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The New Thought Police: Inside the Left's Assault on Free Speech and Free Minds (book review)

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Bimonthly Review

Of Law Books <http://www.law.suffolk.edu/faculty/ebander/index10-12-00.html>
Volume 13 Number 6 – November/December 2002

Interview with Professor Edward Samuels, Author of *The Illustrated Story of Copyright* (St. Martin's Press, 2000. 294 p. 0 31226 176 4) and Professor at New York Law School.

Interview by Robert S. McNamara, Book Review Editor, *Journal of High Technology Law*, Suffolk University Law School

Q. What was your purpose in writing *The Illustrated Story of Copyright*?

A. My primary purpose was to write an explanation of copyright that would be accessible to a general audience. I wanted my seventy-year-old parents to be able to understand it, as well as my teenage children. There are popularizations of science, history, biography, and just

about everything else, but no really successful and accessible explanations about the law. What better place to start than with copyright, which involves creative works - music, movies, television, books, art - that people are familiar with?

The subject matter is one that people can understand. At the same time, I've always wanted to publish an "anthology" of famous copyrighted works, or works involved in some of the famous cases, for use by copyright law professors. I imagine that we copyright professors all go around collecting reproductions of works involved in some of the famous cases, to use as props in our classes. I thought it would be nice to pull some of these together.

Q. What is your major thesis?

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Coming Issues: An Interview with Sara Dillon, author of *International Trade and Economic Law and the European Union*.

A. The current spin on copyright is that the new technologies, particularly the Internet, somehow "change everything," and that copyright is obsolete or ill-equipped to handle the difficult issues raised by the new technologies. But the Internet is hardly the first new technology, and, if anything, the story of copyright in the twentieth century is the story of how it responded to the new technologies - sound recording, radio, television, tape recording, photocopying, the digitization of all forms of creative works using computers, as well as the Internet. The Internet isn't quite as threatening if you view it in the historical perspective of these other technologies.

Indeed, there has been more activity on the copyright front in the last thirty years than in the prior history of copyright. In the field of music copyright, we've had major amendments in 1971 (adding sound recordings to federal copyright), 1984 (extending the exclusive rights in sound recordings to cover rentals as well as sales), 1992 (the Audio Home Recording Act), 1995 (the Digital Performance Rights in Sound Recordings Act), and 1998 (various amendments as part of the Digital Millennium Copyright Act). This hardly looks like what you would call an "obsolete" law!

Q. What are the origins of copyright law?

A. Ah, you may not intend it, but this is something of a trick question. The traditional answer, and I give some of the history in my book, is to look back at the Stationers' Licensing Acts in England in the seventeenth century, and to view the 1710 Statute of Anne as an extension of these "censorship" laws. (This embarrassing "origin" is then emphasized in arguments that we should limit copyright.) But the licensing acts lapsed over a decade before the passage of the Statute of Anne, and the new law was something of a revolution in that it granted rights to authors; not, as the publishers had asked, to the publishers.

While the licensing acts were in place, controlling

the publishing of books, there was no pressure to pass a general copyright law to protect authors, since the publishers' monopoly gave them something of an incentive to pay the authors to get the rights in popular works. But once the old structure was abandoned, the need for a general copyright law became apparent. It was picked up in the United States in the Constitution (granting Congress the power to pass copyright law) and the first United States copyright act of 1790. The act was passed with hardly any discussion, since it seemed obvious to most of the legislators (many of whom were themselves authors, and who had been lobbied powerfully by Noah Webster) that a federal copyright law was in the public interest.

Whatever the "origins" of American copyright law, it's obvious that it's no longer limited to what it was in 1790. The "monopoly" approach can't explain the tremendous expansions of copyright in recent years, in terms of the subject matter included in copyright, in terms of the scope of rights granted, and in terms of the way copyright is applied to new technologies.

It's commonly recognized that the civil law countries have had a more favorable view of copyright as a "property" or "natural" right than has the United States. Yet, since we've joined the Berne Convention in 1988, our laws are in many ways indistinguishable from the laws of the civil law countries.

In short, I think it misses the point to get too caught up in the "origins" of copyright. As I point out in my introduction, "Thomas Jefferson never saw anything like this," and it would be ludicrous to decide issues of modern copyright by reference to what it might have meant two hundred years ago.

Copyright is ever-evolving. That is the story of copyright: constant changes, at an ever-accelerating rate, to the challenges of technology.

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Q. Has advanced technology in any way created different forms of artistic expression that required copyright law to evolve and adapt to such new technology?

A. Absolutely. Most of the focus in the case of the new technologies has been on the "user" or potentially "infringing" side - technology for reproducing, altering, and distributing works, all of which are supposed to be within the exclusive control of the copyright owner (though with lots of exceptions). But the technology creates new possibilities on the creation side as well.

I do think we tend to over glamorize the possibilities, though. I'm sure we've all gone to computer expos and watched as someone demonstrated how some new program, like Create-A-Masterpiece, is going to make creative geniuses of us all, and we've plopped down \$500 for this great program. Picture someone with a pencil and pad sitting right next to them drawing exquisite creations before our eyes. Would we plop down \$500 for the pencil that they were using?

The new technology is just tools. We still need creativity to make meaningful art, and it's copyright that protects and encourages creativity.

Q. What impact has your research had?

A. That's a tough one. The book has been successful in reaching its audience, if I can believe some of the rave reviews - "succeeds brilliantly" or "succeeds admirably." (Check out the reviews at my website, <http://www.nyls.edu/samuels/copyright> - they've been quite generous.) Has it changed the law? I doubt it. Hopefully, it provides something of a balance against some of the recent books that praise the Internet, and blame copyright for somehow inhibiting the development of the Internet to its full potential.

Q. Is this a publication for both practitioners and students?

A. Absolutely, I think there's something here for just about everyone. (Again, don't take my word for it, check out the reviews.) And that includes people involved in the creation or consumption of entertainment works, who otherwise have no training in the law.

Q. Is there a common theme within the book?

A. Basically, it's the optimist's take on copyright. Instead of concluding that copyright can't work in the face of new technologies, I show how copyright has been adapting to the new technologies for years now. I don't think copyright owners should always win their cases, but in fact they don't. There are lots of limiting doctrines, like the idea-expression dichotomy, or the fair use doctrine, or various compulsory licenses that limit the scope of copyright, and create a balance between the rights of copyright owners and copyright users. We can disagree about precisely where to draw some of the lines, but I think that copyright, as a body of law, has actually been

quite successful. And I expect it to continue to be so.

Q. Tell our readers a bit about your background.

A. Nothing too exciting here. After a couple of years in practice, I've been teaching for 25 years now at New York Law School. Although I also teach and study and write about commercial law, bankruptcy, and contracts, my favorite area is copyright and intellectual property. It's just a fun area, and the people who are involved in the creation of copyrighted works are just incredible. Over the past three years, as I've contacted hundreds of people, getting permissions to reproduce works for the book, I've been completely rejuvenated in my interest in this field. I only hope it continues to be as exciting for the next 25 years.

BIOTECHNOLOGY

Biotechnology and the Creation of Ethics.

Raymond R. Coletta. Berkeley Electronic Press: The Gruter Institute Working Papers on Law, Economics, and Evolutionary Biology: Vol. 1: Article 5, see also 32 McGeorge Law Review 89 (2000)

<http://www.bepress.com/giwp/default/vol1/art5>

Reviewed by Daniel Erskine, Suffolk University's Journal of High Technology Law

Professor Coletta attempts to articulate an objective ethical theory governing the promulgation of biotechnology in the American and global context. His focus is on the impact of genes on the human behavior. The speed of biotechnology contributes to the rush to commercialize genetic material and deterioration of normative ethics and law. The development of biotechnology is controlled primarily by biologists and secondly by bio-technocrats and scientists. With the domination of scientific ideology biological exploration plunges ethics into a bottomless chasm. The result is the swift development of the biotech industry and the commercialization of the processes creating genetic patterns and procedures manipulating human genes.

In manufacturing the human ethical norm, man's belief system is altered by the skilled precision of a genetic engineer. The same engineer will help parents choose the color of their daughter's eyes and her behavior. blueprint.

These concurrent events foster a lack of perspective concerning the ethical import of

biotechnological actions. The businessmen, researchers, and scientists, as well as the market forces contribute to the lack of reasoned ethical consideration. Time allows humans an opportunity to gain the necessary perspective to participate in ethical reasoning. Lacking the proper perspective essential to counterbalancing the speed of science, the poignant questions posed by biotechnology are not addressed. Therefore, the answers to those questions are unfettered by ethical and legal considered judgment. As a result, human beings become a race of utopian individuals whose ethical behavior and pure thought is predetermined by the biologist who doubles as deity—or the wizard behind the curtain.

The professor then looks toward the capability of geneticists to engineer human emotions, ethical perspectives, and a sense of justice. Human ethics, thus, are predetermined by genes. Through the evolutionary process of natural selection, the human genetic makeup resulted. The brain itself is a result of this process of natural selection. Our behavior is implanted by our genetic code, and our brain is the repository for our ethical and moral thought. Emotions seated also in the brain are subject to manipulation just as the brain itself. Through genetic manipulation of the brain an individual's sense of ethics is created. The possibility arises of choosing ethical norms, implanting them, and ultimately creating an idea of ethics that is the same for every human individual.

In manufacturing the human ethical norm, man's belief system is altered by the skilled precision of a genetic engineer. The same engineer will help parents choose the color of their daughter's eyes and her behavior. Provided, of course, with the choice between Armani and Polo designer genes, parents construct a complete rational ethical individual tailored to the exact specifications of their own master blueprint. All this occurs against the backdrop of the free market of genetic material.

Professor Coletta then asserts that law, as it shapes the behavior of man, is no longer necessary. Expertly created genes govern human conduct. Socially beneficial behavior enforced by law gives way to genetically constructed behavioral norms. These legal norms are implanted, so the need for law making diminishes with the promulgation of genetic engineered human beings. The correct utilization of biotechnology, the professor argues, is to address and construct new legal norms responsive to empirical data collected through scientific evaluation of human responses to environmental stimuli.

Professor Coletta concludes that current ethical thinking does not address biotechnological concerns. The failure to do so leaves the sector unrestrained. The lack of restraint could produce an extinction of the human race as much as an enhancement of the human *persona*.

Can ethical behavior be implanted within the human mind? A philosopher of the Middle Ages spoke of

virtues infused by God. Thomas Aquinas, though, asserted infused virtue does not make one virtuous *per se*. Rather rational deliberation leads to a choice, which in turn created a virtuous action. Virtuous habits resulted from the repeated deliberative choice of man through reason of the same conduct. The existence of sin proved man was capable of choosing a different path than the one implanted within him. If God can not force men to think or act a certain way, then how may the geneticist do what the divine will can not?

The professor contends not only ethics, but also laws, arise from a human's genetic code. He holds fast to the idea that man is simply a biological golem whose characteristics are infused through his DNA. Law is external to man, or to qualify the statement more precisely, human law is the imposition by the sovereign upon the individual of certain rights. Professor Coletta assumes scientists may, in the words of the Old Testament, write law upon the hearts of men. With the law and ethical action preinstalled, the human mind engineered with the precise of a German automobile will cease imagining and run in conformity with the cogs and pistons implanted within it.

Externalities shape our attributes as much as the interior genetic makeup. Sociologists and physiologists are quick to admit that surroundings contribute in large part to the development of the individual. Take the example of the farmer who is trained by party members in the tenets of communism, and the farmer in the American Midwest exposed to democratic liberalism. Likely their views of politics will be greatly different, but their conceptions of how to farm similar. Conditions fashion our personality and mode of thinking about particular issues.

Man is a construct of emotions and experiences. Genetics strives too high to reach the zenith of human capacity to structure life. Circumscribing human action has obsessed rulers for millennium. In the end Professor Coletta proposes a present day Platonic myth of metals where genes supplant bronze, silver, and gold. Ethics is subjective, and therefore represents the sum of all the inputs absorbed by the human mind. As much as man believes in the fallacy of his own omnipotence, his reason confines him to his limited capability.

COMMERCIAL LAW

***Perspectives on the U.C.C.* Douglas E. Litowitz. Durham, N.C.: Carolina Academic Press, 2001. 190 p. ISBN 0-89089-630-5. \$25.00**

Reviewed by Michael Rustad, Professor, Suffolk University Law School

Finally we have an anthology of the best scholarly and historical work on the Uniform Commercial Code. Litowitz's thesis is that the UCC is not just a random salad of code sections to be mastered. Rather, the UCC is integral to legal scholarship in its social, political, historical and

economic dimensions. Given that the UCC is one of the world's most successful codification projects, it is high time for an anthology of UCC jurisprudence. This compact volume is well edited and does a good job of sampling the best in UCC scholarship. Many of the founding fathers and mothers are represented in *Perspectives on the U.C.C.*: Llewellyn, Mentschikoff, Braucher, Kripke, and Patchel.

Dusty Feet & Pie Powder Courts

I would have liked more than a passing mention to the work of William Murray, Lord Mansfield, father of commercial law and Chief Justice of the King's Bench from 1756 to 1788. Lord Mansfield was the first justice to appoint merchant juries to decide commercial disputes which was a legal invention that influenced Llewellyn and has a continuing vitality to this day. Lord Campbell's *Lives of the Lord Chief Justices* has a masterful description of Mansfield's conversations with the merchants. Campbell describes how one merchant, Mr. Edward Vaux, always wore a cocked hat, and had almost as much authority as the Lord Chief Justice. Many of the concepts and methods of commercial law were invented by Lord Mansfield: law/merchant, negotiability, negotiation, holder-in-due course, and incorporation of the usages of trade.

The law of commercial instruments that grew out of 18th Century England evolved in today's UCC. Litowitz provides an overview of commercial law before the Code setting the stage with Bane's article on the evolution of commercial law from law merchant to Code creation.

The early essays discuss the birth of the UCC and the politics of the codification project. Litowitz provides us with interesting pieces from the drafters of the UCC: Gilmore, Llewellyn and Mentschikoff. Litowitz next looks at the drafting of the UCC and the politics of it getting approved by legislatures. Next, he turns a critical eye to the life and times of Llewellyn. Papke's look at the life of Llewellyn is an encyclopedic entry in the *Dictionary of American Biography*. jurisprudence and interpretation of the UCC, including challenges from critics. After discussing often-neglected issues surrounding the social and political implications of the UCC, the discussion turns to currently pressing problems such as the amendment process and the arguments surrounding federalization.

Code Llewellyn: The Quandary

The UCC has often been described as Llewellyn's Code, Code Llewellyn and *Lex Llewellyn*. It was Karl Llewellyn who called for the creation of the Code and served as reporter for over half of the UCC. Llewellyn's life was like a Charles Dickens' novel. His life was the best of times and the worst of times. There was tragedy in his life. His father was bankrupted by the panic of 1893. He suffered a painful divorce from his first wife in 1930 and

struggled throughout his adult life with alcoholism. (p. 51) His third marriage to Soia Mentschikoff stuck. Mentschikoff and Llewellyn evolved into a dream team for the drafting of the Code.

Litowitz provides us with some classic, but difficult to locate documents on the forming of the UCC. Llewellyn's testimony before the New York Law Revision Commission is included as is Justice Braucher's *Legislative History of the Uniform Commercial Code*.

William Twining's work on Llewellyn's life and works is a spellbinder if that is possible for any Code-related scholarship. Twining's work captures Llewellyn's masterful work perfectly. The larger work is a comprehensive study of Llewellyn's other significant works as a legal realist and as a legal anthropologist (*The Cherokee Way* with Hoebel). Chapter Three begins with "A Look at Karl Llewellyn." Grant Gilmore's essay "In Memoriam: Karl Llewellyn," recalled their work together drafting the UCC. Gilmore, no UCC slouch also found Llewellyn's encyclopedic command of the sources of the commercial law to be daunting. (p. 53) He was, in Gilmore's word, "a man of his time." (p. 54) Gilmore thought that Llewellyn would be best remembered for his "flashing insights, for the brilliance of its intuitions, for the powerful untidy surge of life that carries it forward." (p. 54) The next cut is from William Twining's classic work on *Karl Llewellyn and the Realist Movement* (U/Okla Press, 1973)

The Naked Code Creator

Otto von Bismarck once observed: "The less we know about how sausages and laws are made, the better we'll sleep at night." The less I know about Llewellyn's dark side, the better I'll feel. James J. Connolly, Peggy Pschirrer and Robert Whitman's article on "Alcoholism and Angst in the Life and Work of Karl Llewellyn" deflates those impressed by the work and charismatic personality of Karl Llewellyn. Like Upton Sinclair's expose of the Chicago meat packing industry, this piece is a stomach turner. Litowitz edited out many of the seamier and unforgettable episodes in the founder's life. The authors turn a jaundiced eye to Llewellyn's alcoholism and psychiatric disorders. This is the stuff for the *New York Review of Books* or perhaps *National Enquirer* or reality television. Llewellyn's letters reflect "symptoms of chronic sadness and low self-esteem as well as disturbed sleep." (p. 58). I am not sure how commercial law scholarship is advanced by unveiling Llewellyn's sexual dysfunction in the pre-Viagra era or his troubled bouts of drinking and illicit sex. The editor asks whether after reading this selection, we know too much about Karl Llewellyn. Depression, sexual dysfunction, and alcoholism have too little to do with the Code and its creation.

Deconstructing Karl's Code

The next chapter examines the question of whether the Code has an underlying jurisprudence or philosophy. Professor Danzig finds the Code's Zeitgeist in its adoption of standards such as "reasonableness," "good faith," and "usage of trade." Gedid argues that the UCC is first and foremost a document of legal realism. Arthur Corbin, Grant Gilmore and Friedrich Kessler of Yale University Law School were Code drafters and advisors. Yale was the center of Legal Realism. Lawrence Friedman describes the Realists as scholars who "sneered at the idea that the way to decide cases was by logical deduction from preexisting cases and rules." Law students will find the excerpts on the UCC jurisprudence to be helpful in understanding the Code's methodology and how it keeps in step with social and technological change. Professor Gedid notes how realism informs the Code's cross-references, relationships among the text, and comments.

Maggs takes issue with those scholars who find the UCC to reflect a unified theory. He notes how recent amendments to the Code reflect a fading imprint of Llewellyn's jurisprudence. He criticizes today's reporters of Article 1 who faithfully replicate Article 1 concepts without attention to the need for transformation. Maggs was one of the few contributors to this volume who referenced the fact that all of the UCC's articles are under revision.

The rise and fall of Article 2B of the UCC and the demise of Revised Article 2 reflects a breakdown of the engineered consensus of the UCC founders.

Chapter Six highlights the federalization of commercial law. At common law, commercial law was almost exclusively state law. Today, virtually every Article is supplanted and cabined by a growing federalization. Article 2, for example, is supplemented and supplanted by the Magnuson-Moss Consumer Warranty Act as well as countless other federal statutes. Fred Miller, the CEO of NCCUSL, questions the federalization and Congressional expertise in enacting successful commercial statutes.

In recent years, the UCC revision process has been infected with interest group politics. I participated in the drafting of Article 2B and its successor statute, UCITA (Uniform Computer Information Transactions Act). Every open meeting featured pitched battles between the information industries, the Internet stakeholders and consumers. The American Law Institute withdrew its support for Article 2B on licensing when it was unable to achieve a consensus. Revised Article 2 has suffered a similar fate and the updating of the Code has suffered. Ed Rubin's piece, "Thinking Like a Lawyer, Acting Like a Lobbyist," documents his ill-fated role in the revision of Article 3 on negotiable instruments. Professor Rubin concluded that the banks and financial institutions swamped consumer and academic representatives. The recent experience of the UCC revision confirms the need for reform. The Code is not apolitical. As Von Ihering reminded us: "The law does not descend from the Legal Heavens." Chapter 8 also features the superb work of Kathleen Patchel on how

interest group politics captured the Code.

Chapter 9 on Commercial Law and Literature can best be described as whimsical. The UCC needs humor. The only UCC anecdote I would add is the story of Yogi Berra receiving a check from speaking at a sports writer's banquet. Yogi thanked the writers for the honorarium but quipped. "After all these years, you still can't spell my name. It should be payable to Berra not Bearer!" The final chapter is a big picture assessment of the Code by Gilmore and White and Summers. This book is nicely indexed and produced. It is a must for all commercial lawyers and law professors to get this book. It would be a perfect text for an advanced seminar on commercial law and to supplement courses in Sales, Contracts, and the UCC. Keith Sipes and his Carolina Academic Press should be congratulated for producing this wonderful volume. This is a winner!

CONSTITUTIONAL LAW

Before Roe: Abortion Policy in the States.
Rosemary Nossiff. Philadelphia: Temple University Press, 2001. 206 p. paper ISBN 1-56639-810-X. \$21.95

Reviewed by Yvette López Adams, Sociology and Anthropology Department, Northeastern University

The landmark 1973 Supreme Court decision of *Roe v. Wade* remains one of the most hotly and publicly debated issues in this country. As Nossiff, a professor of Political Science at Rutgers University, writes, abortion is "one of the most intimate decisions a woman makes, whether to continue or terminate a pregnancy, [it] has become one of the most politicized issues in contemporary American politics." *Before Roe* explores the controversial issue of how abortion was addressed prior to the groundbreaking Supreme Court decision. Nossiff "compares pre-*Roe* abortion politics in New York with those in Pennsylvania," the two states famed for paving the way for abortion policy across the nation both before and after *Roe v. Wade*. Despite similar demographic, political, and economic characteristics, New York approved a liberal policy while Pennsylvania enacted a restrictive one. Nossiff also includes case studies of other states in her analysis.

After her introduction of the issues, Nossiff takes an in-depth look at the history of "Reform and Opportunity" in abortion politics. She does an excellent job of illustrating how politics played out among party and interest groups. Nossiff's book reflects the pluralist perspective, in that individuals and interest groups win political struggles through superior tactics and the building of alliances. She argues that the movement of political reform greatly impacted "both the degree of access new forces had to the parties, and the political opportunities and resources available" to them. She then compares the "Competing Discourses" of abortion such

as the medical, legal, religious, and moral dialogue. While pro-choice advocates contended that "restrictive abortion laws violated women's rights to privacy, equality, and liberty," pro-life forces argued against abortion reform based on notions of "the sanctity of human life."

The next stage in Nossiff's analysis is a discussion of "Gender Identity and Political Mobilization." She notes that just prior to pre-Roe debates, women's political identity began to strongly emerge, adding fuel to the fire. Nossiff's next two chapters focus on the two states in her analysis: "Party Politics in New York" and "Interest-Group Politics in Pennsylvania," where she finds that there were changes in the party structure in New York that opened new doors for pro-choice activists. In contrast, the Pennsylvania Catholic Church organized anti-abortion efforts while pro-abortionists were weakened by their lack of interest in "taking control of the Democratic Party." Her discussion leads her to combine "Party, Discourse, and Policy" by comparing and contrasting the two states' political debates. Finally, we hear the effects of pre-Roe and Roe events in her chapter entitled "After Roe: The Pendulum Swings Back," as well as her concluding comments. Nossiff argues that "Roe decriminalized earlier abortions" and its influence was so great that it made many states reverse their restrictive laws, making it easier for women across the country to obtain a legal abortion.

In New York, pro-choice supporters were able to frame the debate because they began preparing legislation much earlier than the pro-life forces. The 1965 *Griswold v. Connecticut* decision "shifted the debate from the religious and moral/medical frameworks created in the nineteenth century to a legal/medical one, where beliefs and practices were challenged by constitutional arguments and medical facts" in the state of New York. Moreover, they were able to attract non-Catholics, as well as Catholics, to join them in the struggle towards abortion reform. In the Commonwealth of Pennsylvania, in contrast, anti-abortion activists and supporters took the lead while pro-choice supporters did not make their voices heard soon enough. In each state, most of the activists on both sides were well-educated and middle- to upper class women.

One of Nossiff's most interesting points is that abortion was not always an issue that divided the country. "It was only in the 1850s that the American Medical Association sponsored an antiabortion campaign in a bid to professionalize medical practice." At the time, men gained control over the medical profession. Women who had been practicing midwifery as well as other "medical" services were not seen as medical professionals. This argument places the abortion struggle in the context of women's historical struggle against gender discrimination. *Before Roe: Abortion Policy in the States* presents a thorough historical, political, medical, legal, and gendered analysis of U.S. abortion politics. Although her focus is on the changes in abortion policy, she also provides moving case

studies of individual women and their experiences with abortion. This is an excellent text for Political Science, Women's Studies, American History, Sociology of Gender, Religion, Social Policy, and Law students. It may be of particular interest to lawyers who concentrate on gender discrimination, health care or biomedicine, and women's rights.

***The New Thought Police: Inside the Left's Assault on Free Speech and Free Minds.* Tammy Bruce. NY: Forum, 2001. 300p. ISBN 0-7615-3404-0. \$23.95.**

Reviewed by John W. Teeter, Jr., Professor, St. Mary's University School of Law

Attacks on political correctness have grown both plentiful and rather tiresome. Recent years have seen the publication of works such as Alan Charles Kors and Harvey A. Silverglate's *The Shadow University* (1998), Larry Elder's *The Ten Things You Can't Say in America* (2000), David Horowitz's *Hating Whitey and Other Progressive Causes* (2000), and numerous other rants. Such tomes occasionally score valid ideological points but one grows weary of the bitter repetitiveness of it all.

The New Thought Police might seem to offer a little novelty in the litany. Bruce describes herself as "An openly gay, pro-choice, gun-owning, pro-death penalty, liberal, voted-for-Reagan feminist"(p. XI). Furthermore, Bruce was president of the Los Angeles chapter of the National Organization for Women (NOW) from 1990-1996 and she is undeniably bright, impassioned, and edgy.

Her book, however, is a decidedly mixed bag. The best parts center on her controversial role as a feminist spokeswoman during the O.J. Simpson murder trial. Bruce cogently emphasized that the crime was a tragic paradigm of domestic violence rather than a racist conspiracy against a black cultural icon. Her stance, however, drew the public ire of NOW's national leadership, which alleged that Bruce was insensitive to blacks and was endangering the feminist/civil rights alliance. Bruce eventually resigned her post with NOW and was understandably disillusioned by her public vilification at the hands of other purported feminists.

Bruce's anger is both the strength and failing of *The New Thought Police*. Her indignation propels the book's intensity but goads her into mudslinging that sounds all too familiar. Jesse Jackson, Al Sharpton, and the other usual suspects are trotted out for trashing, which may be deserved but offers nothing new. Bruce also stoops to red-baiting by accusing Martin Luther King, Betty Friedan, Gloria Steinem, and other progressive leaders of communist or socialist sympathies. Such dime store demagoguery serves little purpose, and much of the book reads like Bill O'Reilly in persecution mode. The writing, moreover, ranges from the witty and incisive to the annoyingly *jejune*. Four times, for example, Bruce employs

the shopworn symbolism of the emperor with no clothes. All in all, *The New Thought Police* resembles a keen from a wounded heart rather than a serious analysis of legal and cultural issues. Bruce may yet have much to teach us, but she must first learn that less heat could produce more light.

REFERENCE

***Disability Resource Library*, CD-ROM, DND Press, \$69.95.**

Reviewed by Betsy McKenzie, Law Librarian, Suffolk University Law School

The Disability Resource Library is designed to run on Windows, Mac, Linux and Unix, in PC or HTML format. This CD-Rom is "a comprehensive collection of disability laws, guidelines, settlements, reports and more." It also includes links to current web resources. The interface is excellent, looking much like a web browser. There are command icons along the top of the screen, and a split window to facilitate navigation. There is a table of contents with subheadings that can be opened or closed, an index, a search function, a list of "favorites" that the user can build, and a glossary, all in a portion of the split screen, with tabs to select among them. I will describe each item in more detail below.

The *Disability Resource Library* was designed by a disabled author, T.E. Barich, and his sensitivity to disabled users shows in the special feature that allows the user to adjust the size of the text. The user can begin with a comprehensive welcome section that describes special features in clear language, offering links for more detail. There are many features allowing the user to customize the appearance and navigation. One of the more useful features is called "Locate." Once the user finds a page through the Index or Search, this allows her to display the Contents, showing the category from which the page comes. This obviates confusion over whether you are reading a statute, a regulation or some other type of document. It works well, though the user may have to scroll to find the precise listing of the found document in the Contents list. The "Locate" function delivers the user to the top of the main category (which is probably the most important information), and the user still may need to scroll down to find the actual document highlighted under one or more subcategories.

The "Contents" is a tree design listing, with drop-down lists of subcategories. The design looks familiar enough that computer users should find it intuitive. Because "Contents" are in the smaller side of the split screen, and each subcategory is further indented, sometimes, the full title does not display. But moving the mouse over the title displays the full title. The split screen also hides part of the document once you find one. The "Hide" command icon at the top of the screen allows you to hide the split screen with the navigation tools, and then

use the full screen button to enlarge the window, showing the full page width at once. The point and click browsing in the "Contents" feature is a useful way to explore the library.

The "Index" feature is similar to familiar programs, allowing both browsing in alphabetical order and searching of the index listings. The user types one or more letter of the topic desired, and the index pops up the heading, or the closest alphabetical listing. If the user cannot guess the heading, then browsing the Index or Contents may work. Lastly, the *Disability Resource Library* features a fairly sophisticated full text search feature. The user can combine terms with Boolean connectors such as "and," "or," "near" and "not." "Near" searches for the combination within 8 words. Quotes require the phrase to appear as typed. There are wildcard options to allow one or more characters at the beginning, end, or middle of words. And the user can nest the search commands. The options are clearly explained in non-technical languages in the "Welcome" section. Once a document is found through the "Search" function, the terms are highlighted, though there is an option to turn off the highlighting. Note that there is not a way to require the program to take you right to the occurrence of the terms as connected in the search.

The Disability Resource Library includes the full text of federal statutes, CFR provisions, and a docket by year of ADA litigation, with amicus listings as well. It does not include the full text of court decisions, but provides a law school style brief of the case, with the citation and holding. Cases can be accessed through the docket, by the "Search" function or using an index by issues or another by impairments. These indexes don't take the user right to the docket brief for the cases, but do list the style of the case and the impairment or issue. The indexes, like the dockets, are limited by year. Many case listings will state whether the case is merely filed, has been resolved, decided, appealed, or has some other status. The *Library* includes settlement agreements from the Department of Justice, apparently in full text.

There are guides, articles, Technical Assistance Letters and much more. There is also a very comprehensive list of links to websites. This is arranged in alphabetical order, which really only works if you have an idea of the name you might want. However, the links seems to be included in the search of the index and the full text search as well. While using the CD-Rom, I received a pop-up window offering a live update. I was not able to connect to the website needed for this feature, but it is an intriguing-sounding way to keep the CD current, if it works.

This CD-Rom is an excellent resource for the specialist in disability law. It retails for \$69.95, and can be

purchased at Amazon.com or from the publisher's website:

<http://www.dndpress.com>

CYBERLAW

***Digital Copyright.* Jessica Litman, New York: Prometheus Books, 2001. ISBN 1-57392-889-5. \$25.000**

Reviewed by Michael L. Rustad

Chapter Titles: 1. Copyright Basics; 2. The Art of Making Copyright Laws; 3. Copyright and Compromise; 4. A Thought Experiment; 5. Choosing Metaphors; 6. Copyright Lawyers Set Out to Colonize Cyberspace; 7. Creation and Incentives;

8. *"Just Say Yes to Licensing"*; 9. The Bargaining Table; 10. The Copyright Wars; 11. Copyright Law in the Digital Millennium; 12. Revising Copyright Law for the Information Age; 13. The Copyright Bargain

Professor Litman's cogently argued book raises provocative questions about the shaping of copyright law. The major publishers, the music industry, and software industry along with Hollywood and Walt Disney maintain powerful lobbies to continuously expand the reach of intellectual property rights. It is not just copyright law, but every branch of intellectual property law that is expanding at the expense of consumers not present at the bargaining table in the halls of Congress. Where is the lobby for the unborn consumer? Litman argues that the movie industry and the record companies had a disproportionate impact on the Sonny Bono Copyright Term Extension Act and Digital Millennium Copyright Act, two of the more expansionary amendments to the U.S. Copyright Act.

I. Sonny Bono Copyright Term Extension Act

Traditional copyright law is being challenged on several fronts by the rise of the Internet, and any company operating online must be aware of these issues. As I write this review, the U.S. Supreme Court is hearing a constitutional challenge to the Copyright Term Extension Act in *Eldred v. Reno*. Congress extended the term of copyright law 11 times in the last 40 years. The latest extension is the Sonny Bono Copyright Term Extension act which extends 20 years to existing and future copyrights. The U.S. Supreme Court is considering two questions: [1] Did the D.C. Circuit err in holding that Congress has the Power under the Copyright Clause to extend retroactively the term of existing copyrights? [2] Is a law that extends the term of existing and future copyrights categorically immune from challenge under the First Amendment? Professor Lawrence Lessig who represents the petitioner argues that Congress' frequent extensions of the copyright are in effect a copyright term on the installment plan.

The *Eldred* case is yet another example of Professor Jessica Litman's argument that copyright law has evolved into a subject of great public import. She notes that Congress has added more than 100 pages to the copyright

statute with many provisions extending the rights of authors. Litman argues that a new copyright law paradigm is emergent where the law of copyright is a tool for extracting commercial value rather than merely a way of protecting works.

A law review article described the rapidly expanding rights of authors as: "Honey, we've shrank the commons." Litman's book raises all of the critical questions of the implications of shrinking the copyright commons, fair use, and expanding the rights of authors at a rapid pace. Professor Litman's readable book is recommended not only for lawyers, policymakers, but to ordinary Americans.

II. Digital Millennium Copyright Act of 1998

The Internet has made it easier to copy artwork, photographs, streaming video, text computer software and other information, and recent changes in copyright law are accommodating changing technologies. Web sites are a collection of data, video, sounds, and images accessible to hundreds of millions of Internet users. The Internet is an ocean of data making new connections and possibilities for our information society. Professor Litman's argument is that copyright law had become a means to extract value in unprecedented ways in the digital world. The technology makes it possible for the first time in world history to have a "pay for view" world.

The Digital Millennium Copyright Act (DMCA) was ostensibly passed by Congress to implement our World Intellectual Property Organization (WIPO) treaty obligations. However, WIPO was also disproportionately influenced by delegations from the U.S. record, movie and digital industries. Professor Litman is concerned about the erosion of the doctrine of fair use resulting from the DMCA's anti-circumvention provisions.

Copyright Law's Public Vision

Many introductory copyright casebooks begin with the unexamined hypothesis that copyright is necessary to provide authors with an economic incentive for creation. Litman notes that it is ironic that the law of copyright is presented as promoting knowledge when it may have the opposite effect in a digital world. The pay-for-view world described by Professor Litman can be laid at the feet of copyright law and the use of licensing for transferring values. The law of copyright was a sleepy backwater prior to the rise of the computer age and the rise of the Internet. Software did not evolve as a separate industry until the early 1980s. By the mid-1980s, it was clear that software could be copyrighted. By then, the trend in the law was for courts "to accord software a relatively thin protection," as one circuit after another followed the abstraction-filtration-comparison test. Courts will examine the program at various levels of abstraction from the most detailed to the most general. IBM was the first major computer vendor to grasp the importance of licensing access. IBM was the first vendor to view software as a source of value. IBM

unbundled software and hardware in an era when all computer vendors sold the hardware bundled with the software. The licensing of software has evolved license agreements where the licensee pays for a single view of information. Since the 1980s, licensing agreements have become a chief means of transferring value in our information society. Licensing gives publishers unprecedented control over their works. Litman describes how copyright law is the aider and abettor of greater technological control over works which is the key component of the digital economy. Litman argues that we will need to wrestle copyright law from the well-heeled stakeholders to restore the balance envisioned by the Framers of the Constitution. This is a book for copyright scholars, law students, as well as the general public.

A ROUNDUP OF ESSENTIAL RESOURCES FOR INTERNET LAW

By Michael L. Rustad

The Internet is about competition and governance in the global economy. The Internet reflects a movement towards globalization and interdependence in the world economy. The number of Internet users topped 400 million in 2000, up from fewer than 200 million users at the end of 1998. The global Internet is a "seamless web" that will connect 926 million Internet users by 2003. The web has a growing impact on world trade and is the fastest growing free-trade zone. Internet trade is multi-hemispheric, as the sun never sets on the Internet. An IDC report "forecasts that e-commerce sales in 2001 will represent 9.5 percent of total revenue for companies that already have an online arm. In 2000, that figure was 4.7 percent."

Internet actors share a common vocabulary, but increasingly come from radically different cultures and legal traditions. The shrinking of national boundaries creates new problems in compliance with legal norms and standards. A systematic analysis of international issues is beyond the scope of this section. However, online companies or Internet portals such as Yahoo! that cross national borders must be prepared to comply with international law, foreign laws, and transnational industry standards as well as EU Directives. The European Commission (EC) is the chief legal institution responsible for applying the legal framework for ensuring free competition in the Single Market. The EC Competition Rules are found in Articles 81 and 82 of the Treaty of Rome. European competition law consists of national legislation in individual member states as well as regulations applying across the EU. The overarching purpose of European competition law is to eliminate barriers to trade. The Treaty of Rome created the European Community in 1957 to promote the free movement of goods and prevent anti-competitive practices. The Treaty of Rome Articles 30 to 37 called for eliminating quantitative restrictions on trade between Member States to facilitate the free movement of goods. Article 36 requires the protection

of industrial and commercial property and the elimination of arbitrary discrimination or restrictions on trade. The basic principles governing online contracts, intellectual property, jurisdiction, choice of law, and conflicts of law on the Internet apply equally well on the Internet. The books discussed in this review essay explain technology, consumer, and legislative actions for the development of global internet law and governance.

Law of Cyberspace Series, Volume 1, The International Dimensions of Cyberspace Law.
Teresa Fuentes-Camacho. Burlington, VT: Ashgate, Dartmouth, UNESCO Publishing 2000. 241 p. ISBN: 0-7546-2146-4. \$29.95

This edited collection explores the role of UNESCO in formulating principles for human rights in the international fora of cyberspace. This first volume in UNESCO's "Law of Cyberspace" series explores the role of international standards for ethical values and legal principles. Each of the contributors comes from a different region of the world and brings interdisciplinary scholarship and theories to an examination of the international dimensions of human rights in cyberspace. UNESCO is concerned with promoting Cross-disciplinary work on the ethical, legal and societal issues of cyberspace as a specialized agency of the United Nations with competence in human rights. UNESCO draws its mandate from a constitutional mandate concerned with expression, universal access to information and transborder communication. (p.3) UNESCO joins an alphabet soup of international internet standards setters that include the EU, OECD, UNCITRAL, WIPO and the WTO. The first principles for UNESCO's cyberspace law and ethics begin with technological neutrality in the domain of informatics, telecommunications, and multimedia. Technological neutrality is critical to have seamless access to information. Just as the railway needed uniform gauges for tracks to insure that trains seamlessly cross borders in European countries, the information society must also minimize functionally equivalent constraints to ensure the flow of information.

UNESCO is also interested in fundamental human rights on the Internet to protect human rights. Privacy and intellectual property rights must also be protected in cyberspace. UNESCO's role as a catalyst for cyberspace stems from its mandate as a UN agency dedicated to human rights and ethics. UNESCO's work in cyberspace begins with some positions of principle: [1] Technological Neutrality in the Domain of Informatics, Telecommunications and Multimedia; [2] Privacy and Electronic Commerce; [3] Freedom of Expression and Control of Illegal or Harmful Material; [4] Common Good, Intellectual Property and Public Domain; [5] Towards a Universal Framework for Cyberspace. This section explores the clashing objectives between preserving intellectual property rights as well as the public domain for the

common good. This section of the book seemed too abstract and decontextualized. The first principles are starkly stated devoid of examples and illustrations. This is an excellent collection of essays. My personal favorite article is chapter one by Elizabeth Longworth.

Chapter One: The Possibilities for a Legal Framework for Cyberspace

Elizabeth Longworth critically examines the logic and limits of cyberspace law and policy. Longworth notes that the promise of transformation of society must be tempered with the possibility of new forms of social stratification, privacy invasions, structural unemployment, and social dislocation from the information society. Longworth's refreshing skepticism about the information society is a good counter point to the many books on cyberspace law that view transformation as an undivided good. She asks about what macro-strategy is necessary for cyberspace regulation. What new paradigms are necessary. Longworth notes that legal scholars are generally myopic in focusing upon specific aspects of cyberspace as opposed to considering the possibility of new international cyberspace law. The paradigm shift away from substantive centralized legal models is next examined. Who will comprise the cyber police in implementing cyberspace law? (p.10) The concepts of cyberspace demand a reassessment and readjustment. The qualities of cyberspace impact legal design. Longworth views the following characteristics as key to developing a law for The "I-Way: [1] No geographic limitations; [2] Anonymity in Cyberspace; [3] Ability to Escape Controls; [4] Structural Hierarchies and Zones; [5] Interactive, Dynamic Nature; and [6] Electronic Linkages.

Longworth draws heavily upon the work of American scholars such as Larry Lessig, Ethan Katsh, Henry Perritt, David Johnson and David Post in setting forth the possibilities for a legal order for cyberspace. Perhaps the strongest section of the chapter was Longworth's discussion of how the characteristics of cyberspace impact legal design. The irrelevance of geographic boundaries and cross-border communications creates difficulties for a territorial-based set of legal rules. Rather than territorial boundaries, the Internet's boundaries are code-based or password protected. The capacity to create anonymous identities and new cyber-identities at will makes it relatively difficult to protect against intellectual property infringement, cyber-terrorism, or other nefarious activities. The Internet architecture of hyperlinks encourages Internet governance based upon self-regulation (p.18). The hyperlink architecture also makes it difficult to control online behavior. The decoupling of physical space and law creates a legitimation crisis for territorially defined rules.

Longworth next explores the objectives of law-making. What are the functions and dysfunctions of cyberspace law and law-making? Traditionally, law upholds rights or principles including the concept of control by sovereigns. The flipside of the delegitimized hierarchical

control models is the untested nature of self-control or market solutions. She asks: "Can self-regulation—such as a decentralized private law framework for cyberspace—be sufficient 'authority' for that form of law-making?" Cyberspace law undermines "top-down centralized authority." (p.19). Longworth next examines the possibilities for governance including models based upon code, economic theories of control, and customary control. Given that the cyberspace connects hundreds of countries, which values should be reflected in its legal principles? What is the greater good when users come from radically different cultural traditions?

UNESCO has traditionally endorsed the greater value of freedom of expression. To date few courts have addressed the values of Internet law. Longworth cites the New Zealand High Court decision of OGGi in which a judge cited Article 19 of the International Covenant of Economic, Social and Cultural Rights as a guiding principle. Longworth next examines four structures of control for cyberspace law: direct law, norms, market and code drawing from the work of Professor Lessig.

[1] Cyberspace Law as Direct Law

Copyright law, the law of defamation, and the law of obscenity are cited as examples of direct law. Direct law is limited by the difficulty of enforcement. The Software Police of the SPA seek to impose sanctions by serving as private attorneys general in cyberspace. The crusade against copyright reflects the structure of control in direct law; software piracy will result in sanctions or penalties. The difficulties of direct law stem from the ability of Internet users to anonymize their transactions. An example of direct law was the recent jailing of an Indonesian student for illegally accessing the computer account of a fellow student. Hong Kong recently enacted a new statute imposing criminal sanctions against its citizens who take or make bets in unauthorized Internet gambling operations.

[2] Cyberspace Law as Norms

Next, Longworth examines the constraint of social norms. Norms were first studied by sociologists. The New Chicago School of Law extended the study of norms to legal scholarship. Norms, in contrast to direct law, are decentralized and organically determined by the community. During the early 1990s, theorists held out great promise for social control through self-regulation. One of the early examples of informal social control was the flood of email that shut down a Spam e-mailing law firm in Arizona. Social norms were traditionally defined as 'netiquette.' Norms-based cyberspace law has the advantage of plasticity and immediacy but are not backed by the courts.

[3] Cyberspace Law as "Code"

The concept of cyberspace law as Stanford Law Professor Larry Lessig. He developed his theories while first developing codes for Harvard's Berkman's Center. Lessig

notes how code is a constraint and a form of architecture for cyberspace. Software is a form of social control as we have seen in the recent efforts by Congress to require libraries to install software filters. Software filters are a form of control to information. Software may not only screen out and block information but also facilitate open expression. Lessig notes how software may encourage chatrooms and freedoms of speech not found in the brick and mortar world. Lessig's thesis is that codewriters are, in effect, legislators: "Code in essence becomes an alternative sovereign." Code can control and constrain social deviance but who will control the code-writers? Longworth asks how broader values of public law can be instituted in the context of code. She cautions that we can not count on liberalism to be part of the "invisible hand of codewriters."

[4] Control Through the Market

American law and economics scholars are likely to endorse a model of control of the Internet through competition. If network protocols are primary legal rules, how can competition be assured? She cites the example of Australia's attempt to administer content control through the Australian Broadcasting Authority. Where's the competition if one provider has the authority to remove material not conforming to Australian classification standards? (p.28) Internet service providers (sysops/ISP/registries) may be able to exact hierarchical control in a way that government cannot accomplish. Longworth next draws an analogy of customary law in cyberspace to merchant law or *lex mercatoria*. The use of the request for comment by standard setters is portrayed as a form of 'customary' cyberspace law.

One of the shortcomings of customary cyberspace law is that it is not grounded in any system of authority. Although cyberspace is self-regulation, there needs to be some conventional authority beyond rule making by code. Longworth next examines Johnson and Post's classic article, "And How Shall the Net be Governed?" She notes how government is struggling with rules for digital signatures and authentication. The next section examines dispute resolution in cyberspace. The issues of choice of law, conflict of law and choice of forum apply equally well to cyberspace. Most other countries connected to the Internet do not follow the U.S. due process approach to jurisdiction. American courts, however, have adapted the territorial-based concept of due process to Internet transactions in hundreds of reported decisions.

Intractable issues arise when multiple jurisdictions exercise prescriptive jurisdiction. For example, by what authority does an Attorney General in Massachusetts regulate Internet-related tobacco sales or gambling? The parties to e-commerce transactions routinely include choice of law clauses in their agreements. It is questionable whether the anti-consumer provisions of many U.S. agreements are enforceable in European countries connected to the Net. Saudi Arabia is likely to have a

different view of content regulations than the Netherlands. Longworth surveys the difficulties of developing a distinct jurisdiction for cyberspace. The cyberspace jurisdiction could theoretically be constructed through international treaties and conventions. Longworth cites how UNCITRAL developed an influential Model Law on Electronic Commerce. The international fora of ICANN have suffered a series of blistering attacks by stakeholders of the domain name system. ICANN has been criticized for its organizational and governance structure. Stakeholders favoring a "rebidding" of the ICANN contract are lobbying the Department of Commerce. The legitimation crisis faced by ICANN reflects the difficulty of developing new cyberspace agencies in the absence of international treaty.

Longworth explores the possibility of a public international court for cyberspace. The WIPO method for adjudicating domain name disputes is an example of ADR in cyberspace. Finally, Longworth explores possibilities and opportunities within the framework of cyberspace law. Longworth mentions international developments such as the Lugano, Brussels and Hague Convention.

The European Union countries are promulgating some of the most extensive regulations of cyberspace. The Brussels Regulation replaces the 1968 Brussels Convention effective March 2002. The Brussels Regulation applies to all EU countries that signed the Brussels Convention of 1968 except Denmark. The new Brussels Regulation has not yet supplanted the Lugano Convention of 1988. The Brussels Regulation governs jurisdiction in civil and commercial disputes between litigants and provide for the enforcement of judgments. The Council Regulation (EC) No 44/2001 of 22 December 2002 revises the Brussels Convention of 1968.

The Brussels Regulation gives consumers the right to sue suppliers in their home court. Article 15 provides that if a business "pursues commercial or professional activities in the Member State," the consumer may sue in the court where he or she is domiciled. Art 15.1(c). Article 15(1) (c) extends the consumer home forum rule to entities that direct activities to Member States. The far-reaching consumer provisions apply equally well to the E-Business targeting European consumers. European Union rules may de facto become a law of the Internet since non-EU countries may be subject to its rules.

In all B2C sectors, it is critical to comply with Directive 1999/44EC of the European Parliament and of the Council of 25 May 1999. This Directive, for example applies to SPC's sale of computer systems to consumers in Europe. Similarly, all consumer transactions in Europe must comply with Council Directive 93/13/EEC of 5 April 1993 governing unfair terms in consumer contracts (OJ L 95, 21.4.1993). The Data Protection Directive gives data subjects control over the collection, transmission, or use of personal information. The data subject has the right to be notified of all uses and disclosures about data collection and processing.

The Convention on the Law Applicable to Contractual Obligations (the Rome Convention), 23 O.J.

Eur. Comm. 1 establishes mandatory rules such as the unfair terms provisions. The Rome Convention otherwise adheres to a freedom of contract regime. The e-business contracting with a Rome Convention signatory should consider choice of The Distance Selling directive requires the e-business to provide "postal addresses, full delivery costs, and date and terms of contract via a 'durable medium.'" The Directive requires "clear contact details, trade and public registration details, along with full tax or delivery costs." The Directives require commercial communications to be clearly labeled.

Directive 1999/44 EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees applies equally well to Internet-related consumer transaction. The Directive on consumer goods contains provisions similar to Article 2 of the Uniform Commercial Code. However, there are significant differences. Under Article 2 of the UCC, the perfect tender rule gives buyers a right to reject goods if they fail in any respect to conform to the contract. The UCC remedies apply to the time of tender versus the Directive that gives consumers a two-year period to exercise rights as to defective products. (Article 5(1)).

The Directive presumes that any non-conformity found in the first six months after delivery to have existed at tender. Unlike Article 2 buyers, consumers under the Directive have a right of repair or replacement without charge or inconvenience (Article 3(2)). The Directive also has provisions on product guarantees. As with the Magnuson-Moss Act, there are rules on the content of guarantees. The Directive does not permit consumers to waive or limit their rights under the Directive. (Article 7(1)).

Internet contracts must also comply with Directive on unfair terms in consumer contracts? Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts applies to the Internet-related transaction. The unfair terms directive policies unfair terms where there is an imbalance of power between the company and consumer (Article 1). The Directive applies to one-sided (adhesion) contracts where the terms are offered on a "take it or leave it basis." Any ambiguity in a consumer contract is construed against the company in favor of the consumer. (Article 5). The central provision of the unfair terms Directive is that contractual terms found to be unfair are unenforceable. European courts tend to be pro-welfaristic as opposed to U.S. courts that tend to be consumer neutral. The ultimate legal framework-governing cyberspace is likely to be polycentric given the few collective values embraced by the countries connected to the Internet. Longworth argues for the need for flexibility and pragmatism is the coming collective conversation on values.

Longworth's chapter is capped off by a discussion of UNESCO principles. UNESCO has long embraced the right of communications as a fundamental human right. UNESCO embraces a participation principle. "Every citizen should have the right to meaningful participation in the information society." (p. 60) UNESCO also endorses

the universal principle that the new media should be accessible to all individuals on a non-discriminatory basis. Multi-culturalism and multilingualism should also be promoted in Internet activities. UNESCO strives to promote ethics at the local and international levels. All persons should have a right to read, write and work in cyberspace. Other principles include free expression, privacy and encryption, access to information, training principle and international cooperation. Her overall argument cautions against "ill-considered interventions in law-making for cyberspace." (p. 61) She contends that in the absence of collective values, the UNESCO Cyberspace Principles are a useful template for cyberspace governance. Longworth argues for a greater awareness and debate on the role of code as regulation. "The need for awareness of and informed debate on, the de facto regulatory nature of cyberspace cannot be overemphasized." Longworth's chapter is a treasure trove of first principles for cyberspace law and the highlight of the book.

The international dimensions of cyberspace law also include a study of radically different cultures, legal systems and views of human rights. In May of 2002, a U.S. federal court overturned the Children's Online Protection Act (COPA) requiring libraries to install software filter to filter out pornography. COPA was overturned on the grounds that the filter violated the First Amendment. The concept of obscenity is that it violates community standards under the standard of *United States v. Miller*. Turkey recently enacted a law that requires ISPs to remove libelous statements or "lying news" from web sites. This recent example illustrates the conflict between free expression and national regulations. Cyberspace is a new world community with different countries, cultures, languages and legal systems. Cyberspace law and its legal framework present new forms of governance and new challenges. This review essay examines the international or global environment of this new global community.

Chapter 2 on Freedom of Expression and Regulation of Information in Cyberspace deals with the legal framework for controlling information. The U.S. Congress, to date, has been unable to develop content controls that can withstand constitutional scrutiny. In the *Reno v. ACLU*, the U.S. Supreme Court struck down the Communications Decency Act of 1996 on grounds of vagueness. Section 502 of the CDA prohibited the making of obscene or indecent material and its transmissions to minors via the Internet.

The developments in Chapter Two make reference to the Clinton Administration's free market paradigm for the Internet. The CDA made it a criminal offense to permit telecommunications facilities to be used to commit the offenses. The CDA was first challenged in the Eastern District of Pennsylvania that granted a preliminary injunction against enforcement of the CDA's provision on obscenity or child pornography. Judge Dalzell's famous quote on the CDA was that the government "could not

burn the global village to roast the pig." (p.77) The U.S. Supreme Court ruled that the CDA was unconstitutional because of vagueness. This chapter does a nice job of explaining the evolution of online content filter and rating systems as well as the son of CDA. The chapter also reviews the ABA Report on Online services as well as Australian developments. The Australian principles on online content favor open access and expansion of e-commerce. The unhappy saga of Felix Somm and the German CompuServe Case is examined, as is the response to the CompuServe case by the European Internet Service Providers. Cyberspace content regulation has been shaped in part by the AOL/Bertelsmann venture. One of the principal spin-offs of the venture was a coalition that drew up Europe-wide principles. The remainder of the chapter sets forth principles for content regulation developed by OECD, UNESCO, and the Global Business Dialogue. The legal and moral issues of John Perry Barlow's aphorism of thinking globally and acting locally are examined. First principles for the flow of information include transborder access, privacy, encryption, domain names, content rating, international hotlines and protection of copyright. Professor Grainger notes that national administrations should have responsibility for local compliance with international principles, criminal law (terrorism, pedophilia, hate speech illegal content, etc.) Grainger notes that national administrations need to work on schemes of self-regulation content rating tailored to local culture. The underlying philosophy behind localizing content ratings, cultural mores, and hotlines is to individuate cultural ratings thus facilitating local access.

Chapter Three draws a parallel between cyberspace law and the law of outer space. Professor Anna Maria Balsano highlights the legal aspects of cyberspace. Although copyright is the first IP right that needs to be handled, trademark law needs to accommodate the unique legal environment of the net. Trademark law has yet to develop a global registry. She next explores the basic principles of the Outer Space Treaty and the international treaties adopted for satellites and remote sensing. The principles for outer space law have a parallel to cyberspace law. Cyberspace law, like outer space, is to be used for peaceful purposes. Individual nation states in both spheres must supervise non-governmental activities. Balsano examines the similarities and differences between outer space and cyberspace. Cyberspace, like outer space is unconstrained by territorial boundaries. Both space spheres operate beyond known and recognized political boundaries. Cyberspace, like outer space, challenges territorial concepts as well as many other legal and institutional issues. Cyberspace, unlike outer space, is governed by a patchwork of national regulations in various stages of development. Cyberspace, like the law of outer space, will require international coordination and harmonization (p.141)

Professor Barsano acknowledges that it will take time to assess and monitor the impact of cyberspace on

society. Sustained study is necessary prior to adopting an international code of conduct. She contends that it is within the interest of all netizens to ensure a law that is equitable and orderly.

Yves Poulet's chapter (Chapter Four: Some Considerations on Cyberspace Law) is on the role of the state in cyberspace: when to intervene and desert cyberspace. Professor Poulet reviews the UNCITRAL and EC Draft Directives on electronic signatures. He more broadly examines the role of law in the development of an information society. Chapter 5: Liability in Cyberspace is by University of Montreal law professor, Pierre Trudel. Professor Trudel describes how the Internet has become both a virtual space and a place for interaction. The open networks create liability risks (defamation and privacy) as well as copyright infringement. Trudel next examines the metaphor for web sites: [1] carrier; [2] owner of premises; [3] publisher; or [4] librarian. Information torts for the foreseeability of use of the information and erroneous information are examined. The role of contract, self-regulation and national law for civil liability are explored.

The final chapter by Professor Christina Hultmark examines morals for the Internet. The role of legal norms and their influence on morality are examined. The key question is: How can the sense of morality be enhanced on the Internet? There is an Appendix Report to the Director-General of UNESCO on the International Experts Meeting on Cyberspace (Sept. 1998). There is list of abbreviations and an index. Overall, this is an excellent collection of essays. Every academic law library needs several copies.

Computer and Internet Liability: Strategies, Claims and Defenses, 2d ed. Richard D. Williams & Bruce T. Smyth. New York: Aspen Law & Business, 2002. ISBN: 0-7355-1851-3, \$180.00

This is a treatise by litigators who approach cyberspace as a sphere for potential liability. The book is more of a litigation guide to cyberspace risks as opposed to a treatise on intellectual property law. The book will be useful to litigators to get a broad overview of each topic as opposed to practice pointers or forms. Topics include:

Intellectual property principles-Liability for infringement...website protectability...metatags, keywords, linking, framing.

Privacy-Defamation principles and the Internet ... unsolicited e-mails... online offers.

Jurisdiction-Whether an Internet company selling goods or service on the Web is doing business in multiple states or countries.

Breach of contract-Applicability of the U.C.C....express and implied warranties...breach of ...electronic signatures.

Tort liability-claims for defective computers and software...computer-related damage to property or personal injury...tortious error...negligence.

Chapter One is an examination of the business

climate of cyberspace. Chapter Two is a historical study of the Internet technology and computer revolution. Chapter Three is a study of intellectual property in cyberspace. The intellectual property chapter discusses potential lawsuits over metatags, keywords, linking and framing. The chapter makes no pretensions of being comprehensive or even representative. The purpose of the chapter is to illustrate intellectual property liability. The law of privacy is covered in Chapter Four. There is a rather superficial analysis of common law tort claims. The topics of workplace privacy and e-mail monitoring are discussed in more detail. This chapter discusses constitutional concerns as well as the ECPA and the Children's Online Privacy Protection Act. There is a very brief section on the Gramm-Leach-Bliley Act and the Health Insurance Portability and Accountability Act (HIPAA). As with the intellectual property law, the coverage is not comprehensive. The strongest section is on John Doe subpoenas and tips to unveil the anonymous tortfeasor. The litigator will find these brief summaries to be a useful introduction. There are few practice pointers and practice-oriented forms in this or the other chapters.

Traditional principles of jurisdiction are applied to cyberspace in Chapter Five. Chapter Six is a study of computer information contracts and online contracting issues. The coverage of UCITA, UETA, and E-Sign are comprehensive. The material on computer error litigation addresses issues of mutual and unilateral mistake. Torts in cyberspace are the subject of Chapter Seven. Chapter Seven is a very strong chapter. The section on fraud litigation covers the mitigation of damages as well as waiver in addition to the statute of limitations. The requirement of knowledge of falsity of misrepresentation is used to illustrate computer law cases. This is one of the few reference works to explore negligence claims in computer litigation. The causes of action for products liability and negligence claims in technology litigation are presented. Chapter Eight covers the issue of the liability of computer consultants, professionals and service providers. Chapter Nine is a superb discussion of products liability and negligence liability of manufacturers and sellers. Chapter Nine provides a good primer on the liability of corporate directors and officers. The remaining chapters cover Class Action and Consumer Claims (Chapter Eleven) Electronic Discovery (Chapter Twelve), Alternative Dispute Resolution (Chapter Thirteen) and Insurance Coverage (Chapter Fourteen). This handbook has an index with references to sections.

Pike & Fischer Internet Law & Regulation. Pike & Fischer, Inc., 2002

The *Internet Law & Regulation* is a multi-volume set with an online and a print edition. The set provides context for the Internet in its closely edited collection of topical overviews by leading academics, lawyers and policymakers. The edited collection consists of a "who's who" of top Internet policymakers. (For example, Ray Nimmer is the

reporter for the Computer Information Transactions Act. Holly Towle is a key advisor to the ABA on online contracting issues. Walter Effross is a leading ABA Science and Technology Section writer etc.)

The *Internet Law & Regulation* service is an attractive product for law schools with courses in cyberspace law, e-commerce and information technology. Topics include: Criminal Liability (Volume 1); Internet Commerce (Volume 2); Intellectual Property (Volumes 3 & 4); Privacy (Volume 5); Taxation (Volume 6). There are several volumes of cases. Each volume has cumulative tables of cases, citation tables, reverse citation tables, and a general index. There are excellent digests and digest supplements. Suffolk University Law School is a subscriber to the Pike & Fischer Service. The set is supplemented by frequent updates and e-mail indices of new cases and statutes. To check out sample updates, see Pike & Fischer's website: <http://internetlaw.pf.com/>. All law schools should consider subscribing to this superb service.

ADVANCED INTERNET LAW: INTERNET SECURITY, CYBERCRIME AND DISPUTE RESOLUTION IN CYBERSPACE

Michael L. Rustad

Law of Internet Disputes. David W. Quinto. Aspen Law & Business, 2001. ISBN: 0735525927. \$165.00 11.

This is a book about dispute resolution in cyberspace examining rules, regulations, ADR, and technologies. There is the Anticybersquatting Consumer Protection Act, ICANN's Uniform Domain Name Dispute Resolution Policy, The Digital Millennium Copyright Act, The Children's Online Privacy Protection Act and other statutes. This book is well organized by type of dispute: i.e. domain name, framing etc. Chapters include:

1. An overview of the internet and World Wide Web
2. Domain names
3. Litigating domain name disputes
4. Invoking ICANN's uniform domain name dispute resolution policy
5. Protecting domain names abroad
6. Statutes affecting copyrights on the internet
7. Litigating internet copyright disputes
8. Combating defamation, trade libel, product disparagement and other improper postings
9. Disposing of Spam
10. Challenging improper metatags, banner advertisements, and hyperlinks
11. Protecting privacy on the internet
12. Determining personal jurisdiction in the Internet age

12. Overview of the internet and World Wide Web
13. Domain names
14. Litigating domain name disputes
15. Invoking ICANN's uniform domain name dispute resolution policy
16. Protecting domain names abroad
17. Statutes affecting copyrights on the internet
18. Litigating internet copyright disputes
19. Combating defamation, trade libel, product disparagement and other improper postings
20. Disposing of Spam
21. Challenging improper metatags, banner advertisements, and hyperlinks

Protecting Privacy on the Internet

This book includes practice pointers, forms and sample agreements such as linking agreements. It is updated annually. This is a useful reference work for professors teaching courses in Internet Law or Dispute Resolution in Cyberspace.

***Law of Internet Security and Privacy* by Kevin J. Connolly. New York: Aspen Law & Business, 2002. 394 p. 0 73552 211 1**

Ninety one percent of responding companies surveyed reported employee abuse of Internet access privileges, while twenty six percent reported theft of proprietary information. For those companies that could put a dollar figure on their losses, the amount totaled over \$120 million. Losses of proprietary information accounted for losses of \$151,230,100. Ninety-four percent detected computer viruses, a nine percent increase from 2000. Over the next few years, these statistics are bound to increase the more reliant companies become on their technology infrastructure. Despite the increasing number of computer intrusions and service attacks, no one is suggesting that companies seal off their networks and lock their laptops. As Tom Lambert stated: "The greater the risk, the greater the precaution. The greater the risk of Cybercrime, the greater the duty of precaution.

Class actions may result in private networks being shut down if security holes recklessly endanger proprietary data or vulnerabilities allow attackers to launch third party attacks from inadequately protected websites. The burden of precaution is great given the radius of the risk. It is critically important to understand the method of computer attack. Common methods of intrusion include computer viruses, denial of service, distributed denial of service, Trojan horses, trapdoors or other known vulnerabilities. Web servers constitute a serious risk to network security because inadequately configured networks give the entire

world a window onto your computer system. "The general goal of network security is to keep strangers out. Yet the point of a Web site is to provide the world with controlled access to your network. Drawing the line can be difficult. A poorly configured Web server can punch a hole in the most carefully designed firewall system. A poorly configured firewall can make a Web site impossible to use." Netspionage is broadly defined as "using networks, computers and associated capabilities to steal corporations' secrets."

The ECHELON network includes the United States, "in cooperation with its closest allies, the United Kingdom, Australia and Canada" is supposed to track all telephone conversations, electronic mail messages and faxes. Network enabled espionage in the "black zone" is accomplished by a wide variety of tools including Trojan horse software, BackOrifice2000, digital dead drops, computer elicitation, steganography. Netspionage may result in a wide variety of legal risks including:

- [1] Disclosure or theft of company trade secrets liability to contractual parties as a result of exposure of data that is subject to a non-disclosure commitment.
- [2] Financial losses from deleted, corrupted, or copied data, possible insurance claims for loss of data, property damage, business interruption, or employee fraud or dishonesty
- [3] Shareholder suits against directors and officers for share price drops due to network disruptions.
- [4] Liability to "downstream" victims of a network attack perpetrated through your company's network. Customer or employee lawsuits for violation of their privacy rights or exposure of financial information.

Corporate networks may be at risk from: [1] Investors and potential investors, [2] Competitors interested in intercepting data on customers, vendors, and potential employees; [3] Governments intercepting data; [4] Terrorists, ideologues and political opponents; [5] Opportunists using corporate networks to distribute Spam e-mail, and [6] Insiders including current and former employees, consultants seeking to damage the company.

Kevin Connolly sets the stage for his book on Internet security by examining the history of information technologies. The material on what is the Internet is a little too basic for experts. Chapter Two and Three divide security concerns into server-side and client-side concerns. Chapter Four is a close study of network security. Standard methodology, activity, and types of exposure classify computer viruses. The role of cryptography in redressing security is discussed. This chapter develops an argument for a corporate network security department. The Chief Information Officer is a relatively new corporate role and much needed.

Chapter Five examines server-side privacy

concerns. Every e-business collects information about its customer. Every business needs to know its customer base to succeed. The European Directive on Data Protection and the scatter-shot approach to privacy in the United States is next compared. Article 25 of the Directive requires data transmitted from a European country to have an adequate level of protection.

The Safe Harbor negotiated by the Commerce Department is a system of self-certification (p. 154) Once a self-certification has been made, the data flow may not be suspended unless one of the two predicates of Article 3 are satisfied. Notice, Choice, Onward Transfer, Security, Data Integrity, Access and an enforcement mechanism are required. Connolly notes that a company can avoid complying with the Directive by not collecting personal information or prohibiting access by citizens of the European Union.

Next, Connolly examines the FTC Privacy Guidelines. The FTC guidelines include: [1] Notice/Awareness; [2] Choice/Consent; [3] Access/Participation; [4] Integrity/Security; and [5] Enforcement/Redress.

Special concerns for a company's privacy policy must be implemented to comply with the Children's Online Privacy Protection Act (COPPA). Checklists are provided for server-side privacy concerns. In addition, the topic of claims by employees of invasion of privacy is discussed. E-Mail in the workplace requires specific employer policies and training to avoid liability. The EC Data Protection Directive is appended to Chapter Five, as is the EC Decision with Respect to the Safe Harbor. Finally, there is an appendix describing Internet Standard for Cookies as well as a sample e-mail policy. The final chapter examines client-side privacy issues. Cyber stalking, identity theft, Spam e-mail, reverse computer trespass and data mining are covered. There are sections on e-mail, cable modem traffic and children and the Internet. This is a good guide to Internet privacy and security. Corporate counsel representing e-businesses will find this book of value. Law students interested in topics such as Internet security, torts in cyberspace, and privacy will find this book to be of value.

***Tangled Web: Tales of Digital Crime from the Shadows of Cyberspace.* Richard Power, Indianapolis, Indiana: Que, 2000. 431 p. \$25.00**

Tangled Web is a fascinating study of crime in cyberspace by Richard Power who became famous in the field of Internet security through his work with the Computer Security Institute (CSI). Power covers all of the reasons why the Internet has become a bad neighborhood: viruses, identity theft, hackers, cyberstalking and countless other cybercrimes. This is the best recent book on Cybercrime and endorsed by critical praise from a who's

who of Internet security and Cybercrime experts. We meet fascinating cybercriminals such Vladimir Levin who bilked millions from Citibank. Citibank: Vladimir Levin, a Russian cybercriminal, stole \$10 million dollars from Citibank. Power describes how a gang of cybercriminals called the Phone masters hijacked the U.S. phone companies until the FBI caught them.

Cybercrime has become even more commonplace over the past two years since the publication of Powers book. The National Infrastructure Protection Center (NPIC) of the FBI warned companies about the increased incidence of distributed denial of service attacks that would be launched by cyber terrorists. Beginning on September 11, there were cyber attacks launched by patriot hackers and counter attacks by anti-U.S. hackers. Many of the September 11-related cyber attacks took the form of web site defacements.

A company's web site may not only be defaced but also paralyzed by a denial of service attack. In *The Night of the Living Dead*, zombies sucked brain matter in a frenzied hunger. In the computer world, Trojans can be used to turn your PC into their own computing matter - effectively turning it into a zombie machine. Internet security remains a top concern for companies. A survey of Australian companies found "more than a quarter of executives felt e-business was not secure with those saying it was "reasonably secure and reliable" dropping to 45 per cent, down from 64 per cent in 2001. A survey of U.S. companies "concluded that the average number of cyber-attacks against businesses increased 79 percent from last July to December. Companies faced an average of 20 attacks per week in July, but by December it increased to 35 a week."

The NPIC has documented that Pakistani hackers have been active in hacking into U.S. web sites. A single hacker defaced web sites number in the thousands by compromising an ISP domain name server and redirecting those sites to a page entitled: "Fluffi Bunni Goes Jihad." This one anti-U.S. hacking incident is the largest single defacement act in the history of the Internet. Power's fascinating book cover all of the bases for cybercrime: [1] Crime, War, and Terror in the Information Age; [2] Hackers, Crackers and Virus Writers; [3] Spies and Saboteurs; [4] Muggers and Molesters in Cyberspace, [4] The Defense of Cyberspace; and [5] Appendices of U.S. laws, international treaties, and other resource.

Chapter One examines types of cybercrime and cybercriminals. Power should know about how to classify Cybercrime given his role in developing CSI surveys. Powers does not mince words when sharing knowledge about cybercrime. He acknowledges that the true extent of Cybercrime is unknown and perhaps unknowable. Rik Farrow wrote in the Foreword that the typical computer security chosen by most companies is comparable to placing a sign on a fishing shack saying: "Protected by Smith and Wesson." He found many companies to be abjectly

negligent in protecting their e-commerce business.

Stateful packet filtering or SPF is compared to a business hiring a guard waving people through as fast as possible.

Chapter One introduces the reader to the shadow side of cyberspace. Cybercrime occupies a broad spectrum: [1] Unauthorized access by insiders; [2] System penetration by outsiders; [3] Theft of proprietary information; [4] Financial fraud using computers; [5] Sabotage of data or networks; [6] Disruption of Network Traffic; [7] Creation and Distribution of Computer Viruses; [8] Software Piracy; [9] Identity Theft; and [10] Hardware Theft.

Power is less surefooted when it comes to the law of cybercrime. The treatment of cybercrime law is superficial and written for the layman, not the lawyer. The key cybercrime statute is the Computer Fraud and Abuse Act not the Computer Fraud and Misuse Act. (p.4) I found the discussion of state computer crime to be wanting. There is too little in-depth treatment of the 1996 Economic Espionage Act to satisfy an interdisciplinary audience. It is telling that Power's research assistants were three students at the York Prep High School in New York. This is not a Cybercrime law treatise, but it is a useful sourcebook for understanding cybercrime.

Power makes no claim of being an expert on the law of cybercrime. Power's expertise is in the trenches where he is clearly at home and understands the causes, consequences, and prevention of cybercrime. Cybercrime prosecutors and investigators as well as Internet security corporate experts will find this to be an invaluable guide.

I also recommend that academic law librarians acquire this book because it is a treasure trove of information on the cybercrime from one of the nation's top experts.

Chapter Two explores the motives of cybercriminals. Power cites the work of Donn Parker (*Fighting Computer Crime: A New Framework for Protecting Information*, 1998). Parker demystifies the idea that hackers are intellectuals or form a legitimate subculture. Parker describes most cybercriminals as individuals with intense personal problems. Parker found youthful hackers to be liars, hyperactive, and to have a history of drug and alcohol abuse. Parker's typology: Adversarial Matrix is a useful typology of categories of offenders classified by level of expertise, international connections, motivation, personal characteristics, as well as potential weaknesses. Prosecutors and investigators of cybercrime will be interested in learning more about the mind of the cybercriminal.

Power is the nation's leading expert on the extent and scope of the cybercrime problem. His CSI/FBI Computer Crime and Security Survey is the bible of cybercrime.

Chapter Three presents the results of CSI/FBI surveys, Computer Emergency Response Team's (CERT)

statistics on incidents, vulnerabilities, alerts, etc. The CSI/FBI Survey confirms the wide radius of the Cybercrime risk. The 2002 CSI/FBI survey is available at : <http://www.gocsi.com/pdfs/fbi/FBI2002.pdf> for the price of registering. Employee abuse of Internet access privileges and viruses are the single largest risks. Increasingly, organizations are likely to report intrusions to law enforcement. Organizations underreport cybercrimes because of the fear that the adverse publicity will be used against them. Chapter Four examines the cost of computer crime and security breaches. The costs of system penetration include downtime, staff time, consultants as well as legal time payable at hourly rates.

Chapter Five explores some of the most publicized Cybercrime prosecutions including the Kevin Mitnick, Morris Worm, The Rome Labs Case and the Datastream Cowboy, and the strange case of El Griton who broke into Harvard's computer system. Chapter Six describes Joy Riders: Mischief that Leads to Mayhem. Many of the incidents involved teenagers who broke into military computer systems. Chapter Seven was a study of Grand Theft Data: Crackers and Cyber bank robbers. In late 1999, 485,000 credit card records were stolen from VISA USA's e-commerce sites. Internet-based credit card is big business. Vladimir Levin's Citibank Cyber-Heist is described, as are other grand thefts of data and money. Chapter Eight is a study of hacktivism and cybervandals. The saga of Melissa and the \$10 billion love letter that decimated company and personal computers is described in Chapter Nine.

Part III examines the growing problem of corporate spies and saboteurs. Chapter Ten examines trade secret theft in cyberspace and will be a chapter of great interest to academics. Netspionage or computer-based espionage is one of the greatest threats to companies. Trusted employees and former employees as well as domestic and foreign competitors are the highest rated threat groups. This chapter has practical advice on how to comply with the Economic Espionage Act. The wrath of the disgruntled employee remains a significant risk (Chapter Eleven). It is very difficult to quantify the hidden costs of Cybercrime. Chapter Twelve is a study of info war and Cybercrime. The events surrounding the World Trade Center and Pentagon disasters have heightened security in government agencies. Internet security is a necessity rather than optional feature of a government agency as shown by a federal court's shutting down of the Department of Interior's web site because it lacked standard security measures. A Special Master concluded that the government site had "no firewalls, no staff currently trained/capable of building and maintaining firewall devices, no hardware/software solution for monitoring network activity including but not limited to hacking, virus and worm notification . . . [and] a serious lack of wide area networking and security personnel in general." There were reports that the Al Qaeda exchanged intelligence using unsuspecting websites and chatrooms to relay their deadly plans that

resulted in the destruction of the World Trade Center twin towers and terrible destruction at the Pentagon. Info warriors and cyber terrorists concern the U.S. National Infrastructure Protection Center (NIPC) with the disruption of key infrastructure.

Part IV on muggers and molester in cyberspace is particularly troubling. Identity thieves use the identity of innocent Internet users to obtain credit. Child pornography on the Internet is the principal focus of law enforcers because it is like shooting fish on the barrel. Child molesters are easily caught in sting operations.

Part V goes inside Fortune 500 corporations and examines the defense of cyberspace. There are chapters on global law enforcement, the U.S. federal government, countermeasures and an epilogue. There are useful appendices of resources and publications. The Draft Convention on Cybercrime is reprinted, as are the principal U.S. laws. There is an excellent, reader-friendly glossary. My only criticism of this book is that there were too many vignettes at the expense of a more sustained analysis of the causes of computer crime. The book is engaging and will be of interest to Internet lawyers, security consultants, corporate counsel and academics interested in Cybercrime.

Internet and Technology Law Desk Reference, 2002 Ed. by Michael D. Scott. New York: Aspen Law & Business. 737 p. ISBN 0-7355-2210-3. \$135.00

The high technology law will find *the Internet and Technology Law Desk Reference* to be one of the most reference works available on the market. I use the *Desk Reference* frequently and turn to it when wanting to learn more about Internet law, high-tech terms, legal doctrines, acronyms, and jargon. I am teaching Internet Law in Sweden and the *Desk Reference* and my textbook are the only books going in my backpack.. One of the greatest features of this "place book" for Internet law is that the cites are accurate. The terms as defined in court decisions, statutes, regulations, or industry usage are explained.

The book covers over 2,400 legal and technical terms. This book will be of great value to lawyers, law professors and students interested in careers in high technology law. This handbook provides the technical definitions and legal meanings of issues in a wide array of field including:

- Copyright and Patents
- Contracts and Torts
- Security and Trade Secrets
- Free Speech Issues
- Internet Fraud and Crime
- Internet and E-commerce
- Software and Hardware

- Telecommunications
- Multimedia and Video Games
- Computer Manufacturing
- and more.

This is an A plus rated internet law reference work and a must acquisition.

BOOKS RECEIVED

A listing here does not preclude subsequent reviews. Please check with publishers as to current prices and bulks sales.

AALL Directory and Handbook, 2002-2003 ed. 520 p.

Administrative Justice in the United States, 2d ed. Peter L. Strauss. Carolina Academic Press, 2002. 408 p. \$30.00 paper

AIDS: Cases and Materials, 3d ed. William E. Adams, Jr., Mary Anne Bobinski, Michael L. Closen, Robert M. Jarvis and Arthur S. Leonard. Carolina Academic Press, 2002. 319 p. 0 89089 662 3. \$60.00

Animal Law: Cases and Materials, 2d ed. Sonia S. Waisman, Bruce A. Wagman, and Pamela D. Frasch. Carolina Academic Press, 2002. 784 p. 0 89089 059 5. \$80.00

Art and Museum Law: Cases and Materials. Robert C. Lind, Robert M. Jarvis and Marilyn E. Phelan. Carolina Academic Press, 202.718 p. 0 89089 116 8. \$80.00

Beyond Repair? America's Death Penalty. Stephen P. Garvey, ed. Duke University Press, 2002. 244 p. 0 8223 3043 1. \$18.95 paper

Child Maltreatment Law: Foundations in Science, Practice and Policy. Roger J. R. Levesque. Carolina Academic Press, 2002. 695 p. 0 89089 067 6. \$80.00

Comparative Corporate Law: United States, European Union, China and Japan: Cases and Materials. Larry Cata Backer. Carolina Academic Press, 2002. 1388 p. 0 89089 526 0. \$90.00

Comparative Criminal Procedure: A Casebook Approach. Stephen C. Thaman. Carolina Academic Press, 2002. 272 p. 0 89089 974 6. \$27.50

Copyright Law: Protection of Original Expression. Sheldon Halpern. Carolina Academic Press, 2002. 605 p. 0 89089 231 8. \$75.00

Criminal Competency on Trial: the Case of Colin Ferguson. Mark C. Bardwell and Bruce A. Arrigo. Carolina Academic Press, 2002. 391 p. 0 89089 070 6. \$40.00

Domestic Violence Offenders: Current Interventions, Research, and Implications for Policies and Standards. Robert A. Geffner and alan Rosenbaum, eds. Haworth, 2002.307 p. 0 7890 1930 2

Environmental Justice: Law, Policy, and Regulation. Clifford Rechtschaffen and Eileen Gauna. Carolina Academic Press, 2002. 467 p. 0 89089 412 4. \$45.00

The Five Types of Legal Argument. Wilson Huhn.

Carolina Academic Press, 2002. 201 p. 0 89089 107 9. \$17.50 paper

Florida Legal Research: Sources, Process, and Analysis, 2d ed. Carolina Academic Press, 2002. 246 p. 0 89089 069 2. \$22.50

The Hearsay Rule. G. Michael Fenner. Carolina Academic Press, 2002. 550 p. 0 89089 089 7

Japanese Employment and Labor Law. Kazuo Sugeno. Tr. by Leo Kanowitz. Carolina Academic Press, 2002. 793 p. 0 89089 611 9. \$90.00

Journal of Access Services: Innovations for Electronic and Digital Library and Information Services. Vol. 1, no. 1. Haworth, 2002. Subscription: \$120.00 libraries

The Journal of Archival Organization. Haworth Press. Vol. 1, no. 1, 2002. Subscription: \$185.00 libraries

Journal of HIV/AIDS & Social Services. Vol. 1, no. 1, 2002. Haworth Press. Subscription: \$200.00 libraries

The Journal of Human Resources in Hospitality in Tourism. Haworth Press. Subscription: \$200.00 libraries

The Journal of Industrial Hemp: Production, Processing and Products. Vol. 7, no. 1, 2002. Haworth Press.

The Journal of Pain & Palliative Care Pharmacotherapy. Haworth Press, Vol. 16, no. 1 2002. Subscription: \$350.00 libraries

The Juridical Unconscious: Trials and Traumas in the Twentieth Century. Shoshana Felman. Harvard University Press, 2002. 253 p. 0 674 00931 2. \$45.00 paper

Kids Who Commit Adult Crimes: Serious Criminality by Juvenile Offenders. R. Barri Flowers. Haworth, 2002. 244 p. 0 7890 1129 8. \$49.95

Law and Justice in A Multistae World: Essays in Honor of Arthur T. von Mehren. James A.R. Nafziger and Symeon Symeonides, ed. Transnational Publishers, 2002. 875 p. 1 57105 118 X. \$185.00

The Law and Process of the U.N. Human rights Committee. Kirsten A. Young. Transnational Publishers, 2002. 381 p. 1 57105 062 0. \$125.00

Law in Ancient Egypt. russ VerSteeg. Carolina Academic Press, 2002. 241 p. 0 89089 978 9. \$27.50

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Law of Internet Speech, 2d ed. Madeleine Schachter. Carolina Academic Press, 2002. 754 p. 0 89089 054 4. \$80.00

The Law Review. S. Scott Gaille. Berkeley: Creative Arts Book Co., 2002. 166 p. 0 88739 377 2. \$14.95

Left Legalism/Left Critique. Wendy Brown and Janet Halley. Duke University Press, 2002. 455 p. 0 8223 2968 9. \$22.95 paper

The Little Black Book: A Do-It-Yourself Guide for Law Student Competitions. Barbara K. Bucholtz, Martin A. Frey and Melissa L. Tatum. Carolina Academic Press, 2002. 132 p. 0 89089 512 0. \$15.00 paper

Money, Politics, and Campaign Finance Reform Law in the States. David Schultz, ed. Carolina Academic Press, 2002. 409 p. 0 89089 072 7. \$39.95 paper

Native American Natural Resources Law: Cases and Materials. Judith V. Royster and Michael C. Blumm. Carolina Academic Press, 2002. 588 p. 0 89089 423 X. \$80.00

Our Chief Magistrate and His Powers. William Howard Taft. Carolina Academic Press, 1924, 2002.177 p. [foreword, instruction and notes by H. Jefferson Powell]. \$45.00

Perspectives on the U.C.C. Douglas E. Litowitz. Carolina Academic Press, 2001. 190 p. 0 89089 630 5. \$25.00

Police Liability: Lawsuits Against the Police. Dennis M. Payne. Carolina Academic Press, 2002. 224 p. 0 89089 144 3. \$30.00 paper

Post-Conflict Justice. M. Cherif Bassiouni, ed. Transnational Publishers, 2002. 800 p. 1 57105 153 8. \$145.00

The Private Life of a New South Lawyer: Stephens Croom's 1875-1876 Journal. Occasional Publications of the Bounds Law Library - Number Three. University of Alabama School of Law, 2002. 91 p.

Professional Judgment on Appeal: Bringing and Opposing Appeals. Steven Wisotsky. Carolina Academic Press, 2002. 370 p. 0 89089 986 X. \$75.00

Public Services Quarterly, Vol. 1, no. 1. Haworth, 2002. Subscription: \$75.00 libraries

Regulation of Health Care Professionals: A Casebook Approach. David C. Pate; edied by Robert F. Corrigan, Jr. Carolina Academic Press, 2002. 0 89089 087 0

Religious Liberty in a Pluralistic Society, 2d ed. Michael S. Ariens and Robert A. Destro. Carolina Academic Press, 2002. 1061 p. 0 89089 660 7. \$85.00

The Right to Home School: A Guide to the Law on Parents' Rights in Education, 3d ed. Christopher J. Klicka. Carolina Academic Press, 2002. 206 p. 0 89089 623 2. \$19.95 paper

Shame, Guilt, and Alcoholism: Treatment Issues in Clinical Practice, 2d ed. Ronald T. Potter-Efron. Haworth, 2002. 238 p. 0 7890 1516 1. \$49.95 paper

Suspect Identities: A History of Fingerprinting and Criminal Identification. Simon A. Cole. Harvard University Press, 2002. 369 p. 0 674 01002 7. \$17.95 paper

Thinking Like a Lawyer: An Educator's Guide to Legal Analysis and Research. Sarah E. Redfield. Carolina Academic Press, 2002. 0 89089 923 1. \$23.50p Paper

Trademark Law: Student Study Guide 2002. Carolina Academic Press, 1999, 2002. 264 p. 0 89089 619 4. \$19.95 paper

The Vanished Man. Jeffery Deaver. Simon & Schuster, 2002. 413 p.0 7432 2200 8. \$25.95 [fiction]

Wade Keyes' Introductory Lecture to the Montgomery Law School: Legal Education in Mid-Nineteenth Century Alabama. Occasional Publications of the Bounds Law Library - Number Two. University of Alabama School of Law, 2001. 45 p.

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NOTA BANDER

.... Jonathan Franzen's article "Mr. Difficult," New Yorker, Sept. 30, 02, p. 100 is a critique of William Gaddis's literary output. His comments on "A Frolic of His Own" (p. 110), which I found confusing but enjoyable, is worth a place in the literary collection of a law library. "The best parts of 'Frolic' are the legal opinions and the characterizations," writes Franzen. I agree.

.... I enjoyed Ed Siskel's The Business of Reflection, a celebration of the career of Justice John Paul Stevens." See University of Chicago Magazine, August 2002, p. 29. While on university alumni publications, see Michael C. Dorf, "Two Centuries of "Columbian" Constitutionalism," Columbia, Fall 2002, p. 24

.... It always does my heart good to hear a good word about a librarian. Sam Allis writes about Peter Drummey, Stephen T. Riley Librarian of the Massachusetts Historical Society, Boston Globe, Oct. 27, 2002, p. A2. If poets are the unsung legislators of the world, librarians are their regulators.

.... Bush v. Gore and the French Revolution: A Tentative List of Some Early Lessons. Sanford Levinson, 65 Law & Contemporary Problems 7 (2002). I list it here just in case you missed it.

.... In this column I have made mention of the role of reviewers. Charles McGrath's column in the NYTimes Book Review, Oct. 27, 2002, p. 31 notes that Ian McEwan's "Atonement" "contains one of the classic rejection letters .. By turns, it encourages, criticizes, condescends, praises with faint damning and demonstrates the editor's worldliness and superior knowledge." Good advice for a reviewer.

.... And on book reviewers. The TLS Oct. 11, 2002, p. 16 quotes Jason Cowley of the New Statesman as writing: "Most book reviewers are compromised by personal prejudice, fellow feeling and career considerations. There is always a book and a writer deemed worth of ... 'a trashing,' There is always a writer to be humbled." On Oct. 18, 2002, p. 19, JC replied and reneged on his remark and claimed he was only being amusing. Also on that date and that page a Roger Scruton vented his anger at the TLS, The New York Review of Books, and the London Review of Books (to which the LRB took exception on Oct. 25, 2002, p. 17). Such fun!

.... This is a sentence I wish I had written: "Thus, all Victorian schoolmasters were Gradgrinds, their pupils growing up into Bounderbys, Merdles or Dombey's, surrounded by a bourgeoisie made up of Podsnaps and Veneerings, governed by a Circumlocution Office administering laws swathed in Chancery fog, with a host of Bill Sikeses, Daniel Quilps and Jonas Chuzzlewits up to no good somewhere in the background" Jonathan Keates reviewing Michel Faber's The Crimson Petal and the White, TLS, Sept. 27, 2002, p. 22. I usually see people in terms of Dickens' characters.

.... "25 Must-See Legal Movies" by Karl Weiss, The National Jurist, November 2002, p. 12 is a good check list for your video library. How could the author miss "The Fortune Cookie" I'll never know.

.... Tevi Troy has written "Intellectuals and the American Presidency" (Rowman and Littlefield, 2002). It was reviewed by Rober Porter, TLS, Oct. 25, 2002, p. 7 and the reviewer quotes the author as follows: "Do seek out advice from intellectuals, but do not rely on that advice."

.... Laurence Lustgarten, "The Parable of the Terrorist," TLS Oct. 25, 2002, p. 15 is an interesting take on terrorism. Worth reading.

.... Michael B. Reddy's "Copyright Year in Review 2001-2002," Legal Information Alert, Sept. 2002, p. 1 is essential reading for all librarians. It particularly alerted me to CTEA (Copyright Term Extension Act of 1998) which is now before the U.S. Supreme Court. See Jeffrey Rosen's "Mouse Trap," The New Republic, Oct. 28, 2002, p. 12 which spells out the danger of extending copyrights to corporations (my interpretation as the original human beings that created the ideas that corporations want to protect are long dead).

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Undercover: Police Surveillance in Comparative

Perspective. Cyrille Fijnaut and Gary T. Marx, eds. Kluwer, 1995. 337 p. Reviewed by Jacqueline E. Ross, 69 University of Chicago Law Review 1501 (2002)

Undercover Policing and Accountability from an International Perspective. Monica den Boer, ed. European Inst. of Public Administration, 1997. 218 p. Reviewed by Jacqueline E. Ross, 69 University of Chicago Law Review 1501 (2002)

Understanding the Americans with Disabilities Act: An Overview for Lawyers. William D. Goren. ABA, General Practice, Solo and Small Firm Section, 2000. 179 p. \$64.95. Reviewed by Shaun Esposito, 94 Law Library JI 108 (2002)

Undisciplining Literature: Literature, Law & Culture. Kostas Myriades and Linda Myriades, eds. Reviewed by Marinos Diamantides, 12 Cardozo Stud. L. & Lit. 293 (2000)

Unfit to Practice. Perri O'Shaughnessy. Delacorte. 422 p. 0 385 33484 2. \$24.95. PW June 10, 2002, p. 40 [fiction - attorney up for disbarment]. See interview with authors, PW Aug. 19, 2002, p. 62

Unfree Speech: The Folly of Campaign Finance Reform. B.A. Smith. Princeton University Press. 286 p. \$26.95. Reviewed by L.A. Mandelker, NYLJ, April 17, 2001, p. 2. Reviewed by Michael Pinto-Duschinsky, TLS, Sept. 28, 2001, p. 6

United States Census Bureau: Census 2000 Census of Population & Housing (2001). Reviewed by Douglas A. Kysar, 87 Cornell Law Review 853 (2002)

Up In Smoke, From Legislation to Litigation in Tobacco Politics. CQ Press, 2002. 260 p. \$21.95. Reviewed by Travis McDade, 94 Law Library JI 649 (2002)

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The Victim's Fortune: Inside the Epic Battle over the Debts of the Holocaust. John Authers and Richard Wolffe. HarperCollins, 2002. 480 p. 0 06 621264 2. \$29.95. PW May 6, 2002, p. 45 Reviewed by Alan Dershowitz, Financial Times, June 24, 02, p. 15. Reviewed by Marilyn Henry, Forward, August 16, 2002, p. 13.

Violence, Nudity, Adult Content: A Novel. Vince Passaro. Simon & Schuster, 2002. 256 p. 0 684 85726 X. \$24.00. Reviewed by Janet Maslin, NYTimes, Feb. 18, 2002, p. B14. Reviewed by James Marcus, NYTimes Book Review, March 10, 2002, p. 18

The Virtues of Vengeance. Peter A. French. Lawrence: University of Kansas Press, 2001. 264 p. \$29.95. Reviewed by Joan Ullman, NYLJ, Oct. 5, 2001, p. 2 ["literary, philosophical and legal roots of vengeance"]

The Votes that Counted: How the Court Decided the 2000 Presidential Election. Howard Gillman. Univ. of Chicago Press, 2001. \$27.50. PW Aug 13, 2001, p. 187. Reviewed by Zachary W. Carter, NYLJ Feb. 5, 2002, p. 2. See also BRLB Nov.-Dec. 2001, p. 23

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Wage Hour & Leave Report. BNA, 2002. ISSN 1537 6389. \$695.00 looseleaf, biweekly. Reviewed by Randall J. Thompson, Legal Information Alert, July/Aug.

2002, p. 15

The Warren Court: Justices, Rulings, and Legacy. Melfin Urofsky. ABC-CLIO, 2001. 356 p. \$65.00. Reviewed by Lynn K. Hartke, 94 Law Library JI 118 (2002)

What Brown v. Board of Education Should Have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decision. Jack M. Balkin, ed. NYU Press, 2001. 257 p. \$29.95. Reviewed in 115 Harvard Law Review 2034 (2002). Reviewed by Wendy Parker, 52 JI of Legal Education 303 (2002).

What Kind of Nation: Thomas Jefferson, John Marshall, and the Epic Struggle to Create a United States. James F. Simon. Simon & Schuster, 2002. 352 p. 0 684 84870 8. \$26.00. Reviewed by Joseph J. Ellis, NYTimes Book Review, March 10, 02, p. 10. Reviewed by David Propson, NYLJ April 19, 2002, p. 2

What Your Lawyer doesn't Want You to Know. Douglas R. Eikermann. Self-Counsel Press, 2002. 224 p. 1 55180 406 9. \$16.95. PW August 12, 2002

When Elections Go Bad: The Law of Democracy and the Presidential Election of 2001. Issacharoff, Pamela S. Karlan and Richard H. Pildes. NY: Foundation Press, 2001. 172 p. \$9.95 paper. Reviewed by Lonny S. Hoffman, 95 Northwestern Law Review 1533 (2001). Reviewed by Michael C. Dorf, 99 Michigan Law Review 1279 (2001). Reviewed by Lonny Sheinkopf, 95 Northwestern University Law Rev. 1533. On the election, see also Lawrence Tribe, 115 Harvard Law Rev. 170 (2002); Michael J. Klarman, 89 California Law Rev. 1721 (2001).

When Law Goes Pop: The Vanishing Line Between Law and Popular Culture. Richard K. Sherwin. University of Chicago Press, 2002. 325 p. \$27.00. Reviewed by Jeffrey Rosen, August 5, 12, 2002, p. 25. See also BRLB, Nov.-Dec. 2000, p. 24

When She Was Bad: Violent Women and the Myth of Innocence. Patricia Pearson. Reviewed by Miles A. Jacoby, 1 J.L. & Fam. Stud. 85 (2000)

When the State Kills: Capital Punishment and the American Condition. Austin Sarat. Princeton University Press, 2001. 314 p. 0 691 00726 8. \$29.95. See debate between Barry Latzer and Austin Sarat in 11 Law and Politics Book Review 296 (2001). Reviewed by Paul S. Berman, 102 Columbia Law Review 1129 (2002). Reviewed by Wayne A. Logan, 100 Michigan Law Rev. 1336 (2002). See also BRLB Nov.-Dec. 2001 p. 23

Who Owns Academic Work? Battling for Control of Intellectual Property. Corynne McSherry. Harvard University Press, 2001. 275 p. 0 674 00629 1. Reviewed by John Sutherland, TLS Feb. 22, 2002, p. 11

Why Lawsuits Are Good for America: Disciplined Democracy, Big Business, and the Common Law. Carl Bogus. NYU Press, 2001. 272 p. \$34.95. Reviewed by Garrett Epps, American Prospect, July 30, 01, p. 39. Reviewed by Philip K. Howard, NYLJ, Nov. 16, 2001, p. 2

Why Our Drug Laws Have Failed and What We Can Do About It: A Judicial Indictment of the War on Drugs. James P. Gray. Temple University Press, 2002. 272

p. \$19.95. Reviewed by Emily Parsons, *The American Prospect*, Jan. 28, 2002, p. 43

Why Terrorism Works: Understanding the Threat, Responding to the Challenge. Alan M. Dershowitz. Yale Univ. Press, 2002. 256 p. 0 300 09766 2. \$24.95, PW July 8, 2002, p. 39. Reviewed by Richard A. Posner, *New Republic*, Sept. 2, 2002, p. 28. Reviewed by Barry Gewen, Sept. 15, 2002, p. 12. Reviewed by David Abel, *Boston Globe*, Nov. 6, 2002, p. C8. Reviewed by Danny Goldberg, *Forward*, Oct. 25, 2002, p. B2. See the Laurence Tribe letter and reply by Posner in the *New Republic*, Oct. 14, 2002, p. 4
Editor's note: I agree with Professor Tribe as to the "gratuitous swipes" at Dershowitz in Judge Posner's review and because Gilbert and Sullivan are no longer with us, I offer my parody of their famous 'List' song to put finale on this opera bouffe:

As someday a public intellectual may be found
I've got a little list - I've got a little list
Of those busybodies who have to make a sound
And who never would be missed - who never would be missed

There's the pestilential nuisances who count their citations
And never ever miss adding speaking situations
All the scholars who proudly boast their law reviews
And love to see their names splattered in the news

They'd none of 'em be missed - they'd none of 'em be missed

There's the professor clan, and others of the race
And the obiter dictaist - I've got him on the list!
And the book reviewer who doesn't stick to the case
And that Nisi Prius nuisance who thinks he's quite the lure
Who writes with impunity from his sinecure.
And the Irwin Corey types who say they know it all
Have lost their audience since Adam took his fall

They'd none of 'em be missed - they'd none of 'em be missed!

All pontificators, byliners and those with public view,
The cyber guys, they're the first on every list,
They think they founded a church, and they're making a pew

Oh, they know just who is and isn't a scholar
And they are known to count their every word
If you don't believe it, hear them holler
"Don't you know, I'm cited more than Admiral Bird."

There's the authority on everything that's sexual
Despite rumors of being somewhat ineffectual
And while sure he has just everything in hand
He's limited to playing symbols in the band
Oh, God! They'd none of 'em be missed - they'd none of them be missed

They think they're lovers without ever being kissed.

They'd none of 'em be missed - they'd none of 'em be missed

The apolgetic writers of the compromising kind,
Such as - What-d'ye-call-him - Thing'em Bob, and likewise - Nevermind

And 'St - 'st - and What's-his-her-name, and also - You-know-who

(The task of filling up the blanks I'd rather leave to YOU!)
But it really doesn't matter whom you put upon the list,
For they'd none of 'em be missed -they'd none of 'em be missed!

The Winning Argument. Ronald Waicukauski, Paul Mark Sandler and JoAnne Epps. ABA Section of Litigation, 20001. 182 p. 1 57073 938 2. \$85.00. Reviewed by Steven C. Perkins, *Legal Information Alert*, March 2002, p. 11

Women and Human Development: The Capabilities Approach. Martha C. Nussbaum. Reviewed by John Lewis, 8 U. Chi. L. Sch. Roundtable 215 (2001)

Women of the Jordan: Islam, Labor, and the Law. Amira El-Azhary sonbol. Syracuse Univ. Press, 2002. 0 8156 2985 0. \$24.95 paper. PW August 12, 2002

The Workplace Law Advisor: From Harrassment and Discrimination Policies to Hiring and Firing Guidelines: What Every Manager and Employee Needs to Know. Anne Covey. Cambridge: Perseus Publishing, 2000. 257 p. \$17.00 paper. Reviewed by Lynn K. Hartke, 93 *Law Library JI* 616 (2001)

The World Court in Action: Judging Among the Nations. Howard N. Meyer. Rowman & littlefield, 2002. 311 p. \$75.00. Reviewed by Raymond J. Dowd, *NYLJ*, April 5, 2002, p. 2

World Internet Law Report. Joel Kolko, ed. BNA, 2002. ISSN 1468-4438. Newsletter. \$925 per year. Reviewed by Alyson Danowski, *Legal Information Alert*, June 2002, p. 15

A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights. Mary Ann Glendon. Random House, 2002. 333 p. \$25.95. Reviewed by Cass R. Sunstein, *New Republic*, Feb. 25, 02, p. 37. Reviewed by R. David Propson, *NYLJ* January 30, 2002, p. 2

World Online Business Law. Andrew Simpson, comp. & ed. Oceana Publications, 2002. 0 379 01287 1. \$375.00 2 looseleaf volumes

The Wrong Man: The Final Verdict on the Dr. Sam Sheppard Murder Case. James Neff. NY: Random House, 2002. 414 p. \$25.95. Reviewed by Julie Salamon, *NYTimes Book Review*, Nov. 11, 2001 p. 18

Wrongful Death. Blaine Kerr. Scribner, 2002. 384 p. 0 7432 1117 0. \$25.00. PW April 29, 02 p. 4 [fiction - war crimes, malpractice, trial]

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You Can't Eat GNP: Economics as if Ecology Mattered. Eric A. Davidson. Reviewed by Robin Kundis Craig, 23 *W. New Eng. L. Rev.* 173 (2001)

REAR VIEW REVIEW: *Double Fold: Libraries and the Assault on Paper* by Nicholson Baker. New York: Random House, 2001. 0-375-50443-3

Reviewed by Brian Flaherty, Reference Librarian, Suffolk University Law Library, and Co-Editor, Bimonthly Review of Law Books.

The first several chapters of this book are a relentless catalog of what has been lost: sold off or destroyed in the name of preservation. Mr. Baker begins with a detailed discussion the 1999 sell-off and destruction (pulping) of the British Library's foreign newspaper. In the late 90s, print runs of Joseph Pulitzer's *New York World*, the *Chicago Tribune*, the *New York Herald Tribune* (the "best paper in U.S. History") and other major papers were quietly eliminated from the British Library in favor of the microfilm. It was all part of something called the "overseas disposal project," an operation only slightly less covert than the Manhattan Project. "Not a problem," you say. "Certainly some of the larger research libraries in the United States, certainly the Library of Congress itself has retained print copies of these papers." Not so. The Library of Congress, the New York Public Library and Columbia University all have discarded their print runs of the *World*. "At Columbia University (whose school of journalism Pulitzer founded), at the New York Public Library...you can flip through memoirs [and] biographies...of Joseph Pulitzer...But the *World* itself, the half-million-page masterpiece in the service of which Pulitzer stormed and swore and finally went blind, was slapdashedly microfilmed in monochrome and thrown out by the New York Public Library, probably in the early fifties." (p.13-14)

"But..." you protest, "These newspapers were all printed on acid paper. They were all turning to dust, right?" Not so, says Mr. Baker. Most of the "acid paper turning to dust" hysteria is the result of studies and reports written based on artificial aging experiments – i.e. baking books in dry ovens for a time, and trying to predict their longevity from the result. These reports of paper's imminent death are greatly exaggerated. Mr. Baker quotes a number of librarians and archivists who say as much, notably Hy Gordon, general manager of the Historic Newspaper Archives (on newspaper): "Oh yeah, yeah, it doesn't fall apart...the ends might crack, but that's all. The newspaper's still fine."(p.20) In addition, he offers endless anecdotal evidence of paper's longevity, all sounding a familiar refrain: I bought a copy of [title]; there were blemishes on the edges, but the body of the paper itself was in fine shape, and just to pull at your heartstrings and get you really incensed at the people who pulp these things, here's an interesting tidbit from [insert title & page number, and amusing anecdote].

But what of the microfilm? You protest. Initially, microfilming, due largely to the policies and inventions of Verner Clapp (once the number two man at the Library of Congress, eventually the director of the Council on Library Resources), invariably involved the destruction of the original. It was more efficient, more economical that way. The collections were microfilmed in order to save space; the destruction of the original had already been worked into the equation. Early microfilming, however, was, well, flawed. In a chapter entitled "It Can Be Brutal," Mr. Baker discusses at length the process of microfilming, and the quality of the end product. First, the actual quality of the film is often quite bad. Microfilming is a brain-deadening adventure, and even the most attentive are doomed to a drop in quality after, say, the millionth page. There is a wealth of information missing, cut off by an unforgiving margin; pages are inadvertently omitted. The film itself has proven to be less durable than anticipated. Early cellulose acetate film degraded, releasing acetic acid, fusing some of the film together. Diazo fiche faded with prolonged exposure to light. The more modern silver emulsion films were (are) highly susceptible to humidity and water damage. Mr. Baker cites several studies, and surveys by the Library of Congress and the National Library of Canada, which conclude that 30 to as much as 50 percent of microfilm is damaged, "rejected" by the evaluators. In short, The Library has pulped a perfectly serviceable collection of daily newspapers dating back before 1900, in favor of poorly produced microfilm which fades, degrades, and turns to acid.

Double Fold is, as I have written above, a wonderfully entertaining read, even while it's devastatingly disturbing. It is an epic tragedy that the originals of wonders such as the *New York World* and the *Chicago Tribune* were ever discarded. This tragedy is told by a true master of language, and a fetishist of history. There is a chapter entitled "Virgin Mummies," devoted to the critically short supply in the 1850s of rags used for paper production (Before a move was made to wood pulp). A solution, for a time, was to import rags that were used to embalm Egyptian Mummies. There is also, throughout the book, an almost joyful connection drawn between all of the folks working diligently in the library "preservation" industry (i.e. microfilming & pulping), and the military and CIA. The book is highly recommended for the beauty of its language, as well as for the importance of the thesis.

But what of his wholesale distrust of microfilm? I write for a journal whose audience is primarily librarians. Have you had experiences with newsprint from the early 20th century? How has the paper fared? And have you had to use microfilmed copies of early newspapers? Is every second roll "rejectable"? Is Mr. Baker being just a bit alarmist here? I invite you to examine your own "anecdotal evidence."

Mr. Baker does not have a high opinion of most librarians, or of the profession generally. Reading more carefully, however, it is clear that his opinion wasn't particularly charitable to begin with. He writes "Why couldn't he (Verner Clapp) have left library administrators alone, rather than forever distracting them *from their primary task as paper-keepers* (emphasis mine)." (p.94). The recent tectonic shift in "information architecture" (for lack of a better phrase) has re-emphasized librarians' roles as information *providers*, not *keepers*. For *keepers* of information, *keepers* of cultural artifacts such as newspapers, Mr. Baker would do well to pester the Smithsonian Institution, an archive curiously exempt from his meticulously worded wrath.