

Looseleafing The Flow: An Anecdotal History of One Technology for Updating

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INTRODUCTION

When law was the word of God, there was no such thing as updating. Or was there? When Moses smashed the tablets at the foot of Mt. Sinai¹, they had to be rewritten, not by the finger of God as before,² but this time taken in dictation by Moses.³ And were these new tablets not an update? The left tablet, containing those commandments concerning the relationship between the individual and God is open to question, but the right tablet, whose commandments govern relationships between human beings⁴—even if they were rewritten by Moses exactly the same as God wrote them, was not the fact that nothing had changed significant?

If a legal publisher were on the scene, it would have distinguished between a replacement and a revision by anticipating what Moses thought was needed and calling it that. If a law librarian were involved, there could have been much internal deliberation, worry even—far too much to justify company time, so there might even have been a sneaking back after work⁵ and a sifting through rubble looking for letter fragments, trying vainly to reconstruct, imagining a future where the difference between “thy” and “the” might determine the outcome of a suit—with perhaps no more resolution than the hope that nobody would ever ask.

As in many similar instances over the intervening millennia, when the error is only discovered after too many mistakes have been made, when the wrong sheets have been discarded and the intended discards saved, when the binders get too full to permit insertion of any more material and the librarian must improvise—history has shown that a part of the miracle of human experience and the limitless promise of America is that often, no one ever does ask.

The oldest notion of updating is gossip, still in use, because accuracy was never the point. Then came the written word along with marginalia and

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1. *Exodus* 32:20, KJV.

2. *Exodus* 31:18, KJV.

3. *Exodus* 34:27, KJV.

4. *Exodus* 20:12, KJV.

5. According to the oral tradition of the Torah, the broken tablets were placed in the tabernacle of holiness to remind us that the sacred lies not in perfection but in the struggle toward moral growth. Interview with Chiam Nacham Lavner, late uncle of mine, in Las Vegas, Nev. (Jan. 24, 1984).

the gloss. This shows the readers what has changed since the original writing. But margins are finite in size, and many people are raised to believe that writing in a book defaces it. The next stage, after printing, is to put the notes, the changes, the elucidation, and amplification at the end of the text. The idea is to supplement. This forces the reader to check the back of the book without a reminder. It can work beautifully provided that the supplemental material consists of more additions than subtractions and that the quantity of changes is reasonable and orderly in its arrival. But when things get hot and heavy, as they tend to in matters of money and the modern state, then neither profit nor the delineation of acceptable human behavior have any regard for consistency of form, occurrence, or language, and order can quickly unravel. In the ensuing chaos, updating can mean reinventing.

The history of modern organized literatures is often a history of its readers being overwhelmed. The few icons, or concepts, or artworks are cherished; the many become lost in the pile. At some point, the very thing you acquired out of love or reverence becomes impossible to find.⁶ Technology creates the illusion of ordering the pile and creates peace, until the piles themselves get lost. And then a grid of piles brings order and so on. Keeping track of the corpus all comes down to the state of a human heart; that is, until an agreement starts to emerge as to what belongs in which pile. Then people start to teach each other how to search and you have what we call a literature.

The principles on which information was classified in the nineteenth century was called science.⁷ The technology used in this classification was called "the office," "stationery," "office supplies," "stationers' supplies;" and it certainly was never thought of as a technology. Nineteenth-century science was the result of a few good men, guided by genius, perseverance, exercise, and prayer uncovering the divine order of the universe in one or another of its mundane manifestations. Divine order was usually hierarchical with big categories dividing and subdividing until all the information belonged somewhere.⁸ Darwin in biology, Linnaeus in botany, G.C.F. Hegel in logic, nature, and mind, Melvil Dewey in the library, and C.C. Langdell in the law school⁹ all discovered elegant systems of classification. In law, the analysis and classification of cases had been going on for almost thirteen hundred years.¹⁰ But now, in addition to finding form, history, and

6. Edgar Bellefontaine, Director of Boston's Social Law Library, explained cataloging as, "Once you buy something, you have to be able to find it!" quoted in David Turkalo, *Interdisciplinary Cyberspace—A potpourri*, 9 BIMONTHLY REVIEW OF LAW BOOKS 12 (March April 1998) (reviewing CATALOGING AND CLASSIFICATION: TRENDS, TRANSFORMATIONS, TEACHING, AND TRAINING [James R. Shearer & Alan R. Thomas, eds., 1997]).

7. G. EDWARD WHITE, *TORT LAW IN AMERICA: AN INTELLECTUAL HISTORY* 23 (1985).

8. See *id.* at 24.

9. For the case as "specimen" and other valuable observations see Howard Schweber, *The "Science" of Legal Science: The Model of the Natural Sciences in Nineteenth-Century Legal Education*, 17 LAW AND HISTORY REV. 458 (1999).

10. The *Corpus juris civilis* was compiled by the Emperor Justinian from 528 to 534. See ALICE D. SCHREYER, *THE HISTORY OF BOOKS: A GUIDE TO SELECTED RESOURCES IN THE LIBRARY OF CONGRESS* 109 (1987).

language, and argument, there was a new and higher purpose for finding cases. And that was to extract principles, and later to establish historic lines of cases to give fuller meaning to the extracted principles, because these principles were God's order. And man was in the anxious state of being overwhelmed by information until he uncovered them. Thus, Langdell transformed research and analysis into revelation.¹¹

Nowadays, we believe that machines have overcome the necessity for any divine order. Our machines can rank and sort by date, alphabet, by thread, by anything we want or will imagine. The problem of how to classify is over, but the solution does not bring us comfort, or the insights that cumulate to wisdom. The machine takes care of updating, but the machine itself must be upgraded frequently. With each upgrade, the machine does more, but in a slightly less familiar way. Trade-offs must be evaluated, prompts memorized, licenses awarded. We learn more, we learn every day. Our machines help us, drive us, save us—we could not keep track of our lives, no less our law, without them, but they are not heaven sent.

The Ten Commandments, on the other hand, sound like they came from above. They never need updating because they are the principles from which the discussion begins. Whereas we, stuck in the perpetual present, are at the end of the discussion, beset by the bounty of riddle and paradox constantly posed in everyday life. The Ten Commandments resonate with confidence and authority. The millions of administrative and judicial decisions of the last few decades do not. We can find the opinion that speaks precisely to the issue at hand, and we can insist that it is a rare nugget of truth that will illuminate. We can marvel at what a great trick it is to be able to find it, but does it help us understand and accept? Does it serve the repair of the social order? Does it heal the conflict that caused the search in the first place?

Welcome to the history of updating.

This work will show that there is a great gulf between the culture of lawmakers and the culture of those who comply. Lawmakers—legislators, administrators, and especially judges—function by producing primary authorities in law. The texts of these authorities are the law itself. Because they were created in the course of deciding actual cases—cases which produced insights to a truth of lasting value, these texts have an authority equal to all the other insights produced down through the ages. The excitement that accompanies such insights tends to blind lawmakers to the chore of compliance. Those whose work in the world is determined by what is permitted and what is forbidden are invisible to those who define that work. Tying cases together remains the obsession of the legal profession, but it is no longer possible, as it was in the eighteenth century, for this tying to occur in the mind of a lawyer. The gulf between then and now has been bridged by a very creative, profit-driven legal literature, which has survived and prevailed by adapting new technology. That

11. The decline in religious identification going on at the time, made this evidence of God's presence even more satisfying. WHITE, *supra* note 7, at 22.

bridge is what this work will examine.

This work begins with a history of the technology that eventually came to serve the practice of law. Next, the historical context in which the technology emerged, is examined. Third, this work discusses the institutions which the technology served and the interactions between its necessities and inventions. Fourth, the work canvasses the rise of the legal profession and of the law in the context of the changes brought by technology, then, the history of the specific organizations that provided technology for the legal profession. And finally, the work attempts to summarize the seamless continuum of growth and change in the profession, the technology, and the literature.

The interfiled looseleaf service, an innovation of the nineteenth-century information explosion is the quintessence of the "book in which editing never stops."¹² The contribution made in this form was to take great quantities of incomprehensible information, order it, regularize it, put it in one place, and then, by substitution of new pages for old, keep its contents up to date without altering look, feel, size, or location. It did on the paper page what the computer now does on the screen. Long before the digital age, looseleaf publishers did not see their contribution as having much to do with format. The product they were selling was the timeliness, accuracy, and wisdom of their work. The change to digital format was easy for them. For the consumer, however, the change from paper to digital was profound. The new medium itself promised all. The content was taken for granted. In the course of the change, the status of legal advice was transformed from a voice of authority to that of a service provider, hence the resultant competition based on packaging rather than substance. And a world where we pity the postman rather than the fool.

When information arrives rapidly, the usual human response is to arrange it chronologically, and later to arrange it by category. Category usually means all the information you will want to see all at the same time. In law, information is usually decisions made by courts, legislatures, and agencies. In business, information is usually a sum of money. In law, information is reported then codified or digested. In business, information is entered in a journal then posted to the appropriate debit and credit ledger accounts. From a spatial conceptual framework, it is the same process.

When notions like speed, accuracy, and ease arrived at the office, the extra scribbling required by double entry came into question. Why not classify by moving the same piece of paper from one place to another? Such thinking may help explain subsequent electronic developments. If we examine terms like page up, page down, jump, link, scroll, launch and visit; or home, platform, and site, we begin to see why physical space became the most successful metaphor for classification. For example, "enter" arrived at the heart of the keyboard as an accounting term. Enter meant to write down or record. Now it means to go into. To erase was to

12. Robert C. Berring & Valerie Wedin, *Looseleaf Services: A Subject Bibliography*, *LEGAL REFERENCE SERVICES Q.* (Winter 1981), at 51, 52.

scrape off, rub out or uproot; but to escape is to gain freedom or liberty by leaving. Index is a finger pointing to the answer, but a search engine is a vehicle that picks up your order and delivers it to you. A period is an end as well as a stop; dot is just a tiny fence separating two places. Meanwhile, the concept of page has not changed in a thousand years. File, folder and document all retain their nineteenth-century meanings, except that they are less precious now. The most serious change has been to the term generate, which means to change energy from one form into another with something lost in the translation. To author is to create something out of darkness and voids—the activity, perhaps, of an inferior, abstract, little god but still a work divine.

THE THREE RING BINDER

Within the ring binder industry, the myth of its own beginning lay in the chance meeting of a sloppy salesman and a compulsive bicycle mechanic in Chicago.¹³ The salesman was called Wilson or Jones. He kept his paperwork tied with string to the handle bars of the bicycle from which he made his calls. The mechanic was called Jones or Wilson. The bicycle broke and was put in for repairs. The mechanic not only fixed it, he also replaced the untidy bundle of papers with a neat pile held in a shiny metal ring binder of his own invention. When the salesman picked up his bicycle, the two formed the Wilson Jones Company and went on to become the largest manufacturer of looseleaf and other recording equipment in the world.

In fact, Jones was in jewelry repair. He invented a sheet holder and started the Chicago Shipping and Receipt Book Company in 1893.¹⁴ Wilson was a "circus man," a promoter of sorts. When he bought in, the company became Wilson Jones and they became the biggest.¹⁵

In 1837, Ezra Ripley of Troy, New York was granted a patent for the "Ready Binder."¹⁶ In 1840, William Mann of Philadelphia was granted a patent for "Mann's Patent Moveable Binder." In 1868, Col. G. W. Emerson was granted a patent for the "Emerson Binder" which was produced by the Barrett Bindery of Chicago for over a century. In 1877, fifteen patents were granted for "Paper files and related devices." Of these, most of which were never produced, the "Common Sense Binder" of Asa L. Shipman was a great success and is still in production. In 1879, a patent for the "Shannon File" was granted to James L. Shannon of Chicago with improvements by Yawman & Erbe of Rochester, New York. And in 1882, the Page and McCleery Order System was patented, and the modern looseleaf industry could begin.

Edward C. Page and J. B. McCleery were young order clerks for a

13. Interview with Christine Krause, Sales, U.S. Ring Binder Corp., New Bedford, Mass. (May 5, 1997).

14. WILSON-JONES CO., WILSON-JONES CATALOG, front paste-down, 1988.

15. RICHARD D. SIMMONS CUSTOM LOOSE LEAF, A DYNAMIC INDUSTRY 132 (1992).

16. See *id.* at 6 & ff.

Chicago Shoe Company. Among their tasks were entering new orders in a book, filling the orders, and then posting the filled orders to the appropriate account. Being modern office workers, they got salesmen to record their orders on uniform multiple sheets, which they kept clamped in sheet holders. When the orders were filled, the sheets were removed to transfer binders and bound between covers held together by screws with hand nuts for permanent storage. This system caught on. In 1884, Rubel Brothers manufactured and marketed the Page-McCleery System. Metals were furnished by Christian H. Stoeling's machine shop. Stoeling's later moved on to become Chicago's leading manufacturer of psychological apparatus.¹⁷ In 1904, William Pitt, running a machine shop in Kansas City, invented a new lighter-weight ring binder. Present day ring metals are all based on it.¹⁸

As the flow of information accelerated, looseleaf filing kept pace, maintaining alphabetical order no matter how many new accounts were added or old ones dropped. And of course, in the advent of a crisis, any number of clerks could be thrown into the fray simultaneously, where with the old bound fixed leaf books of the previous technology, only two people could work at the same time.

Looseleafs kept pace but the early decades were chaotic. Paper sizes and punchings varied greatly as did binder mechanisms. Changes and improvements tended to outrun the learning curve of users. What was new and modern and the latest fashion was also frustrating to those who had just learned the last one. And with certain features, no agreement was ever reached. Even today, with the technology well past its maturity, American binders have three rings, with a tongue at top and bottom, which is pressed to open the rings, while European binders have two rings, which are opened simply by pulling on the rings. To this day, Europeans cannot understand why the unnatural two-hands-pushing-on-the-tongues movement would be preferred to the simple natural pulling motion needed to open two rings. To this day, Americans insist on the tongue and three rings.¹⁹

And just as word processing evoked praise for the pencil, and computer games made pocket billiards seem wholesome, so, at a certain point of increased visibility, looseleafs came under criticism. A ripple of opposition arose. One or two states passed laws prohibiting its use. Agitation for similar laws was strong in other states. In 1913, a leading New York City newspaper editorial warned that looseleafs encouraged the falsification of accounts.²⁰ By 1916, there was so much money in looseleafs that a patent infringement suit over a looseleaf binding mechanism, which had been dragging on from decree and contempt order through appeal, affir-

17. See *Id.* at 37.

18. See *id.*

19. Krause, *supra* note 13.

20. SIMMONS, *supra* note 15 at 130 (quoting George H. Wolcott, Loose Leaf Reminiscence; Wolcott, VP & Director of Sales, Wilson Jones Co. Chicago. Printed in The Stationer, a Wilson Jones Publication. Vol. 26 [Summer 1945]).

mation, cross-appeal, and reversal, finally broke into the legal literature as a Sixth Circuit appellate opinion.²¹

THE MECHANICAL ERA

The development of the three-ring binder did not take place in a vacuum. The very same sophistication in machine tool-and-die making that allowed for ring-metal manufacture was also flooding the world with cheap precision mechanical objects of which, in their day, the most important seemed to be the sewing machine and the repeating rifle.²² Rival significance would eventually emerge, however, for the keyboard and the calculator.

The changes were symbiotic and profound. In 1860, the American population was 36 million, having doubled since 1840. By 1920 it was 106 million. From 1840 to 1920, the native-born population increased six times, and the number of immigrants increased thirteen times, from 3 to 40 million.²³ In the twenty-five years following the Civil War, America's network of railroads tripled in size. In the next twenty-five years, it doubled again.²⁴ With the introduction of uniform rates and postage stamps, the volume of the U.S. Mail more than doubled between 1845 and 1849 from 38 million to 81 million pieces. Between 1845 and 1855, the number of post offices increased from 14,900 to 24,400, the length of America's roads increased from 143,000 to 228,000 miles, and the number of letters handled from 40 million to 132 million. From 1830 to 1860, as the population increased 144%, the volume of mail increased 1300%.²⁵ The penny post card, introduced in 1872, caused an explosion in distance education. Correspondence courses in shorthand were popular. Eight new shorthand systems appeared that year. Isaac Pitman's Penny Plate was one of the most popular. Weekly lessons arrived by post card, to be completed and graded by return mail.²⁶ In 1863 on Wall Street, there were five mail deliveries a day and six collections from the newly instituted letter box.²⁷ Between 1829 and 1837 the number of banks in the United States grew

21. *Proudfit Looseleaf Co. et al v. Kalamazoo Loose Leaf Binder Co.*, Kalamazoo Loose Leaf Binder Co. v. Proudfit Looseleaf Co. et al 230 F. 120 (1916); Also see *Kalamazoo Loose Leaf Binder Co. v. Wilson Jones Loose Leaf Co.*, Same v. Milton C. Johnson Co. 286 F. 715 (1920). These two cases include elaborate descriptions, drawings even, of the technological high points in binder history, including: the England, Rosenthal, Nott, Proudfit, Bushong, Wigginton, and Farron patents as well as descriptions of the binders of Doyle B.M., Best, Distrow, Templeton, Anderson, Kuhlman, Stith, Lounsbury, and Firestone.

22. SHARON HARTMAN STROM, *BEYOND THE TYPEWRITER: GENDER, CLASS, AND THE ORIGINS OF MODERN AMERICAN OFFICE WORK, 1900-1930*, 178 (1992).

23. JÜRGEN KOCKA, *WHITE COLLAR WORKERS IN AMERICA, 1890-1940: A SOCIAL-POLITICAL HISTORY IN INTERNATIONAL PERSPECTIVE* 36 (Maura Kealey trans., 1980).

24. *Id.*

25. GERALD CULLMAN, *THE UNITED STATES POSTAL SERVICE* 73 (1973).

26. ALAN DELGADO, *THE ENORMOUS FILE: A SOCIAL HISTORY OF THE OFFICE* 73 (1979).

27. CARL H. SCHEEL, *NEITHER SNOW, NOR RAIN . . . THE STORY OF THE UNITED STATES MAIL* 42 (Constance Minkin, ed., 1970).

from 329 to 788, and loans increased from \$137 million to \$525 million. By the Civil War, even farming had shifted substantially, from self-sufficiency to crops for cash.²⁸

In 1844, the electric telegraph was perfected, and the proposed visual telegraph, with towers, telescopes, and flags to signal between New York and New Orleans, was abandoned.²⁹ By 1866, the nation was wired.³⁰ Now, baseball could be followed pitch-by-pitch in local taverns across the country, from scoreboards scrawled on store windows and billboards in big cities.³¹ Now, baseball games could be felt, gambled upon, and rise to the status of National Pastime. Also, horse racing, after 500 years as the sport of kings, developed an intimate relationship with the wallet of Everyman. The Gold and Stock Telegraph, the most profitable of all telegraphic services, linked brokers across the nation directly to Wall Street.³² In 1877, the telephone was invented, putting the network of the wired to more direct, more widespread use. In 1872, a wire could carry two messages; by 1878, a quadruplex wire carried four.³³ In 1886, there were 250,000 incandescent lamps in use in the United States. By 1890, there were four million. In 1899, 2,500 automobiles were built; by 1920, over eight million cars were registered.³⁴

In 1817, packet boats began sailing between New York and Liverpool at specific times on specific dates,³⁵ sailing "full or not full."³⁶ The punctuality of departure and arrival began the principle of the regular line service³⁷ with printed schedules. Such service meant that manufacturers and producers of raw materials no longer had to own or even charter ships. Further, the packet line led to cheaper transportation because with

28. THOMAS C. CORCORAN & WILLIAM MILLER, *THE AGE OF ENTERPRISE: A SOCIAL HISTORY OF INDUSTRIAL AMERICA* 43, 58 (rev. ed. 196).

29. GERALD W. BROCK, *THE TELECOMMUNICATIONS INDUSTRY: THE DYNAMICS OF MARKET STRUCTURE* 58 (1981).

30. ROBERT LUTHER THOMPSON, *WIRING A CONTINENT: THE HISTORY OF THE TELEGRAPHIC INDUSTRY IN THE UNITED STATES, 1832-1866* viii (1947).

31. In 1886, Western Union began to purchase game information from baseball clubs. By 1897, the National League as a whole sold telegraph rights. See HAROLD SEYMOUR, *BASEBALL: THE EARLY YEARS* 200 (1989). In 1884 in Tennessee, a baseball game in Chattanooga was transmitted by telegraph to a theater in Nashville, where it was described to an audience, play by play. In 1889, during baseball games in Cleveland, Ohio, all 2,400 telephone operators in town were kept apprized and answered questions, inning by inning. By 1894, baseball games at the Polo Grounds in New York City were routinely transmitted and broadcast to an audience at the Standard Theater, several miles away. See CAROLYN MARVIN, *WHEN OLD TECHNOLOGIES WERE NEW: THINKING ABOUT ELECTRIC COMMUNICATION IN THE LATE NINETEENTH CENTURY* 213-214 (1988).

32. BROCK, *supra* note 29, at 148.

33. See *id.* at 88.

34. PAIGE SMITH, *AMERICA ENTERS THE WORLD* 872 (1985).

35. ROBERT GREENHALGH ALBION, *SQUARE-RIGGERS ON SCHEDULE: THE NEW YORK SAILING PACKETS TO ENGLAND, FRANCE AND THE COTTON PORTS* 20 (1965).

36. *Id.* at 27.

37. *Id.* at 21.

known departure and arrival times, smaller and smaller quantities, literally packages, could be sent in a regular flow, making for an increasingly rapid financial turnover for manufacturers, retailers, and the shipping line owners.³⁸ The heyday of the packet boat was over by 1838, then steam reduced their importance.³⁹ But the benefits of speed, regularity, and turnover did not go unnoticed. Especially in the response of capital to the railroads, which were just then making their technological move.

It took the railroad to spread population, manufacturing, and goods far enough apart to create the demand for the telegraph.⁴⁰ It took the telegraph to keep train, which ran on a single track in both directions, from head-on collision.⁴¹ It took the telegraph and shorthand to create the demand for a typewriter so that transcription could keep pace with dictation.⁴² It took generations of immigrants and homesteaders, settled far from their loved ones and anxious to communicate—as well as cheap printing and perforated stamps, federally employed mail carriers, steel frames and air brakes for railroad cars, better lighting, and the International Postal Treaty of 1874⁴³—to teach us how to read and write. It took the world of wonder into which literacy leads minds to foster the American faith in education as a reliable means of improving life.

As early as the 1820s, textile mills taught their employees to read as part of their vision of a better future.⁴⁴ Between 1870 and 1920, American literacy rose from 80% to 94%. In 1900 school attendance was required, quadrupling the pupil population.⁴⁵ By 1930 it had increased eight times since 1900.⁴⁶ Between 1890 and 1910, the number of high school graduates tripled. By 1920, it nearly doubled again.⁴⁷ Between 1890 and 1924, the number of college students quadrupled.⁴⁸ In the same period, the number of graduate students doubled every decade.⁴⁹ Night school, correspondence courses, and business and education institutes of all sorts flourished after 1900, gradually shifting from private to public with the introduction of compulsory education.⁵⁰ As labor continued to move from rural agricultural to specialized urban positions, more occupational training was needed. As schools continued to move from a religious to a commercial

38. *Id.* at 37, 38.

39. *Id.* at viii.

40. BROCK, *supra* note 29, at 58.

41. See *Id.* at 74.

42. BRUCE BLIVEN, JR., *THE WONDERFUL WRITING MACHINE* 35 (1954).

43. SCHEELE, *supra* note 27, at 48.

44. CORCORAN & MILLER, *supra* note 28, at 20.

45. KOCKA, *supra* note 23, at 45.

46. C. WRIGHT MILLS, *SOCIOLOGY AND PRAGMATISM: THE HIGHER LEARNING IN AMERICA* 47 (1966).

47. KOCKA, *supra* note 23, at 102.

48. MILLS, *supra* note 46, at 51-52.

49. *Id.* at 41, 44, 69.

50. STROM, *supra* note 22, at 72.

foundation, occupational training became education.⁵¹ Education became increasingly professional, utilitarian, and scientific.⁵² Between 1890 and 1928, the number of private colleges and universities grew from 315 to 1076, and their endowments rose from 74 million to one billion dollars.⁵³ Professions which had existed only as jobs before the Civil War, like realtor, accountant, surveyor, engineer, and others were legitimated by schools of science and technology. The number of college students in America grew by 352% between 1890 and 1924.⁵⁴ Adult education began in the 1880's as extension services of universities. The Morrill Act of 1862⁵⁵ helped create colleges for the benefit of agricultural and mechanical arts⁵⁶ where coeducation, household arts, and other vocational ideas were introduced.⁵⁷

The dominant medium of the nineteenth century was printing. Industrialization so transformed printing that previous competitors such as the theater, the lecture, and especially the sermon, all powerful mass media in the eighteenth century, were quickly dwarfed. Paper-making machinery was introduced at the turn of the century. By 1824, paper prices had fallen by one-third; by 1843, prices were half. In 1900, sixty times as much paper was being produced as in 1800.⁵⁸ Metal presses replaced wood early in the century. In 1814 the steam press was introduced. Hand presses could produce 300 printed sheets in a good hour; the steam press produced 1100. By 1828, 4000 sheets an hour were being printed; in 1848, 6000 sheets an hour, and in 1868, 20,000 sheet an hour. In the first 14 years of the nineteenth century, printing costs fell by 25% and they continued to fall throughout the century.⁵⁹ In 1822, letter-founding machines increased the production of printing type from 300 to 700 pieces per day to 1200 to 2000 pieces.⁶⁰ Stereotyping, or casting-set type in plaster for reprinting without costly resetting, was perfected by 1840.⁶¹ In the late 1880's machine typesetting was perfected. The most highly skilled compositors, on good days in their best hours, could set about 2000 letters and

51. MILLS, *supra* note 46, at 50.

52. See *id.* at 41.

53. See *id.* at 45.

54. See *id.* at 52.

55. Morrill Act, 12 Stat. 503 (1862).

56. The United States donated to each state and territory 30,000 acres of public lands for each senator and representative in Congress at that time. The proceeds constituted a fund to endow and support state colleges for the benefit of agriculture and mechanical arts. Some states divided up the fund, some chose and sold the land unwisely, others turned the gift into a "magnificent patrimony." See 1 NELSON'S PERPETUAL LOOSE-LEAF ENCYCLOPEDIA 103-104 (rev. ed. 1932) (1905).

57. MILLS, *supra* note 46, at 47-49.

58. S.H. STEINBERG, FIVE HUNDRED YEARS OF PRINTING HISTORY 137 (John Trevitt ed., ed.1996) (1955).

59. See *id.* at 139.

60. See *id.* at 140.

61. See *id.* at 139.

characters in a hour; machines set at least 6000 per hour.

Penny magazines started in the 1820s. Books made of cheap wood pulp paper with cardboard covers, sold off racks and designed to be discarded after one reading, flooded America along with newspapers in the 1830s and 1840s.⁶² Five times as many books were published in the twenty years after 1830, as were published in the preceding sixty years.⁶³ By the end of the century, both junk mail and subscriptions were facilitated by a treadle-operated addressing machine. It carried a stack of small metal plates, each with a name and address, which were inked and printed mechanically.⁶⁴ A simple, colorful literature emerged.⁶⁵ Immigrants from despotic, authoritarian, lawless, and illiterate European backgrounds were inundated with cheerful wholesome notions of democratic citizenship.⁶⁶

Accompanying these profound material changes, mediated and manipulated as they were,⁶⁷ was the judgement of a commonly held belief in a future of perpetually cheaper, easier, more reliable, and more orderly forms of manufacture, transportation, and information. Better printing, better lighting, more informed investment decisions, more enlightened social grouping, and new notions of organization were eagerly awaited. Such vast psychological and social reconstruction was especially evident in the response of the legal literature. Because, in our social organization, individual action leads to conflict, which leads to resolution by the application of experience which gets written down, studied, amplified, and

62. See *id.* at 167.

63. Carl F. Kaestle, *Literacy in the United States: Readers and Reading since 1880* 54 (1991).

64. Delgado, *supra* note 26, at 86.

65. As the mass media shifted from church pulpits to newspapers, subject matter secularized but was otherwise unchanged. Newspapers were subsidized by political war chests and promoted ideologies exemplified by God's wrath. Then, in the 1830s, as costs declined, the price of a paper fell from six cents to one. Advertising based on circulation replaced political patronage as the source of revenue. With improved vehicles and roads, the rise of department stores, expanded suffrage, free schools, and a Jacksonian surge of interest in democracy, the audience grew. The mediated politics of advertisers replaced the direct politics of ruling elites. Morality surrendered to news. Fact became defined as objective. Reporting strived to be unbiased. Fact-finding replaced instruction and the journalist, after first descending into bad taste and sensationalism, then began a slow climb to the status of a professional identity. The progress of the Civil War was followed by a vast audience. When the war ended, America was a nation of newspaper readers. See J. ANTHONY LUKAS, *BIG TROUBLES* 649-650 (1997).

66. STEINBERG, *supra* note 58, at 170. However, literacy is a complex phenomenon, not easily measured, and for most of American history, not measured at all. Systematic national data on the reading habits of Americans does not begin before the 1930's. The scant evidence seems to be that the information revolution spread books and newspapers from a small elite to a larger elite. Those who could write, signed their name. Those who could read, read a few religious works. See KAESTLE, *supra* note 63, at 180. The revolution was one of economic clout, not population numbers. The revolution was one of controlling the great forces of commerce and industry and the habits of mind they created. The widespread indulgence in popular culture came later. See THORSTEIN VEBLEN, *THE THEORY OF BUSINESS ENTERPRISE* 13 (New American Library Mentor edition, n.d.) (1904) (esp. note 9).

67. Contact between producer and consumer had never been less. *Id.* at 31.

codified, our development of generally acceptable behavior finally comes to rest, distilled in legal texts, or treatises.⁶⁸ These texts were produced for sale to lawyers. As history they reveal needs, hopes, rights, and power, or all the political struggles that begin and end with words.⁶⁹

The period 1815-1830 produced a few classics of legal reasoning,⁷⁰ which valiantly attempted to summarize by principles, the increase in individual decisions.⁷¹ Kent's *Commentaries on American Law*, first offered in 1826, closed the era with its final volume in 1830. It became and remains, by acknowledgment, the work which most successfully achieved comprehensiveness. 1830 to 1860 was a period of frantic activity and achievement. Paramount was Joseph Storey's production of eight classics in nine years, many of which became the sole standard on the subject, or the first American work published, reprinted, or cited in Europe.⁷² It was a time when legal literature began to flower and flourish and also to culminate. The Industrial Revolution brought complication and confusion to the legal profession. Confused lawyers created an unprecedented demand for secondary sources, or perhaps, the outpouring was just the usual response of genius to crisis and confusion.⁷³ 1860 to 1885 was a threshold of maturity for the law. In this period, both the law

68. "By restating and synthesizing decisions and statutes, legal texts seek to impose order on the chaos of individual precedents. They also summarize historical developments, analyze and explain apparent discrepancies and inconsistencies, predict future changes, and provide practical guidance for the conduct of legal business by the legal profession." MORRIS L. COHEN ET AL., *HOW TO FIND THE LAW* 404 (9th ed., 1989).

69. My discussion of the legal literature of the nineteenth century relies on CHARLES WARREN, *A HISTORY OF THE AMERICAN BAR* 540-562 (Howard Fertig ed., 1966) (1911).

70. For example, DAVID HOFFMAN's *COURSE OF LEGAL STUDY* in 1821, CUSHING's first American edition of *POTHIER'S MARITIME CONTRACTS*, FESSENDEN's second edition of the first American book on patent law, *LAW OF PATENTS FOR NEW INVENTIONS*, THOMAS SERGEANT's *CONSTITUTIONAL LAW*, DANIEL CHIPMAN's *ESSAY ON THE LAW OF CONTRACTS FOR PAYMENT OF SPECIFIC ARTICLES*, and WILLIAM RAWLE's *A VIEW OF THE CONSTITUTION OF THE UNITED STATES*, all in 1822, NATHAN DANE's *ABRIDGEMENT OF AMERICAN LAW* in 1823, the first American casebook, *ANGELL ON WATERCOURSES* and ASAHEL STEARN's *SUMMARY OF LAWS AND PRACTICE OF REAL ACTIONS* in 1824 and GULIEN C. VERPLAACK's *ESSAY ON DOCTRINE OF CONTRACTS* in 1825, to name but a few. See *id.* at 540-542.

71. A twenty-five fold increase in the twenty-six years following 1810. See *id.* at 557.

72. See *id.* at 544-545.

73. Examples are, JOSEPH K. ANGELL's and SAMUEL AMES's *LAW OF PRIVATE CORPORATIONS* and JAMES GOULD's famous *PLEADING* in 1832. HENRY WHEATON's *ELEMENTS OF INTERNATIONAL LAW* in 1836, TIMOTHY WALKER's *INTRODUCTION TO AMERICAN LAW* in 1837, FRANCIS HILLIARD's *REAL PROPERTY* in 1838, JOHN BOUVIER's *LAW DICTIONARY* in 1839, GREENLEAF ON EVIDENCE begins in 1842, THEODORE SEDGEWICK, JR.'s *ELEMENTS OF DAMAGES*, the first book on the subject, in 1847, ANGELL ON CARRIERS, the first book to discuss railroads in 1849, THEOPHILUS PARSON's famed *CONTRACTS* in 1853, his *ELEMENT OF MERCANTILE LAW* in 1856 and his *MARITIME LAW* in 1859, EDWIN L. PIERCE's *AMERICAN RAILWAY LAW*, the first book devoted to the subject, in 1856, CAUSTEN BROWNE's *STATUTE OF FRAUDS*, the first new book on the subject in fifty years, in 1857, and three works on a subject of growing contention, JACOB D. WHEELER's *A PRACTICAL TREATISE ON THE LAW OF SLAVERY* in 1837, JOHN C. HURD's *LAW OF FREEDOM AND BONDAGE IN THE UNITED STATES*, and T.R.R. COBBS's *LAW OF NEGRO SLAVERY IN THE UNITED STATES*, both in 1858. Many eminent law journals began in this period. See *id.* at 545, 547.

and its literature became systemic economic activities, which is to say, industries. It was also a time of outrageous fraud, deceit, and other sins of the marketplace, as well as a time of excess profit sufficient to encourage scholarship.⁷⁴ The first treatise on the telegraph and the first on negligence⁷⁵ hint of the new dawn.

Further proof of a shift in era came when Christopher Columbus Langdell's *A Selection of Cases on the Law of Contracts* burst on the scene in 1870,⁷⁶ as the first peripheral spun off of the case method's conquest of legal education. Langdell's new vision for learning the law responded to the effects of the new industrial technology with celebration rather than lamentation. Langdell was appointed dean of the law school at Harvard in 1869.⁷⁷ By 1900, a "remarkable uniformity was apparent in legal curricula across the land."⁷⁸ By 1920, despite the rising complexity and ambiguity of law, its literature, and life; and despite the new sophistication needed for both comprehending the intent of government and advising clients, virtually all law schools were imitating Harvard. Only cases—only judge-made law—only general principles were studied.⁷⁹ A parallel response to Langdell's, though the two are rarely linked, was the appearance one year later of *American Reports*. This was the first selective annotated reporter "containing all decisions of general interest decided in the courts of last resort of the several states with notes and references."⁸⁰ Its opening pages, entitled "Advertisement" expose a radical plan.⁸¹ The shocking revelation that some publisher's practices are evil, specifically that all published decisions are not of value, and that lawyers are being forced to buy what they do not want in order to get

74. Examples, EMORY WASHBURN'S *AMERICAN LAW OF REAL PROPERTY*, 1860-1862, PARSON'S *PROMISSORY NOTES AND BILLS OF EXCHANGE* in 1865 and *PARTNERSHIP* in 1867, also in 1867 GREGORY YALE'S *LEGAL TITLES TO MINING CLAIMS*, and a third edition of REDFIELD ON *RAILWAYS*, JOHN NORTON POMEROY'S *CONSTITUTIONAL LAW* and THOMAS M. COOLEY'S *CONSTITUTIONAL LIMITATIONS*, both 1868. Also in 1868, WILLIAM L. SCOTT'S and MILTON P. JARNAGIN'S *LAW OF TELEGRAPHS*, the first treatise on the subject. And in 1869, THOMAS G. SHERMAN'S and AMASA A. REDFIELD'S *TREATISE ON THE LAW OF NEGLIGENCE*, another first law book on this subject. *Id.*

75. *Id.*

76. *See id.* at 550.

77. MARTHA RICE MARTINI, *MARX, NOT MADISON: THE CRISIS OF AMERICAN LEGAL EDUCATION* 57 (1977).

78. *Id.* at 59.

79. *Id.*

80. 1 *Am. Rep.* t.p. (1871).

81. To purchase and keep complete sets of the several State reports is now beyond the pecuniary ability of the great body of the profession . . . The reports of the court of last resort in each State contain cases of great general importance, but they are buried beneath a mass of practice and local cases of no value outside of the jurisdiction in which they were decided. To obtain the few valuable cases, the lawyer is compelled to buy volumes composed mainly of matter of little or no value to him . . . To remedy this evil, by separating that which is important from that which is local, is the object of *American Reports*. The cases reported will be selected from the last volume of the current reports of each state, immediately after its publication, by the editor, assisted by two able and experienced lawyers." *Id.* at 5-6.

what they need did not seem to shock anyone. The concept of selectivity was a success.⁸² *American Reports* grew to become an important source of profit in legal publishing,⁸³ but in no way did it slow the flow of reported cases or abate the mania for extending the notion of comprehensive in rival publishers in the legal profession.⁸⁴

One major theme running throughout this history is the infusion of technology with the democratic ideal. The articulated dream was a success as the result of invention. Inventors were the new royalty who had earned their wealth, influence, and celebrity by coming up with devices for maintaining the new pace.⁸⁵ With the horrors of slavery and early industrialization in memory, hope continued to prefer machines as the bearer of all brunts. In a land of the equally-created all pursuing happiness, dirty work had to be done, but it was for those who had not yet assimilated into the American way. Old-fashioned exploitation, Social Darwinism, Manifest Destiny, imperialism, chauvinism, and other versions of European brutality and arrogance were wandered into, but only by the misguided. The American, democratic ideal required exploiting your imagination instead of your neighbor—making from nothing a machine, a gadget, or a process; success was both getting rich and deserving it.

SOME HISTORY OF THE CLERICAL DIALECTIC

In ancient Sumer, the priest-kings began to construct temples on a grand scale in about 2500 B.C., or perhaps as early as 9000 B.C.⁸⁶ In order to build such large projects, laborers needed to be fed from a central source. The produce gathered to do this had to be methodically recorded as to origin, quantity, and type. This was done with marks on clay tablets. These marks, as far as accepted scholarship can tell, were the first form of writing. The clay on which the first writings were done was sometimes formed into tokens. Some of these tokens had holes in their center, so they could be strung together. If strung, the number and order of the tokens could be altered until the attachment of a bulla, or piece of clay stamped

82. I.e., the notion of helping lawyers to find their way through the impossible quantity of literature, by selecting that which "may be deemed useful as illustrations of established principle" 1 Am. Rep. 6 (1871).

83. *American Reports* was published by the Bancroft-Whitney Co. who also issued, in 1878, *American Decisions*, a retrospective selection, covering the earliest issue to 1869. In 1888, *American Reports* was followed by *American State Reports*, which in 1912 merged into *American and English Annotated Cases*, which in 1919 merged with *Lawyers Reports Annotated* to become the esteemed *American Law Reports*. See THOMAS A. WOXLAND AND PAUL J. OGDEN, LANDMARKS IN AMERICAN LEGAL PUBLISHING: AN EXHIBIT CATALOG 37-38 (1990).

84. For the response of the legal literature to the technology of cheap print, see Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U.L. Rev. 615, 620-621 (1996).

85. CORCORAN & MILLER, *supra* note 28, at 183.

86. JOHN KEEGAN, *A HISTORY OF WARFARE* 127 (1993).

with a seal.⁸⁷ Thus, the work could be updated, revised, condensed, or expanded under the control of whoever held the seal.

For the Sumerians and the ancient Egyptians, business was barter and transactions were recorded as narratives of events.⁸⁸ When the scale of Roman business led to the invention of money, numerals replaced narratives. But Roman numbers do not lend themselves to calculation, and by the time a better system was agreed upon, the paramount problem of business had become tracking and controlling the movement of credit, rather than cash. It was all satisfactorily resolved in the course of the Renaissance into a system of double-entry bookkeeping, the system that we still use today.

In the Middle Ages, clerks were big shots. They kept the accounts for the estates of kings and lords. By the thirteenth century they were often Oxford graduates. Their ledgers were kept of great pages made of sheep hide. On the smooth side of these hides, the progress of livestock and produce were recorded. The membrane side was reserved for matters of money.⁸⁹

In 1789, the English artist George Rolandson drew a contemporary office in ink and colored it with a wash. Over the shoulder of a seated scribbling clerk, is an identifiable bunch of invoices stuck on a spike hanging from the wall, while beside them papers are suspended in piles from various lengths of string.⁹⁰ So, whether or not continuous, over these millennia, there were clerks recording, maintaining, and verifying records, classified in categories of moveable leaves. What varied was the social importance of the process, which was everything.

Technology applied to this drudge work only seemed to lower its status. The steel pen was invented in 1829.⁹¹ Because of it, and the smoother surface of machine-made papers, greater thicks and thins were possible than with a quill. Writing became more legible, thus easier and faster to read. Steel pens also accelerated writing because unlike the quill, there was no need to stop and sharpen it, and since steel pens held more ink, they did not need to dip as often. The fountain pen, developed from 1832 to the end of the century, only occasionally needed filling and did not dip at all. Blotting paper invented in the middle of the nineteenth century eliminated the need for drying powders and further hastened the writing process. Later, the typewriter formed a letter with the slap of a single finger! Gas lamps and then electric bulbs made reading and writing easier and therefore, faster still. As volume increased with these advances, paperwork considered unnecessary was tied with red tape and sealed, or

87. Leila Aprim, *Scribes, Script and Books: The Book Arts from Antiquity to the Renaissance* 26 (1991).

88. *ENCYCLOPEDIA BRITANNICA* 225 (11th ed., 1909).

89. *Supra* note 87, at 15.

90. Drawing reproduced and credited to the Yale Center for British Art. DELGADO *supra* note 26, at 10.

91. *Supra* note 88, at 229.

sewn up into a bound book and then shoved into a box. The increasing quantity of information was a problem; hiding it was the response. The seal and sewing were security measures. The only concern for old records was that they not be stolen or altered. By the time of the Civil War, when clerks went off to fight, they were replaced by women.⁹² Women, it was discovered, were better at operating the typewriter and other new machines. They were also better employees, considered more docile and less ambitious. Their manners were so refined that cuspidor manufacturing went into a glut. By the turn of the twentieth century, separate lavatories for women were constructed.⁹³

Finally, America paused in her expansion. Her good land was under cultivation, her wilderness occupied, and capital expenditures were no longer producing extraordinary profits. The networks of railroad, telephone, and banking were complete. Standardized, branded products were distributed to national markets. Once manufacturing was tamed, the new large corporations that emerged in the last quarter of the nineteenth century brought marketing under similar control by creating their own national sales organizations, staffed by employees rather than independent commission agents. Railroads and shipping companies led the way. Early in the process came the introduction of cooled cars and automated meat-packing. By the turn of the twentieth century, the banana was being marketed nationally.⁹⁴ Symbolic of the national unity that commerce and technology preferred, and that administrative law was willing to supply, were the standardization of time zones imposed in 1885, and the standardization of a common railroad track gauge, which caused tens of thousands of miles of track to be moved on the weekend it was adopted.⁹⁵ Symbolic of the corresponding close of the frontier⁹⁶ were the wires that bound us, carrying on average a million messages a day.⁹⁷ And symbolic of America's faith in its opportunity model, no matter what the evidence, was the continued growth of electricity and the outpouring of imagination concentrated around that metaphor.⁹⁸

92. Delgado, *supra* note 26, at 44.

93. *Id.* at 38.

94. *Id.* at 260.

95. May 31-June 1, 1866. RICHARD J. STILLMAN II, PREFACE TO PUBLIC ADMINISTRATION: A SEARCH FOR THEMES AND DIRECTIONS 63 (1991).

96. Other symbols were the problems of stables, manure piles, manure in the streets, and the persistence of flies. Throughout the 1890s, offal contractors removed an average of eight thousand dead horses per year from the streets of New York City. JOHN DUFFY, *THE SANTARIANS: A HISTORY OF AMERICAN PUBLIC HEALTH* 176 (1990).

97. EDWARD W. BRYN, *THE PROGRESS OF INVENTIONS IN THE NINETEENTH CENTURY* 30 (1900).

98. In medicine alone, Americans had invented all manners of therapeutic equipment, such as electric belts, electric gloves, rings, bracelets, necklaces, trusses, corsets, shoes, hats, combs, brushes, chairs, couches, blankets, electric smelling bottles, an adhesive plaster, electric spectacles, scissors, a foot warmer, hair singer, syringe, a drinking cup, a hair cutter, a torch, a catheter, a pestary, gas lighters, exercise devices, a doormat, an electric hair pin, and even electric garters! *Id.* at 97-98.

The sophistication of business administration had grown to control not only the productive process through cost accounting,⁹⁹ but also the private lives of those involved in that process.¹⁰⁰ Meanwhile, down on the factory floor, human relations remained primitive.¹⁰¹ Modern industrial labor began with sub-contracting. As late as the 1870's, workers were employed by their foremen in coal mining, brass-founding, and steel mills, and in the home by subcontractors, at piece rates and by commission agents in textiles, metalwork, watchmaking, millinery, and leather working.¹⁰² During the course of the century, however, the labor model was transformed from artisans who owned their own tools and materials to wage workers compensated for their time, not their skills.¹⁰³ This transformation was the last puzzle piece for office technology.

The professions had regrouped, shifting from a craft apprenticeship to a university professional school model for training. Participating in that shift, teachers and accountants grew closer to doctors, lawyers, and the clergy in respectability.¹⁰⁴ Other groups, like law librarians, horseplayers, and other sporting enthusiasts, maintained facility at the leading edge of the new information technologies, but with scant social success.

Cut adrift from roots and home while prospering, a newly landless urban population craved faith in the new order. A new style of self-proclaimed expert began to appear in America. Unacknowledged, impressed by themselves, arrogant of the very nerdiness by which they were scorned, clerks began their rise. Clerks worked in offices, and as machines took over the productive aspects of life, the office took control of the machines (and the machines took control of the office and the clerk). At the time when the looseleaf flourished, office supplies was the reigning technology. Other than what went on in the human mind, the storage and retrieval of information was handled by the office.

It was not long before immigrants, farmers, and other country folk, and even some factory hands, began to notice the office as a place where nice, clean sit-down work was done in clean and fashionable clothes.¹⁰⁵

99. HUGH G. AITKEN, *SCIENTIFIC MANAGEMENT IN ACTION: TAYLORISM AT THE WATERTOWN ARSENAL, 1908-1915* 18 (Princeton U. Pr. Ed., 1985) (1960).

100. "[The machinist] did not know that the company built special buildings for saloons, charging high rental, or that church meetings were compelled to be held near saloons, and that in some cases saloons were in close contact with the schools. He knew that the company had maintained a sociology department, but he did not know what its activities were, nor was he aware that his officials dictated the appointment of our preachers and schoolteachers and exercised the right of discharge if they offended by criticism . . ." The testimony of John Morrison, Aug. 28, 1883. U. S. Congress. Senate. Report of the Committee of the Senate upon the Relations between Labor and Capital (USGPO 1885) 1:755-759. Testimony reproduced in LEON LITWACK, *THE AMERICAN LABOR MOVEMENT* 24 (1962).

101. AITKEN, *supra* note 99, at 37-38.

102. HARRY BRAVERMAN, *LABOR AND MONOPOLY CAPITAL* 62 (1974). *Id.* at 62.

103. CORCORAN & MILLER, *supra* note 28, at 9.

104. KOCKA, *supra* note 23, at 45.

105. STROM, *supra* note 22, at 274.

The office was slightly sissified, but it was better paid than most non-professional work, with shorter hours and better benefits. For successful bosses, business was becoming the meaning and goal of life. Business was both the dream and its fulfillment; the office became palace and temple as well as workplace. Rare wood and marble made their appearance.¹⁰⁷ The fountain pen, after a half century of development, finally emerged as a metaphor of weapon and decoration, worn on the breast pockets of high-ranking big shots, much like a ceremonial sword.

For manufacturers, the office gradually began to produce the order for which they longed. The office gathered and transmitted information, and information became the means of control. When management turned to science for help, the productive process came under observation, analysis, and the application of reason. Scientific management applied to the office itself led to more elaborate accounting. In business, accounting is the language that can tie together widely divergent attitudes and goals. In an era of meteoric growth, accompanied by wild fluctuation, public ignorance, and scandal, cost-accounting was perhaps the greatest invention of all. With cost-accounting, business organizations began to divide into more and larger administrative units, with more accounting, large staffs, and more mechanization.¹⁰⁸ The notion of office had grown from being the important occupation to including the physical place where such occupation was carried on to being the controlling mechanism by which important occupations functioned.

The transformation of labor from craft to manufacturing cog became possible when office technology provided the means for the design and control of every physical movement.¹⁰⁹ This separation of skill and thought from the labor process was accomplished by rethinking the humanity of those involved, and by replicating the production process on paper before it took place in life.¹¹⁰ This replication brought record-keeping to planning, estimating, and layout.¹¹¹ It brought total control to the process of manufacturing.

The typewriter was invented early in the nineteenth century but it was not developed until the 1870s.¹¹² Once perfected, it went into mass production in 1879,¹¹³ and for nearly a century never stopped growth or

106. *Id.* at 205.

107. SMITH, *supra* note 34, at 1034.

108. See STROM, *supra* note 22, at 28 and 189.

109. *Id.* at 109.

110. *Id.* at 125.

111. *Id.* at 126.

112. There was a lack of capital among its inventors. *Id.* at 179. William Burt of Mt. Vernon, Michigan, a surveyor, received the first patent in 1829. Bliven, *supra* note 42, at 25. Christopher Sholes of Milwaukee received the fifty-second patent in 1873. *Id.* at 42. Sholes contribute the understriking type bar, so you could see what you were doing, and do it faster than any pen. *Id.* at 55. Sholes sold out to Remington, a large diversified conglomerate then manufacturing guns, sewing machines, and farm equipment. *Id.* at 56.

113. Remington sold 146 typewriters in 1879. By 1890, it was selling 65,000 per year. DELGADO, *supra* note 26, at 72.

development.¹¹⁴ Carbon paper was a simple idea that had been around for a hundred years; just a sheet of paper coated with lampblack that had been mixed with grease, it was easily home made. But it made fuzzy copies and was messy, and since paper absorbed the grease, it was only good for a few months, whether used or not. The proliferation of the typewriter with its hard slap and the importation of carnauba wax from Brazil in the early years of the century, led to a new harder carbon paper which was easy to handle. A single sheet could be used about fifty times, and it did not spoil.¹¹⁵ It was tidy and could make four or five copies at the same time.¹¹⁶ The increased speed of the typewriter over the pen helped facilitate a new demand for correspondence and testimony. This, the rise of business education, the spread of mail, and economic growth, created a new importance for the use and techniques of shorthand.

The adding machine of William Seward Burroughs was available in 1853. It could add, subtract, and print the results.¹¹⁷ With its introduction, clerks no longer needed a knack for figures. The cash register appeared in 1882.¹¹⁸ It soon combined with the adding machine and grew into the comptometer, which was key driven and did subtraction, addition, multiplication and division. The 1890 U. S. Census was tabulated on key punch machines, which were rapidly taken up by railroads, retailers, and large manufacturers.¹¹⁹ Adding machines and typewriters were soon combined into machines that produced bills, invoices, purchase orders, and even polite responses to common complaints. Switchboards were installed and clerks had to be urged to stop sending memos and start using the phone.¹²⁰ New child labor laws were drying up the pool of available messenger boys just as they were no longer needed.¹²¹

Bound paperwork eventually gave way to faux marble and leather cardboard boxes, with alphabetized tabs along one edge. The vertical file, with hanging folders and raised title-tabs appeared in 1892. Roller bearings on the drawers came shortly after.¹²² Once systematic technological development intersected with the romance of the inventing genius, hundreds of ways of fastening paper to other leaves like itself, in piles of various thicknesses, were unleashed on an unsuspecting world and finally resolved into the choice of paper clip or staple, depending on permanence.¹²³ Blotters became objects of fashion and advertisement.

114. In 1881, the Central Branch of the Y.W.C.A. in New York City began teaching a class of "eight young ladies" to typewrite. BLIVEN, *supra* note 42 at 71. By 1910, there were 2 million typewriters in the United States, covered by more than 2,600 patents. *Id.* at 102.

115. *Id.* at 220-222.

116. DELGADO, *supra* note 26, at 81.

117. *Id.* at 86.

118. STROM, *supra* note 22, at 180.

119. *Id.* at 181.

120. *Id.* at 43.

121. *See infra*, at 31.

122. DELGADO, *supra* note 26, at 68.

123. HENRY PETROSKI, *THE EVOLUTION OF USEFUL THINGS* 58 & ff. (1993).

In the beginning, clerks were assistants to owners or managers. Managers paid their clerks out of their own salaries. Clerks were often relatives of the boss or suitors to their offspring. They were hired for life. They were prospective partners and they dressed in the same suits as their employers. In the 1870 Census, there were 82,000 clerks or .6% of the workforce. By 1900, there were almost half a million, 75% of which were male.¹²⁴

The first industrial clerks were timekeepers. Then a foreman's clerk was added to monitor work in progress—tracking workers, materials, and tasks. This grew into tracking cost, planning and scheduling, purchasing, engineering, and design. Sales, originally seen as the owner's job, gradually transferred to clerks via travel arrangements, correspondence, order processing, computing commissions, buying advertising, and arranging publicity. Clerks handled financial statements. They borrowed, extended credit, ensured collection, regulated cash flow, implemented policy, etc. As owners extended themselves through their clerks, they became capable of carrying on their entire economic operation from their desktop work stations, reproducing on paper the entire business process. This parallel process brought an enormous quantity of record keeping into being.¹²⁵ Each step of production was now meticulously planned, timed, accounted for, and controlled from afar.¹²⁶ At this point, as craft disappeared, the only remaining types of humans needed were machine-minders, engineers, and clerks;¹²⁷ at this point, the purpose of the office was to control the enterprise, including the office itself. Alas, on becoming the object of its own powerful analysis, instead of emerging from the chaos of industrialization, office work also declined from craft to task. Pay and status advantages over the factory floor disappeared, and, as wherever engineers replaced craftsmen, offices came to be staffed with unskilled employees, assigned a series of simple unchanging operations.¹²⁸

In this way, the advances brought by machines worked against their

124. *Id.* at 295.

125. In 1896, New York became the first state to license certified public accountants. By 1914 thirty-three states were licensing them. In 1921 qualifying exams prepared by the American Institute of Certified Public Accountants were used in thirty-six states. Of the first-time takers, only 13% passed. STROM, *supra* note 22, at 86. Between 1900 and 1930, the number of accountants in America grew from 23,000 to almost 200,000, and the number of bookkeepers grew from about 250,000 to about 750,000. *Id.* at 83. In 1899 eighteen companies were producing calculating machines worth \$6 million. Twenty years later, sixty-five companies produced \$83 million worth. *Id.* at 179.

126. There were thirty engineers in the United States in 1816, 2,000 in 1850 (the first census to count professions), 7,000 in 1880, and by 1920 there were 136,000 engineers. In 1870, engineering degrees were granted to 866 graduates in the United States; by 1920 there were over 30,000 engineering students. BRAVERMAN, *supra* note 102, at 242. With engineering came the planned routing and scheduling of works in progress, systematic inspection between operations, printed job instructions, and studies to determine the rate at which work should be done. AITKEN, *supra* note 99, at 28.

127. BRAVERMAN, *supra* note 102, at 246.

128. *Id.* at 130.

mind. "Charting and analysis techniques" assigned specific time values to each task.¹²⁹ Typewriters were metered to count key strokes. Typists switched from tab to space bar to get more strokes. Employers countered by pay rates per line or square inch; templates were developed to measure each.¹³⁰ Water coolers were moved to keep clerks from taking steps.¹³¹ The size, shape, and hardness of penholders were studied with a view to reducing blotting times, as was the evaporation rates of inks.¹³² Getting up from a chair was found to take .033 minutes, or .05 minutes if it included a picking up of papers.¹³³ Laying aside an item in hand previously picked up from within arm's reach, was found to take .02 minutes if repetitive, or if non-repetitive, .03 minutes. Turning the page of a bound book, it was determined took .02 minutes.¹³⁴ Picking up and positioning a pencil takes .0257 minutes, erasing one digit with a pencil and rewriting it takes .0820 minutes, and for each additional digit .0096 minutes.¹³⁵

To open or close a binder—the number of rings not specified—in position on a desk takes .03 minutes, to open a binder to the last page takes .08 minutes.¹³⁶ To locate, in a binder or folder, not including the necessary time to read or otherwise fix in mind that which is to be located, takes .12 minutes for selected sheets when all the sheets are in a definite order.¹³⁷ All this, of course is bare standard, and does not include the 16.67% for fatigue and personal needs that testing by engineers has determined to be decent human behavior.¹³⁸ Such decency also included one toilet seat and wash bowl for each ten persons, check rooms for outer wearing apparel, and cool water drinks five or six times a day, not to mention considerate speech in subdued tones, if it was necessary to speak at all.¹³⁹

Clerks were no longer management. They continued to maintain the machines of office technology. They chose them, caressed them, and speculated as to possibilities, but its product was no longer theirs. Perhaps the clerks understood better than anyone else, the social restructuring that was taking place, but so what?

"When a dry goods jobber replaced bound ledger books with the more maneuverable loose leaf variety, carbon forms, and some computing machines at the turn of the century, he eliminated six male clerks and replaced them with one male billing clerk and a female comptometer operator."¹⁴⁰

129. A GUIDE TO OFFICE CLERICAL TIME STANDARDS FOR MANUAL OPERATIONS, A COMPILATION OF STANDARDS DATA USED BY LARGE AMERICAN COMPANIES 19 (1960).

130. BRAVERMAN, *supra* note 102, at 308. For reproduction of an actual typing template, see W.H. LEFFINGWELL, SCIENTIFIC OFFICE MANAGEMENT 136 (1917).

131. BRAVERMAN, *supra* note 102, at 310.

132. BRAVERMAN, *supra* note 102, at 311 quoting LEFFINGWELL, *supra* note 130, at 20.

133. STANDARDS DATA, *supra* note 129, at 25.

134. *Id.* at 34.

135. *Id.* at 74.

136. *Id.* at 24.

137. *Id.* at 43.

138. *Id.* at 59.

139. LEFFINGWELL, *supra* note 130, at 10-11.

140. STROM, *supra* note 22, at 186.

This quotation almost summarized where the nineteenth century left America: an emerging middle class in conflict with an emerging working class, to which was added hostility between rural and urban life, and deeper hatreds—based on race, religion, and ethnicity.¹⁴¹ Some responded to the change by identifying with an older romantic, competitive capitalism of small and equal companies, or an even older romantic agricultural model of the yeoman who could walk away from their tithed cottages without giving notice, but more responded by organizing. The individual was sacrificed, in a significant shift, to the institutional. The broad population of craftsmen had become mere hands on the machine, former entrepreneurs became mere hands on the desk, and businesses themselves became cogs in vast financial empires.¹⁴² Capitalist traditions, such as fierce competition and free markets, persisted in rhetoric, but the institutions through which these traditions operated served the biggest corporations or nobody.¹⁴³

And so, what began as the glorious extension of human capacity¹⁴⁴ continued, but not without unexpected consequences. Among the most far-reaching changes brought to American life by this transformation were those achieved in the field of anxiety. As distances were shortened and population densities increased, Americans were increasingly crowded, yet felt more isolated and remote than ever before. With information flooding American life, people could not identify the forces manipulating them. And as machines increasingly spared the need for skill and effort from labor, working conditions grew worse.

Beginning the twentieth century, America found itself a nation dominated by large manufacturing corporations where the foremen could not control their workers, management could not control its foremen, and the corporations could not control their managers. But the economy was in great health and growing vigorously, so things could continue to get worse.¹⁴⁵

141. KOCKA, *supra* note 23, at 48.

142. *Id.* at 336.

143. *Id.*

144. In the effort to lengthen out the limited span of life into a greater record of results, time becomes an object of economy. To save time is to live long, and this in a pre-eminent degree is accomplished by the telegraph." BRYN, *supra* note 97, at 15.

145. A generation later, World War I took technology over the top. Troops, supplies, and equipment moved by railroad, tank, bicycle, and airplane at speeds not previously imagined; and information flowed through wires, even from the midst of battle. For the war confirming the triumph of large-scale industry and the image of bureaucracy as efficient, see WILLIAM E. LEUCHTENBURG, *THE PERILS OF PROSPERITY* 41-43 (1958). For casualty figures so high that soldiers on both sides were refusing to obey orders, see KEEGAN, *supra* note 86, at 361-363. For the mutiny of dozens of divisions, see LEUCHTENBURG, *id.* at 36 for the dynamics of surrender and its importance in the outcome of World War I, see NIALL FERGUSON, *THE PITY OF WAR*, 367-394 (1999).

For the role of the war in industry's consummate triumph—establishing a pace of work determined by the machine with labor having to adjust—thus the complete control of labor by management, see BRAVERMAN, *supra* note 102, at 147. For the effects of this triumph—

The political goals that technology gained were astounding and would have reached the heart of the looseleaf and the meaning of updating, had not that war been preceded by a monumental invention which ultimately changed all life and law profoundly. That invention was the Sixteenth Amendment to the Constitution—the only part of our “highest law” ever linked by popular culture, in humor and in song, with death, i.e. the income tax.

ORIGIN OF THE ADMINISTRATIVE STATE

The income tax survives as a potent symbol of the fear of powerlessness that government can instill in ordinary Americans. Its origin lies neither in the warrior or spy function gone awry, nor in the exercise of raw power, but rather as an outgrowth of reform.

With the excesses of industrialization came the response of reform, regulation, and redistribution.¹⁴⁶ It was as though industry so overwhelmed the American way of life that the collective citizenry forgot its most basic obsessions. That is, the cult of the individual in matters of rights and fates, a distrust of governance, a resigned stinginess toward those absolutely necessary rules, and a grudging insistence that they be administered as locally as possible.¹⁴⁷ In short, the zealous, obsessive, self-absorbed polity that was America, transformed through industrialization into a body with its obsessive zeal intact but now for regulation, rather than against it, no matter what size and cost of government that demanded.

By 1911, administrative discretion had already become constitutional; that is, administrative ruling had the force of law.¹⁴⁸ Meanwhile, Congress was pouring out regulatory legislation: The Interstate Commerce Act of 1877,¹⁴⁹ the Sherman Act of 1898,¹⁵⁰ the Sherman Anti-Trust Act of 1890,¹⁵¹ the Bankruptcy Act of 1898,¹⁵² the Elkins Act of 1898,¹⁵³ the arrangement of machines into assembly lines, higher wages, the organization of labor into unions, and the emergence of industrial psychology, industrial relations, and sociology as academic departments in American universities—see *id.* at 140. For the testing of workers, which began in the armed forces as part of job designs (mechanization had made the prediction of job performance unnecessary), see *id.* at 147.

For the questioning of the immutable feudal obligations growing from the biological nature of human beings and other post-war labor problems, see DON D. LESCOVIER & ELIZABETH BRANDEN, 3 HISTORY OF LABOR IN THE UNITED STATES, 1869-1932 330 (2d. prtg. 1952) (1935).

146. ALFRED H. KELLY, JR. AL., THE AMERICAN CONSTITUTION: ITS ORIGINS AND DEVELOPMENT xix (6th ed. 1983) (1948).

147. See ALEXIS TOUCHEVRE, 2 DEMOCRACY IN AMERICA 67 & ff.

148. U.S. v. GILMAN, 216 U.S. 614 (1911).

149. Interstate Commerce Act, ch. 104, 24 Stat. 379 (1887).

150. Erdman Act, ch. 370, 30 Stat. 424 (1898). (prohibiting the yellow dog contract—a labor contract where the employee promises, as a condition of employment, never to join a union.)

151. Sherman Act, ch. 647, 26 Stat. 209 (1890).

152. Bankruptcy Act, ch. 541, 30 Stat. 544 (1898).

1903,¹⁵³ the Pure Food and Drug Act of 1906,¹⁵⁴ the Meat Inspection Act of 1906,¹⁵⁵ the Hepburn Act,¹⁵⁶ the Mann White Slave Traffic Act of 1910,¹⁵⁷ the Owen-Keating Act of 1916,¹⁵⁸ the Clayton Anti-Trust Act,¹⁵⁹ the Federal Trade Commission Act of 1914,¹⁶⁰ the Federal Reserve Act,¹⁶¹ the Selective Service Act,¹⁶² and many more, too numerous to mention.

This rolling snowball of regulatory legislation was seen as a means of civilizing the manners of industry,¹⁶³ and improving the conduct of those who had formerly no incentive to improve.¹⁶⁴ It was a new kind of police power, exercised as adjustment rather than enforcement and administered by a new kind of deputy, legitimate by expertise and technical skill and by a visible lack of political experience.¹⁶⁵ As science had been applied to production, now science was being applied to the effects of production.

Of course there had always been administrative regulation. As Americans, we prefer a rude and wild past when freedom was unchecked

153. A "perfection" of the I.C.C. Act, assured that rates published with the I.C.C. were the rates charged. Elkins Act, ch. 708, 32 Stat. 847 (1903).

154. Pure Food and Drug Act, ch. 391, 34 Stat. 768 (1906).

155. Act of June 30, 1906, ch. 3913, 34 Stat. 669. Also see Meat Packing Act, ch. 2907, 34 Stat. 1260 (1907).

156. The Hepburn Act was another "perfecting act" which allowed the I.C.C. to set maximum rates. Hepburn Act, ch. 3591, 34 Stat. 584 (1906).

157. White Slave Traffic Act, ch. 395, 36 Stat. 825 (1910).

158. Owen-Keating Act, ch. 432, 39 Stat. 675 (1916). (one of many child labor restrictions—this one prohibits overtime).

159. Clayton Act, ch. 323 § 7 38 Stat. 730, 731-32 (1914) (current version at 15 U.S.C. § 18 [1994]).

160. Federal Trade Commission Act, ch. 311, 38 Stat. 717 (1914).

161. Federal Reserve Act, ch. 6, 38 Stat. 251 (1913) Also see 1st Nat'l. Bank v. Fellows 244 U.S. 416 (1917).

162. Selective Service Act, ch. 15, 40 Stat. 76 (1917); ch. 76, 40 Stat. 554 (1918); ch. 79, 40 Stat. 557 (1918). See ch. 143, 40 Stat. 845 (1918) for the appropriations act to define, create, and fund a modern army including an academy, telephone and telegraph system, typewriting machines, development of aircraft, aircraft, aviation stations, balloon schools, mosquito destruction, vocational training, textbooks, ammunition, shooting galleries and ranges, switchboard operators at interior posts, ice machines, bakeries, laundries, barracks, draft and pack animals and vehicles, ambulance, printing, binding, etc., contract surgeons and nurses, pay of the army, travel at home and abroad, incidental expenses, and many other specifics.

163. KERMIT HALL, *THE MAGIC MIRROR* 208 (1989).

164. "The Securities Act and the Securities and Exchange Act . . . supply for the first time standards of conduct, welcomed by those who never desired or who certainly no longer desire to sacrifice ethics for expediency, but who in the competition and pressure of high finance drifted into the loose habits of the marketplace." WILLIAM O. DOUGLAS, *DEMOCRACY AND FINANCE: THE ADDRESSES AND PUBLIC STATEMENTS OF WILLIAM O. DOUGLAS AS MEMBER AND CHAIRMAN OF THE SECURITIES AND EXCHANGE COMMISSION* 249 (James Allen, ed., 1940).

165. See HERBERT DAVID CROWLEY, *THE PROMISE OF AMERICAN LIFE* 344 & ff. (Transaction ed. 1993) (1909).

and there were no wars, taxes, or even political conflicts between upstream dumping and downstream fishing, which there always were.¹⁶⁶ In fact, from whenever we came down from the trees and began making law and commentary, authority administered. The human tradition has always been to give up rights in exchange for aggressive measures to protect the population from sickness and death.¹⁶⁷ That power has been called the founding principle of all civil government.¹⁶⁸

The principle is that the king, as the trustee of the public good, justifies the power of police and the power of eminent domain in terms of the welfare of the community. Thus, power flows from law and so on. The classic statement was by Chief Justice Lemuel Shaw of Massachusetts.¹⁶⁹ As transplanted Europeans, white Americans carried this tradition, even while living in self-sufficient isolation, on the land and rather far apart.¹⁷⁰ As a result they functioned as a nation believing in national government, but without one or the desire for one. America began with resisting the

166. For the following discussion and quotations, I am indebted to Harry N. Scheiber, book review, *Private Rights and Public Power: American Law, Capitalism, and the Republican Polity in Nineteenth-Century America*, 107 YALE L. J. 823 (1997) (reviewing WILLIAM J. NOVAK, *THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* [1996]).

167. WILLIAM J. NOVAK, *THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* 197 (1996). The tradition has been documented, at least since the Black Death in 1348, when isolation emerged as the only defense against contagious disease. The quarantaria, or "40 days" of isolation for anyone arriving from a plagued area, began in Venice DUFFY, *supra* note 96, at 7.

168. 6 R.C.L. § 187. Blackstone called it "the due regulation of domestic order of the kingdom." WILLIAM BLACKSTONE, 4 COMMENTARIES 162. To Justice Story, it was "the promotion of the peace, health and good order of society" and among the fundamental duties of government (JOSEPH STOREY), *NATURAL LAW* (1832) (originally published manuscript) reprinted JAMES MCCLELLAN, *JOSEPH STOREY AND THE AMERICAN CONSTITUTION* 313, 322 (1971). For Chief Justice Taney of the Supreme Court, the power of sovereign government was all the same, whether quarantine and health laws, pilot laws, laws establishing courts, requiring certain instruments to be recorded, or regulating commerce: "And when the validity of a state law making regulations of commerce is drawn into question in a judicial tribunal, the authority to pass it cannot be made to depend upon the motives that may be supposed to have influenced the legislature, nor can the court inquire whether it was intended to guard the citizens of the state from pestilence and disease, or to make regulations of commerce for the interests and convenience of trade." *License Cases*, 46 U.S. (5 How.) 504, 582 (1847). See Scheiber, *supra* note 166, at 824 n.6.

169. "By the common law of England as it stood long before the emigration of our ancestors to this country and the settlement of the colony of Massachusetts, the title to the land or property in the soil, under the sea and over which the tide waters ebbed and flowed, including flats or the sea-shore, lying between high and low water mark, was in the king, as the representative of the sovereign power of the country. But it was held by a rule equally well settled that this right of property was held by the king in trust, for public uses, established by ancient custom or regulated by law, the principal of which were for fishing and navigation. These uses were held to be public not only for all the king's subjects, but for foreigners being subjects of states at peace with England, and coming to the ports and havens of England, with their ships and vessels for the purposes of trade and commerce . . ." *Commonwealth v. Alger*, 61 Mass. (7 Cush.) 53, 65 & ff. (1851).

170. STILLMAN, *supra* note 95, at 105.

European compulsion to obey anyone considered superior in age, rank, talent, status, expertise, or character. This resistance gained strength through agrarian self-sufficiency. The republican ideology that seized our earliest consciousness envisioned a participating electorate, who by discourse and debate, made their own deals and their own rules.¹⁷¹ Americans believed that they would always sacrifice selfish interest to the public good, and that there would never be any state machinery.¹⁷² This ideology celebrated law as the foundation of government.¹⁷³ Discovering that law became a reverent American habit. The Constitution was divine, the common law was the wisdom of experience, and administrative law was just ordinary human diligence filling in the cracks.¹⁷⁴ Administrative rules were necessary and were formulated as the need arose, but they were viewed as few, and even when those few grew to many, invisible.¹⁷⁵

But when technology arrived to reshape American life, including a reshaping of governmental responsibility and authority, the deeply felt ideals still found in the rural backwaters were not solicited. The lack of a state bureaucracy—the lack of an entrenched, centralized state of any kind, in fact, eased the way for the administration of a changing culture to serve the needs of the new technology, its professional expertise, its aura of success and growing world power, and its money.¹⁷⁶ An America that believed in science and progress through science produced administrators who also believed in science and its habits.¹⁷⁷ In fact, they believed that administration itself was a science, and that economy and efficiency could be found through its method. Their optimistic faith in humankind and its organizational capacities all grew from science.¹⁷⁸ For these new administrators, administration was management, not law; and administration, not

171. *Id.* at 22.

172. *Id.* at 24.

173. Quoting Cotton Mather: "Americans as the chosen people of a covenanted nation, a 'surrogate Israel.'" *Id.* at 32.

174. *Id.* at 67-68.

175. E.g., "Each colony had its own standards for admission to the bar . . ." FRIEDMAN, *A HISTORY OF AMERICAN LAW* 99 (2d ed., 1985) (1973). Early American government was comfortable with all manners of nuisance laws and quarantine regulations. State and municipal ordinances imposed quality controls, inspections, and market standards. Auctions and peddling were regulated, as was servitude, apprenticeship, wages, and standards of craft. Strict regulations were imposed on fish farming, bird hunting, and cranberry picking. *Id.* at 78-79. In 1860 New York City health regulations filled an entire volume; by 1872, the Sanitary Code regulated ashes, ash-boxes, ash-carts and asses, bedding, bells and birds, bone-burning, bone-grinding, bricks, brine, Brooklyn, buildings, burials and burning fluids, geese, gander, glue-making, goats, graves and grease, hides, hogs, horns, horses and horse-racing, mad animals, manufactories, manure, markets and marriages, piers, pig-pens, poisons, police and pound-keepers, prisons, privies, and public places, swill, swine, vats, vaults and vessels, water, weapons and yarding cattle. Sanitary Code provisions selected from NOVAK, *supra* note 167, at 198.

176. *Id.* at 105.

177. *Id.* at 108.

178. After 1851, even librarians began to call their work science. Fred Shapiro, *The Name of Our Profession*, *LEGAL REFERENCE SERVICES Q.*, 117-118 (Summer 1984).

law, was the central problem of government.¹⁷⁹

The direction and control of financial resources was not mentioned in the Constitution. Yet, it emerged as a central task of government. By the late nineteenth century, the Federal budget exceeded one billion dollars.¹⁸⁰ Such a sum demanded administration, but there was no such office yet. In the hoopla following President James A. Garfield's assassination by a career diplomat passed over in the handing out of political patronage, Congress passed the Civil Service Act of 1883.¹⁸¹ This act introduced the theory of merit as the criterion for selecting and promoting government employees. The ideal of a politically neutral civil service of committed professionals grew with this act.¹⁸² It was one of many things that grew because industrialization transformed the Constitution.¹⁸³

What was new with the Industrial Revolution was that the good, the true, and the beautiful, unlike the behavior of birds and the use of bridges and market scales, was suddenly not available to judicial or legislative bodies, but was now a part of some specialized abstract knowledge of invisible waves and currents, magnetic fields flowing through the air requiring the vocabularies of algebra and trigonometry and full of statistics and mystery. Justice now turned on processes which the senses could not experience but which had profound effects on the welfare of the community. A new order brought new needs. The idealistic view of administrative power resting on "*salus populi suprema lex est*"¹⁸⁴ was on the wane, replaced by a state grown bureaucratized, a politics focused on the idea of the individual self, and a law more formal, more instrumentalized, and more concerned with special interests and power.¹⁸⁵

The rise of administrative regulations has various explanations. It was the war between labor and capital climaxing in a compromise of reform rather than a revolution.¹⁸⁶ Or, it was an outcome of the disenchantment with states' rights that lingered with the sadness of the Civil War to join the urge for a centralized general government,¹⁸⁷ or perhaps just the habits of the wartime experience of mobilizing masses of humanity and materiel, coordinating and commanding them, and arranging for their public health and feeding.¹⁸⁸ Or it was formative America's distrust

179. STILLMAN, *supra* note 95, at 114.

180. STILLMAN, *supra* note 95, at 60.

181. Civil Service Act, ch. 27, 22 Stat. 203 (1883).

182. STILLMAN, *supra* note 95, at 57.

183. *Id.* at 37.

184. "Let the welfare of the people be the final law." Cicero *De Legibus* iii in CHAMBERS ENGLISH DICTIONARY 1742 (7th ed., 1990).

185. NOVAK, *supra* note 167, at 248.

186. SMITH, *supra* note 34, at 1036.

187. GEORGE ANASTAPOLO, *THE AMENDMENTS TO THE CONSTITUTION: A COMMENTARY* 187 (1993).

188. KERMIT L. HALL, ET AL., *AMERICAN LEGAL HISTORY: CASES AND MATERIALS* 353 (2d ed., 1996).

of administration leading to an overdeveloped common-law attitude toward administration, and in turn, resulting in a bad balance between judicial and administrative governance.¹⁸⁹ A looser vision might see it as the arrogance of the newly enfranchised professions of engineering and accounting rising in the American consciousness and spreading the belief that they should monitor and control the behavior of all and create a literal Domesday, where every secret would be told and counted.

The state, which American ideology had formerly seen as the enemy, was suddenly all that stood between industry and the power to define the enjoyment of life. The scope of state power became central to the struggle as the various political forces, finding no place else big enough, turned to the state.¹⁹⁰ But the government had been dwarfed and the social life of labor smashed. The materialist euphoria was accompanied by suffering and terror. Business, in its concentrated corporate form, was out of control. In response, what was left of the democratic ideal fought back with the intensity of a crusade. Idealism, however, was no match for the devotion to immediate gain.¹⁹¹

Legislatures were fine for the simpler times and fights of party politics. Legislation had a long tradition of debate, drafting and redrafting, and scrutiny. It was a tradition of large bodies producing public written records, of small committees producing celebrated public hearings of great drama and entertainment, and unspeakably corrupt and surprisingly noble personal behavior behind the scenes; but to the extent that legislatures function at all, they produce only statutes. And statutes are few, and they tend to be weak and vague, or they would never have gained the necessary votes.¹⁹² The judiciary, by professional training and habit, tends to conform to standards of conduct and rules of law that insist on hearing both sides of every point and that seek principles rooted in authority for every decision. Every judicial judgment is subject to review by a panel of judges. Judicial opinions appear in public records which are then examined; inconsistencies tend to surface.¹⁹³ But the judiciary, like legislatures, was characterized by ideology and politics, whereas administrative agencies were able to present themselves as bodies of neutral expertise. The administrative process itself was thought to cultivate scientific neutrality.¹⁹⁴ This process also flattered America's notion of its democratic self, especially as it was perceived by those concerned with higher morality, mobility, and power.¹⁹⁵ The regulatory process meshed beautifully with America's famed charm as an administrative power which, "if it is

189. ROSCOE POUND, *ADMINISTRATIVE LAW* 39-40 (reprint 1981, 1942).

190. Owen M. Fiss, *Why The State?* 100 HARV. L. REV. 781, 781 (1986-1987).

191. CORCORAN & MILLER, *supra* note 28, at 275.

192. ERIC REDMAN, *THE DANCE OF LEGISLATION* 154-161 (1973).

193. POUND, *supra* note 189, at 60-61.

194. Richard A. Posner, *The Rise and Fall of Administrative Law*, 72 CHI.-KENT L. REV. 953, 953-4 (1997).

195. See DOUGLAS, *supra* note 164, at 266-7, also at 292.

not somewhat wild, it is at least robust, and an existence checkered with accidents indeed, but full of animation and effort."¹⁹⁶

And so administrative regulation arrived, adjusting relations and ordering conduct in an impulsive way, breaking from both legislative and judicial traditions to having no tradition at all other than to respond to the corrupt, the immoral, the dangerous, and the outrageous. It is a tradition of wide-ranging, ad hoc response, and then pursuit of whatever happens to be interesting, with or without "*audi alteram partem*,"¹⁹⁷ calling for evidence of rational probative force, or consideration beyond the case at hand.¹⁹⁸ It was general, abstract, and discretionary; subject, if not to whim, then to sudden and unpredictable bursts of clarification, with which neither the Congress, the regulated, the public, or any other body or form of human association could keep up with in an orderly fashion.¹⁹⁹ Progressive regulation soon created its own new fear. Perhaps for mystical reasons, it was named for the dead technology of yore that could no longer frighten anyone. When regulatory zeal ran to extremes, its result was known as "red tape."²⁰⁰

They regulated railroads, labor, sausages, and sex. Villains were brought down and the populace rejoiced, but none of this provoked the miracle necessary to make regulation orderly or comprehensible enough for the representation of clients at reasonable fees. The new university law school, where ordinary humans were being made to think like lawyers, might have been just the place to restore order and bring sense to the texture of industrialized life, but legal education was busy restoring the reputation of the profession, thus allowing it to continue and to prosper and regain its greatness, etc. Who wanted to interrupt that?

For inspiration, there was always the example of medicine, which fell into decline just ahead of law. In the second quarter of the nineteenth century, physicians began to notice that their profession was debased in the mind of the public. Near mid-century, it had "sunk to the level of a trade."²⁰¹ In 1847 the American Medical Association was founded to promote unity, reform, education, and to increase the intellectual activity of the profession.²⁰² It was also founded to lobby for licensing laws, and eliminate homeopathy and other irregular practices which were attracting patients from high society.²⁰³ At mid-century, scholarly medical journals appeared. Self-study and self-criticism lead to empiricism's replacing rationalism as the preferred medical method. The invention of the

196. I DE TOCQUEVILLE, *supra* note 147, at 96.

197. Hear the other side. BLACK'S LAW DICTIONARY 131 (6th ed., 1990).

198. See POUND, *supra* note 189, at 86.

199. John A. Fairlie, Administrative Legislation, 18, MICH. L. REV. 181, 197-200 (1920).

200. BOUVIER'S LAW DICTIONARY 2852 (8TH ED., 1914).

201. JOHN HARLEY WARNER, THE THERAPEUTIC PERSPECTIVE: MEDICAL PRACTICE, KNOWLEDGE, AND IDENTITY IN AMERICA, 1820-1885 38 (1986).

202. *Id.* at 39.

203. DUFFY, *supra* note 96, at 34-5.

thermometer in 1866 encouraged attention to norms established by measurement and making graphs.²⁰⁴ Clinical medicine became central to new knowledge. A devotion to science as the basis of treatment emerged. Experimental laboratory science led to therapeutic moderation, a new emphasis on hygiene, and the concept of preventive medicine.²⁰⁵ Bloodletting was eclipsed.²⁰⁶ The use of the microscope and thermometer and the application of chemistry and physics transformed the professional identity of physicians. A new relationship between knowledge and treatment emerged. Medicine shifted from practice to training, from the exercise of judgment to the application of knowledge.²⁰⁷ Medical education became rigorous and professional. The proprietary-school model was dumped in favor of a college in the new university. The course was extended to three years with examination at the end. The curriculum was grounded in experimental science.²⁰⁸ With the discovery of the diphtheria anti-toxin in the mid-1890s the therapeutic promise of bacteriology was fulfilled.²⁰⁹ Science saved the profession from having to compete with quacks in public.

Meanwhile with the rise of street cleaning, garbage removal, regulation of the water supply, and increased privy building and emptying,²¹⁰ the notion of public health as a good idea grew in the public mind. With the creation of state boards of health,²¹¹ slaughterhouses were cleaned up, smallpox vaccinations were administered; and food, water, and air pollution were addressed. For all these solutions and more, statistics were collected.²¹² In the 1880s and the 1890s, water and sewer systems were established all across America, the benefits of which were partially nullified by increasing urban populations.²¹³ But as the century closed, morbidity and mortality rates declined, and life expectancy, which had declined in the 1830s and 1840s was on the rise. Smallpox, diphtheria, tuberculosis, and typhoid were essentially finished, as was yellow fever. And who was there to take credit for the increased health of the society, but the organized and scientific medical profession.

Law, though not so glamorous as medicine, was also being

204. WARNER, *supra* note 201, at 101.

205. *Id.* at 241.

206. *Id.* at 208.

207. *Id.* at 260.

208. When Charles Eliot became president of Harvard in 1869, he transformed the medical school into the German model of higher education based on research in science. Many followed Harvard's example. *Id.* at 273-274.

209. *Id.* at 279.

210. Most American cities and towns were struggling with these problems by 1830. DUFFY, *supra* note 96, at 72.

211. The Massachusetts State Board of Health, 1869, was the first. On its inception, its president proclaimed that education would be the therapy of the future. WARNER, *supra* note 201, at 241.

212. DUFFY, *supra* note 96, at 150-151.

213. *Id.* at 175.

transformed. By searching for basic principles in past cases instead of trying to master obsolescent rules and forms, lawyers were knitting a scholarly veneer to cover their craft skills. As they did, their social status rose commensurate with their appearance as educated, articulate, and smart professionals, all of which they had been before industrialization and economic instability swept an older generation of gentlemen lawyers out of business a half-century before.²¹⁴ Their restored position seemed to rest on the elevation of the case, first to a source of principle that revealed divine law²¹⁵ and then as the exercise and discipline that honed the legal mind. As rules and writs declined, the work of lawyering became extracting the law from a known case and applying it to current facts in order to persuade a court.²¹⁶ Increasingly, the technical aspect of legal training became the ability to discriminate between cases.²¹⁷ As the number of cases proliferated out of control,²¹⁸ lawyers had no choice but to learn to search that haystack. To provide a living for its practitioners, the law needed, even more than a viable means of marketing, to be seen as an objective expression of morality and not as the language of lackeys of businesses who paid for and determined the law.²¹⁹ Since the case method provided such scientific, moral, and divine expression, the legal profession was prepared to stick with it, even to the point of drowning in it. Administrative regulation as law, although reinvigorated by reform as a new concept, alas, was part of the old rigamarole that lawyers were just learning to rise above.

In 1823, there were about 24,000 American lawyer; in 1870, there were about 40,000 and by 1880, more than 64,000.²²⁰ With continued

214. WILLIAM P. LAPIANA, *LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION* 80 (1994).

215. *Id.* at 138.

216. *Id.* at 102.

217. *Id.* at 169.

218. The oft quoted statistics: "Chancellor Kent, in the second volume of his *Commentaries* p. 474, complained at that time of the multiplication of reports . . . In a note it is stated, as a fact of great significance, that in 1839 there were 539 volumes of American reports; and Storey, writing in 1831, speaking of his study of the law says: "Then [1801] there were scarcely any American reports (for the whole number did not exceed five or six volumes) . . ." 1 *Am. Dec.* v (1878).

"In 1810, there were only a meager 18 volumes of American reports. By 1840, the number had grown to 545 volumes and less than ten years later, in 1848, there were nearly 800 volumes. By 1885, a comprehensive law library had 3,800 volumes of American reports. Legal periodicals of the nineteenth century were filled with anguished pleas from the profession to the courts and the publishers for a way to control this explosion," in *AMERICAN LEGAL PUBLISHING*, *supra* note 83, at 37.

"In 1810, there had been only 18 American reports published; 452 by 1836; about 800 by 1848; 2,944 by 1822, 3,798 by 1883; and in 1910 there were in existence 8,208 volumes of American law reports (exclusive of about 2,000 volumes of reprinted collections of cases.)" WARREN, *supra* note 69, at 557.

219. Morton J. Horwitz, *The Rise of Legal Formalism*, 19 *J. LEGAL HISTORY* 251, 251 (1975).

220. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s* 22 (1983), quoting Reed, *Training for the Law* 442.

economic expansion, there were more big firms and fewer solo practitioners and more law schools.²²¹ Both big firms and schools were anxious to professionalize lawyering and raise its standards.²²² This was part of a wider trend institutionalizing and stratifying American life, especially visible in the growth of higher education, professional education, and spectator sports.²²³

In law, as the rise of administrative regulation made the language more obtuse and difficult, it also facilitated the metaphor of law as a machine, similar to other emerging technologies in that only a trained mechanic could understand and make it work. The case system, already in place in law schools, both defined law as technical and produced the technicians who could operate it.²²⁴ Thus the rise of law school as a means of entering the profession, the rise of the case method in legal education, and the standardization of legal education all supported each other. As the elite of the profession migrated from the role of litigator to that of the counselor who advised in order to avoid litigation—more philosophers of jurisprudence than craftsmen, and thus more appropriately case-method trained—the image of lawyers improved.

The Industrial Revolution brought the legal profession much of what it desired. Its success was shared by commercial publishers. Soon, entrenched subsidized official publication of court decisions began to wane.²²⁵ The delays, lack of uniformity, and inaccuracies of government publication had become obstacles to the timely and uniform administration of justice.²²⁶ Commercial publishers had developed citators and digests and brought order to the printing of reported cases.²²⁷ The order was dramatic and the profits commensurate.

And so it was no surprise that with the introduction of federal income taxes, the chaos of administrative regulation reached a zenith. And an impending crisis of such proportions loomed, that none dared think it may be they to save the day. Only the lorn and lonely legal publisher found the courage to envision the miracle that was needed and discovered what prices could be charged for providing it.

After ratification by the states in 1913, adoption of the Sixteenth Amendment was certified.²²⁸ The Revenue Act of 1913 followed quickly.²²⁹ Thus began a new era of federal finance, in fact, a radical

221. *Id.*

222. *Id.* at 24.

223. *Id.* at 20. For the introduction of the elective system in American higher education (beginning with Harvard in 1869) as a result of the increase and complexity of the division of labor and a factor in subsequent specializations, see MILLS, *supra* note 46, at 40.

224. STEVENS, *supra* note 220, at 40-41.

225. KENDALL F. SVENGALIS, *THE LEGAL INFORMATION BUYER'S GUIDE AND REFERENCE MANUAL* 73 (1996).

226. *Id.* at 63.

227. FREIDMAN, *supra* note 175, at 409.

228. U.S. Const. amend. XVI, 37 Stat. 1785 (1913).

229. Revenue Act of 1913, ch. 16, 38 Stat. 114 (1913).

reconstruction of our federal system. For both the states and a growing force of urban entrepreneurs and manufacturers, a new relationship with government began. With income tax, government finally became so intrusive, so personal, and so emotional—so deeply consequential—that the cost and conceptual shift begged for by the new technology was no longer resistible. And looseleaf binding, which had been around for a quarter century and perfected for over a decade²³⁰ came immediately into fashion in the legal literature. Looseleafs took hold in tax law for more reasons than technology. As the Internal Revenue Service emerged as an archetype, it engaged citizens in an arena of opposing forces, with both sides bereft of any higher morality and each able to afford any toy or tool perceived to produce an edge. And the IRS, although a mere agency of the government, came quickly to be seen as cold and mean. As modern life emerged, God no longer inhabited conscience, but the IRS might. If you steal an apple and no one sees you do it, if a bear leaves something in your woods, or if you pose no threat but seriously annoy your elected representative, whom do you fear? In the hearts of Americans, it is often the IRS.

This frightening image of tax collection was the only available means of enforcement before the digital age. In the American consciousness, taxes grew to become a significant paradox; a social necessity experienced as a personal violation. We give up things to live together, but when it is our turn to give our money, it doesn't feel like giving, it feels like victimization.²³¹ Tax law is enforced in a climate that at surface is reasonable and merely administrative, simply the application of rule without revenge or myth-making, while underneath, there are no holds barred and no expenses spared. Justice in such a setting is, for the legal literature, something rather pure.

SOME ACTUAL HISTORY

In the legal literature, after cheap printing made the "good memory" that lawyers were known for²³² obsolete,²³³ updating was first achieved by simply producing a new edition with a revised text and a new index. As the pace of arriving information picked up, texts were issued over time, keying sections and paragraphs from one issue to the next like a magazine with familiar sections. More common was the occasional supplement, issued when needed, until the combination of text and

230. See SIMMONS, *supra* note 15, at 6-7.

231. A survey conducted by Louis Harris on behalf of the Boy Scouts of America, found that only 65% of respondents believed it was wrong to cheat on taxes. Tom Herman, WALL ST. J., June 14, 1995 at 1, mentioned in MICHAEL J. GRAETZ, *THE DECLINE (AND FALL?) OF THE INCOME TAX 91 & n.3* (1997).

232. "It is of great advantage of us to have Mr. Parsons in the office. He is in himself a law library, and proficient in every useful branch of service." John Quincy Adams quoted in STEVENS, *supra* note 220, at 10 taken from 1 WARREN, *supra* note 69, at 135.

233. Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance* 75 CALIF. L. REV. 15, 20 (1987).

supplement became cumbersome. Then a new volume or set replaced them, to be in turn supplemented and so on. The "advance sheet" kept pace with events, but did not revise or index in retrospect. All of these systems came and stayed, but none dominated, because whatever the physical or conceptual system, it was the extent and currency of the index that made any updated work easy or difficult to use.

As the quantity of information began to tax the memories of legal researchers, reliance on finding aids increased. As the human forefinger might be seen as the original locating tool, so finding aids began with the index. When publishers began to notice the importance of the index, supplementation no longer needed to be bound. Instead of extensive revision, small sections of the work could be updated separately.²³⁴ Minor changes could be achieved by inserting new pages. Books composed of loose leaves allowed for changing any page without disturbing the others. Thus, revision was always going on and a new edition was never necessary in theory, as long as the index was perpetually revised, which was always possible. However, when a new approach or a new arrangement of ideas arrived, mere substitution was never good enough.

In law, thinking plods along from one reasoned conclusion to the next, using "because" and "therefore" to wear a path between decisions. Landmark cases may be decided by politics, by logic, experience, or sheer brilliance, but the form that change takes in law is a rearrangement of the precedents. Every judicial opinion is a nugget of truth presented as a comment on, and logical consequence of, the wisdom of the ages. However, the biggest and most beautiful truths emerge when the nuggets are rearranged. At such times, the only way to updates is to begin again.

Some areas of law have not evoked an insight in ages. Common law subjects like bailments, libel and slander, replevin and specific performance are about relationships between neighbors. They were settled to widespread satisfaction a long time ago. Other areas of law have less to do with truth, so insight is not what alters them. These areas are concerned with rarified and formalized activities like business interests and aspects of the relationship of citizens to their government. Typically, they are areas of administrative law, born of statute and growing like kudzu in an attempt to control the behavior of people determined to outwit it. These areas of law, such as bankruptcy, banking, labor law, utilities, trade, securities, and above all taxation, are places where the looseleaf functions best.

Attempting to predict and then pin down the elusive self-interest that underlies much of human response in areas of just and agreeable behavior quickly leads to complication and obfuscation; identifying, defining, and prohibiting articulated behaviors creates a technical literature so ornate it can reduce the most dedicated researcher to boredom. The regulation of taxation is relentless. For the naive, the unwary, for the life lived without

234. Matthew Bender & Co. published Heaton's Surrogate Practice which was updated via separately stitched chapter pamphlets as early as 1907. WILLIS EDGAR HEATON, *THE PROCEDURE AND LAW OF SURROGATES' COURT* (1907).

contemplation or documentation—for the cynic, the hoodlum, and silver-tongued devils, taxes are trouble. Vanity is the breeding ground of tax problems! For all these reasons and more, tax law²³⁵ cries out for the looseleaf tradition of a single publication which includes statutes, cases, administrative regulations and decisions, commentary, and even projections organized in creative ways between special binders that simplify the insertion, removal, and substitution of individual pages.²³⁶ All of these things can be found elsewhere in the law library with great effort, and easily in the looseleaf service, once you get the hang of it. Not to mention the authority and accuracy of its authors,²³⁷ which is the essence of the form.

By the end of the nineteenth century, the commercial potential of legal publishing was realized.²³⁸ Ordered, accessible information had become a commodity, sold for profit, not something the government handed out in good time because its citizenry had the right to know. Meanwhile in the law library, the longing for the perpetual page and the continuous edition were rising toward consciousness, couched, as usual, in the ubiquitous anxiety over quantity.²³⁹ In that famous essay, looseleaf format was viewed, not as a means of updating, but as a way of choosing relevant cases and leaving the rest behind, thereby enabling a barrister to "carry in a small bag as much useful materials as would now require a wheelbarrow."²⁴⁰ After anchoring the current anxiety in Lord Coke and Francis Bacon, the erudite librarian then adds the American Bar Association, Jeremy Bentham, and Justinian's imperial minister in a single reference.²⁴¹ And once establishing the importance of cases being available individually rather than bound together in a chronological but otherwise random order, there is much talk of cardboard thickness, and how it would extend by a quarter of an inch beyond the case, and drawer size, narrow but deep, its height and width only slightly exceeding the leaves—concerns which convey the thrill still attached to the office and its paraphernalia, and the librarian's sense of feeling positioned at the forward edge. The idea being that loose cases, by constant shuffling, can be

235. Internal Revenue Code, 26 U.S.C.

236. J. MYRON JACOBSTEIN ET AL, *FUNDAMENTALS OF LEGAL RESEARCH* 304 (6th ed. 1994).

237. FREDERICK C. HICKS, *MATERIALS AND METHODS OF LEGAL RESEARCH* 300 (3rd rev. ed. 1942).

238. SVENGALIS, *supra* note 225, at 73.

239. Ingeborg S. Fredlund, *Loose Leaf Law Reports*, 3 L. LIBR. J. 44, 44 (1910).

240. *Id.* at 47. Preceding this essay is one on how to construct a catalogue. It begins, "An unidentified contemporary of Sir Edward Coke once complained bitterly that while in his youth he could carry the books of the law to court under his arm, in his maturity he could scarce accomplish it in a barrow. Now," the article went on "it was a matter of how many boxcars." E. D. Adams, *Constructing a Catalogue*, 3 L. LIBR. J. 35, 35. (1910).

241. "Bentham likened the condition of affairs to the books of the Roman law before they were digested by Tribonian. 'A mass,' he says, 'the contents of which defy the industry of an ordinary lifetime to master.' (Report Am. Bar Assn., 1895, p. 343.)" FREDLUND, *supra* note 239, at 45.

prioritized and kept in a manageable space, similar to the arrangement of *Nelson's Loose Leaf Encyclopedia*.²⁴²

The crux of the matter was the saving of space, time, money, and temper.²⁴³ The idea seems valid, unless you turn the page to the hostile responsum immediately following.²⁴⁴ It rails that our current system of digests and citators and encyclopedias are better than any homemade system, and besides "a glance at the heaped desk of the average lawyer will satisfy the most doubting, that the lawyer and his clerk cannot be trusted with loose leaves that are likely to stray or get out of place."²⁴⁵ And speaking of space, time, money, and temper, on the next page²⁴⁶ is an announcement that in September 1910, the state of Kentucky began to issue advance sheets for its reports, which could be subscribed for through the state librarian. Eighteen other reporters that already issued advance parts are listed, with a note that the list does not include any of the sets published by the West Publishing Company, all of which issued advanced parts.

So, the looseleaf was in active audition. All was poised but still in darkness. The history of looseleaf publishing in law is rooted in concepts of service as much as updating. In addition to speed, ease, and accuracy; concepts of nurture, panacea, concentration, and focus should not be excluded. It all boils down to the very little things that servants did for their masters in bygone days, abstracted to one narrow and specific metaphor, and then out-sourced.

In 1892 the seed that grew into an industry was planted with the formation of the Corporation Trust Company. CT was a service to the lawyers then organizing and representing some of the very large corporations beginning to appear across the land.²⁴⁷ For a few years, it concerned itself with organizing, qualifying, registering, and representing corporations under individual state laws.²⁴⁸ When United States Steel was formed its

242. Fredlund suggests Nelson's as a model system for the keeping statutes updated as rapidly as they were enacted. FREDLUND, *supra* note 239, at 47; the publishers' preface to the 1926 edition of Nelson's Index claims that the Loose Leaf system was originated by Thomas Nelson and Sons, INDEX, NELSON'S LOOSE-LEAF ENCYCLOPEDIA V (1926); respectable scholarly records show Nelson's Perpetual Loose Leaf encyclopedia; an international work of reference, illustrated with colored plates and engravings, complete in 12 octavo looseleaf volumes, published by Thomas Nelson, N.Y., 1909, 1910, 1911, 1912, 1914, 1915, 1916, 1917, 1918, 1920, an index in 1926, and 1930. [AE 5.N33.] 410 NATIONAL UNION CATALOG OF PRE-1956 IMPRINTS 228-229 (1975). The 1932 edition discusses World War II and the United Nations at great length. Yearly editions of a perpetual looseleaf are by definition a contradiction, but evidence of viability. See 12 NELSON's, *supra* note 56, at following 266 & following 642.

243. FREDLUND, *supra* note 239, at 45.

244. Mrs. Eva N. Hawley, *Law Reports Loose Leaf System*, 3 L. LIBR. J. 48, 48 (1910).

245. *Id.*

246. Advance Parts of State and Federal Reports, 3 L. LIBR. J. 48, 48.

247. Peyton R. Neal, Jr., *Loose-Leaf Reporting Services*, 62 L. LIBR. J. 153, 153 (1969).

248. [May 1989] Selling (CCH) par. 101 (an unpublished internal looseleaf product "restricted to the use of the CCH Sales organization." Some pages of this manual for sales representatives were obtained from a confidential source.).

founders asked CT to monitor Congress on its behalf. In 1903 a legislative reporting service began. In addition to US Steel, the American Tobacco Company the American Locomotive Company, Prudential Insurance, and American Telephone and Telegraph also asked to subscribe.²⁴⁹ In 1907, CT launched *Congressional Service* which included bills, acts, and documents produced by Congress. There were three classes of subscription, and each class could be applied to any or all specific subject matters, such as banking, insurance, export, revenue, or taxation. It was a true services and included advice on introducing bills, reports of standing and conference committees, and even advice on presidential action. A "daily letter" summarized each day in Congress and its significance, if any. Looseleaf binders were supplied for filing. The features of this service found their way into succeeding publications such as Commerce Clearing House's *Legislative Reporting Service*, the *Congressional Index Service*, and the various state advance session laws services.²⁵⁰

In 1907 Oakleigh Thorne bought the company. He had achieved a series of successes as a corporate manager, then rose to the presidency of one of the nation's leading commercial banks, the Trust Company of America. During the Panic of 1907, a dramatic run on his bank made him a public figure. In the same year his bank survived the run, Thorne merged it with the Equitable Trust Company, retired, and bought Corporation Trust for a half million dollars. He explained that his sole motive was to take care of the "men" who had stood by him during the panic, only to lose their jobs in the merger. He had no other motive and planned to take no active interest, he said.²⁵¹

Others said that Thorne, who died as a "non-Catholic,"²⁵² and was later stereotyped as a "thrifty Quaker," planned to use Corporation Trust to publish reporters.²⁵³ This publishing was begun as a second, separate business. But one year later in 1908, the service and the reporter of decisions become one. *Corporation Trust Journal*, soon condensed to *Corporation Journal*, was a periodical consisting of digested court decisions, rulings and regulations, and opinions of whatever official bodies could be found bearing on the conduct of corporations. Things went well. Justus L. Schlichting, who later headed CCH, joined the CT reporting department in 1909.²⁵⁴ CT's in-house lawyer, John Sears, was put to work publishing *Reporter for the Corporation Excise Tax Law of 1909*.²⁵⁵ In

249. *Id.*

250. Hicks, *supra* note 237, at 309.

251. Thorne was descended from one of the earliest Europeans to settle in America. His ancestry traced from Massachusetts to Long Island where in 1665, a Thorne became one of the patentees of Flushing and the proprietor of a Long Island plantation. *Oakleigh Thorne, Financier*, 81, *Dead*, N.Y. TIMES, May 14, 1948, at 19.

252. *Id.*

253. Stratford P. Sherman, *The Company That Loves the U.S. Tax Code*, FORTUNE, Nov. 26, 1984, at 58, 58.

254. Selling (CCH) *supra* note 248, at *id.*

255. *Id.* at par. 104.

1910, CT began covering the Supreme Court, much as it covered Congress, with its *Supreme Court Service*.²⁵⁶

On other fronts, invention was busy mothering necessity. The binder and ring metal as we know it was available in 1904.²⁵⁷ School children were taking notes and arranging them loosely. Engineers were designing and directing labor's every act and worker's lives.²⁵⁸ Manufacturers were tracking orders, accountants watching costs. *Nelson's Perpetual Loose Leaf Encyclopedia* was available, visible, and resting "upon the unique means of keeping the material accurate to date," dedicated to "utility rather than ornament," "judicious condensation," and "recognizing the needs of the life of the world today."²⁵⁹

In the United States of America, there had been taxes on incomes for as long as there had been government experiencing revenue crisis.²⁶⁰ The "faculty taxes" levied by states on various trades and professions go back to colonial times.²⁶¹ National taxes were collected for the War of 1812, the Civil War and in 1894 after the Panic of 1893.²⁶² But when the economy recovered, further widening the disparity in the distribution of income and further promoting the fascination with the resulting inequalities, agitation for reform increased. One focus of this agitation was the comparative study of riches and their accumulation, and the causes and effects of poverty.²⁶³ One result was the split of the Republican Party in 1912 between progressive and conservative, and a slide by the Democrats into office. The new Democratic President, Woodrow Wilson, was famous for being a college man, a Puritan, a progressive reformer, and a technocrat. As president, when provoked to the point of war, he would send a diplomatic note instead.²⁶⁴ These notes were not dictated but composed with

256. NEAL, *supra* note 247, at 154.

257. SIMMONS, *supra* note 15, at 7.

258. BRAVERMAN, *supra* note 102, at 44.

259. 1 NELSON'S, *supra* note 56, at 3-4. Its unique format holds a seven-by-ten-inch visible page, with a quarter-inch notch at top and bottom where the extending paper fits into a binding mechanism. The binding is covered in an ordinary middle green, slightly yellowish cloth, with a common large grain. The pages are three-hole drilled, and the binding mechanism employs posts rather than rings. The spine is two and one-quarter inches thick, and the text block, which varies, cannot exceed two and one-half inches. At the top and bottom of the inside spine, a steel bar runs from back to front, with an asymmetrical two-pronged fork running from front to back, lying on top of it. A screw running between the prongs and into the bar holds the mechanism together. As the upper prong of the fork is shorter than the lower, when the screw is loosened, the fork falls away, the binding opens, and pages can be taken away or added. The screw has two opposite notches rather than a slot, requiring a custom tool.

260. JOHN F. WHITE, *THE POLITICS AND DEVELOPMENT OF THE FEDERAL INCOME TAX* 67 (1985). I am indebted to Witte for the immediately following discussion.

261. *Id.* at n. 2.

262. See *id.* at 67-75. The Supreme Court overturned the income tax as unconstitutional in *Pollock v. Farmers' Loan & Trust Co.* 157 US 429 (1895). *Id.* at 71 n.14.

263. *Id.* at 76.

264. LEUCHTENBURG, *supra* note 145, at 23.

technocratic flair on his private typewriter.²⁶⁵ The format enhanced his image, but we now know that his reasons were not ideological. In 1896, he suffered a stroke and lost the use of his writing hand.²⁶⁶ He then began to type.²⁶⁷ A later stroke in 1904²⁶⁸ and a broken thumb in 1911²⁶⁹ preserved his allegiance to technology.

In his inaugural address,²⁷⁰ Wilson called for tariff reduction with an income tax to make up the lost revenues.²⁷¹ He also called for an emergency session of Congress to begin such reform immediately.²⁷² They did. A constitutional amendment was passed. An income tax was accepted as inevitable²⁷³ but not considered as important as the tariff.²⁷⁴ The statutory process involved conflict and confusion, and a final law which compromised. Compromise implies concession, adjustment, and clarification. Yet, the tradition of confusion over the meaning of the tax consequences of the sale of property, which led directly to the protracted and difficult legislative history of capital gains, began with the original bill. Also original was the conflict over deductions for spouse and children, deductions for business expenses like interest, taxes, and depreciation; exclusions of several kinds of income such as life insurance, interest on state bonds, incomes of presidents and federal judges, or state and local employees²⁷⁵—all of these affected groups had established vehicles for influence peddling in advance of the tax and used it to their advantage.

265. BARBARA W. TUCHMAN, *THE ZIMMERMANN TELEGRAM* 8 (1958).

266. EDWIN E. WEINSTIEN, *WOODROW WILSON: A MEDICAL AND PSYCHOLOGICAL BIOGRAPHY* 141 (1981).

267. A year later he wrote to his wife with the recovering hand, saying "to do anything else would be too much like kissing you by machine." *Id.* at 142.

268. *Id.* at 158.

269. *Id.* at 236.

270. Wilson rode to his inauguration in an automobile, the first American President ever to use this technology for ceremony. LEUCHTENBURG, *supra* note 145, at 6.

271. *Id.* at 77. But not literally. In the rhetoric of the times, the observation that called for an individual income tax was: "A tariff which cuts us off from our proper part in the commerce of the world, violates the just principles of taxation, and makes government a facile instrument in the hands of private interests." An observation that could hardly be footnoted. First Inaugural Address as President of the United States Delivered March 4, 1913, 2 *SELECTED LITERARY AND POLITICAL PAPERS AND ADDRESSES OF WOODROW WILSON* 4 (copyright 1926 by Edith Bolling Wilson under the title *THE NEW DEMOCRACY*) (nd.).

272. A personal income tax as the democratic alternative to tariff can only be deduced by inference and from the actions of the legislature. Here again, Wilson's unremarkable call is for "the object of the tariff duties henceforth laid must be effective competition, the whetting of American wits by contest . . ." Woodrow Wilson, First Special Address to Congress Asking Immediate Revision of the Payne-Aldrich Tariff, Apr. 8, 1913. 63rd Cong., 1st Session. In 50 *CONG. REC.* 130, quoted in *id.* at 27.

273. WITTE, *supra* note 260, at 77.

274. The income tax section occupied only 8 pages of an 814 page report." *Id.* Also, of the 88-page act which spelled out the actual fiscal changes, only Section II, pages 166-180, describes an income tax. The rest is concerned with tariff, the administration of customs, and trade agreements. Revenue Act of 1913, *supra* note 229, at 114-202.

275. WITTE, *supra* note 260, at 78.

After major testing throughout all branches of federal, state, and local governments²⁷⁶ and borrowing language and ideas from the states, foreign countries, and history, a concise act, but nevertheless, an act filled with windy language, was passed.²⁷⁷ Although it created important basic principle, like acknowledging both the ability to pay as well as the expenses affecting the creation of income,²⁷⁸ in fact, the income tax as enacted had almost no effect whatsoever.²⁷⁹

No immediate effect on anyone's wallet, and yet the inception of such a tiny tax was experienced by the rich and powerful as an attenuated and difficult, repulsive, disastrous, monstrous, and altogether disgusting birth. The thought of an income tax, however slight, made many powerful citizens of the Republic frantic and in need of special pampering. Those of the this esteemed group who subscribed to CT's *Congressional Service* asked for and were lucky enough to receive it. At its subscribers request, CT's *Congressional Service* covered the progress of the legislation through Congress in depth. CT graciously organized an Income Tax Department to do it. The new department's first act was to commission Luther Speer, new Deputy Commissioner of the new Internal Revenue Service to write a treatise on the new law. That treatise,²⁸⁰ was sold on news stands and in bookstores for twenty-five cents.²⁸¹ It was a hit and an early indication to those attuned of the enormous profit that might be realized from an interpretive legal literature, now that government had entered the private life of its citizenry with both aplomb and an obsession for minuti so exacting that no ordinary personality could grapple.²⁸²

276. *Id.*

277. Revenue Act of 1913, *supra* note 229. However precise and comprehensive it seemed, it was followed by a Revenue Act of 1916, ch. 463, 39 Stat. 756 (1916), Revenue Act of 1917, ch. 63, 40 Stat. 300 (1917), Revenue Act of 1918, ch. 18, 40 Stat. 1057 (1919), Revenue Act of 1921, ch. 136, 42 Stat. 227 (1921), Revenue Act of 1924, ch. 234, 43 Stat. 253 (1924), Revenue Act of 1926, ch. 27, 44 Stat. 9 (1926), Revenue Act of 1928, ch. 852, 45 Stat. 791 (1928), and a Revenue Act of 1932, ch. 209, 47 Stat. 169 (1932). Although this was not only clarification, but also the reversal of progressive tax policies by three successive reactionary administrations. Then thinking about taxation changed again, and along came the National Industrial Recovery Act, ch. 90, 48 Stat. 195 (1933).

278. Revenue Act of 1913, *supra* note 229.

279. Less than two percent of the labor force filed returns in the years 1913-1915. The amount of tax collected was so small as to be almost immeasurable. Four years later, the United States entered World War I. Tariff and excise revenues declined with the war, and the federal budget deficit rose to \$177 million between 1915 and 1916 and was climbing. By 1916, individual and corporate income tax accounted for 16 per cent of federal revenues. In the period 1917-20, the percentage rose to 58.6. See WITTE, *supra* note 260, at 78-79.

280. At 111 pages it is sometimes referred to as a pamphlet. LUTHER F. SPEER, *FEDERAL INCOME TAX LAW AFFECTING INDIVIDUALS AND CORPORATIONS WITH AN ANALYSIS OF THE ACTS OF EXPLANATORY NOTES* (1914).

281. Selling (CCH), *supra* note 248, at par. 101.

282. For another sign of the potential value of expert advice, and the pressure being exerted on its format was the experience of Foster's treatise. Rushed into print soon after the publication of the forms needed for the returns due in March 1914, but before the promulgation of Treasury Department regulations, the book nevertheless went out of print twice in a

By December 1913, the first modern legal looseleaf, *Federal Tax Service*, was published by CT in a black looseleaf binder. It was 400 pages long and contained the text of the federal act, Treasury decisions, forms, and provisions for other new developments. Also included were letters from the IRS containing rulings on specific questions which were solicited from subscribers. The publication saw itself as a "a great co-operative effort amongst attorneys to understand the provisions of a complex and important law."²⁸³ William P. Powell was its editor and Justus L. Schlichting its single most important author.²⁸⁴ Its contents were numbered consecutively and punched for its binder. The binders themselves were flat black with seven one-inch rings which simply pulled apart. There were no dividers rising above the text block. A notice boasted of its devotion to currency over regularity.²⁸⁵ In fact, over time, it turned out that new material in tax publications tended to be updated weekly, in other publications, every two weeks. Eventually it became a house rule that every unit had to be updated once a month.²⁸⁶

In 1917, *War Service Tax* was published by Corporation Trust Company. The binder was similar to *Federal Tax* except the seven rings were hollow, small chutes, like curved pipe which had been split in half. There were no tabs, and plenty of forms in the text. The next year's edition of *War Service Tax* had on its title page a carbon copy of a typewritten note, cut out and tipped-in by hand. It was the print equivalent of Standing Room Only.²⁸⁷

In 1918, black and white cardboard tabs began to separate sections. In 1921 a "perpetual cumulative index" was added, speeding up the technology considerably.²⁸⁸ In 1924 the Revenue Act was printed on pink pages, and the cardboard tabs separating sections had plastic extensions. The binder rings shrunk down to three from seven, and the cover, now made of metal, was held to the spine by piano hinge.

By the 1920s, tax rates were at a peak, accounting for over half of all federal revenues.²⁸⁹ CT had 20,000 subscribers and about twenty com-

month and a second edition appeared within the year re-written with new forms, the regulations and the substance of new case law. See Preface to Second Edition. ROGER FOSTER, A TREATISE ON THE FEDERAL INCOME TAX UNDER THE ACT OF 1913 n.p. (1915).

283. *Id.* at 103.

284. *Id.*

285. This volume contains rulings in force at the time of supplementation. New pages are issued as often as new rulings, regulations or decisions appear." 1 FEDERAL TAX REPORTER 1 (1913).

286. Selling (CCH), *supra* note 248, at par. 256.

287. Important Notice: Acts of Aug. 5, 1909, Oct. 13, 1913 and Sept. 8, 1916. If you have found the pamphlet containing extracts from these acts of value and anticipate the need for such a pamphlet during the present year, we suggest that the copy sent to you originally, provided for insertion in your 1917 binder, be transferred therefrom to this new 1918 binder, for convenient reference. Our supply of this booklet is practically exhausted. The Corporation Trust Company." 1 WAR SERVICE TAX 1 (1918).

288. HICKS, *supra* note 237, at 3 11.

289. See WITTE, *supra* note 260, at 78-79.

petitors.²⁹⁰ Among these were *Nelson's Wisconsin Tax Service*, *McKay's Massachusetts Tax Service*, *Cowan's Blue Sky Manual*, *Woise & Coigne's Telegraphic Service*, the publications of Court Decision Reporting Corporation and many original Commerce Clearing House titles. All were absorbed by the CT and CCH merger into CTC.²⁹¹

William KixMiller began Commerce Clearing House in Chicago in 1916 with the *U.S. Master Tax Guide*. In 1917 this Guide was supplemented by a looseleaf binder of new developments called *Rewrite Bulletins*. In 1921 KixMiller's *Federal Tax Service* began. By 1927 he had 10 looseleaves in the area of tax. But in the mid-1920s, Prentice-Hall sued him for infringement. Litigation proved inconclusive but expensive, and sent him looking for cash.²⁹² Soon CCH and CT merged. In 1927 the Commerce Clearing House looseleaf division of the Corporation Trust Company began. In 1928 it was publishing 17 looseleaf services. By 1942 it was publishing 35 such services²⁹³ and by 1969, there were over 50 CCH titles.²⁹⁴ Over the years, changes in legislative thinking tended to support more pages rather than less. And every kind of insecurity within the profession over language losing its precision led to even more pages. By the mid 1970s, there were about 25,000 pages per year and a subscription cost of \$975. The whole thing weighed in at about seventy pounds.²⁹⁵ The physical act of filing became laborious, and still it kept growing.

The two major competitors that CCH did not buy were *The Standard Income Tax Service*, published by the Standard Statistics Company, and Prentice-Hall. Standard Statistics went under in 1924. Prentice-Hall never failed. Quite the contrary.

The Prentice-Hall Company was founded on Oct. 13, 1913, by Richard P. Ettinger and Charles W. Gerstenberg.²⁹⁶ Gerstenberg was a lawyer and Professor of Finance at the New York University School of Commerce. Ettinger began working for Gerstenberg while in high school. He continued in his employ during his undergraduate years at NYU and throughout his career at New York Law School.²⁹⁷ In 1913, they formed a company in order to publish a textbook of Gerstenbergs called *Materials of Corporate Finance*.²⁹⁸ The firm was named for its founders' mothers, Marion Prentice Ettinger and Harriet Hall Gerstenberg.²⁹⁹ *Materials of*

290. Selling (CCH), *supra* note 248, at par. 104.

291. Hicks, *supra* note 237, at 311.

292. Selling (CCH), *supra* note 248, at par. 105.

293. Hicks, *supra* note 237, at 312.

294. NEAL, *supra* note 247, at 188-190.

295. SHERMAN, *supra* note 253, at *id.*

296. RICHARD PRENTICE ETTINGER, *EVERYTHING HAPPENS FOR THE BEST* 17 (1960).

297. *Id.* at 7.

298. "Dr. Gerstenberg handed me materials of corporate finance and told me to get it printed and to attend to all the details and we would share the profits." *Id.* at 109.

299. Hicks, *supra* note 237, at 314.

Corporate Finance was a success.³⁰⁰ Ettinger was twenty years old at the time. A year later he published his own text, *Credits and Collections*, which became the leading work on the subject.³⁰¹

Three years later the new Internal Revenue Code arrived, and Prentice-Hall decided to explain it. Gerstenberg and Ettinger, along with John A. Conlon, George Hamilton, and Chauncey Eversfield, wrote *Federal Income Taxes* which appeared in 1917. A first printing of 4,000 sold quickly, and a reprint of another 4,000 was ordered. The second edition sold a few hundred copies,³⁰² but most of it was still at the bindery when the Treasury Department issued new regulations which struck this book suddenly and completely obsolete. Facing financial disaster, Ettinger came up with the idea of an updated supplement to be inserted into the book, and both were sold together.³⁰³ The device was successful. Sales were brisk but more supplements, bothersome as they were, became necessary.³⁰⁴ Finally, Ettinger hit upon a solution so ingenious that even he himself, although obliquely, was forced to compare it to the achievement of Gutenberg.³⁰⁵ In 1919 Prentice-Hall offered a looseleaf reporter on income tax, shoestring bound.³⁰⁶ The rest was history. Ettinger kept inventing.³⁰⁷ Accordingly, P-H grew from one room on lower 5th Avenue to a twelve-story building, to half a million square feet in New Jersey, fifty-six acres in Rockland County, and vast tracts in Utah and California; from one employee to over 40,000; from one book to 150,000 publications, etc.³⁰⁸ By 1970 Prentice-Hall sales topped \$100 million.³⁰⁹

There were other pieces to the pie.³¹⁰ In 1934 a group of Prentice-Hall executives left the firm and started the Alexander Publishing Company. Alfred H. Alexander had been vice-president at P-H for over a decade. They began with a looseleaf in four volumes called *Federal Tax*

300. For proof of five editions, see CHARLES W. GERSTENBERG, *MATERIALS OF CORPORATE FINANCE*, 5TH ED. (1962).

301. ETTINGER, *supra* note 296, at 109.

302. HICKS, *supra* note 237, at *id.*

303. *Professional Publishing—Looseleaf Subscription Services: Tradition and Change* (Gayle Feldman, ed.) PUBLISHERS WEEKLY, Sept. 16, 1988, at 40.

304. HICKS, *supra* note 237, at *id.*

305. Quoting an undated, unattributed speech about himself, given at Hobart and William Smith College on the occasion of his honorary degree in 1966, the speaker reckoned that, first Gutenberg invented moveable type, then Ettinger invented the replaceable page. ETTINGER, *supra* note 296, at 7; but see NELSON'S, *supra* note 242.

306. Selling (CCH), *supra* note 248, at par. 104.

307. Subsequent inventions included the "deferred profit-sharing plan", the "split-dollar insurance plan" and "many other things." ETTINGER, *supra* note 296, at 7.

308. *Id.* at 170.

309. *Id.* at 9.

310. In 1919 looseleafs in internal medicine and surgery were published by the Prior Company. Titles grew to include cardiology, radiology, obstetrics and gynecology, even psychiatry. The medical looseleaf literature rivals that of the law. PUBLISHERS WEEKLY, *supra* note 303, at 40-41.

Service. Federal Tax Decisions was added in 1940, and later a tax control service, a wages and hour service, and a tax course.³¹¹ Alexander became Michie in 1955, and Lawyer's Co-op in 1963.³¹² Research Institute of America, Inc. began as a publisher of books. In October 1935 a book called *Minimizing Payroll Taxes* by Hugo E. Rogers appeared. A regular case-bound hardback, it explained the payroll part of the new Federal Social Security Act; an explanation that went quickly out of date as states began to pass similar acts. A second printing in November included the new state provisions and was in looseleaf form. The company was called the Tax Research Institute until 1939, when it expanded its outlook and dropped the word tax from its name. RIA has always called subscribers members.³¹³ It went through a series of owners in the 1980s and 90s, when serial swallowing was common in the industry, but RIA survived, perhaps because it has always taken an analytical rather than a codification approach.³¹⁴

BNA, or the Bureau of National Affairs, publishes weekly periodicals, not moveable pages, but these are usually grouped with looseleafs' because they are housed in binders and because of their reputation for obsessive speed, accuracy, and a special look. BNA began in 1933 as a subsidiary to a failing daily newspaper.³¹⁵ *US. Daily* was a national newspaper with a national following but not enough advertising. Relaunched as *US News*, it was accompanied by two services which attempted to learn from previous mistakes and supply the same sort of quality information, only packaged for subscribers rather than advertisers. These services were designated reporters, not newsletters or magazines, and those who bought them were users or clients, not subscribers. *US. Patent, Trademark and Copyright Reports* and *US. Law Week* were both successful. *P.T.&C.* was a weekly and was cumulated into bound quarterly volumes called *Patents Quarterly*. *US. Law Week* reported the text of all opinions of the U.S. Supreme Court, with a complete journal of the court's proceedings and digests of important lower federal court decisions. Their claim to fame was that they published the decisions of the high court first. They did this by seizing the actual decision upon its reading and rushing it to camera. The resultant image was printed using photo-offset lithography, a recently improved process at the time.³¹⁶ Any last minute corrections to the text

311. Hicks, *supra* note 237, at 316.

312. See Michie Co. publication, *ALEXANDER FEDERAL TAX HANDBOOK* (1955-1963), and beginning in 1964, Lawyer's Co-op publication, *MICHIE'S FEDERAL TAX HANDBOOK* (39th ed.) (1977).

313. Hicks, *supra* note 237, at 316.

314. Telephone interview with Howard Wolosky, Vice President, *PRACTICAL ACCOUNTANT* (APR. 24, 1997).

315. The company began during the Bank Holiday of 1933, which caused the demise of *U.S. Daily*. JOHN D. STEWART, *MAKING EMPLOYEE OWNERSHIP WORK* 3-4 (1997).

316. Using zinc plates coated with casein-sensitized coatings and image lacquers made for sharper images, faster priming and longer runs. These factors translated into lower costs, etc. UNITED STATES GOVERNMENT PRINTING OFFICE TRAINING SECTION, *THEORY AND PRACTICE OF LITHOGRAPHY* 2 (1964).

appeared in the hand of the justice who made the change. Such corrected texts were prepared, printed, assembled and mailed before dark, "thereby insuring the delivery of the decision within 24 hours after they had been handed down."³¹⁷ *US. Law Week* was published on Monday, then the only day of the week on which high court opinions were handed down. Washington subscribers got them the next morning. Subscribers east of the Rockies got their *U S. Law Week* by Wednesday. It must have been one hell of a postal service then, and the hand-corrected decisions gave *US Law Week* a high speed, hi-tech, ultra-modern look. Today's digitals wished they had something so authoritative and so visually so. Its contents too were enviable. *US. Law Week* has become one of the most highly regarded titles in all of the literature. For identifying major issues or tracking the direction that the law is tending toward, and for general wit and excellence, many leading scholars read *US. Law Week*.³¹⁸ BNA's greatest claim to fame, however, is its ownership. In 1946, BNA raised capital by selling itself to its employees.³¹⁹ After more than fifty years, it remains employee-owned.

Looseleaf reporting is generally based on statutes. That is, looseleafs are arranged by statutes which are enhanced with decisions, interpretations and other editorial comments. It began this way and remains so. It is perhaps no accident, then, that in 1916 just when looseleafs were finding their market, the very first pocket parts were issued by the West Publishing Company to update McKinney's Consolidated Laws of New York.³²⁰ Pocket parts are unbound supplements with a cardboard flap at the end, which fits into a slot in the back paste down of the volume being updated. When you have the volume in hand, you also have the supplement, and might be more likely to consult it. The pocket part became the standard for updating codified statutes, extending the sense of a familiar framework being revised and filled in with infinite detail. The advance part or sheet became the standard updating device for case reports, extending the sense of an infinite linear series. And looseleafs became the standard for annotations organized by statute, but gathering every relevant source to it, whether case, statute, regulation, commentary, journalism, or otherwise. This is how development came to rest, as it must, when a technology matures.

CCH stuck with the three-ring binder. Ring binders lie flat and are easy to open, close, and lock. CCH eventually locked with a patented slide-lever. Its binder rings grew from a diameter of an inch and a quarter, to an inch and three quarters in 1922.³²¹ Over the years they grew to two, two and a quarter, and finally, two and three-quarters inches. This was

317. Hicks, *supra* note 237, at 318-319.

318. Robert C. Bering, *How To Be a Great Reference Librarian*, LEGAL REFERENCE SERVICES Q., Spring 1984, at 17, 32-33.

319. STEWART, *supra* note 315, at 9.

320. SVENGALIS, *supra* note 225, at 8.

321. 1 STAND. FED. TAX REP. (CCH) 1 (1922).

soon not big enough, but given the relationship between ring and paper and the way text blocks turn and flop, two and three-quarters was pushing it. The ring metal went from nickel-plated steel, to steel painted flat black, so as not to reflect light and perhaps bring annoyance to the eye of a subscriber.³²² The rings themselves were eventually coated with cadmium, the self-lubricating metal, which offered less resistance to the paper as it moved back and forth. The flippers that raise the paper off the rings at the front and back of the binder came to be waxed at the point where they touched the rings in order to move more smoothly. The black fabrikoid use for the cover was treated to resist spotting. Prentice-Hall settled upon a five-post binder with a flat backbone, whose front cover flipped open and laid flat.³²³ Sometimes, there was a hinge in the center of the spine.³²⁴ Such a binder is expandable, and can hold many more pages than rings. Its backbone comes apart for easy insertion, but the pages go uphill and down and may get tight as the binder expands. And the binder, of course, gets heavier as it fills. RIA went for double locking top and bottom rings.³²⁵ Others use prong-type binders whose prongs overlap or combinations of prongs and posts and so on.

GROWTH AND DEVELOPMENT OR MATURITY

On the first day of the twenty-third annual meeting of the American Association of Law Libraries, held May 29, 1928, in the private dining room of the French Lick Springs Hotel, French Lick, Indiana, Francis D. Lyon, Assistant Law Librarian of the New York State Library conducted a round table discussion on the subject of the value and need for limitation of looseleaf and other services. The discussion was limited to thirty minutes, but members were requested to come prepared to present their views.³²⁶ One year later, a special committee headed by John T. Vance reported on a comparison of the methods and time used to obtain the same information from official government publications and from commercial looseleaf services. The report was inconclusive.³²⁷ At the 1935 AALL Annual Meeting, Miss Olive C. Lathrop, of the Detroit Bar Association library, in a cautionary talk, about where the escalating quantity and cost of legal materials was headed, entitled "The Law Library of 1985" chose to sidestep looseleafs, but not exactly.³²⁸ In 1940, the American Bar

322. For discussion of CCH binder see Selling (CCH), *supra* note 248, at par 283.

323. *Id.* at par. 284.

324. 1 PRENTICE HALL FEDERAL TAXES 1 (1973).

325. Telephone interview with James Rooney, retired Executive Editor, STAND. FED. TAX REP. (May 12, 1997).

326. "Loose Leaf and Other Services," Tuesday, May 29- 2:30 p.m. see *Program, Twenty-Third Annual Meeting*, 21 L. LIBR. J. 2 (1928).

327. *Proceedings of the Twenty-Fourth Annual Meeting*, 28 L. LIBR. J. 102, 107 (1935).

328. "I can take no time to argue for or against the desirability of such publications. They are here. They increase each year. Their publishers are shrewd, far-seeing individuals who believe in their publications enthusiastically. I believe the business will continue to be con

Association Special Committee on Legal Publications and Law Reporting recommended that the length of appellate briefs be reduced, that lengthy quotations be omitted from such briefs and that the number of citations included be reduced.³²⁹ They arrived at these recommendations after a serious survey of the American bar.³³⁰ Further, they mentioned that in all states surveyed, members of the bar said they would prefer shorter written opinions and the omission of pure dicta. They go on at great length, but their point is clear.³³¹ There was too much and it cost more than lawyers could afford.³³² And specifically, the attorneys felt that there was too much of what wound up in looseleaf services.³³³ Their remedy for all this is shocking, although what they suggest is exactly what transpired about fifty-five years later.³³⁴ The difference is that when it actually came to pass, it had the opposite effect.³³⁵ Meanwhile, the response to the suggestion was dated.³³⁶

Some aspects of looseleaf culture are only revealed anecdotally.

lined to a few well organized companies as it is exceedingly expensive to operate. But the subjects covered will increase mightily. My own small library receives 14 separate loose-leaf services with almost daily mailings of rules, regulations, new matters and court decisions. In addition we have four services reporting court decisions alone, one covering fifteen different subjects. We have one service giving us our State statutes as soon as signed by the Governor." Olive C. Lathrop, *The Law Library of 1985*, 8 L. LIBR. J. 161, 166-167 (1935).

329. 65 ANNUAL REPORT OF THE ABA 263, 263 (1940).

330. Over 5,000 attorneys were surveyed in 16 states. *Id.* at 265.

331. Although on a paradoxical note, "Majorities in each state are opposed to legislative action which would provide for a penalty against anyone who published an opinion which was designated 'not to be reported.'" *Id.* at 267.

332. "In addition to the \$5.20 per book, the lawyers were charged \$18 per year for official advance sheets, which cost prohibited the use of the advance sheets by many attorneys throughout the state." *Id.* at 269. "There is no question but what the lawyer is being overburdened and his income seriously depleted by the great number of books published which he may feel compelled to buy irrespective of any high pressure salesmanship." *Id.* at 270. "Many lawyers in Florida cannot hope to maintain a library including anything other than a few textbooks, the Florida Statutes and the decisions of the Florida Supreme Court." *Id.* at 279.

333. "A very substantial majority of attorneys in each state surveyed believe that there is unnecessary duplication in the publication of digests, encyclopedias and loose-leaf services." *Id.* at 273.

334. "It seems most unfortunate from the standpoint of cost to the profession that it has not been possible for the publishers to merge their editorial efforts and the overhead of publication. As in the case of the merger of the competing series of selected cases, which resulted in a publication of greater value to the attorneys, it would seem that a merger in the publication of law books which are national in scope might be to the advantage of both the profession and the publishers." *Id.*

335. Over the last twenty-five years, the cost of loose leafs has not only failed to decrease, it has increased, roughly speaking, by a factor of five! For a summary of the surveys for the years 1973/74 through 1993/94, see Bettie Scott, *Price Index for Legal Publications 1993-94*, 86 L. LIBR. J. 837, 840 (1994).

336. "In regard to duplication of law textbooks, we can see no help for this because to try and stop it would mean trouble from the Federal Trade Commission." ANNUAL REPORT OF THE ABA, *supra* note 329, at 274.

Women employed by CCH shared editorial responsibility, but were not allowed to smoke at their desks, as men were. For senior editors, the worst day of the year was April, when the binders of the master sets were secretly unlocked, and upon consultation, scattered everywhere to the chorus, "April Fools!"³³⁷

In the early days, filing was exciting. Attorneys did the filing. They were the users, they were the experts; filing was part of the means of maintaining their expertise, and they found the process pleasurable. With the Great Depression came economic hardship for many, but sweet times for some lawyers and for the publishers of looseleaf services. Agencies promulgating regulations multiplied exponentially. For the public, it was hopeful chaos; for the publishers, it was gold.³³⁸

In 1933, the first one hundred days of the Franklin D. Roosevelt Administration brought the drastic measures of the New Deal to help inspire an idle, angry populace, a business community on the verge of despair, and an economy lying at the bottom of a trough. In this brief period, CCH began its Securities, Labor, Social Security, Carriers, Food and Drug, Liquor Control, and Bankruptcy Reporters.³³⁹ The decline in tax legislation was dramatically reversed with the recodification of 1939. This boom in administrative law when so many other hands were idle led the work of looseleaf filing down the economic ladder to the rung of lowest compensation.

With Britain, France, Germany, and Russia already at war, the librarians continued to wage their perpetual battles for status within law schools,³⁴⁰ for shorter judicial opinions, for limiting those opinions to a new point of law or a novel application, or at least limiting the publication of such opinions, and for limiting citation to published cases.³⁴¹ The ongoing European conflict was merely hinted of at the annual banquet.³⁴²

Meanwhile, the glamor of office technology was still being celebrated. Speaking about the treatment of pamphlets and other unbound materials, the law librarian at Harvard lovingly describes the steel transfer cases that hold the records and briefs from the fourth, fifth, seventh, eighth,

337. ROONEY, *supra* note 325.

338. "We are all familiar with the scandal of the Hot Oil Case and the morass of statutory and administrative law produced by this country's efforts to lift itself out of the depression and to wage World War II. The reforms of the Federal Register Acts were paralleled by increasing sophistication in the loose leaf services . . ." Morris L. Cohen, Panel Chairman, *Panel on Historical Development of the American Lawyer's Library*, 61 L. LIBR. J. 440, 458 (1968).

339. Selling (CCH), *supra* note 248, at par. 108.

340. Annie C. Walker, *The Place Accorded to the Library in Law School Announcements*, 33 L. LIBR. J. 397, 397-400 (1940).

341. *Report of the Committee on Cooperation with the A.B.A.—Law Reporting and Duplication of Law Books*, 33 L. LIBR. J. 303, 305 (1940).

342. "At this time in the history of the world, our conceptions of justice according to law . . . are threatened in their ancient home as they have never been before . . ." *Association Banquet*, 33 L. LIBR. J. 349, 350 (1940).

ninth, and tenth circuits.³⁴³ He also describes making folders and labeling them with a lettering kit. Discussion of his lettering outfit goes on for over a thousand words.³⁴⁴

During the last summer of that era of suffering and innocence, before America went to the war that brought them unexpected wealth, technological achievement, and a sense of responsibility for shaping up the entire world's population, the looseleaf industry underwent an interesting, if subtle, change. It was one of those broad evolutionary shifts that only history reveals as more than local.

In the profitable world of legal publishing, there is a difficult distinction between interpreting legal sources for lawyers so that they may advise their clients, and interpreting legal sources so succinctly and with such clarity and articulation that they can leap-frog over the legal profession and be grasped directly by the layman. In a perfectly free market this might be called doing your job well. But for the legal profession, when the layman fails to be intimidated by obscurity or complexity in a legal source, there is a resulting fear that leads to scrutiny with the hope of unmasking the illegal activity called "unauthorized practice."

Conversely, when a publisher provides reports of legislative and judicial progress to a subscribing population which is subscribing in order to make better legal and business decisions, there is a natural tendency to stretch. Reporting on pending legislation leads to forecasting the effect of such legislation if ratified, and so on. Prophecies, warnings, and hunches based on real or imagined expertise and inside information creeps in. The difficult line may be unconsciously crossed. You do not ask your lawyer

343. "They are equipped with rolls at the front of each drawer and the drawers, even when filled are easy to pull out. One legal size case will accommodate two rows of briefs and records . . . the cases can be put one on top of each other in stacks of four or more . . . the papers are kept clean and can be easily and rapidly withdrawn when needed . . ." Eldon R. James, *Treatment of Pamphlets and Other Unbound Material in the Harvard Law School Library*, 33 L. LIBR. J. 283, 284 (1940).

344. E.g., "I have mentioned our extensive use of oak tag, a heavy manila stock. It might be useful to say something more about this and also to speak of the lettering device we use . . . The oak tag is cut to size with a minimum of waste by a levered cutter. The pages who do this sort of temporary binding in their spare time use a ruler and an ordinary bone folder in order to cut the oak tag to the exact size and shape needed . . . it is then stapled by means of a heavy hand stapling machine to the materials which is to be covered, or if it is not stapled, tape is attached to the cover . . . The cover, whether in the case or folder form or in the form of temporary binding is then lettered by the Leroy lettering outfit manufactured for the use of draftsmen by Keuffel and Esser. This consists of a pen, or rather a stylus, attached to a moveable arm, with the stylus at one end and . . . any of the boys can produce lettering which is uniformly satisfactory, even with very little practice . . ."

Mr. Drucker: What is the cost of the lettering outfit?

Mr. George A. Johnston (Librarian, Law Society of Upper Canada, Osgoode Hall, Toronto, Canada): It is about \$15.00 in this country, a little bit less for you.

Mr. James: If you only get one stylus it is inexpensive . . .

Mrs. Forgeus: Don't the steel transfer cases for your Records and Briefs get very bulky? Don't they take up a lot of space?

Mr. James: Oh, yes, they get bulky, but shelves get bulky too . . ." *Id.* at 283, 284 (1940).

when you know the answer, even though you cannot remember how you came to know it and so on.

But whatever it was called, the business of practicing law was not very good in the summer of 1941. There was no available evidence that laymen were indulging themselves in looseleaf subscriptions, and yet the legal profession, embodied by the American Bar Association, felt that the service ideal had gone too far. The ABA Standing Committee on Unauthorized Practice of Law invited the publisher's committee on bar cooperation to meet.³⁴⁵ Ettinger of Prentice-Hall was present. Schlichting of CCH, Leo Cheme, the founder of RIA, and Dean Dunwoody of BNA were all in attendance. They met in Savannah, Georgia, and reached an agreement on May 21, 1941.

After that, the looseleaf subscriber was no longer a member of a service, but the consumer of a product. As customers they would no longer be urged to telephone, write, or call with their problems. A product was for sale; you bought it or you did not. Thus began the broad historic change in attitude from the depths of the Depression, when people felt bonded in failure, to the heady excesses of the post-war era when success continually fed upon itself until a new level of arrogance emerged, and many aspects of community were sacrificed to the economic. It was a shift from competition based on service to price war, from price as a function of cost to price as a function of value perceived, from business relationships based on trust to personal relationships based on power and benefit. As a culture, we went from gut to statistical analyses, from big to bigger and more powerful decision-making bodies covering smaller and smaller populations, and from government as something good to government as something entrenched. From then on, going out to buy things became a central act of social life. You bought stuff because its defects were less frustrating than those of the other available stuff, and because its advertisements brought you the entertainment that you enjoyed, or else made you feel like there would be something missing from your life if you bought the other stuff.

Moreover, when the wholesale product is information retailed as advice, the resulting conspiracies blur. Free markets have no mechanism for getting users to join together to share in the cost of production.³⁴⁶ Prices do have the effect of signaling consumer preference and channeling investment,³⁴⁷ but when the product is understanding and not the medium of its conveyance, almost all costs are fixed. Once created, there are almost no more costs.³⁴⁸ Thus, the obvious choice for looseleaf publishers was not to provide and update information, but to provide maintenance of an expertise. If there was a problem in understanding, the supply stream

345. For the Savannah meeting, see HICKS, *supra* note 237, at 302 & ff.

346. PAUL GOLDSTEIN, COPYRIGHT'S HIGHWAY: FROM GUTENBERG TO THE CELESTIAL JUKEBOX 176 (1995).

347. *Id.* at 178.

348. *Id.* at 177.

contracted. Then a salesman showed up and explained. On a sales call, the binders were checked and misfiling straightened out. An updated legal development was one with comments, predictions, and speculation as to possible consequence. Prophecy and wisdom were all a part of the soup until the summer of 1941. After Savannah, looseleaf publications, in accordance with the agreement, added a notice to the title page of each first volume advising readers to hire a lawyer for legal advice.³⁴⁹ Since that time, the publisher's work has been to read, evaluate, analyze, explain, index, and report the law. The service ideal had to confine itself to scholarship, accuracy, and the individual look and feel of a publication, which when successfully done gave the subscriber a sense of security and familiarity, the two essential prongs of legal comfort.

With World War II came the various war law reporters and an increased importance attached to taxation. The War Manpower Commission ruled that looseleafs were an essential business, and all "binders and materials" were free from any ration restrictions.³⁵⁰ After all, it was taxes that funded the war effort. Moreover, within the federal bureaucracy recently and hastily organized on an unprecedented scale, there were many agencies clinging to their loose leafs in the hope of finding identity in their authority.³⁵¹ BNA's *Price and Production Controls*, a genuine loose leaf, was deemed so essential, its editors were encouraged to use unlimited amounts of paper.³⁵²

The U.S. Navy awarded CCH a "certificate of achievement" for keeping the nation aware of changes in rules and regulations throughout the war.³⁵³ The navy had also begun to play around with "electronic indexing" during the war, and shared its ideas with the publishers.³⁵⁴ Throughout the war, the masthead of CCH's *Standard Federal Tax Guide* news summaries, which began the supplementation package, showed a drawing of a tank arriving at the crest of a hill. A banner above the hill said "Buy War Bonds." In 1944 the hatchmark of a union shop appeared at the bottom of CCH title pages.³⁵⁵ Prentice-Hall and the West Publishing Company were honored by the government for their work in

349. "This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or expert opinion is required, the services of a competent professional should be sought." 1 STAND. FED. 1 (1944). On June 20, 1941, that same notice was sent to subscribers of all looseleaf publications, along with a letter which said, "If you will refrain from asking our opinion or advice, you will save us the embarrassment we suffer when we may not be of help." HICKS, *supra* note 237, at 305.

350. Selling (CCH), *supra* note 248, at par 108.

351. Telephone interview with James Rooney, retired Executive Editor, STAND. FED. TAX REP. (May 21, 1998).

352. STEWART, *supra* note 315, at 9.

353. Selling (CCH), *supra* note 248, at par 108.

354. ROONEY, *supra* note 351.

355. 1 WAR LAW SERVICE 1 (1944).

tax and legal treatises, respectively.³⁵⁶ Service was subtly shifting from the business notion of providing for individual subscribers to the more noble calling of national service, serving the democratic ideal, and finally, defending the free world. This process of shifting from business to a sense of mission was quite common in American industries involved in the Second World War. It seemed to coincide with a slide into unparalleled prosperity which needed something at least as significant as defeating Nazis to feel good and deserving of such riches.

With the war's end came peace, and the return of the legal literature to what would never be the same again. A Harvard Law School tax professor wrote a praise of, and a prayer for, the punch card.³⁵⁷ In it the legal literature is again identified as overwhelming. Not only were judicial decisions "growing like a rolling snowball,"³⁵⁸ but a variety of non-legal matter was now "essential to sound legal advising."³⁵⁹ The solution was business machines. Could they not do for law what they were doing for accounting and statistics? Couldn't law investigate them as science was doing? Small reporters like *Federal Rules Decisions* could be published on punch cards.³⁶⁰ Tax materials would be even better. Looseleafs were almost punch cards!³⁶¹ Alas, infallible indexes and digests are not quite ready to provide machine-made answers, but it will not be long if we pull together and recognize the common enemy, who we aid and obscure when we compete. The author continues the Cold War rhetoric by asking West, CCH, Prentice-Hall, and Shepard's to cooperate in the mechanization of legal research, because it cannot be done without them.³⁶²

Many looseleafs services rooted in war lingered on and revived in 1950 for the Korean War. By the 1950s, the American economy entered a long period of stable prices that supported an abundance so grand that former notions of luxury were often surpassed by the ordinary life of the majority. In Chicago, Carlos Murphy's Restaurant, a CCH hangout, switched its menu from bound to looseleaf format.³⁶³ In many law firms, each partner began to require a separate subscription to his favorite looseleafs. If the firm had twenty partners, even if the set had grown to twenty volumes, there would be twenty subscriptions and twenty sets of updates to file and shelve.³⁶⁴ The technology had grown invisible and the physical

356. ROONEY, *supra* note 351.

357. John M. Maguire, *Adaptation of Modern Mechanical and Electrical Aids to the Assembly of Tax Information*, NEW YORK UNIVERSITY SEVENTY ANNUAL INSTITUTE ON FEDERAL TAXATION 1008 (1949).

358. *Id.*

359. *Id.*

360. *Id.* at 1009.

361. "Ever since 1913, their topic has enjoyed what may be called super-digest treatment. . . . Tax workers have long known the loose-leaf device, which has many of the merits of cards, although in considerably less elastic form." *Id.*

362. *Id.* at 1014.

363. ROONEY, *supra* note 325.

364. *Id.*

act of filing into a menial chore. Meanwhile, developments such as the 1954 revision of the Internal Revenue ballooned out of control unexpectedly. While the revision was still a pending bill in Congress, CCH *Standard Federal Tax Reporter* issued more than 3,000 pages of text, reports, and explanations in advance of enactment.³⁶⁵ Once the 1954 Code was enacted, the regulations to it were not completed until 1958. During this period looseleaf supplements of 300 to 500 pages per week were not unusual.³⁶⁶ Such volume, combined with the phenomenon of multiple subscriptions led to a new industry called "filing services." This industry employed white-collar proletarians, under color of some faceless off-site logo, who reported to law offices and libraries and filed. They did drudge work of patent boredom which led to mistakes and even conscious or unconscious political or apolitical sabotage, similar on its surface to the experience of Moses and the original tablets. Whatever its cause and wherever the blame was directed, filing began to interrupt the work flow. Much later, the stress of looseleaf filing was altered by the introduction of the Walkman, and other miniature devices for receiving entertainment on the job,³⁶⁷ but by then so much else had changed that professional filers were already considered obsolete, although they were not and would not be for another forty or fifty years, if then.

These factors and others, often just varieties of the sin of holding too high an opinion of oneself as a result worldly success, seeped into the industry. Coverage began to shift from complete to comprehensive. Where formerly every single case, attorney general's opinion, and administrative ruling, even if redundant, had to be digested—where formerly copyright and purity were synonymous and every quote and fact had to be scrupulously permissioned and attributed—eventually the strain became so great that compromise was demanded. Absolute certainty gave way to the priorities of the work day. Although not a bad thing, in and of itself, compromise, as it began to lose its tragic aspect, worked against moral maintenance. Compromise became instead the mark of a true professional, whose fudges and fiddling were a sign of the wisdom that came from experience. Faced with the hard fact of too much information, tough guys did what they had to, never noticing what was happening to the importance of truth.

TECHNOLOGY STRIKES IT RICH

In 1950 at the Forty-third Annual Meeting of the American Association of Law Librarians in Seattle, a roundtable discussion on looseleaf services was presented as the Saturday night entertainment. The

365. Selling (CCH), *supra* note 248, at par. 225.

366. ROONEY, *supra* note 325.

367. Michael G. Chiorazzi, Deputy Director, Boston College Law Library, Address to Law Librarians of New England Research Course at Boston College Law Library (May 6, 1992).

Chairman of the Committee on Loose Leaf Services had requested a discussion between publishers and librarians, rather than a mere reading of a report. In advance, however, the committee left a rather direct letter about what it had in mind.³⁶⁸ The problems were familiar, but as the subject of a year long study by an AALL committee, a new status was suggested. The specifics were old: too expensive, too much duplication, too slow, poorly indexed, and that group of anxieties and frustrations that lump together into feeling buried by information: the paper is too thin, the type too small, the binders are too big and tend to overfill—the subject matter is so specialized; so many sets have to be mastered. The salesmen can be loud and pushy and what starts out as a thoughtful modest book, under the guise of updating, quickly grows into a high-cost multi-volume set. Oh vey! And so the banter goes: Are looseleafs reviewed? How can they be?³⁶⁹ Well, the trouble with the publishers is that they think that they invented something unique, so they violate all conventions of title page and table of contents at the beginning, and they violate the index at the end. Those tabs can be confusing . . . complex material cannot be made simple; and complex material insists on complex finding aids . . . looseleafs are confusing because they cover too much . . . too little. . . .³⁷⁰

And neither was the defense used by looseleaf publishers recently updated—We have a very short time to do this . . .³⁷¹ we are dealing with a diverse public, who think in very different ways.³⁷² The subject matter is very complex and voluminous. This is a difficult problem, please tell us what you want....³⁷³

Near the end, a philosophical question arose³⁷⁴ in the context of helping lawyers who have not kept up with the craft aspect of their profession.³⁷⁵ Who is responsible for maintaining the standards of the craft? Must lawyers define the competence they are seeking? Or do the publishers who are selling it to them? And who audits whom? Rather than answer, an academic librarian seized the floor and advocated law school

368. The letter called for lower costs, more promptness in updating, less duplication, and free copies for libraries the cost of which should be charged to advertising. *Report of the Committee on Loose Leaf Services*, 43 L. LIBR. J. 200, 200-201 (1950).

369. The ALA Subscription Books Bulletin reviewed CCH's *Congressional Index* by subscribing for six months and comparing it with other ways of tracking Congress (favorable review) . . . *Id.* at 206.

370. *Id.* at 207.

371. *Id.* at 204.

372. *Id.* at 212.

373. *Id.* at 213.

374. *Id.* at 219.

375. In the legal literature as in carpentry, calligraphy, tooth and shoe repair, or rocketry, the tool which gives you the most control is usually the most difficult to master, while the easy one has the fewest applications, and the least flexibility. A brush is much more difficult to master than a pen. A ball point is the easiest of all, but it cannot do much for thick and thin. Meanwhile, the toolmaker, or publisher, thrives by responding to the market, not by enforcing standards.

libraries as the place to teach the mechanics of looseleaf use.³⁷⁶ In a slightly more perfect world, he might have been pleading that mechanics are not part of legal education, because the mechanisms change frequently, and what a law school must do is teach why the learning curve is important, or inspire their students or stimulate their curiosity because librarians are educators too! Perhaps he was just coming to this when the round table ran out of time. Lost in the middle, as the Prentice-Hall man pleaded the case for needing to appeal to a diversity of users, an illustration slipped out that would grow to enjoy a long, if obscure, public life.³⁷⁷ Although made in passing, it was more an understanding of the role of technology in our social organization than a mere fact.

The point was that even our rulers need a looseleaf service to explain to them what they have created. This suggests that we are governed by a combination of madmen, millionaires, and other organized minorities who smash and grab and compromise each other's vision and then hand the resulting legislation to sober editors who turn it into comprehensible language that all of us, even the madmen, then live by. Because the heroic efforts of editors render the mash comprehensible, the democratic ideal maintains. At least enough for the post-war era, when threats were abstract and vigilance was exciting; a vigilance which became the over-riding, and even undermining, concern.

In 1952 General Dwight Eisenhower, hero of the Second World War, was easily elected president after a pleasant campaign. His campaign manager, a Chevrolet dealer from Flint, Michigan,³⁷⁸ named Arthur Summerfield, was appointed Postmaster General. Summerfield was the son of a mailman whose success led him to try to turn the post office into a business. In the course of this determination, he deeply offended Congress, the mailmen, most postmasters, and much of the public, but after six years of insistent politics, he did get the rates increased,³⁷⁹ especially second and third class mail which were so low, he felt they were immoral.³⁸⁰ Looseleaf publications had been delivering their updates as second class postage since the 1930s.³⁸¹ But second class postage was for periodicals which were defined by their regularity, and the essence of the looseleaf service was to update when necessary, no matter what the period of time. So to qualify for second class rates, looseleafs changed the titles of their newsletters to conform to the title of the service it highlighted.

376. Mr. Vernon M. Smith of the University of California Law Library, Berkeley. *Id.*

377. "The Federal Government buys Prentice-Hall and Commerce Clearing House services and furnishes them to the Bureau of Internal Revenue. Why? Because we can furnish them less expensively than they can do it for themselves. They could not produce the service at a price for which we sell it, because when they buy it from us, they are sharing the cost with thousands and thousands of subscribers throughout the United States." *Id.* at 212.

378. GERALD CULLINAN, *THE UNITED STATES POSTAL SERVICE* 166 (1973).

379. Postal Rate Increase Act of 1958, 72 Stat. 138 tit. 2 (1958) and Postal Modernization Fund, 72 Stat. 138 tit. 3 (1958).

380. CULLIN, *supra* note 378, at 166.

381. ROONEY, *supra* note 325.

and they obediently dated and consecutively numbered every page even though they were not going to be inserted consecutively. And they mailed regularly. *Standard Federal Tax Reporters* were mailed on Wednesdays, for example.³⁸² This sometimes meant editors scribbling madly and trucks rushing to the post office at minutes to midnight.³⁸³ And now the costs of both the looseleaf filings and their direct mail advertising increased. As soon as the increases took effect, Summerfield launched another campaign for another increase in postal rates.³⁸⁴

The publishers of looseleaf service services grew alarmed. A meeting was held in Washington, D.C., where they conspired to share their clout. All the bigwigs were there, but before they even resolved, the increase in second-class rates was defeated,³⁸⁵ and the meeting was remembered as significant, not because anything was done, but as a social event. It was, in fact, the last time that looseleaf publishers ever gathered.³⁸⁶

In the early post-war era, the same pressures of created information pushing on format that had been creating office technology, began to surface in the provinces. The state of Washington first published its statutes in looseleaf in 1951-52. A company called Remington had been publishing statutes in hardbound form supplemented with pocket parts since the 1920s, but the project petered out in the 1940s as uneconomical. At that point, the state legislature began its own official code, known as the Revised Code of Washington, or RCW.³⁸⁷ The printed statutes were punched with the standard three hole placement, but were bound with a lever device, a clip rather than a ring. The volumes were seven and three-quarters by ten inches, with a spine that expanded from two and a half to four and a half inches. The binders were a deep green that became known in the legal literature as "Washington green." The whole thing was reprinted every other year, with supplemental pages in the off year. About twenty percent of the sections would change each year. Eventually, there were ninety-six titles in the code and keeping track of the page inventory was difficult. The introduction of computerized typesetting in the late 1960s made the growing quantity of changes manageable for a short time, but eventually, too much changed too frequently. The last looseleaf pages were published in 1972, and the last looseleaf paginated statutes were abandoned in 1974. Since then, the whole set has been reprinted every two years and put out in perfect bound soft covers. In 1995 the state published its statutes on compact disk. It was moderately successful. More subscribers still get paper than the disk, even though the disk is one

382. Selling (CCH), *supra* note 248, at par 257.

383. ROONEY, *supra* note 325.

384. CULLIN, *supra* note 378, at *id*.

385. Congress gave a pay raise to postal employees but no rate increase. Postal Employees Salary Increase Act, 74 Stat. 296 (1960).

386. STEWART, *supra* note 315.

387. For Washington history, telephone interview with Dennis Cooper, State of Washington Code Revisor (Apr. 22, 1998).

quarter the cost, but there is no growth in the number of paper subscriptions and there is in disk. And Washington statutes, like so many others, are now free on the Internet, up since 1996 and the official version of the code. From a historical perspective, it now seems that the looseleaf appealed to government's sense of efficiency. But later on, the logistics of tracking all those separate pages was just too much. Meanwhile, Oregon, smaller and next door, had a history of looking to Washington as a leader.

In Oregon, statutes had been updated and reissued bound every four years, with pocket parts every other year and session laws in between. Things were historically slow but sweet.³⁸⁸ The legislature met every other year, so there was finite supplementation, although rules were more of a problem. Then in 1953, the legislative assembly created the Office of Legislative Counsel to draft bills and to publish, edit, codify, and sell statutes. In fact, the statute revision was passed as a bill, and that very year a series of three ring binders began to appear, filled with statutes on thin manila paper, and held together by a long screw in the center to be tightened with a dime. The color of the binders became known as "miserable gray." Raised tabs indicated the chapters, and every two years, those chapters which changed were replaced. A second set of binders were provided for superseded chapters. The integrity of the chapter was maintained by glue along the edge, creating more a loose chapter than a leaf. As the years went by, of course, there was more legislation and more change. By the mid 1960's it seemed that every chapter changed every time the legislature met and so it was all reprinted whether necessary or not. By the late 1970s, the physical limits were strained. The binders had become expensive, the statutes were heavy and the shelves grew weak. In 1988 a survey of subscribers concluded that smaller lighter volumes would do, and in 1989, the looseleaf experiment came to an end, victim of the volume of legislative activity that had inspired it.

In Kentucky, a 1954 survey of the bench and bar showed a clear preference for looseleaf statutes.³⁸⁹ Since 1942, Dunne Press, Inc. had been publishing hardbound volumes when necessary and a supplement at the end of the each Kentucky General Assembly session, which met every other year. Then in 1955, the Legislative Research Commission published its looseleaf version in an edition of 500 copies. By going to looseleaf, the commission was able to please the bar and also relieve a shortage. Statutes had not been published since 1953, and anyone admitted to the bar since may have had trouble obtaining them.³⁹⁰ Historically, the Commonwealth of Kentucky was deeply committed to a statutory code of a single volume.³⁹¹ From the adoption of the Kentucky Constitution in 1894 until

388. Telephone interview with Robert Lundy, Staff, Oregon Office of Legislative Counsel (Feb. 25, 1998).

389. KY. REV. STAT. foreword (1955).

390. *Id.*

391. For historical information concerning Banks-Baldwin, telephone interview with Virginia Luttenton, Senior Principal Editor, the West Group, formerly Senior Editor, Banks-Baldwin (May 28, 1998).

1918, Judge John D. Carroll edited, codified, annotated, and even numbered the statutes himself in editions of 1899, 1903, 1909 and 1915. After that, Mr. Baldwin published *Carroll's Kentucky Statutes*, in editions published in 1918, 1922, 1930, and 1936. It was always a single volume, including annotations, always black cloth with gold stamping. To maintain that unity, the volume grew from a slim book in 1908 to a weighty tome, four and seven-eighths inches thick, in 1936. The pages of that volume were made of bible paper, known for being thin, strong, and expensive. But even thick, the book worked as few contemporary books do. Mr. Baldwin was a stickler for deep dark type and binding which would lay open unattended, without hint of self-closure, easily and completely flat. He used to say that one-quarter of the cost of producing statutes was in the binding; that the binding cost more than the printing, but Baldwin would not compromise. In 1936, *Carroll's Kentucky Statutes* became the official edition, which was nice, of course, but here were no others.

Although his statutes were case bound, early in his career, Baldwin invented the Remov-A-Lex binder, also known as "The Binder That Opens Flat 'Automatically.'"³⁹² Remov-A-Lex texts were two-hole drilled. The back cover contained hollow posts that the text blocks fit over. Two solid posts, connected by a strip of metal called a transfer bar, fit into the hollow posts and held the text in place. Another bar, attached to the front cover, slid over the transfer bar when a trigger was pushed and locked the binding closed. The outside of the Remov-A-Lex was covered in a leather looking fabrikoid, the spine was split and overlapping, its width depending on the amount of text inserted. Wherever you opened them to, these binders stayed, and the pages did not, could not, fall out, even if the book fell—even if it was tossed!

In 1922, Baldwin moved from Louisville to Cleveland and started to do for Ohio the same things he was doing in Kentucky. Production was not a problem as his printer was R.R. Donnelly of Chicago, the largest printing firm in America. Donnelly printed most American phone books, Life magazine, best-sellers, etc. Later in the 1920s, The Banks Company of New York, established 1804, and the oldest law publishing house in America,³⁹³ fell into the hands of relatives who were not particularly keen on publishing. Baldwin was hired as a consultant, and he traveled back and forth from Cleveland to New York City. In the early 1930s, Baldwin bought the Banks Company, and Banks-Baldwin then became the oldest law publishing house in America. In New York, Baldwin continued doing statutes in hardbound volumes through the beginning of World War II, but the New York legislature met constantly, passed many laws and did so with no numbering system, and so much of the Banks Company staff

392. From Banks Baldwin Law Publishing Company "Instructions for Operating The Baldwin Remov-A-Lex Binder" included with every title. n.d. n.p.

393. *Id.* Instructions say "Banks-Baldwin Law Publishing Company, Oldest law publishing house in America, Established 1804." But see Morris L. Cohen, 1 BIBLIOGRAPHY OF EARLY AMERICAN LAW, Entry number 1854 257 (1998), where the earliest mention is a "catalog of law books for sale by Gould and Banks, at their stores, 1820."

enlisted in the armed forces that Baldwin gave up and sold the title to Lawyers' Co-op. In Ohio, statutes were published as Throckmorton's Code, and remained a single volume until 1968. Near the end, the volumes became so thick that editors and legislators found new applications.³⁹⁴

Back in Kentucky, a wide variety of practice materials continued to be published with Remov-A-Lex binders, some with individual replaceable signatures of four, eight, or 108 pages as necessary,³⁹⁵ some with replaceable pamphlets, side-wire stitched if modest, saddle-stitched if thick.³⁹⁶ Statutes continued to be bound. Then in 1942, the *Kentucky Revised Statutes* were newly revised and the whole code was reenacted.³⁹⁷ That is, regrouped, revamped, renumbered, and passed by legislative act. To do this, the Kentucky General Assembly created the Office of the Reviser of Statutes. The reviser had the authority to make changes in the law that were not substantive. Robert Cullen came to Kentucky from Wisconsin to fill this newly created position. He produced a new revised volume of statutes and a companion volume of annotations, published his first year in office, still 1942. From that time on, the quantity of language only increased. The original looseleaves were in fact loose-chapter and called such. Most Kentucky law firms were small at the time. Few had librarians. There was much complaint about filing from the secretaries and clerks who did it, and from the lawyers who found chapters misfiled.³⁹⁸

The first of the official Legislative Research Commission loose-chapter statutes of 1955 filled three binders and occupied eight inches of shelf space. The binders were eleven inches tall and eight and a half inches deep. The spines were approximately two and five-eighths inches wide with one-inch rings inside. The binders were burgundy in color. At the beginning, there were many "see also" references from one statute to another, but no genuine annotations. Only those chapters affected were issued after the legislative session, until 1962. By 1964, the Legislative Research Commission had sold out their publishing interests to Bobbs-Merrill who produced soft bound supplemental pamphlets rather than loose chapters from 1962 until 1968. Then Bobbs-Merrill switched to

394. "I used to sit on them because the chairs were too low." Luttenton, *supra* note 391. (From 1967 to 1994, Ohio Statutes were published in Remov-A-Lex binders, the set growing from 9 to 30 volumes. In 1995 the set went back to case bound books with pocket parts. Ohio Opinions of the Attorney General were also done in Remov-A-Lex, along with a host of practice materials.)

395. *e.g.* BALDWIN'S KENTUCKY PRACTICE in four binders covering criminal and appellate procedure, probate, and many other topics.

396. *e.g.* KENTUCKY DOMESTIC RELATIONS LAW.

397. For history of statute revision, telephone interview with John Spangler, Commonwealth of Kentucky, Reviser of Statutes, telephone interview (Apr. 23, 1998).

398. "Lawyers put charge of the loose leaf statutes felt 'like a second lieutenant in the infantry getting assigned to mess duty.'" Telephone interview with Morton J. Holbrook, Jr., Commonwealth of Kentucky, Legislative Research Commission, advisor in 1960 (Apr. 28, 1998).

hardbound volumes with pocket parts, and Michie bought Bobbs-Merrill. Then West and Klewiers divided Michie.

Meanwhile, Banks-Baldwin also produced *Kentucky Revised Statutes* in single volumes, with annotations in 1942, 1943, 1955, and finally, the last of the single volume statute compilations in 1963. Each of these was updated with dark blue soft-covered supplements. In 1970, at the suggestion of the Legislative Research Commission, Banks-Baldwin switched their statutes to looseleaf which they issued in nine three-ring binders of bright Kentucky blue. The set has grown over the years. Tab dividers are included, and for archival purposes a big long shoelace is provided to thread through and tie the discarded pamphlets. The set is up to sixteen binders. They occupy over five feet of shelf space and still they come, shrink-wrapped, perfect bound chapters that arrive four times a year for any title of the code in which more than one-third of the material has changed. Since 1979, the Banks-Baldwin version has been "certified" by the Legislative Research Commission, but as of 1997, the official statutes are the state's web version.

In 1995, West Publishing bought both Bank-Baldwin and Michie. The resulting menage of former rivals is considered a happy marriage. And while each succeeding cycle of Kentucky legislation has increased in quantity of language, the cycle of railroad legislation has passed, as has the fashion for private acts, and the struggle in the limelight nowadays is for the statutory naming of highways, a realm where "Blue Moon of Kentucky" has reached the status of anthem, and the name of Bill Monroe is solid gold.³⁹⁹

Nevada statutes decided to go looseleaf in 1955.⁴⁰⁰ They were first codified in 1929, published in 1931, supplemented 1931-41, supplemented again 1943-49, and compiled in 1949. While lawyers made do with session laws, the Nevada Legislative Council Bureau spent seven years on a giant codification project, culminating in not merely an update, but a re-enactment of the code 1867-1956, published as the last such bound statute set. Nevada was still sparsely populated then, an easy-going state with a small body of law. The *Nevada Digest* was enough for case finding. And updating session laws was no great labor. In 1955, statutes in looseleaf form were just an idea. In 1957 it was proposed to the legislature and passed. The justices of the Supreme Court and the Legislative Counsel Bureau formed a committee to carry out a new codification, and in 1960 the first volume appeared. Some people blamed the members of the council who came from back east and brought the looseleaf with them, others gave credit for instituting progress. The set was formed of standard-sized padded gray Naugahyde plastic binders with fifteen slightly flatted rings, about the size of silver dollars. The debate has ceased, but the set goes on

399. *Id.*

400. For Nevada statute history, telephone interview with Kim Morgan and Brenda Endos, both Nevada Legislative Counsel Bureau, Legal Division staff members (Mar. 18, 1997).

as issued. The spines hold a slot where a silk-screened label says "Nevada Revised Statutes Chapter x-x". The set grew to fifty-one volumes, and then through changes in margins and type face, shrunk back down to forty-nine. But this includes volumes of city charters, special and local acts, disposition tables, repealed and replaced sections, three volumes of court rules and for good measure, the U.S. and Nevada constitutions. For the first twenty years or so, there were two sets, gray for statutes and dark blue binders for annotations, requiring most things to be looked up twice. When the Michie Company began publishing annotated statutes in traditional bound books with pocket parts in 1984, the gray looseleaf set responded by incorporating the annotations. The Michie set survives, but the official looseleaf set has a much larger circulation. For the legislature, which meets in alternate years, and for most lawyers, the binders are easier because you wind up carrying around only the statutes you need. Although the binder used is a standard issue of the General Binding Corporation, in parts of the Nevada legal community, the fifteen rings are sometimes a source of pride. It does not fall open if you drop it, and its pages turn like a book. Of course, the same statutes are available on the Internet without annotations, but free of charge.

A decade late and out of theoretical sequence, if not historical fact, is the state of New Mexico where the Compilation Commission of the legislature asked the Michie Company to switch their statutes from the regular bound books they had been publishing to a looseleaf format.⁴⁰¹ In 1968 Michie did so and still does. The set runs fourteen volumes. It is composed of pamphlets of statute sections punched with two holes and fit into a compression binder. When sixty percent of the contents of a pamphlet has changed, the pamphlet is revised as mandated by statute.

Meanwhile, back at the national level, the Law Librarians held a panel in Philadelphia in 1956 to discuss their problems with publishers. It was the fifteenth time they met specifically to discuss this problem since 1922,⁴⁰² and history had telescoped it down to two prongs: duplication and high prices.⁴⁰³ The discussion began with a statement by Ernest Breuer, Librarian of the New York State Law Library. Although only two sentences, it was a triumph of misogyny, misanthropy, political incorrectness and just plain incorrectness:⁴⁰⁴

"I feel like the proverbial parent who is about to spank his child, the child in this case being the law book publisher. After all, they come here, we accept their hospitality, most of us will take their drinks, and then we turn around and do this to them—but just like the spanking, it is absolutely necessary so that there will be harmony in the family."

From here the discussion goes on to accusations of padding volumes

401. For New Mexico statute history, interview with Gordon Russell, former Associate Director, University of New Mexico Law Library, in Dartmouth, Mass. (Apr. 23, 1998).

402. *The Case of the Librarian v. The Publisher—A Panel*, 49 L. LIBR. J. 467, 468 (1956).

403. *Id.* at 467.

404. *Id.* at 468.

to increase their weight and price, also known as "stuffing the Strasbourg goose,"⁴⁰⁵ the waste of paper through the width of gutters and margins,⁴⁰⁶ duplication of junk mail, etc.,⁴⁰⁷ and with regard to the looseleaf, the problems of lost pages,⁴⁰⁸ dating the publication,⁴⁰⁹ and paginating so that the index still works.⁴¹⁰ In a parenthetical lament for the riches of the literature being overlooked, the Federal Security-Loyalty Program is mentioned without embarrassment.⁴¹¹ Such insensitivity might serve to mark the end of an era when complacency was a goal, denial was pervasive, and the quantity of information never slowed.

FROM COLD WAR TO WARM PEACE

In 1959, a legal journal ran an article that made fun of the difficulty of finding and tracking federal regulations.⁴¹² Such criticism has been represented in the literature since the beginnings of federal agency administrative regulations,⁴¹³ but formerly, the actual books were available in so few places⁴¹⁴ that the problem was more conceptual than physical. With post-war prosperity, law libraries expanded subscriptions, and a new population was able to experience the frustration first hand. Moreover, by the late 1950s, fears of being branded a malcontent encouraged criticism to demonstrate its respectability by being smart rather than angry. The new fashion in values demanded that scholars create a safe science of procedure and abandon the more dangerous approach to politics as the science of life. And so, being smart, this article proposed an elaborate looseleaf service which combined the Federal Register and the Code of Federal Regulations into a single publication, where the pages would be numbered, and following the page number a dash and the edition number. Under this imaginative system, expanding regulations would be interfiled

405. *Id.* at 473.

406. *Id.*

407. *Id.* at 486.

408. *Id.* at 474.

409. *Id.* at 477-478.

410. *Id.* at 487.

411. . . "there is a vast amount of studies being published now under the auspices of foundations, and similar groups which deal with legal subjects—such things as the Federal Security-Loyalty Program. It distresses me that law publishers aren't publishing more of them . . ." *Id.* at 477.

412. Norman J. Futor, *Searching the Federal Regulations: Forty-seven Steps are Too Many*, 45 A.B.A. J. 43, 43 (1959).

413. See John A. Fairlie, *Administrative Legislation*, 18 MICH. L. REV. 181 (1920); Lester A. Jaffee, *Publication of Administrative Rules and Orders*, 24 A.B.A. J. 393 (1938); John H. Wigmore, *The Federal Register and the Code of Federal Regulations, How to Use Them—If You Have Them*, 24 A. B. A. J. 10 (1943); *The Federal Register and the Code of Federal Regulations—a Reappraisal*, 80 HARV. L. REV. 439 (1966).

414. Wigmore notes only 115 copies of the *Federal Register* in public and university libraries and only forty-eight copies going to bar libraries in only twenty states. *Id.* at 10.

alongside the current pages and revised regulations would replace the obsolete pages. Once removed, the superseded pages would, in turn, be filed in a set of archival binders.

Alas, the format was too common to be found at any technological forefront, but it was still an efficient response to a crisis of information. And for some, presumably those without infinite shelf space, keeping up with federal regulations was getting critical. The Federal Register had grown to a quarter of a million pages, and the Code of Federal Regulations, although two years younger⁴¹⁵ was approaching 355,000 pages.⁴¹⁶ Yet this proposal was swatted down by a "detailed evaluation" of the journal article, written by the Director of the Office of the Federal Register, never named, and inserted into the Congressional Record by Senator Carl Albert of Oklahoma.⁴¹⁷ The Director was careful not to give insult⁴¹⁸ but in the end, the looseleaf remained suspiciously insecure.⁴¹⁹ Alas, in 1959, security was a paramount concern.

In a scathing response,⁴²⁰ Futor retraced the heroic and laborious steps necessary to wade through the "60 foot shelf" of the Federal Register and the "85 foot shelf" of the CFR, shelves then growing at the rate of 3 feet per year. After detailing all the places and chances for error, he questioned the notions of "absolute reliability" and "assurances of completeness and accuracy."⁴²¹ Then he attacked at cost and timeliness⁴²²—the savings in printing and binding, the editorial burden, the thousands of unofficial pages federal agencies produce because the FR-CFR relationship is so cumbersome, the research cost and time. A footnote exempted the privately published looseleaf services from blame.⁴²³ The conclusion called the system "outmoded and incomplete."⁴²⁴ And then Futor ended with the most vicious blow of all, struck with the latest weapon developed

415. The Federal Register began March 14, 1936; the Code of Federal Regulations began June 1, 1938. See GEORGE S. GROSSMAN, *LEGAL RESEARCH: HISTORICAL FOUNDATIONS OF THE ELECTRONIC AGE* 236-237 (1994).

416. Norman J. Futor, *Modernizing Federal Regulations*, 21 *FED. B. J.* 219, at 231 (1961).

417. 105 CONG. REC. A7969 (daily ed. appendix Sept. 11, 1959) (included as Extension of Remarks by Rep. Albert).

418. "... while a loose leaf service may be valuable in some areas as a working tool" and while "the idea of a loose leaf promulgation system has been examined and discussed many times since 1938 when the Codification Board considered various possible systems, including loose leaf..." *Id.* At A7970.

419. "... the mercy of whoever inserted the leaves. No matter how good the filing instructions, no matter how pressing the need for accuracy and no matter how conscientious the person filing, the user has no absolute assurance of completeness and accuracy. There are simply too many chances for human error involved." *Id.* at A7969.

420. Futor, *supra* note 416, at 219.

421. *Id.* at 224.

422. *Id.* at 226.

423. "These services ordinarily go beyond what would be expected of a government publication, in that they provide editorial guidance and analysis. As a result, they are relatively expensive." *Id.* at 226 n.39.

424. *Id.* at 232.

out of a smug new academic confidence rising in those whose prominence came after the witch hunts of the previous decade. Rather than the fear of politics that the academic community had been driven to, this generation saw themselves as superior to, and professionally in, the service of politics. They identified themselves as a professional elite whose training and intelligence established their legitimacy, and whose scholarship was science, not speculation, and something indispensable to a government interested in pragmatic solutions to social problems. Their rise paralleled the rise of the military-industrial complex in American politics, its obsession with secrecy and security, and the shift to underground test sites for atom bombs. The weapon of choice for these newly respectable intellectuals was the footnote.⁴²⁵ In this formative era, only the most macho of authors in the legal academy used a footnote to make a substantive point. But Norman Futor's fury was so bold that in his ultimate footnote, he cites a footnote which lead to a chain of other footnotes, at the bottom of which lies exposed, the Achilles heel of his critic.⁴²⁶

He brought logic, skill, and vehemence to the discussion, but Futor could not convince. Sheer brilliance did not overcome historic temperament. In a time still recovering from the fear of a satanic enemy within, loyalty and security were both elusive and all that mattered. Notions that hinged on something loose or replaceable were not acceptable.⁴²⁷ The important work was the identification of evil, so that it could be neutralized. But evil was protected, camouflaged, and slippery. For sinister reasons, it often appeared as its opposite. Cleansing was vital. Stability or

425. For an overview of the legal footnote, see Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131(1987). For the ideological aspects of footnoting see Arthur D. Austin, *Footnote Skulduggery and Other Bad Habits*, 44 U. MIAMI L. REV. 1099, 1024-1026 (1990). For the provenance of the ultimate footnote quote, Noel Coward's "Encountering a note is like going downstairs to answer the doorbell while making love," see *Id.* at n.20.

426. The article ends "Interestingly enough, the Office of the Federal Register—in issuing its own regulations—chooses the loose-leaf format" *Id.* at 232 n.75. Footnote 75 says "see note 25 supra." Note 25 says "Appendix, para. 9. The Office of the Federal Register has issued a looseleaf 'Federal Register Handbook' with amendments to be forthcoming 'in the form of replacement pages or added pages.' The purpose is 'to assist Federal officials in complying with . . . requirements relating to the Federal Register'; and, according to the Introduction: 'The Heart of the Handbook is Chapter 1, which presents the complete text of the regulations of . . . The Federal Register (1 CFR Ch. 1.) annotated . . .'" Apparently, it was felt that a failure to comprehend and follow the regulations governing publication of federal agency documents, could cause the Federal Register staff a great deal of work and trouble. In the case of its own regulations, therefore, the Office of the Federal Register was concerned to make them accessible and convenient with a loose-leaf system. (Emphasis supplied.)" *Id.* at 224 n.25.

427. A Mississippi decision noted that looseleaf binders were susceptible to dangers—"extraction, addition or substitution of the separate pages, unauthorizedly or with even possibly corrupt purposes, or they may become loose and lost accidentally . . ." *Davis v. Rosenthal Plywood* 42 So.2d 750 (Sup. Ct. of Miss.) 750 (1949) at 750. A Delaware case noted "... loose leaf records may be said to be less efficient and less secure than other methods of record keeping that may have been adopted by the Legislature . . ." *State v. Shaw* 126 A.2d 542 (Sup. Ct. Del.) (1956) at 549.

the appearance of permanence and continuity became more important factors than space, efficiency, or time.

The Cold War view of intellectual good work as the containment of subversion seems to have invaded even the choice of format. No matter, for as security concerns continued to intensify on all fronts, critics of access to governmental information moved on from the availability of regulations, or what the government thought was acceptable behavior, to the direct requests for secret files, or what the government thought of them.⁴²⁸ Once personalized, format lost visibility.

But in the early 1960s, when the fear of Russians and the Yellow Peril were losing momentum, Professor John Harty, at the University of Pittsburgh, created an electronic library of the public health statutes of all fifty states.⁴²⁹ By 1965, Professor Harty had put some U.S. Supreme Court cases and some Pennsylvania cases on magnetic tape.⁴³⁰ The tape was searchable. In fact, one of the goals of the project was to free the law from indexing.⁴³¹ Although this work was not widely followed, it proved consequential.

As the decade transpired, evidence of odd flights of fancy appeared in some unlikely places. *The Research Institute Tax Guide*, published in annual binders from 1967 to 1978,⁴³² is covered in black matte boards embossed with a gold shield, not unlike Superman's crest, holding the initials "R.I.A." The spine is also matte black, but metal. Across the spine, running from bottom to top is a large orange check-mark, with the word "Research Institute" running horizontally at the top, and "Tax Guide" dropping vertically down the center. At every fold or intersection of plane, the corners of the spine are rounded, creating a futuristic—but now dated—appearance. In 1967 the spine and covers changed from matte to shiny black metal, and in 1974 they changed again to plastic. The binder is seven by ten inches, the pages six by eight. Inside are eight one-and-a-half-inch rings. The rings open with push buttons at the top and bottom. In 1971 these release buttons change from metal to plastic. The raised tabs separating sections are, in order, orange, green, pink, powder blue, and brown. All these colors are extremely bright, except the brown. From across any law library, this set stands out.

Meanwhile, the quality and quantity of available resources continued marching on. When The Social Security Act of 1967⁴³³ was passed, CCH had an employee stationed on the Senate floor, who grabbed the bill as it became law and flew to Chicago. His plane was met by editors and annotators, and before the sun rose, the full text of the new law was in the mail

428. Freedom of Information Act, 80 Stat. Sec. 1,378 (1966).

429. William G. Harrington, *A Brief History of Computer-Assisted Legal Research*, 71 L. Libr. J. 543, 544 (1984-1985).

430. *Id.*

431. *Id.* at 546.

432. RESEARCH INSTITUTE TAX GUIDE (1967-1978).

433. Social Security Amendment of 1967, 81 Stat. 821 (1968).

to CCH subscribers.⁴³⁴

Also, following a book review praising the *Proceedings of the Ninth Colloquium on the Law of Outer Space* as "timely,"⁴³⁵ in 1968 there appeared the transcript of a panel discussion on the historical development of the American lawyer's library, chaired by Morris L. Cohen.⁴³⁶ Following Cohen's brilliant summary of the legal literature to date⁴³⁷ was another panel on the future of the American Association of Law Libraries. This latter panel began with a critical resolution noting a "lack of participation in the decision making process of this association"⁴³⁸ and went on to Raymond Taylor's response to being snubbed by the AALL committee on relations with publishers.⁴³⁹ Raymond Taylor would remain unknown for less than a year. While a lack of clairvoyance is predictable, it did not help that no one knew what dawn it was.⁴⁴⁰

Beginning in 1970, President Nixon imposed wage and price controls with a gust of executive orders and legislation.⁴⁴¹ The pace was such

434. Richard Stanza, *Lawbook Publishing: A \$145 Million-a-Year Business*, 4 JURIS DOCTOR 31.32 (1974).

435. Morton S. Jaffe, Book Review, 61 L. LIBR. J. 199 (1968).

436. COHEN, *supra* note 338, at *id.*

437. Cohen divided the law library into three periods. The first, roughly from 1880 to the New Deal, was a period of innovation and growth, a blossoming of material and information, characterized by the invention of the six great research tools: the National Reporter System, the American Digest System, annotated statutory compilations, annotated reporters (culminating in ALR), Shepard's Citations and, of course, the variety of looseleaf services. The second period, from the late 1930s to 1968, was a period of continued increase, accompanied by doubts that legal research methods and materials can continue to store and retrieve the necessary legal knowledge. This period ended with a loss of pride and confidence, rising costs, pressing time and space demands and an "apparently uncontrollable proliferation." The third period, from 1968 onward, Cohen hoped would be like the first, a time of change and innovation, or as he put it, "If we are now in the winter of discontent, can the springtime of rebirth be far off?" *Id.* at 456.

438. *Panel on Organization and Structure of AALL—The Future*, 61 L. LIBR. J. 463 (1968).

439. *Id.* at 467. For Taylor's subsequent rise to legal literary repute, see *infra*.

440. For a legal publishing trend generated by social unrest, see John Griffiths, *Punitive Reclassification of Registrants Who Turn in Their Draft Cards*, 1 SSLR 4001, (APRIL 1968). Published by the Public Law Education Institute from April 1968 through 1973, Selective Service Law Reporter was a quasi-looseleaf, with post binders and separate sections. New pages arrived monthly, bringing news & analysis, scholarly articles, statutes and case law during this most explosive period in draft law history, with virtually all pages for permanent retention.

For rumblings of conceptual change in technologies revealed in the legal literature, see testimony of Mr. Phillip Silbert, appellant and numbers runner, "At this point, Mr. Silbert took a piece of lined loose leaf paper from his pocket and showed it to me, and asked if it could be used in a computer . . . Again, Mr. Silbert wanted to know if this type of information, this type of paper could be used in a computer and I told him that the information would have to be recorded on punch cards; that it wouldn't be possible to use loose leaf paper . . ." *Silbert v. State*, 280 A.2d 55 (Md. Ct. of Sp. App. 1971) at 68-69.

441. E.g. Exec. Order No. 11,588, 36 Fed. Reg. 6339 (1971); Economic Stabilization Act of 1970, 84 Stat. 799 (1970); Exec. Order No. 11,615, 36 Fed. Reg.; 15 Exec. Order No. 11,627, 36 Fed. Reg. 20,139 (1971); Economic Stabilization Act of 1971, 85 Stat. 743 (1971);

that looseleaf editors began staying up all night occasionally, issuing daily reports of daily updates. Special "emergency booklets" were frequently issued. Of course, underlying the fury was subscriber demand for tracking such a legislative burst. The demand, presumably rooted in prosperity, generated a new importance for looseleaf services.⁴⁴² That importance, expressed as more language, more specificity, more interpretation—now seems to signify the temper of those times. For looseleafs, it was a time of extraordinary performance and prosperity. Subscribers were flush. The scene should have been a happy patch of pig heaven, but instead, the industry which saw itself as savior of the administrative state, and to an extent democracy, experienced a shock. Thinking itself in service, because it made regulation comprehensible to both the government and the legal profession and because it helped preserve a sense of self-worth for both bureaucrat and attorney, and because it had been rewarded as such, the industry was disarmed and open to attack. It came when Ray Taylor, then Marshall of the Supreme Court of North Carolina, and its Librarian as well as a member of the Committee on Relations with Publishers of the AALL, took the bold step of suggesting protection for lawbook consumers.⁴⁴³ In response, his suggestion was described as a "broadside attack against loose leaf publications"⁴⁴⁴ and "a free-wheeling polemic."⁴⁴⁵

Taylor complained that publishers took advantage of overworked attorneys and their employees through unordered and duplicate shipments, billing, and other suspicious coincidences of sloppy bookkeeping.⁴⁴⁶ Specific offenses included selling old books with new titles, including the same book in different sets, failing to advertise prices, selling cheap books with expensive supplements, planning obsolescence by failing to supplement expensive books, etc. The looseleaf format in particular was fingered for issuing old books with new titles,⁴⁴⁷ adding obscure titles to established series to insure automatic sales,⁴⁴⁸ and publishing treatises as looseleafs thereby turning them from valuable secondary sources suitable for citation into ephemera.⁴⁴⁹ The picture is one of the weary lawyer, the harried secretary, and especially the overwhelmed librarian who in trying to collect every relevant thing, realizes she just bought what she already

Exec. Order No. 11,640, 37 Fed. Reg. 1213 (1972); Exec. Order No. 11,660, 37 Fed. Reg. 6175 (1972); Exec. Order No. 11,695, 38 Fed. Reg. 1473 (1973); Exec. Order No. 11,723, 38 Fed. Reg. 15,437 (1973).

442. ROONEY, *supra* note 351.

443. Raymond M. Taylor, *Lawbook Consumers Need Protection*, 55 A.B.A. J. 553, 553 (1969).

444. Mark H. Johnson, *A Cheer for Loose-Leaf Texts*, 55 A.B.A. J. 1034, 1034 (1969).

445. *Id.*

446. TAYLOR, *supra* note 443, at 554-555.

447. *Id.* at 554.

448. *Id.* at 555.

449. *Id.*

has, or can't buy what is needed, as she routinely falls prey to the distractions of sorting out the mixed-up bills, while the incoming deceptions keep arriving unmonitored.

Taylor's criticism appeared in June; Five months later, the Federal Trade Commission announced an "industry wide investigation,"⁴⁵⁰ and the industry declared that its feelings had been hurt. Speaking for the publishers was Mark H. Johnson, an anguished and insulted, highly respected looseleaf author and authority on taxation.⁴⁵¹ As Johnson knew he was right, he reached for the tools of his trade and defended his honor:⁴⁵² The Anglo-American legal structure rests on pure research. Research discloses all relevant precedent. Precedent gives value to a rule of law. Precedent can be difficult, even unfair, but it is the best mechanism ever devised for the production of justice. Without precedent, judgment might be arbitrary or even corrupt. Precedent demands pure research and abhors secondary sources. But for the last century, time has increasingly become money, and the complexity of the law something horrible. No lawyer could stay abreast; no firm could assemble the team of associates necessary to keep pace; no client could afford to pay for the necessary level of research. And still, our government makes ever more law to plug every loophole and cure every inequity. Lawyers must now give advice off the tops of their heads, because they can no longer afford the time to find the answers in books! Only the looseleaf service can manage to keep up with the changing statutes and regulations while compiling cases and digesting them. To the individual lawyer required to find cases with analogous problems and the statutes related, the looseleaf is an enormous help, but it is not enough. The lawyer needs more. The lawyer needs analysis, perspective, and continuity. He or she needs expertise. In short, lawyers need treatises—lawyers need secondary sources.

If these sources update too fast, then little changes, and they sell at great expense, mostly what subscribers already have. If they update slowly, some things go obsolete before publication, and relevant material gets lost. If they update by supplementation, they fall victim to instructions to disregard the six paragraphs at the top of page xxx and substitute the following, etc. If they update by looseleaf pages, checking the citation leads the reader to a page that no longer exists, and if they supplement by adding new materials without subtracting the old, the printing costs are not economic. Meanwhile, as the mass of decisions and rulings grows more voluminous and disconnected, editing it has become heroic. The sheer volume, scope, and complexity are forcing more analysis and summary and less reporting, while the tempo is making it harder to reflect and revise. The proliferation of secondary sources is not a ruse to dazzle and

450. FTC news release of Nov. 10, 1969, quoted in Raymond M. Taylor, *New Protection for Law Book Users*, 61 A.B.A. J. 1373, 1373 (1975).

451. Jacob Rabkin & Mark H. Johnson, *Fed. Inc. Gift & Est. Tax'n.* (MB) (1942-); Jacob Rabkin & Mark H. Johnson, *Current Legal Forms with Tax Analysis* (MB) (1948-).

452. JOHNSON, *supra* note 444, at 1034-1036.

defraud, but rather the price of the growth, the complexity, and the pervasiveness of law and government that has overtaken the straightforward search for finding the right cases from which to proceed. This is not an abuse; this is a dilemma!

Johnson's argument was accurate, reasoned, and powerful, but nothing new. In fact, ever since the industrial revolution began delivering the legal literature in abundance,⁴⁵³ there was a parallel and connected questioning of the need for the publication of all judicial opinions, whether they were illuminating or not, and an uneasiness with the level of material and intellectual resources being devoted to indexing, digesting, annotating, reconciling, explaining, interpreting, and otherwise boiling down, or keeping up the ability of individual minds to remain expert with enough confidence to give advice. By the time of Taylor's frustration, the worry had already become chronic, that the bulk of indexing materials was approaching a substantial percentage of the opinions indexed, and that a volume of reports would routinely produce several books for the library.⁴⁵⁴

Alas! poor Johnson, for he was right. His critics were deluded, his defense was brilliant and the problem he so well put was getting worse. Dilemmas, however, do not inspire passion, and the times demanded passion. Issues were bursting on the American scene too rapidly to follow. Interests were not easy to sustain. In a climate of such momentum, hearts ruled. Taylor's criticism had stung deep in the collective psyche. And public attacks on integrity in the land of law libraries are not soon forgotten.

And so a tumultuous decade drew to a close, with inner cities and imaginations up in flames. Machine gun nests had appeared on the great lawn of the U. S. Capitol to protect it from the citizenry. Elected representatives at the highest levels of government had been snubbed in public by teenage activists, and assassination had become a political tactic far from unthinkable. Streets, dinner tables, and even church picnics bristled with ideology and confrontation. In the law library subculture, where respect for those who paid for drinks was still intact, the fundamental business activity of producing the legal literature had been called crooked and corrupt. Having been identified as victims by the FTC, librarians took sides and the status quo began its comeback.⁴⁵⁵

453. See discussion *supra* pp. 15-16.

454. Eugene M. Prince, *Law Books, Unlimited*, 48 A.B.A. J. 134, 135 (1962).

455. "Law book publishers' income and success depend largely upon their integrity and the good will of their customers. By the same token, law librarians who can depend on friendly, considerate, and cooperative law book publishers can more effectively serve their own readers . . ." Julius J. Marke, *The Gentle Art of Making Enemies or Law Book Publishing Revisited*, 63 L. Libr. J. 3,3 (1970)."

"Despite the years of meaningful dialogue and friendship, there still appears to be a failure of communication . . . we are more concerned with misunderstandings than with skullduggery." *Id.* at 4.

"Many lawyers prefer larger type and adequate spacing between lines. As I grow older, I am becoming more sympathetic to this format myself. It certainly is easier on the eyes and is

One year later, after the formation of a committee for complaints on law book publishing by the Texas Bar Association⁴⁵⁶ and an ABA special committee on lawbook publishing practice,⁴⁵⁷ the avuncular voice heard in *solo supra*,⁴⁵⁸ was chosen to moderate an AALL Forum and make nice.⁴⁵⁹ But the outrage, the anger, and the blame were all in earnest. Some of this anger was new, at least to the angry. Some of it was the arrogance of youth, responding to an older generation; some was the arrogance of age in a generation whose assets were outstripping its dreams and propriety.

In 1970 Richard Price Ettinger turned seventy-five years of age, and his company, Prentice-Hall, celebrated its 55th anniversary by publishing his autobiography, *Everything Happens for the Best*.⁴⁶⁰ The title, also his motto, came to him during his seminal income tax crisis.⁴⁶¹ The autobiography is itself a looseleaf with morocco like fibre boards, three-hole drilled, and shiny brass spreading fasteners which hold the text block, then divide to lie flat along the back cover. Chapters begin with protruding sleeve tabs in alternating red, blue, and yellow plastic, each holding printed labels such as "Strike It Rich with Present Products," "Unmasking the Enemies of Profit," and "The Best is Yet To Come." In theory, the pins could go back together and out, thereby allowing pages to be added. More of a boast than a biography, the book is an outrage of positive thinking. It touts selling the same information again,⁴⁶² the virtues of junk

less of a strain when intensive reading is required for extended periods of time." *Id.* at 5.

"The main difficulty often arises at the input stage when credit for a particular payment is posted incorrectly in the computer. Once this error is fixed in the electronic memory of the computer, no oral or written communication to the publisher in explanation 'will lure it back to cancel half a line, nor all your tears wash out one word of it.' The publisher then shifts the burden of proof to the purchaser and expects him to clear the account." *Id.* at 12.

456. Julius J. Marke, Moderator, *Panel on Law Publishing Under Attack*, 64 L. LMR., J. 533, 541 (1971).

457. *Id.* at 540.

458. MARKE, *supra* note 455.

459. "Rather than harassment and name-calling we need better understanding and good will." *Id.* at 534. "Both lawyers and law librarians would be wary of putting impossible demands upon publishers, requiring them to perform services that are not economically feasible. The added cost will be passed on to the consumer. We must decide whether we are willing to pay for the services that both lawyers and law librarians are demanding. I mention this just as a caution and a consideration." *Id.* at 545. "It was surprising to learn that publishers do, indeed, suffer from undesirable, even obnoxious, practices on the part of librarians . . . frequently librarians put an ownership stamp on materials before they are sure that it is theirs or that they want to keep it, and then ask the seller to accept its return . . . librarians also frequently make rather late claims for continuations or periodicals, and are indignant when asked to pay for replacement copies . . . payment of institutional bills is likely to be slow, some librarians are slow to the point of negligence . . . a month later, the librarian notified the dealer that the volume thought to be lost had now been received in a shipment from the bindery, and therefore the duplicate unbound copy was being returned. The dealer lost . . ." *Id.* at 548.

460. ETTINGER, *supra* note 296, at 109.

461. See *supra* p. 50.

462. ETTINGER, *supra* note 296, at 71.

mail,⁴⁶³ and the supremacy of the book format in facing the threat of socialism and worse.⁴⁶⁴ Meanwhile, as late as 1973, Prentice-Hall looseleaf updates still arrived insensitively labeled.⁴⁶⁵

In April of 1973, the first commercial on-line legal database was introduced. It began with a press conference at the Overseas Press Club in New York City.⁴⁶⁶ It was named Lexis by a firm whose business was to make up corporate names.⁴⁶⁷ Immediately thereafter, the planning for a second on-line legal database was begun, but it was not until April 1975 that Westlaw went on-line to its first subscriber.⁴⁶⁸ The influence of this new form of legal publication was immediately recognized; the profundity of this influence has been both over estimated and underestimated ever since.

In 1973, CCH entered *Fortune Magazine's* list of the 1,000 largest American Corporations. Zooming in at number 999, CCH was revealed to have 2,700 souls in its employ, its own printing facilities, and sales, in 1972, of \$67,057,095. Net earnings were \$7,466,180.⁴⁶⁹ These figures are significant because of their clout and also because, of the 600-odd legal publishers, no one else's figures were available. In a survey, conducted by *Juris Doctor*, none of those questioned about the sensitive issues of finance and strategy bothered to respond.⁴⁷⁰ Their report on law book publishers began by quoting a Census Bureau survey⁴⁷¹ and never got any further. No one would talk to them.

Juris Doctor was published from 1971 to 1979. It identified itself as a magazine for the new lawyer,⁴⁷² and it tried to capture the mood of one

463. "People like to get mail. Occasional complaints to the contrary notwithstanding, national research experts come up with pronouncements about how their studies show direct mail advertising is welcomed and how it gratifies and stimulates a person to buy." *Id.* at 110.

464. "That threat is more real than we realize." *Id.* at 173.

465. "Filing instructions for the Secretary or other member of the staff who fills the Prentice-Hall Looseleaf Reports." 1 PRENTICE-HALL FEDERAL TAXES 1 (1973).

466. William G. Harrington, *A Brief History of Computer-Assisted Legal Research*, 77 L. LIBR. J. 543, 553 (1985).

467. *Id.* at 552.

468. *Id.* at 553.

469. Richard Sandza, *Lawbook Publishing: A \$145 Million-a-Year Business*, 4 JURIS DOCTOR 31, 31 (1974).

470. *Id.*

471. "The Census Bureau, which surveys the industry every five years, has what it considers to be an accurate estimate of the industry's total sales. The most recent figures, from the 1972 survey, show that in 1972, the industry had book sales of \$145 million, compared to \$74 million in 1967. Sales for the services were \$192 million." SANDZA, *supra* note 491, at *id.* Note that by 1987, sales were up to \$1.8 billion, and by 1992, sales were \$2,487.9 billion! Bureau of the Census, U.S. Dep't. of Commerce, 1992 Census of Manufacturers *Newspapers, Periodicals, Books, and Miscellaneous Publishing*, Table 6a, Industry 2731 Book Publishing 31 (May 1995), <www.census.gov/prod/11/manmin/mmi/mci27af.pdf>.

472. "New lawyers were social activist, but socially active, egalitarian, but materialist. This is the sort of slick glossy with ads for Opels, Audis, travel tours, and Vat 69 whiskey. There are IQ quizzes and party tips too!" E-mail from Spencer E. Clough, Associate Law Librarian for Public Services, University of Conn. School of Law (Aug 27, 1998) (on file with the author.)

direction in a polarizing profession⁴⁷³ even while that profession grew a little nervous for its reputation. Not as nervous as the law library—that bastion of good manners, free advice, and satisfied customers—where the very occurrence of anger and confrontation was disturbing. (Even joyful noises make libraries uncomfortable.) Legal publishing was even more rattled. After all it was the same sort of stuff, but with a magnificent cash flow attached, facing the threat of change.

Eventually, the president did resign⁴⁷⁴ but oddly enough, the government never exploded and the culture never imploded. The ensuing social and political upheaval caused a great run on the resources of legal education, however, driving up enrollments,⁴⁷⁵ tuition,⁴⁷⁶ and expectations of wide-sweeping reforms in the social structure, but such reforms never took place.⁴⁷⁷ And history moved on.

And then came that strange modern arc that crept inexorable across America over the last half century without much effect, of low culture replacing high culture in many cultured lives, erasing distinctions of decency, good taste, bad behavior, and snobbery. Social edifices and institutions promoted as products of human nature and essential to civilization slowly eroded and crumbled, without leaving much in the way of nostalgia, until finally, in 1973, looseleafs found themselves under a banner headline in the middle of the *National Enquirer*.⁴⁷⁸ There, Dean Boyd, a retired IRS agent named by name, Commerce Clearing House, Prentice-Hall and Research Institute of America. Boyd said, "They spend over a million dollars a year to buy tax publications . . . The IRS will probably be after my hide for what I've said about them. But it happens to be true. I defy them to deny it. Remember, I worked for them and know how they operate." Dick Smith, an IRS public affairs man admitted, "We spend almost \$1.7 million annually on tax services. The IRS needs to keep 70,000 staff members informed." Bill Schreck, the CCH sales manager said they did about \$250,000 a year business with the IRS, and that about 15% of all tax publications produced

473. The same issue contained the following editorial comment: "Today's dedicated students have turned into what they most hate: technocrats. Both the concerned law student and the Army colonel have in common an abhorrence of abstract thought. They have joined the tradition of postwar, technically oriented American anti-intellectualism that has reached its zenith in the current administration in Washington. The people around Kennedy and Roosevelt were remarkable because of their Renaissance aspirations; the people around Nixon are remarkable for their lack of such aspirations." Neely, Richard, *Why Johnny Can't Learn*, 4 JURIS DOCTOR 15, 15 (1974).

474. President Nixon appeared on television the evening of August 8, 1974 and announced that his resignation would be effective at noon the following day. John Herbers, *The 37th President: In Three Decades Nixon Tasted Crisis and Defeat, Victory, Ruin and Revival*, N.Y. TIMES Apr. 24, 1994 at A29.

475. "Enrollments increased 50% from 1967 to 1972." Harry First, *Competition in the Legal Education Industry (II): An Antitrust Analysis*, 54 N.Y.U. L. REV. 1049, 1057 (1979).

476. Between 1966 and 1972 tuition increased 71%. *Id.* at 1058.

477. *Id.* at 1060.

478. *IRS Hires Tax Experts to Help Them Understand Their Own Law*, NATIONAL ENQUIRER Nov. 14, 1973, at 48.

by private firms go to the IRS. The IRS public affairs office said. "We have to have these publications simply because we don't have any of our own. Frankly we couldn't operate without them, even though they're really only telling us about our own laws."⁴⁷⁹

This was the *National Enquirer* in the era when tabloid covers featured Elvis in black against black backgrounds, hiding his age and weight and divorce grief, while offering his tips on diet, spirit, and procreative techniques. But even there and then, tax advice to the tax man was not exactly front-page news. To history, it was not news at all: if one person has a question of interpretation, the answer may be difficult to discover. If many have the same question over time, the community will produce expertise in that area, and answers will be provided in exchange for sustenance. But if many thousands of people permanently need the same kinds of interpretations, they will be published and sold because this remains the most effective way, as it was, even in the days of scholars and scribes. And on the other hand, when law is produced outside of politics and personal conflicts, by experts rather than players; and the legal language they create is not law, but their interpretation of the law they administer,⁴⁸⁰ then an uncontrollable process is unleashed, of creating and explaining, expanding and reducing, and in general, weaving a tapestry so ornate that interpretation is assured a place of importance by the very nature of the process.⁴⁸¹ A process and a tapestry which had grown so expansive, so fearsome and so difficult, that by 1973, it was noticed in the *National Enquirer*.

In 1975, a mere six years after Raymond Taylor's strident criticism broke through the polite quietude assumed to befit librarians and challenged the Federal Trade Commission to "prescribe appropriate practices to be followed in the publication, advertisement and sale of law books,"⁴⁸² the FTC issued its "Guide for the Law Book Industry."⁴⁸³ The guide named all eleven objectionable practices described by Taylor, and added a couple more—sending and billing for unsolicited books and failing to maintain acceptable billing procedures.⁴⁸⁴ The FTC defined the looseleaf, demanded its provenance, and insisted that publishers play fair.⁴⁸⁵

Business, however, did not suffer. In a story about CCH buying up its own stock, as the company had grown rich without diversification, it is described as a very large fish in the small pond of "updatable looseleaf

479. For a possible link between the *National Enquirer* and the 43rd Annual Meeting of the AALL in Seattle, in 1950, see *supra* note 377.

480. TAYLOR, *supra* note 443, at *id.*

481. JOHNSON, *supra* note 444, at 1035.

482. TAYLOR, *supra* note 443, at 556.

483. 40 Fed. Reg. 33436 (1975) as corrected, 40 Fed. Reg. 36116 (1975)

484. TAYLOR, *supra* note 443, at *id.*

485. A lawbook is either loose leaf or permanently bound, the distinguishing characteristic being whether the pages "are permanently attached to the binder." "the month and year of issuance" must be shown on each loose leaf replacement page, thereby making it easier for the user to determine the timeliness of the material being used and to include a date in citations of that material. 40 Fed. Reg. 33116 (1975).

publications." It did its job so well, said its chairman, Oakleigh B. Thorne IV, that "its biggest single customer for tax reports is the IRS and the single largest subscriber to its energy reports is the Department of Energy." Profits for 1979 were up 19% and earnings were up 60% since 1978.⁴⁸⁶

With 1980 came the dawn of the Reagan Era—a return to hard-headed individualism and Hollywood's version of "Old Yankee" values. In the legal profession, aesthetic fashions were turning from sensitivity and holistic touchiness to couched memoranda ordering lower light bulb wattage in the washroom and less smelling of flowers. "A Guide To Looseleaf Services,"⁴⁸⁷ published for Midwestern practitioners began, "Don't purchase the first looseleaf product drawn to your attention."⁴⁸⁸ It cautions subscribers to be wary of publishers,⁴⁸⁹ to weed ruthlessly,⁴⁹⁰ to sell materials as soon as you are done with them,⁴⁹¹ and significantly, to make sure you find the right filer.⁴⁹² It hammers away at the labor aspect,⁴⁹³ revealing the new fashion for nineteenth-century responses to problems in economic relationships.⁴⁹⁴ In spite of itself, the professional literature was beginning to sound like the wisdom of age and resignation, rather than confidence.⁴⁹⁵

The Deficit Reduction Act of 1984, a fashionably named tax law, gained fame even as a bill for its complexities, ambiguities, and errors. Its

486. Allan Sloan, *The Thornes' Sharp Deal*, FORBES, Oct. 29, 1979 at 125, 125.

487. Tim Knier, *A Guide to Select, Acquire and Manage Looseleaf Services*, WIS. BAR BULL. Aug. 1980. at 12, 12.

488. *Id.*

489. *Id.* at 13.

490. *Id.* at 14.

491. *Id.*

492. "Assign the right person to file. Much as in bookkeeping and other precise numerical work, loose leaf filing is not suited to everyone. It is a matter of reality that many firms deem looseleaf filing to be a trivial and mundane task. Thus it falls to the newest, lowest staff member, a runner, a receptionist, a secretary or an office manager, to fill in dead time. This is not an efficient method to handle looseleaf filing . . ." *Id.*

493. "Don't circulate releases or reports to anyone in the firm. Photocopy the report or compile an in-house memo for general circulation, but file the original immediately . . . Have clear delegation of authority to retrieve materials from all offices in your firm . . . If your filer must answer the bosses questions, telephones, or messages while filing, you allow that person a good means to destroy your looseleaf investment . . . Hire trained filers. In larger metropolitan areas there are legal personnel placement firms that are able to provide looseleaf filers." *Id.* at 15.

494. "Allocate specific time for filing. Only a time-motion study will pinpoint how much staff time should be budgeted for your loose leafs . . ." *Id.* Also, "You might employ your own general office part-time employee as a looseleaf filer. But beware. You will get what you pay for and what you don't suspect you are paying for. Don't expect miracles immediately from this type of employee. You will have start-up and on-going overhead costs for this person. You have expenses in screening and hiring, continuing their personnel paperwork and payroll and in training and supervising them. There is also the potential danger that this position on your staff will be a rapid turnover spot." *Id.* at 16.

495. "So much of the looseleaf investment depends on the people filing your services. Remember, one misfiled page in a looseleaf is enough to destroy the value of the entire service." *Id.*

passage⁴⁹⁶ may have prompted *Fortune* to run a story about CCH.⁴⁹⁷ At this time, the *Standard Federal Tax Reporter* was up to 25,000 pages. It weighed over seventy pounds. And there had been no new competitors since 1935. CCH and the IRS had grown up together and symbiotically—the IRS, the largest single customer of CCH, had grown dependent, and on the other hand, remained the fountain of all insights drawn by CCH. That fountain also known as, “tax laws so voluminous and arcane that even professionals cannot untangle them unaided.”⁴⁹⁸ The results were sales of over 400 million dollars, a profit of forty million, and a profit margin of roughly twenty-five percent on legal services. In fact, CCH had accumulated too much cash, but they could not diversify because they could not find companies with returns on investment anything like as high as their own.⁴⁹⁹ With problems like this, who needed solutions? “Database publishing represents the company’s most exciting growth opportunity and its biggest challenge” . . . but they have “hesitated, perhaps wisely, to plunge into the business. . . .”⁵⁰⁰

In 1987, a conservative nominee for the U. S. Supreme Court, testifying before the Senate Judiciary Committee, was asked why it took him ten years to repudiate the offensive views he formerly held. Robert H. Bork answered with a slap of metaphor drawn from the established virtue of the format:⁵⁰¹ “Senator, I don’t usually keep issuing my new opinions every time I change my mind. I just don’t. If I revisit the subject . . . I revisit it, but I don’t keep issuing looseleaf services about my latest state of mind.”

In 1990 the librarians began noticing once again that aggressive publishers were producing unnecessary updates rather than catering to real needs. In fact, so intently, and at such high prices, that more firms had to resort to hiring librarians as a measure of cost control.⁵⁰² For some publications, the cost doubled between 1989 and 1990.⁵⁰³ This new phenomenon emphasized treatises rather than services. Irregularly supplemented treatises had surfaced as the fastest rising-price product in the legal literature.⁵⁰⁴ While fewer than ten such treatises were published between 1970

496. The Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 (1984).

497. SHERMAN, *supra* note 253, at 58.

498. *Id.*

499. *Id.* at 65.

500. *Id.* at 60.

501. Excerpts from *Questioning of Judge Bork by Senate Committee Chair*, N.Y. TIMES, Sept. 16, 1987 at A27, A28.

502. See Marguerite E. Mulvihill, *Law Librarians Reconsider Rising Costs of Treatise Supplements: Canceling Subscriptions to Treatise Supplements*, PUBLISHERS WEEKLY, Oct 12, 1990, at 34.

503. *Id.* at 35.

504. “The annual cost for subscriptions to such services as CCH’s *Standard Federal Tax Reporter* and Maxwell Macmillan’s *Federal Taxes*, both loose leaf services that include weekly updating, now pale in comparison to the annual costs for irregularly updated treatises such as *Moore’s Federal Practice* and *Collier on Bankruptcy*, supplementation of which is sporadic and released no more often than five or six times a year.” Allen C. Story, *Cost Excess in Supplementing Looseleaf Treatise Publications*, 3 LAW PRAC. MGMT. 38, 39 (1992).

and 1974, there were forty-two new looseleaf treatises begun in 1984 and thirty-eight in 1985.⁵⁰⁵ Customers were complaining that "actual content changes were too slight to substantiate the accompanying costs."⁵⁰⁶ In addition, changes large and small were being restricted to supplements rather than new editions, so that new buyers entering the market had to buy both the obsolete data and the updates.⁵⁰⁷ Professional advice was to reexamine your needs and cancel or just cancel!⁵⁰⁸ Even while angry at the publishers, a visionary librarian was still able to end on an overly kind and conciliatory note.⁵⁰⁹

Now those days seem long ago. The digital age has wired us back into a concern with format that verges on obsession. In the collective consciousness, form triumphs over content, and the great fear is not ignorance, but being left behind, unable to hear the music, because the gadget you bought yesterday is now obsolete.

The history of updating the law has tended to be driven by money and information leading to specialization in the practice of law and a resulting sophistication and specialization of the research resources being produced.⁵¹⁰ This history has also been driven by some curious trends within the rise of the legal profession where increasing commercialization, deprofessionalization and division of labor have all worked to make the legal literature more effective.⁵¹¹ That is, as the time of lawyers grew more valuable, the amount they were willing to spend on time-saving tools, grew commensurate.⁵¹² Thus, the erudition of those tools also grew.

505. Elaine M. Moore, *Quality of Looseleaf Treatises: Analysis of the Publisher's Contribution Profession*, LEGAL REFERENCE SERVICES Q., 1/2, 1988, at 209, 210.

506. STORY, *supra* note 504, at *id.*

507. For discussion of Kendall Svengalis, *Cost Effective Acquisitions*, 9 PUBLISHERS CLEARING HOUSE BULL. 14 (1985); see also Moore, *supra* note 505, at 211, note 7.

508. "If a subscription gets out of hand, kill it. Don't be afraid, doctors do it all the time, why shouldn't we?" Comment made by Thomas H. Reynolds, Associate Law Librarian, University of California at Berkeley, Boalt Hall Law Library, *Panel on Foreign and International Law Collection Development on a Shoestring*, American Association of Law Libraries, 86th Annual Meeting, Boston (July 15, 1993).

509. "Many librarians and lawyers are wondering whether computers will some day replace books. The well-done loose leaf treatise that provides well-reasoned discussion with both general overview and detailed practical pointers in a compact and easy-to-use format is just the sort of book least likely to be replaced." MOORE, *supra* note 505, at 220-221.

510. COHEN, *supra* note 338, at 458.

511. For the growth of the profession, the nature of that growth and an overview of the phenomenon, see Richard H. Sander and E. Douglass Williams, *Why Are There So Many Lawyers? Perspectives on a Turbulent Market*, 14 L. & SOC. INQUIRY 391 (1989). On the growth of the large firm, the literature is extensive, but see Robert L. Nelson, *Tournaments and Transformations: Explaining the Growth of Large Law Firms*, 1992 WIS. L. REV. 733, 734-735 (1992) (reviewing Marc Galanter and Thomas Palay, *TOURNAMENT OF LAWYERS* (1991)); Friedman, *supra* note 175, at 640. For the continuing disparity in lawyers' incomes, see Richard A. Posner, *The Material Basis of Jurisprudence*, 99 INDIANA LAW JOURNAL 1, 14 (1993), and for the actual decline in the price of legal services despite contrary perceptions by the public and the procession, see *id.* at 27.

512. SCOTT, *supra* note 355, at *id.*

At the dawn of the computer age, a dawn which has lasted for a quarter century, both the quantities of elemental primary sources, and the cost and quality of the finding aids necessary to manage them, were dazzling. And so, the accumulation of published cases and statutes and regulations continued unabated, such that the literature, its librarians, and even its real estate creaked at the weight. Eventually, the profession had to question its ability to afford to purchase, house, and maintain what it used to.⁵¹³

As late at 1992, when we think we were already revamping our memories to categorize in electronic metaphors, the legal profession, caught up in practice as much as theory, was still preoccupied with the problem, not the dawning solution. And the American Bar Association, in their role as shepherd,⁵¹⁴ was still scolding lawyers for not being vigilant,⁵¹⁵ scolding publishers for taking advantage of practitioner's lack of vigilance,⁵¹⁶ scolding the world for being too expensive, and those successful in the world for putting up with the prices.⁵¹⁷ The message remained that old sense of feeling victim of too much information. The vulnerability was revealed quite subtly,⁵¹⁸ and also not so subtly.⁵¹⁹

CCH drifted from being a top ten Fortune 500 performer in earnings per share and return on equity in the late 1980s⁵²⁰ to a subject in a cover story feature called "Why Companies Fail."⁵²¹ In 1992, CCH losses

513. COHEN, *supra*, note 338, at 459.

514. STORY, *supra* note 504, at 41.

515. "Pay closer attention to invoices being paid for looseleaf treatise supplements, or consult with whomever in your office is in charge of paying them. Examine newly received looseleaf supplements more carefully and determine whether the supplementary information they bring with them is of critical enough value to warrant the cost." *Id.* at 40.

516. "Apparently operating on the premise that law book supplementation is habitually purchased without questioning and regardless of costs, publishers of irregularly supplemented legal looseleaf treatises have abandoned reasonable and competitive publishing and pricing patterns of their subscription publisher competition. They have instead launched into higher realms of price charging that have become inordinately costly for all of us." *Id.* at 38.

517. "Our costs for conducting business today are ever-increasing. When a supply source for our business support imposes costs that are out of line marketwise, it should be normal business conduct on our part to reexamine seriously the need for their product. Such is the case with many of today's publishers of irregularly updated looseleaf treatises." *Id.*

518. "The annual costs for subscriptions to such services as CCH's *Standard Federal Tax reporter* and Maxwell Macmillan's *Federal Taxes*, both looseleaf services that include weekly updating, now pale in comparison to the annual costs for irregularly updated treatises such as Moore's *Federal Practice* and Collier on *Bankruptcy* . . ." *Id.* at 39.

519. "In 1989, Moore's *Federal Practice* was found to have overlooked for nine years revising its discussion explanation of the structure of the federal courts system that was changed by 1980 and 1982 laws. This same publisher was also discovered to have misorganized its supplementary material for Gilson's *Trademark Protection and Practice*, having formatted content that included new legislative enactments in a manner that contradicted the usual arrangement of cumulative supplementation by this publisher. It took the publisher some seven months to correct the Moore's error once it surfaced, and a year to fix the Gilson problem. During these time frames the annual upkeep costs of the problematic sets were in excess of \$1,400 for Moore's and more than \$700 for Gilson. *Id.* at 40.

520. Kenneth Labich, *Why Companies Fail*, *FORTUNE*, Nov. 14, 1994 at 52.

521. *Id.*

reached \$6.4 million.⁵²² Then the company made adjustments and offered its products in electronic form.⁵²³ By 1994 profits were about \$19 million. For 1995, although paper subscriptions had fallen from a peak of about 40,000 to 20,000, profits were over \$30 million.⁵²⁴ Before that year was out, the Thorne family, led by President and Chief Executive, Oakleigh Thorne IV, sold the company. The buyer was Wolters Kluwer, a Dutch publisher in the science and medical fields. The price was \$1.9 billion cash.⁵²⁵ There were so many mergers in legal publishing that year, that this one was not outstanding.⁵²⁶ In the summer of 1996, the RIA Group, formerly known as Research Institute of America, paid the American Bar Association one million dollars for the rights to be "primary corporate sponsor" of the ABA's tax section. The agreement specifically prohibited CCH from throwing any official parties or serving cocktails or hors d'oeuvres connected to tax section meetings.⁵²⁷

Meanwhile, in the workaday world, looseleaf technology persists, though not unchanged. American industrial manufacture has moved its labor strategy from mechanizing the individual at a mechanical assembly line, to subcontracting the labor process to middlemen overseas skilled in masking the entire nature and culture of working conditions, and subcontracting moral leadership to millionaire athlete corporate spokesmen.⁵²⁸ And yet, in such a world, looseleaf filers can still be found, trotting off to work with their rulers, rubber fingers,⁵²⁹ filing guides, filing combs, and filing codes for tax management. There is plenty of work available, and their pay is no longer the minimum.⁵³⁰ With mature technology, there are no surprises.⁵³¹ The focus is on accuracy.⁵³² Filers come from all walks of

522. William Gruber, *After Taxing Times, Electronic Leap Pays Off for Publisher*, CHICAGO TRIBUNE, Mar. 27, 1995, at 3.

523. *Id.*

524. *Id.*

525. Kenneth N. Gilpin, *Law and Tax Publisher to Be Sold for \$1.9 Billion*, N.Y. TIMES, Nov. 28, 1995, at D1; *Publisher CCH Agrees To Buyout by Dutch Firm*, WALL ST. J., Nov. 28, 1995, at A3.

526. See *Thomson to Purchase West Publishing for \$3.43 Billion*, WALL ST. J., Feb. 28, 1996, at A3.

527. Bartalk, THE AMERICAN LAWYER, July/Aug. 1996, at 13.

528. For astute criticism of endorsement by athletes, see Derrick Z. Jackson, *Paul Robeson Stood Taller*, THE BOSTON GLOBE, Apr. 7, 1998 at A21.

529. "Rubber Finger—To be worn on the index or middle finger of the right hand. The proper way to wear the rubber finger is to have the perforations over the fingernail and the raised oval on the cushion of the finger ready for contact with the paper. Let your fingernail breathe." ACCUFILE INCORPORATED, A GUIDE FOR FILERS (1997) at 19.

530. Telephone interview with Nicholas H. Ypsilantis, Vice-President, AccuFile, Inc. (Feb. 18, 1999).

531. Handle the binders with care, they are heavy. Be aware that they may have been left open by a previous user." ACCUFILE GUIDE, *supra* note 529, at 12.

532. "Tips and Hints/Be Fresh and alert—Develop a method for relaxing . . . Once a publication/report letter has been completed, stretch your arms, get up and take a few steps around the room, straighten your back, rotate your neck . . ." *Id.* at 16.

life. Although it has been noticed that experienced knitters tend to excel at looseleaf filing, perhaps because they are comfortable with following complicated written instructions, no one attempts to categorize the modern filer.⁵³³

It may be the immediacy of paper or the lack of licensing fees or other restrictions that come with electronic subscriptions; it may be the lack of down time or other waiting for the screen, whereas a page can be flicked; or it may be the portability that can take the authoritative text into a meeting or onto an airplane, but whatever it is, there is plenty of work and it is growing. However, noticing this nearly anachronistic phenomenon, and mentioning it, can lead to social and professional decline. Whatever remains right about the looseleaf, it is no longer acceptable for academic or suburban dinner conversation.

For those who persist, a quick search engine click on "looseleaf" turns up a stale magazine story about the "beautifully executed and dignified presentation" intended to attract the 1996 Summer Olympics to Atlanta. The presentation, a complex five-book package, that "represents an unusual collaborative effort between a custom looseleaf manufacturer and a trade binder . . . [to] produce the book covers and slip case, stamp and gold leaf foil decoration, deboss the flyleaves and covers, as well as make the die cut tabs that separate the different sections."⁵³⁴ Other hits include: a recommendation for elementary school teachers to lighten the backpacks of children by switching to three-ring binders and loose-leaf paper;⁵³⁵ a profile of Filofax, the English maker of looseleaf diaries and personal organizers, bouncing back from years of losses;⁵³⁶ a product brief about mainstream salads, once confined to Iceberg and Romaine, now encompassing a host of greens including arugula, butter head, cabbage, chicory, spinach, and looseleaf lettuces;⁵³⁷ a report of the decline and loss of shelf space to bags, by the looseleaf, or packet sector of the tea industry;⁵³⁸ a report on the increase in the sales of snuff, looseleaf and other smokeless tobacco accompanying the decline in smoking;⁵³⁹ and a book review of "Loose Leaf: The Wackiest School Notebook Yet".⁵⁴⁰ The book is a juvenile, the most conservative of literary markets, because

533. Ypsilantis, *supra* note 530.

534. *Olympian Effort: Looseleaf Manufacturer, Trade Binder and Design Firm Team Up in Attempt to Lure 1996 Summer Olympics to Atlanta*, AMERICAN PRINTER, Sept. 1990, at 72.

535. Brenda Power, *All "Journaled Out"*, THE INSTRUCTOR, Mar. 1997, at 48.

536. Andrew Blackman, *Back For a Second Bite of the Cherry*, ACQUISITIONS MONTHLY, June 1995 at 20.

537. *Product Briefing: Salad Greens & Mixes*, ID: THE VOICE OF FOOD SERVICE DISTRIBUTION, June 1994 at 24.

538. "Twenty-five years ago, when looseleaf accounted for 85% of all sales, it was simply called tea. Then came the popularity of the tea bag and instant coffee." *Loose Talk*, SUPER MARKETING, Sept. 10, 1993 at 23.

539. *Smokeless Volume Leaps*, U.S. DISTRIBUTION JOURNAL, Dec. 15, 1992 at 19.

540. Renee Steinberg, Book Review, SCHOOL LIBRARY JOURNAL, Apr. 1991, at 150.

all jokes are fresh if you are young enough.⁵⁴¹

Even late in the 1990s, little flurries of activity occur around the print versions of looseleaf publications.⁵⁴² In truth, most sales by looseleaf publishers remains in paper. Printing technology is still advancing.⁵⁴³ And the trick of transforming bound updates to looseleaf format as a means of raising revenue persists.⁵⁴⁴

On the computer screen, the current version of Filemaker Pro, the Rolodex program for Mac, uses the image of the three-ring binder as the ikon to click upon for turning the page. Sentimentalized, the image may

541. For example, "When the noted Russian writer Gogol put on goggles to walk among his gaggle of geese, did the gaggle giggle at Gogol's goggles, or did the gaggle ogle at Gogol's goggles without giggling, or did giggled Gogol giggle at the gaggle?" LOUISE PHILLIPS, *LOOSE LEAF, THE WACKIEST SCHOOL NOTEBOOK YET* (1990) at 2.

542. "CCH had made the decision to stop publishing print versions of New York Tax Analysis and California Tax Analysis. I think this is just a shame . . . I like electronic research, but when the actual print product goes away somehow it makes me nervous." Lydia Wilson <lydia.wilson@Internet.MCL.com>, *Two more great books gone*, posted Tues. Oct 7, 1997, <law-lib@ucdavis.edu>. Also reply, "I agree, the New York Tax Analysis is a great product and I am very sorry to see CCH discontinue the print format . . ." Kathie J. Sullivan <rnltwkjs@transit.appliedtheory.com> *Re. Two more great books gone*, posted Oct. 7, 1997, <law-lib@ucdavis.edu>. *Law-Lib Archives* <<http://lawliblibrary.ucdavis.edu/LAWLIB/lawlib.html>>.

543. CCH's print-on-demand (POD) system is a new concept unveiled in 1998, after six years of joint development with IBM. It resulted from the continued growth of the number of printed pages (having passed one billion annually). This made the warehousing of inventory difficult. Mid-year subscriptions had to be manually assembled by inserting and removing all the subsequent updates. Rush orders became unpleasant. As solution, a large electronic database with daily updates was created, coupled with a press which is actually a laser printer. POD updates automatically and prints 2000 pages per minute, trimmed, stacked and punched. Leslie Bonacum, *On the Cutting Edge with On-Demand Printing* 3 (8) AALL Spectrum 26 (May 1999). Also interview with Mary Dale Walters, Public Relations Manager, CCH Inc., May 5, 1998.

544. "Can someone explain to me the point of the pamphlet-style looseleafs with which CBC has replaced many titles formerly updated by pocket parts. These are not looseleaf "services" which generally attempt to be very current, and are updated frequently. In most cases, they are still updated annually, and of course, they do not allow interfiling of pages as with real looseleafs. So what's the point?"

"I have been looking at titles transferred from LCP to CBC in 1992, tracking the price increases since that time. In some cases, LCP titles updated by pocket parts have been replaced by these kinds of looseleafs. Although the price increases are obscene even when updating is still by pocket part, they are much higher for these revised 'looseleafs' . . . I have compared the tables of contents from the older and revised editions, and I find that they are almost identical, so as far as I can tell there is no real difference. . . ."

"I know that lawyers tend to think that loose leafs are more current, and they have an almost superstitious regard for the looseleaf format. When my wife was Publications Director for the Oregon State Bar, she tried to move some titles to the hardbound format, because it is cheaper to publish in that format. Almost all Oregon CL publications are looseleaf, and they are updated infrequently. Nevertheless, the lawyers wanted them to continue to be looseleaf, even tho that means they must be priced higher." Joe Stephens <jstephen@willamette.edu> CBC pamphlet-style "loose leafs", posted May 9, 1997, <law-lib@ucdavis.edu>. *Law-Lib Archives* <<http://lawliblibrary.ucdavis.edu/LAWLIB/lawlib.html>>.

endure elsewhere, but the truth is, for the culture at large, that the meaning of the term has moved on.

And so the action shifts, separating the very concept of page from paper, and blowing the shriveled metaphor of leaf out of the collective conscience. And the law, far from being timeless and immutable, remains the diffuse social butterfly it has always been.⁵⁴⁵ And we come the present, which likes to describe itself as the digital age, promising electronic cure for the modern researcher's arthritic aspect. But ours is an age that can also be viewed as one of enduring commitment to the inclusion of every single case, statute, opinion, analysis, rule and regulation, no matter how many, how long-winded or how fast they are promulgated. Despite its tonic effect, digitized information, coming as it has at a time of declining respect, also has a tendency to leave, in the mind of the client, an impression that the advice of their attorney is not the result of sagacious inquiry, but rather, the click of a mouse, which is not much work, and not worth much. The feeling that they could have pulled it down off the Internet themselves is also helping to make this the age of clients unwilling to pay. Electronics may hasten the end of billable hours as a pricing mechanism. At the same time that these electronic developments have made space infinite and delivery instant, they have also, rather than obliterate costs, made them all fixed. This means that any particular information can be given away at no additional cost, but there is no place to recover the vast commitments to development and editing, except in the market place. And in the legal profession as in the rest of the post modern world, the rich have got richer and the poor poorer. Thus, the cost of information has become less important and more critical for some (those who have to have it now no matter what it costs) and more important and less critical for other (those who have to have it free or almost free, no matter how long it takes.) And while "weekly" and "monthly" impose real time deadlines, "instantaneous" can mean whenever. Without the postman's pick-up, there is no consequence to being a little late. The battle may well turn on consumer perception; the consumer may well be ahead of the producer; and wherever this might lead, the electronic ability to keep pace with the quantity of information is holding us to the nineteenth-century tasks of digesting, citation checking, and annotating.

We summarize cases and arrange them alphabetically by subject, because we still need to know what previous courts have ruled in cases with facts similar to our, and we still want to examine the language and arguments of these previous cases. We annotate because we don't have the time or the learning or the genius to formalize insights of a quality as high as those we can buy via subscription. Ours is an era of form, not content, because the way we live may be faster, but we are still doing the same old things, framed in the same old social values and concepts, with the same old politics defining fairness and justice. The fashions have

⁵⁴⁵ Judges and lawyers are interested in current events. See Simon Greenleaf and Simeon E. Baldwin, both quoted in WARREN, *supra* note 69, at 559-560.

changed, but we are still slaves to fashion; we still rule by update and by consensus, because our notion of the democratic ideal of justice still demands it.⁵⁴⁶

And so, we still need primary sources of law. For a people with the history we have, authority lies in the Ten Commandments and the Constitution and we must have links to them. In one sense, judicial insight occurs because the world is not biblical or America is not revolutionary any more. But judicial insights are also realizations that our true authorities fail to address or won't apply equitably. So these insights must serve as the primary authority for our permanent law, even though they get overruled, questioned, criticized, distinguished, explained, limited, interpreted, invalidated, eroded, and vacated or go out of fashion. But they are our truth and as such must be saved, indexed, annotated, classified, and glossed. Otherwise we lose our links to God and the Founding Fathers.

And now that we are stuck, arranging and identifying, counting and categorizing this voluminous and ever-expanding truth—stuck with an expensive legal literature as the bridge between lawmakers and those who must figure out how to comply in order to work—we are realizing how much maintenance that literature needs in order to continue.

"The law in a high society bulks out of all understanding. Our law is the regulation of the clash of interests in a society so complex we gasp before it."⁵⁴⁷ The future holds many fears, but at least the long hope for mechanical and electronic assistance in legal research has been realized.⁵⁴⁸ The dream of push button research is the way we now work. Space, velocity, and labor have all been conquered. The new technology has deeply penetrated law. And yet, this technological revolution has been accompanied by an increase in the numbers of library staff.⁵⁴⁹ And law libraries themselves have increased, in the course of this revolution, renovating, building, and growing in ways that leave them with more square feet.⁵⁵⁰ This is not surprising. As the new technology has allowed the law to grow more comfortably, so this comfort has lead to an increase in books, newsletters, and all manners of supplementation, in quantities that would be uneconomic, if not impossible, without the technology. What has declined, is the fear of being overwhelmed by the proliferation of the legal literature, coming after a long history.⁵⁵¹

546. It has been observed, in the realm of poetry, that "the mania for innovation always leads to speculative traffic in arbitrary notions; and reliance on pure inventiveness invariably brings with it the spurning of man's accumulated riches, with all the fateful consequences this entails." NADEZHDA MANDELSTAM, *HOPE ABANDONED* 45 (Max Hayward, trans., Atheneum, 1974).

547. Karl N. Llewellyn, *THE BRAMBLE BUSH* (1981 ed.) 105 (1960).

548. Roy N. Freed, *Prepare Now for Machine-Assisted Legal Research*, 47 A.B.A. J. 764, 764 (1961).

549. Richard A. Leiter, *Legal Research Then and Now*, LEGAL INFO. ALERT, Sept. 1998, at 4.

550. *Id.* at 5.

551. See Hibbitts, *supra* note 84, at 654 for a bibliography of this history, see *id.* at notes 27, and 221-223.

Looking backward, we see how there has always been too much to file, and how the load eventually snagged the work flow. We remember fondly how each set had its own look and feel, the boldface section headings and subheadings that with practice, like gargoyles on medieval cathedrals, brought comfort as theaters of memory. We miss such comfort and wonder what else was lost as life becomes more fragile and the demands for speed and change continue.⁵⁵² The search for truth once seemed to drive the legal profession, at least in its purest regions. That seems to have been lost somewhere in the search maze. Law schools used to teach text and commentary as if they were the truth. All schools used to teach the truth. Now they teach how to answer questions. How to get the answers as fast as you can, anywhere you can. The respect for truth, for copyright, for credit and attribution, even spelling and proofreading skills, all gone in the rush to click a mouse. For those who embrace this new world and need it to make their mark, welcome to the history of updating. It never ends.

552. "I have the table of contents of a chapter of an unknown looseleaf with no indication of publication title or publisher. I am trying to track down the full chapter with very little information. I have exhausted all local resources, and could use the help of this wonderful list . . ." Jackie Ignatowski <jai@whdlaw.com>, *Audit book chapter*, posted Sept. 16, 1998, <law-lib@ucdavis.edu> *Law-Lib Archives* <<http://lawlibrary.ucdavis.edu/LAWLIB/lawlib.html>>.