrase or even a small joke in the summary, but a reporter must be in the courtroom to catch it.” SAVAGE, *supra* note 26, at 837.

⁶⁶ Mary E. Bates, *The Use of the Internet in Special Librarianship*, in HANDBOOK OF INFORMATION MANAGEMENT 225 (Alison Scammell ed., 8th ed. 2001) (“[S]pecial librarians are challenged to emphasise added value, to demonstrate our ability to dig deeper, to access information sources not available or not easily retrieved on the open Web, and to provide the information in the most convenient format for our clients.”)

⁶⁷ *Cf.* MARTIN & HANSEN, *supra* note 61, at 90 (“Librarians have traditionally had a love-hate relationship with newspapers as part of library collections”).

⁶⁸ *Id.* at 7 (“News librarians and archivists have long acknowledged that the electronic backfile, or ‘morgue,’ is not a reliable facsimile of the print newspaper, and there is nothing approaching an archival copy of online products created solely for electronic distribution.”)

opinions to history has not been an area of focus for law libraries, but law librarians have the potential to add value to readily available information and should do so.⁶⁹

People often take for granted where information comes from; today's technology cannot wholly disrupt all intermediaries; important information is "collected and structured by researchers, writers, or journalists and broadcasters" and these professionals often rely on libraries to do their job.⁷⁰ "For decades now there has been a fear that the role of the librarian, the special librarian in particular, would disappear."⁷¹ While the Internet displaces libraries as "a place where information is stored,"⁷² it makes this archival function of librarianship more important and creates new opportunities to provide current awareness services.⁷³ At a time when "law librarians are fighting for their professional existence,"⁷⁴ a professional identity centered on increasing, reorganizing, and enhancing the flow of legal information adds value to law librarianship in a way not easily displaced by technological progress.⁷⁵ When law librarians take on new roles, such as the one described here, the profession undergoes "reintermediation."⁷⁶ Law librarians should begin thinking of themselves as digital curators. The important distinction here from managers of knowledge in archives and museums is the fluid state of the legal information law

⁶⁹ Kelly Kunsch, *The Way We Were and What We 'B,'* 21 LEGAL REFERENCE SERVICES Q. 97, 110 (2002) (noting that technology makes the lives of law librarians easier in some ways, but raises expectations).

⁷⁰ Paul Sturges, *Gatekeepers and Other Intermediaries*, ASLIB PROC. 62, 63-65 (2001).

⁷¹ *Id.* at 62.

⁷² *Id.* See also Kunsch, *supra* note 69, at 99 (describing how the availability of Supreme Court opinions online means users will get information sooner, but make users want all legal information to be quickly made available).

⁷³ Librarians set up alerting services and can push information to interested parties. See Margaret A. Schilt, *Faculty Services in the 21st Century: Evolution and Innovation*, 26 LEGAL REFERENCE SERVICES Q. 187, 201 (2007) ("Librarians, aware of the breadth and depth of the information universe, are eager to share the latest Web site or blog entry, but acting as a filter to protect their faculty's most important asset-their time-requires a depth of judgment that is developed only through close attention to shifting interests and desires of the faculty they serve.")

⁷⁴ Robert C. Berring, *Legal Information and the Search for Cognitive Authority*, 88 CALIF. L. REV. 1637, 1707 (2000).

⁷⁵ The current of the Internet flows toward accessibility, by increasing accessibility librarians can become essential players in the digital age. See also Lee F. Peoples, *The Death of the Digest and the Pitfalls of Electronic Research: What Is the Modern Legal Researcher to Do?*, 97 LAW LIBR. J. 661 (2005) (describing librarians as guides in the electronic information environment).

⁷⁶ Sturges, *supra* note 70, at 65. RICHARD JOST, SELECTING AND IMPLEMENTING AN INTEGRATED LIBRARY SYSTEM: THE MOST IMPORTANT DECISION YOU WILL EVER MAKE 95-96 (2016) (describing the "shift in the idea of the library as a space" and Library 3.0).

librarians are curating.⁷⁷ The state of the law is always in flux and patrons want information that interests them immediately.⁷⁸

“[A]s new forms of communication develop, the model of law which prevails in a society will change.”⁷⁹ As new technological manifestations of the press begin to cover the Court, law librarians need to stay up-to-date⁸⁰ and have an active voice because prevailing models of legal research will also change.⁸¹ Law librarians are the authority on authority;⁸² if someone has a reference request about the state of the law, the law librarian will not simply provide news coverage of a court decision. A law librarian most likely will avoid news coverage altogether. If legal information literacy means anything, it means knowing the correct type of information a question calls for. For non-librarians, however, digital news coverage serves an important purpose, and law librarians should recognize this. Advances in technology have made populist legal research google-ified (i.e. keyword driven).⁸³ This is problematic. “Principles based on keywords rather than legal concepts may bear no relation to the actual state of the law, often disregarding the greater context in which the keyword is used.”⁸⁴ Search engines will rely on court coverage to digest and direct users to legal information. However, these accounts will also be plagued with verbosity and there will be smaller proportion of relevant terms. The odds a patron will receive meaningful results using this search method will largely be dependent on the quality of reporting and the intervention of law librarians. Particularly, in open-ended searches for authority, newspaper accounts and blogposts discussing decisions have the potential to operate like the headnote of a decision—“finding aids guiding the reader to the actual words of the decision.”⁸⁵

⁷⁷ “[K]eeping abreast of current events and developments, and anticipating questions” makes the job of the reference librarian easier. Oscar J. Miller, *English Language Problems: Manual Search Techniques*, 56 LAW LIBR. J. 428, 431 (1963).

⁷⁸ Kunsch, *supra* note 69, at 99-100 (“Users have transferred immediacy from where it should be expected to where it should not be expected.”)

⁷⁹ Ethan Katsh, *Communications Revolutions and Legal Revolutions: The New Media and the Future of Law*, 8 NOVA L.J. 631, 668-69 (1984).

⁸⁰ *Cf.* Mary Whisner, *Keeping Up Is Hard to Do*, 92 LAW LIBR. J. 225 (2000).

⁸¹ *See* Jerry D. Campbell, *Still Shaking the Conceptual Foundations of Reference: A Perspective*, 48 THE REFERENCE LIBR. 21, 22 (2007) (“Having a continuing role in the future was not and is not guaranteed for reference librarians.”)

⁸² *Cf.* Peter W. Martin, *Neutral Citation, Court Web Sites, and Access to Authoritative Case Law*, 99 LAW LIBR. J. 329 (2007).

⁸³ Lawrence B. Solum, *Bloggling and the Transformation of Legal Scholarship*, 84 WASH. U. L. REV. 1071, 1081 (2006) (discusses his limited use of electronic catalog and that an index is “crude tool when compared to full-text searching.”)

⁸⁴ Barbara Bintliff, *Context and Legal Research*, 99 LAW LIBR. J. 249, 260 (2007).

⁸⁵ COHEN ET AL., *supra* note 2, at 33.

The job of the journalist covering the court is by no means easy.⁸⁶ “[L]aw is a specialized field, fully comprehensible only to the expert,”⁸⁷ yet journalists have a professional duty to cover it accurately since society relies on journalists to translate the Court’s decisions for mass consumption.⁸⁸ Without adequate care, a journalist’s portrayal of the law can misrepresent it for the public. A journalist’s inadequate portrayal of a case removes the law from its context.⁸⁹ Today, markets dominate the way everyone lives their lives and thinks,⁹⁰ and information is a commodity.⁹¹ The market-dominated culture makes the job of the press and libraries pivotal, since the shared professional responsibility of these professions is to be impartial and to provide comprehensive coverage.

The financial situation these professionals face makes doing their job a difficult task.⁹² Both financially depend on the collective interests of society; a lower number of interested parties will create a greater burden on those who are interested. Law librarians, specifically, face competitors vying to satisfy their patrons’ information needs.⁹³ Whether coverage of the U.S. Supreme Court is of low quality does not appear to threaten a law library’s budget on its face or the research of a law librarian—it is a very narrow issue and a law library is much more than its current awareness services, let alone simply a U.S. Supreme Court current awareness services. Inadequate coverage by the press, however, will harm the legal research of law library patrons. Similarly, if the press does not adhere to high journalistic standards, the likely effect would be a perpetuation of disinterest in the Court or,

⁸⁶ David L. Grey, *Decision-Making by a Reporter under Deadline Pressure*, 43 JOURNALISM & MASS COMM. Q. 419 (1966) (case study on how a reporter went through making news judgments).

⁸⁷ Justice Antonin Scalia, *A Justice Critiques the Press*, in POLITICS AND THE MEDIA 262, 264 (Richard Davis ed., 1994).

⁸⁸ “One of the major problems confronting the Supreme Court reporter is the great tension that often exists between making a story both understandable to a lay audience as well as accurate. There is an ever-present risk of oversimplifying things to the point where important nuances of a critical ruling are lost in translation.” Elliot E. Slotnick, *Media Coverage of Supreme Court Decision Making: Problems and Prospects*, 75 JUDICATURE 128, 136 (1991). There is a long history of the press lacking in this regard. Joyce, *supra* note 12, at 1310.

⁸⁹ Cf. Bintliff, *supra* note 84, at 266 (“Legal research no longer requires beginning with knowledge of the law because the emphasis of electronic research is on facts and keywords, not legal concepts. Research now is truly a mechanical process of entering factual words into a database or search engine and retrieving results. These research results appear to support the realists’ claims that law has no internal consistency. They dispense with the shared context of a profession, despite its necessity for effective communication.”)

⁹⁰ See generally Wendy Brown, *Neo-Liberalism and the End of Liberal Democracy*, 7 THEORY & EVENT 1 (2003).

⁹¹ Bates, *supra* note 66, at 232.

⁹² Taylor Fitchett et al., *Law Library Budgets in Hard Times*, 103 LAW LIBR. J. 91 (2011).

⁹³ JOST, *supra* note 76, at 95.

worse, the rule of law.⁹⁴ Patrons will have to increase their reliance on specialized products (though many will settle for mediocre results); if the mass media's quality of court coverage degrades, producers of specialized products will have a pecuniary interest to inflate costs. Law librarians should, then, be proactive, ameliorate the state of legal research, and learn about opportunities to support the lasting quality of current awareness efforts.

3. BLOGS AS CURRENT AWARENESS RESOURCE AND APPRAISING BLOGS

Ultimately, the patron's level of interest in U.S. Supreme Court current awareness depends on the patron's relationship with the information.⁹⁵ A law professor, for example, will need to stay up to date on the happenings of the Court to fulfill professional obligations (both teaching and scholarly).⁹⁶ Many attorneys have similar obligations.⁹⁷ As for the public at large, every year the U.S. Supreme Court takes on various cases that touch many lives. People are interested in learning about these cases. While the establishment media may not provide consistent coverage of the Court throughout the year, it will assuredly cover these cases.⁹⁸

A notable case is *Bush v. Gore*,⁹⁹ a case where the Court's legal reasoning determined who the President would be. The decision received "unprecedented media coverage,"¹⁰⁰ but in 2000 law blogging was prenatal,¹⁰¹ so it did not receive the same coverage online that decisions receive today. The case exists at a liminal period of U.S. Supreme Court current awareness. The Court released its 65-page December decision at 10 p.m. the day following oral argument.¹⁰² The circumstances were not

⁹⁴ Cf. MATHEWSON, *supra* note 43, at 362 (arguing that death of court coverage in news tied to the qualifications and quality of coverage).

⁹⁵ Evidently, social relationships determine information behavior. Yang Lu, *The Human In Human Information Acquisition: Understanding Gatekeeping And Proposing New Directions In Scholarship*, 29 LIBRARY & INFORMATION SCIENCE RESEARCH 103, 116 (2007)

⁹⁶ Schilt, *supra* note 73 (describing how customizing services accounts for growth of faculty services librarianship)

⁹⁷ See, e.g., *U.S. v. Winston*, 492 F. Supp. 2d 15, 17 (D. Mass. 2007) (recognizing the importance for attorneys to stay up-to-date).

⁹⁸ Collins & Cooper, *supra* note 21, at 38 ("Although the [downward] trend in overall coverage is undeniable, we provide evidence that the proportion of cases that are covered on the front page has stayed roughly constant.")

⁹⁹ 531 U.S. 98 (2000).

¹⁰⁰ MATHEWSON, *supra* note 43, at 280.

¹⁰¹ "In the annals of Internet history, 2002 may go down as the year of the blog." Robert J. Ambrogi, *The Year's Most Laudable Web Site Launches*, 46 *Res Gestae* 16 (2002).

¹⁰² See Michael Herz, *The Supreme Court in Real Time: Haste, Waste, and Bush v. Gore*, 35 AKRON L. REV. 185, 188 (2002)

perfect, and some argue that the Court did not provide “a clear explanation why” it ruled in Bush’s favor,¹⁰³ but the press failed the nation. The establishment media focused on the political implications, not the Court’s reasoning.¹⁰⁴ Notably, the Court’s website still received just over a million page views in “the hours just before and after” the decision.¹⁰⁵ The nation’s confusion and dissatisfaction with the news coverage may account for many of these page views. Fast-forward to 2012, the Court decides *National Federation of Independent Businesses (“NFIB”) v. Sebelius*.¹⁰⁶ In addition, to the establishment media, numerous websites are tracking the Court. Chief among them is *SCOTUSblog*. This case also received unprecedented coverage. *SCOTUSblog* “received 5.3 million hits (ten times its ‘previous daily high’) from 1.7 million unique readers”¹⁰⁷ The Court’s website crashed, and the nation was “completely dependent on the press to get the decision right.”¹⁰⁸ Following inaccurate descriptions of the Court’s decision, the establishment media relied on *SCOTUSblog* for its analysis of the decision, and shortly afterward moved on to covering reactions; on the other hand, “*SCOTUSblog*’s live blog continued providing legal analysis for almost six more hours.”¹⁰⁹

“As longstanding sites such as *SCOTUSblog* continue to evolve ... the task of legal research grows ever easier.”¹¹⁰ The Internet helps lawyers and judges make decisions in more ways than increasing access to court decisions and documents;¹¹¹ more voices are available for decision-makers to evaluate.¹¹² The structure of a blog supports its use for current awareness purposes—blogs are chronological. “Institutional forces” support “short form, open access, and disintermediation,” and since a blog is all of those things they are increasingly growing in popularity.¹¹³ In

¹⁰³ Erwin Chemerinsky, *A Failure to Communicate*, 2012 BYU L. REV. 1705, 1705 (2012). *Cf.* Joyce, *supra* note 12, at 1311 (describing contemporary newspaper accounts of *Marbury v. Madison*).

¹⁰⁴ MATHEWSON, *supra* note 43, at 381-82. Perhaps a minority view, Lyle Denniston defends the Supreme Court decision as a “triumph of law over politics.” Richard J. Peltz, *Preface: Bringing Light to the Halls of Shadow*, 9 J. APP. PRAC. & PROCESS 291, 295 (2007).

¹⁰⁵ U.S. GOV’T PRINTING OFF., KEEPING AMERICA INFORMED 9 (2001), <https://www.gpo.gov/pdfs/congressional/archives/2001gpoannualreport> (“For the period November 21 to December 5, the Court’s Web site received 4,346,687 page views, approximately double the normal volume for a two-week period.”)

¹⁰⁶ 132 S.Ct. 2566 (2012).

¹⁰⁷ Vincent J. Strickler, *The Supreme Court and New Media Technologies*, in COVERING THE UNITED STATES SUPREME COURT IN THE DIGITAL AGE 61, 78-79 (Richard Davis ed., 2014).

¹⁰⁸ *Id.* at 79.

¹⁰⁹ *Id.* at 80-82.

¹¹⁰ Robert J. Ambrogi, *Keeping Up with the Federal Courts*, 68 BENCH & B. MINN. 14, 15 (2011).

¹¹¹ *Cf.* Frederick Schauer & Virginia J. Wise, *Nonlegal Information and the Delegalization of Law*, 29 J. LEGAL STUD. 495 (2000)

¹¹² Caroline Young, *Oh My Blawg! Who Will Save the Legal Blog?*, 105 LAW LIBR. J. 493, 494 (2013)

¹¹³ Solum, *supra* note 83, at 1087.

the 2015 American Bar Association Legal Technology Survey Report “[m]ore than 90% of respondents from each firm size report using the Internet to read information on news and current awareness.”¹¹⁴ 27.6% reported using “Weblogs/blogs” for current awareness either daily or 1 or more times a week.¹¹⁵ The legal blog, or “blawg,” is a short form of legal scholarship¹¹⁶ or news that is “born-digital.” That means that this form of communication originates online and may never find an expression in print.¹¹⁷ Unlike legal newspapers,¹¹⁸ law blogs are often “read for entertainment,” but, like legal newspapers, they are often devoted to the special interests of a professional group.¹¹⁹ Scholars have typically considered blog citations “mainstream” since *The Bluebook* included an entry for them in the Eighteenth Edition.¹²⁰

Legal blogs lack the editorial oversight found in peer-reviewed publications or even student-edited legal periodicals. A legal blog may not be sound, accurate, or factual, and the burden is on the reader to determine whether a blogpost is worth relying upon. There seems to be a free-market character when it comes to legal blogs. For present purposes, analyzing the impact of the legal blog is more important than taking on their quality. Legal blogs are not simply passive receptacles of legal information; legal blogs regularly make an impact. For example, *The Volokh Conspiracy*¹²¹ influenced the litigation in *NFIB v. Sebelius*;¹²² the blogposts were later captured in the monograph *A Conspiracy Against Obamacare* to demonstrate the importance of this influence.¹²³ *The Volokh Conspiracy* challenged “the perception

¹¹⁴ AM. B. ASS'N., 2015 AMERICAN BAR ASSOCIATION LEGAL TECHNOLOGY SURVEY REPORT V-xxxi (2015)

¹¹⁵ *Id.* at V-54 (Of the 678 respondents, 11.1% responded “Daily,” 16.1% responded “1 or more times a week,” and 39% responded “Never”).

¹¹⁶ Solum, *supra* note 83, at 1073. See Judy M. Cornett, *The Ethics of Blawging: A Genre Analysis*, 41 LOY. U. CHI. L.J. 221, 244-55 (2009) (describing what characterizes blogs and the communal nature of blogging).

¹¹⁷ See generally Richard A. Danner, *Issues in the Preservation of Born-Digital Scholarly Communications in Law*, 96 LAW LIBR. J. 591(2004).

¹¹⁸ Kenyon, *supra* note 10 (“As an old, stable, and continuing type of publication, these papers deal in practical, run-of-the-mill legal events, not sensational happenings. Essentially a practitioners' sheet, they offer speed of publication. Generally, no index or retrospective searching tool is provided. Appearance can be daily, weekly, or several times per week.”)

¹¹⁹ *Id.*

¹²⁰ Christine Hurt, *The Bluebook at Eighteen: Reflecting and Ratifying Current Trends in Legal Scholarship*, 82 IND. L.J. 49, 59-60 (2007).

¹²¹ *The Volokh Conspiracy*, <https://www.washingtonpost.com/news/volokh-conspiracy/>.

¹²² Neil Siegel, *Online ACA symposium: A theory of the tax power that justifies – and may have informed – the Chief Justice’s analysis*, SCOTUSBLOG (Jul. 9, 2012, 12:48 PM), <http://www.scotusblog.com/2012/07/online-aca-symposium-a-theory-of-the-tax-power-that-justifies-and-may-have-informed-the-chief-justices-analysis-2/>.

¹²³ RANDY E. BARNETT ET AL., A CONSPIRACY AGAINST OBAMACARE: THE VOLOKH CONSPIRACY AND THE HEALTH CARE CASE 271 (Trevor Burrus ed., 2013) (giving examples of how the blog influenced the litigation) (Ilya Somin).

that there was an expert consensus supporting the constitutionality of the mandate.”¹²⁴ Current events blogging by legally trained persons promotes the legal profession’s values.¹²⁵ It allows specialized responses to legal events as they are happening. Appellate lawyers particularly benefit from blogs as the medium often operates as a vehicle for doctrinal arguments.¹²⁶ Similarly, there are opportunities to utilize blogs to teach law students to think like attorneys.¹²⁷ This includes using legal blogs in doctrinal courses to teach information literacy.¹²⁸ In his latest book, *Divergent Paths*, Judge Richard Posner notes the value of accessing “cases and commentary in a more realistic setting, with a fuller background--encountering them in the identical way in which practicing lawyers, law clerks, judges, and law professors encounter them.”¹²⁹

It is a commonly held belief online that a current awareness resource is only important the moment a content creator releases it. That everything has a short life online, and the value of current awareness material fades away shortly after its creation. This thinking is a misperception that neglects the importance of archiving;¹³⁰ in most cases, neither the legal blog owner nor major commercial databases are preserving information on legal blogs, so important legal blogposts will

¹²⁴ *Id.* at 272.

¹²⁵ “In the modern environment of law practice, the law changes rapidly and develops in significant ways as a matter of course. One consequence of this modern environment, and of dramatic advancements in technology, is the advent of extensive resources for staying abreast of developments in the law. Numerous legal newspapers, periodicals such as *United States Law Week*, and on-line services serve this important purpose.” *McNamara v. U.S.*, 867 F.Supp. 369, 374 (E.D. Va. 1994) (reversed on other grounds).

¹²⁶ Jodi S. Balsam, *Law Blogging Engages Students in Writing That Connects Theory to Practice and Develops Professional Identity*, 23 *PERSP.: TEACHING LEGAL RES. & WRITING* 145, 146 (2015) (“The principal pedagogical goal of the blogging assignment was for the students to engage with course materials in a way that illustrates the practical application of doctrine, as opposed to a more theoretical approach.”)

¹²⁷ “If students wanted background or other supplemental reading material relating to the case, they would use Westlaw or Google to find it. And they would think about the questions the teacher had asked them to think about.” RICHARD A. POSNER, *DIVERGENT PATHS: THE ACADEMY AND THE JUDICIARY* 306 (2016) (arguing against the use of casebooks and explaining how it would be “costless” for a teacher to give a list of cases to students.)

¹²⁸ “The most practical means of incorporating information literacy instruction into legal education is to integrate it into doctrinal courses in which librarians collaborate closely with faculty members, as part of a library component to a legal research and writing class or in an advanced legal research course.” Nancy B. Talley, *Are You Doing It Backward? Improving Information Literacy Instruction Using the AALL Principles and Standards for Legal Research Competency, Taxonomies, and Backward Design*, 106 *LAW LIBR. J.* 47, 51 (2014). There are many possible uses for blogs outside current awareness, see, e.g., Peter W. Martin, *Possible Futures for the Legal Treatise in an Environment of Wikis, Blogs, and Myriad Online Primary Law Sources*, 108 *LAW LIBR. J.* 7, 22 (2016).

¹²⁹ POSNER, *supra* note 127, at 307.

¹³⁰ See generally Danner, *supra* note 117.

disappear unless there is an intervention.¹³¹ Since 2007, the Law Library of Congress has made an effort to preserve legal blogs, and, while admirable, this attempt falls short due to a lack of standardization and reliance on automation.¹³² Researchers can learn a lot about a specific point in time by reading the coverage contained on a law blog. Likewise, “new media can supply a depth of coverage unknown to traditional sources, with every case, every decision, every argument, and every legal voice available at a mouse click. For those willing to make the small effort to look for themselves, greater understanding of the Court awaits online.”¹³³

If law librarians exercise discretion, thereby narrowing the scope of preservation—selection, saving, and indexing—to specific legal blogposts, it may prove to be a more fruitful endeavor than the mass capturing of pages.¹³⁴ As will be explored, the specific legal blogposts would not be limited to any one blog, but will be a collection of various impactful blogposts. “The decisions we make regarding what to collect, how it will be organized and described, and how it will be made accessible have a profound impact on how those materials will be interpreted by users.”¹³⁵ The extent a law librarian participates in preservation will likely depend on the mission of their library; law librarians at academic institutions are likely to preserve blogposts connected to their institutional memory, such as posts by faculty members. However, there is insufficient coverage by law librarians serving producers of legal blogposts. Many blogs fall outside the academy, i.e. practitioner blogs,¹³⁶ and law librarians will have to go the extra distance to preserve influential blogposts insufficiently represented.¹³⁷ This extra distance is much shorter than it may otherwise appear if the law librarians are active in monitoring current awareness resources of interest to their patrons. Law librarians have been the great

¹³¹ Young, *supra* note 112. *See also* Martin, *supra* note 128, at 29 (“When William Patry ended his blog in 2008, he was confronted with strong user demand that it be archived. In the end, he yielded, but only after explaining that despite the care that he put into writing its entries, he ‘regarded them as ephemera.’”)

¹³² Young, *supra* note 112, at 497-502. *See Legal Blawg Archive*, <https://www.loc.gov/law/find/web-archive/legal-blawgs.php>.

¹³³ Strickler, *supra* note 107, at 88.

¹³⁴ “The commonly heard complaint about information overload is a valid one, but it misstates the problem. The issue is not *information* overload but data overload.” Bates, *supra* note 66, at 241.

¹³⁵ Joseph Deodato, *The Patron As Producer: Libraries, Web 2.0, And Participatory Culture*, 70 J. DOCUMENTATION 734 (2014).

¹³⁶ “[Librarians] must develop an open dialogue with users that will point the way toward constant adaption and enhancement of services. The nature of the new or modified services ... must vary from organisation to organisation.” Sturges, *supra* note 70, at 65-66.

¹³⁷ Although, in situations where law firms with practitioner blogs have law firm librarians, preserving these blogs can be a natural extension of the law firm librarian’s duties.

collaborators since the law library profession's beginning;¹³⁸ if law librarians distribute this responsibility, they will succeed in preserving born-digital legal current awareness materials for future researchers.

We live in a world of data overload; in this world of data overload, certain parameters should put in place as to the process of selecting the material to preserve. In the print-framework, when a librarian made preservation determinations about current awareness news coverage, status as a 'newspaper of record' was a large driver in the librarian's analysis. The 'newspaper of record' "(1) contains relatively comprehensive news reports of the day, (2) contains authoritative records or official notices, and (3) serves as an archival, organized chronicle of events."¹³⁹ Law librarians should set a similar standard for the 'blogposts of record,' as it will function like the 'newspaper of record.' However, instead of designating this status to a unitary resource like *The New York Times*, the 'blogposts of record' will be an amalgamation of multitudinous blogs. It will satisfy the first element based on how many bloggers discuss current legal events, which law librarians will select. Law librarians will link the blogposts to case documents and other important files to satisfy the second element. Third, law librarians will index and sort the entries to make it accessible to users.

An historical understanding of legal bibliography will be essential for this enterprise, "for the very practical reasons that [law librarians] must find intellectual means to cope with our information explosion and must know the materials that deserve preservation or need reprinting."¹⁴⁰ Law librarians are specially situated¹⁴¹ to evaluate which legal blogs are worthy of being included as 'blogposts of record.'¹⁴² To the extent possible librarians strive to exercise ethical principles in collection development.¹⁴³ While it is important to try to collect different points of view and

¹³⁸ A. J. Small, *Library Essentials*, 8 LAW LIBR. J. 77, 78 (1915) ("An essential that enters materially into the success of any library is a willingness to co-operate and exchange with other libraries")

¹³⁹ MARTIN & HANSEN, *supra* note 61, at 8.

¹⁴⁰ William B. Stearn, *President's Page*, 62 LAW LIBR. J. 337, 337 (1969).

¹⁴¹ See Ethan Katsh, *The Law Librarian as Paratrooper*, 83 LAW LIBR. J. 627, 630 (1991) ("As caretakers of legal collections that are separate from the university library, both physically and by the nature of its holdings, law librarians make frequent decisions about what is a legal text and what is not, what belongs in the law library and what does not.")

¹⁴² "Among historians and librarians, the 'newspaper of record' concept refers especially to the role that newspapers play as reference resources." MARTIN & HANSEN, *supra* note 61, at 79. "The Times was the first newspaper to publish continuously, beginning in 1919, an index of subjects found in its pages, and as a result, librarians began using the expression 'newspaper of record' in reference to the Times soon after the paper's index was available." *Id.* at 7.

¹⁴³ See generally Locke J. Morrissey, *Ethical Issues in Collection Development*, 47 J. LIBR. ADMIN. 163 (1997).

protect marginalized voices,¹⁴⁴ law librarians must be conscientious of the task taken on. Law librarians should start small. It is too difficult to save everything online and then expect to organize it. There are too many voices and no chance to save everyone's.¹⁴⁵ Law librarians do not purchase all legal materials available in print.¹⁴⁶ A literally complete collection is an impossible ideal,¹⁴⁷ so law librarians must be "critically selective."¹⁴⁸

For purposes of selecting 'blogposts of record,' shareworthy blogposts are singularly worthy of preserving and organizing. In representations of the law, a balance of viewpoints is important, but law librarians must keep in mind that the project here is about the collection for the future historian studying current awareness "for real-time impressions of historical events."¹⁴⁹ It is better, then, to focus on what people are reading and, by extension, sharing. For this reason, if a patron will not read (or share) a blogpost for reasons of quality, farfetchedness, or poor search engine optimization, the blogpost does not necessitate the same level of preservation, as a widely accessed blogpost. In other words, law librarians should not go out of their way to preserve a blogpost they would not share. Law librarians are not so special as to have access to the world's web analytics to see what legal information is popular and most regularly distributed, but law librarians have their personal experience and knowledge. Just as law library collections have the power to reflect the interests of a specific legal community—be it a law firm, a law school, or a courthouse—so too will an institution's current awareness offerings reflect the interests of patrons in the institution. For example, law faculties have different

¹⁴⁴ See generally Juris Dilevko & Kalina Grewal, *A New Approach to Collection Bias in Academic Libraries: The Extent of Corporate Control in Journal Holdings*, 19 LIBR. & INFO. SCI. RES. 359 (1997).

¹⁴⁵ A natural comparison is the difficulty of indexing the ever-increasing number of law journals. See Alena Wolotira, *From a Trickle to a Flood: A Case Study of the Current Index to Legal Periodicals to Examine the Swell of American Law Journals Published in the Last Fifty Years*, 31 LEGAL REFERENCE SERVICES Q. 150 (2012).

¹⁴⁶ Harry S. Martin III, *From Ownership to Access: Standards of Quality for the Law Library of Tomorrow*, 82 LAW LIBR. J. 129, 135 (1990) ("Computer analysis of the records of several very different law libraries demonstrates two interesting facts: (1) even the largest law library does not hold a majority of currently published legal titles; and (2) even the smallest law school library collects books not acquired by others.")

¹⁴⁷ Cf. Kent Milunovich, *Issues in Law Library Acquisitions: An Analysis*, 92 LAW LIBR. J. 203 (2000).

¹⁴⁸ "[Law librarians] must aim at critically selective collections that cover given fields of learning to such an extent that expectable demands on law libraries can be met." Stearn, *supra* note 140.

¹⁴⁹ Young, *supra* note 112.

tastes. It is through the diversity of faculty interests that preserved blogs will achieve a diversity of viewpoints.¹⁵⁰

It will be necessary for law librarians to practice providing current awareness services to their patrons, if they do not do so already. In the academic setting, any law librarian that provides current awareness services to faculty will be well suited to participate in this blog preservation endeavor. The Collection Development Librarian is a natural choice to be involved in the preservation project, but the Faculty Services and all-purposes Reference Librarian would be equally capable of participating.¹⁵¹ To accomplish this task “wise choices can be made only by those who, having acquired the requisite knowledge, have the inclination to thrash through mountains of bibliographies and current awareness sources.”¹⁵² A plurality of law librarians taking on this task will need to determine the specific method to accomplish it, and the specific method will depend on what they find to be the most natural. If law librarians actively stay up-to-date with blogs in their positions, then it would require minimal effort to preserve blogposts as they go.¹⁵³ An advanced knowledge of legal terminology is in each law librarian’s tool kit; during this process, the law librarian can apply terms associated with the content of the blogpost, or assign terms from a controlled vocabulary. The applied knowledge is where the value in the resultant product will ultimately lie. Law librarians should approach selection and taxonomy holistically. There is an art to law librarianship, and the tool developed here will be an expression of that art. The content law librarian decide to share with faculty—based on what is instinctively seen as worth sharing—is the content that law librarians need to preserve for future generations. Again, like the selection method, the manifestation of such an undertaking will require a consensus among law librarians. Law librarians could use Perma.cc or another method to capture the blogposts.¹⁵⁴

Described here is a prospective approach to legal blog appraisal. However, for the decade-plus production of legal blogposts that has passed, much commentary has been written that is worthy of preservation. Much of it will be lost. Preserving this

¹⁵⁰ Cf. George W. Dent, Jr., *Toward Improved Intellectual Diversity in Law Schools*, 37 HARV. J.L. & PUB. POL’Y 165 (2014).

¹⁵¹ Compare Connie Lenz, *Faculty Services in Academic Law Libraries: Emerging Roles for the Collection Development Librarian*, 96 LAW LIBR. J. 283, 290 (2004) to Schilt, *supra* note 73.

¹⁵² Marian G. Gallagher, *Book Selection in Law Libraries—Who’s In Charge Here*, 63 LAW LIBR. J. 14, 15 (1970).

¹⁵³ Cf. Whisner, *supra* note 80.

¹⁵⁴ See Matthew E. Flyntz, *Ever Onward: Expanding the Use of Perma.cc*, 34 LEGAL REFERENCE SERVICES Q. 39 (2015). In order to combat link rot, the Court has begun saving webpages as a PDF when the Court cites to a website. *Internet Sources Cited in Opinions*, http://www.supremecourt.gov/opinions/Cited_URL_List.aspx.

content will require an extra effort on the part of law librarians. It may be necessary to apply a limiting principle to the retrospective preservation. Two key factors in selecting past blogposts ought to be distribution and quality. These factors are inherent in conversations of impact, and should be the prevailing consideration for creating a resource for future researchers.¹⁵⁵ Here are three potential factors law librarians should consider 1. Whether traditional sources like the courts or law review articles cite to the blogpost, 2. Whether the blogpost was popular or shared, and 3. Whether the blogpost involved an important case or moment in legal history. Perhaps law librarians can search through their e-mails for blogposts and collaborate with their institution's legal periodicals to apply these factors.

4. CONCLUSION: *SCOTUSBLOG* AND LAW LIBRARIANSHIP

If law librarians are looking for an exemplary legal blog to help them understand what is worthy of preservation, they should turn to *SCOTUSblog*. *SCOTUSblog* is the 21st century "current events folder file."¹⁵⁶ All legal blogposts cannot be saved, but there is an exception to every rule; every blogpost dealing with a case or controversy on *SCOTUSblog* is worthy of inclusion as 'blogposts of record.' There is a presumption of truth and accuracy when someone reads *SCOTUSblog*.¹⁵⁷ While this is true of most coverage of the Court received by non-law audiences, many authorities in the legal community consider *SCOTUSblog* a respectable resource.¹⁵⁸ This has been the case since its origin.¹⁵⁹ Kent Olson's *Principles of Legal Research*

¹⁵⁵ See generally Ronen Perry, *The Relative Value of American Law Reviews: A Critical Appraisal of Ranking Methods*, 10 VA. J. L. & TECH. 1 (2005); James M. Donovan et al., *The Open Access Advantage for American Law Reviews*, 97 J. PAT. & TRADEMARK OFF. SOC'Y 4 (2015)

¹⁵⁶ Miller, *supra* note 77 ("By way of illustration on this matter of keeping current, we took note recently of the newspaper report of the decisions in the school prayer case. We ascertained the citations of the lower court report, the citation to the Supreme Court opinion contained in the United States Law Week, and we prepared a folder with the name and case. During the following week a rather astounding number of people inquired about this case, including some children, and they were quickly taken care of by utilizing this folder to best advantage.")

¹⁵⁷ This is analogous to reading a case in West's National Reporter System. See Robert Berring, *Chaos, Cyberspace, and Tradition: Legal Information Transmogrified*, 12 Berkeley Tech. L. J. 189, 200 (1997).

¹⁵⁸ In describing how information resources garner authority, Robert Berring calls this the 'Tinkerbelle' phenomenon: "If everyone believes that a set is credible, it is credible." *Id.* at 193 ("There is no exact explanation of how this happens. At some point, however, the judgment of the market is that this information is what counts.")

¹⁵⁹ "SCOTUSblog, www.scotusblog.com, has long stood out to me as among the best of the legal blogs. Since its launch in October 2002, it has established itself as the definitive and authoritative resource for all things Supreme Court. It tracks the court from all angles, providing news reports, in-depth analysis, case files, court calendars, and statistics." Ambrogi, *supra* note 110, at 14.

includes *SCOTUSblog* alongside another website for background information on the Court.¹⁶⁰ The other website is the Supreme Court's official website.¹⁶¹

SCOTUSblog is not without its weaknesses, and law librarians are capable of making a meaningful contribution to improve the services it provides. Specifically, the blogposts on *SCOTUSblog* do not meet the preservation standards necessary to make them accessible to future researchers. *SCOTUSblog* currently has a limited tagging system in place and limited searching capabilities. In addition, even though the legal blog has been in existence since 2002, its early posts (pre-2008) appear to be lost.¹⁶² It will be necessary to apply the retrospective 'blogposts of record' preservation process to *SCOTUSblog* in order for *SCOTUSblog* to exist perennially.¹⁶³

SCOTUSblog sets a high standard for parties covering the Court, but also sets a high standard for law librarians to enhance library services. In addition to providing coverage of every oral argument and decision, *SCOTUSblog* provides numerous services. The examples are many: *SCOTUSblog* hosts symposiums where it brings legal scholars of various viewpoints together to discuss issues before the Court, it aggregates coverage of the Court from various news sources and blogs, it hosts documents associated with cases for those wishing to stay current to reference, it compiles "Stat Packs" on the Justices' voting patterns, and it has a "Live Blog" where it provides ready-reference to anyone with questions. By performing traditional law library functions in new ways, *SCOTUSblog* serves as an example of law librarianship. It blurs the distinction between a legal reference resource and a legal reference provider, and has become a 'laboratory of legal invention.'¹⁶⁴ One perspective is *SCOTUSblog* is filling a void that law librarians could fill.¹⁶⁵ Another

¹⁶⁰ OLSON, *supra* note 20, at 211 (noting "[SCOTUSblog] often has the first reports of new decisions and developments in pending cases"). Similarly, BARKAN ET AL., *supra* note 8, at 361 (listing SCOTUSblog second to the Supreme Court's website within the category "Current Events and Reference Resources": "SCOTUS Blog is a rich source of information, commentary, and analysis about the Court ...").

¹⁶¹ OLSON, *supra* note 20, at 211.

¹⁶² The Wayback Machine does retain traces of the old *SCOTUSblog*, see https://web.archive.org/web/*/http://www.goldsteinhowe.com/blog/index.cfm.

¹⁶³ *Berring*, *supra* note 74, at 1705 ("The impetus to publish and maintain information, and to provide quality access to it, has always been the market. As for volunteers, without eventual profit-making they will wither.") See also Jess Bravin, *Future of Oyez Supreme Court Archive Hangs in the Balance*, WASH. POST (Feb. 1, 2016), <http://blogs.wsj.com/law/2016/02/01/future-of-oyez-supreme-court-archive-hangs-in-the-balance/>

¹⁶⁴ See generally Richard A. Danner, *Law Libraries and Laboratories: The Legacies of Langdell and His Metaphor*, 107 LAW LIBR. J. 7 (2015).

¹⁶⁵ "In their professional roles, reference librarians in the early 1990s could be justly proud of the practice of reference. As had catalogers in the decade of the 1960s, they had achieved the pinnacle of the practice of reference in the age of the book. While enjoying a well-earned satisfaction with their work, however, they had also grown comfortable in it. And staying in this comfort zone had a

is that, like the law library, *SCOTUSblog* provides an option to patrons—it provides services that patrons can arrive at in other ways.

SCOTUSblog certainly fills a gap in the legal information universe, but this gap is an inevitably shrinking one because the Court will continue to make accommodations and other sources will attempt to rise to the level of *SCOTUSblog*'s contributions. *SCOTUSblog*, then, is like a law library not only in its services, but also in its ontology; its resilience demonstrates that intermediaries continue to have an important role in society. Just like the law library, *SCOTUSblog* gets its strength from the value it adds to legal information. By linking the Court's decisions to current awareness resources, *SCOTUSblog* is engaging in a public service law librarians can learn from and improve.

limiting effect on their eagerness to embrace questions of change, especially the prospect of change on a large scale. This kept reference librarians from taking the lead in transforming reference and meant that the re-invention of reference in the digital age was being led by individuals other than reference librarians.” Campbell, *supra* note 81. *See supra* text accompanying note 93.