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## Director's Corner

By Judy Morgan, Law Library Director

The law library is pleased to announce several new improvements designed to enhance your experience at the library. Professor Week's old office on the Lower Level near the vending machines has been converted into a student lounge. You will find comfortable seating, tables and a TV/VCR with cable (coming soon) in the lounge.



*The law library's new student lounge is the perfect place for a study break.*

It would be hard to miss the renovated large computer lab. Crews worked feverishly over the Christmas break removing the old countertops, painting and installing new tables and chairs. The Homsey lab was also recently renovated. New chairs and tables were installed

and the room was reoriented to make it the perfect place for computer training.

Laptop users who like to work at the tables in the reference wing will be very pleased to learn that power connections were installed

in the floor underneath each table. No need to string power cords all over the place any more, just look below and plug in!

We hope you enjoy these new improvements. Have a great semester and see you at the law library!

## Videos Now Available at the Law Library

Move over, Blockbuster! The OCU Law Library has the best selection of legal thrillers and courtroom drama DVDs and videos around, from old classics to John Grisham hits. Students may rent for free for two days, although some are available for longer terms.

This weekend I'm checking out two movies: *The Bonfire of the Vanities* with Tom Hanks, Bruce Willis, and Melanie Griffith, and John Grisham's *The Client*, starring Susan Sarandon and Tommy Lee Jones. I have to return *The Client* in two days, but *Bonfire* is not due until April.

During the fall 2004 semester, Prof. Danne Johnson placed several interesting videos on reserve for her Legal Profession class. The list included *Body Heat*, *Bonfire of the Vanities*, *Cape Fear*, *Devil's Advocate*, *In the Name of the Father*, *Jagged Edge*, *L.A. Law*, Alfred Hitchcock's *The Paradine Case*, *Philadelphia*, *Rainmaker*, *Regarding Henry*, *Suspect*, *To Kill a Mockingbird* with Gregory Peck, *The Verdict*, *Wall Street*, and *The Young Philadelphians*. I watched *In the Name of the Father* during the first week of exams. In case you are not familiar with this one, it is based on the true story of a

young Irishman and his father who are wrongly imprisoned for an IRA bombing. Daniel Day Lewis stars as the main character who eventually gains release and vindication with the help of a compassionate and determined female attorney, but not before his father dies in prison.

Other available videos include: *The Runaway Jury*, *Paper Chase*, *A Few Good Men*, *The Witches of Eastwick*, *The Chamber*, *Midnight in the Garden of Good and Evil*, *The Pelican Brief*, *A Time to Kill* and others. Check them out!

By Jennifer Gerrish  
Reference Librarian

## Google Scholar - “Standing on the Shoulders of Giants”?

The name implies goodies for students. All scholarly information free and downloadable! Well, not quite. The new application from Google may not be all it seems, particularly for law scholars. The new service, available at:

<http://scholar.google.com/> is still in Beta, meaning it is being tested, although available to the public.

It works like regular Google, use the textbox to type in your search terms and click search. The results are not necessarily what you would expect. Many look like links to articles, but when you click on the link you are confronted with an abstract, and scrolling down the screen informs you that the full article is available from the site only for a fee, usually around \$25. If the site is one of those available thru this library, like EBSCO or JSTOR, you may access the article free. If not you may be stuck.

It is a bit aggravating also that your search terms may not even be evident in the abstract you reached because Google Scholar searches the full text of the article, not the abstract. Some of the results are books and clicking on the “library” link will allow you to tell whether this library has the book. Bewilderingly, some results require you to click a “web search” link to search the web to see if the result is available there. Some results include a “cited by” link that may prove useful.



It is evident that this service is not geared to law, most of the articles are from other disciplines, although more are being added. There are a few results that are “legal “ ones. There are a some abstracts of law review articles, some presentation-type articles from law firm web sites, some information posted by law professors on law school sites, information from conference presentations and occasional links to statutes available thru Findlaw.com. Using “secured transactions” as a search term brought up 332 results, for example, and many of these were from other countries. Some results were abstracts of articles, some were references to books, a few were drafts of articles, apparently placed on the web originally for comments. Many results were about economics.

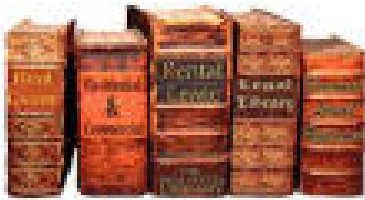
This is a service that will be helpful to legal scholars, especially to find articles about

law in other disciplines. As more legal works are added it will become more useful, although it is hard to imagine it ever being the place to start a search. It already works great if you are searching for an article on a legal topic from another discipline, and it also looks good for searching for articles from other countries. Just don’t expect that everything will be available full text.

By Victoria Santana

Reference Librarian

# Strange Laws and the Doctrine of Desuetude



Ever stumble across a weird or outdated Oklahoma law while doing legal research? Some of my personal favorites include the prohibition against fortune telling, Okla. Stat. 21 § 931; the offense of profane swearing punishable by a \$1 fine for each offense, Okla. Stat. 21 § 905; and, the law making it illegal to promote bear wrestling or horse tripping exhibitions, Okla Stat. 21 § 1700. Entire websites are devoted to these outdated laws, see <http://www.dumblaws.com/>

Did you ever wonder what would happen if someone tried to enforce these laws. Would they be successful? What type of defense would you put forward if your client was charged with violating one of these laws?

One possibility is the doctrine of desuetude which dates back to ancient Roman law and is also a part of Scottish law. Desuetude pronounced ([de-swi-"tūd](#)) is defined by *Blacks Law Dictionary 8<sup>th</sup> ed.* as “**1.** Lack of use; obsolescence through disuse. **2.** The doctrine holding that if a statute or treaty is left unenforced long enough, the courts will no longer regard it as having any legal effect even though it has not been repealed.”

An article in *Corpus Juris Secundum* posits that desuetude

is “founded on concepts of fairness embodied in federal and state constitutional due process and equal protection clauses” See 82 C.J.S. *Statutes* § 292 (2004). Statutes that may be voided by the doctrine include: malum prohibitum crimes and statutes that have been openly and repeatedly violated for a number of years without enforcement. The classic *Sutherland Statutes and Statutory Construction* also discusses the doctrine and notes that it applies when changed circumstances make enforcement of a law unreasonable. See § 23:26 (6<sup>th</sup> ed. 2004).

The doctrine was recently discussed in an Oklahoma Supreme Court Supplemental Opinion by Justice Opala, a jurist known for peppering his opinions with classical common law doctrines. In *Holleyman v. Holleyman*, 2003 OK 48, 78 P.3d 921, 943, Opala uses the doctrine in discussing the Court’s decision which he says “does not alter the course of present day law but merely excises from its body an aberrational growth of antiquarian jurisprudence long in *desuetude*.”

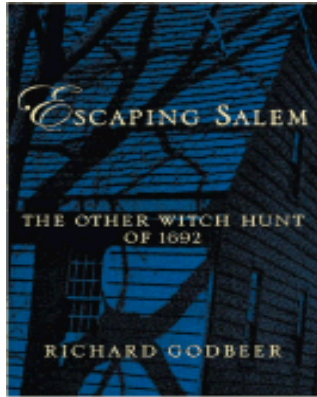
By Lee Peoples  
Head of Reference Services



*Fortune Telling and Bear Wrestling are a Few of the Acts Prohibited by Oklahoma’s Strange Laws*



# Escaping Salem: The Other Witch Hunt of 1692



Escaping Salem: The Other Witch Hunt of 1692  
by Richard Godbeer

OCU Law Library Call Number:  
KFC 3678.8 .W5 G66 2005

“*Escaping Salem* provides a corrective to the stereotype of early New Englanders as quick to accuse and condemn. That stereotype originates with Salem, which was, in its

scale and intensity of hysteria, unlike other outbreaks of witch hunting in New England. Stamford’s witch hunt was much more typical.” Prologue p.8

This narrative form of American history reads like a well-written mystery novel. Mr. Godbeer undertakes the chronicling of the thorough investigation and trial of this particular incident. The care with which the specific court followed established procedure in order to avoid the excesses of Salem is impressive.

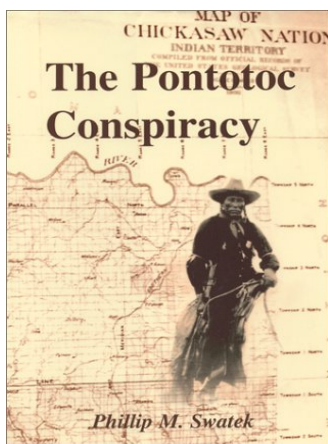
The telling of the tale is interesting in itself and the author freely borrows from the language of literature to add flesh to the bones of history as he opens his book:

“It was early one evening in June 1692 and dusk was falling over

Stamford, Connecticut, a compact little town of some five hundred souls perched on the northern shore of the Long Island Sound. A young man named Ebenezer Bishop was strolling homeward through the town, hungry for his supper after helping one of his neighbors mend a broken fence. Mary Newman, a woman in her early thirties whom Ebenezer had known since childhood, was heading in the opposite direction. They greeted each other cordially as their paths crossed and Ebenezer continued on his way. But a few seconds later he came to an abrupt halt in front of Mister Wescot’s house as a young woman’s scream erupted from inside—a piercing, blood-chilling scream followed by a prolonged wail of pain and fright.” Prologue p.1

Book Review By:  
Mary Gillman, Library Specialist

## The Pontotoc Conspiracy



*The Pontotoc Conspiracy*  
by Phillip M. Swatek

OCU Law Library Call Number:  
F702.P74 S93 2003

Pick up some Oklahoma history while reading a real life mystery.

The book is another example of the new form of narrative history set in 1909 in the new state of Oklahoma in the town of Ada in Pontotoc County.

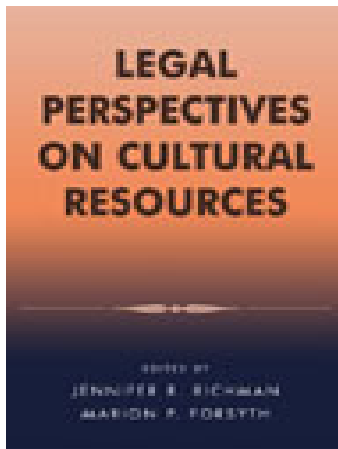
“In February 1909, one of Pontotoc’s best known citizens—former Deputy Marshal Gus Bobbitt—was assassinated from ambush near his ranch a few miles from Ada. Townspeople were outraged, because of the stealthy nature of the murder, and because they believed continued killing even with state law enforcement in place threatened the future of their town . . . Since the assassin had always survived trial by jury,

community leaders had no reason to think he wouldn’t get away again, dragging Ada’s reputation down to a disastrous level. . . .” (from the bookjacket)

What happened? Who did it? Were they ever caught? Read the book to see what happened in the real wild west!

Book Review By:  
Mary Gillman, Library Specialist

# Legal Perspectives on Cultural Resources



## *Legal Perspectives on Cultural Resources*

Editors: Jennifer R. Richman and Marion Forsyth

OCU Law Library Call Number: KF8210.A57 L44 2004 (Native American Collection).

*Legal Perspectives on Cultural Resources* is a collection of essays by legal experts and archeologists that discuss a variety of issues concerning cultural resources and the Native American Grave Protection and Repatriation Act (NAGPRA). Sherry Hutt's essay presents six cultural property theories that shape cultural property law, policies, and activities: the moralist, internationalist and nationalist theories, property law theory, scientific theory, and market theory. She concludes that NAGPRA was drafted "in a moralist mode, with an internal process based on property theory."

Richard Cunningham's essay examines the old common law "finder's rule" and rule of

"treasure trove" in which courts award possession of a buried "treasure" or artifact to the finder. He traces the development and adoption of the "poaching rule" and its American adaptation. He notes that American courts have rejected the treasure trove rule in recent years in favor of the rule of landowner's constructive possession. That is, the courts are now recognizing a landowner's right to an artifact found on the landowner's property by another discoverer.

Other topics discussed in the book are current federal laws that pertain to archeological finds, illicit trade in archeological items, underwater cultural heritage, criminal punishment and enforcement, the role archeology in the creation and implementation of NAGPRA, federal spending on the Kennewick Man skeleton, the vulnerability of NAGPRA to a constitutional challenge, and the role of NAGPRA in the 1999 *Gramly* case. Richard M. Gramly, a professional archeologist and adjunct professor at Canisius College in New York, used students to excavate 16 Native American skeletons from the Kleis site. In *Gramly*, the state of New York and the Seneca Nations jointly filed a lawsuit against Gramly and Canisius College in federal district court in Buffalo under NAGPRA. The settlement required Gramly to repatriate the cultural items to the Seneca Nations.

Jennifer Richman's essay on the constitutionality of NAGPRA is intriguing. She contends that NAGPRA removes cultural items from museums and agencies without compensation, (unless the institutions are able to establish right of possession), possibly triggering a violation of the Takings Clause of the U.S. Constitution. She contends that by giving standing only to lineal descendants, Native American tribes, and Native Hawaiian organizations, the Act creates special rights and treatment for certain categories of people to the exclusion of other groups in violation of the Fourteenth Amendment's Equal Protection clause. Although I believe it is unlikely that NAGPRA will be challenged on constitutional grounds, the issues raised are extremely interesting from a legal standpoint.

Other essay contributors are: Lynne Sebastian, Paula J. Desio, Neil Brodie, Patty Gerstenblith, Marilyn Phelan, David J. Bederman, Alan L. Schneider, Christopher A. Amato, William A. Lovis, Keith W. Kintigh, Vincas P. Steponaitis, and Lynne G. Goldstein.

Book Review By:

Jennifer Gerrish  
Reference Librarian

# Banned Books Week

Banned Books Week is sponsored annually by several organizations, most notably the American Library Association. Endorsed by the Center for the Book of the Library of Congress, Banned Books Week is observed the last week of September.

Banned Books Week began in 1982 to promote awareness of the issues of censorship and intellectual freedom. While classics such as *To Kill a Mockingbird* and *The Adventures of Huckleberry Finn* are famous for being banned from public and school libraries, the ALA's current work focuses more on challenged books. A book becomes "challenged" through a formal, written complaint which attempts to remove or restrict it; a book is "banned" once it has been removed. In the past three

years, over sixty percent of all challenges originated from parents trying to ban particular materials from school curriculums or libraries.

Phyllis Reynolds Naylor is the most challenged author for 2003, knocking J.K. Rowling to the second spot. Rowling had topped the list since 1999. Rounding off the top ten list for 2003 are Robert Cormier, Judy Blue, Katherine Paterson, John Steinbeck, Walter Dean Myers, Robie Harris, Stephen King, and Louise Rennison.

To commemorate Banned Books Week 2004, OCU's Sigma Tau Delta English honor society sponsored "Banned Books Awareness Day" on September 29. In addition to hosting an information table outside the cafeteria, ΣΤΔ members

distributed candy with titles of banned books attached, donated Banned Books Week bookmarks to both campus libraries, and secured a gubernatorial proclamation naming the day "Banned Books Awareness Day" in Oklahoma.

To learn how you can protect your freedom to read, visit the American Library Association's website at <http://www.ala.org/ala/oif/bannedbooksweek/bannedbooksweek.htm>. The next Banned Books Week is September 24 – October 1, 2005.

By Donna Gregory  
Administrative Assistant



## Oklahoma City University Law Library

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The Gavel is published once each semester by the OCU Law Library. The Gavel is also available online at: <http://www.okcu.edu/>

**Lee Peoples † Editor in Chief**

The primary mission of the Law Library is to serve the research and academic needs of the faculty and students of the OCU School of Law. The Law Library also supports the research efforts of OCU faculty, staff and students. In addition, the Law Library provides access to legal materials to the local bar and the general public.