

LAW LIBRARIANS

G. Edward White

FIRST, TWO STEREOTYPES ABOUT LIBRARIANS in general. Whether the stereotypes are accurate, or whether they apply to law librarians, are questions that will subsequently be addressed. The stereotypes are captured in the following excerpts from musicals.

In *The Music Man*, Meredith Wilson's musical about life in the midwest in the early years of the twentieth century, the Robert Preston character ("Professor Harold Hill"), con man extraordinaire, charmer, and rake, becomes smitten with the Shirley Jones character, "Marian the Librarian." As part of his courtship of Marian, Hill sings:

In the moonlight a man could sing it, in the moonlight
And he could tell that his darlin' had heard every word of
his song
With the moonlight helpin' along
But when I try, my dear, to make it clear
I need you badly, madly, madam librarian – Marian –
It's a long-lost cause I can never win
For the civilized word accepts as unforgivable sin

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Any talkin' out loud with any librarian
Such as Marian

And in *Les Misérables*, near the end of the first act, Inspector Javert, the dogged, incorruptible, proud policeman who has made it his life's mission to track down the escaped "criminal" Jean Valjean, sings in frustration (and pride) after failing to corner Valjean, but knowing he eventually will:

We are the sentinels
Silent and pure
Keeping watch in the night –
Keeping watch in the night.

In the first excerpt one sees the stereotype of the library as a place of refuge, a public sanctuary, and the librarian as the female guardian of that preserve. Marian the librarian, although unmarried, is "madam," and she is not a woman to be wooed in the library. Indeed talking out loud in the library is uncivilized, and the public profession by a male of his admiration for a female is even worse. The outdoors by moonlight may be a time for such talk, but not indoors, and most assuredly not in a library. One need not have seen *The Music Man* to grasp that among the persons "shooshing" Hill will be Marian the librarian herself. She is the keeper of the sanctuary, and an incorruptible one at that.

In the second episode the librarian's role is expanded and justified. Mere "shooshing" becomes part of a nobler mission. Javert is a police inspector rather than a librarian, but the two offices share that mission. The holders of both offices are sentinels, "silent and pure." Javert and his ilk keep watch to ensure that criminals are thwarted. The librarian keeps watch to make sure that the purity and tranquility of the library is not defiled. The library is pure in the same sense a church might be thought to be: it is a public place where nearly anyone can come, without paying to enter, and be alone with their thoughts. It is a place with books (and now cassettes and videos and computers) that is open to "everyone," or at least presumptively open to almost all members of certain populations. As such it is a place that needs to be preserved. It needs senti-

nels. Librarians keep watch. And they especially keep watch “in the night.” The night is when passions are unleashed and the prospect of rowdiness, or at least the absence of decorum, increases, especially when the library “customers” are on the younger side, or perhaps on the wayward side. The ethos of a library requires that youth or waywardness, in themselves, not be the basis for excluding persons from it. But someone needs to keep watch lest the special atmosphere of the library be disturbed. That sentinel, keeping watch in the night, often silent and necessarily pure, is the librarian.

A librarian said to me, many years ago, that libraries were one of the few institutions in society that were unambiguously good. How could one object, she suggested, to a place that offered people an opportunity for respite and learning at the same time, and for free? She probably also meant, “how could one object to librarians?” I pretty much agreed with her, and still do. But this essay is not entitled “In Praise of Law Librarians.” There are many definitions of essay writing, but one might be the challenge of attempting a detached treatment of topics and people one cares deeply about. So I propose to take a brief look at the role of law librarian from the perspective of history. Will there be a dark side to the profession? I would hope not. But let’s see.



The idea of repositories of learning is ancient. As soon as some cultures began to establish written records, places for keeping those records emerged. The places were typically not public, however. They were connected with powerful people, those who had the resources to learn to read and write, and who learned that having access to records that affected the citizenry of a clan or tribe or village or region or nation was a source of power and a link between the past, present, and future. The Oxford English Dictionary reports that the word “posterity” first appeared in the fourteenth century.¹ Recent work on the history of aural and written forms of communication in Western Europe suggests a logic to the appear-

¹ *Oxford English Dictionary*, 1169 (1st ed., 1933).

ance of the word at that time. By the thirteenth century the scattered remnants of written culture, overwhelmed, obscured, and redirected to palaces and monasteries in the long interval between the first and fourteenth centuries, had begun to reemerge. Printed books had begun to compete with, and eventually supplant, the sagas and stories of aural culture. A major appeal of the printed word was its capacity to survive intact over time.² The book was directed not only at contemporary readers, but at posterity.

At the time of the American framing private libraries were common among the more affluent and educated segments of the population. Thomas Jefferson's selling of his library to the nation – to help stock the fledgling Library of Congress – said something about Jefferson's capacity to manage his finances. It also said something about the status of libraries in the early nineteenth century. The institution of a library had become established, and the idea of a *public* library along with it.

The first American law schools were private institutions, entrepreneurial in character. George Wythe's lectures in Williamsburg, Litchfield law school in Connecticut, and Harvard were designed to allow their proprietors, and the academic institutions with which they were connected, to make some money out of the perceived need for young American men of social, political, or economic ambition to learn to read the law. All the above institutions featured lectures by a faculty proprietor, sometimes along with colleagues.³ And all featured books. Law schools needed to furnish books to students. Law schools needed places where students, and faculty,

² Interest in the relationship of books to aural culture has been particularly keen among British legal and social historians. For examples, see Wilfred Priest, *The Inns of Court Under Elizabeth I and the Early Stuarts* (1972), and David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (2000).

³ Robert Stevens's *Law School* 3-19 (1980) remains the best overview of the state of American legal education in the early nineteenth century, despite the fact that Stevens devoted less than 20 pages, inclusive of notes, to that period. The book does not, however, contain a single index entry for law libraries or librarians.

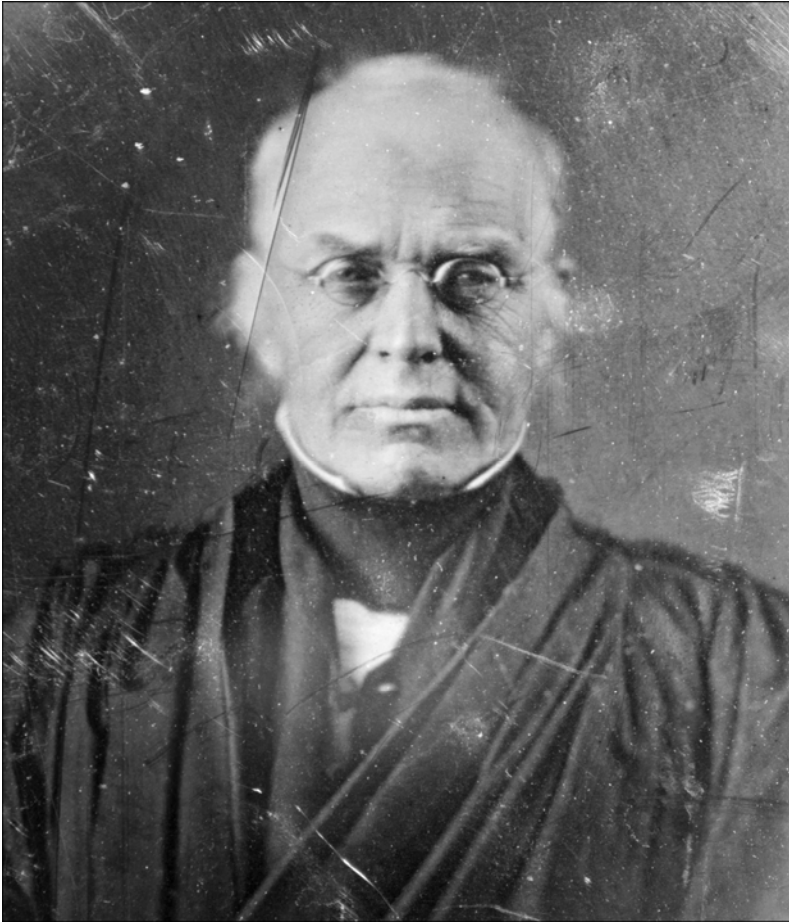
could gain access to and read those books. Law schools, in short, needed libraries. And they would need law librarians.

By the time Charles Eliot, the President of Harvard, had resolved to change the orientation of that university's law school to more closely approximate the professionalization of arts and sciences departments, and had hired an obscure practitioner, Christopher Columbus Langdell, with the title of Dean, Harvard had already had some law librarians.⁴ Langdell had been one of them, during the 1850s. He had entered the law school in the fall of 1851, having previously entered, but not graduated from, Harvard College. He would remain a law student, in large part for pecuniary reasons, until December, 1854.⁵

⁴ The best source on the history of Harvard law school in the nineteenth century is still *The Centennial History of Harvard Law School, 1817-1917* (1918). Written and compiled "by the Faculty, with the assistance of graduates," and published by the Harvard Law School Association, the *Centennial History* is hardly objective in its portrait of the institution. But it also contains information that would be very hard to obtain from any other source, and some of it is perhaps more insightful, and revealing, than the authors may have intended. Chapter III of the *Centennial History* (pp. 86-121) is devoted to "The Library." It concludes with an appeal for funds. *Id.* at 119-121.

⁵ Langdell entered Harvard College at the age of 23. He had previously been a mill worker and school teacher in New Hampshire who managed to win a scholarship to attend a private school, Phillips Exeter Academy, from which he eventually graduated in 1848. That fall he entered Harvard College as a "fresh-sophomore," expecting to graduate in 1851. In the fall of 1849, however, he contracted an illness, and was subsequently granted leave of absence in order to resume his vocation as a school teacher so as to improve his financial condition, which amounted to dire poverty.

During that interval Langdell resolved to attach himself to an Exeter law office in order to study law. He did so until November, 1851, when he entered Harvard Law School, expecting to stay the then customary three semesters required for a degree. Langdell actually remained a law student for three years, primarily because he was employed by Professor Theophilus Parsons as a research assistant for Parsons's treatise on contracts, and because he also received some income for being the law school's librarian. He eventually left the law school in December, 1854 to practice law in New York City, where he worked until 1870. See the biography of Langdell in *Centennial History*, 223-236.



Supreme Court Justice and Harvard law professor Joseph Story “sold his books to the Harvard Corporation at below cost, and he and [fellow professor Simon] Greenleaf bought as [many books] as their funds would allow” for the Harvard law library.

In the times in which Langdell served as student-librarian, the state of the Harvard law library, once very promising, had become fairly chaotic. Between 1829 and 1848 the library had benefited greatly from donations and acquisitions of books by the law school’s two dominant faculty members, Justice Joseph Story and Simon

Greenleaf.⁶ But although two internal Harvard reports issued in 1847 described the library as containing about 12,000 volumes, and being “in a state of excellent order and presentation,” hard times were coming. After Story died in 1845, and Greenleaf resigned for health reasons in 1848, “no one seems to have taken particular interest in the library” for several years. In 1858 the Visiting Committee of the law school was chagrined to report that more books had been lost in the preceding year than had been acquired.⁷ By 1861 the Visiting Committee, having learned that 870 volumes had been lost in the past twelve years, was even more pointed:

Your Committee looks upon this state of things as truly alarming [S]ecurity should be the first law of such a collection. . . . The Librarian is not a librarian in the common acceptation of the term – a keeper of books – for he exercises no special supervision.⁸

Fortunately for the Harvard library, in 1870 Langdell was persuaded by Eliot to assume the position of Dean of the school. The position of Dean – at first something more approaching a faculty secretary – was Eliot’s innovation, designed to further the role of a law school as an independent, professionally oriented unit of a university. Langdell and Eliot both believed in empirical research, and

⁶ *Centennial History*, 90-94. Story “sold his books to the Harvard Corporation at below cost, and he and Greenleaf bought as [many books] as their funds would allow.” *Id.* at 93.

⁷ The Committee’s report characterized the situation as “a bibliofuracity” that was “deserving of special punishment.” The loss of the books amounted to a “carelessness not to be distinguished from crime.” *Centennial History*, 96. The word “bibliofuracity” seems to be an example of logical coinage. In the early nineteenth century “furacious” was used as a synonym for “thievish,” and “furacity” for “thievishness.” Hence “bibliofuracity” would be the state of affairs existing when books are stolen. The author of the passage in the Committee’s report may have consulted one of the first three editions of Noah Webster’s *Dictionary*, which appeared between 1828 and 1847, where “furacious” and “furacity” are described as “*little used*.” (italics in original). See, e.g., Noah Webster, *An American Dictionary of the English Language* (1st. ed, 1828, unpaginated). My thanks to Arthur Schulman for calling my attention to the Webster editions.

⁸ *Centennial History*, 96.

for Langdell “[t]he library [was to lawyers and law students] what the laboratory is to the chemist or the physicist and what the museum is to the naturalist.” He instituted what he called, in an 1870-71 Dean’s Report, “important changes ... in regard to the law library.” Those included hiring a permanent librarian, cutting off “the supply of free textbooks” to students, a practice that had marked the “dark years” between 1848 and 1869, and making “duplicates ... of such reports and other books as were in frequent demand.” Langdell also required “the constant attendance of the librarian or his assistant in the library during all the hours it was open,” the necessity of securing “the librarian’s permission” to enter the library at all, and the creation of a “working library” by “taking such books from the general library as seemed desirable for that purpose” and “supplying their places with new copies.”⁹ The result of those innovations was not only to prevent books from disappearing from the library, and to ensure that students would actually pay the cost of the books they used, but to transform the library into a “public” working space of which the librarian was the guardian.

When Langdell sought to hire a full-time librarian for the school, he did not turn to one of his colleagues, or a student. Instead he hired John H. Arnold, a thirty-three-year-old former private school teacher. Arnold would remain in his position for the next 41 years, retiring in 1913. He was, essentially, a book collector, interested not only in buying books but also in their preservation. It was never anticipated that he would participate in legal scholarship or instruction, and the other duties he performed — Secretary of the law school from 1872 to 1899 and editor of the school’s Quinquennial Catalogue from 1886 to his retirement — were ones that required no legal training.¹⁰



⁹ *Centennial History*, 96-97.

¹⁰ On Arnold see the biography in *id.* at 189-192



University of Virginia's Clark Hall Law Library circulation desk, circa 1960. (Law Librarian Frances Farmer is the woman in a dark dress and wearing glasses, standing behind the desk.)

Now our historical narrative enters a very familiar phase. During Langdell's Deanship, which extended until 1895, the "Harvard model" of legal instruction, featuring the case method, the idea of the library as laboratory, and the explicit financial and administrative linking of law schools with universities, proliferated. By the early twentieth century the status of law schools as post-undergraduate institutions providing professional training had been institutionalized with the formation of the Association of American Law Schools, a spin-off of the American Bar Association. In this atmosphere the role of the law librarian subtly shifted. As "elite" law schools became affiliated with universities that also contained graduate arts and sciences departments, the production of scholarship became an increasingly important feature of membership in the legal academy. In the same time period student law reviews had gradually displaced the earlier peer review journals as outlets for the scholarly publications of law faculty members, and the West Pub-

lishing Company had begun to systematize the publication of the reports of federal and state courts. The shelves of law libraries began to expand exponentially.

These developments meant that a single librarian, even aided, as at Harvard, with a handful of assistants, could no longer staff a law library. Not only were law librarians expected to be book collectors and keepers of collections, they were expected to assist faculty and students with research. Different sorts of library staff members were required: some collectors, some administrators, some researchers, some sentinels. By the close of the Second World War all the “elite” American law schools were formally associated with universities; all encouraged research and publication by their faculty members; all sponsored their student-edited law journals; all received their revenues from a combination of support from their affiliated universities, tuition revenues, and endowments; all were required to be accredited by the AALS and meet ABA curriculum requirements; and all had staffs of librarians.¹¹

When administrative and budgetary responsibilities were added to those of stocking, keeping, and using book collections, the position of “head” law librarian – that occupied between 1871 and 1913 by Arnold the Keeper and Collector of Books – became one that bore little resemblance to Arnold’s. But the changes in the librarian’s role were not uniformly grasped by American law schools. In some places, such as Virginia, the librarian remained, as late as the mid 1970s, a variant on the Sentinel figure.¹² But at other institu-

¹¹ Other illuminating works on legal education in the early and mid-twentieth century are Laura Kalman, *Legal Realism at Yale* (1986); John Henry Schlegel, *American Legal Realism and Empirical Social Science* (1995); and Neil Duxbury, *Patterns of American Jurisprudence* (1995).

¹² Frances Farmer, a 1933 graduate of the University of Richmond’s law school, became law librarian at that institution in 1938. In 1942 she joined the law library staff at Virginia, becoming head librarian in 1945. Farmer’s persona was something of a refinement on the Sentinel stereotype. Although in some respects she resembled a museum curator, she was also a pioneer in developing new forms of information services. Farmer retired in 1976. For a brief biography, see *Richmond Times Dispatch*, September 15, 1993, p. B3.

tions, in the years between the close of World War II and the 1970s, some members of the tenured faculty, who were full-time teachers and scholars, had also had experience as librarians. Samuel Thorne, who joined the Harvard faculty in 1956, and Preble Stoltz, a member of the Boalt Hall faculty from 1961 until his retirement in 1991, provide examples. Thorne's scholarly focus, research in the English yearbooks of the medieval period, was regarded as sufficiently obscurantist by the early twentieth-century law teaching market that he began his career as a librarian, and only later evolved into the role of full-time faculty member, scholar, and progenitor of English legal historians at American law schools.¹³ In roughly the same time period Stoltz, who had also temporarily served as a librarian, wrote frequently on the California judiciary.¹⁴



In many respects the period of the early 1970s was one of those intellectual and cultural watersheds in the history of a profession. Legal scholarship began to change, becoming more ambitious and interdisciplinary, and that change altered the orientation of faculty research, and over time, the profile of persons entering the legal academy. New kinds of research projects placed new demands on libraries. When this trend dovetailed with the onset of digital research, the role of a law librarian underwent a further transformation. Now head librarians not only needed to be administrators, they needed to be skilled researchers in multiple sources of information.

¹³ Thorne was a 1930 graduate of Harvard law school whose first appointment was as a librarian at Northwestern in 1932. After the Second World War he joined the Yale faculty, also as a librarian. He remained in that capacity until at least the late 1940s. When he moved to Harvard in 1956, it was as Professor of Law. See *Boston Globe*, April 9, 1994, p. 67; Harvard Law School *Yearbook* (1975), p.75.

¹⁴ Stoltz's best known work was *Judging Judges* (1981), an analysis of the California Commission on Judicial Performance's investigation of the California Supreme Court during the tenure of Chief Justice Rose Elizabeth Bird. For a brief discussion of Stoltz's tenure as head librarian at Boalt, see Ira Michael Heyman, "Tribute: Professor Preble Stoltz," 80 Calif. L. Rev. 801, 810 n.12 (1992).



Dean Monrad G. Paulsen (fifth dean of the University of Virginia School of Law 1968-1976) presents "Criminal Law and its Processes," a book he co-authored, to Law Librarian Frances Farmer (at left) on November 1, 1969.

By now it is well known that the watershed of the 1970s had significant effects on the pool of entrants for jobs in the legal academy. It is also now possible to recognize those "effects" as causes in themselves, and the whole watershed as an exercise in complex causa-

tion. As the arts and sciences markets in higher education dried up, fewer undergraduates with outstanding academic credentials chose to go to graduate school, so that admissions to law, business, and medical schools swelled. Law schools became repositories for people who had entered, and sometimes completed, doctoral programs, but had concluded that they might have better chances of entering the academy as law professors. The entry-level law teaching market began to become peopled with such persons, and their success at finding jobs, which they did so with increasing frequency after 1980, was linked in part to their experience with the sort of sustained, ambitious research and writing that is demanded of graduate students in Ph.D. arts and sciences programs. And as more persons with graduate training and a commitment to ambitious, interdisciplinary scholarship populated law faculties, the standards for scholarship in law schools began to change. It is now the case, in almost all sectors of the legal academy, that evidence of sustained written work is a *sine qua non* for eligibility in an entry-level candidate.

Those developments meant – and still mean – that many talented contemporary graduates of law schools do not enter the academic market at all. They have skills that will serve them well in other sectors of the legal profession, and will result in their finding lucrative and stimulating jobs. They may well have no interest in producing academic scholarship. They might be seen as presenting a stark contrast to the graduates who apply for positions in the market for law professors. The latter set of persons is collectively aware that prerequisites for law teaching jobs include the preparation of a “job talk” and a willingness to engage on issues connected with scholarship. They also learn that they will be advantaged, as graduate students have traditionally been advantaged, by the sponsorship of someone on the faculty of the law school they attended.

The above contrast between those seeking jobs in the legal academy and those entering other sectors of the profession has been familiar to observers since the 1970s. But what about entrants for positions as law librarians?



It would have been surprising, given the trends in law faculty research, scholarship, and placement since the 1970s, if the role of law librarian had not changed as well. And, as anyone paying the slightest attention to that role knows, it certainly has. The changes, in fact, have arguably been more extensive, more multi-faceted, and perhaps even more significant for the future of legal scholarship than any of the more familiar ones just described. But they have largely taken place under the radar screen.

To understand the scope and significance of the changes that have taken place in the role of law librarian in the last thirty-odd years, it is necessary to recall another feature of Langdell's deanship at Harvard. In 1890 Langdell, in a letter to Eliot, gave a brief history of the law library during his deanship. "Prior to 1870-71," Langdell reminded Eliot, "the only persons employed to care for the library were a student-librarian and the janitor of Dane Hall." Twenty years later "a permanent librarian, a permanent assistant librarian (both of which have held their present positions for the last eighteen years) and three assistants are constantly employed in the care and administration of the library and in other administrative duties." Moreover, "whereas [in the years between 1848 and 1870] no one connected with the School took much interest in the subject of purchasing books for the library," now "it [had been] decided that the Librarian should make it part of his duty to follow up auction sales of law books in all the principal cities of the United States."¹⁵ The law librarian as administrator, as well as Keeper and Collector, had come into being.

But there is more in the Langdell excerpt. John Hines Arnold had been given a "permanent assistant librarian ... and three assistants" to help him run the library. Langdell may have been naive, or prone to exaggeration, in his claim that all the librarians were "constantly employed in the care and administration of the library," but his expectations were plain. The law library was to be an institution

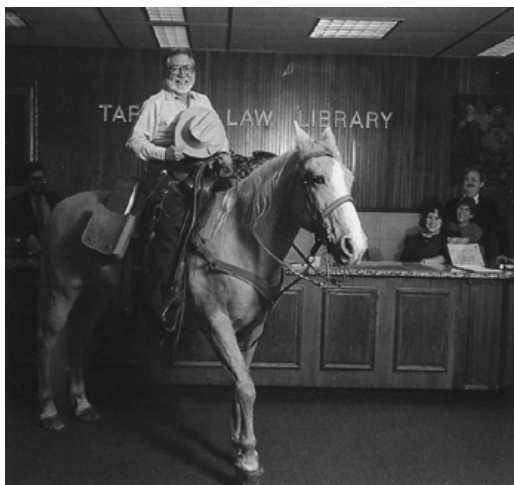
¹⁵ *Centennial History*, 103-104.

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with a strong degree of autonomy, not only with respect to the care of its collection but also in how that collection was acquired. Arnold the Sentinel was also Arnold the Book Buyer and Arnold the prospective CEO. Yet Arnold had no legal training at all.

In Langdell's excerpt one can see the sources of the ambivalent role that law librarians have come to occupy on late twentieth- and twenty-first century law faculties. By the 1970s, the era of the non-lawyer librarian had passed, and the era of the Thornes and Stolzes was winding down. Being a head librarian had too many administrative and budgetary demands to be other than a full-time job. Some of the great librarians of that era are still active, most conspicuously Roy Mersky at Texas, but it is very rare these days to find a librarian who combines running a library with teaching and scholarship, as Mersky has.

*Roy Mersky, Harry Rea-
soner Regents Chair in
Law and Director of
Research at the Univer-
sity of Texas School of
Law, astride his trusty
steed in front of the
circulation desk at UT's
Tarlton Law Library,
with what appears to be
one of his treatises in the
saddlebag.*



The result is that the profile of a prospective head librarian has changed. It is now anticipated that candidates for the position will have legal training and administrative and budgetary experience, but they will not necessarily have been teachers or scholars. This is not to say that the role of a head librarian is divorced from teaching or scholarship: indeed most members of contemporary library staffs

engage in both. It is to say, however, that today's librarian is not expected to be, as Thorne and Stolz were, the equivalent of a full-time tenured member of a law faculty who happens to primarily engage in administration and scholarship as opposed to teaching and scholarship.

And yet the question of the law librarian's contemporary role remains more complicated than the above paragraph might suggest. As the scholarly dimensions of occupying a law faculty position have proliferated, as law students themselves engage in more ambitious scholarship, and as digital research has dramatically expanded, the need for a cadre of sophisticated persons providing research services to the members of a law school community has increased. Increasingly such persons enter the market as staff members of law libraries. It may not be much of an overstatement to suggest that such persons are the ganglia in a law school's scholarly networks. Notwithstanding the scholarly arrogance that can sometimes accompany a preoccupation with "doing one's own research," everybody on a law faculty who does regular scholarship knows that in the age of digital information there are all kinds of stuff out there that one needs help in finding and assessing.

Interestingly, the law librarians who provide that help tend to labor under, and perhaps even relish, a posture of anonymity. It may be that gatherings of law librarians resemble gatherings of former Supreme Court law clerks, where some participants occasionally suggest that Justice X's celebrated opinion was really theirs. I would suspect otherwise. The position of research librarian seems to attract people who enjoy its anonymity. Marian the Librarian's selflessness has not wholly been lost in an era of relentless self-promotion.

In the modern law library, just as in the days in which Langdell served as student librarian, there are time-servers and shirkers: people happy to get the benefits of academic life without actually performing academic tasks. As library staffs have expanded, such persons have occupied positions on them. But such persons exist in all sectors of the academic world. Notwithstanding the sometimes uneasy status relationships that can exist among library staffs, stu-

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dents, and faculty, and notwithstanding the opportunities for abuse of the Sentinel role that still accompany the position of one who is a keeper of books, I am inclined to end this essay where it began. Who can object to libraries? And who, on reflection, can, or should, object to law librarians?

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