Enhancing Library Collections through Open Education

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INTRODUCTION

The changes to ABA Accreditation Standards for Law Libraries recognize the trend of increasingly digital legal information used by law schools. Interpretation 604-1 reads: "The appropriate mixture of collection formats depends on the needs of the law library and the law school; it need not entail a mixture that includes physical books." This interpretation will significantly impact how physical spaces are used, but it also provides several opportunities to rethink digital resources, and the audiences served by the law library.

Part of the collection that varies greatly among law libraries is the casebook/course materials collection. Such materials are often cost-prohibitive and have either negatively impacted the library's ability to collect other items or budget constraints do not permit the collection of casebooks. This paper will focus on the integration of Open Educational Resources ("OER") into the library collection.

OERs provide a low-cost method of providing access to materials for students and give faculty more ownership over the materials used in their course, while also furthering the legal profession's goals of diversity and equity, access to justice, affordable material, legal information literacy, and making legal information more accessible. Additionally, when properly developed and incorporated into the online catalog OERs can also be made digitally available to the public, increasing equitable access to the collection.

The exorbitant cost of law school materials can be reduced to almost zero by relying on OERs created by faculty and other experts while creating a stable resource where the copyright is owned by the faculty, library, or institution. Furthermore, OERs provide a direct line to legal authorship outside of the traditional publishing apparatus currently in place. Finally, the born-digital nature of OERs allows them to be updated more frequently than traditional casebooks and to be shared in the same way that legal scholarship is shared through an institutional repository or Law Review Commons.

While OERs are not the answer to all the issues presented by the changes in the ABA standards, they provide a tremendous amount of agency for law libraries to tailor one area of their digital collections to enhance their usability and effectiveness. This paper will address the requirement of the law library to "provide reliable and efficient access" to legal resources, but also how additional features unique to OERs can benefit the legal profession and further the access to justice agenda.

I.   ABA ACCREDITATION STANDARDS' IMPACT ON LAW LIBRARY COLLECTIONS

The American Bar Association ("ABA") accreditation of law schools[1] has always included standards that define the law library collection. Previous versions of the standards made it clear that "[a] collection that consists of a *single format* may violate Standard 606."[2] The requirement that law libraries hold collections that consist of varied formats guarded against law libraries converting their collections to mostly or entirely digital resources, maintaining a requirement that print resources be part of the collection.

The changes to the 2024-25 version of the standards completely did away with this requirement: "[t]he appropriate mixture of collection formats depends on the needs of the law library and the law school; it *need not* entail a mixture

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1.   AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, Am. Bar Ass'n, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2024-2025 43–45 (2024).https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2024-2025/2024-2025-standards-and-rules-for-approval-of-law-schools.pdf [https://perma.cc/6ZKW-H2VT].

2.   AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, *supra* note 1, at 44 (emphasis added).

that includes *physical books.*"[3] Seemingly overnight, law libraries went from protecting the print resources they had to the freedom to do what they wanted with their collections, whether that was keep a hybrid collection or move entirely digital.

This led to concerns. Concerns over what is reliable and efficient access? This is the latest requirement of the ABA for law library collections. Are Lexis, Westlaw, and Bloomberg sufficient? What about when one services does not renew their contract with a vendor and resources disappear? What happens when the service that owns the material decides to no longer archive historical materials? These along with so many other questions are things every law librarian is currently facing. Daily navigating access is a challenge with the roadblocks put in the path of law libraries when trying to provide the best access to resources needed by our students and law school employees. The legal publishing world is seeming to forget that before there are practicing lawyers, there are law students. Students and other patrons that need to understand what they know and do not know and be guided in identifying what is available to help them learn about the law.

These patrons (particularly future lawyers) need to learn multiple paths and practices to fulfill the requirement of ABA rules of Professional Conduct 1.1 – Competence – which reads:" A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[4] To attain a competent level of "thoroughness and preparation" lawyers need to have had the opportunity in law school to develop skills using the resources they are expected to be competent using in practice. Competence does not come overnight or by osmosis, it comes through education on resources, and lots of guided practice.

Whatever the prognostication, there is no doubt that current collections are going to change. The elimination of required print materials puts the physical law library into danger: without the need for physical books, the law library can turn into a vast computer lab with access to all the legal information required by the ABA online. The integrity of the collection as well as access to complete information by both the academy and the legal profession are also in danger. Single platform, digital only titles are becoming cost prohibitive thus impacting not only student and faculty access to resources, but what is available to the legal profession through their local academic law library.

II.   OPEN EDUCATIONAL RESOURCES IN LAW LIBRARY COLLECTIONS

The fate of current collections is still up in the air, which provides the perfect opportunity to not only rethink the collection, but where the

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3.   *Id.* at 44 (emphasis added) (Interpretation 604-1. Interpretation 604-2(d) states that "reliable access to information resources may be provided through . . . print materials" indicating that print is allowed but not required).
[4] MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 1983).

collection comes from. Traditional collection development has focused on audience, access, cost, and relevant content.[5] Law libraries would select from various titles based on individual librarian expertise (multi-selector models) while continuing to meet the ABA accreditation standards.[6] The modern collection development policy has begun to revolve around a "just in time" standards, whereby the library will order materials for immediate faculty requests or curricular needs.[7]

These trends point to three realities of the current collection development paradigm we find ourselves in, in the wake of Interpretation 604-1. First, stable digital resources are the primary focus of libraries for their ongoing collection development. This puts a premium on ensuring that a digital resource is stable and long lasting. This has typically come from the imprimatur of the big legal databases, whereby a database would hold a resource in their digital collection, thereby imbuing their stability upon the resource. However, this invariably leaves libraries at the whims of the database and their collection development policies,[8] with little to no ability to affect the policy. Titles included by the parent company of the online service are impacted as well as those by other publishers. Long time access to titles from a third-party publisher can change overnight. This has been seen many times

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5.   *See* MED. LIBR. ASS'N COLLECTION DEV. CAUCUS, MED. LIBR. ASS'N, COLLECTION DEVELOPMENT BEST PRACTICES 12–13 (2019), https://prism.northwestern.edu/records/qydrn-a6k03/files/Collection_Development_Best_Practices_V1_2019.pdf?download=1 [https://perma.cc/HDM4-8BW6]; *see also* CHICAGO PUBLIC SCHOOLS, COLLECTION DEVELOPMENT 2 (2022) (noting that the criteria "used in selecting school library materials" include material representative of "students' multiple lived experiences," materials which "accommodate the needs of students," is reliant on the ability of "school budgets" to "support ongoing library . . . collection development needs," and materials that "support the school's and districts educational goals and policies"). *See* David Whelan, *Collection Development and Law Libraries*, EXPLS. WITH INFO. & TECH. (June 26, 2010), https://ofaolain.com/blog/2010/06/26/collection-development-and-law-libraries [https://perma.cc/N7LG-Y9R8] (observing that duplication, cost, and space have led to digital resources creating more value based on collection development criteria in law firms, than print resources).

6.   Jacob Sayward, *Collection Development*, *in* INTRODUCTION TO LAW LIBRARIANSHIP, 123, 125–26 (Zanada Joyner & Cas Laskowski eds., 2021).

7.   Jamie Baker, *Collection Development: Just in Time & Just in Case*, RIPS LAW LIBRARIAN BLOG (Jan. 15, 2016), https://ripslawlibrarian.wordpress.com/2016/01/15/collection-development-just-in-time-just-in-case [https://perma.cc/5LNL-7WW4] (describing that budget constrictions demanded libraries move from the "just in case" model of collecting any and all titles in the chance they were needed, to a "just in time" model where demand drove the collection development in law libraries).

8.   *See* Posting of Heather Simmons, heather.simmons@uga.edu to http://community.aall net.org/discussion/causes-of-action-superceded-articles-have-been-removed-from-westlaw (Aug 30, 2024) (on file with the *Iowa Law Review Online*). Westlaw removes old versions of the ALR and now Causes of Action from their digital collections.

over the years[9] and impacts all users of the services, often leaving the user with no access or the need to make a costly acquisition of the resource through another avenue.

Second, control of what resources are available has now become more in the hands of existing legal databases than at any other point: with library collections turning toward existing digital subscriptions, the demand for specific titles will become even greater, giving digital libraries far more ability to dictate agreements with more leverage over the resources. Similarly, this control is heightened by the cost-benefit analysis of the parent companies where libraries will increasingly move away from costly print subscriptions, which will create an incentive to make up the income loss in other places, namely the now (even more) highly demanded digital subscriptions. Control and cost of resources have always been part of vendor agreements, but the shift from print to digital collections will create a wider gap between the agency and power dynamics within these relationships.

Thirdly, the focus on relevant content has not changed at all: libraries still need resources that are useful and relevant to their patrons. While this reality has not changed, the continuing pressures for libraries to find relevant content will continue to strain the ability of libraries to find adequate resources at a cost that is feasible. With these three realities, the dynamics of traditional collection development (audience, access, cost, and relevant content) continues to permeate the decision making over collections, yet with a more limited market in which to fulfill these requirements.

This is where OER can achieve three goals for libraries: (1) "self"-creation of digital resources, that can simultaneously be "self"-printed to bolster the print collection; (2) control the copyright and the costs associated with collecting traditional legal resources; and (3) include more faculty, scholars, and attorneys into the authorship of collections for public and institutional use, diversifying the market for authors and content.

A.   *SELF-PUBLISHED LEGAL RESOURCES*

The traditional model of collection development has always included seeking out new or reliable resources, and working with a publisher or vendor to order and add the resource to the collection. This requires two elements to exist that are entirely out of the control of libraries: (1) someone authors the material needed (usually not a problem for a profession that writes like it is running out of time) and (2) the publisher or vendor providing that resource at a cost that is affordable for the library. The transition from just-in-case to just-in-time collections led to more discernment in selecting resources; not because libraries became pickier, but because the costs associated with these resources became unsustainable under the just-in-case model.

Just as the publishers acted as gatekeepers for adding resources to the collection, they also acted as gatekeepers for the content and who would write.

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9.   PLI Librarian, *PLI Content No Longer Available Via* Westlaw (Nov. 1, 2012), https://libraryrelations.pli.edu/3655 [https://perma.cc/PGZ3-7VKJ].

First, demand for content was based upon national or general demand, which would overlap with regional and local demand for the most part, but not entirely. This in turn created a market for more local and regional publications, which are then often subsumed by the same publishers selling all of the resources. While not quite a monopoly, this consolidation of the legal resource market has led to a few publishers providing more than 80 percent of the resources available to add to the collection.[10]

The increased reliance on existing digital libraries has been cause for much of the trepidation over the revised ABA Standards and Interpretation 604-1: "an academic law library with no physical collection is at the mercy of the vendors of those platforms for access."[11] This acknowledges the need for a collection that is less at the whim of third parties, and more controlled by the library collection development policy. Traditionally control has been most exerted by purchasing print materials while supplementing with a stable digital collection. The duality of the collection allowed for flexibility of use while maintaining a stable, in person version of the resource that could be used in perpetuity. The transition to subscription resources updated regularly, has made print materials more analogous to digital materials in that libraries became even more reliant on publishers to maintain their print collections.

A similar force upon the collection came from faculty who reviewed resources during course preparation and requested (or demanded)[12] supportive resources from the law library.[13] While not standard policy, some

10. Kendall F. Svengalis, Legal Information Buyer's Guide and Reference Manual 8-15 12–13 (2005), https://access-to-law.com/elaw/readings/sven1_full.rtf [https://perma.cc/DE3N-LZ5H] (describing that in 2003, 82 percent of the sales of legal information came from Thomson Reuters, Wolters Kluwer, and Reed Elsevier; this does not take into account the market share that the parent companies of these publishers own in the digital legal research database market).

11. Nicholas Mignanelli, *Whither the Monograph?: Changes to the ABA Standards on Library and Information Resources and Their Unintended Consequences for Legal Scholarship*, 2 Northwestern L.J. des Refusés 1, 6–7 (2024) (stating that the gap between the "haves and have-nots" extends not just between libraries and vendors, but "the handful of well-resourced law libraries that continue to maintain print . . . collections" and those who cannot); *see also* Simmons, *supra* note 8.

12. Michelle Zakarin, *Using Open Educational Resources (OER) in Legal Education*, Ass'n Am. Law Schs. (May 25, 2022, 2:00 PM), https://www.aals.org/sections/list/technology-law-and-legal-education/using-open-educational-resources-oer-in-legal-education [https://perma.cc/T2ZY-9D6Q]; *see also* Ass'n of Am. Law Schs, *Using OER (Open Educational Resources) in Law School Courses*, YouTube (Aug. 3, 2023), https://www.youtube.com/watch?v=qE5BWeHc9dg [https://perma.cc/EE94-PALW]. (describing that following the COVID-19 pandemic there was a significant demand by law professors for accessible, online, and low-cost legal casebooks exploded resulting in resources from AALS to meet the demand).

13. Amy Taylor & Stephen Wolfson, *Using Open Educational Resources to make the Law and Law School more Accessible and Affordable*, Am. Ass'n Law Librs. (July 18, 2022, 11:00 AM), https://elearning.aallnet.org/products/using-open-educational-resources-to-make-the-law-and-

collection development course reserve policies include required course texts. These decisions allowed the faculty simultaneously to help their students and facilitate collection development by providing the library with materials that were inherently and directly relevant to the patrons.

The loss of a required print collection does not mean that these considerations are left by the wayside; but it does severely restrict the way these competing and collaborating considerations can be fulfilled. For instance, a print resource needed for a course was not only available to the students, but to any patron who used the library as a resource. Without the need for print collections, the library is under no obligation to provide non-digital collections, since their primary patron bases (students and faculty) will have access to any library subscription database. However, this maintains the status quo that legal publishers hold all the resources that can be used in the law library and legal courses.

This is where OER can offer a possible alternative, by allowing faculty to cater to their students while also providing resources beyond their immediate need. This expands the value of a digital resource beyond the paywall or the immediate confines of the library space. They also provide the library, institution and author far more control over the resource than current publication standards. By using OER creation resources,[14] faculty can create a resource that caters to the students in that course. Taking control of this publication process allows the faculty member control over content, publication, and dissemination, taking a little more power back from the publishers who hold a near monopoly on legal resources being used.

When this resource is added to the law library collection, it then allows additional users to access the resource and to refer to it when needed. The benefit of a resource aimed at students is that it is more readily accessible and intelligible by the public at large. Additional considerations should be made, but adhering to accessibility, diversity, equity, and accessibility principles, the resources made for a particular course can evolve far beyond their original use to be a resource for the public and anyone with a stable internet connection.

B. *IDEA RESOURCES*

OERs present a wonderful opportunity to incorporate the values of inclusion, diversity, equity, and accessibility into the library collection. Since they are available in more than one format, and can even be converted to additional formats, their flexibility allows for ease of access and removal of

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law-school-more-accessible-and-affordable#tab-product_tab_overview [https://perma.cc/PD8Q-QSB5].

14. *Create Your Own OER*, UNIV. S.C. UNIV. LIBRS. (Nov. 25, 2024, 4:27 PM), https://guides.library.sc.edu/OER/createOER [https://perma.cc/4Q6B-AVDV]*; see also Law Textbooks and Full Courses*, OER COMMONS (2025), https://oercommons.org/curated-collections/405 [https://perma.cc/UL7H-TSND] (demonstrating the value of additional resources, there exist hundreds of legal OER that faculty can use to review, inspire, or utilize in their own courses. Once created, any OER at an institution can also be added to the OER Commons to magnify the utility of the resource).

barriers to digital content. Since they are available online, they do allow for ease of use for remote patrons, who may have issues getting to the library, or are unable to during public library hours. Increasing the equity and inclusiveness of the collection is vital for myriad reasons, and OERs offer an easy and affordable way for libraries to do this.

It is therefore no surprise that libraries and librarians have been the vanguard of the open access movement: OERs fit perfectly into the library mission of accessible and free legal information for their patrons. It likewise maintains some benefits to special classes of patrons, such as faculty, attorneys, or judges where library subscription databases provide access to the legacy legal resources, while legal knowledge for patrons outside of these groups or the public at large can still benefit from the wealth of legal information published in OERs.

1.   Diversity and Equity for Institutional Patrons

Traditional authorship of legal books has been based on the author's knowledge, previous scholarship or work, and commercial value. If a book was marketable, it would be worth publishing. Unfortunately, this has created a permanence of authorship: Hornbooks, treatises, and monographs are perpetually republished with updates, limiting the opportunity for new authors to enter the market. This barrier also provides more leverage for publishers who control these widely used resources to limit who they would like to edit the future publications. This reality is similarly found in Law Review authorship: diversity is not the driving force in selecting authors, resulting in disproportionately white and male authors being published in law reviews and law journals.[15] This then leads to a magnifier effect where citation statistics from existing scholarship become a factor in publishing future scholarship, perpetuating the desire for journals to continue to publish overwhelmingly white[16] and overwhelmingly male scholars.[17] These systems of

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15.   Ian Pisarcik, *Women Outnumber Men in US Law School Classrooms, but Statistics Don't Tell the Full Story*, JURIST (Jan. 17, 2024, 2:28 PM), https://www.jurist.org/commentary/2024/01/women-outnumber-men-in-us-law-school-classrooms-but-statistics-dont-tell-the-full-story [https://perma.cc/4Q59-4XY7]; s*ee also* Elizabeth D. Katz, Kyle Rozema & Sarath Sanga, *Women in U.S. Law Schools, 1948-2021*, 15 J. LEGAL ANALYSIS 48, 60 (2023) (while the growth of women participation in law schools has more than doubled in the last 50 years, the growth of women faculty has not kept pace; women remain less than a majority of faculty while currently making up a majority of students).

16.   *See generally* MEERA E. DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA 110–11 (2019) (citing Victor D. Quintanilla, *Critical Race Empiricism: A New Means to Measure Civil Procedure*, 3 U.C. IRVINE L. REV. 187, 198 (2013)) (describing that even among "liberally minded" faculty, white dominance is taken as normal, stymying BIPOC in advancing in legal academia).

17.   Myrna Morales, Em Claire Knowles & Chris Bourg, *Diversity, Social Justice, and the Future of Libraries*, 14 LIBS. & THE ACAD. 439, 446 (2014) (stating that in publication generally, there are systemic biases toward white men, with 90 percent of *New York Times* book reviews of books written

publication, which preserve the status quo, are preserved in law library collections since there is no other avenue to carry published legal scholarship.

Open educational resources can provide an avenue for authors traditionally barred from legal publication to get their scholarship published and disseminated.[18] OER is a self-publishing option which while carrying limitations,[19] also takes agency for publication from regular publishers and puts it directly into the hand of authors. This allows authors, particularly female authors, and authors of color,[20] to have a forum that would otherwise be more difficult to attain altogether. While this would require sustained and regular attention for updating the resource from author and institution alike, it does provide an opening by which the faculty can assist in the collection development of their institutional library,[21] while simultaneously extending their scholarly and pedagogical reach.[22]

Representation is such an important aspect of ensuring participation, especially when it comes to underrepresented students.[23] "Seeing oneself

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by white male authors); *see also Writers and Authors*, DATA USA, https://datausa.io/profile/soc/writers-authors#demographics [https://perma.cc/E8BQ-D9E3] (describing that while the majority (59 percent) of all writers are female, 80 percent are white, there are only 20 percent authors identifying as a race other than white).

18.   Sydney Richardson & Jacqueline Roebuck Sakho, *Creating Equitable Access: Using OER for Socially Just Educational Leaders*, 16 J. MULTICULTURAL EDUC. 443, 444 (2022) ("For the authors, being African American women professors in a college where very few looked like them meant that they had to be careful with how they discussed the importance of DEIB in K-12 schools. Using OER as an assignment proved to be the best way in which to accomplish their goals").

19.   *OER Pros/Cons and Evaluation Methods*, UNIV. PACIFIC UNIV. LIBRS. https://scholarlycommons.pacific.edu/oer/pro-con-oer.html [https://perma.cc/SC9C-GH4R] (describing that law library collections suffer from sustainability issues for resources published through OER); *see also* E. Krelja Kurelovic, *Advantages and Limitations of Usage of Open Educational Resources in Small Countries*, 2 INT'L J. RSCH. EDUC. & SCI. 136, 139–40 (2016) (describing beyond the limitations, and particularly relevant for all libraries, it is clear that faculty believe that the "institution" rather than individual faculty should be responsible for publishing OER).

20.   Morales et al., *supra* note 17 ("Other evidence points to a significant gender imbalance in the publishing industry"); *see also* Nicholas Shea, Gloria Mulvihill, Vi La Bianca & Alyssa Hanchar, *Who is Publishing Diverse Books Best?*, 34 PUB. RSCH. Q. 207, 216 (2018) ("Despite at least twenty years of emphasized interest in diversity, publishing is still a predominantly white industry").

21.   Jennifer Pate & Elaine Thornton, *OER Publishing and Libraries*, 82 SERIALS LIBR. 150, 151 (2022) ("[O]ver half of the survey respondents [librarians] identified themselves as the leader . . . of the OER publishing program. . . . [O]ver 30% indicated that OER publishing was managed by another unit *in the library.*" (emphasis added)).

22.   Brian Lindshield, *Using Scholarship of Teaching and Learning and OER Towards Earning Promotion and Tenure at a Research 1 Institution, in* VALUING OER IN THE TENURE, PROMOTION, AND REAPPOINTMENT PROCESS 48, 51 (Andrew McKinney, ed. 2024), https://pressbooks.cuny.edu/tenureandpromotioncasestudies [https://perma.cc/RW3C-T36U] (using and publishing OER can lead to successful scholarship and securing tenure when the commitment to such resources is present).

23.   Tatiana Melnichuk, *What Is a Diversity and Inclusion Policy and Why Is It Important for Companies to Have One?*, FORBES (June 14, 2022, 7:00 AM),

represented in the . . . authors . . . in a classroom and school library can go a long way in making sure we are conveying a message . . . that school is *for* and *about* them."[24] This further identifies the need for more diverse authors to present their scholarship and pedagogical work to lawyers, students, and other faculty.[25] This is where OER has already been instituted into the legal academy: within classrooms.[26] Since OERs offer a cost-effective alternative to the traditionally expensive law school textbooks,[27] they further offer a cost reducing mechanism to make law school a little more accessible to all students.[28] While OER's most immediate benefit is its cost effectiveness,[29] it also gives faculty the ability to curtail and curate content for students in a way traditional course books do not. By reducing this financial burden for

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https://www.forbes.com/sites/forbeshumanresourcescouncil/2022/06/14/what-is-a-diversity-and-inclusion-policy-and-why-is-it-important-for-companies-to-have-one [https://perma.cc/FW4M-HSBQ] (describing the ways in which a policy is essential for employees, the same rational exists for patron policies: transparency, security from discrimination, and inclusion).

24. JANE FLEMING, SUSAN CATAPANO, CANDACE M. THOMPSON & SANDY RUVALCABA CARRILLO, MORE MIRRORS IN THE CLASSROOM: USING URBAN CHILDREN'S LITERATURE TO INCREASE LITERACY 20 (2016) (focusing on children in K-12 education, the authors also identify that little empirical evidence has been done to clarify the links between diverse authors and improved literacy).

25. *See* DEO, *supra* note 16, at 3 (describing that women of color already feel like "outsiders" as legal professors; this is certainly enhanced by the prevalence of white, male legal scholarship that dominates the profession).

26. *See* Connie Lenz, *Affordable Content in Legal Education*, 112 L. LIBR. J. 301, 306 (2020) (describing that OER provides roughly the same learning outcomes as traditional textbooks, but at a fraction of the price, ensuring that access is widened to law students who take the course, or those seeking to use it as a reference); *see also* LI YUAN, SHEILA MACNEILL & WILBERT KRAAN, OPEN EDUCATIONAL RESOURCES – OPPORTUNITIES AND CHALLENGES FOR HIGHER EDUCATION, EDUC. CYBERNETICS: REPORTS, at 7–10 (2008), https://web.archive.org/web/20110105182549/http://digitalcommons.bolton.ac.uk/iec_reports/1 [https://perma.cc/B5Q8-7YUM] (providing an overview of OER and that it has been used in other Higher Educational departments and schools for over a decade).

27. Emily Elmer, *Open-Source Law Textbooks: The Answer to the Book Buying Burden?*, AM. BAR ASS'N (Apr. 1, 2022), https://www.americanbar.org/groups/law_students/resources/student-lawyer/student-essentials/open-source-law-textbooks (on file with the *Iowa Law Review Online*); *see also J.D. Costs & Financial Aid*, VAND. U. L. SCHOOL, https://law.vanderbilt.edu/jd-program/costs-financial-aid/costs [https://perma.cc/B7FB-K2WG] (stating that numbers will vary but estimating that text books cost $1700 for 1L students and $500 for upper level students, for a total cost of $2700 for all three years of law school for textbooks alone).

28. Tyson Schritter, *5 Great Ways to Lower Your Textbook Costs*, ABOUND, https://abound.college/finishcollege/advice/5-ways-lower-textbook-costs [https://perma.cc/9JZV-KRL5].

29. Elmer, *supra* note 27 ("An open-source (or open-access) casebook is a digital textbook that students receive a license to access, usually at little to no cost to the student").

students, it also creates a cost-effective way to supplement the library collection through print[30] and digital resources.

The use and creation of OER for curricular and library use further enhance OER's value as a universally designed resource.[31] By providing resources which are not only cost effective but also fully usable by the student, OERs allow for maximum distribution of material while maintaining maximum usability. Providing lower-cost resources for use by students and library patrons maximizes the usability of these resources even beyond the world of legal academia, which aligns with the goals of law libraries (especially public law libraries) to provide accessible legal resources to all patrons, including the public or non-legal experts.

2.   Equity and Inclusion for Public Patrons

The value of OER is apparent in the classroom but is magnified in their accessibility to the public at large. Coursebook access often followed the same route: purchase of a book (either new or used), which was used by one student during the entire course, at which point the book was discarded, resold, or donated. The inefficiency of this system is apparent due to (1) every student in the course performing this same routine, and (2) the obsolescence of the resource after a couple years when a new edition is created and the process begins again. Some institutions attempted to provide some alternative route by purchasing a copy of one or all of the coursebooks required in the institutions' curricula, but years of reduced budgets[32] makes the sustainability of this model (wherever it was possible and effective to begin with) impossible.[33] The cherry on top of this frustrating reality is that the vast majority of these coursebooks are print only, making any shared digital version impossible as well.

Conversely, OER are born digital, and therefore accessible to anyone with access to the resource (which is usually anyone under Creative Commons

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30.   *See* Lenz, *supra* note 26, at 305 (describing that OER offer the ability to provide "low-cost print versions of OER texts.")

31.   *See* Matthew L. Timko, *Universal Design and DEI*, 43 LEGAL REFERENCE SERVS. Q. 1, 12 (2024).

32.   Amanda Robert, *Law Libraries Chart a New Direction for the Future, New Report Shows*, ABA J. (Apr. 16, 2019), https://www.abajournal.com/web/article/law-libraries-chart-new-direction-for-the-future-aall-report-shows [https://perma.cc/848M-8J43] ("The average overall budget for academic law libraries was $2.6 million in 2013 and $2.2 million in 2018, representing a 17.2% decrease, according to the data. The decrease was more dramatic for public law schools, at 21.1%.").

33.   Jean O'Grady, *AALL Survey Reveals: Budgets, Staffing, Salaries in Law Libraries on the Rise* DEWEY B STRATEGIC (Nov. 20, 2017), https://www.deweybstrategic.com/2017/11/aall-survey-reveals-budgets-staffing-salaries-law-libraries-rise.html [https://perma.cc/W7K9-A5W7] (stating that from 2007 to 2017 the print resources budgets at law schools dropped from 82% of total budget 56%, while electronic budget rose from 18% of total to 44%).

licenses[34]) but can also be retrofitted to be duplicated into a print format, all of which is available to the public in these multiple formats.[35]

OER then provide an arguably infinite alternative to the finite existence of traditional coursebooks. But their value goes beyond this reality by extending their usefulness to the public at large, not just the student body they were originally created to serve. By holding OERs, and their print analogs, in the library collection, the resources evolve beyond their original use to service anyone from the public who may need to make use of them. The value of this cannot be overstated, especially in a world that just experienced a pandemic where physical proximity became a barrier to access: OER as born digital resources allow the public to access the resources where they (the public) are, rather than required to be present within the library.[36] While law schools may use online resources available in the library in coursework, this inherently limits their utility, especially when behind a paywall. The OER model provides the public with access to legal information that would otherwise be available, but unusable at the institution.[37]

OER can be used to remove the barriers between the public and institution, while also supplementing the law library collection and making even private libraries more public. Public access to legal information has always been the mission of law libraries, yet this mission is confined to those few public libraries that allow the public to access them. Yet even the existence of public libraries limits access: institutions reserve their subscriptions to proprietary databases for their institutional patrons like students and faculty. This creates a frustrating situation for librarians: knowing the information exists and is accessible yet denying this access to certain patrons. It is true that the primary laws are available online in most jurisdictions but helping law

34.   *Open Education*, CREATIVE COMMONS, https://creativecommons.org/about/education [https://perma.cc/5FPA-VGKB] ("Open Educational Resources (OER) are teaching, learning, and research materials that reside in the public domain or have been released under an open license [such as creative commons] that permits their free use and adaptation by others.").

35.   *See Born-Digital Scholarly Publishing: Resources and Roadmaps*, BROWN U. LIBR., https://library.brown.edu/neh-institute-born-digital-scholarly-publishing [https://perma.cc/C8SU-QZ56] ("By demystifying and streamlining the digital publication process, and by making the full curriculum openly accessible, this first-of-its-kind national training program expands the voices, perspectives, and visions represented in the practice and production of digital humanities scholarship."); *see also* Lenz, *supra* note 25, at 305; Timko, *supra* note 31, at 8.

36.   Milo Santamaria & Michelle Reed, *Unlocking OER for Public Libraries*, LIBR. FUTURES (Nov. 28, 2023), https://www.libraryfutures.net/post/oer-for-public-libraries [https://perma.cc/7CKJ-ML9P] (highlighting that OER were vital for public libraries to "help working parents support their children with distance learning during the pandemic" and "public libraries can turn to OER for their community's learning needs").

37.   *See* O'Grady, *supra* note 33. Since public law libraries have seen the sharpest decline in their budgets, combined with the reduction in print collections across law library types, the public patrons of these institutions and members of the local bench and bar are the hardest hit by the reduction in legal resources. *Id.*

students understand this information without a secondary source or supplemental aid is always difficult; trying to assist the public without them is almost impossible. OERs provide the opportunity for law libraries of all stripes to create resources that are aligned with the mission of the law library to provide access to legal information, rather than act as an additional barrier.[38]

CONCLUSION

OERs will not solve all the problems of rising costs, stable resources, and accessible information that have been perpetuating the legal information profession. Likewise, there are considerable barriers to OERs becoming a substantial part of the library curriculum. However, the amendments to the ABA standards provide an opportunity to rethink the library collection by advancing OERs as a resource to foster and include in the digital (and print) collections to ensure the needs of the institution are met.

They are also resources with considerable additional benefits: accessibility, usability, low cost, and expanding the diversity of authorship in legal scholarship. By adjusting the library collections to include OER, libraries open a new avenue for legal thought, discussion, and access that is not usual in the current paradigm. While OER will not change this dynamic overnight, it is an exciting prospect to push library collections into the future.

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38.   *See generally* Lauren Adams & Regina Smith, *Evolution of Public Law Libraries*, 10 AALL SPECTRUM 16, 17 (2006) (tracing the history of public law libraries and dangers to diminishing budgets and changing patron needs).