

# CASEBOOK REVIEWS

## Casebooks Are Toast

*Robert Laurence\**

Into the fine spinach salad that is this Symposium on commercial law casebooks comes a grain of sand. An annoying defect in the total presentation. A distracting flaw that should not take away from the value of the remainder of the mix, but somehow does. For I am the one whose job it is to say that casebooks as a genre are dying, soon, I think, to become extinct. "Dinosaurs," a prior generation would have called them; "toast" in modern parlance.<sup>1</sup> The future of law school teaching materials lies on the Web.

I begin by describing my own experience using the Web to get materials to my students. I then explain what to me is the major shortcoming of the traditional casebook, and how that shortcoming is relieved by the use of Web-based materials. I continue with an appraisal of the gains and losses of using the Web instead of printed-upon paper. I conclude with something of a lament, for I, it turns out, have a fondness for paper, a fondness that is becoming increasingly quaint as the new century gets its legs under it.

---

\* Robert A. Leflar Distinguished Professor of Law, University of Arkansas. I am grateful for the support of a University of Arkansas summer research and writing grant, which was helpful in the preparation of this essay.

1. The editors and I have had a little cross-generational syntax exchange regarding the precise meaning of my title, and because "toast" is their generation's word, I should defer to their interpretation. Which I do, with this explanation: I do not intend the title to be taken literally. Now there's an observation that would seem to go without saying, but here I mean the nonliteral nature not of the word "toast," but of the word "are." (As an Arkansan, of course, I have standing to ponder in public that "it depends on what the definition of 'are' is.") I take the expression "casebooks are toast" to contain a bit of future-ness in the tense. Casebooks are not yet dead, as this Symposium shows as well as anything. They are likely never to be entirely dead and extinct, gone from legal education. But I think that we are presently in the early stages of a process whose end will be a decline in the usefulness of casebooks as we know them today. "Casebooks are in the process of becoming toast" would be more precise, but has less snap. Who would read an essay with such a title?

## I. WHAT I DO AND HOW I CAME TO DO IT

I use the Web for class materials in two ways, both of which I think to be typical of those of us who have gone electronic (there is a third way, too, that I will mention and dismiss below as interesting but irrelevant to this Symposium). For my first year Contracts class, I have the students buy a traditional casebook and then use the Web to supplement the materials that are there. Some of this supplementation is to add cases on point from my particular, not to say peculiar, jurisdiction. Mostly not, though, because I, like most of you, I suppose, do not teach a very localized first-year course. Rather, the supplementation here, in the main, provides the students with full versions of some of the cases cited within the casebook's principal cases. We study these imbedded cases for those occasions, which are becoming more and more frequent, when I want to slow down and have the class see how the judge has used, or misused, precedent in the principal case. "Camping out," the students call this, as in "Laurence has camped out on *Empire Gas*."

This supplementation is very easy to accomplish, using either of the two law-related Web-based systems, one from LEXIS and one from West, the latter of which calls its system TWEN, for "The West Educational Network."

Wait. Back up. I do *not* use the Web to create what is known as a "virtual classroom." Both the LEXIS and TWEN systems have numerous features that allow one to create what is thought by some to be the classroom of the future. A teacher can communicate with students, can create commercial law chat rooms, can administer quizzes and tests to the students, can pose questions to the class as a whole or to individual students, and so on and so forth. I have colleagues who are very much attracted to these features of the two systems and, I am told, use them effectively. But I don't; thus, I am a relatively low-tech user of the high technology available on the Web. I use the Web only modestly, to create a "virtual casebook," not a "virtual classroom." It is this virtual casebook that I here describe, henceforth without the quotation marks, in this Symposium on casebooks of the more traditional kind.

Thus, I am not in a position to do a side-by-side comparison of all of the features of the LEXIS and TWEN virtual *classroom* offerings. I am a LEXIS man myself, for pretty much the same reason that I speak English. It's not that I have a strong preference for the merits of English over, say, Hungarian, but it's the language that I used first, and by the time I got to wondering whether there might be some reason to change, it was too late. I find LEXIS to be quite easy to use and

am happy with it. But I'm told by colleagues that TWEN is good, too, and just as easy to use, and this essay should not be taken as sales pitch for LEXIS over TWEN, nor an equation of their merits by one who has studied both. I have not.<sup>2</sup>

So I am not going to compare LEXIS and TWEN, or tell you how to set up a virtual classroom, if that is where your interests take you. Nor do I need to say much more about the use of the Web merely to supplement a traditional casebook. It's easy to do and could be used along with any of the casebooks reviewed in this Symposium. I started there first, and it turns out to be a nice first step for those who don't yet want to commit the time to using the Web as a casebook substitute, instead of just a casebook supplement. Just set up a LEXIS or TWEN course site and post a few cases for your class to access. But this Symposium is about commercially produced legal casebooks, so it's there that my present attention should lie.

With my courses in Debtor-Creditor Relations, which is half Article 9 and half state law collection remedies, and in Bankruptcy, I use the Web as a casebook substitute. That is to say, the students in these courses do not buy a casebook. They need a copy of the Uniform Commercial Code in the former, and the Bankruptcy Code in the latter, but that is all they have to buy. All other materials are available for free on the Web.<sup>3</sup>

What's on the Web for them? Oh, a little "Welcome to the Debtor-Creditor Website," and the "rules" of the course, attendance policies, exam rules, old exams and the like, but most of what they find there, under the heading of "Course Documents" in LEXIS, is a list of chapters that looks much like the chapters in the typical casebook discussed elsewhere in this issue of the law review. Within each

---

2. I have tried the Web-based system that Computing Services for the campus pushes—called WebCT here at the University of Arkansas—but have found the learning curve much steeper for that system and, of course, it cannot gain access to online LEXIS or Westlaw materials.

Why use WebCT, or any system other than LEXIS or TWEN, at all? I use it for the Equine Law class that I teach in the Animal Sciences Department, where the students can't obtain LEXIS IDs. And I have been forced on occasion to use it for the first month or so of Contracts here in the law school, when the legal writing staff wishes, for reasons I find understandable, to withhold LEXIS IDs from the first years at the very beginning of legal research.

Speaking of LEXIS IDs, watch out for the problems created by non-law students, cross-enrolled in your class from other departments on campus. It takes a special kind of entreaty to get IDs for those students.

3. "Free," of course, is a matter of one's definition. The law school itself pays for a LEXIS or Westlaw contract, and the student users of my virtual casebook must submit themselves to various marketing ploys of Lexis-Nexis, Inc. The company also runs a lottery, apparently based on LEXIS usage, which increases dramatically when a student is enrolled in my class and uses my casebook. A couple of years ago our student Westlaw representative won the LEXIS lottery to the tune of \$1,000 while using my casebook, a loophole that I think has since been closed.

chapter are links to cases and statutes, as well as some text, essentially my annotations to the materials linked. Some problems. Some law review commentary. That's about it. It's possible to post essentially anything, from email exchanges I have had with former students to cartoons that catch my eye, but most of what's in my virtual casebook are cases and statutes, with my annotations.

## II. WHY I DO IT

If it's not clear, let me say this straightaway: my materials are no better, and probably not even in the same league with, the materials discussed elsewhere in this Symposium. This essay is the ultimate in the way of form over substance. I am pushing not my own particular class materials, which are quirky, idiosyncratic, and Arkansized, but rather the Web itself as a classroom tool. The medium, not the message. In some odd way, actually, the fact that substantively my virtual casebook is inferior to the physical casebooks reviewed here is one of the strengths of the teacher-generated, Web-based system. How can that be? The problem with many casebooks, including, I suspect, some of those discussed on these pages, is that they tend to be literary schizophrenics, unable to decide whether they are teaching materials or treatises, and ending up as a bit of both. That's unfortunate, for me as a teacher and for my students.<sup>4</sup>

From my students' perspective, the problem is that casebooks are expensive, not very valuable on the used market, and not very useable after graduation. In other words, they tend not to be very good treatises. The principal cases are too long and not useful when doing research, the notes are not organized as they would be in a treatise and are full of questions rather than answers, and casebooks are not updated in the same way treatises are. So, after buying a casebook, a student is faced with two unhappy alternatives—sell the book back to the bookstore, if they'll have it, at a sizeable loss, or put it on the shelf of his or her post-graduation office library, where it will quickly become an office ornament.

But if a casebook rarely accomplishes the task of becoming a worthwhile treatise, it is the attempt to be treatise-like that spoils the typical casebook for me as a teacher. For classroom purposes, there is

---

4. I must not sweep too broadly here. Surely some casebooks abandon all pretense of being treatises and are purely teaching materials. Justice Frankfurter's famous casebook on Interstate Commerce, *FELIX FRANKFURTER, A SELECTION OF CASES UNDER THE INTERSTATE COMMERCE ACT* (3d ed. 1925), in which the cases are set out without text, comment, or annotation, and in alphabetical order within chapters, is a prime example. I am not privy to the list of casebooks being reviewed in this Symposium, so I am far from certain that some of those, even, are purely teaching materials. The problem that I identify in the text is, though, a generic one.

much too much there. Rarely will I bring up before the students more than a quarter of the material that is in a typical casebook and, as teaching materials, the stuff that I don't use is a distraction. The students don't know what to do with it for class preparation nor for exam purposes. My rule tends to be this: prepare only the principal cases for class, and the only notes that will be on the exam are the ones that I discuss in class. All the rest of the pages we flip right on by.

So, my Web-based virtual casebook is one designed just for my class. It contains the cases that I will talk about, the problems that I want the students to ponder, the text that I want the students to read.<sup>5</sup> It has no treatise-like aspect. I am not multi-tasking.<sup>6</sup> It is a single-minded work, designed for use in the class that *I* am teaching, not the class that *you* are teaching.

### III. THE UP SIDES AND DOWN

What are the advantages and disadvantages of using the Web to get materials to the students? Let's look at the question from the perspective of the students themselves, the teacher, and the institution—that is to say, the law school.

#### A. *What's In It for the Students*

The principal advantage to the students is that they don't have to spend the money to buy a casebook. Thus, they save approximately \$50.<sup>7</sup> Now, that alone will get you into the running for Professor of the Year. Second, the materials are focused on precisely the task at hand, in my case, say, learning the material for Laurence's Spring Semester 2002 Debtor-Creditor course. They have to know what's there, heavily supplemented, of course, by what went on in class,<sup>8</sup> and what they don't have to know isn't there. It makes for a very efficient learning process.

---

5. Okay, I admit that the fit is not perfect, for I do not start from scratch each semester. The virtual casebook contains cases that I discussed in class last year and have decided not to discuss this year, but they are few and the students can easily avoid, with some warning, the cases I won't be discussing.

6. Specifically, I am not trying to satisfy my dean's desire for scholarly publication at the same time that I'm trying to put together materials for my students' use. Web-based teaching materials—*mine*, at least—contain little in the way of scholarship and count for nothing with the dean by way of publication. I'll discuss this matter below.

7. Especially thrifty students, I note, have learned how to get a copy of the statutes themselves off the Web, leaving them with no book expenses in the course.

8. I am not required by my law school to take attendance, and in the classes that I discuss here, I do not. The virtual casebook format has this additional advantage to me: the casebook itself is not only "virtual" in the electronic sense, but virtually unusable, in the old-fashioned sense, by a student who does not come to class.

Web-based materials are also localized, designed for the students sitting in front of you. Sometimes, of course, that is not so important, the best current example being when the subject is the new Article 9, which was adopted almost identically everywhere, and which has not yet had the chance to suffer state-by-state appellate misconstructions. Bankruptcy law, too, exemptions aside, needs less localization than do other courses. But in most courses, as taught at almost every law school, there are places where local law comes into play, and, in my experience, students tend to appreciate that their teacher is shaping the course to the jurisdiction where most of them will practice.<sup>9</sup>

Finally, there is a feature of my virtual casebook that the students don't see as an advantage but probably is. Relatively few of the cases that I have posted for them are edited for use in the casebook; usually I just link directly to the unedited case on LEXIS.<sup>10</sup> Thus, the students confront the raw material of the law and learn that, after graduation, cases will not come to them either nicely edited down to eliminate the irrelevant discussion or with a tidy, square-bracketed synopsis of the facts, as they do in casebooks. As I say, not all students appreciate the favor I am doing for them here, but they will.

The principal disadvantage to the students is the ever-present possibility of a technical glitch. "The network was down last night" becomes the hi-tech version of "the dog ate my homework." Books, on the other hand, are rarely down. Furthermore, I note here "The Principle of Technological Anti-Hierarchy," named as such by my techno-adverse artist who observes, with her usual insight, that when a device at one level of technology fails, it does not revert to the next lower level of technology. An electric typewriter, during a power outage, is not even as good as a manual typewriter, and a word-processing computer, when it crashes, is not even as good as an electric type-

---

9. Readers who teach at law schools in which there is no felt obligation to prepare most of the students in the class for the actual practice of law in one particular state may ignore this perceived advantage of Web-based materials. Indeed, because I find the ability to localize materials to be one of the greatest advantages to the virtual casebook, teachers at those schools may not be attracted to the Web at all.

10. There are two ways to get a case into the virtual casebook. One is simply to link to the LEXIS location of the case, which is easy to do as the LEXIS-based system is specifically designed for that purpose. (TWEN, I'm told, is the West-wise equivalent.) The other is to download the case from LEXIS onto my hard drive, then uplink the downloaded version back to the LEXIS website. The latter method sounds more complicated than it is, and is the system I use when I want to edit the case for the students. I am unsure of the precise copyright issues involved in this download/uplink combination, and have not explored the question with my LEXIS representative. I assume that because I am working entirely within the LEXIS system, and all the users have LEXIS ID numbers, there will be no copyright difficulties.

writer. Thus, my virtual casebook, when the network is down, does not revert to real-book status; it's no good at all.<sup>11</sup>

Overall, it is clear that the possibility—indeed, the likelihood over the course of a semester—of a technical malfunction is a frustration for students and the principal disadvantage of the virtual casebook from their perspective.

### *B. What's In It for the Teacher*

The principal advantage for the teacher is the Web's flexibility—you can make the course be what you want it to be. The principal disadvantage for the teacher is the Web's flexibility—you have to find the time to make the course be what you want it to be.

Let me note first that the efficiency and flexibility of the Web-based virtual casebook does not take away from its rigor or sophistication. When I was once describing to a colleague how my students are only responsible for what happens in class, he somehow translated that into an indication of superficiality in my classroom. On the contrary, and perhaps an example from Debtor-Creditor will help. A question that has arisen frequently in my state is what judgment should be entered against a garnishee who does not answer the interrogatories and otherwise defaults on the garnishment. Our statute has been amended several times, not always with the most artful language, the general trend being toward greater and greater protection for the defaulting garnishee, who is usually, but not always, employers or banks. There are several Arkansas Supreme Court cases, arising in several different procedural postures, that are rather contradictory if you want to know the truth, and not always in sync with the changes being made by the General Assembly. The statute, the cases, and some law review commentary are on the course website, and we work in class pretty carefully through the historical progression that leads to the present muddled state of the Arkansas law, including the different procedural attacks that can be made by the lawyer for the garnishee, attacking the entry of judgment. Superficial? Hardly; the in-class discussion, and the exam, are actually quite rigorous. And important to Arkansas lawyers. And—does it go without saying?—based on law found in no national casebook.

---

11. There is one apparent technical glitch that I like. My first-year students quickly discover that, in a class of seventy, the network will be overtaxed if everyone is trying to print out today's supplementary case during the hour before class. Those who get stuck unable to print are rightly embarrassed to admit it in class, and the Web ends up providing an incentive to at least think about getting ready for class early rather than late.

Note that I have violated all the rules of law review publication by not citing the cases and statutes that I mentioned without name or section in the preceding paragraph. I presume that no reader of this Symposium is the least bit interested in seeing citations to Arkansas law regarding defaulting garnishees, and those that are know where to find them.<sup>12</sup> And that, in a way, is exactly the point. No national casebook would, or should, have the detail necessary to a student at the University of Arkansas trying to work through this particularly obtuse area of our local law. Presumably, any casebook that would have that information would also have a similar discussion of the law of Wyoming, which might be interesting but would be unlikely to find its way into my class here in Fayetteville. The Web provides me with an efficient way to get the necessary materials to my students, without bothering *your* students about it.

Does it take time? Sure; what doesn't? But it certainly takes *less* time than writing a national casebook like those reviewed here, which I have never done, but which, I'm told, can consume one's life. My materials contain no string cites of cases from other jurisdictions, and few "majority rules." There are no lengthy notes on material that I'm not going to cover in class, but that some teacher in Florida might want to go over.

Still, it takes time, more so the first time you do it because you're having to master the technological manipulations as well as the law. It is for that reason that I'm lucky to have begun the way I did, first by supplementing a first-year casebook, then by supplementing my Debtor-Creditor casebook. When that latter casebook went out of print without a new edition, I couldn't find a new one that I liked as well, and at that point took the plunge and converted my supplementation of the out-of-print book into a full-substitute virtual casebook. The course of that progression was over a couple of years, and landed me pretty much where I want to be.<sup>13</sup> Now when I read advance sheets and find a new Article 9 case, I can quickly add it at the appropriate place in the virtual casebook, if I think it merits an in-class mention.

Furthermore, this time spent creating the website duplicates, to some large extent, my class preparation. Getting one's brain around a new casebook is itself time consuming, as we all know. Picking the

---

12. All right, you might look at Robert Laurence, *The Supreme Court and the Defaulting Garnishee, Redux: An Essay on McCourt Manufacturing Company v. The Credit Bureau of Fort Smith and a Few of Its Predecessors*, 49 ARK. L. REV. 1 (1996).

13. During that progression from "experimenter" to "user," I had to master new technology, as LEXIS changed its virtual classroom provider. This problem I take to be endemic to Web use, and can happen to any of us at any time. Be ready.



cases that I want on the website and writing the annotations takes some time too, but when I'm done, I'm pretty well-prepared for class. So, as you can see, there is some inverse efficiency of scale, so to speak, in the preparation of a virtual casebook, the "scale" here being *smaller* than in the usual national casebook. The virtual casebook is designed for my class, not yours, and during its creation I am also preparing for the time, later on, when I will be standing in front of my class teaching those materials.

Herein, then, lies the quandary for the teacher contemplating the creation of a virtual casebook: are the advantages flowing from flexibility worth the time that such flexibility demands? Those demands are surely eased by the inverse efficiencies of scale I mentioned just above, but it would be overreaching to suggest that there is no net consumption of time by using the Web. I plainly think the advantages outweigh the disadvantages; others will not be so sure. What will the dean think? See the discussion below.

### C. *What's In It for the Institution*

The primary advantage for your law school, it seems to me, is having satisfied students, even if that satisfaction comes primarily from saving money. My students, at least, seem pleased with the website for reasons beyond those that are thrift-related. Their generation, of course, is much more technologically minded than mine,<sup>14</sup> and they think it entirely proper that the Web should be used in close connection to the classroom. And they manipulate the system more handily than I do. And, perhaps most importantly, what they see on the screen they know has been designed for them. They appreciate the time and effort.

Let's be honest: few of the hours that we spend typing in front of a computer screen are seen by students as directly benefiting them. Even assuming that research and publication has a substantial indirect benefit to their education—an assumption that I think to be unassailable<sup>15</sup>—the students don't see those hours being expended on their be-

---

14. To evaluate this observation, you need some indication of my generation. When I was a math student at Ohio State University in the mid-1960s, it would have taken a small house to hold all the computing power that now resides under my desk.

15. Which justifies the citation given in note 12, above. There is, indeed, a close connection for many of us between scholarship and teaching, so close, in fact, that it is often difficult to tell whether the class topic became a law review article, or vice versa.

half. Putting together a website for Debtor-Creditor is work that I am doing directly for them, and they tend to appreciate it.<sup>16</sup>

The primary practical disadvantage for the institution seems to me to be printing costs. Many people, and not just students, are quick to hit the "Print" icon. I have a chat with my students at the beginning of the course, encouraging them to read the cases off the Web and to get prepared for class while looking at the screen. Then, come to class and learn, and decide after class what hard copies are needed. When I want to make sure that they have a hard copy of something in class, I tell them to print it out as part of the assignment, and we work together to keep under control the seemingly automatic response of printing the entire website. But I concede this to be only a partial solution to a problem that is only one aspect of a much larger problem across the law school, as paper budgets are continually busted. Different law schools have different approaches to the print-first-then-read addiction, and I have no particularly helpful solution. But I concede that as more and more of us begin to use the Web for course materials, the students' savings on their casebook expenses threatens to become an expense to the law school via the printers.

Less tangibly, the cost to the law school is in footnotes. Preparing course materials for the Web undoubtedly takes professorial time away from scholarship for the law reviews or book publishers. Those slick pamphlets that show up in our mailboxes so commonly these days, touting the accomplishments of the faculty of this law school or that one, rarely tell us that Professor So-and-So has posted materials for his or her commercial law students on the Web. Apparently, the authorship of such postings does not translate well into *U.S. News and World Report* rankings. Writing commercial law casebooks that are then reviewed favorably in this Symposium apparently does.

*Sic transit mundus academicus.* And I doubt that it will change during my career. There are only so many hours in a day, and we are willing to devote only so many of those to our jobs. Within those hours we must prepare for class, commit scholarship, and sit on committees. It is surely possible to do all three, and to do them reasonably well. The creation of one's own class materials necessarily takes time, but some of that time is also class-prep time, and some of it might be scholarship-prep time, as the class leads the teacher to an issue worthy of scholarship.

---

16. Let me not gush here. They don't *all* like it, and some of those who do think that it's what I ought to be doing with *all* my time, not meriting special praise. The Web may get you into the running for Professor of the Year; it does not ensure your election.

But all of that only partially ameliorates the trade-off inherent in what I am proposing here, and I do not dispute the fact that designing a virtual casebook will take you away from more public work that your dean would prefer you to be doing. Well, get a new dean. Just kidding. At least do this: try to convince your dean that the time it takes is worthwhile, and then ease yourself into Web use so you can continue to do the other, too.<sup>17</sup>

What about one's influence on the law, its evolution, and its practice? Surely a nonvirtual casebook makes its author more influential in his or her field, and that's what *U.S. News* is measuring, right? Well, consider this: for the great majority of us, we have much, much more influence on the way the law evolves and is practiced when we stand in front of our students than when we write footnotes for the law reviews. Exceptions are so rare as to prove the rule. I believe that the time that I spend making a localized virtual casebook for my Debtor-Creditor course will, in the end, have a greater impact on the law than anything I will ever publish.

#### IV. THE LAMENT

It turns out, as I mentioned at the outset, that I have a fondness for paper. Holding one's own book in one's own hands gives a true, tangible sense of achievement. I also know that I recently published my first article online, and it carried with it none of that sizeable feeling of accomplishment that publishing for the law reviews generally has for me. I wrote it, and it disappeared into the ether. Gone. It was never tangible, nor was my feeling of having done something.

So I am not entirely happy with the way we are going here. However, there is, too, a tangible sense of accomplishment when one teaches a good class, and it is to that sense that I turn now. Web-based teaching materials, I think, make my classes better. And, with no disrespect to the serious scholarly feats of the authors contributing to this Symposium, I am the one who is here to deliver the news: casebooks are toast.

---

17. With charming naiveté, my editors ask, "How about some discussion in this section about how a professor would persuade one's [sic] dean that virtual casebooks are worthwhile, as you suggest? How did you do it?" Here are four pretty basic suggestions: (1) Don't ask; it's easier to get forgiveness than permission. Don't go to the dean and say, "I'm thinking of putting off the polishing up of that article for *Stanford* while I post some materials on the Web. What do you think? (2) Overlap as much as you can. That is to say, make your scholarship come out of your class. (3) If you do committee work poorly enough, then they'll stop putting you on so many damn committees. (4) It helps if you can type quickly.