THE FUTURE OF ANNOTATED CODES?1

Daniel Bell, Faculty Services and Outreach Librarian, University of Arkansas, Young Law Library (dlb021@uark.edu)

Does your state have an official code? Unless you live in Illinois, your answer is probably “yes.” But does your official code also contain annotations? Three states in MAALL have an official, annotated code: Arkansas, Kansas and South Dakota. The recent Supreme Court holding and aftermath of Georgia v. Public.Resource.Org might affect these codes.2

All fifty states have codes, and almost all have official codes, deemed by the state to be reliable evidence of the underlying session laws. Most states also have unofficial codes, produced by third parties, which contain annotations. These unofficial codes include extra information the official codes lack, such as citations to relevant primary law, secondary authorities explaining the law, and even form books to help the practitioner use the law. The official codes, however, usually contain not much more than the bare bones text of the statutes and possibly history notes.

Georgia’s code, the Official Code of Georgia Annotated (OCGA) is both official and annotated. LexisNexis publishes the code and annotations under the supervision of an arm of the Georgia legislature, the Georgia Code Revision Commission. Copyright is claimed by the state of Georgia in the OCGA. In the mid-2010’s, an organization and website, Public.Resource.Org (PRO) began freely distributing the OCGA on the internet and on flash drives. Georgia sued PRO and the case eventually made its way to the U.S. Supreme Court. Arkansas filed an amicus brief, which Kansas, South Dakota and several other states with official, annotated codes joined. The brief supported Georgia’s position that PRO was infringing the copyright on the OCGA’s annotations, and warned of dire consequences should the official annotations be freely distributable.3
Georgia lost at the Supreme Court. The Court held that the annotations were not subject to copyright, dusting off the reasoning from a line of three cases from the 1800s which created the “government edicts” doctrine. The first of the three cases held that no copyright could exist in judge-written opinions, as they were statements of the law and thus ultimately created by the people. The second case held that extra matter also written by the judge in the discharge of their duties, such as syllabi and headnotes, could not be copyrighted either. The third case held that extra materials accompanying the cases which are written solely by the publisher could, however, be copyrighted.

In applying these three cases, the Court in Georgia v. PRO extended the doctrine from judge-made case law to statutes created by the legislature, and held that Georgia’s annotations were created, through oversight and control, by the legislature in the course of its duties, and thus not subject to copyright protection.

An interesting by-product of this case was the idea that the bare code itself — the black letter law — could not be copyrighted (affirmed in the case as well as conceded in the amicus brief mentioned above). Despite this, Arkansas’s and South Dakota’s online, unannotated statutes still contain copyright notices.

Since the Court decided Georgia v. PRO, PRO has continued to make official, annotated codes available on their website. LexisNexis’ response, outlined in a meeting with the Arkansas Code Revision Commission in December of 2020, is that the decision is narrowly applicable to Georgia only, and they will continue to submit their annotated codes to the Copyright Office. They also said they would look at other remedies, such as somehow separating the code from the annotations.

Georgia did just that in a law that went into effect on July 1, 2021. The law lists several categories of content, such as relevant case summaries and citations to secondary authority, which it says are not to be considered part of the law or holding the “imprimatur” of the legislature. The law also purports to remove any oversight by their Code Revision Commission in the creation of the annotations. Presumably, the next step is for LexisNexis to sue PRO for copyright infringement when they post future supplements and editions of the OGCA.

In short, despite the recent holding and seeming victory for the public domain in Georgia v. PRO, the case is only the signal of the end of the first round of the fight. If Georgia’s attempted separation of the annotations from the code is successful, we should not be surprised to see similar laws introduced in the Arkansas, South Dakota and Kansas legislatures.

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1 This is a very condensed version of an article which will appear this fall in Arkansas Law Notes. The full article is available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3895267.

2 140 S. Ct. 1498 (2020).


6 Banks v. Manchester, 128 U.S. 244 (1888).

7 Callaghan v. Myers, 128 U.S. 617 (1888).


9 South Dakota Legislative Research Council, South Dakota Codified Laws, https://sdlegislature.gov/Statutes/Codified_Laws (copyright
JOIN BOOK TO ACTION TO DISCUSS "ONE PERSON, NO VOTE" AND TO SUPPORT INDIANAPOLIS HEAD START

Gail Wechsler, Law Library Director, Law Library Association of St. Louis (gwechsler@llast.org)

Since 2015, the MAALL Book to Action program has been an important part of the MAALL Annual Meeting. We hope you will participate in Book to Action by reading and discussing the selected book and by donating in support of the book drive.

Co-Coordinator Cindy Bassett and I have selected what promises to be a timely and provocative book to read this year. One Person, No Vote by Carol Anderson looks at the history of voting in the United States and efforts over the decades to add more requirements to and impose more restrictions on the right to vote. A key focus is on the rollback of African-American participation in the vote since 2013, after the U.S. Supreme Court decision in Shelby v. Holder, 570 U.S. 529 (2013). The Shelby ruling allowed states with a history of discrimination against Blacks at the ballot box to change voting requirements without prior approval from the U.S. Department of Justice (eliminating one section of the federal Voting Rights Act).

One Person, No Vote is a quick read at under 200 pages. It is not too late to pick up a copy even at the last minute.

In addition to reading and discussing One Person, No Vote, Book to Action in 2021 will be supporting Family Development Services (FDS), a Head Start organization located in Indianapolis. According to Theresa Shidler at FDS, “[b]ooks are always a treasure for our families and we never have enough. [We are] thrilled to be working with you on this project.” The book drive will be a way for each Head Start classroom to have enough new, developmentally appropriate titles for their children. Among the goals of Head Start is to make sure that the students served are kindergarten-ready and develop a love of reading well before they start elementary school.

Photo by Gail Wechsler
Once again, we are also thrilled to be partnering with a local, independent bookstore for the book drive. Whether or not you have time to read the book and whether or not you can attend the Annual Meeting this year, you can still support Indianapolis Head Start by ordering books online from Kids Ink Children’s Bookstore. Kids Ink makes this very easy. Just go to the website at https://www.kidsinkbooks.com/ and click on the MAALL Book to Action link at the top of the page. Then select your books and put “Book to Action” in the comment line when you place your order. As an added bonus, Kids Ink will donate a portion of the proceeds of the book sales to Head Start as well.

Thanks in advance for donating books to this worthy cause. I hope to see many of you at the book discussion, currently scheduled for October 29 at 2:15 PM at the virtual MAALL Annual Meeting this fall.

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DAZED & INSTRUCTED

Matt Timko, Academic Technologies & Outreach Services Librarian and Assistant Professor, Northern Illinois University College of Law, (mtimko@niu.edu)

THE RETURN OF THE BLOB

Every year, it always happens without fail. I plan for it, I prepare for it, I understand it, and yet every year we arrive at this point no matter how many times I tell myself “not this year.” And of course, it has happened again, and we are squarely inside of “The Blob.” The Blob is sneaky and stealthy, squirming its way into the law school and law library, and even my own home, to surround me and begin the pressure campaign. For those of you who don’t know what I’m talking about (yet I think you all do at some fundamental and primal level), the Blob is that moment of a new semester where you sit down and realize you’re enveloped and exclaim: “how am I already stressed and running behind?!?”

Part of the problem is in the planning stage. It’s all fine and good in the “preseason” but once things get started, the plan falls apart. While this is not entirely true, it is always the case that several things I had planned to do during the semester need to be revisited or abandoned over the course of the term. Similarly, things I planned for in June and implemented in August don’t seem like the best ideas when I’m in the thick of things, with September me proclaiming, “why, oh why did I think it was a good idea to meet with 62 students individually?!” But more than that, I believe the summer and the time it affords us to prepare and reflect can actually backfire by creating lofty expectations and a sense of time that is never available during the semester.
Yet with experience comes wisdom: there are ways to fight the Blob and hold it at bay. Organization is key. I firmly believe that organization can solve almost any problem, and while I have not always been good about it, this year I come prepared. Every week has a goal and every day has a plan to reach that goal, which helps me keep focused on the small and endless things I need to pay attention to on a daily basis. Similarly, I’ve pared down my ambitions this year, realizing that it is about quality rather than quantity, and am focusing my attention on better feedback and engagement. Finally, being back in the office has proven a boon, since my coworkers here are more professional, more respectful, and don’t bang on my door every hour calling “Daddy, daddy?”

Things are off to a good start this year, even being enveloped by the Blob, but of course, no start to the semester is perfect (in fact, this column was late getting to the MAALL editors because I lost track of it with all the other Blobby concerns; my apologies!) But already I’m noticing things are a little easier, falling into place based on the plan I made, and tasks are getting done with regularity due to the automation of my schedule. I’m slowly, slowly fighting back the Blob to give myself some room for when something unexpected happens, since I know that’s when the Blob gets stronger. I should probably start planning for that!

AFFIRMATIONS

Autumn Collier, Assistant Librarian II, Littler Mendelson P.C. (acollier@littler.com) & Jill Kilgore, Research Librarian, Littler Mendelson P.C. (jlkilgore@littler.com)

THE LINE BETWEEN BEING HELPFUL AND PUSHY

Librarians are naturally inclined to help. It is why most of us are attracted to the profession. We have a desire to learn and share information. However, in our quest to share information and assist others we can sometimes cross the line and be perceived as pushy instead of helpful.

Making sure that we don’t cross this boundary is difficult. How do we make sure we are available, approachable, and there for our patrons without coming across as a lioness/lion stalking their prey? A situation I regularly must navigate is providing helpful trainings and demonstrations. I would like to discuss a couple of suggestions for navigating this delicate issue:

1. Partake in the reference interview
2. Limit follow-ups
Numerous articles talk about conducting a reference interview and rightfully so, as it is a very important step. The thing that many articles forget is that people don’t know what they don’t know. This is a problem because if you schedule a demonstration and ask “what would you like to know about the resource?” you will often get a deer in the headlights look or a vague response of “everything.” The trick to a good reference interview is to ask targeted questions. These questions can start general and get more specific as you learn more. As a law firm librarian, here are some questions I will ask as a starting point:

1. Have you struggled with finding information in the past? What was it that you found difficult?
2. What are your biggest concerns while you are carrying out a research project?
3. Is there an area of your practice where you feel like you struggle to find information?

These questions give the user more to think about and provide more insight as to what that individual or office might need. Any follow-up questions are typically targeted towards figuring out what the attorney already knows. There is no point in showing them how to construct a search string in Westlaw if they already know that part. I would also consider whether our services have resources outside of the norm that can meet the user’s needs. These would be the things I would offer as highlights in the demonstration, along with an explanation of how they fit the research needs mentioned in the reference interview.

It is at this point the situation can be more difficult to navigate. If the user is not working with you and will not provide detailed answers to any of your questions, you may have to default to a generic demonstration. You know the one — the demonstration that tries to highlight the tons of very expensive resources that your institution provides, and you try to talk about it all succinctly in under 30 minutes. Yeah... that one. These demonstrations are important and serve a purpose, but the downside can be that if you can’t get a user to try the resource soon after the demonstration, they will forget about it.

The question then becomes how do you encourage the use of a new resource without invading someone’s time. This is a million dollar question. Below are a few things I have found helpful when conducting follow-ups to get user buy-in.

1. Gamify. This method is trending. After your demonstration, mention that the library will be tracking usage and the person who uses the new resources the most by the end of a certain time frame will get a prize. You can even pit offices or groups against each other and make the prize a pizza party... or let the winning office pick the LaCroix flavors for the next month. (Is this a thing at any other institutions? Do your attorneys or attorneys-in-training fight over LaCroix flavors?)

2. Limited but blatant follow-up. This one is also very common. We usually include presentation materials, additional information materials, and the opportunity for users to reach out with more questions. The trick here is to keep it to one or two contact attempts. Anything beyond that can feel pushy.

3. A sneaky follow-up. This is the trickiest of the follow-up attempts to master. This is a follow-up disguised as a discovery! The easiest way to do this is if someone asks a question at the end of the demo and you need to check your answer before officially saying anything. Send that answer to the whole group and include additional information. If you didn’t get any questions that required a follow-up, then this is a good opportunity to find more information or send them information on something you didn’t get time to cover. My favorite is starting an email with something along these lines: “I just found out that Westlaw does analytics too! You can use this link and learn more about how to utilize this lesser-known feature of Westlaw.” From there you can continue to include your follow-up resources and try to keep that line of communication open.
My favorite method is the sneaky follow-up and I try to find new and unique ways to “discover” things so my users don’t realize it is a follow-up email. I still have to be careful with these and not overdo it or they will catch on and stop taking my emails seriously.

I know that traditionally we have been taught that it is better to overdo it, but after personal experience with vendors and trainers of various kinds, I know that I do not always appreciate multiple follow-ups. One or two makes sense and I always appreciate having the presentation materials to review later on, but quality of a follow-up is more important than quantity.

Below are articles I have found helpful on this topic. I hope my experiences and methods help others create a solid strategy of their own. I would love to hear what works best for others.

References:


Anisa Purbasari Horton, *This is How to Write a Follow-up Email That’s Not Annoying*, FAST COMPANY (July 19, 2017), https://www.fastcompany.com/40437743/this-is-how-to-write-a-follow-up-email-thats-not-annoying.


**MANAGER TO MANAGER: TIPS TO KEEP YOU SANE AND EFFECTIVE**

*Gail Wechsler, Library Director, Law Library Association of St. Louis (gwechsler@llastl.org)*

**HOW TO DEAL WITH A CHALLENGING EMPLOYEE**

This issue’s topic is a delicate one. In a perfect world, all of your staff members will be ideally suited to their positions and will give 100 percent to their jobs and to your library. But what do you do if you have an employee who, for whatever reason, is not meeting expectations?

As with every personnel-related issue, responding to the situation requires you to be careful and sensitive to the employee. Consider whether the employee is new and is having issues due to a lack of experience, whether your employee is a long-term staff member who may not be able to pivot to new tasks in changing times, or whether they are someone who doesn’t fit either of these scenarios but still is grappling with how to do their job well.

For a new employee, my recommendation is to feel that person out and see where they think they need help. Have a frank conversation about this. Maybe you are piling too much on someone new. Maybe some additional training or coaching will do the trick. It may also be that the employee has something going on in their personal life interfering with work obligations. You won’t know unless you ask. Be available to provide the guidance and support needed.
For the long-term employee who may no longer have the right skill set for what your library needs, there are several options as well. You can offer additional training and see whether that takes care of the problem. If that doesn’t work, you may have to create a very specific set of written tasks and expectations for that employee, so that they know there are concerns and are aware that you are trying to make sure they meet minimum requirements for working in your library. Be prepared to make some changes if you still don’t get the performance you need after taking all of these steps. In one instance, I felt the only way to adequately address my concerns after a long-term employee repeatedly failed to meet set tasks and duties was to reduce their hours to part-time, since the duties they could continue to do well were not sufficient to justify a full-time position.

Being a manager is not a bed of roses. Sometimes hard choices need to be made. But if you tackle the issue of a challenging employee with empathy and show that you are trying to help, you will know you have done all you can, even if ultimately you can’t fix the problem.

MESSAGE FROM THE PRESIDENT

Matthew Braun, Associate Director for Administration, University of Illinois, Albert E. Jenner, Jr. Memorial Law Library (braun22@illinois.edu)

In my column for the June 2021 issue of MAALL Markings, I wrote about how a time of incoherence can be countered by a spirit of perseverance. After the necessary, but difficult, cancellation of the in-person MAALL Annual Meeting for this year, I was reminded that one never knows how incoherent a situation may become and how much perseverance may be required.

For many legal information professionals and countless others, this worldwide pandemic has changed plans, dashed hopes, and challenged assumptions, comfort levels, and wellbeing in myriad ways. Our cancelled in-person meeting is disappointing, yes, but it must be viewed in the proper perspective, given the pandemic’s influence on everyday life. Rising above our disappointment, we will connect through our second MAALL Virtual Meeting, building upon a successful model from last year.

This year’s program lineup is simply outstanding, and reflects the innovation, leadership, and dedication of information experts who continue to explore new concepts, study past practices, ask tough questions, and everything else in between. I strongly encourage all members to participate in the Virtual Meeting 2021, if possible, so we may effectively advance our association’s core values of community, continuing education, and collaboration.

As my time as MAALL President closes, I have many people to thank for making this strange year still wonderful.

Thank you to everyone who served on a MAALL committee and especially to those who worked on updating committee manuals. This work is often tedious, but it is vitally important for continuity from year to year and for assessment of committee initiatives.

Thank you to the Grants Committee, chaired by Eric Brust, and the Library School Liaison Committee, chaired by Steven Probst, for working to create two new annual meeting grants — one for a Diversity, Equity, and Inclusion candidate and one for a library school candidate. Special thanks to Executive Board members Matt
Timko, Autumn Collier, and Gail Wechsler for their advice and leadership on these new grants.

Thank you to the Vision Planning Task Force for advising yours truly on initiatives specifically designed to meet the call of the current Vision Plan. This work is vitally important right now, as the association needs to think creatively about how to sustain its influence during a time when in-person meetings and events are not possible.

Thank you to the Education Committee, chaired by Vice President/President-Elect Chris Steadham, and to the Local Arrangements Committee, chaired by Miriam Murphy, for the countless hours of work that they put into organizing the annual meeting. Each hour of this work was done with the knowledge that circumstances could change at any moment, and the professionalism with which these committees operated is most admirable and most appreciated.

Thank you to the Executive Board for 2020-2021: Vice President/President-Elect Chris Steadham, Past President Lacy Rakestraw, Secretary Matt Timko, Treasurer Gail Wechsler, Member-at-Large Rebecca Lutkenhaus, and Member-at-Large Autumn Collier. Their collective work and wisdom have served the association extraordinarily well.

Finally, thank you to the entire MAALL membership for allowing me the joy of serving as president. It has been, is, and will continue to be one of the most positive and formative experiences of my career.

MESSAGE FROM THE VICE-PRESIDENT

Christopher Steadham, Director, Wheat Law Library, University of Kansas School of Law (csteadham@ku.edu)

Fellow MAALL members, I am so pleased to report that we have had an overwhelmingly positive response as we shift gears for a virtual conference this year. I suppose this is no surprise, as the people of MAALL always rise to the occasion, but I once again find myself in awe of the resiliency on display. As I write this column, plans are being finalized for an amazing slate of programming that will take place on October 28th – 29th and November 3rd – 5th. We have adopted this schedule based on a variety of factors and inputs, including a desire to follow the template of last year’s incredibly successful meeting. Please save these dates on your calendar and stay tuned for more details that will be coming very soon.

Current plans include vendor demos on November 3rd and live MAALL programming on the remaining dates, MALLCO Roundtables to kick things off on the first day of the conference, and several excellent pre-recorded presentations for on-demand viewing at your convenience.

I am also pleased to share the good news that, in coordination with KU Professional & Continuing Education and the University of Kansas School of Law, we will be able to hold the conference on a cutting edge cloud-based virtual platform that will enhance the experience for attendees and presenters alike. I am excited to share the details on these developments in the coming days but, suffice to say, there are many people working hard to ensure this annual meeting is nothing short of exceptional. I am more confident than ever that we will indeed be Back on Track this fall!

This is an extraordinarily busy time of the year for most of us and this makes the recent efforts of the MAALL membership and leadership all that more remarkable. The Executive Board, Local Arrangements Committee,
Education Committee, Vision Planning Task Force, and all of the others carrying on the important work of MAALL deserve a round of applause. I thank our outgoing Board members for their unparalleled commitment during tumultuous times and welcome our incoming Board members as we seek to carry on that good work. Last but far from least, I thank our many program presenters who have been flexible throughout the process of planning our meeting. I cannot wait to see you all in late October and early November!

STATE MEMBER NEWS

Drake Law Library
Joe Stouffer is the new Access Services Associate at the Drake Law Library. In this role he will help staff the Information Desk, supervise student shelvers, and manage collection projects. Joe previously worked for the libraries at Graceland University and Central College in Iowa. This fall he will start the University of Iowa’s online master’s program in library and information science. Welcome Joe!

The Drake Law Library recently renovated a computer lab into two flexible work spaces for students. A bequest from the estate of Deborah Sulzbach, who served as the library’s Acquisitions Librarian from 2001-2016, made the renovation possible and the rooms have been named in her honor.

Nebraska State Law Library
The State Library is hoping to move back into the Capitol as early as the end of this month, but no hard date has been set, so it may not be until September. Either way, the HVAC renovation is nearing its end, and we will be able to move back “home” soon. We will miss all of our friends at the Schmid Law Library who have been our gracious hosts for the better part of two years now!

Creighton University
Hans Herzl-Betz submitted a working draft of a paper to the Boulder Conference on Legal Information: Scholarship and Teaching, which was accepted for discussion at said conference. The conference itself
was held virtually on July 16, 2021. A maximum of 12 papers could be accepted for review and discussion at the conference. His paper relates *The Art of War* by Sunzi to legal research and legal research instruction.

**University of Nebraska - Lincoln**
Stefanie Pearlman was appointed to an additional four-year term on the Nebraska Supreme Court’s Access to Justice Commission.

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**To all our other members:** We hope no news is good news!  
And please let us know of any future news items at [https://forms.gle/aSR9Ru6JVX7SjExx7](https://forms.gle/aSR9Ru6JVX7SjExx7)!

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**MAALL MARKINGS INFORMATION**

MAALL Markings is published four times a year by the Mid-America Association of Law Libraries, a chapter of the American Association of Law Libraries, and is a benefit of membership. The purpose of MAALL Markings is to publish news of the Chapter, selected news of AALL and other professional associations, and MAALL members, as well as to solicit and publish articles to add to the body of literature in the profession of law librarianship. All articles are copyrighted and any republication or use of any portion of the content for any purpose must have written permission from the author/s.

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- March (No. 2): February 15
- June (No. 3): May 15
- September (No. 4): August 15

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# LINKS TO AALL CHAPTER & SIS PUBLICATIONS

Links originally compiled by Lindsey Carpino for the CALL Bulletin and reprinted with permission. *MAALL Markings* updates links on a yearly basis. The original post is available at [http://bulletin.chicagolawlib.org/2016/05/aall-chapter-sis-publications/](http://bulletin.chicagolawlib.org/2016/05/aall-chapter-sis-publications/).

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2020/2021 MAALL Executive Board

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There are a number of opportunities available to serve MAALL. Please contact Matthew Braun at braun22@illinois.edu if you would like to serve on a task force or committee.