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Like Mark Twain: The Death of Academic Law Libraries Is An Exaggeration*

Kenneth J. Hirsh**

At the 2013 CALI Conference on Law School Computing, James Milles posited that academic law libraries are doomed, and the author presented the contrasting viewpoints on which this article is based. While the author agrees with Professor Milles's underlying observations, he envisions a scenario where law libraries, and more importantly librarians, remain essential parts of law school life.

¶1 James Milles believes that the academic law library may be doomed.¹ More accurately, he believes “that the law library as (1) *an iconic place within the law school*, (2) *managed financially and administratively as part of the law school*, and (3) *with staff devoted to the law school*, will become increasingly rare.”² So, although the title of Milles’s article may exaggerate the fate of the academic law library as he envisions it, his article does predict enough doom that I wish to respond to it.

¶2 To begin with, I agree with Milles’s underlying observations about legal education. Indeed, legal education faces two crises, and these two add up to an existential threat—if not for the wider current system of legal education, then at least for some law schools. First, Department of Labor statistics show that there are twice as many law

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¹ James G. Milles, *Legal Education in Crisis, and Why Law Libraries Are Doomed*, 106 LAW LIBR. J. [redacted], 2014 LAW LIBR. J. [redacted].

² *Id.* at [redacted], ¶ 5 (emphasis in original).

school graduates for expected open positions, which has been the case for some time.³ This is despite continuing discussions of a vast underserved market of legal services consumers, mostly at the low end of economic resources.⁴ Second, there is a persistent and growing crisis of confidence in the ability of law schools to meet the needs of would-be lawyers, particularly in light of high tuition and substantial and often unsustainable student loan debt loads. In the 1990s and into the mid-2000s, the salary bubble made the “investment” in obtaining a JD degree a potentially profitable one for at least the upper performing portion of the student body; the collapse in salaries and in available positions since then and the nearly nonstop escalation in tuition have combined to wipe out this value proposition, with no signs of it returning in the foreseeable future.⁵

¶3 In his analysis of likely law school cost cutting in response to the current crisis, Milles finds that “the library may be most vulnerable.”⁶ Indeed, E. Thomas Sullivan identifies “the high cost of maintaining research libraries, given the near monopoly pricing that takes place in the world book market”⁷ as one of eight factors he considers “‘core’ cost drivers” of legal education.⁸

¶4 So, given that I generally agree with Milles and his sources that legal education is embroiled in a crisis with multiple foundations, why do I disagree with his conclusion that law libraries are doomed?

³ See William D. Henderson & Rachel M. Zahorsky, *Paradigm Shift*, A.B.A. J., July 2011, at 40.

⁴ Emily A. Spieler, *The Paradox of Access to Civil Justice: The “Glut” of New Lawyers and the Persistence of Unmet Need*, 44 U. TOL. L. REV. 101 (2013).

⁵ In addition to the many sources Milles cites, see E. Thomas Sullivan, *2012 James P. White Lecture on Legal Education: The Transformation of the Legal Profession and Legal Education*, 46 IND. L. REV. 145 (2013).

⁶ Milles, *supra* note 1, at [redacted], ¶ 28.

⁷ Sullivan, *supra* note 5, at 152.

⁸ *Id.*

¶5 First, a caveat: forecasts of future events and trends are, at best, educated guesses. Nevertheless, trying to game out possible futures is a responsible way of engaging in strategic planning. One particular technique is called scenario planning.⁹ You can get an abbreviated description of the process in a Wikipedia article.¹⁰ Peter Schwartz argues persuasively that preparing for different possible futures (“scenarios”) increases your odds of having an appropriate response ready, but it still it does not guarantee success.¹¹

¶6 Milles and I both envision scenarios for law schools just beyond the range of the short term: in my view, for the next one to five years. We agree on the history and facts on which we base our future scenarios:

- Law schools have been overproducing graduates for many years, although for most of us this did not become obvious until the recession that began in 2008.
- The cost of attending many law schools does not calculate into a positive return on investment for most of their law students in the present situation, and this fact may not change for some time.
- Tenured law faculty, who govern at most university-affiliated law schools, are not wont to embrace cost reduction efforts that reduce their salaries or increase their teaching loads.
- Most of those same faculty do not see the need to revise curricula in a substantial way.

⁹ PETER SCHWARTZ, *THE ART OF THE LONG VIEW* (1996).

¹⁰ *Scenario Planning*, WIKIPEDIA, http://en.wikipedia.org/wiki/Scenario_planning (last visited Dec. 1, 2014).

¹¹ SCHWARTZ, *supra* note 9.

¶7 An additional set of problems is brought by the prospective students themselves: What expectations do they have of law school? Most 1L students enter immediately following the completion of their bachelor's degree program, although a substantial number do seek a JD after spending time employed outside of academia.¹² The majority has spent the previous sixteen years toiling in a series of schools. Until they reached high school, their parents made most significant decisions regarding these students' education. They went on to college and likely financed some or all of it with family funds, grants, work study, and loans. Somewhere along the way they decided to attend law school, whether to pursue a career as an attorney or for a less well-formed notion of what use they would make of a JD. Except for those who have a family member practicing law, their expectations of what a legal career entails are largely formed by representations of attorneys in popular culture: books, movies, and television series. Since each of these is a medium designed more to entertain than to inform, the emphasis is on the drama, not the day-to-day practice of law. It follows that most entering law students do not have realistic expectations of what may lie ahead of them following bar passage. Consequently, I argue that law schools are obligated to include in their curriculum information and experiences that help students develop realistic expectations of what their legal careers may include. For many law students, this is not happening now, largely because the legal professionals to whom they are most exposed—law school faculty—generally have little experience as practicing attorneys.

¹² See KIMBERLY DUSTMAN & PHIL HANDWERK, ANALYSIS OF LAW SCHOOL APPLICANTS BY AGE GROUP: ABA APPLICANTS 2005-2009, at 2 (2010), *available at* [http://www.lsac.org/docs/default-source/data-\(lsac-resources\)-docs/analysis-applicants-by-age-group.pdf](http://www.lsac.org/docs/default-source/data-(lsac-resources)-docs/analysis-applicants-by-age-group.pdf).

¶8 Adding the focus on student expectations is merely one more element of the crisis and does not explain how I might disagree with Milles. To return to the language of scenario planning that I describe above, simply put, each of us selects a different scenario that he considers the more likely to reflect future events. In Milles’s scenario, more and more law school libraries are merged into the parent institution’s library, the library as place is less important, and the librarians that do serve law school faculty count that among their other duties. In terms of scenario planning, all he describes could come to pass, and I will admit now that my own position in this argument is not a disinterested one.

¶9 I am confident that in my scenario, some law schools will close. As you would guess, I hope that mine is not among them. Somewhere and soon a university president may well conclude, as William D. Henderson suggests in a “Letter to University Presidents,”¹³ that closing the law school is the only viable choice.

The Role of the ABA

¶10 Milles thoroughly explains the role of the American Bar Association (ABA), and specifically its Section of Legal Education and Admissions to the Bar, in law school accreditation.¹⁴ The *ABA Standards and Rules of Procedure for Approval of Law Schools* were greatly revised in 1996 and underwent comprehensive reviews in 1996–2000 and 2003-2006.¹⁵ A review cycle that began in 2008 has only recently ended with the

¹³ William D. Henderson, *The Calculus of University Presidents*, NAT’L L.J., May 20, 2013, at 14.

¹⁴ Milles, *supra* note 1, at , ¶ 6. For a discussion of the history of the ABA standards as they apply to and effect law school libraries, see Theodora Belniak, *The History of the American Bar Association Accreditation Standards for Academic Law Libraries*, 106 LAW LIBR. J. 151, 2014 LAW LIBR. J. 9.

¹⁵ AM. BAR ASS’N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2013-2014, at vi (2013) [hereinafter 2013 STANDARDS].

adoption of revised standards.¹⁶ To be fair, Milles wrote his article before these revised standards pertaining to libraries were fully modified.

Because the revised standards are not yet effective as of this writing, it is helpful to compare the *2013 Standards* with the revised *2014 Standards*. The library standards had not changed significantly since 1996. Since then, Chapter 6 of the standards has set out minimum requirements for law libraries⁷ and information resources. With regard to administrative control of the law library, Standard 602 has provided:

(a) A law school shall have sufficient administrative autonomy to direct the growth and development of the law library and to control the use of its resources.

(b) The dean and the director of the law library, in consultation with the faculty of the law school, shall determine library policy.

(c) The director of the law library and the dean are responsible for the selection and retention of personnel, the provision of library services, and collection development and maintenance.

(d) The budget for the law library should be determined as part of, and administered in the same manner as, the law school budget.¹⁷

¶11 For many years deans and library directors have relied on Standard 602 to assert the need to maintain the law library's autonomy from the university's library system. At most law schools, and until recently, they have succeeded. Likewise, for many years library directors have relied on the sabbatical accreditation site team visits to bolster arguments to the university administration that the library's facilities¹⁸ or

¹⁶ AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REVISED STANDARDS FOR APPROVAL OF LAW SCHOOLS AUGUST 2014 [hereinafter 2014 STANDARDS], *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy.pdf.

¹⁷ 2013 STANDARDS, *supra* note 15, at 46.

¹⁸ Standard 702: "The physical facilities for the law library shall be sufficient in size, location, and design in relation to the law school's programs and enrollment to accommodate the law school's students and faculty and the law library's services, collections, staff, operations, and equipment." *Id.* at 50.

operating budgets are inadequate.¹⁹ In the years prior to 2008, when common wisdom was that law schools would continue enjoying substantial financial support from their universities, these arguments were often successful.

¶12 The 2014 Standards change some word order in Standard 602 and substitute the word “shall” for the word “should” in paragraph (d) regarding the law library’s budget; otherwise, the requirement that the law school have “sufficient administrative autonomy”²⁰ remains unchanged. At least so far as the standards are concerned, parent universities are not yet being given new ammunition for consolidating law school libraries into the operations of their central library systems. In fact, although Interpretation 602-1 has been revised, it essentially strengthens its preference favoring law school library autonomy by adding “priorities and funding requests” to the “basic law library policies” that are to be determined by the law library director, the dean, and the law school faculty even if the law library is administered as part of the university library system.²¹

¶13 Standard 603, which sets standards for the law library director, has provided as follows:

(a) A law library shall be administered by a full-time director whose principal responsibility is the management of the law library.

(b) The selection and retention of the director of the law library shall be determined by the law school.

(c) A director of a law library should have a law degree and a degree in library or information science and shall have a sound knowledge of and experience in library administration.

¹⁹ Standard 6-1(b): “A law library shall have sufficient financial resources to support the law school’s teaching, scholarship, research, and service programs. These resources shall be supplied on a consistent basis.” *Id.* at 45.

²⁰ 2014 STANDARDS, *supra* note 16, at 37.

²¹ *Id.*

(d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.²²

¶14 The careful reader will note the distinction between the uses of the mandatory “shall” in paragraphs (a), (b), and (d) and the precatory “should” in paragraph (c). In fact, some law schools have retained library directors who do not have the credentials described in paragraph (c). For example, when Milles left his directorship at SUNY Buffalo, James Wooten, a nonlibrarian faculty member, was named to that position.²³ Likewise, in 2008 John Palfrey, who was cofounder and executive director of the Berkman Center for Internet & Society at Harvard, was named the library director at Harvard Law School following the retirement of Terry Martin.²⁴ This was despite his not having a library degree. On Palfrey’s leaving Harvard in 2012, Jonathan Zittrain was named as his successor.²⁵ Like Palfrey, Zittrain is not trained in library science.²⁶ Despite the language in paragraph (c) of Standard 603, there was no public indication that either school was ever in jeopardy of ABA sanctions on this issue.²⁷

²² 2013 STANDARDS, *supra* note 15, at 44.

²³ Ilene Fleischmann, *James A. Wooten Named UB Law Library Director*, NEWS CTR.-NEWS RELEASES (Aug. 3, 2009), <http://www.buffalo.edu/news/releases/2009/08/10313.html>. Subsequently the school appointed Elizabeth Adelman, who holds a JD and an MLS, to the position.

²⁴ *Palfrey Appointed as New Head of Harvard Law School Library*, HARV. L. TODAY (Apr. 30, 2008), http://www.law.harvard.edu/news/2008/04/30_palfrey.html.

²⁵ *Zittrain, Wones to Step into Leadership Roles for Harvard Law School Library*, HARV. L. TODAY (Mar. 7, 2012), <http://today.law.harvard.edu/zittrain-wones-to-step-into-leadership-roles-for-harvard-law-school-library>.

²⁶ I do not intend to disparage the skills of Wooten, Palfrey, or Zittrain, and I am not asserting that their libraries were disadvantaged by their appointments. Rather, I am merely showing that schools have sometimes seemingly ignored this provision.

²⁷ At SUNY Buffalo, however, there was an unusual extended timeframe for completion of the sabbatical accreditation renewal that began with the regularly scheduled site visit in April of 2009. At the time of that site visit Elizabeth Adelman was interim director. Professor James Wooten was named director the following August, and afterward the ABA Council requested additional information regarding the library administration. It further conducted a second fact-finding visit by a law librarian in the spring of 2011, before finally approving reaccreditation after Wooten had stepped down and Elizabeth Adelman had become director. (Email from Elizabeth Adelman, Director of the SUNY Buffalo Law Library to the author (July 17, 2014) (on file with the author).)

¶15 The draft revision of Standard 603 removed the explicit language that the director “should have a law degree and a degree in library or information science” as noted above and instead requires that the director “shall have appropriate academic qualifications and shall have knowledge of and experience in law library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards.”²⁸ Following an effort by many academic law library directors to restore the specific degree language to the body of the standard, the Standards Review Committee added Interpretation 603-1, which creates a presumption that having both degrees meets the requirement of “appropriate academic qualifications.”^{29, 30}

¶16 At the time he wrote his article, Milles anticipated that any likely revision of the standard would allow deans even more flexibility in administering law libraries. I conclude that the *2014 Standards* still fundamentally favor law library autonomy and that the library director be credentialed with law and library science degrees. Nevertheless, using the standards as a cudgel to preserve the library’s autonomous status will be less successful in the future than it has been in the past. Regardless of the language in the standards, in some cases the degree of autonomy has already lessened in recent years, and

²⁸ 2014 STANDARDS, *supra* note 16, at 38.

²⁹ “Having a director of a law library with a law degree and a degree in library or information science is an effective method of assuring that the individual has appropriate qualifications and knowledge of and experience in library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards. A law school not having a director with these credentials bears the burden of demonstrating that it is in compliance with Standard 603(c).” *Id.*

³⁰ E-mail from Scott Pagel, Director of the George Washington University Law Library and member of the Standards Review Committee, to lawlibdir@lists.washlaw.edu (May 1, 2013) (on file with the author).

the question now becomes not whether additional law libraries will lose autonomy, but instead what will become the norm.

Whither Law Libraries

¶17 Despite my agreement with Milles on his salient reference points, I disagree with his contention³¹ that most law schools will no longer administer law libraries. While the culture of reputation that Milles describes is accurate,³² even if legal education comes to place less value on traditional measures of scholarship, maintaining that reputation requires an active library with trained law librarians. Faculty will continue to rely on law librarians to identify and obtain more esoteric resources and to maintain the more common ones. Assigning these tasks to general university librarians will not lessen the need to train them in the law, and doing so might seem more cost-effective to faculty seeking to avoid imposing lower costs by changing their own place in the scheme of things; however, reassigning the librarians results in no net cost benefit to the university as a whole.

¶18 A major reason that law schools have had separate libraries is their location: law schools typically occupy their own buildings, either on the main university campus or in a remote location. The pedagogical goal of developing a community of practice aims to teach students not only to “think like lawyers” but to “live like lawyers” as well. Likewise, medical schools form communities of practice for future physicians by having dedicated facilities, which are often near teaching hospitals and which also typically have medical libraries. The custom differs for liberal arts and science graduate departments,

³¹ Milles, *supra* note 1, at 35.

³² *Id.* at 25.

which often are housed in the same space that hosts the undergraduate departments. For so long as law school faculty and students occupy a dedicated set of buildings, meeting their needs will require that librarians and management of access to resources be housed in the same location. First, while many faculty locate and use legal resources without assistance, others seek out librarians for help in obtaining materials. Second, law students very often need librarian support to effectively use online and print resources. The experience of law librarians and faculty across the country bears this out, as do attorneys who complain that their new associates are not able to efficiently conduct research when they begin work.

¶19 One might argue that absent the requirement contained in a standard, having trained law librarians onsite does not require that the librarians report to a director under the control of the law school. On the other hand, in these circumstances it is difficult to argue that any significant cost savings will inure to the institution by shifting their administration and reporting status to the university librarian. For all these reasons, I submit that *most* law schools will continue operating a law library under the administrative direction of the dean and faculty of the school. My definition of law library means “an operation whose mission is to provide both services and resources optimized to meet the research, teaching, and learning needs of the school’s faculty and students.” It does not mean merely “a place where one goes to find particular books and other printed materials or to study.”

¶20 Despite the relatively minor changes in the *2014 Standards* regarding library autonomy and library director credentials, the rapid and, many would argue, sustained changes in legal education make it clear that maintaining the status quo is not a viable

option for academic law libraries. As law schools look for ways to modify curriculum, expand programs, minimize tuition increases (or even lower tuition), and otherwise meet the demands of current and potential students, libraries and librarians must actively participate in these efforts. Suggestions for transforming library services include the following:

- Advancing faculty scholarship efforts through managing repositories, directly conducting research for faculty or managing research assistants, managing the article submission process, and encouraging faculty to publish open access, e-book versions of treatises, practice manuals, and casebooks³³
- Taking a greater role in teaching practice skills by expanding the traditional coverage of legal research training and supporting other expansions of skills training in the curriculum³⁴
- Participating in the academic support programs that are being formalized in many law schools³⁵

¶21 To be sure, in an era when libraries will not be handed additional staff or larger budgets, taking on new responsibilities means giving up other ones. This requires assessing the law school's current needs and deciding which services are no longer meeting those needs and therefore can be dropped in favor of adding new services that will help the law school in the new environment. The crucial question, "What should law libraries stop doing in order to address higher priority initiatives?" was so well stated by Carl Yirka, former law library director at Vermont Law School, that law library directors refer to it as "the Yirka Question."³⁶ Only by successfully addressing this question will law libraries demonstrate they remain essential components of today's law schools.

³³ See Simon Canick, *Library Services for the Self-Interested Law School: Enhancing the Visibility of Faculty Scholarship*, 105 LAW LIBR. J. 175, 2013 LAW LIBR. J. 8.

³⁴ See Genevieve Blake Tung, *Academic Law Libraries and the Crisis in Legal Education*, 105 LAW LIBR. J. 275, 2013 LAW LIBR. J. 14.

³⁵ See David C. Walker, *A Third Place for the Law Library: Integrating Library Services with Academic Support Programs*, 105 LAW LIBR. J. 353, 2013 LAW LIBR. J. 17.

³⁶ Carl A. Yirka, *The Yirka Question and Yirka's Answer*, AALL SPECTRUM, July 2008, at 28.

¶22 Finally, I now turn to the third point of Milles's contention, that the library will no longer be an iconic place. This is already a trend as evidenced in both new law school construction and the repurposing of traditional library spaces in existing law school buildings. This has come about as a combination of factors that include the shift to digital materials, the need to provide expanded space for teaching and administrative departments, and the realization by all concerned that space formerly occupied by book stacks can be put to different use. At several law schools space formerly used by the library has been converted to other use.³⁷ Recently opened law school buildings, such as Eckstein Hall at Marquette and the Thomas Jefferson School of Law, still have significant dedicated library space, though at least at Marquette the library is designed to be integral with the rest of the building in a concept called the "the library without borders."³⁸ As law libraries shift more resources into digital form, less space is needed for traditional holdings of reporters and journals. Many law schools have removed their runs of bound journals, and, more recently, several schools have canceled their print subscriptions to the West National Reporter Service. More and more, library directors view modern law libraries as hybrids of electronic and print resources, with their key deliverable now being a high level of customized service by staff rather than a collection of legal publishing materials.

¶23 It is even more likely that within newer law buildings collaborative workspace and private study space will become more valuable than shelf space. I agree, then, with those who argue that dedicating a large portion of law school space to the maintenance of

³⁷ For examples of such conversions, see Lauren M. Collins, *Changing Spaces*, AALL SPECTRUM, Sept./Oct. 2014, at 32.

³⁸ See Julia Jaet & Patricia A. Cervenka, *A Library Without Borders: The Marquette Law Library Opt's for an Unconventional Design*, AALL SPECTRUM, May 2011, at 11.

print materials and ornate reading rooms will not be sustainable. However, in a hybrid law library, where service is as or more important than a physical collection, ready access to skilled assistance and the dedicated programming and teaching that librarians can perform will still make a centralized “home” for librarians and related professionals (information and media technology support) efficient and desirable. The library as an iconic space that occupies the largest single portion of building floor space and is filled with rows of books does have a limited life ahead. But purpose-built space that provides workspace for librarians and students, small-group meeting places, small classrooms and labs, and accessible shelving for printed materials that are either not available online or are best used in their printed format will still be a needed component of any efficient law school building. The space may not be as large and iconic as it once was, and in some instances it may not carry the name “library,” but there you will still find librarians and ready access to the work they do.