

BUILD IT AND THEY WILL PUBLISH FINDING AIDS: THE MATURING OF HIGHER EDUCATION LAW

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INTRODUCTION

How does one measure the arrival of an academic field of study? Who can certify a developed area of law practice? How do we recognize that a specialization is fully formed? In the area of academic law, it is surely the appearance of instructional materials, ripened into casebooks. There is an astonishing rise of casebooks and other instructional materials in developing fields, some of which did not even exist as fields of study when I was in law school in the late 1970's, or in my early teaching years (at least as measured by the manifest evidence that they were fields, or the appearance of casebooks). Some examples are: terrorism and national security law,¹ animal rights law,² alternative dispute resolution and negotiation/mediation law,³ food and drug law,⁴ the many subjects of health law,⁵ and intellectual property law.⁶ Each of these fields, as well as

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1. See, e.g., VICTORIA SUTTON, *LAW AND BIOTERRORISM* (2003).
2. See, e.g., DALE D. GOBLE & ERIC T. FREYFOGLE, *WILDLIFE LAW: CASES AND MATERIALS* (2002).
3. See, e.g., R. HANSON LAWTON & RUSSELL L. WEAVER, *CONTEXTUAL NEGOTIATION: FACILITATED PROCEDURES AS ADVANCED NEGOTIATION* (2006).
4. See, e.g., PETER J. COHEN, *DRUGS, ADDICTION, AND THE LAW: POLICY, POLITICS, AND PUBLIC HEALTH* (2004).
5. See, e.g., WILLIAM E. ADAMS, JR., MARY ANNE BOBINSKI, MICHAEL L. CLOSEN, ROBERT M. JARVIS & ARTHUR S. LEONARD, *AIDS: CASES AND MATERIALS* (3d ed. 2002).

many others I could single out, have casebooks (and the respective law school courses),⁷ organized sections of the American Bar Association or other professional organizations, including NACUA,⁸ specialized journals such as the one you are reading,⁹ and other formal evidence of being developing, legitimate fields of inquiry. Scholars of knowledge dissemination and organizational networks—themselves the avatars of developing fields of study—note that all new fields go through these same stages of infancy and maturity,¹⁰ and I have considered them healthy signs that the legal academy is evolving and maturing.

Not all of these are salutary developments. Observers may believe them to be a sign of the excesses of the liberal state or, alternatively, evidence of a vast right-wing conspiracy, but the academic marketplace will only allow such developments if there is a place for them. In sum, people write casebooks (or instructional books, across disciplines) to establish a field, to subdivide a field, to put their own personal and pedagogical stamp upon a field, or for a variegated mixture of these motivations. Note that I do not include economic gain among the motivations, although that can result once in a while; indeed, truth be told, most casebook efforts violate minimum wage laws in the end. Carving out a specialized field of legal study can lead to lucrative consulting, litigation, or pro bono opportunities, but I believe that a profit motive is the least likely reason for undertaking such initiatives and the least likely result.

By this logic, finding tools, treatises, concordances, encyclopedias, and manuals are indisputably markers of a fully ripe and developed field of practice. By any of these markers, higher education law is, like many of its practitioners, in its middle age, meaning wiser and more nuanced than it was in its early years. As a result of my long labors in these fields, I am on virtually every listserv or mailing list there is, and I get many unsolicited

6. See, e.g., KEITH AOKI, *SEED WARS: CONTROVERSIES AND CASES ON PLANT GENETIC RESOURCES AND INTELLECTUAL PROPERTY* (2008).

7. See MICHAEL A. OLIVAS, *THE LAW AND HIGHER EDUCATION: CASES AND MATERIALS ON COLLEGES IN COURT* (3D ED. 2006); JUDITH AREEN, *HIGHER EDUCATION AND THE LAW: CASES AND MATERIALS* (2009).

8. In my field of higher education law, for example, the D.C.-based National Association of College and University Attorneys (NACUA) provides many organizational tools and resources. For more information see their official website at <http://www.nacua.org> (last visited February 7, 2011). Happy 50th birthday, NACUA.

9. The *Journal of College and University Law*, for example, is jointly published by the University of Notre Dame Law School and NACUA. It is a hybrid, refereed and student-edited law review, on whose editorial board I serve. For more information see their official website at <http://www.nd.edu/~jcul> (last visited February 7, 2011).

10. See generally JOHN C. SMART, KENNETH A. FELDMAN & CORINNA A. ETHINGTON, *ACADEMIC DISCIPLINES: HOLLAND'S THEORY AND THE STUDY OF COLLEGE STUDENTS AND FACULTY* (2000) (study of academic disciplines and knowledge production theory). For a discussion of faculty research and discovery particularly see *id.* at ch. 1 ("Academic Disciplines and Academic Lives").

notices about published materials, although there is no one centralized, integrated repository or purveyor of these materials. As a service to the field, I have gathered several of the most promising in this review essay, and will endeavor to explain their place in the firmament of higher education finding tools and reference materials. Remarkably, each has something to recommend, and several are likely to be of great use to practitioners—a group in which I include faculty in all fields who write or teach in the area of higher education law writ large, campus administrators with these functions under their purview, policymakers at the state and federal level who influence postsecondary education policy or law, organizational actors in non-governmental organizations and associations that serve the field in some fashion, and the extended constellation of professionals with this polity in their sights.

I. *ENCYCLOPEDIA OF LAW AND HIGHER EDUCATION*,
EDITED BY CHARLES J. RUSSO (SAGE, 2010)¹¹

Charles Russo, who holds both a doctorate and a law degree, is one of the more prolific law and education scholars. And with his many years of editorial service and leadership in educational organizations, he has the reach to assemble the first Encyclopedia of Law and Higher Education, which struck me at first glance as an unnecessary tool, an opinion I reversed when I read it more carefully. While it will likely not appear on many personal desks, it should be found in many libraries as a useful and well-conceived reference guide. It covers the waterfront of important topics, and provides short summaries of each topic, with a bibliography of important cases, statutes, and reference materials. Most of the entries are by academics and most of them in Educational Administration departments. Topics include: **Cases:** Affirmative Action and Race-Based Admissions, Disability, Faculty Issues, Finance and Governance, Gender Equity, Religion and Freedom of Speech; **Concepts, Theories, and Legal Principles:** Academic Freedom, Copyright, and Tenure; **Constitutional Rights and Issues:** Affirmative Action, Due Process, and Equal Protection Analysis, among others; **Faculty Rights:** Academic Freedom, Collective Bargaining, and Tenure, among others; **Organizations and Institutions:** American Association of University Professors, Boards of Trustees, and Unions on Campus, among others; and **Primary Sources:** excerpts from “Landmark U.S. Supreme Court Cases,” Religion and Freedom of Speech, Statutes, Students Rights and Welfare, and Technology.

Simply listing these here shows the difficulty in any such taxonomy, which in this instance is both over-inclusive (religion lurks almost everywhere) and under-inclusive (virtually no immigration or international issues, and no USA-PATRIOT Act, despite the rising significance of each). Almost all of the entries are crisply written and annotated, and some are

11. *ENCYCLOPEDIA OF LAW AND HIGHER EDUCATION* (Charles J. Russo, ed., 2010).

quite good given the space limitations inherent in the genre. The treatment of the various statutes is particularly efficacious, although I believe these thumbnails would have been better to have been sprinkled throughout the subject matter areas, rather than being cordoned off. Given the overlap of the subject matter, some topics appear almost too much, but my review of almost two dozen of the entries showed them to be authoritative and useful—surely the most important criteria in writing such a finding tool. For any revision, sure to be in the planning stages, I would urge that the large categories be better conceptualized and tightened. As two of many examples, it would never occur to me to look up “grading practices” in the area of Governance and Finance, or “tenure” as a Concept, Theory, and Legal Principle. In fact, I would tighten the category of Concept, Theory, and Legal Principle and scatter its pieces to their proper sections, since they confuse in their current standalone status.

Notwithstanding these quibbles, the Russo Encyclopedia is a useful reference document, especially if one does not wish to plow through the encyclopedic William Kaplin and Barbara Lee treatise, *The Law of Higher Education*, in which many if not most of these topics appear at more length and in more integrated fashion.¹² But that text is two volumes, with a likely supplement, and it has its own internal issues, as I noted in a laudatory review of the volume.¹³ With over 550 pages, the Russo volume is hardly a *Nutshell*, but it will be an efficacious finding tool for many who just want a reference or note for the complex practice of college law.

II. *THE COLLEGE ADMISSIONS OFFICER'S GUIDE*, EDITED BY BARBARA LAUREN (AMERICAN ASSOCIATION OF COLLEGIATE REGISTRARS AND ADMISSIONS OFFICERS, 2008)¹⁴

While we are on the topic of encyclopedias, I note that there is no single style in the genre, and the definition would extend to this handy and specialized version, which is encyclopedic in its coverage of various admissions and registrar functions—as befits a volume published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). Here, the editor Barbara Lauren, like Charles Russo, holds both a doctorate and a law degree.¹⁵ Her approach, more focused upon the

12. WILLIAM A. KAPLIN & BARBARA A. LEE, *THE LAW OF HIGHER EDUCATION* (4th ed. 2006).

13. Michael A. Olivas, *Higher Education Law Scholarship and the Key to All Mythologies*, 33 J.C. & U.L. 591 (2007) (book review).

14. *THE COLLEGE ADMISSIONS OFFICER'S GUIDE* (Barbara Lauren, ed., 2008) [hereinafter *GUIDE*].

15. Disclaimer: Lauren and I were Georgetown Law classmates and reconnected a dozen years after graduation when she moved to AACRAO. Also, I authored the chapters on prepaid tuition plans, Michael A. Olivas, *State Savings Plans and Prepaid Tuition Plans: A Reappraisal and Review*, in *GUIDE* *supra* note 14 at 41, and on undocumented students, Michael A. Olivas, *The DREAM Act and In-State Tuition for Undocumented Students*, in *GUIDE* *supra* note 14 at 337.

front-end issues of admissions, was to solicit forty-four longer essays, ten to twelve pages in length, in the following areas: Foundational Issues in Admissions, Recruiting in Different Settings, Marketing Tools, Outreach to Various Populations, International Students, Admissions Processing, Measurements and Placements, Graduate and Professional Level Admissions, Data and Institutional Research, and Professional Development. In contrast to the Russo approach, she largely invited practitioners to write the chapters, and it shows. These are very detailed, sometimes too much so, but with real bite and sage advice. My favorites (above the authoritative ones on prepaid tuition plans and undocumented students)¹⁶ are the entries in Section I: Data and Institutional Research, where one learns about “rolling the data” which, it turns out, is not something that you would do at a Dylan or Stones concert, but a not-intuitively-obvious method of queuing applications.¹⁷

But a review of all the entries excites and delights. As just two examples, I had never given much thought to how home-schooled applicants are shoehorned into all the square holes of admission; this is an embarrassing admission (no pun intended), inasmuch as I work with many registrars and admissions officials to accommodate the round pegs of undocumented students, and so should be aware of how other, more mainstream admits do not come in one size.¹⁸ In addition, Chapter 34, on law school admissions, was also excellent. Even though I have spent much of my professional life studying legal education and admitting law students, as well as conducting pre-law programs and encouraging undergraduates to apply to law school, I learned several new tricks by reading the Anne M. Richard entry.¹⁹

Because admissions and registrar officials can become isolated and overwhelmed with the sheer amount of work, a resource such as this is a useful tool, if supplemented with updated materials and additional detail. Sometimes, the devil (and God) are in the details, as where Chapter 34 counsels taking the LSAT once,²⁰ when an increasing number of students take it multiple times. In truth, applicants are widely disregarding this advice. In 2009, the most recent year for which such data are available, only fifty-three percent of all test-takers took the LSAT once; almost ten percent have taken it more than twice, and over 300 (about .2%) have taken it five or more times. As recently as 2006, two-thirds of all the test-takers took the LSAT only once.²¹

16. See *supra* note 15.

17. Reta Pikowsky, *Student Data: The Relationship Between the Admissions and Registrar's Offices*, in GUIDE, *supra* note 14, at 523.

18. Angela J. Evans & David Wallace, *Homeschooled Students: Background and Challenges*, in GUIDE, *supra* note 14, at 277.

19. Anne M. Richards, *Law Schools*, in GUIDE, *supra* note 14, at 453.

20. *Id.* at 464.

21. E-mail communication among Kent Lollis, Philip Handwerk, LSAC, and the

To persons of my generation (born in 1951), the scariest chapter is the one concerning the voodoo admissions practice of online applications—entitled *Interactive Services: Staying in Tune with a Web-Savvy Generation*.²² The chapter is quite detailed and makes a virtue of the institutional necessity of posting all materials online in order to reach applicants these days, who have come to expect such technological niceties and capabilities.

This specialized volume is widely-used by AACRAO members and college counselors, with its only drawback being the continuity and update plans. The Association advertises it as the first update in over a decade, and these types of publications do not age well. AACRAO has a comprehensive publications program, and offers not only *College & University*, a respectable academic journal that publishes scholarship on enrollment management, student characteristics, and the like, but also dozens of other specialized handbooks, studies, and administrative guides to very specialized markets, such as works on the Federal Right to Privacy Act (FERPA), international students, and document security. It is not clear when the Lauren Guide will be revised and updated, and there is no mechanism for supplements or updates. Even as it ages, however, it is a thorough and detailed guide to the many moving parts of admissions and academic records.

III. DEANNE LOONIN, *STUDENT LOAN LAW* (NATIONAL CONSUMER LAW CENTER, 3RD ED. 2006) WITH 2009 SUPPLEMENT AND COMPANION WEBSITE²³

One volume under review that does get the updating requirements right is the exquisite *Student Loan Law* by Deanne Loonin in the National Consumer Law Center (NCLC) publications series. The NCLC is among the premier United States legal organizations devoted to the comprehensive field of consumer law, which is at the zenith of its influence after the enactment of major comprehensive student loan legislation and consumer protection/banking reform. Stumbling into the NCLC publications web must cause heart attacks to would-be predators and banking interests, or would if it turned out consumers could read these complex volumes. Regular bi-monthly publications include ones that pay detailed attention to Bankruptcy and Foreclosures, Debt Collection and Repossessions, Consumer Credit and Usury, and Deceptive Practices and Warranties.

author (November 15–23, 2010) (on file with author).

22. Joe F. Head & Thomas M. Hughes, *Interactive Services: Staying in Tune with a Web-Savvy Generation*, in GUIDE, *supra* note 14, at 165.

23. DEANNE LOONIN, *STUDENT LOAN LAW* (3d ed. 2006) [hereinafter LOONIN]; DEANNE LOONIN, *STUDENT LOAN LAW* (3d ed., Supp. 2009) [hereinafter *Supplement*]; NCLC Companion Website, <http://www.consumerlaw.org/webaccess> (allowing access to site materials after subscribing and following the registration process) (last visited February 7, 2011).

Student Loan Law is part of the Debtor Rights Library, which includes similar volumes (all with websites) in Consumer Bankruptcy Law and Practice, Fair Debt Collection, Foreclosures, Repossessions and Access to Utility Service. While these are not my area of expertise, I would certainly want them on my desk if they were. There are also similar treasure troves in the Credit and Banking Library, Consumer Litigation Library, and the Deceptions and Warranties Library, each with extraordinary finding tools, supplemented every few years with compact discs and companion websites. These are serious players in the industry, and even the subtitle of Loonin's volume shows its seriousness: Collections, Intercepts, Deferrals, Discharges, Repayment Plans, and Trade School Abuses.

Because in 2010, the U.S. Supreme Court decided a student loan/bankruptcy case,²⁴ I dug deeply into the twenty-five-page, heavily footnoted and small-typed Chapter 7 entitled "Discharging Student Loans in Bankruptcy," which is subdivided into: The Bankruptcy Option, When Can a Student Loan Be Discharged, The Dischargeability Determination, Advantages of Chapter 13 Bankruptcy When a Student Loan Cannot Be Discharged, and Student's Rights After Discharge.²⁵ The 2009 Supplement helpfully marks changes from the original 2006 edition by bolding the new subsections in the Table of Contents (itself a marvel of categorization) and drawing attention to them, as well as adding an entirely new section entitled, "Refinanced Student Loans in Bankruptcy."²⁶

While the 2010 Supreme Court case *United Student Aid Funds v. Espinosa* was not decided when the 2009 Supplement was issued, the text includes details about the case and the 9th Circuit decision.²⁷ The website includes it, as well as a useful summary, with preliminary advice about its implementation. It is difficult, although not impossible, to follow the thread from the 2006 volume to the 2009 Supplement to the current website, but it is surely preferable to the alternative: stale materials that do not ripen or age well, given the fast-paced world of student loans. One last remarkable feature: this is not only the best index I have ever used in almost any legal field, but there is a separate Index (dubbed "Quick Reference") that cross-references to the several other volumes in NCLC series, so that one can check the applicability of federal statutes or consumer law references across the series. I picked a half dozen concepts

24. *United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367 (2010).

25. LOONIN, *supra* note 23, at 111–36.

26. *Supplement*, *supra* note 23, at xiv–xv.

27. *Id.* at 106–07. In March 2011, as this review was going to press, I received in the mail a revised 2010 version of the student loan text, DEANNE LOONIN, *STUDENT LOAN LAW* (4th ed. 2010), 694 pp., with Companion Website, \$100.00. Because of the *Journal* deadlines, I chose not to revise my reading of the overall project, but a very quick and cursory reading revealed it to be another superb reference text, one even more detailed than its 2006 predecessor volume under review. Also note how quickly the NCLC issued the revisions to the 2006 volume, after the 2009 update. This volume contained no CD.

to try the thoroughness of the Index and Quick Reference, and found them all until I could not find the provisions of the Uniform Gift To Minors Act, which I expected to find. I also could not find any useful references to undocumented students, in all likelihood because they are ineligible for Title IV financial aid, but Texas and New Mexico allow these students resident tuition status and some financial assistance, so I would have plausibly found some mention. In addition, some other students with legal status (say, refugees or asylees) have some eligibility as Permanently Residing Under Color of Law (PRUCOL), but either they were absent, or I could not find their mention anywhere.

That said, these are truly remarkable resources in a complex and fluid field, and the lag is minimized by the commercial availability of the comprehensive Supplement and website. Others in this large finding aid business could take a lesson from this volume, which is amazingly comprehensive, authoritative, and well-written. If I were in any position even peripheral to the student loan or financial aid business, I would sleep with these volumes under my pillow.

IV. MICHAEL PRAIRIE AND TIMOTHY GARFIELD, *COLLEGE AND SCHOOL LAW: ANALYSIS, PREVENTION, AND FORMS*
(AMERICAN BAR ASSOCIATION, 2010)²⁸

Three of the four finding aids under review originated from private organizations and membership associations, including this American Bar Association volume by Michael Prairie and Timothy Garfield, two experienced school lawyers in San Diego, California. Its nineteen chapters, totaling 632 pages, come with a compact disc containing hundreds of forms, from forms for the hiring of school janitors to varying vendor boilerplate for goods and services purchase agreements. Because the volume itself is a “lite” version of Kaplin and Lee,²⁹ with a conclusion in each chapter labeled “Preventing the Problems,” it is the preparation forms that may be the most useful part of this project. Not a day goes by on NACUANet where someone does not need a form for this or that problem, and remarkably, it is almost always to God’s ears, as someone else will post exactly the document requested, usually within hours. The book does have a list of “Forms For Colleges and Schools” that runs almost a dozen pages, but it does not indicate that the forms are in the compact disc, and the list does not conform to the order of the various contracts, policies, and forms on the compact disc. The volume would certainly be improved by making the index or finding tool more congruent with the compact disc, and generally more user-friendly. Here, as in almost any example I could pick, I would look at the NCLC Loonin project for guidance.

28. MICHAEL PRAIRIE & TIMOTHY GARFIELD, *COLLEGE AND SCHOOL LAW, ANALYSIS, PREVENTION, AND FORMS* (2010).

29. See *supra* note 12 and accompanying text.

While the compact discs are useful (although they tend to skew more to primary and secondary schools than to colleges and universities), the chapters are not uniquely helpful, not only because they summarize major points covered in more detail in Kaplin and Lee (whose superior treatise is referenced in many chapters) but because they are too short to be authoritative. For some reason, the page format uses only two-thirds of each page, which makes it easier to read, but leaves some of the treatments of complex issues disconcertingly thin. As an example, I draw attention to the section on International Students,³⁰ which covers approximately twenty pages (perhaps less in real-time print). While it is adequate as far as it goes, it adds nothing fresh to various NACUA or NAFSA³¹ materials, and omits things that readers, especially administrator and attorney readers need to know. In the list of statutes, for example, nowhere mentioned is important legislation, passed immediately after the 2001 terrorist attacks, dealing with colleges and universities, which partially include: USA-PATRIOT Act; Aviation and Transportation Security Act (affecting flight-training schools); Enhanced Border Security and Visa Entry Reform Act of 2002 (data collection on international students and scholars); the Border Commuter Student Act of 2002 (affecting part time, international commuter students); and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (controlling use and distribution of toxins and other biological agents used in scientific research and instruction). While they mention the Student and Exchange Visitor Information System (SEVIS), the comprehensive computerized system designed to track international students and exchange scholars, they omit mention of the Department of State's Technology Alert List (TAL), an enhanced consular official review process for detecting terrorists who seek to study sensitive technologies; Visas Mantis, a program intended to increase security clearances for foreign students and scholars in science and engineering fields; and many other salient and complex regimes that college and university officials really need to know. It is also not clear from the discussion that non-immigrants in other classifications can and often do attend college, even if they do not fit into the traditional SEVIS categories. Finally, the Chapter does not address the special issues of international children in primary and secondary schools and the attendant F-1 transactions.

I think that some of the problem is that Kaplin and Lee exist, and only if these entries are crisper, more synthetic, and more "preventive" would there be enough oxygen in the room to justify such an ABA volume. Further, lumping together primary and secondary with higher education contributes to the problem, as both are specialized fields, with overlap to be

30. PRAIRIE & GARFIELD, *supra* note 26, at 329–50.

31. Information about NAFSA: Association of International Educators can be found at its official website, <http://www.nafsa.org>.

sure, but still with separate identities, requiring separate finding tools, regulatory regimes, and legal theories. If they asked me, and believe me, the ABA does not consult with me, I would urge attention be paid to one or the other, and then I would fill in the other half of the volume with more annotated and helpful “preventive law” cites. At present, this volume represents the worst of both worlds—not enough authoritative college and university law and too much primary and secondary school law, not all of it authoritative or fulsome. Some, but not all of the compact-disc-provided forms are likely to be useful. Because this is a new enterprise for the book, it is not clear what the plans are to update, revise, and supplement. However, because there is no Kaplin and Lee for primary and secondary school law, I would urge the authors and their publisher to pitch the tent there, and then perhaps branch out to college and university law, but in a different book project.

V. CONCLUSION: BUILD IT AND THEY WILL COME

It is significant that these texts have appeared, and the odd marketplace that combines specialized, professional, and association-based books will always have a ready audience. As another example, the National Association of Financial Aid Administrators publishes the authoritative quarterly *Journal of Student Financial Aid*,³² and produces a series of detailed niche manuals for their membership; a 2010 example is *Professional Judgment in Eligibility Determination and Resource Analysis*,³³ a useful and fundamental higher education text. NAFSA: Association of International Educators is a group whose members navigate the complex statutory and regulatory shoals of recruiting and enrolling international students.³⁴ A very useful online text is NAFSA Adviser's Manual Online; while it is more administrative and manual-like than it is scholarly, it is regularly-updated and widely employed by campus users.³⁵

Many of these publications cross my desk, in part because I am on their radar, and in part because I read widely in the higher education trade press. Years ago, I would attend professional meetings with topics like, “Is Higher Education a Field of Study?” Higher education is most assuredly a field of study with robust evidence to prove it: associations, scholarly

32. JOURNAL OF STUDENT FINANCIAL AID, *available at* http://www.nasfaa.org/research/Journal/Journal_of_Student_Financial_Aid_-_Current_Issue.aspx (last visited March 17, 2011).

33. PROFESSIONAL JUDGMENT IN ELIGIBILITY DETERMINATION AND RESOURCE ANALYSIS, *available at* <http://www.eric.ed.gov/ERICWebPortal/detail?accno=ED364171> (last visited February 7, 2011).

34. *See supra* note 31.

35. NAFSA ADVISER'S MANUAL ONLINE, *available at* http://www.nafsa.org/publication.sec/working_with_international/nafsa_adviser_s_manual (last visited February 7, 2011).

vehicles, literature being added to daily, a robust trade press, a robust scholarly press, and a regular place in the polity. Perhaps more to the point, its subfields (law, finance, history, student psychology, etc.) all have the same emerging phylogenetic and evolutionary evidence. My review of one part of this evidence—the existence of finding tools and manuals—suggests strongly that the field is continuing to evolve and spread. The use of technology applied to these aids has made several of them quite current and powerful. This marketplace will continue to ripen for both producers and users of higher education law scholarship.

Should one of them break through and provide timely and useful publications that are regularly refreshed and updated, I predict that this particular marketplace will respond powerfully and profitably, perhaps with a generous site license.³⁶ People of my generation, which I will situate as those who do not expect to download digital music for free, often prefer to hold their reference materials in hand and thumb through them, even if they are printed out offline. I clearly do, and yet even I also routinely go online for my research tools and ride the slipstream back and forth across the digital divide. All the authors of these works under review, Kaplin and Lee, and others who play in these fields should take heed about the need for updates and supplementing for putting their excellent work into play.

36. *Id.* There is a site-license arrangement that is funded by differential membership/non-membership fees.

