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**Law Schools and the Open Access Movement:  
An Article Review of *Aux Armes Citoyens***

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Law Schools and the Open Access Movement  
*An Article Review of Aux Armes Citoyens*

The advent of the Internet in 1994 inaugurated a “revolution”<sup>1</sup> in legal research. For the first time, the legal profession became poised to disseminate limitless levels information— both within its own community and to the public at large. Ironically, free access to legal information has become increasingly fettered. In recent years, the contraction of the publishing market has left only three corporations as the custodians of a deep repository of legal knowledge.<sup>2</sup> Although this market consolidation, coupled with staggering technological developments, has facilitated the expansion and improvement of online legal research services, such innovation has a price.

In *Aux Armes, Citoyens*, Ian Gallacher explores the implications of these changes with respect to their potential societal costs. Gallacher identifies the “seeds of a future problem,”<sup>3</sup> which, if unaddressed, could further compromise equal access to justice.<sup>4</sup> His analysis situates the legal research revolution within “a longstanding tradition of making the law inaccessible to the citizenry.”<sup>5</sup> This tradition, which has favored insularity rather than access, and elitism rather than understanding, presents a twofold challenge: first, increasing the availability of the law; and second, making that law intelligible.<sup>6</sup>

Beyond mere analysis, Gallacher’s manuscript is a manifesto— a call to America’s law schools to take their place on the vanguard of the open access movement. Yet who will bear the consequences of such a commitment? In this paper, I will use the framework taught in Advanced Legal Research (ALR) at Stanford Law School as a touchstone for analysis of Gallacher’s call to arms. First, I will address his proposition that law schools are uniquely situated to respond to the

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<sup>1</sup>Gallacher, Ian, “*Aux Armes Citoyens!*” *Time for Law Schools to Lead the Movement for Free and Open Access to the Law*, (Nov. 28, 2007) (unpublished manuscript, on file with the SSRN).

<sup>2</sup> *Id.* at 1. Thomson Corporation, Reed Elsevier, and Wolters Kluwer have separately merged with an extensive list of legal research providers.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 6.

problem of limited access to the law. Second, I will assess which of the resources employed in ALR have comparable, open access substitutes to LexisNexis and Westlaw. Finally, I will briefly reflect on how Gallacher's ten principles for the liberation of the law fit within and the objectives of a contemporary legal resource course and the comprehensive mission of a law school.

### **Law Schools and the Legal Research Vanguard**

A confluence of technological developments and market pressures has elevated a cadre of corporate entities to the station of de facto guardians of virtually all legal information. The privatization of knowledge that intuitively and morally belongs within the public domain is cause for careful scrutiny of the legal research status quo. But if profit-maximizing corporations are ill equipped to the task of compiling and distributing legal information, to whom should we turn? To answer this question, Gallacher classifies the way in which various groups are situated with respect to the law. This positioning is instructive of their respective capacities to design and implement an open access alternative to subscription-based access to costly online legal research services.<sup>7</sup>

#### *A. Lawyers*

Legal practitioners have what Gallacher characterizes as an “appropriately mercenary relationship with the law.”<sup>8</sup> Their profession dictates that they view the law instrumentally rather than holistically. To the practicing lawyer, the law is only a tool for satisfying the needs of her clients. Her knowledge of the law becomes coextensive with a specialized area of practice. In consequence, she has little need to cultivate the epistemological understanding that a thoughtful restructuring of the system of legal knowledge requires.

Yet Gallacher perhaps understates the potential that practicing lawyers have to become leaders in the open access movement. Lawyers have unparalleled access to raw legal information. They are the first receivers of the opinions handed down by courts. Where courts have reneged their responsibility to publish opinions, practicing lawyers are in the next best position to make such information available. Gallacher recognizes this, at least anecdotally, in his account of appellate

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<sup>7</sup> *Id.* at 18.

<sup>8</sup> *Id.*

litigator Howard Bashman.<sup>9</sup> When the Second Circuit decided *Higarzy v. Templeton*, Bashman made the opinion available on his blog within an hour.<sup>10</sup> When the Court contacted Bashman to ask that the opinion be removed and replaced with a redacted copy, Bashman refused. Although lawyers are servants of the law, they maintain an independence from the courts. This would allow them to publish case law without being beholden to an ulterior agenda.

## B. Courts

Gallacher argues that Courts may be even poorer stewards of the law than practicing lawyers. Though they lack the adversarial bias of litigators, their use of the law is likewise utilitarian and no less instrumental.<sup>11</sup> Gallacher notes that a court has an inherent interest in maintaining a manageable docket. As such, Gallacher argues that courts are unlikely to support free and open access to the law because the movement could encourage an increase in pro se filings. In support of his hypothesis, Gallacher discusses the decision of federal court to withhold the publication of most opinions.

But Gallacher's argument gives insufficient treatment to the historical climate in which this practice developed. The decision to publish only certain opinions came in the 1960s because of an increasing federal case load.<sup>12</sup> When addressed by the 1964 Judicial Conference,<sup>13</sup> participants noted the strain that high volumes of published opinions placed on the resources of public and private law libraries.<sup>14</sup> Given that these strains have been mollified by tremendous increases in storage capacities, court may become increasing willing to take responsibility for making their opinions available for public consumption. Although Gallacher argues that courts will remain hesitant to make opinions publicly available because of fear of increasing their dockets, further empirical study is necessary to ascertain whether this projection is reasonable.

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<sup>9</sup> *Id.* at 25

<sup>10</sup> Bashman's blog may be accessed at <<http://howappealing.law.com/>>

<sup>11</sup> Gallacher, *supra* note 1, at 19.

<sup>12</sup> Karen Swenson, *Federal District Court Judges and the Decision to Publish*, Justice System Journal (2004), available at [http://findarticles.com/p/articles/mi\\_qa4043/is\\_200401/ai\\_n9395052](http://findarticles.com/p/articles/mi_qa4043/is_200401/ai_n9395052)

<sup>13</sup> Judicial Conference of the United States, Reports of the Proceedings of the Judicial Conference of the United States 11 (1964), which determined: "That the judges of the courts of appeals and the district courts authorize the publication of only those opinions which are of general precedential value and that opinions authorized to be published be succinct."

<sup>14</sup> Swenson *supra* note 11.

### C. Politicians

Gallacher also considers the political sphere as a potential force within the open access movement, yet he dismisses this possibility as quickly as it is addressed because of the possibility of corruption.<sup>15</sup> As recent data made available through Open Secrets<sup>16</sup> and the Sunlight Foundation<sup>17</sup> has illustrated, elected officials are particularly susceptible to capture by campaign contributors. But Gallacher's fear of the undue influence of money seems unfounded in the context of legal publishers. So far this year, lead executives in the Thomson Corporation have made \$21,675 in personal contributions to political candidates, yet their giving pattern is diffuse and diverse.<sup>18</sup> On the whole, of the 18 Thomson executives who gave, twice as many favored liberal candidates over traditionally, pro-business conservatives. Although those who supported Republicans gave on average twice as much, the total disparity in giving between contributions to Republicans and Democrats amounted to a mere \$25, with \$10,850 in donations to the former and \$10,825 to the latter.<sup>19</sup> Sixteen officials at Wolters Kluwer gave separate gifts totaling \$7,893 to Democratic candidates as compared to only \$349 to Republican candidates.<sup>20</sup> And the ten contributors from Reed Elsevier contributed \$33,716, which went *exclusively* to Democratic candidates.<sup>21</sup>

There are myriad problems with relying on this data as evidence of the absence of political corruption with respect to legal publishers. Among these, while the open access agenda ostensibly embodies a liberal ideology, the movement has thus far received insufficient treatment in the political arena to find a home in either party. Moreover, despite Gallacher's skepticism, evidence seems hopeful that politicians could assume a more active stance with respect to this ongoing controversy.

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<sup>15</sup> Gallacher, *supra* note 1, at 19.

<sup>16</sup> <<http://www.opensecrets.org/>>

<sup>17</sup> <<http://www.sunlightfoundation.com/>>

<sup>18</sup> The Huffington Post, Fundrace 2008,

<http://fundrace.huffingtonpost.com/neighbors.php?type=emp&employer=Thomson+Corporation>

<sup>19</sup> *Id.*

<sup>20</sup> The Huffington Post, Fundrace 2008,

<http://fundrace.huffingtonpost.com/neighbors.php?type=emp&employer=Wolters+Kluwer+&search=Search>

<sup>21</sup> The Huffington Post, Fundrace 2008,

<http://fundrace.huffingtonpost.com/neighbors.php?type=emp&employer=Reed+Elsevier+&search=Search>

Recent legislation seems supportive of this possibility. In 2002, Congress passed the E-Government Act, codified at *44 U.S.C. §3501 et. seq.*, which provides for

[T]he dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology.<sup>22</sup>

As applied to the justice system, courts are required to make available “the substance of *all* written opinions . . . *regardless of whether such opinions are to be published in the official court reporter*, in a text searchable format.”<sup>23</sup> Gallacher notes that courts have evaded compliance by narrowing what qualifies as a “written opinion.”<sup>24</sup> Still, while legislative action is not a lone cure, it should not be overlooked as a potential part of a broader movement to effect substantive change in the realities of contemporary legal research.

#### D. Law Schools

Skeptical of the capacity of practicing lawyers, courts, and politicians to lead the open access movement, Gallacher maintains that the revolution should begin within the academy. His thesis carries tremendous potential, yet warrants necessary caution. Gallacher argues that law schools are “the only legal institutions that value the law itself, with no additional agenda.”<sup>25</sup> While the possibility of an alliance of law schools reforming the way in which legal information is collected, classified, and disseminated, is both innovating and inspiring, Gallacher’s argument fundamentally misstates the purpose of a law school. Rather than a freedom from “additional agendas”<sup>26</sup> law schools are wholly committed to a distinct purpose. Within their classrooms, the law is valued, not for its own sake, but for the sake of pedagogy.

The mission of a legal academy is first and foremost to teach. While this objective is consistent with deconstructing (and reforming) the legal research episteme, as with any substantial revision of an institutionalized discipline, change is both hard-fought and gradual. We need only consider that first year students still take courses within the rigidly prescribed subject areas formulated by Harvard

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<sup>22</sup> 44 U.S.C. §3501 (2006).

<sup>23</sup> *Id.* (*emphasis added*)

<sup>24</sup> Gallacher, *supra* note 1, at 6.

<sup>25</sup> Gallacher, *supra* note 1, at 20-1.

<sup>26</sup> *Id.* at 21.

professors more than one hundred years ago to appreciate that law schools are not always the bulwarks of radical reform.

As a practical matter, law schools are entangled in a complex web of financial obligations. As Gallacher notes, law schools have “disturbingly close ties to the principle commercial vendors of legal information.”<sup>27</sup> Even in the event of substantive changes in the way that law schools approach legal research, the interests of students and faculty alike in the services provided by legal publishers renders this troubling symbiosis all but impossible to undo. This is especially true in the context of a legal research class, which has a dual commitment of teaching students to explore alternative research methods while preparing them for the demands of their professional life. Given the time limitedness of the first-year legal research curriculum, absent more advanced training, students may never venture beyond the portals of LexisNexis and Westlaw.

Yet law schools do have one unique asset that distinguishes them from practitioners, courts, and politicians: the capacity for intra and inter institutional coalitions. A union of law librarians, legal academics, and students within a single school would create an organism with the specialized knowledge, intellectual might, and manpower to research, design, and implement a novel approach to the study and dissemination of the law. When allied with other law school committed to a common agenda, the possibilities for change are substantial.

While law schools will continue to face the difficult balance of training students for a conservative profession while standing on the forefront of reform, advances in open access research make this posture increasingly sustainable by expanding the possibilities of low and no cost legal research.

### **Open Access Legal Research and Leaning the Law**

A practical barrier that law schools face in acting upon Gallacher’s manifesto is overcoming their pedagogical commitment to private, paid, legal research providers. Following Gallagher’s theory, Tim Stanley’s practical guide, and the “tips” from *Legal Research Methods in the US and Europe*, I

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<sup>27</sup> *Id.*

will look to see which of the materials that we studied during the course would still be accessible, with relative convenience, without LexisNexis and Westlaw.

### A. Databases

As a premier research university, Stanford subscribes to hundred of databases, 819 of which are available by title through SULAIR (Stanford University Libraries and Academic Information Resources) network.<sup>28</sup> There is no low cost alternative to the multi-million dollar investment that Stanford has made in these resources; however, these databases, as an alternative to LexisNexis and Westlaw, can serve as a first point of inquiry for interdisciplinary study and legal research. Of the available databases, 48 canvas some subject of law.<sup>29</sup> Databases of particular use to legal researchers include HeinOnline,<sup>30</sup> which contains the full text of many law reviews and historical legal periodicals, and the Making of Modern Law (MoML), which hosts a vast collection of primary documents from scholars ranging from Arthur Corbin to Sir Edward Coke.<sup>31</sup>

As a low cost alternative to LexisNexis Law, the SULAIR database homepage also includes links to LexisNexis Academic and LexisNexis Congressional.<sup>32</sup> Additionally, several other databases listed in SULAIR may be accessed outside of the network with no charge at all. These include THOMAS, the Code of Federal Regulations, the Federal Register, the California Code of Regulations, the United Nations Treaty Collection, the U.S. Census, and U.S. Supreme Court Records and Briefs.<sup>33</sup>

Young Stanford Law alumni, bereft of their SuNet IDs, could also chose to begin their online legal research through Public.Resource.org. This site has links to the Smithsonian Institution, the U.S.

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<sup>28</sup>Sucat Databases, <http://library.stanford.edu/sulapp/databases/index.jsp?function=browse&field=sort/ptitle>

<sup>29</sup>Sucat Law Databases, <http://library.stanford.edu/sulapp/databases/index.jsp?function=search&field=category&query=Law>

<sup>30</sup>J. PAUL LOMIO & HENRIC SPANG-HANSEN, *Legal Research Methods in the U.S. and Europe* 23 (2008).

<sup>31</sup>*Making of Modern Law*, Author Index. 346, 315.

<sup>32</sup>*supra* note 27.

<sup>33</sup>Available through Yale law at <<http://curiae.law.yale.edu/>>

House of Representatives, the Department of Commerce, and the U.S. Courts, each containing thousands of pages of data, all available for free.<sup>34</sup>

## B. Secondary Sources

### 1. Treatises

Treatises are an excellent starting point for the cost effective researcher because they both offer a comprehensive guide to a discrete area of the law and cite to paramount cases in that field.<sup>35</sup> Most treatises exist in hardcopy form and may be perused at leisure in a public law library. Some treatises may also be accessed in an online, text searchable format through Public.Resource.org.<sup>36</sup> Following the U.S. Courts link to the Casebooks, Treatises, and Reporters subheading, students can read, and download— free of charge— books, manuals, and practice guides. Some available titles include *The Principles of the Law of Insurance: Adopted in the Civil Code of the State of California*, by William Barber, and *Practice, Pleading, and Evidence in the State of California*, by Edward Harston. This extensive collection, made available through Google Books, also includes historical and multidisciplinary texts, such as *Official Letters to the Honorable American Congress*, by George Washington, and *The Law in Shakespeare*, by Cushman Kellogg Davis.<sup>37</sup>

Public.Resources.org organizes treatises, practice guides, and reporters in a single list, alphabetical by subject, state, and type. Although this list is an invaluable resource, it is far from comprehensive and lacks the search capacities of Westlaw's comparable "Treatises, CLEs, and Practice Guides" database. Still, there is little need to use LexisNexis or Westlaw to access and read treatises and practice guides provided that one has access to a public law library. One can search by state and subject area using a library catalogue, and search within a hard copy of a treatise by using its table of contents and index

### 2. Looseleaf Services

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<sup>34</sup> Public.Resource.org, <http://public.resource.org/>

<sup>35</sup> LOMIO, *supra* note 27, 17-8.

<sup>36</sup> Public.Resource.org, Proceedings of the Courts/ Book/ Selected Cases, Codes, and Treatises, <http://bulk.resource.org/courts.gov/books.html>

<sup>37</sup> *Id.*

Looseleaf services are a good place to begin research in a rapidly changing field of law.<sup>38</sup> They are especially useful in tax, labor, and environmental law; all areas that are sensitive to timeliness and currency. Looseleaf services may be used both for background research and for finding primary sources. Because of their extensive indexing and citations, looseleaf services can be a critical first step in formulating a research plan.<sup>39</sup>

While the advent of the Internet has decreased the need for looseleaf services, these continue to be published and maintained in firm, university, and public law libraries. Many looseleaf services, formerly available only in print, may also be accessed online. Publishers of looseleaf service include, in addition to Lexis and West, the Bureau of National Affairs (BNA), Matthew Bender (MB), Commerce Clearing House (CCH), and Prentice Hall (PH).<sup>40</sup>

Using looseleaf services decreases the cost of legal research by limiting the time spent scouring pricey legal databases.<sup>41</sup> By using a looseleaf service first, a researcher can narrow the field of inquiry such that, if use of LexisNexis or Westlaw becomes necessary, she will already know what she is looking for the moment that she logs on to their portals.

### 3. Legal Encyclopedias

Legal encyclopedias, including *American Jurisprudence* (AmJur), *Corpus Juris Secundum* (CJS), and *California Jurisprudence* (CalJur), are all available in hard copy at Robert Crown as well as in virtually every public law library in the country.<sup>42</sup> Like treatises and looseleaf services, these are a good starting point for research because they offer a student an overview analysis of an area of the law.<sup>43</sup> Encyclopedias often also cite to specific cases, with the greatest wealth of primary sources located in their footnotes.<sup>44</sup> Since the text of the encyclopedias provides only a condensed summary of a legal topic area, the footnotes are useful for picking apart that summary and delving deeper into

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<sup>38</sup> DOUGLAS BARCLAY, *Loose Leaf Services Guide*, Syracuse University Law (2003).

<sup>39</sup> LOMIO, *supra* note 27, at 19.

<sup>40</sup> BARCLAY, *supra* note 37.

<sup>41</sup> LOMIO, *supra* note 27, at 19.

<sup>42</sup> *Id.* at 20.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 20-1.

research, allowing a student to obtain a more nuanced understanding of a topic reported in an encyclopedic article.

For example, I began my research for my first year Legal Research and Writing course brief assignment in AmJur, under a natural language search through Westlaw, for “FHAA” and “reasonable accommodation.” The first article yielded by my search was AmJur Civil Rights §393, which states:

“The Fair Housing Amendments Act is confined to rules and policies that hurt handicapped people by reason of their handicap, rather than those that hurt them solely by virtue of what they have in common with other people, *such as a limited amount of money to spend on housing.*”<sup>45</sup>

Looking to the footnote that followed this excerpt, I discovered *Hemisphere Building Co. Inc. v. Village of Richton Park*, a case from the 7<sup>th</sup> circuit.<sup>46</sup> Reading *Hemisphere* gave me a more complete understanding of how the statement in the AmJur article could be qualified. However, there are limits to relying too closely on a legal encyclopedia. It wasn’t until I read *U.S. Airways v. Barnett*,<sup>47</sup> a case that was not cited in the AmJur article (likely because it is an ADA rather than an FHAA case) that I learned that although accommodating financial constraints may be presumptively unreasonable, a financial accommodation could be found reasonable under the specific facts of a case.

In my research, using Westlaw was a helpful tool for navigating AmJur. Still, the article could have been easily located without a Boolean search by spending a few minutes glancing over the AmJur index. The title of the article was very clear and on-point: “Discrimination in sale or rental terms and services.”<sup>48</sup> Thus, if I had had the confidence, and the patience, to search without relying on Westlaw, the information that I received could have been accessed just as easily in print.

#### 4. Law Review Articles

Law review articles are one secondary source that is particularly *poorly suited* to using the search features of LexisNexis and Westlaw. Unlike the clear and on-point titles in a legal encyclopedia, the clever titles use by law professors for their article headings can often tell a researcher very little about

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<sup>45</sup> American Jurisprudence, Discrimination in sale or rental terms and services, § 393.

<sup>46</sup> *Hemisphere Building Co v. Village of Richton Park*, 171 F3d 437 (7th Cir. 1999)

<sup>47</sup> *U.S. Airways v. Barnett*, 535 U.S. 391 (2002)

<sup>48</sup> *Supra* note 44.

the content of the article. By using an index, such as WilsonWeb or LegalTrac, a student can locate law review articles by topic.<sup>49</sup> This saves time and money by avoiding fruitless key word searches in Westlaw's JLR database. For example, many of the students in ALR, myself included, experienced this frustration firsthand while completing Homework 8, Question 1, Part c!

[ Please find a law review article that discusses various state law initiatives to regulate telemarketers' calls and provide a complete citation (with author, volume, publication, page number, and date) for the article. ]

## 5. American Law Reports

Like law reviews, American Law Reports offer selective coverage of particular areas of law. While not all subjects are addressed in an ALR, those subjects that are addressed receive substantial treatment. The value of the ALRs is their "annotations," which offer detailed reviews of the topic area through a discussion of important cases and statutes.<sup>50</sup> ALRs are organized according to a digest system that has become the basis of the Westlaw key-numbers taxonomy.<sup>51</sup> ALRs may be searched through Lexis and Westlaw, but they are also available in print, reducing the need for costly, online research.

## 6. Blogs

Legal Blogs, often called Blawgs, allow a researcher to stay on the forefront of new and developing information. The list of contributors to the blog-o-sphere is ever increasing, but good places to begin research include [www.lawprofessorblogs.com](http://www.lawprofessorblogs.com) (which contains the postings, analysis, and musings of law professors), and [legalscholarshipblog.com](http://legalscholarshipblog.com), a service from the faculty of Pittsburgh and Gallagher Law Schools that includes article calls, information about upcoming conferences and workshops, and general legal scholarship resources.<sup>52</sup> Legal blogs can also be located through the Justia blawg search at [www.blawgsearch.justia.com](http://www.blawgsearch.justia.com). In addition to its Boolean

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<sup>49</sup> LOMIO, *supra* 27, at 22-3.

<sup>50</sup> *Id.* 25.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* 24-5.

search features, the Justia blawg locator also lists blawgs by subject area, state, country, and law school. For example, Justia links to 62 law library blogs, including Stanford Law Library's very own "Legal Research Plus."<sup>53</sup> Blawgs are an excellent source for students, allowing them to keep abreast of changes in a rapidly developing legal world. They plug users into the most current discussions in the field. Students may even wish to join in the dialogue by creating their own blawg. Those interested may do so at [blogline.com](http://blogline.com) for a small fee.

### C. Statutes and Legislative Histories

Statutes are a critical source for legal research. A researcher should always ask herself: *is there a statute on point?* Where a statute applies, it is controlling, therefore it is critical to be aware of current laws.<sup>54</sup> Statutory research materials on the federal level include the Constitution of the United States, the United States Code (USC), and the Code of Federal Regulations (CFR). Each of these is available for free online, however, the commercial annotated additions of the U.S.C. and C.F.R. contain resources that are unavailable through the free alternatives.<sup>55</sup>

#### 1. Codes and Annotated Codes

The United States Code, as published through the Office of Government Printing, can be reached through [www.gpoaccess.gov](http://www.gpoaccess.gov). The U.S.C. is also available for free through Cornell Law School at [www.law.cornell.edu/uscode/](http://www.law.cornell.edu/uscode/). Yet these free versions of the code have severe limitations, including the speed with which they are amended and updated. By contrast, annotated codes help researchers to answer the additional question: *is this still good law?*

Both Lexis and Westlaw produce annotated versions of the Code.<sup>56</sup> These publications are current and include both monthly cummulatives and pocket parts. Annotations contain a brief description of cases that have interpreted, construed, or ruled on the Constitutionality of a code section. Some code sections may contain several hundred case annotations.<sup>57</sup> These annotations

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<sup>53</sup> Legal Research Plus, <http://legalresearchplus.com/>

<sup>54</sup> LOMIO, *supra* 27, at 30.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 33.

<sup>57</sup> *Id.* at 34.

are an excellent starting point for further case research given the wealth of primary sources to which they direct researchers.

To find a relevant code section, a researcher should begin by looking in an indexed volume.<sup>58</sup> These indexes are perhaps easier read in print. Once a researcher has identified which U.S. Code section applies, she can then turn to the index that accompanies that specific title to get a more in-depth overview of the statutes it contains. In addition to the indexing features, all Code additions also include useful tables. Two of the most helpful include the Popular Name table, which allows researchers to search by the common name for a piece of legislation (e.g. The Clean Air Act, Title IX, the Patriot Act), and the Statutes at Large table, which shows where acts of Congress are codified.<sup>59</sup>

## 2. State Legislation

The state legislative process and the organization of state statutes closely mirror the federal legislative process and the organization of federal statutes. States, like the federal government, first publish law chronologically as session laws. These session laws are then integrated into the state code. Some states include multiple sub codes rather than an umbrella code with diverse titles. For example, in California, there are 28 distinct codes.<sup>60</sup>

Both state and federal code sections may be best researched in print. This is so for two reasons. First, with the advent of Google, most law students and young lawyers feel more comfortable conducting natural language searches rather than searches by terms and connectors. While natural language searches may yield satisfactory results for case law research, this method is far less effective when researching statutes because of the awkward and often antiquated language in which these are written. Second, by researching a code sections in print, it is far easier for a researcher to comprehend the code in context. By looking at the statutes on the printed page, one

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 36.

<sup>60</sup> *Id.* at 38-9.

can flip forward or backward with ease. While it is also possible to “flip” through an online code, this requires a bit more technical savvy as well as higher level of comfort with reading material online.<sup>61</sup>

Since the state and federal governments publish statutes, a researcher may always access these free of charge. But to ensure that the law is current, and to use that law as the starting point for future research, it is worthwhile to use a commercial annotation of a state or federal code. Even still, these annotations may be accessed in print at a public law library. Since there are independent advantages to using the printed forms rather than the online versions available through Lexis and Westlaw, when researching statutes, there is little need to access this material using costly online services.

### 3. Legislative Histories

Legislative histories can shed light on the meaning of a statute by looking to collateral sources. These include bills, Committee Reports, House or Senate documents, the text of debates, and, when available, hearing transcripts. The material necessary to conduct a legislative history may be accessed, for free, through THOMAS, which is maintained by the Library of Congress. Thompson West also publishes the United State Code Congressional and Administrative News (USCCAN), which is an excellent source for committee reports.<sup>62</sup>

In addition to conducting one’s own research, it is also worthwhile to begin with a quick search in a library catalogue to see if a compiled legislative history already exists. For example, a natural language search in SuCat for “legislative history” and “civil rights act” yields *The Civil Rights Act of 1991: a legislative history of Public Law 102-166*.<sup>63</sup>

### D. Case Law

Effective case law research is perhaps the most difficult to accomplish without the use of *Lexis* or *Westlaw*. Yet the move toward open access of case law is accelerating. On November 17, 2007, Public.Resource.org and FastCase, Inc. announced that it would make available 1.8 million pages of

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<sup>61</sup> *Id.* at 42-3.

<sup>62</sup> *Id.* at 45.

<sup>63</sup> Sucat catalogue, <http://jenson.stanford.edu/uhtbin/cgiisirs/EQOO4vbvIL/GREEN/92700119/9>

federal case law.<sup>64</sup> As commented by Carl Malamud, CEO of Public.Resource.org, “The U.S. judiciary has allowed their entire work product to be locked up behind a cash register.”<sup>65</sup> The cases made available through Public.Resource.org will be marked with the Creative Commons symbol, indicating that there is no copyright related to the content. The material will then be integrated through AltLaw and the Legal Information Institute. Low cost case research can also be conducted through LexisOne and Pacer.<sup>66</sup>

### E. Overview

In summary, nearly all of the materials that we studied in Advanced Legal research are also available through low and no cost alternative means. Despite law students’ seeming dependence on the service of LexisNexis and Westlaw, careful planning, greater use of printed materials, and a willingness to explore public resources would allow a researcher to obtain nearly all of the information that she is seeking without ever logging into an online legal research service. While access to case law remains a challenge, the obstacles that keep this material out of the public domain are not insurmountable. With each year, access will continue to improve.

### The Ten Principles

Gallacher’s manifesto outlines 10 principles<sup>67</sup> to guide the open access movement. These principles are as follows:

1. Legal Information Should be Free and Accessible to All
2. An Open Access Legal Information Site Should Be as Complete and as Comprehensive as Possible
3. An Open Access Legal Information Site Should be Flexible
4. An Open Access Site Should Permit Indexed and Non Indexed Searches
5. An Open Access Legal Information Website Should Permit Fast Retrieval of Information
6. An Open Access Legal Information Site Should be Reliable
7. An Open Access Legal Information Site Should be Permanent
8. An Open Access Legal Information Site Should Use Neutral Citation Form to Identify Source Material
9. An Open Access Legal Information Site Should Include a Citator
10. An Open Access Legal Information Site Should Support And Encourage Community Involvement in its Growth

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<sup>64</sup> Public.Resource.org, Announcement, [http://public.resource.org/case\\_law\\_announcement.html](http://public.resource.org/case_law_announcement.html)

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Gallacher *supra* note 1 at 28-44.

These principles accord both with the purpose of a legal research course and the mission of a law school. Advanced Legal Research provides students with the keys to unlock the tools of their profession. ALR courses must be sensitive to alerting students to the research services most commonly used, namely those provided by Lexis and Westlaw, but they can also introduce students to the free alternatives. By teaching law students to research without relying on costly online services, it becomes possible to reform the way that legal research is conducted from the ground up. Gallacher's principles embody the ideals of the free access movement, without sacrificing substantive commitments to effective legal research. In this sense, they both underscore the importance of providing access to all without compromising the quality of research services.

The purpose of a legal education is to empower students to use their legal knowledge in service of others. By ensuring that the law is liberated from behind the costly barriers erected by a small group of publishers, more people will have access to the materials that are deeply needed for resolving legal disputes. Using these principles as a guide, it is possible for a new generation of law students to reform the legal research paradigm without substantial sacrifices to their individual research needs.

Looking forward, much work remains to create a legal research paradigm free from the fetters of costly online services. The movement must begin with a concerted effort by diverse contributors to the field of law. Students can start by assisting with the annotation of cases. Professors can assist by agreeing to publish their articles without copyright. Practitioners and Courts acting together can insure that more opinions are made available to the public. One day, it may even be possible to create a comprehensive online research portal akin to Lexis or West, but available to all.

In conclusion, while the status quo of open access legal research may seem bleak, it is already possible— with effort, patience, and know-how— to conduct much of one's legal research without reliance on the online services of LexisNexis or Westlaw. As technology continues to improve, and more individuals join the open access movement, the ease with which low and no cost research may be conducted will also improve.

The fodder is ready to feed the revolutionary flame. Following Gallacher's lead, it is time for those with a stake in the future of the law to take arms!