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## An Ivy League Mystery: The Lost Papers of Arthur Linton Corbin

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# AN IVY LEAGUE MYSTERY: THE LOST PAPERS OF ARTHUR LINTON CORBIN

SCOTT D. GERBER\*

“The answer to your question, unfortunately, is that there are no Arthur Corbin Papers. We know this answer well because people frequently ask about such papers.”

Fred R. Shapiro<sup>1</sup>

“Corbin to Charles (Seymour?/Clark?), 18 Jan. (1940?), Arthur Corbin Papers, Yale Law School.”

Laura Kalman<sup>2</sup>

“I am shocked that his private papers have disappeared.”

Eugene V. Rostow<sup>3</sup>

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\*Visiting Assistant Professor of Law, Ohio Northern University, Claude W. Pettit College of Law. Ph.D., J.D., University of Virginia; B.A., The College of William and Mary. On a related subject, my first mystery novel will be published in the fall of 2001. See SCOTT DOUGLAS GERBER, *THE IVORY TOWER: A NOVEL* (forthcoming in 2001). I wish to thank Emilie Benoit, Stephanie Edwards, Sandra McDonald, and Leanna Smack for their help with this Essay. I thank Roger Williams University, Ralph R. Papitto School of Law for financial support. I also wish to thank the Editors of the South Carolina Law Review for allowing deviations from the formalistic standards of the TEXAS LAW REVIEW MANUAL ON USAGE AND STYLE. The Essay is dedicated to Ron Collins, who strongly encouraged me to write it and was a source of wonderful advice along the way.

1. E-mail from Fred R. Shapiro, Associate Librarian for Public Services, Yale Law School, to Scott D. Gerber (July 25, 2000, 13:15:41 EDT) (on file with author). All correspondence cited to Scott D. Gerber were written while he was a Visiting Associate Professor of Law at Roger Williams University, Ralph R. Papitto School of Law.

2. LAURA KALMAN, *LEGAL REALISM AT YALE, 1927-1960* 274, n.173 (1986).

3. Letter from Eugene V. Rostow, Dean Emeritus and Sterling Professor Emeritus of Law and Public Affairs, Yale Law School, to Scott D. Gerber (Aug. 30, 2000) (on file with author). Dean Rostow is also the literary editor of Corbin's writings. Joseph M. Perillo, *Twelve Letters From Arthur L. Corbin to Robert Braucher Annotated*, 50 WASH. & LEE L. REV. 755, 755 n.\* (1993).

## I. INTRODUCTION

This is not an Essay I planned to write. The whole thing started out innocently enough. I was asked to teach a course I had not taught before—Contracts—and I thought it would be helpful if I did some research on the subject. Given my background in both legal history and legal theory,<sup>4</sup> I wanted to find out something about the late Arthur Corbin (1874-1967). I wanted to know more about Professor Corbin, the man widely regarded as the greatest Contracts scholar in the history of American law.<sup>5</sup> So on July 17, 2000, I contacted Yale Law School about the possibility of accessing Professor Corbin's papers.<sup>6</sup> I wanted to know something about the man himself: something beyond the stark text of his many published works. I received a reply e-mail later that same day stating that the relevant contact people were away for the week, but that I should hear from one of them shortly.<sup>7</sup> I followed up a week later,<sup>8</sup> and I received the following response from Fred R. Shapiro, Yale's Associate Law Librarian for Public Services:<sup>9</sup>

Your inquiry about the Arthur Corbin Papers was forwarded to me. I apologize for the length of time it has taken to answer you, but I have been on vacation. The answer to your question, unfortunately, is that there are no Arthur Corbin Papers. We know this answer well because people frequently ask about such papers.<sup>10</sup>

Mr. Shapiro's reply puzzled me, given legal historian Laura Kalman had both cited Corbin's papers in her book *1986 Legal Realism at Yale, 1927-1960*,<sup>11</sup> and personally assured me that she had in fact seen them.<sup>12</sup> I e-mailed this information

4. See, e.g., SCOTT DOUGLAS GERBER, *FIRST PRINCIPLES: THE JURISPRUDENCE OF CLARENCE THOMAS* (1999) (analyzing Justice Thomas's acclimation period on the Supreme Court); *SERIATIM: THE SUPREME COURT BEFORE JOHN MARSHALL* (Scott D. Gerber ed., 1998) (examining the Supreme Court in the early republic); GERBER, *TO SECURE THESE RIGHTS: THE DECLARATION OF INDEPENDENCE AND CONSTITUTIONAL INTERPRETATION* (1995) (advancing a natural rights theory of constitutional interpretation).

5. See Robert H. Jerry, II, *Arthur L. Corbin: His Kansas Connection*, 32 KAN. L. REV. 753, 753 (1984); Friedrich Kessler, *Arthur Linton Corbin*, 78 YALE L.J. 517, 517 (1969); Louis H. Pollack et al., *Arthur Linton Corbin*, 76 YALE L.J. 875, 876-77 (1967).

6. E-mail from Scott D. Gerber, to the Reference Department, Yale Law School (July 17, 2000, 11:04:19 PDT) (on file with author).

7. E-mail from Laura Orr, Reference Department, Yale Law School, to Scott D. Gerber (July 17, 2000, 10:05:41 EDT) (on file with author).

8. E-mail from Scott D. Gerber, to the Reference Department, Yale Law School (July 24, 2000, 15:09:16 PDT) (on file with author).

9. Shapiro is respected for his work on legal citations. E.g., Fred R. Shapiro, *The Most Cited Law Review Articles*, 73 CAL. L. REV. 1540 (1985); Shapiro, *The Most-Cited Legal Scholars*, 29 J. LEGAL STUD. 409 (2000) [hereinafter Shapiro, *The Most-Cited Legal Scholars*]; see generally Symposium, *Interpreting Legal Citations*, 29 J. LEGAL STUD. 317-584 (2000) (discussing Shapiro's works).

10. E-mail from Shapiro, *supra* note 1.

11. KALMAN, *supra* note 2 (citing "Corbin to Charles (Seymour?/Clark?), Jan. 18, 1940?, Arthur Corbin Papers, Yale Law School.").

12. Voice mail from Laura Kalman, Professor, History Department, University of California, Santa Barbara (Aug. 4, 2000) (stating that a Yale law librarian had given her access to the Corbin Papers) (notes on file with author); E-mail from Laura Kalman, Professor, History Department, University of California, Santa Barbara, to Scott D. Gerber (Aug. 8, 2000, 11:16:13 PDT) (on file with author) ("[I] sure wish [I] knew what happened to those [C]orbin papers."); E-mail from Laura Kalman, Professor, History Department, University of California, Santa Barbara, to Scott D. Gerber

to Mr. Shapiro, and he responded in a manner arguably better suited for a defense attorney than an inquisitive law librarian. He wrote:

The Corbin papers seem to be a mystery wrapped inside an enigma. I have devoted considerable effort to trying to track them down, but can find no evidence that they exist anywhere now. (The evidence that they do not exist now in the Yale Law or University Libraries is quite conclusive, in that I have checked all the places they could be and talked to all the people who might know their whereabouts.) There are a number of indications that they existed at one time, but I am still not sure to what extent they ever existed in the past.

Perhaps the strongest indication that they existed at one time is the fact that Laura Kalman cites to Arthur Corbin papers in her book, and she is a careful scholar whose citations must be accepted at face value. However, I talked to Kalman and she indicated to me that she had seen one small folder rather than any kind of extensive collection. Did she say something different than this to you?

So, again, I cannot offer any encouragement to you in your quest. If you find any Corbin papers, or any copy of his annotated set of the first Restatement of Contracts (another enigma), I would be very interested to hear about it.<sup>13</sup>

Given how important Arthur Corbin's papers are to the history of American law, I decided to see what I could discover on my own. What follows is the story<sup>14</sup> of my search for the "Holy Grail"—Corbin's papers.<sup>15</sup> As readers will quickly discover, this search led me to some of the leading figures in the legal academy, both past and present, and also gave rise to a number of provocative scenarios about where Corbin's papers might be and what might have happened to them.

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(Aug. 14, 2000, 08:02:03 PDT) [hereinafter E-mail from Kalman (Aug. 14, 2000)] (on file with author) ("[H]ey, this is so frustrating!").

13. E-mail from Fred R. Shapiro, Associate Librarian for Public Services, Yale Law School, to Scott D. Gerber (Aug. 5, 2000, 20:40:26 EDT) [hereinafter E-mail from Shapiro (Aug. 5, 2000)] (on file with author). *See also* E-mail from Fred R. Shapiro, Associate Librarian for Public Services, Yale Law School, to Scott D. Gerber (Aug. 7, 2000, 15:44:17 EDT) [hereinafter E-mail from Shapiro (Aug. 7, 2000)] (on file with author) ("I do not believe that Corbin's papers were ever cataloged. This may be because there were no Corbin papers to catalog, or it may be because whatever items Laura Kalman looked at were part of some group of uncataloged materials that has since disappeared.").

14. The narrative tradition in legal scholarship is identified most closely today with Critical Race Theory and feminist jurisprudence. *See* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et. al, eds. 1995) and CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987) for more information on Critical Race Theory and feminist jurisprudence, respectively. It is an underlying assumption of the present Essay that the narrative method can inform issues beyond civil rights: like the challenges of doing archival legal history.

15. E-mail from Scott D. Gerber, to Fred R. Shapiro, Associate Librarian for Public Services, Yale Law School (Aug. 5, 2000, 17:28:27 PDT) (on file with author).

## II. THE CLUES

A. *The Victim's Profile*

Arthur Linton Corbin was born in Linn County, Kansas on October 17, 1874.<sup>16</sup> His father was a farmer; his mother was a public school teacher.<sup>17</sup> He graduated from the University of Kansas in 1894<sup>18</sup> and from the Yale Law School in 1899,<sup>19</sup> “which wasn’t worth going to at the time.”<sup>20</sup> He finished first in his law school class, “which didn’t amount to much.”<sup>21</sup>

Of course the reputation of the Yale Law School has improved more than a little since Corbin was a student in the 1890s, and he is partly responsible for it. Indeed, one of the three volumes of the *Yale Law Journal* dedicated to Corbin—no small compliment in itself—opens with an essay by a former dean entitled, *Professor Arthur L. Corbin: Creator of the Present-Day Yale Law School*.<sup>22</sup>

Corbin also served as president of the Association of American Law Schools,<sup>23</sup> a teacher and “father in the law” to Karl Llewellyn,<sup>24</sup> a friend and protector of Wesley Hohfeld,<sup>25</sup> a devotee of Benjamin Cardozo,<sup>26</sup> the chief aid to Samuel Williston on the *Restatement of Contracts*,<sup>27</sup> arguably one of the original Legal Realists,<sup>28</sup> and the author of what has been called the “greatest law book ever written”<sup>29</sup>—his multi-volume treatise on Contracts. Clearly, Corbin’s private papers are worth turning over every stone to find. In fact, more than a quarter-century after his death Arthur Corbin remains among the most widely-cited legal scholars.<sup>30</sup>

16. Various aspects of Corbin’s life are chronicled in Arthur L. Corbin, *Sixty-Eight Years at Law*, 13 KAN. L. REV. 183, 183 (1964) [hereinafter *Sixty-Eight Years at Law*]. Jerry, *supra* note 5, at 753. See Kessler, *supra* note 5, at 517-24; Pollack et al., *supra* note 5; and Thomas W. Swan, *Professor Arthur L. Corbin Creator of the Present-Day Yale Law School*, 74 YALE L.J. 207 (1964) for more information on the aspects of Corbin’s life.

17. *Sixty-Eight Years at Law*, *supra* note 16, at 183.

18. *Id.*

19. *Id.* at 184.

20. Interview by B.A. MacLean, Jr. with Arthur L. Corbin, Professor Emeritus, Yale Law School (Jan. 10, 1964) (on file with Manuscripts and Archives Department, Sterling Memorial Library, Yale University).

21. *Id.*

22. Swan, *supra* note 16. Corbin’s most important contributions to improving the law school were in employing the case method of classroom instruction, insisting that full-time faculty be hired and requiring that the faculty publish. *Id.* at 208.

23. Jerry, *supra* note 5, at 759.

24. WILLIAM L. TWINING, THE KARL LLEWELLYN PAPERS 111 (1968).

25. E.g., Arthur L. Corbin, *Foreword* to WESLEY NEWCOMB HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS: AS APPLIED IN JUDICIAL REASONING, at vii, vii-xv (Walter Wheeler Cook ed., 3d. prtg. 1964). Corbin was greatly influenced by Hohfeld’s conceptual approach to the law, and he convinced Williston to adopt it in the *Restatement of Contracts*. *Id.* at xii.

26. Corbin was responsible for persuading Cardozo to deliver the series of Storrs Lectures at Yale Law School that resulted in Cardozo’s classic book, *The Nature of the Judicial Process*. Arthur L. Corbin, *The Judicial Process Revisited: Introduction*, 71 YALE L.J. 195, 196-98 (1961).

27. SAMUEL WILLISTON, LIFE AND LAW: AN AUTOBIOGRAPHY 312 (1940).

28. WILLIAM TWINING, KARL LLEWELLYN AND THE REALIST MOVEMENT 26-40 (1973) [hereinafter TWINING, REALIST MOVEMENT].

29. GRANT GILMORE, THE DEATH OF CONTRACT 63-64 (R.K.L. Collins ed., rev. ed. 1995).

30. Shapiro, *The Most-Cited Legal Scholars*, *supra* note 9, at 424. Peter Linzer closes his popular Contracts anthology with a passage from Grant Gilmore celebrating Corbin’s ninetieth birthday. Professor Linzer introduces the passage by saying, “I know of no better way to close this book.” PETER LINZER, A CONTRACTS ANTHOLOGY 675 (2d ed. 1995). Corbin died on May 4, 1967, at the age of 92. Arthur L. Corbin, *Law Teacher*, 92, N.Y. TIMES, May 10, 1967, at 47.

### B. *The Detective Work*

The first person I contacted after my puzzling communiques from Shapiro and Kalman was Professor Joseph M. Perillo, the general editor of the revised edition of Corbin's landmark *Contracts* treatise<sup>31</sup> and the author of a 1993 article indicating that he had once tried to locate Corbin's handwritten revision of the first *Restatement of Contracts*.<sup>32</sup> Perillo e-mailed me that he had "not been able to locate a Corbin archive."<sup>33</sup> He then suggested that, if I "want to pursue the matter further," I contact "Prof[essor] Barbara Black at Columbia. She is working, I think, on biographies of Corbin and Williston."<sup>34</sup>

I followed Professor Perillo's advice, and on July 31, 2000,<sup>35</sup> Professor Black responded as follows: "I wish I did know where the Corbin papers are. I have some reason to think they were at Yale not all that many years ago, and my guess is that they've just been lost—or misplaced, anyway. Sorry I can't help."<sup>36</sup> Like Kalman's citation to Corbin's papers, Black's statement that she thought they were at Yale "not all that many years ago"<sup>37</sup> inspired me to keep digging.

I expanded my search to all the leading *Contracts* scholars I could think of—hoping that one of them might have stumbled across Corbin's papers at some point over the years. I sent the following general query to each of them:

I am on the faculty of Roger Williams University School of Law. I am currently working on a project that would benefit from a review of Arthur Corbin's papers. Yale does not have them. Do you know where they might be? Have you ever seen them—either in original or duplicate (e.g., microfilm) form—or portions of them? Do you have any suggestions for how I might locate them? Thank you very much for your kind attention to this matter.<sup>38</sup>

31. ARTHUR LINTON CORBIN, *CORBIN ON CONTRACTS* (Joseph M. Perillo ed., rev. ed. 1993).

32. Perillo, *supra* note 3, at 755-57.

33. E-mail from Joseph M. Perillo, Alpin J. Cameron Professor of Law, Fordham University School of Law, to Scott D. Gerber (July 25, 2000, 14:30:44 EDT) (on file with author).

34. *Id.*; see also E-mail from Catherine M.A. McCauliff, Professor of Law, Seton Hall University School of Law, to Scott D. Gerber (Sept. 22, 2000, 15:41:27 EDT) (on file with author) (offering a similar suggestion).

35. E-mail from Scott D. Gerber, to Barbara A. Black, George Welwood Murray Professor of Legal History, Columbia University School of Law (July 25, 2000, 15:20:58 EDT) (on file with author).

36. E-mail from Barbara A. Black, George Welwood Murray Professor of Legal History, Columbia University School of Law, to Scott D. Gerber (July 31, 2000, 12:50:29 EDT) (on file with author).

37. *Id.*

38. See E-mail from Scott D. Gerber, to Helen Hadjoyannakis Bender, Associate Professor of Law, Fordham University School of Law (Sept. 9, 2000, 12:29:52 EDT) (on file with author); E-mail from Scott D. Gerber, to Caroline N. Brown, Professor of Law, University of North Carolina School of Law (Sept. 9, 2000, 12:06:58 EDT) (on file with author); E-mail from Scott D. Gerber, to Steven J. Burton, William G. Hammond Professor of Law, University of Iowa College of Law (Sept. 9, 2000, 14:07:16 EDT) (on file with author); E-mail from Scott D. Gerber, to Richard Craswell, Associate Dean and Professor of Law, Stanford Law School (Sept. 9, 2000, 14:09:15 EDT) (on file with author); E-mail from Scott D. Gerber, to Lawrence A. Cunningham, Professor of Law, Yeshiva University, Benjamin N. Cardozo Law School and Director, The Samuel and Ronnie Heyman Center on Corporate Governance (Sept. 9, 2000, 12:11:16 EDT) (on file with author); E-mail from Scott D. Gerber, to E. Allan Farnsworth, Alfred McCormack Professor of Law, Columbia University School of Law (Sept. 9, 2000, 13:22:25 EDT) (on file with author); E-mail from Scott D. Gerber, to Robert W. Hamilton, Professor and Minerva House Drysdale Regents Chair in Law, The University of Texas School of Law (Sept. 9, 2000, 14:10:04 EDT) (on file with author); E-mail from Scott D. Gerber, to Stanley D.

Most of the professors responded. One of the more common replies was of surprise that Yale didn't have the papers. For example, Professor Stewart Macauley of the University of Wisconsin Law School, and one of the living legends of Contracts law—wrote: "I'm surprised Yale doesn't have them. Have you tried calling Blair Kaufman, Yale's Law Librarian, and asking for help[?]"<sup>39</sup>

Professor Macauley wasn't the only person who offered ideas about whom else I might try. In fact, most of the senior professors were kind enough—and interested enough in Corbin—to do so. The most common suggestion was to contact Joseph Perillo,<sup>40</sup> which I had already done. Some of the professors also recommended that I contact Corbin's descendants to see what they might know.<sup>41</sup> One even offered to contact the relatives of Soia Mentschikoff, Karl Llewellyn's wife on my behalf.<sup>42</sup> I was already in the process of doing these things before I queried the senior

Henderson, F.D.G. Ribble Professor of Law, University of Virginia School of Law (Sept. 9, 2000, 14:11:53 EDT) (on file with author); E-mail from Scott D. Gerber, to Robert A. Hillman, Edwin H. Woodruff Professor of Law, Cornell Law School (Sept. 9, 2000, 14:06:36 EDT) (on file with author); E-mail from Scott D. Gerber, to Eric Mills Holmes, Professor of Law, Appalachian School of Law (Sept. 9, 2000, 13:03:28 EDT) (on file with author); E-mail from Scott D. Gerber, to Arthur J. Jacobson, Max Freund Professor of Litigation and Advocacy, Yeshiva University, Benjamin N. Cardozo School of Law (Sept. 9, 2000, 13:08:47 EDT) (on file with author); E-mail from Scott D. Gerber, to Margaret N. Kniffin, Professor of Law, St. John's University School of Law (Sept. 9, 2000, 13:13:02 EDT) (on file with author); E-mail from Scott D. Gerber, to Peter Linzer, Law Foundation Professor, University of Houston Law Center (Sept. 9, 2000, 13:34:38 EDT) (on file with author); E-mail from Scott D. Gerber, to Stewart Macauley, Malcolm Pitman Sharp and Theodore W. Brazeau Professor of Law, University of Wisconsin Law School (Sept. 9, 2000, 09:36:28 EDT) (on file with author); E-mail from Scott D. Gerber, to Catherine M.A. McCauliff, Professor of Law, Seton Hall University School of Law (Sept. 9, 2000, 13:14:01 EDT) (on file with author); E-mail from Scott D. Gerber, to Alan S. Rau, Robert F. Windfohr and Anne Burnett Windfohr Professor in Oil, Gas and Mineral Law, University of Texas School of Law (Sept. 9, 2000, 14:11:00 EDT) (on file with author); E-mail from Scott D. Gerber, to Richard E. Speidel, Professor of Law, Northwestern University School of Law (Sept. 9, 2000, 14:04:35 EDT) (on file with author); E-mail from Scott D. Gerber, to Robert S. Summers, William G. McRoberts Research Professor in Administration of the Law, Cornell Law School (Sept. 9, 2000, 14:05:43 EDT) (on file with author); E-mail from Scott D. Gerber, to Douglas J. Whaley, James W. Shocknessy Professor of Law, The Ohio State University College of Law (Sept. 9, 2000, 14:13:08 EDT) (on file with author); E-mail from Scott D. Gerber, to William F. Young, James L. Dohr Professor Emeritus of Law and Special Lecturer, Columbia University School of Law (Sept. 9, 2000, 13:28:48 EDT) (on file with author).

39. E-mail from Stewart Macauley, Malcolm Pitman Sharp and Theodore W. Brazeau Professor of Law, University of Wisconsin Law School, to Scott D. Gerber (Sept. 10, 2000, 21:38:49 EDT) (on file with author); *see also* E-mail from Stanley D. Henderson, F.D.G. Ribble Professor of Law, University of Virginia School of Law, to Scott D. Gerber (Sept. 13, 2000, 10:29:51 EDT) (on file with author) ("I have no idea where Corbin's papers reside; I would have assumed they are at Yale."); E-mail from Arthur J. Jacobson, Max Freund Professor of Litigation and Advocacy, Yeshiva University, Benjamin N. Cardozo School of Law, to Scott D. Gerber (Sept. 10, 2000, 10:30:15 EDT) (on file with author) ("I'm very surprised Yale doesn't have them.").

40. E-mail from Caroline N. Brown, Professor of Law, University of North Carolina School of Law, to Scott D. Gerber (Sept. 13, 2000, 10:54:17 EDT) (on file with author); E-mail from E. Allan Farnsworth, Alfred McCormack Professor of Law, Columbia University School of Law, to Scott D. Gerber, (Sept. 11, 2000, 07:13:53 EDT) (on file with author); E-mail from Eric Mills Holmes, Professor of Law, Appalachian School of Law, to Scott D. Gerber (Sept. 20, 2000, 18:14:11 EDT) (on file with author); E-mail from Jacobson, *supra* note 39; E-mail from Peter Linzer, Law Foundation Professor, University of Houston Law Center, to Scott D. Gerber (Sept. 14, 2000, 03:13:59 EDT) (on file with author); E-mail from Richard E. Speidel, Beatrice Kuhn Professor of Law, Northwestern University School of Law, to Scott D. Gerber (Sept. 11, 2000, 08:23:11 EDT) (on file with author); E-mail from Douglas J. Whaley, James W. Shocknessy Professor of Law, The Ohio State University College of Law, to Scott D. Gerber (Sept. 9, 2000, 16:01:07 EDT) (on file with author).

41. E-mail from Jacobson, *supra* note 39; E-mail from Robert S. Summers, William G. McRoberts Research Professor in Administration of the Law, Cornell Law School, to Scott D. Gerber (Sept. 19, 2000, 15:26:15 EDT) (on file with author).

42. E-mail from Brown, *supra* note 40.

Contracts scholars,<sup>43</sup> but it was reassuring to know that my search appeared to have started out in the right direction.

The most important reply came from E. Allan Farnsworth. Professor Farnsworth is regarded as the leading Contracts scholar working today, and he also was the Reporter for the *Restatement (Second) of Contracts*.<sup>44</sup> He responded as follows to my query about whether he knew where Corbin's papers were:

'Fraid not. Joe Perillo would be the best person to try.

When I took over the Restatement Second from Braucher, he gave me some photocopies of the first Restatement with Corbin's notes. Most not very revealing (said what he had already written). I continued to cut the pages up and insert them in my working papers where relevant; later tossed out. To my surprise, when Joe tried to find them, the ALI could not provide the originals.

Good luck!<sup>45</sup>

Other scholars had a vastly different opinion about the value of Corbin's handwritten revisions to the *Restatement*.<sup>46</sup>

I also tried several leading legal historians. John Henry Schlegel was first on my list, given that he had written an excellent book on American Legal Realism that covered much of the period in which Corbin was at Yale.<sup>47</sup> On August 22, 2000, I asked Professor Schlegel my standard question: did he know where Corbin's papers might be?<sup>48</sup> He responded later that same day with the startling pronouncement that "Corbin's papers were burned by his son at his father's express direction. That is why you can't find anything. There are scraps in several places, but nothing sustained."<sup>49</sup> Provocative though it was, Professor Schlegel's response didn't make sense to me: Professor Kalman had *cited* to Corbin's papers in her 1986 book.<sup>50</sup> I, therefore kept looking.

The next historian I contacted was William Twining, the original director of the Karl Llewellyn Papers Project<sup>51</sup> and the author of *Karl Llewellyn and the Realist*

43. For example, I had requested copies of Corbin's testamentary documents from the Hamden Probate Court, in Hamden, Connecticut. Letter from Scott D. Gerber, to Hamden Probate Court, Connecticut Probate Court (Aug. 19, 2000) (on file with author).

44. RESTATEMENT (SECOND) OF CONTRACTS (1981).

45. E-mail from Farnsworth, *supra* note 40. *See also* E-mail from Linzer, *supra* note 40 ("No one knows what happened to Corbin's commentary on the First Restatement that he supposedly sent to the ALI in the early sixties.")

46. *See, e.g.*, E-mail from Macauley, *supra* note 39 ("The one item I know about that might interest you is Corbin's very detailed review of the first [*Restatement of Contracts*]. He produced this just before the [*Restatement (Second) of Contracts*] project started and gave it to Bob Braucher who was the original[] reporter. I assume that Braucher passed it along to Farnsworth when Braucher resigned to become a judge. Or the American Law Institute might have a copy.") (emphasis added). Professor Macauley was one of the advisors of the *Restatement (Second) of Contracts*. *See* RESTATEMENT (SECOND) OF CONTRACTS, *supra* note 44.

47. *See* JOHN HENRY SCHLEGEL, AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE (1995).

48. E-mail from Scott D. Gerber, to John Henry Schlegel, Professor of Law, Faculty of Law and Jurisprudence, State University of New York at Buffalo School of Law (Aug. 22, 2000, 11:45:13 EDT) (on file with author).

49. E-mail from John Henry Schlegel, Professor of Law, Faculty of Law and Jurisprudence, State University of New York at Buffalo School of Law, to Scott D. Gerber (Aug. 22, 2000, 21:26:58 EDT) (on file with author).

50. KALMAN, *supra* note 2.

51. *See* TWINING, *supra* note 24, at v.



*Movement*.<sup>52</sup> Corbin played a central role in Twining's work: not only did Twining argue that Corbin was Llewellyn's "father in the law,"<sup>53</sup> but also that Corbin was one of the fathers of American Legal Realism itself.<sup>54</sup> I therefore hoped that Professor Twining knew where Corbin's papers might be located.<sup>55</sup> Unfortunately, he did not.<sup>56</sup> He stated that because he had completed researching *Karl Llewellyn and the Realist Movement* before Corbin died, he "never saw any papers (other than material in the Karl Llewellyn papers now in Chicago)."<sup>57</sup> He suggested that I contact Neil Duxbury, Natalie Hull, and John Langbein, as well as Barbara Black, to see what they might know about the whereabouts of Corbin's papers.<sup>58</sup>

Unfortunately, Professors Duxbury, Hull, and Langbein had never run across Corbin's papers.<sup>59</sup> Professor Hull's e-mail was particularly revealing:

G-d! Wouldn't I like to get my hands on those papers myself. As far as I know (and I have tried to track them down) the family did not keep them or deposit them at any archive. Corbin's correspondence with Karl Llewellyn (both sides because Soia requested her husband's letters sent to her for the Llewellyn archive) are in the Karl Llewellyn papers at Chicago. There are some Corbin materials in the Angell Papers at Yale. I cite these materials in my book on Pound and Llewellyn. There are also some materials scattered through the ALI archives at Univ. Pennsylvania Law School (and possibly in the NCCUSL archives also at Penn). Finally, Corbin's correspondents should have a smattering of letters in their own archives.

Good luck and let me know what you find.<sup>60</sup>

I contacted a number of other individuals and institutions as well. The Library of Congress was one, albeit one that I knew was a long shot.<sup>61</sup> However, I thought it was worth a try. After all, many a famous figure in American law—for example,

52. TWINING, REALIST MOVEMENT, *supra* note 28.

53. TWINING, *supra* note 24, at 111.

54. TWINING, REALIST MOVEMENT, *supra* note 28, at 26-40.

55. E-mail from Scott D. Gerber, to William Twining, Research Professor, University College London (Aug. 16, 2000, 11:08:45) (on file with author).

56. E-mail from William Twining, Research Professor, University College London, to Scott D. Gerber (Aug. 30, 2000, 09:20:56 EDT) (on file with author).

57. *Id.*

58. *Id.*

59. E-mail from Neil Duxbury, Professor of Law, University of Manchester, to Scott D. Gerber (Oct. 3, 2000, 15:12:40 GMT) (on file with author); E-mail from N.E.H. Hull, Distinguished Professor of Law, Rutgers, The State University of New Jersey School of Law, Camden, to Scott D. Gerber (Sept. 18, 2000, 08:46:46 EDT) (on file with author); E-mail from John H. Langbein, Chancellor Kent Professor of Law and Legal History, Yale Law School, to Scott D. Gerber (Sept. 22, 2000, 14:23:52 EDT) (on file with author).

60. E-mail from Hull, *supra* note 59. Many scholars asked me to keep them posted on the status of my search. *See also* E-mail from Lawrence A. Cunningham, Professor of Law, Yeshiva University, Benjamin N. Cardozo School of Law and Director, The Samuel and Ronnie Heyman Center on Corporate Governance, to Scott D. Gerber (Sept. 10, 2000, 15:21:15 EDT) (on file with author) (asking to be kept informed).

61. E-mail from Scott D. Gerber, to Manuscript Reference Librarian, Library of Congress (Sept. 9, 2000, 14:30:24 EDT) (on file with author).

Thurgood Marshall—had donated their private papers to the Library of Congress.<sup>62</sup> Regrettably, Arthur Corbin wasn't one of them.<sup>63</sup>

Given both Corbin's leading role in the drafting of the *Restatement of Contracts*<sup>64</sup> and that several senior professors suggested I do so,<sup>65</sup> I also contacted the Biddle Law Library at the University of Pennsylvania—the official repository for the American Law Institute.<sup>66</sup> Biddle did have “two folders that contain Corbin correspondence on the subject of Contracts, much of it hand written[sic] and then transcribed by ALI secretaries.”<sup>67</sup> I requested and received copies of those materials: bits of Corbin's suggested revisions to the *Restatement*. However, the “Arthur Corbin Papers” collection itself remained a mystery.<sup>68</sup>

I also wrote to the University of Kansas (K.U.).<sup>69</sup> I did so for two reasons: (1) Corbin had attended undergraduate school at K.U. and (2) I had read a 1984 article in the *Kansas Law Review* that cited—there's that word again—a collection of Corbin's papers.<sup>70</sup> With respect to the first point, I speculated that perhaps Professor Corbin had donated his private papers to his undergraduate alma mater, rather than to his law school alma mater. I contacted the special collections department at the university's main library and asked.<sup>71</sup> My query was forwarded to Barry Bunch, an archivist at the University of Kansas.<sup>72</sup> Although Mr. Bunch reported that, unfortunately, K.U. doesn't “hold [Corbin's] papers,” he mentioned that the Archives did contain “some articles about him in our Graduate Magazine, and some scrapbook entries.”<sup>73</sup> I requested and received copies of these items. More importantly, my relationship with Mr. Bunch would prove indispensable in the

62. Papers of Thurgood Marshall, United States Supreme Court Justice (1949-1991) (on file with Manuscript Division, Library of Congress).

63. E-mail from Patrick Kerwin, Manuscript Reference Librarian, Manuscript Division, Library of Congress, to Scott D. Gerber (Sept. 26, 2000, 10:16:31 EDT) (on file with author).

64. Corbin served as the principal advisor to Samuel Williston, the reporter for the *Restatement of Contracts*. RESTATEMENT OF CONTRACTS (1932). In addition, he consulted closely with those charged with drafting the *Restatement (Second) of Contracts*. RESTATEMENT (SECOND) OF CONTRACTS, *supra* note 44.

65. *See, e.g.*, E-mail from N.E.H. Hull, *supra* note 59 (suggesting I contact the University of Pennsylvania Law School).

66. *See* AMERICAN LAW INSTITUTE, THE INSTITUTE ARCHIVES AND ALI MICROFICHE GUIDE, at <http://www.ali.org/ali/hein.htm> (last visited Oct. 31, 2001). Initial contact with the Biddle Law Library was kindly made on my behalf by Stephanie Edwards, a law librarian at Roger Williams University School of Law. Ms. Edwards is acquainted with several of the librarians at Biddle and knew whom to ask for assistance.

67. E-mail from Melissa S. Backes, Archivist, Biddle Law Library, University of Pennsylvania, to Stephanie W. Edwards, Librarian, Roger Williams University, Ralph R. Papitto School of Law (Aug. 9, 2000, 15:16:56 EDT) (on file with author).

68. *See* E-mail from Scott D. Gerber, to Melissa S. Backes, Archivist, Biddle Law Library, University of Pennsylvania (Aug. 21, 2000, 16:19:52 EDT) (on file with author); E-mail from Melissa S. Backes, Archivist, Biddle Law Library, University of Pennsylvania, to Scott D. Gerber (Aug. 22, 2000, 14:30:58 EDT) (on file with author).

69. E-mail from Scott D. Gerber, to Mary Ann Baker, Library Assistant, Special Collections, Kenneth Spencer Research Library, University of Kansas (Aug. 15, 2000, 15:10:22 EDT) (on file with author).

70. Jerry, *supra* note 5, at 753 n.\*.

71. E-mail from Gerber, *supra* note 69.

72. E-mail from Mary Ann Baker, Library Assistant, Special Collections, Kenneth Spencer Research Library, to Scott D. Gerber and Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas (Aug. 15, 2000, 15:08:58 CST) (on file with author).

73. E-mail from Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas, to Scott D. Gerber (Aug. 15, 2000, 15:36:37 CST) (on file with author).

second Kansas connection: the one presented by the 1984 article in the *Kansas Law Review*.<sup>74</sup>

Footnote \* of the article, entitled, “Arthur L. Corbin: His Kansas Connection,” states: “Unless otherwise noted, all correspondence is on file with the University of Kansas Alumni Association.”<sup>75</sup> I therefore e-mailed the K.U. Alumni Association about the status of that material.<sup>76</sup> I received the following reply: “We have a record of Arthur Corbin graduating from K.U. in 1984. We do not have any additional biographical information on file. Sorry.”<sup>77</sup> The erroneous graduation date aside—it was plainly typographical error—the response troubled me. I followed-up with a telephone call. What I learned during the course of that conversation troubled me even more. Not only was I again told that the Alumni Association “does not have anything on him—that we do not even have a file on him,” it was also suggested to me that “maybe [Corbin] went to K-State.”<sup>78</sup>

My next step was to try to reach the author of the 1984 article,<sup>79</sup> Robert H. Jerry, II. When he wrote the article, Professor Jerry was identified as an associate professor of law at the University of Kansas.<sup>80</sup> However, the law school’s website no longer listed him as a member of the faculty.<sup>81</sup> I therefore contacted the Dean of the University of Kansas School of Law for help.<sup>82</sup> He informed me that Professor Jerry was now the Floyd Gibson Distinguished Professor of Law at the University of Missouri-Columbia School of Law.<sup>83</sup> I then e-mailed Professor Jerry.<sup>84</sup> He wasted no time in responding. He wrote:

Wow. Thanks for letting me know about your interest in this old essay. I’ll interlineate responses below. If you work something up on Corbin, I’d be interested in reading it. . . .

. . . .  
I remember getting a file from the Alumni Association, which is located in the Adams Center . . . . It appears that Corbin in his later years liked to write letters to lots of people, and the alumni association had a file on him. I’m surprised they can’t find it. . . .

. . . .  
I would have left the file with the[m].

. . . .  
There are a couple of other things you might want to track down. . . .

74. See Jerry, *supra* note 5.

75. *Id.* at 753 n.\*.

76. E-mail from Scott D. Gerber, to the Kansas Alumni Association (Sept. 1, 2000, 19:26:42 EDT) (on file with author).

77. E-mail from Melissa Sutton, Kansas Alumni Association, to Scott D. Gerber (Sept. 5, 2000, 13:02:04 EDT) (on file with author).

78. Telephone conversation with the Record’s Office of the Kansas Alumni Association (Sept. 6, 2000) (notes of the conversation on file with author).

79. See Jerry, *supra* note 5.

80. *Id.* at 753 n.\*.

81. See University of Kansas Faculty of the Law School, at [http://www.law.ukans.edu/fac\\_name\\_list.htm](http://www.law.ukans.edu/fac_name_list.htm) (last visited Oct. 31, 2001).

82. E-mail from Scott D. Gerber, to Stephen R. McAllister, Dean and Professor of Law, University of Kansas School of Law (Sept. 6, 2000, 15:47:49 EDT) (on file with author).

83. E-mail from Stephen R. McAllister, Dean and Professor of Law, University of Kansas School of Law, to Scott D. Gerber (Sept. 6, 2000, 16:00:36 EDT) (on file with author).

84. E-mail from Scott D. Gerber, to Robert H. Jerry, II, Floyd Gibson Distinguished Professor, University of Missouri-Columbia School of Law (Sept. 6, 2000, 17:55:00 EDT) (on file with author).

. . . [A]fter I became dean at KU in 1989, I came across a file in the dean's office containing correspondence between Corbin and my predecessors, particularly Fred Moreau, who was the KU dean for many years. I had not seen this when I wrote my first essay, and there was a time when I thought there might be enough stuff in the newly-discovered file to write "Arthur Corbin II." Steve McAllister is the new dean at KU, and his administrative assistant Sandy Patti could no doubt put her hands on the file very quickly.<sup>85</sup>

I thanked Professor Jerry for his suggestions. I mentioned my encounters with the K.U. Alumni Association: "I'm not optimistic the KU Alumni Office will be of much help. At one point one of the people who works in the records office there said that maybe Corbin went to K-State. . . . No wonder archival research is so difficult."<sup>86</sup>

I nevertheless decided that what Professor Jerry had said in his e-mail—that he "remember[s] getting a file from the Alumni Association" and that he would have left the file with the[m]"<sup>87</sup>—made it worth trying the K.U. Alumni Association again. I even attached the relevant portion of Professor Jerry's e-mail to my new query.<sup>88</sup> The reply I received was quick and to the point. The K.U. Alumni Association wrote: "We have checked and double checked our Biographical files and have no records for Mr. Arthur Corbin. Sorry we cannot help."<sup>89</sup> Fortunately for me, archivist Barry Bunch worked at K.U. Given how helpful Mr. Bunch had been with respect to my initial query, I decided to ask if he might be able to help me solve the mystery of the missing K.U. alumni files.<sup>90</sup>

Like the conscientious archivist he is, Mr. Bunch immediately started doing some digging of his own.<sup>91</sup> I followed-up with a quick note mentioning that "I'm especially interested in seeing a May 20, 1965, letter from Corbin to Dick Winternote that describes a 1959 fire that destroyed Corbin's home in Connecticut. The letter is cited in footnote 32 of the 1984 Kansas Law Review article in

85. E-mail from Robert H. Jerry, II, Floyd Gibson Distinguished Professor, University of Missouri-Columbia School of Law, to Scott D. Gerber (Sept. 6, 2000, 16:32:47 EDT) (on file with author).

86. E-mail from Scott D. Gerber, to Robert H. Jerry, II, Floyd Gibson Distinguished Professor of Law, University of Missouri-Columbia School of Law (Sept. 7, 2000, 09:18:00 EDT) (on file with author).

87. E-mail from Jerry, *supra* note 85.

88. E-mail from Scott D. Gerber, to Melissa Sutton, Kansas Alumni Association (Sept. 7, 2000, 09:28:18 EDT) (on file with author).

89. E-mail from Melissa Sutton, Kansas Alumni Association, to Scott D. Gerber (Sept. 7, 2000, 10:27:23 EDT) (on file with author).

90. E-mail from Scott D. Gerber, to Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas (Sept. 6, 2000, 15:17:00 EDT) (on file with author).

91. E-mail from Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas, to Scott D. Gerber (Sept. 8, 2000, 11:57:44 EDT) (on file with author). I was so impressed with Mr. Bunch's professionalism throughout this process that I wrote his boss, the University of Kansas Archivist, to commend him. E-mail from Scott D. Gerber, to Sheryl K. Williams, University Archivist and Curator of the Kansas Collection, University Archives, Kenneth Spencer Research Library, University of Kansas (Sept. 18, 2000, 12:26:43 EDT) (on file with author).

question.”<sup>92</sup> Early the next week I received some great news from Mr. Bunch. He wrote:

Success. The file is indeed at the Alumni Association, I just had to reach one of the old-timers who knew where it was hidden. I'll definitely get the May 20, 1965 letter copied for you. Anything else you think you'd like? I could have them photocopy all the correspondence if you think it would be useful. Just let me know.<sup>93</sup>

I expressed my gratitude—“Thanks, Barry!!”—and requested a photocopy of the entire file.<sup>94</sup>

Mr. Bunch's find was wonderful, obviously. However, the “Arthur Corbin Papers” collection was still unaccounted for. I wasn't quite finished asking Mr. Bunch for help though. I e-mailed him one more time to learn how he had managed to track down the missing file.<sup>95</sup> My objective here was to come up with an idea or two that I could eventually pass along to the folks at Yale.<sup>96</sup> Mr. Bunch's response was quite revealing, and it confirmed what I had suspected all along:

It's mostly a matter of me being around here long enough (23 years) that I know whose bell to ring when something needs to get done. That, and a little detective work. That kind of institutional memory doesn't seem to be valued as much as it once was, but it's great when it works!<sup>97</sup>

A few weeks later I received another e-mail from Mr. Bunch.<sup>98</sup> This particular message confirmed both his own diligence and the sloppy manner with which valuable archival materials are too often handled. He wrote:

Well, I guess I'm on a roll of sorts. I've found the other file that Dean Jerry had told you about, and that you've been checking on with the Law School. Several years ago an intermediary from the Law School gathered up a box of material “for the Archives,” and wanted to incorporate it herself into the collection here. In

92. E-mail from Scott D. Gerber, to Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas (Sept. 8, 2000, 14:24:16 EDT) (on file with author).

93. E-mail from Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas, to Scott D. Gerber (Sept. 11, 2000, 15:21:50 EDT) (on file with author).

94. E-mail from Scott D. Gerber, to Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas (Sept. 11, 2000, 17:35:59 EDT) (on file with author).

95. E-mail from Scott D. Gerber, to Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas (Sept. 14, 2000, 14:48:00 EDT) (on file with author).

96. *Id.*

97. E-mail from Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas, to Scott D. Gerber (Sept. 14, 2000, 16:10:22 EDT) (on file with author).

98. E-mail from Barry Bunch, Assistant Archivist, University Archives, Kenneth Spencer Research Library, University of Kansas, to Scott D. Gerber (Oct. 3, 2000, 10:27:39 EDT) (on file with author).

short, it didn't go through our usual processing, which meant it was physically here but the archivists didn't know it. This is not how such things should be done. In any event, I have it and will make copies for you. Look for a package early next week.<sup>99</sup>

I would eventually share my experiences with Mr. Bunch with Anthony Kronman, the Dean of Yale Law School, but I didn't want to bother Dean Kronman until I had exhausted all other possibilities.<sup>100</sup>

One of the other possibilities I explored was Morris Cohen, the Yale Law Librarian when Professor Kalman accessed the Corbin Papers.<sup>101</sup> I asked Professor Cohen my standard question—does he know where Corbin's papers are—as well as a couple of questions based on some of the responses I had received from others.<sup>102</sup> Professor Cohen's reply is worth quoting at length:

Sorry to be so slow in getting back to you on Corbin's papers. I don't think anyone now alive knows what happened to them. They were never turned over to the Yale Law Library. I investigat[ed] their whereabouts shortly after my appointment here in 1981 and never had any success despite contact with one of the grandchildren. That relative did give us the corrected galleys of one of the Supplements to the treatise (not the edition itself). Those galleys are available in the Rare Book Department of the Yale Law Library. . . .

I don't recall hearing Fred Konefsky's information about instructions by Corbin to destroy them—I don't believe I am the source of that report but it is possible, however, that I once heard a rumor to that effect and foolishly passed it on.

I don't know whether any of the relatives you list are still alive nor whether there are any other relatives. I gave up this search years before my retirement as Librarian in 1991.

. . . I think the mystery remains and if you ever discover more, please let me know.<sup>103</sup>

Next, I asked Eugene V. Rostow, the literary editor of Corbin's writings and a former dean of the Yale Law School.<sup>104</sup> This was the one possibility that Fred

99. *Id.*

100. See Letter from Scott D. Gerber, to Anthony Townsend Kronman, Dean and Edward J. Phelps Professor of Law, Yale Law School (Nov. 13, 2000) (on file with author).

101. Mr. Cohen was the Yale Law Librarian from 1981-91. See Yale Law School Faculty, at [http://www.law.yale.edu/yis/fac-member.jsp?f\\_id=14](http://www.law.yale.edu/yis/fac-member.jsp?f_id=14) (last visited Oct. 31, 2001).

102. E-mail from Scott D. Gerber, to Morris L. Cohen, Librarian Emeritus, Professor Emeritus of Law and Professional Lecturer in Law, Yale Law School (Aug. 24, 2000, 11:02:43 EDT) (on file with author).

103. E-mail from Morris L. Cohen, Librarian Emeritus, Professor Emeritus of Law and Professional Lecturer in Law, Yale Law School, to Scott D. Gerber (Sept. 1, 2000, 15:54:33 EDT) (on file with author). Andrew Kaufman had also contacted Professor Cohen about the Corbin Papers while researching for his biography on Benjamin Cardozo. See ANDREW L. KAUFMAN, *CARDOZO* 661 n.49 (1998) ("Corbin's correspondence, except for scattered items, has not been found, despite a diligent search. Letter from Professor Morris Cohen, Librarian, Yale Law School, to author, June 28, 1984, KCC."). See also E-mail from Andrew Kaufman, Charles Stebbins Fairchild Professor of Law, Harvard Law School, to Scott D. Gerber (Sept. 20, 2000, 10:05:15) (on file with author) (explaining that he had no more information about Corbin's papers than what he had written in his book).

104. Perillo, *supra* note 3, at 755 n.\*.

Shapiro had said he hadn't considered and which he encouraged me to try.<sup>105</sup> Dean Rostow's reply, written in longhand, was both succinct and heartfelt: "I wish you well on your important project—an article [about the] life of Arthur Corbin. I am shocked that his private papers have disappeared. They should be worth pursuing."<sup>106</sup>

The last person I contacted was Dean Anthony Kronman.<sup>107</sup> Obviously, I didn't want to trouble Dean Kronman unless I had to. I pretty much said as much in a November 13, 2000 letter summarizing the steps I had taken to try to locate Corbin's papers. In relevant part, I wrote:

Dear Dean Kronman:

. . . .  
I have been in contact with a number of people who I thought might know where Professor Corbin's papers are (e.g., Barbara Black, Morris Cohen, Allan Farnsworth, Laura Kalman, Andrew Kaufman, Joseph Perillo, Eugene Rostow, Fred Shapiro). Regrettably, no one seems to know where they are.

I also have spent time in the rare book room of the Yale Law School and in the manuscripts and archives department of your university's Sterling Memorial Library (I found one thin file in the latter location that had been misfiled), and I have checked with the Library of Congress. In addition, I have examined the collections of several scholars with whom Corbin had corresponded (e.g., the Lon Fuller Papers, the Karl Llewellyn Papers, the Samuel Williston Papers).

Do you have any thoughts on where Professor Corbin's papers might be? Have you ever seen them, or copies of them, collectively, or any of them, individually? Might they be in storage somewhere at Yale (Mr. Shapiro has been unable to locate them)?

You might be interested to know that the alumni association of the University of Kansas initially stated that it had no record of or file on Corbin. I was puzzled by this, given that Corbin went to undergraduate school at Kansas and that a former dean at the University of Kansas Law School had published an article in the *Kansas Law Review* citing [sic] letters Corbin had written to the Kansas alumni group. Fortunately, a conscientious archivist at the University of Kansas library located them. Might a similar search uncover Professor Corbin's Yale papers? Are there any other people or organizations whom I should contact?

105. E-mail from Shapiro (Aug. 7, 2000), *supra* note 13.

106. Letter from Rostow, *supra* note 3. I also wrote to Professor Jean Braucher to ascertain whether there might be Corbin materials in her father's papers at Harvard in addition to the letters Joseph Perillo had published. E-mail from Scott D. Gerber, to Jean Braucher, Roger Henderson Professor of Law, The University of Arizona, James E. Rogers College of Law (Aug. 7, 2000, 13:39:12 EDT) (on file with author). Like many Contracts scholars had done, Braucher said that she "thought that there are Corbin papers at Yale." E-mail from Jean Braucher, Roger Henderson Professor of Law, The University of Arizona, James E. Rogers College of Law, to Scott D. Gerber (Aug. 9, 2000, 22:25:32 EDT) (on file with author). Unfortunately, she added, Perillo had cited all the surviving correspondence between her father and Corbin. *Id.*

107. Letter from Gerber, *supra* note 100.

I would sincerely appreciate any assistance you might care to provide in locating Professor Corbin's lost papers. Thank you very much for your attention to this matter.<sup>108</sup>

Dean Kronman responded almost immediately. On November 17, 2000, he wrote:

Thanks very much for your letter regarding Arthur Corbin's papers. I shall make every effort to discover what we have here at Yale and will let you know as soon as I have something to report. If Fred Shapiro has been unable to locate Corbin's papers, however, I am doubtful that I will have better luck. Fred is extremely talented in such things and the fact that he's found no cache himself is an inauspicious sign. But I'll make a thorough search in any case.<sup>109</sup>

As of October 2001, I haven't heard anything more from Dean Kronman. Obviously, though, as my letter to the Dean suggests, the hard work of legal history is conducted in the cluttered rooms and dusty stacks of the nation's libraries.

A number of reference librarians had identified a cache of Corbin's letters in the Lon L. Fuller Papers at Harvard Law School.<sup>110</sup> In fact, that's the only collection of Corbin's letters that exist outside of Yale—at least according to the Archives and Manuscripts Control file of the Research Libraries Information Network (RLIN), the international bibliographic database of the Research Libraries Group.<sup>111</sup> Naturally, I made a trip to Harvard to examine the Fuller Papers.<sup>112</sup> I was glad I did. The letters that passed between Corbin and Fuller provide a fascinating glimpse into Corbin's practical approach to teaching Contracts (as opposed to Fuller's more jurisprudential approach). Sadly, though, there were only a few letters in the Corbin correspondence file in question.

I also scoured the Karl Llewellyn Papers, both in microfilm and, because only a fraction of the Llewellyn Papers have been transposed to that convenient format, in person.<sup>113</sup> The Llewellyn Papers contain a wealth of fascinating material from and about Corbin. However, *the* Corbin archive isn't in the collection.

Clearly, a trip to Yale was the critical step in my search for Professor Corbin's papers. It was also one of the first things I did. I spent August 10-11, 2000, in the rare book room of the Yale Law School and the Manuscripts and Archives Department of Yale's Sterling Memorial Library. I made some important discoveries. At Sterling, I stumbled across three letters—two written by Corbin and one written to Corbin—about Wesley Hohfeld, a friend and colleague from Corbin's early days at Yale and one of the most influential jurisprudential thinkers

108. *Id.*

109. Letter from Anthony Townsend Kronman, Dean and Edward J. Phelps Professor of Law, Yale Law School, to Scott D. Gerber (Nov. 17, 2000) (on file with author).

110. E-mail from Kerwin, *supra* note 63; Letter from William R. Massa, Jr., Public Services Archivist, Yale University Library, Manuscripts and Archives Division, to Scott D. Gerber (Aug. 4, 2000) (on file with author); E-mail from David Warrington, Librarian for Special Collections, Harvard Law School Library, to Scott D. Gerber (Nov. 13, 2000, 17:34:40 EDT) (on file with author).

111. E-mail from Kerwin, *supra* note 63; Letter from Massa, *supra* note 110; E-mail from Warrington, *supra* note 110.

112. I viewed the Fuller papers on October 13, 2000.

113. I viewed the originals at the University of Chicago Law Library from December 18-20, 2000. The fact that there are quite a number of Corbin's letters in the Llewellyn Papers illustrates the limitations of the RLIN system.



of the twentieth century.<sup>114</sup> The letters were filed in the Thomas W. Swan Papers, but they weren't described as relating to Corbin in the "finding aid" prepared by Yale Archivist William R. Massa, Jr.<sup>115</sup> Curiously, none of the letters was written by or to Swan, and none mentioned him in any way. To his credit, Mr. Massa did locate the transcript of a fascinating interview conducted by Burton Allan MacLean with Corbin on January 10, 1964, only three years before the legendary professor's death.<sup>116</sup>

I examined a number of interesting items in the rare book room of the Yale Law School.<sup>117</sup> Thanks to Morris Cohen's hard work, Corbin's grandchildren had donated the galley to the supplement to the revised edition of Corbin's famous Contracts treatise. The letter that accompanied the gift well captures the importance of Corbin's private papers (although not these particular papers, given that the corrections are almost exclusively of the typographical sort).<sup>118</sup> The letter reads:

Arthur Corbin (1874-1967) was for many years a highly respected professor of law at the Yale Law School. His work on the law of contracts was for many years and still is the standard text on the subject. *The corrections illustrate the development of the text during the process of revision and give a vivid picture of the author at work.* The proofs will be of research value to legal scholars and historians.<sup>119</sup>

Especially intriguing is Corbin's 1899 thesis from his student days at Yale Law School.<sup>120</sup> This particular document provides an early glimpse into Corbin's influential views on third-party beneficiaries. However, by far the most significant unpublished materials in the Yale rare book room are the five volumes of Corbin's Contracts casebook, first and second editions, annotated extensively in his own hand and from which he taught for many years. Indeed, Professor Corbin seemed to be speaking to posterity—and appreciating his own significance to the history of Contracts law—when he wrote in black ink at the bottom of the preface: "This edition [and this bound volume] was used by me for 12 years in Yale Law School, from Sept. 1921 to June 1933, 2d Ed. published April, 1933."<sup>121</sup>

The story of how Yale came to acquire the volumes adds to the mystery surrounding Corbin's papers. According to Harvey R. Hull, Yale Law School's

114. Corbin, *supra* note 25, at xii.

115. Letter from Massa, *supra* note 110 ("I reviewed folder 10 (see enclosed) finding aid for the Thomas Walter Swan Papers and did not find any Corbin correspondence"). Massa had previously located the Corbin correspondence about Hohfeld when N.E.H. Hull phrased her request as one "for any extant material on Hohfeld at Yale." N.E.H. HULL, ROSCOE POUND AND KARL LLEWELLYN: SEARCHING FOR AN AMERICAN JURISPRUDENCE 103 n.92 (1997).

116. Letter from Massa, *supra* note 110. MacLean was an undergraduate student at Yale at the time of the interview. It appears to have been a class project. Interview by MacLean, *supra* note 20.

117. Harvey R. Hull, the Rare Book Librarian at Yale Law School, was very helpful during my trip to Yale.

118. E-mail from Cohen, *supra* note 103 ("[N]o one has ever found [the corrected galley] very interesting.").

119. Gift of the Family of Arthur L. Corbin to the Yale Law School Library, Oct. 5, 1983 (unpublished acknowledgment, on file with Yale Law School Library) (emphasis added). The gift was made by Professor Corbin's grandchildren, Philip E. Corbin, Davis C. Corbin, and Mrs. Lee Corbin Snowcroft.

120. Arthur L. Corbin, *Actions on a Simple Contract by a Stranger to the Consideration Claiming as the Real Party in Interest* (1899) (unpublished L.L.B. thesis Yale Law School) (on file with Yale Law School Library). The thesis is handwritten.

121. ARTHUR L. CORBIN, CONTRACTS x (n.d.) (Corbin's personal copy).

Rare Book Librarian, the books came into the law school's possession in the late 1990s.<sup>122</sup> The law school was contacted in 1998 by Elm City Books, a local New Haven bookstore that had somehow managed to acquire the manuscripts.<sup>123</sup> The bookstore wouldn't tell law school officials how it got the books, but it was quite willing to sell them to the school.<sup>124</sup>

The owners of the now-defunct bookstore did tell me though.<sup>125</sup> Thanks to some splendid detective work by Emilie A. Benoit, Reference Librarian at Roger Williams University, Ralph R. Pappito School of Law—Emilie was for a time the Dr. Watson to my Sherlock Holmes—I learned that Elm City Books' e-mail address was still posted on the Internet.<sup>126</sup> The next step for me was to ask a couple of obvious questions: Where did the bookstore “[come] across these wonderful volumes (e.g., an estate sale, from his relatives?)” and “are there any other books or papers in existence?”<sup>127</sup>

Perhaps my luck was about to change. Not only did my e-mail to Elm City Books not bounce back as a dreaded “undeliverable message,” but it was answered the day I sent it. Chris Evans, the former owner of the bookstore wrote, “Thank you for your correspondence above. The Corbin material was purchased from the estate of Chester Kerr several years ago. I've no other papers related to Prof. Corbin. Thank you for your interest. Should related items become available I shall contact you.”<sup>128</sup>

The next question: Who the heck was Chester Kerr? A Lexis-Nexis computer search revealed that Kerr had been the longtime director of the Yale University Press.<sup>129</sup> But why did he have Corbin's valuable manuscripts and why did he let them be commingled with, and *sold* by, his estate?

The answers to those questions required me to try to track down *Kerr's* relatives (detective work takes many twists and turns, I was quickly learning). The published accounts of Mr. Kerr's death reported that he was living in a retirement community in New London, New Hampshire at the time.<sup>130</sup> I therefore wrote to the Merrimack County Probate Court to request a copy of his will and codicil.<sup>131</sup> My reason for wishing to examine those documents was to identify the executor of Kerr's estate. Alexander Kerr, one of Chester Kerr's sons, was listed as the executor and trustee of his father's estate.<sup>132</sup> Some further detective work would lead me to e-mail a senior partner of a Philadelphia law firm. In relevant part, I wrote:

122. Personal conversation with Harvey R. Hull, Rare Book Librarian, Yale Law School, via telephone (Aug. 10, 2000) (mentioning that I was the first person to examine the volumes).

123. *Id.*

124. *Id.*

125. See E-mail from Chris Evans, former owner of Elm City Bookstore, to Scott D. Gerber (Aug. 20, 2000, 12:58:49 EDT) (on file with author).

126. E-mail from Emilie A. Benoit, Reference Librarian, Roger Williams University, Ralph R. Pappito School of Law, to Scott D. Gerber (Aug. 18, 2000, 17:15:47 EDT) (on file with author).

127. E-mail from Scott D. Gerber, to Elm City Books (Aug. 20, 2000, 20:19:43 EDT) (on file with author).

128. E-mail from Evans, *supra* note 125.

129. See *Chester Kerr, editor emeritus of the Yale University Press, dies*, 28 YALE BULLETIN & CALENDAR, Sept. 6-13, 1999, at 5. Kerr was best known for “the Kerr report,” a 1948 analysis for the Association of American University Presses in which he maintained that America's universities must do more to ensure the success of their academic presses. *Chester Kerr, Leading Figure in Publishing*, CLEVELAND PLAIN DEALER, Aug. 30, 1999, at 7B.

130. *Kerr Dead at 86*, PUBLISHERS WEEKLY, Aug. 30, 1999, at 18.

131. Letter from Scott D. Gerber, to Merrimack County, New Hampshire Probate Court, Aug. 24, 2000 (on file with author). New London is in Merrimack County.

132. Chester Books Kerr, Last Will and Testament 7 (Jan. 27, 1997) (on file with Merrimack County Probate Court under file no. 1999-780).

Dear Mr. Kerr:

[I]’m currently writing a law review article about Arthur Corbin, the late great Contracts scholar at Yale Law School. During the course of my research I have discovered that Chester Kerr and Professor Corbin were acquaintances. Was Chester Kerr your father? If so, I was hoping you could clear up a couple of mysteries for me:

1. How did Mr. Chester Kerr acquire Professor Corbin’s personal teaching casebooks (first and second editions)? FYI, the casebooks are now housed in the rare book room of Yale Law School, and they are overflowing with Professor Corbin’s notes, etc. They are a wonderful resource for scholars; hence my interest in their lineage.

2. Do you know when Mr. Kerr acquired the casebooks?

3. The casebooks were purchased at Mr. Kerr’s estate sale by a New Haven area bookseller, Elm City Books, and then presented to Yale Law School. Why were the casebooks sold by Mr. Kerr’s estate?

4. Did Mr. Kerr have any other Corbin papers?<sup>133</sup>

As the following response makes clear, I had been lucky in locating the correct “Alexander Kerr,” but the underlying Ivy League mystery remained unsolved. At least for the moment it did. Mr. Kerr wrote:

Yes, Chester Kerr was my father. I have no idea how he obtained Professor Corbin’s casebooks. As you may know, my father was the head of the Yale University Press for more than 25 years, so I presume it was in that capacity. I am surprised he never mentioned the notebooks to me. I was not aware that the books had been bought by a book seller, and was not aware they were part of the inventory. When his books were appraised, all the “rare” books were listed on a separate schedule, and Professor Corbin’s casebooks were not part of the schedule. I would have taken them, I assure you. Also, they were not in his library at his house, so I do not know where they were stored. An estate liquidator came in at the end and liquidated everything, but I thought we had gone through the books. Your communication was the first I had heard of them. I am delighted they ultimately made their way to the rare book library. Sorry I can’t be of more help.<sup>134</sup>

As anyone who takes the time to visit the rare book room at Yale Law School will quickly discover, the Corbin teaching casebooks are a wonderful source of insight into Corbin’s thought. Unfortunately, Chester Kerr didn’t have the cache of Corbin’s papers.

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133. E-mail from Scott D. Gerber, to Alexander Kerr, Esq. (Sept. 7, 2000, 10:29:14 EDT) (on file with author).

134. E-mail from Alexander Kerr, Esq., to Scott D. Gerber (Sept. 11, 2000, 11:52:13 EDT) (on file with author).

What follows in Part III is an attempt to solve the mystery of what happened to Professor Corbin's papers by tying together the clues uncovered during the detective work described in Part II. However, like any good mystery story should permit, readers remain free to decide for themselves whether the detective has correctly solved the "case."

### III. THE SCENARIOS

In the opinion of this academic sleuth, there are five relatively plausible scenarios for explaining what might have happened to the papers of Arthur L. Corbin. I discuss the evidence for each—both pro and con—in turn. The order in which the scenarios are presented is from the most mundane to the most sensational.

#### A. *Yale Never Received Corbin's Papers*

Perhaps Professor Corbin never had a collection of papers to donate to Yale. Perhaps he discarded the reams of paper—drafts of law review articles, revisions to his treatise, correspondence he sent to and received from other major figures in American law—when he finished with them. This scenario defies both common sense—Corbin clearly knew how important he was to the law—and the evidence itself. For example, Professor Corbin's penchant for preserving his papers is manifested by what *has* been recovered: the galleys to the supplement to the revised edition of his treatise and his personal teaching casebooks, and by at least one item that hasn't been preserved—the receipt from his student days as treasurer of the senior class at the University of Kansas that disappeared at the end of his long life.<sup>135</sup>

Of course, simply because Professor Corbin didn't throw out his papers as he went along doesn't mean that he donated them to Yale. This appears to be the position taken by the Yale librarians with whom I have corresponded.<sup>136</sup> The message from both the Yale Law Library and the Sterling Memorial Library has been consistent: Yale never acquired Corbin's papers.<sup>137</sup> An e-mail I received from librarian Diane E. Kaplan on October 12, 2000, concisely summarizes the message from New Haven:

I do appreciate Wilma Slaight's confidence in my sleuthing abilities, but after an extensive review of our holdings, I can only confirm what you were told when you visited Yale in August. We have nothing indicating that Manuscripts and Archives holds or ever held a collection of Arthur Corbin Papers. Though documents relating to him appear in various manuscript

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135. See Letter from Arthur L. Corbin, Professor Emeritus, Yale Law School, to Dick Winternote, Kansas Alumni Magazine (Dec. 14, 1964) (copy on file with author).

136. See E-mail from Cohen, *supra* note 103; E-mail from Shapiro (Aug. 7, 2000), *supra* note 13; E-mail from Shapiro (Aug. 5, 2000), *supra* note 13; E-mail from Shapiro, *supra* note 1.

137. E-mail from Diane E. Kaplan, Head of Reference Services, Yale University, to Scott D. Gerber (Oct. 12, 2000, 15:59:52 EDT) (on file with author). Wilma Slaight is the Archivist at Wellesley College. Stephanie Edwards, one of the librarians at Roger Williams University, thinks highly of Ms. Slaight's professional skills and kindly asked Slaight for her thoughts on what might have happened to Corbin's papers. Slaight indicated that I "had pursued the most effective avenues already," but suggested I touch base with Kaplan. Memorandum from Stephanie Edwards, Collection Services Librarian, Roger Williams University, Ralph R. Papitto School of Law, to Scott D. Gerber (Sept. 28, 2000) (on file with author).

collections and archival record units, we have nothing like what Laura Kalman cites in her notes, a collection of Corbin's personal papers. Kalman notes these as being in the Law School but as you have learned previously the staff there does not know to what the citation refers.<sup>138</sup>

Ms. Kaplan's e-mail itself identifies the most powerful evidence against Yale's position: Laura Kalman cites the "Arthur L. Corbin Papers, Yale Law School" in her 1986 book *Legal Realism at Yale, 1927-1960*.<sup>139</sup> Even Fred Shapiro, who has disclaimed any implied negligence by Yale librarians,<sup>140</sup> couldn't help but acknowledge the power of the Kalman evidence: "Perhaps the strongest indication that they existed at one time is the fact that Laura Kalman cites to Arthur Corbin papers in her book, and she is a careful scholar whose citations must be accepted at face value."<sup>141</sup> Indeed, Eugene Rostow, the literary editor of Corbin's writings, is "shocked" that Corbin's papers "have disappeared."<sup>142</sup>

There is also strong circumstantial evidence that Professor Corbin donated his private papers to Yale: the correspondence I have managed to locate makes clear how much he loved Yale.<sup>143</sup> Indeed, it's not that much of an overstatement to say that Corbin *was* Yale Law School for many years.<sup>144</sup> Then again, David Warrington, Special Collections Librarian at Harvard Law School, mentioned that the practice of "star" scholars donating their private papers to their home institutions upon retirement didn't become a common one until the 1970s<sup>145</sup>—shortly *after* Arthur Corbin died.

#### B. Yale Misplaced Corbin's Papers or Placed Them in Storage

Another scenario is that Professor Corbin's papers are piled in some dark and unknown location at Yale. Yale is a big place, and in recent years the majority of the law school's private papers have been transferred to the Manuscripts and Archives Department of the University's Sterling Memorial Library.<sup>146</sup> Several people with whom I have discussed my search, believe that this is what happened to Corbin's papers.<sup>147</sup> Barbara Black, who is currently working on a project involving both Corbin and Williston is one who does.<sup>148</sup> She wrote in response to

138. E-mail from Kaplan, *supra* note 137.

139. KALMAN, *supra* note 2.

140. E-mail from Shapiro (Aug. 7, 2000), *supra* note 13.

141. E-mail from Shapiro (Aug. 5, 2000), *supra* note 13.

142. Letter from Rostow, *supra* note 3.

143. See *supra* notes 110-21 and accompanying text.

144. A chapter in Twining's book *Karl Llewellyn and the Realist Movement* provides additional support for this observation, as do the tributes to Corbin that have appeared in the *Yale Law Journal* over the years. TWINING, REALIST MOVEMENT, *supra* note 28, at chap. 2 ("Corbin's Yale, 1897-1918"); 78 YALE L.J. 517, 517 (1969) ("This issue of the *Law Journal* is dedicated to the memory of Professor Corbin, for his immense contributions to the Yale Law School and to the study of law"); 76 YALE L.J. 875 (1967) (remembering Corbin upon his death); 74 YALE L.J. 207 (1964) (honoring Corbin's ninetieth birthday).

145. E-mail from Warrington, *supra* note 110.

146. E-mail from Bonnie Collier, Associate Librarian for Administration, Yale Law School, to Scott D. Gerber (Feb. 21, 2001, 13:38:38 EDT) (on file with author).

147. See *supra* Part II.

148. E-mail from Black, *supra* note 36.

a query from me: "I have some reason to think they were at Yale not all that many years ago, and my guess is that they've just been lost—or misplaced, anyway."<sup>149</sup>

Mr. Shapiro rejects this scenario, at least the part about the papers being in storage at the law school.<sup>150</sup> He responded as follows when I raised the possibility with him—a possibility that was suggested to me by Nancy F. Lyon, an archivist at Yale's Sterling Memorial Library:<sup>151</sup> "The Corbin papers are nowhere to be found at the Law Library nor even among the faculty papers (really the contents of old filing cabinets). I have seen a list of such faculty papers, and Corbin's name is not mentioned."<sup>152</sup>

However, it's worth noting that the Records Department of the K.U. Alumni Association has issued a similar reply when I asked whether Corbin's letters to that group might be in storage there or misfiled.<sup>153</sup> Melissa Sutton of that office wrote: "We have checked and double checked our Biographical files and have no records for Mr. Arthur Corbin. Sorry, we cannot help."<sup>154</sup> It was only after Barry Bunch of K.U.'s Spencer Library touched base with some "old-timers" with an institutional memory that the file in question turned up.<sup>155</sup>

David Warrington of the Special Collections Department of Harvard Law School informed me that filing errors are "very rare" for "archives/manuscripts repositories."<sup>156</sup> However, K.U. wasn't the only major institution that had misfiled materials relating to Corbin. Indeed, Harvard itself had done so: Corbin was catalogued as "Alexander" Corbin in the Papers of Samuel Williston<sup>157</sup> which explains why an RLIN search hadn't identified any records for "Arthur" Corbin in the Williston Papers (which had raised a red flag in my mind and caused me to search manually through those papers). Perhaps, most importantly, *Yale* misfiled at least a small portion of the Corbin Papers I have been able to locate.<sup>158</sup> Those particular papers are located in a file marked "re: Wesley Hohfeld" in the Thomas Swan Papers.<sup>159</sup> The file contains three letters, each of which was to or from Corbin—not Swan—and none of which even mentioned Swan.<sup>160</sup> Interestingly, the "finding aid" that accompanied Yale Public Services Archivist William R. Massa, Jr.'s letter in response to my query concerning Corbin's papers didn't mention that there were any Corbin materials in the Swan Papers.<sup>161</sup> However, when legal historian N.E.H. Hull had asked Yale "for any extant material on *Hohfeld* at Yale," the Manuscripts and Archives Division of the Yale University Library—through,

149. *Id.*

150. E-mail from Shapiro (Aug. 7, 2000), *supra* note 13.

151. E-mail from Scott D. Gerber, to Fred R. Shapiro, Associate Librarian for Public Services, Yale Law School (Aug. 7, 2000, 15:36:33 PDT) (on file with author).

152. E-mail from Shapiro (Aug. 7, 2000), *supra* note 13.

153. E-mail from Sutton, *supra* note 89.

154. *Id.*

155. E-mail from Bunch, *supra* note 97.

156. E-mail from Warrington, *supra* note 110.

157. Harvard Law Library, Table of Contents for the Papers of Samuel Williston 1-6 (on file with Harvard Law Library, Special Collections Department) (last visited Oct. 13, 2000).

158. Papers of Thomas W. Swan, Judge, United States District Court of Appeals for the Second Circuit and Dean Emeritus, Yale Law School (on file with Yale Law Library, Manuscript and Archives Division) (last visited Aug. 10-11, 2000).

159. *Id.*

160. *Id.*

161. Letter from Massa, *supra* note 110.

coincidentally, said same William Massa—was able to locate at least one of the very same letters from Corbin about Hohfeld.<sup>162</sup>

The handling and storage of private papers and manuscripts is plainly not an exact science. The treatment of Corbin's ALI materials suggests that K.U., Harvard, and Yale are not alone in their imperfect treatment of private papers—including those relating to Corbin. Melissa Silverman Backes, Archivist at the Biddle Law Library of the University of Pennsylvania, made the point well:

I assume that the Corbin correspondence has been in the ALI files since whenever it was dated. The ALI staff maintained their own files in various states of disarray until 1994, when all files were transferred to the Biddle Law Library. I know that over the years scholars attempted to do research in the ALI basement but don't know if any were successful. Since I have organized the files and created a finding aid (available on our web page) dozens of scholars have done research here, some in the area of Contracts.<sup>163</sup>

It was the possibility that Yale's Corbin materials were in "various states of disarray" that led me to write Dean Kronman for help.<sup>164</sup> If anyone could get to the bottom of what's happening at Yale, I figured it would be Dean Kronman. However, I still haven't heard back from the Dean.

### C. *Karl Llewellyn Lost Corbin's Papers*

The strangest explanation for what might have happened to Corbin's papers is that Karl Llewellyn lost them. This scenario—which I believe at any rate, isn't simply another exercise in "blaming the dead guy"<sup>165</sup>—occurred to me after I had spent a considerable amount of time pouring through Llewellyn's own papers.<sup>166</sup>

In addition to being one of the most important figures in the history of American law—a giant of legal realism, the lead reporter for the Uniform Commercial Code—Karl Llewellyn was also the "son" of Arthur Corbin: not in the biological sense of the word, but certainly in terms of intellectual influence and pedigree.<sup>167</sup> Indeed, Llewellyn's many notes and letters to Corbin almost always began with the salutation "Dear Dad," while Corbin's letters to Llewellyn almost

162. HULL, *supra* note 115, at 103 n.92 (emphasis added). Professor Hull mentions a second Corbin item in footnote 92 of his book. *Id.* That particular item is said to be located in the Arthur Hadley Papers. *Id.* I wasn't referred to it, either.

163. E-mail from Backes, *supra* note 68.

164. Letter from Gerber, *supra* note 100.

165. The most famous case of "blaming the dead guy" in recent history is probably the Reagan Administration's attempt to blame William Casey for the Iran-Contra scandal. *See generally* BOB WOODWARD, VEIL: THE SECRET WARS OF THE CIA 1981-1987 (1987) (discussing Casey's role in the Iran-Contra scandal and how the Reagan Administration blamed Casey for the scandal after his death).

166. *See supra* note 113 and accompanying text.

167. *See* Letter from Arthur L. Corbin, Professor Emeritus, Yale Law School, to Karl N. Llewellyn, Professor of Law, Columbia University School of Law (July, 29, 1943) (available in Papers of Karl N. Llewellyn, Professor Emeritus, University of Chicago Law School (on file with D'Angelo Law Library, University of Chicago) (last visited Dec. 18-20, 2001)). *See generally* TWING, REALIST MOVEMENT, *supra* note 28 (discussing Llewellyn's contributions to the Realist Movement and the Uniform Commercial Code).

always closed in a similar fashion.<sup>168</sup> For example, Llewellyn inscribed a gift-copy of his classic book *The Bramble Bush*: “To Dad Corbin, these grandchildren of his work, with deep affection, Karl.”<sup>169</sup>

Of course just because Corbin and Llewellyn were close doesn’t mean that Llewellyn ever had Corbin’s papers in his possession, let alone that he lost them. However, other evidence suggests that he did and that he might have. The strongest piece of evidence in support of this particular theory is the notation “Corbin” that exists in the top-right corner of each of the letters in the Corbin correspondence file of the Karl Llewellyn Papers at the University of Chicago,<sup>170</sup> and also, in what appears to be the same handwriting, in the letters to and from Corbin about Wesley Hohfeld that were misfiled in the Thomas Swan Papers at Yale.<sup>171</sup> Additional support for this theory, that Llewellyn once held Corbin’s papers and allowed them to be scattered, stems from two facts: (1) Llewellyn’s papers were themselves originally in a state of considerable disarray,<sup>172</sup> and (2) Corbin apparently sent Llewellyn at least some of his private papers (Corbin used the term “stuff”) and instructed his protégé “don’t return [them].”<sup>173</sup>

I asked William Twining if Llewellyn, perhaps to instruct his secretary where to file it, placed the “Corbin” notation in the corner of the Corbin correspondence.<sup>174</sup> Professor Twining replied that he didn’t know.<sup>175</sup> I also asked him whether Llewellyn once had possession of Corbin’s papers, and mentioned that this particular question was prompted both by the “Corbin” notation and the “stuff” Corbin said he was sending to Llewellyn.<sup>176</sup> Professor Twining answered, “Corbin died after KNL, so I doubt that his papers were ever with KNL, unless[s] he sent some special ones. I don’t know what the ‘mass of material’ refers to.”<sup>177</sup>

*Someone* had to have Professor Corbin’s papers though. After all, Dean Rostow is “shocked” they have “disappeared.”<sup>178</sup> But who?

168. KARL N. LLEWELLYN, *THE BRAMBLE BUSH: SOME LECTURES ON LAW AND ITS STUDY* (1930), Arthur L. Corbin’s personal copy kept on file with the Paskus-Danziger Rare Book Room, Yale Law School.

169. *Id.*

170. *See supra* note 113 and accompanying text.

171. I viewed the originals at Yale University from August 10-11, 2000, while I searched the rare book room of the Yale Law School and the Manuscript and Archives Department of Yale’s Sterling Memorial Library.

172. TWINING, *supra* note 24, at 12. “The disorder was magnificent. Little pockets of order, occurring in periods like geological strata, remained as evidence of the efforts of valiant secretaries to introduce a system, but more often than not even these had been subverted by a poltergeist whose capacity for subtle misplacement amounted at times to genius.” *Id.*

173. Letter from Arthur L. Corbin, Professor Emeritus, Yale Law School, to Karl Llewellyn, Professor of Law, University of Chicago Law School, and Soia Mentschikoff, Professor of Law, University of Chicago Law School (Jan. 29, 1961) (available in Papers of Karl N. Llewellyn, Professor Emeritus, University of Chicago Law School (on file with D’Angelo Law Library, University of Chicago) (last visited Dec. 18-20, 2000)).

174. E-mail from Scott D. Gerber, to William L. Twining, Research Professor, University College London (Sept. 22, 2000, 11:55:20 EDT) (on file with author).

175. E-mail from William L. Twining, Research Professor, University College London, to Scott D. Gerber (Sept. 25, 2000, 05:49:33 EDT) (on file with author).

176. E-mail from Gerber, *supra* note 174.

177. E-mail from Twining, *supra* note 175.

178. Letter from Rostow, *supra* note 3.



*D. An Unidentified Person or Institution Has Corbin's Papers*

Perhaps Corbin's heirs have their famous relative's private papers. Not as far as I have been able to ascertain. Indeed, Morris Cohen reports that Corbin's grandchildren—Phillip E. Corbin, Davis C. Corbin, and Mrs. Lee Corbin Snowcraft—donated to Yale Law School the only item they had in their possession: the hand-corrected page proofs to the supplements to the revised edition of Corbin's famous Contracts treatise.<sup>179</sup>

Another possibility that I investigated early on in my search was that Corbin donated his papers to his undergraduate alma mater, the University of Kansas. It's not unusual for a famous alumnus to bequeath his private papers to a beloved undergraduate institution, and Corbin certainly was fond of K.U. In fact, he wrote his last article for the *Kansas Law Review*.<sup>180</sup> The opening passage of that article is particularly telling:

In spite of a firm decision that my writing and speaking days were at an end, it is not possible for me to refuse the invitation of the editors of the *Kansas Law Review* to contribute to its pages. Long absence from my native state has never weakened the "ties that bind."<sup>181</sup>

According to Barry Bunch, K.U. doesn't have Corbin's papers.<sup>182</sup> As the prior discussion makes plain, if K.U. did have them, the diligent Mr. Bunch would almost certainly have found them.<sup>183</sup>

What about the Library of Congress? Many important people have donated their private papers to our nation's preeminent library. Patrick Kerwin, one of the Library's manuscript reference librarians, informed me that Corbin's papers aren't there.<sup>184</sup> Interestingly, Mr. Kerwin—like all of the reference librarians with whom I have corresponded—identified the Lon L. Fuller Papers as the only collection referencing any of Corbin's papers.<sup>185</sup>

Perhaps a private collector owns the papers. The fact that Elm City Books—and Chester Kerr before it—once had possession of Corbin's personal teaching casebooks makes that scenario a real one.<sup>186</sup> Unfortunately, neither Elm City Books nor Mr. Kerr's heirs claim to have any more of Corbin's papers.<sup>187</sup> An Internet search casts doubt on the private-collector scenario, although one of my eager students did uncover an Arthur Corbin Papers collection. Unfortunately, it was a different Arthur Corbin: a gay activist from Santa Cruz, California.<sup>188</sup>

179. E-mail from Cohen, *supra* note 103.

180. *Sixty-Eight Years at Law*, *supra* note 16, at 183.

181. *Id.*

182. E-mail from Bunch, *supra* note 73.

183. See *supra* notes 71-74, 90-100 and accompanying text.

184. E-mail from Kerwin, *supra* note 63.

185. *Id.*

186. See *supra* notes 122-34 and accompanying text.

187. E-mail from Evans, *supra* note 125; E-mail from Kerr, *supra* note 134.

188. *Gay, Lesbian, Bisexual, Transgender Historical Society of North California*, at [http://glhs.org/archmss/mss\\_c.htm](http://glhs.org/archmss/mss_c.htm) (last visited Oct. 31, 2001). Neville Bedford is the student who identified this collection.

*E. The Papers Were Burned*

Legal historian John Henry Schlegel, the author of a book legal realism that spanned Corbin's years at Yale,<sup>189</sup> offered a John Grisham-like scenario when I asked him if he knew where Corbin's papers might be.<sup>190</sup> Schlegel wrote, "Corbin's papers were burned by his son at his father's express direction. That is why you can't find anything."<sup>191</sup>

Professor Schlegel's response—one that hit me like a lightning bolt from the sky<sup>192</sup>—led to a series of follow-up questions from my end: "[1] How did you learn that Corbin wanted his papers burned? [2] Do you know why he wanted this done? [3] Do you know when it was done? [4] Did he request it in his will?"<sup>193</sup> With respect to the first question, Schlegel wrote: "[Alf]red [K]onefsky told me, if I remember correctly; [I] suspect he learned it from Morris [C]ohen, but I am not sure."<sup>194</sup> Professor Schlegel also said that, with respect to question 2, he didn't know why it was done, and as far as when it was done—questions 3 and 4—"my understanding is that it was before he died, but I may be wrong."<sup>195</sup>

I then contacted Professors Konefsky and Cohen to see what they might know about this latest theory about the disappearance of Corbin's papers.<sup>196</sup> Konefsky—Schlegel's longtime colleague at SUNY-Buffalo—replied:

Sorry I can't be of any assistance about Corbin's papers. I don't think Schlegel learned that information from me, since it's not a subject I've thought about or would know. Schlegel's memory is a wondrous thing. Happy hunting, though it might not be a bad idea to give Morris Cohen a call. He or someone else at Yale might know. Have you tried Laura Kalman?<sup>197</sup>

Professor Cohen likewise insisted that the statement about the papers being burned didn't come from him. He wrote: "I don't recall hearing Fred Konefsky's information about instructions by Corbin to destroy them—I don't believe that I am the source of that report but it is possible, however, that I once heard a rumor to that effect and foolishly passed it on."<sup>198</sup> Another mystery, I thought. I therefore set out,

189. SCHLEGEL, *supra* note 47.

190. E-mail from Gerber, *supra* note 48.

191. E-mail from Schlegel, *supra* note 49. Professor Schlegel also echoed the seemingly unanimous opinion about Corbin: "Would love to see what you have to say about Corbin; he is a fascinating topic." *Id.*

192. There is precedent for this sort of thing. For example, just prior to his death, Hugo Black instructed his oldest son to burn his Supreme Court papers. HOWARD BALL, HUGO L. BLACK: COLD STEEL WARRIOR 245 (1996).

193. E-mail from Scott D. Gerber, to John Henry Schlegel, Professor of Law, Faculty of Law and Jurisprudence, State University of New York at Buffalo School of Law (Aug. 23, 2000, 11:20:07 EDT) (on file with author).

194. E-mail from John Henry Schlegel, Professor of Law, Faculty of Law and Jurisprudence, State University of New York at Buffalo Law School, to Scott D. Gerber (Aug. 23, 2000, 10:00:52 EDT) (on file with author).

195. *Id.*

196. E-mail from Scott D. Gerber, to Alfred S. Konefsky, Professor of Law, State University of New York at Buffalo School of Law (Aug. 23, 2000, 14:02:17 EDT) (on file with author); E-mail from Gerber, *supra* note 102.

197. E-mail from Alfred S. Konefsky, Professor of Law, State University of New York at Buffalo School of Law, to Scott D. Gerber (Aug. 28, 2000, 13:38:34 EDT) (on file with author).

198. E-mail from Cohen, *supra* note 103.

with the kind assistance of Emilie Benoit, to learn as much as I could about whether Professor Corbin's papers were destroyed by fire.

Page 1 of the January 10, 1959 edition of the *New Haven Journal-Courier* attests to that fact. Corbin's house certainly was ravaged by fire. The headline blared: "Fire Destroys Interior of St. Ronan St. Home."<sup>199</sup> The story is accompanied by a photograph of Corbin's house engulfed in a cloud of smoke.<sup>200</sup> The fire started when Corbin's daughter-in-law was cleaning a coat on the porch with white, high octane gasoline.<sup>201</sup> The vapors of the gas ignited and spread so quickly "that the first firemen to reach the scene were initially unable to enter the building."<sup>202</sup> No one was injured, but the blaze "completely gutted the two and one-half story home."<sup>203</sup> The story closed by stating that "[i]n an ironic twist to yesterday's disaster, Fire Marshal Lyden said that he remembered reading Professor Corbin's textbooks when he was studying for a law degree at college."<sup>204</sup>

Unfortunately, the newspaper account doesn't state whether Corbin's private papers were in his home at the time of the blaze. And the local fire department doesn't keep records from that far back. Professor Jerry thinks that Corbin's papers very well might have been in the house at the time of the fire.<sup>205</sup> During my frustrating search for the letters Corbin had written to the K.U. Alumni Association, I had become particularly interested in locating a May 20, 1965 letter from Corbin to Dick Winternote of the Kansas Alumni Magazine. It was that letter that Professor Jerry had cited in footnote 32 of his article about Corbin's Kansas connection: a letter that purported to discuss the 1959 house fire.<sup>206</sup> Working from memory, Professor Jerry wrote in response to a query from me about the letter:

It's been a long time since I read the letter, but I seem to recall that it was a devastating fire, and I have a vague recollection of Corbin bemoaning the loss of photos and lots of family records. I think the chances are quite high that the bulk of Corbin's papers would have been lost in the fire, unless he kept most of them at some kind of office at Yale.<sup>207</sup>

When Barry Bunch was finally able to track down Corbin's letters to the K.U. Alumni Association,<sup>208</sup> I quickly discovered that Corbin didn't discuss the house fire in the May 20, 1965 letter to Winternote, as Professor Jerry had stated he had. However, Corbin did discuss the fire in a December 14, 1964 letter to Winternote.<sup>209</sup> Unfortunately, he did not say much about the fire,<sup>210</sup> so Professor

199. *Fire Destroys Interior of St. Ronan St. Home*, NEW HAVEN J.-COURIER, Jan. 10, 1959, at 1.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. See E-mail from Jerry, *supra* note 85.

206. Jerry, *supra* note 5, at 756 n.32.

207. E-mail from Jerry, *supra* note 85. See also Letter from Robert H. Jerry, II, Floyd Gibson Distinguished Professor of Law, University of Missouri-Columbia School of Law, to Scott D. Gerber (June 8, 2001) (on file with author) (explaining in more detail why he believes that Corbin's papers were destroyed in the house fire). Professor Jerry kindly included a copy of his own research file with his June 8 letter. See *infra* Appendix A.

208. See *supra* notes 90-97 and accompanying text.

209. Letter from Corbin, *supra* note 135.

210. *Id.*

Jerry must have heard reports from someone else—or perhaps he confused events like Professor Schlegel had done. All Corbin said about the fire was: “As treasurer of the class, I turned over receipts of some \$250, thereby starting the first Students Loan Fund in KU. I still held Chancellor Snow’s receipt for that amount until my house burned in 1959.”<sup>211</sup>

Additional proof that Corbin’s papers—at least the bulk of them—were destroyed in the house fire comes from Laura Kalman: the very person whose *citation* to the “Arthur Corbin Papers, Yale Law School”<sup>212</sup> in her 1986 book started me on this “long strange trip”<sup>213</sup> in the first place. When I asked Professor Kalman “*how many* pages, approximately” she saw during the course of her research,<sup>214</sup> she replied: “[I] don’t think the [ALC] papers would have been big. [I] vividly recall driving with my husband, then boyfriend, to [DC] to get the [H]arry [S]hulman papers, which filled a trunk, but the [C]orbin papers were under a box, [I] think!”<sup>215</sup>

Professor Kalman allegedly told Fred Shapiro the same thing. According to Mr. Shapiro, Kalman had said “that she had seen one small folder rather than any kind of extensive collection.”<sup>216</sup> Shapiro then asked me, “Did she say something different than this to you?”<sup>217</sup> In a sense, she did: while “under a box” is certainly less than an “extensive collection,” it also seems to be more than “one small folder.” In fact, Professor Kalman left a voice-mail for me in which she said that she had seen a small “chunk” of Corbin’s papers.<sup>218</sup> Moreover, the Corbin materials she cites in her book—“Corbin, Memorandum, 8 Feb. 1935, Box 121, Folder 1252, Angell Papers; Corbin to Charles (Seymour?/Clark?), 18 Jan. (1940?), Arthur Corbin Papers, Yale Law School”<sup>219</sup>—are not the ones to which the librarians at Yale directed me.

That said, the strongest evidence against the theory that Corbin’s papers were destroyed in the house fire are several letters Corbin wrote to Karl Llewellyn and Soia Mentschikoff. A December 1, 1960, letter appears to mark the first time Corbin had mentioned the fire to Llewellyn.<sup>220</sup> Corbin wrote: “Did you know my home was burnt, in January 1959?”<sup>221</sup> Corbin then commenced describing how the fire started, and most importantly for present purposes, the items that were destroyed: a long list that does *not* include the papers.<sup>222</sup> Indeed, elsewhere in the letter Corbin mentions his handwritten revision to the *Restatement of Contracts* for which Joseph Perillo had searched.<sup>223</sup> “I have the whole now, filing a large box,” Corbin wrote.<sup>224</sup> Llewellyn’s reply to Corbin’s letter also suggests that the papers

211. *Id.*

212. KALMAN, *supra* note 2.

213. THE GRATEFUL DEAD, *Truckin'*, on AMERICAN BEAUTY (Warner Brother Records, 1970).

214. E-mail from Scott D. Gerber, to Laura Kalman, Professor, History Department, University of California, Santa Barbara (Aug. 14, 2000, 10:18:22 EDT) (on file with author).

215. E-mail from Kalman (Aug. 14, 2000), *supra* note 12.

216. E-mail from Shapiro (Aug. 5, 2000), *supra* note 13.

217. *Id.*

218. Voicemail from Kalman, *supra* note 12.

219. KALMAN, *supra* note 2.

220. Letter from Arthur L. Corbin, Professor Emeritus, Yale Law School, to Karl N. Llewellyn, Professor of Law, University of Chicago Law School, and Soia Mentschikoff, Professor of Law, University of Chicago Law School (Dec. 1, 1960) (available in Papers of Karl N. Llewellyn, Professor Emeritus, University of Chicago Law School (on file with D’Angelo Law Library, University of Chicago) (last visited Dec. 18-20, 2000)).

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

weren't destroyed by the fire.<sup>225</sup> More specifically, Llewellyn responds directly to the list provided by Corbin and doesn't say a word about Corbin's scholarly papers.<sup>226</sup>

There's also a January 29, 1961 letter from Corbin to Llewellyn and Mentschikoff.<sup>227</sup> That's the letter in which Corbin mentioned he was sending Llewellyn some "stuff" for Llewellyn to keep for him.<sup>228</sup> Importantly, the "stuff [had] survived the fire."<sup>229</sup> A July 29, 1943 letter from Corbin to Llewellyn suggests that the "stuff" to which Corbin was referring was his scholarly manuscripts and papers.<sup>230</sup> The letter reads:

Dear Karl:

Here is my stuff. It has used some midnight oil. I am sure that these sections and my amendments need the clarifying and ripening discussions of our good committee. At any rate, I need them. Written suggestions do not weigh so much or get across without those discussions; and often they are convincingly eliminated by such discussions.

*However, you* are the one who is hard pressed; and I send you my sincere sympathy and affection.

Dad<sup>231</sup>

However, there is evidence from Corbin's own pen that the fire that gutted his house in 1959 also destroyed many of his private papers. In an October 3, 1965, letter to Soia Mentschikoff—a letter in response to Mentschikoff's efforts to track down *Llewellyn's* papers<sup>232</sup>—Corbin wrote that he was enclosing "4 of Karl's

225. Letter from Karl N. Llewellyn, Professor of Law, University of Chicago Law School, to Arthur L. Corbin, Professor Emeritus, Yale Law School (Dec. 13, 1960) (available in Papers of Karl N. Llewellyn, Professor Emeritus, University of Chicago Law School (on file with D'Angelo Law Library, University of Chicago) (last visited Dec. 18-20, 2000)).

226. *Id.*

227. Letter from Corbin, *supra* note 173.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.* (emphasis in original).

232. Mentschikoff was obviously more successful at tracking down her late-husband's papers than I have been in locating those of Professor Corbin. *See* Papers of Karl N. Llewellyn, the University of Chicago Law School (on file with D'Angelo Law Library, University of Chicago) (last visited Dec. 18-20, 2000). However, a perusal of the Llewellyn Papers suggests how deep the mystery really is: *Llewellyn* had tried unsuccessfully to track down *Cardozo's* papers (they, too, were said to have been burned!). Letter from Harry Shulman to Karl N. Llewellyn, Professor of Law, University of Chicago Law School (Jan. 27, 1960), Papers of Karl N. Llewellyn, Professor Emeritus, University of Chicago Law School (on file with D'Angelo Law Library, University of Chicago) (last visited Dec. 18-20, 2000):

Dear Karl:

Get a firm grip on the arms of your chair! Miss Newman of the Supreme Court Library has written concerning the Cardozo papers, after checking with Joe Rauh, Cardozo's last law clerk. Here it comes:

"... he says that the papers were left to the late Judge Lehman and he believed that they were destroyed by the Judge because they were *so exceedingly personal in nature*. This coincides with a notation in the MS Division of the Library of Congress, which says 'The main group of papers were destroyed by Judge Lehman.'"

The New York Court of Appeals library has nothing. Neither does the State Law Library. Cardozo's nephew, Mike, thought we had them. Herb Wechsler's understanding is the same as Joe Rauh's.

letters” that he had found since his return from his summer home in Maine.<sup>233</sup> “They were all received since the fire that destroyed my house in Jan. 1959. A few letters from various people that I received prior to the fire were saved; but I cannot find them.”<sup>234</sup> The letter goes on to add to the mystery, though: Corbin mentions a “full account” of Llewellyn that he had sent to “Gene Rostow to be typed for the Y.L.S. archives.”<sup>235</sup> That particular document wasn’t one of the Corbin materials to which I was referred by the Yale librarians.

Perhaps most important is a July 16, 1965, letter from Corbin to Mentschikoff in which Corbin states that his “letter files,” which “filled several filing boxes,” were *not* burned.<sup>236</sup> However, “only a portion of the letters were preserved”—they were to be moved with him to his new house in Hamden, Connecticut.<sup>237</sup>

#### IV. CONCLUSION

Even if some of Professor Corbin’s papers were destroyed by fire or discarded by him, what happened to the rest of them? What happened to the “portion” of his correspondence that was “preserved”? What happened to his draft manuscripts? We shouldn’t forget, for example, that his heavily-annotated teaching casebooks do survive.<sup>238</sup> Laura Kalman put it well when I asked her about the fire scenario. She wrote: “[I] don’t know anything about it, and [I]’m sure [I] saw at least a portion of them.”<sup>239</sup> Indeed, Professor Kalman was researching her book in the early-1980s well *after* the 1959 house fire. She saw *something*.

We shouldn’t forget about a couple of other clues, either. For one thing there’s the folder marked “re: Wesley Hohfeld” that contains letters to and from Corbin that somehow ended up in the Thomas Swan Papers at Yale’s Sterling Memorial Library, despite the fact that the letters don’t mention Swan and don’t appear to

I have not given up, of course, but it is clear enough that the papers *left to Columbia* were burned by that vigilant censor, Irving Lehman. Butler and Smith, I gather, wanted the matter handled at the “top level,” no coaching invited from the faculty or library staff. It was “handled” all right—the way Warwick handled Jeanne d’Arc.

“They were so exceedingly personal in nature.” I’ll be a son of a bitch!?!

*Id.*; see also Letter from Karl Llewellyn, Professor of Law, Columbia University School of Law, to Irving Lehman, Associate Judge, New York Court of Appeals (Dec. 13, 1938); Letter from Irving Lehman, Associate Judge, New York Court of Appeals, to Karl Llewellyn, Professor of Law, Columbia University School of Law (Dec. 19, 1938); Letter from Adah Marks to Henry Root Stern, Esq. (Nov. 30, 1939) (copy to Llewellyn); Letter from Frank D. Fackenthal, Provost, Columbia University, to Karl Llewellyn, Professor of Law, Columbia University School of Law (Apr. 30, 1940). All correspondence available in Papers of Karl N. Llewellyn, Professor Emeritus, University of Chicago Law School (on file with D’Angelo Law Library, University of Chicago) (last visited Dec. 18-20, 2000).

233. Letter from Arthur L. Corbin, Professor Emeritus, Yale Law School, to Soia Mentschikoff, Professor of Law, University of Chicago Law School (Oct. 3, 1965) (available in Papers of Karl N. Llewellyn, Professor Emeritus, University of Chicago Law School (on file with D’Angelo Law Library, University of Chicago) (last visited Dec. 18-20, 2000)).

234. *Id.*

235. *Id.*

236. Letter from Arthur L. Corbin, Professor Emeritus, Yale Law School, to Soia Mentschikoff, Professor of Law, University of Chicago Law School (July 16, 1965) (available in Papers of Karl N. Llewellyn, Professor Emeritus, University of Chicago Law School (on file with D’Angelo Law Library, University of Chicago) (last visited Dec. 18-20, 2000)).

237. *Id.*

238. See *supra* notes 122-34 and accompanying text.

239. E-mail from Laura Kalman, Professor, History Department, University of California, Santa Barbara, to Scott D. Gerber (Sept. 2, 2000, 03:15:06 PDT) (on file with author).

have anything to do with him.<sup>240</sup> There's also the handwritten note that Corbin penned at the bottom of his teaching casebooks—"This edition [and this bound volume] was used by me for 12 years in Yale Law School, from Sept. 1921 to June 1933[,] 2d Ed. published April, 1933"<sup>241</sup>—which plainly shows that Corbin was writing to posterity and that he knew the value of his personal papers. *The casebooks still exist*, although they ended up in Yale's possession only recently and only by the most John Grisham-like of circumstances.<sup>242</sup>

There's also the fact that Eugene V. Rostow, the literary editor of Corbin's writings, expressed "shoc[k]" that Corbin's personal papers have "disappeared."<sup>243</sup> Certainly Dean Rostow would know if Corbin's papers were destroyed in a fire that made the front page of the New Haven newspaper.

The fact that Elm City Books, Chester Kerr's son, and Corbin's own grandchildren claim that they don't have any more of Corbin's materials than the items they released to Yale strongly suggests, at least to me, that *if* anyone has the papers, it's Yale.<sup>244</sup> So do the facts that the Library of Congress and K.U. don't have them. For me, the most likely answer to this Ivy League mystery is that the papers have been misplaced or placed in storage somewhere at Yale.<sup>245</sup> Not only is this scenario the one that's most consistent with common sense—and if Sherlock Holmes taught us anything, it's the value of common sense—it's also the one that's most consistent with the evidence that does exist: that private papers are often misfiled (for example, Corbin's correspondence with the K.U. Alumni Association), mis-indexed (for example, the reference to Arthur Corbin as "Alexander" Corbin in the Papers of Samuel Williston at Harvard Law School, the disarray at the American Law Institute, and Yale's own handling of Corbin's letters about Hohfeld), or stored in a corner somewhere.

With respect to this last point, it's important to remember that the private papers that used to be housed at Yale Law School were transferred to Sterling Memorial Library not all that long ago. As anyone who has ever moved knows, things are often misplaced in the process. In fact, months after I thought my communications with the Yale Law School were over, I received an e-mail from one of the librarians there that stated: "I have recently learned that one of our faculty members may have one file folder of Corbin materials. I have no idea what it is, but will let you know when (and if) I get my hands on it."<sup>246</sup>

Perhaps that folder turned up through the institutional inquiry that Dean Kronman promised to make on my behalf. Let's hope the Dean's efforts bear even more fruit. If they don't, not only will the Ivy League mystery remain, but one of the cruelest ironies in the history of American law will be perpetuated: Arthur

240. Papers of Thomas W. Swan, *supra* note 158.

241. CORBIN, *supra* note 121.

242. See *supra* notes 122-34 and accompanying text.

243. Letter from Rostow, *supra* note 3.

244. The second most likely scenario, in my judgment, involves Chester Kerr. See *supra* notes 122-34 and accompanying text. Could the former-director of the Yale University Press have been doing something with Corbin's papers—such as preparing to publish them? Given that Mr. Kerr's son, Alexander, didn't know about the annotated casebooks that ended up at Elm City Books, and then back at Yale, he probably wouldn't have known about any other papers (as he says he doesn't). In short, Alexander Kerr was probably "trusting" whatever auction-house was conducting the inventory and handling the estate sale to pick out the valuable material. It's certainly possible that Professor Corbin's materials would have been overlooked in this process and simply discarded. Sadly, this happens a lot with old genealogical materials: people don't realize the historical value of them and throw them out.

245. Barbara Black appears to agree with this scenario. E-mail from Black, *supra* note 36.

246. E-mail from Collier, *supra* note 146.

Linton Corbin, *the* leading opponent of the parol evidence rule,<sup>247</sup> will have his own legacy judged solely by the “four corners” of his published work.<sup>248</sup>

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247. See, e.g., Arthur L. Corbin, *The Interpretation of Words and the Parol Evidence Rule*, 50 CORNELL L.Q. 161, 188-90 (1965) (evidencing his support of using extrinsic evidence in contract interpretation).

248. An e-mail that was forwarded to me on October 7, 2001, supports my conclusion that the answer to the mystery surrounding Professor Corbin’s papers is to be found at Yale. A Mr. Simon Stern wrote:

Dear Mr. Gerber,

I saw your article on the mystery surrounding the Arthur Corbin papers, and just wanted to mention that I have Corbin’s copy of the 2d tentative draft (March 19, 1941) of the ALI Code of Evidence. It has his signature on the front cover, but not other markings or marginalia. It turned up at [a] Yale law textbook sale some time last spring, which is where I bought it. I don’t think it sheds any light on the Corbin mystery—if anything it only compounds the mystery—but I thought you might be interested to hear about it.

Best,

Simon Stern

E-mail from Sandra McDonald to Scott D. Gerber, Visiting Assistant Professor of Law, Ohio Northern University, Claude W. Pettit College of Law (Oct. 7, 2001, 09:48:50 EDT) (on file with author) (forwarding an E-mail from Simon Stern, Law Student, Yale Law School, to Scott D. Gerber (Oct. 6, 2001, 22:31:50 EDT)).



## APPENDIX A

What follows is an annotated list of the Corbin materials I have been able to locate. The list is organized alphabetically.

1. Hamden, Connecticut Court of Probate
  - (a) Corbin's codicil and will and testament (6 pp.) (copy on file with author).
2. Harvard Law Library
  - (a) Lon Fuller Papers: correspondence between Corbin and Fuller about the possibility of Fuller taking over Corbin's Contracts casebook (27 pp.) (copy on file with author).
  - (b) Samuel Williston Papers: Corbin's suggestions for the *Restatement of Contracts* (9 pp.).
3. University of Chicago Law Library
  - (a) Karl Llewellyn Papers: letters to and from Corbin on a variety of subjects (119 pp.); Llewellyn's annotated copy of Corbin's Contracts casebooks (approx. 500 pp.); Miscellaneous manuscripts about Corbin (approx. 25 pp.) (copy on file with author).  
The letters are available on microfilm.
4. University of Kansas, University Archives, Kenneth Spencer Research Library
  - (a) Alumni Association file: letters from Corbin regarding University of Kansas Alumni Association Matters (9 pp.) (copy on file with author).
  - (b) Dean's Office file: letters to and from Corbin regarding Kansas Law School matters (63 pp.) (copy on file with author).
5. University of Missouri-Columbia School of Law
  - (a) Research file of Robert H. Jerry, II, Floyd Gibson Distinguished Professor of Law: letters from Corbin about growing up in Kansas, and about legal education, generally, and Kansas Law School, specifically. Professor Jerry's research materials for his article about Corbin's Kansas connection (117 pp.) (copy on file with author).
6. University of Pennsylvania, Biddle Law Library
  - (a) American Law Institute archives: Corbin's suggested revisions for the *Restatement (Second) of Contracts* and reaction to the suggestions (149 pp.) (copy on file with author).

7. Yale Law School Rare Book Room
  - (a) Anson's Principles of the Law of Contract, inscribed and annotated by Corbin (1919) (approx. 575 pp.).
  - (b) Corbin's LL.B. Thesis: "Actions on a Simple Contract by a Stranger to the Consideration Claiming as the Real Party in Interest" (1899) (24 pp.) (copy on file with author).
  - (c) Corbin's personal teaching copies of his Contracts casebook, annotated by the author, (1st ed. 1921) (approx. 1500 pp.) and (2d ed. 1933) (approx. 1300 pp.).
  - (d) Corbin's Teaching Materials for a Course on Legal Analysis (1919-1947) (approx. 100 pp.).
  - (e) Galley proofs with the author's holograph revisions of the revised edition of Corbin's Contracts treatise (1961-1963) (approx. 700 pp.).
8. Yale University, Sterling Memorial Library
  - (a) Thomas W. Swan Papers: letters to and from Corbin regarding Wesley Hohfeld (25 pp.) (copy on file with author).
  - (b) Miscellaneous manuscripts: transcript of interview of Corbin conducted by B.A. MacLean, Jr. (22 pp.) (copy on file with author).

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