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CRIV Tools

www.aallnet.org/main-menu/Advocacy/vendorrelations/CRIV-Tools

The CRIV Sheet

Editor's Corner

This is my last issue of *The CRIV Sheet* as editor. I want to thank Associate Editor David Hollander for his valuable assistance this year. I am confident he will do a great job as editor next year. I'd also like to express my gratitude to all of the librarians who have submitted articles during the past year. It has been enjoyable to read them all. Through my experiences with *The CRIV Sheet* and on the CRIV

Committee during the past three years, I've learned a great deal.

This issue contains an article by Pauline Afuso about what it's like to be a law librarian who works for a vendor. In addition, I hope you'll enjoy Lee Sims' article on Bloomberg Law's entry into the world of major legal publishers and David Hollander's discussion of how electronic access to academic journals can differ in law and university libraries.

Michelle Cosby North Carolina Central University School of Law Library

From the Chair

Welcome to the final *CRIV Sheet* for the 2012-2013 term! It has been an honor to serve as CRIV chair and to work with a group of amazing individuals. I would like to thank all of the 2012-2013 members of CRIV for their hard work, dedication to CRIV, and dedication to AALL.

CRIV has had several major accomplishments during this term. We finalized our improvements to the Vendor Relations pages available at www.aallnet.org/main-menu/Advocacy/vendorrelations. Additionally, CRIV also had a conference call with LexisNexis officials to discuss the implementation of eBooks. For information on Lexis's response, please visit crivblog.com/2013/02/07/lexisnexis-ebook-

response-posted-on-behalf-of-lexisnexis. As always, CRIV is here to assist you. If you are having trouble dealing with a vendor, please do not hesitate to contact us for help by filling out the Request for Assistance Form available at www.aallnet.org/main-menu/Advocacy/vendorrelations/request-assistance.html.

I would also like to invite you to the CRIV-organized program at this summer's Annual Meeting in Seattle, *Off the Page and Beyond the Book: New Models for Buying and Selling Legal Information*, on Monday, July 15 from 2:30 p.m.-3:45 p.m. We have several wonderful speakers lined up, and the program should be interesting and informative.

Pauline Afuso Washington County Law Library

A Law Librarian in Vendor's Clothing, or Things I Learned While Working for a Legal Publisher

When I first started to work at West, the question I got most from friends, family, and colleagues was, "But what do you do?" Fair question, because, when I first started, I wasn't really sure what I would do there either. What would a legal publisher need from a law librarian, especially a fairly new one just out of law school with only a few years of practical experience working in the field? Conversely, how would the experience of working for a legal publisher be beneficial to me as a law librarian? How would it affect me—would I still be a law librarian if I left? At the start of my time at West, I could not imagine how I would begin to answer these questions.

I started out working at West in a group called New Product Development. This group was responsible for creating new online products and was staffed mostly by people who originally worked in other areas of the organization. Coming from the Reference Attorneys, the Editorial Department, Documentation, Customer Service, and elsewhere in the company, the people in the group brought their collective experiences together to create new online legal research products. Among my colleagues there were a lot of lawyers, English majors, and even a few MBAs but very few librarians, so adding a librarian to the team brought a bit of unique expertise that was missing from the group.

It turns out that the skills that I learned as a librarian, such as organizing and classifying information, collection development, and performing reference interviews, are all skills one uses to maintain legal databases. And other skills I have, such as knowing how a patron will access information, how a patron determines whether information is relevant, and what the patron uses the information for once it is accessed, are all great things to understand if you want to create new features for an online database.

While in this group, I worked as a product manager, and it was there that I learned about the different types of managing. When I worked in law libraries, I worked with the people and materials in the library and essentially managed the library space. At West it was a little different because I didn't really manage people or spaces. Instead, I managed products and the processes required to get features online. For example, making a change, even a small one, on Westlaw is neither quick nor easy. The process for fixing something minor, such as correcting a typo or a broken link in a document, involved several departments and multiple layers of testing and scheduling. It was important to make sure that the fix for one problem did not cause another problem. The process for implementing a new feature or service was infinitely more complex and involved working with many groups of people who do not report to you and, actually, had several other products to work on as well. How do you persuade people to work to meet your deadline?

You do so by being organized, having thorough documentation, and having an open communication plan. If there were questions on a project, there was a clear chain of command of who could make decisions. All project steps were clearly documented, with all team members able to refer to meeting notes and specifications relating to the product. Regular meetings and copious email kept everyone on task, and celebrations of our hard work made everyone feel that they had a stake in getting the product out the door. Outside of the corporate world, I suspect that these product management strategies will work well for anyone who needs to get a project done on time and within budget. They certainly apply to libraries.

Although I worked with several good teams, there were not many librarians in my group. In spite of

the isolation of working in a corporate setting, I did not find it that hard to keep up with new issues that affected the rest of my colleagues. I was able to maintain a connection to the profession by volunteering with my local chapter, the Minnesota Association of Law Libraries (MALL), and with AALL. Luckily for me, MALL was, and remains, very supportive of all of its members. I found that being active in these professional organizations helped me forge some strong bonds with many local law librarians and kept me up to date with the changing profession. Similarly, volunteering for committees on AALL, attending the Annual Meeting, and participating in continuing education webinars also kept me informed and involved with the profession.

Staying connected was easy. Attending the conference was easy. Attending the conference and visiting the Exhibit Hall while wearing a badge that said I worked for a vendor was hard. Well, maybe not hard—more like *awkward*. This past summer I left my employment at West, and it was the first time in more than a decade that I was able to wander the hall, ask questions, and not feel that I was somehow spying for my employer. Frankly, being able to openly walk around the Exhibit Hall was very exciting. I can't wait to do it again.

Back when I started to work for West, when everyone was asking me, "But what do you do?" I really did not know what I was going to be doing, how long I would work there, how it would affect my career, or what I would do once I left. Today, I am firmly back in a traditional library again, so apparently my time with a vendor did not hamper my career or prevent me from returning to the world of law librarianship. And I am lucky because working at West/Thomson Reuters did give me some tangible skills and experiences that can be repurposed in the library world. With regard to practical skills, I now have substantive experience with project management and collaboration and very extensive knowledge of Westlaw.

Perhaps the better question at the start of my time at West would have been, "But what are you—a vendor or a librarian?" The answer is that throughout my time as a vendor, I remained a law librarian. Furthermore, wearing both hats enabled me to do both jobs more effectively.

Bloomberg Law and the Quest for Parity

When Pete Rozelle was the commissioner of the National Football League, he instituted a series of systemic changes that would insure parity among NFL teams. The ostensible reason for parity was to provide a level playing field for all of the teams. Parity between teams would promote the concept that on any given game day, any team could compete with any other team. Parity was especially important to expansion teams. Rozelle's key idea was that parity would inure to the benefit of the fans by bringing excitement to the game, even games with rookie teams. This idea has been adopted in one form or another by all of the major sports leagues. All of these systems are designed to level the playing field—to make competition between teams more real and more likely, all to the benefit of the fans.

When Bloomberg Law (known as BLaw) first came along, it was much like an NFL expansion team. BLaw sought to enter the league of major legal research systems. Competition was bound to be stiff. In fact, from the late 1970s to early 1980s, there had really only been two competitors: Westlaw and LexisNexis. The subject of this short article, then, is to review BLaw's attempt to gain parity with the major players in this league and to consider the questions academic law librarians have had about adopting it at their libraries.

To be sure, there have been other players over the past three decades. Loislaw, Fastcase, Casemaker and CasemakerX, VersusLaw, Law.com, and others have provided a lower-cost alternative for researchers. They have not, however, been in serious competition with the larger companies.

How was it that BLaw proposed to enter the major leagues of legal research systems? First, BLaw needed to determine what makes a major league player into a *real* major league player. Westlaw and LexisNexis had: (1) access to all of the primary law (cases, statutes, regulations, constitutions), (2) trusted secondary sources (treatises, law reviews, monographs, practice materials, encyclopedias, and much more) that would lead researchers to that primary law, (3) finding aids that tied those primary sources and secondary sources together (digests, indexes, and the like), (4) citators, (5) a system of current awareness sources (newsletters, electronic alerts, and more), and (6) the ability to easily, perhaps even effortlessly, move among all of these research assets. Clearly, mere access to primary law alone does not make any research system a major player in the top tier of legal research products.

So BLaw set out to make itself into a major player by looking at how Westlaw and Lexis operate and then implementing that approach. In addition, BLaw looked to highlight some features that would make it unique when compared with the others. BLaw, for example, decided to emphasize collaborative tools, its business background, and a “transparent” flat-fee pricing structure that included court dockets. But these alone were not going to be enough. They needed to acquire and offer access to reliable, trusted secondary materials. And so, in the fall of 2011, BLaw acquired BNA and added materials from the Practising Law Institute (PLI).

Consider these Bloomberg Law assets:

- Collaborative tools are now considered to be a pervasive feature in the law practice of the future. Millennials bring with them the desire to incorporate social networking in their lives. See, for example, “Millennials: A Portrait of Generation Next,” Pew Research Center, at www.pewresearch.org/millennials. As Millennials graduate from law school to become associates in law firms, they bring with them the desire to work in groups. BLaw has, of course, extended its appeal to Millennials in other ways. For example, it has sponsored the SCOTUS Blog, which, like all joint-author blogs, can only be considered a model of collaboration. Thus, BLaw has embraced the collaborative generation. In fairness, it is important to note that WestlawNext and Lexis Advantage, the latest iterations of those products, incorporate social networking features. Regardless, BLaw recognized that the future of social networking nonhierarchical collaboration is here now.
- Accessing court dockets has become an intriguing feature of modern law practice. Using briefs, memoranda, motions, and other pleadings is an excellent way to find relevant primary law, to sharpen issues, to discover a winning argument, and to see what's going on in a particular field. See, for example, the dockets section of Justia.com. The day of the court runner is almost over. Both Westlaw and LexisNexis have a way to access briefs and pleadings, but their docket databases are covered by a separate subscription. BLaw includes docket access as part of its basic commercial and academic packages.

The days of unattached secondary sources may seem—but only seem—to be at an end. During the past 30 years, both Westlaw and LexisNexis acquired the vast

majority of secondary source material, so BLaw was faced with a relative paucity of secondary source material that it could acquire. Thus, the BLaw acquisition of BNA and its continuing relationship with PLI should come as no surprise. Both resources were, at best, only semi-attached to Westlaw and LexisNexis.

But the real thrust of BLaw's attempt to be a major player is to be found in its flat-fee pricing structure and its attempt to gain parity with Westlaw and LexisNexis in the academic environment.

BLaw proposed a flat fee of \$450 per month (now \$475) for each member of a law firm that is using BLaw. That flat fee covers everything that BLaw has to offer, including dockets, primary law, and secondary law. Although questions have been raised as to how transparent the flat fee really is and how competitive the flat fee is when compared with the cost of Westlaw and LexisNexis, it is clear that the flat fee has played an important role in BLaw's attempt to compete with Westlaw and Lexis.

In its attempt to gain parity in law schools, BLaw proposes to provide full access to all of the BLaw material for free (except for BNA material) and significantly reduce the amount that law libraries pay for access to the BNA suite of resources. In return, BLaw asks that law libraries use "reasonable efforts" to treat BLaw the way that Westlaw and LexisNexis are treated: to be given equal time in research and writing database training programs, to be given the same contact information (class lists/faculty lists) that Westlaw and LexisNexis are provided, to be allowed to recruit student representatives, and to have lab access for the presentation of training sessions.

In short, BLaw is offering a financial carrot in return for a level playing field—it wants parity in vying for future customers.

BLaw's parity proposal raises three immediate questions that law libraries must address. In framing these questions and the discussion that follows, I conducted a search of the legal research blogosphere and a series of informal off-the-record interviews with a limited number of academic law librarians whose libraries had accepted the BLaw proposals.

1. Does it make financial sense?

The offer for free access to BLaw is probably most difficult to resist for law libraries with strapped budgets. Also, the reduced cost for BNA—as much as 35 percent in many cases—is similarly hard to resist. Free access is especially enticing when compared with the cost of Westlaw and LexisNexis. Also, the advantage of free access far outweighs the downside of offering a product that might not have as many

secondary sources available as Westlaw and LexisNexis, especially if the library intends to maintain its Westlaw and LexisNexis subscriptions. The fact is that by offering such a subscription rate, BLaw may very well force other vendors to consider repricing their products or offering additional services not currently covered as part of their overall subscription packages.

The answers I received to the question of whether accepting BLaw's proposal makes financial sense were pretty uniform: "easy," "a slam dunk," and even "a no brainer."

2. Are the terms of the offer reasonable?

When making its proposal, BLaw may not have considered the disconnect between the library, the law school, and the research and writing faculty. Some of the terms librarians used to describe the requirement that BLaw be treated with parity in the legal research program included "heavy-handed" and "coercive." One thought that this was an attempt by BLaw to "control the curriculum." But other librarians thought that these terms were completely reasonable. Regardless, in the end, I could find no librarian who did not accept the terms of the BLaw contract. Bloomberg Law reports that even though it is still in the process of reaching out to librarians, more than 155 academic law libraries at ABA-accredited law schools have signed up for the program.

One problem that arises with the quid pro quo is that the subscription contract is between the library and BLaw, not the law school and BLaw. The library at most schools has no real say in the structure of the curriculum of the research and writing program or in how faculty in general teaches. Some schools already have librarians embedded as instructors in the research and writing program. For those schools, acceptance of the terms of the proposal may represent a lower hurdle. But where librarians are not currently involved in the research and writing program, asking the law library to require the teaching of BLaw alongside Westlaw and Lexis could present a real problem. Getting approval from the dean to enter into the subscription agreement will be crucial.

The attitude of the research and writing faculty may be even more important. Possible resistance to the terms of the proposal seems likely to come in two forms: (1) there is insufficient time to teach three systems, and (2) academic freedom allows research and writing faculty to teach what they want to teach.

Adding database training sessions for 1L students is always a problem, and handling sessions for all three vendors might become even more difficult. However, though there is no hard data on this, anecdotal experience seems to be that instructors are requiring

students to attend training sessions outside of regular class time anyway. While using class time for basic database training might detract from overall classroom time management, mandatory training sessions outside class will not.

Although BLaw would certainly prefer that instructors use BLaw in showing students how to handle research problems during class time, it does not insist on it. This may be because BLaw has accepted the need to be flexible in handling faculty demands, as evidenced by its willingness to set the contract standard performance as “reasonable efforts.” Although BLaw’s methods may seem coercive or heavy-handed to some, BLaw appears to be primarily interested in parity, not in imposing its will on any single research and writing class or program. Thus, the issue of academic freedom, when applied to an individual instructor, need not rear its head. Again, full consultation with research and writing faculty and the dean is crucial to the acceptance of this contract provision.

3. Does it promote the library’s mission?

Each academic law library is part of a greater institution—the law school. And the primary goal of each law school and, by incorporation, each law library, is to prepare its students to be lawyers. The practice of law is changing, and with that change comes a new way in how we do legal research. Graduating students need to be flexible in their approach to research. They have to be able to use free resources, flat-fee resources, and more traditional resources. They also have to be able to use nonlaw resources.

Consider Laura Justiss’s 2011 article in *Law Library Journal*, “A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms.” She details the wide variety of research resources with which law firms want their new hires to be familiar, including Bloomberg. Also consider the excellent post by Jean O’Grady on July 27, 2012, on her blog, Dewey B. Strategic. She details use of all three major research systems in private firms by age group. She also provides an insightful comparison of the good and bad features of all three vendors based on a survey of law librarians. The days when a student could graduate with a good foundation in using only Westlaw or LexisNexis are gone. Some firms now use both, some only one. If the recent graduate picked the wrong one to become most familiar with during law school, he or she may now be in real trouble. Even in 2010, before the recent additions to the BLaw resource list, law firm librarians considered BLaw to be a legitimate research tool along with Fastcase, Loislaw, EDGAR, and others.

If we are not adding BLaw, as well as Loislaw, Casemaker, and EDGAR, to whatever we are teaching, we are not providing our students with tools they need to be successful graduates. And this was a point on which everyone I surveyed seemed to agree: to prepare students for the current legal research environment, we have the obligation to expose them to as many resources as possible. If those resources include BLaw, so be it.

Journal Bundles and the Plight of Nonlaw Academic Libraries

During the past year, I have been serving on a committee at the Princeton University Library (which is not a law library but holds a significant collection of legal materials in its humanities/social science library) that has been addressing the issue of the ballooning costs of subscription packages to academic journals. I spend most of my time conducting law reference and instruction and also developing the library's law collection. My experience in purchasing print and digital legal materials has exposed me to many of the vendor and price-related issues and decisions that law school libraries face daily: increased prices of computer-assisted legal research tools, costs of maintaining print law subscriptions, library management agreements with legal information vendors, and much more. However, my work on Princeton's committee has made me (painfully) aware of a major vendor relations issue from which we, in the academic law community, are largely, if not fully, exempt. This revelation has given me the rare experience of feeling lucky about the cost and ease of subscription to one important law source: academic law journals. Here, I hope to spread this rare feeling of luck about drawing the long straw in legal information vendor relations. I also hope to spread some alarm at issues nonlaw academic libraries are facing when dealing with academic journal publishers and also to spread some awareness since there are some law titles that will inevitably be ensnared in that very complicated and expensive vendor relations mess.

In many of the social and hard sciences, the main publishers of academic journals are large, mostly commercial, publishers. A popular model for providing electronic access to these journals has been "the bundle." The bundle provides a library access to a large group of academic journals for a large price. The bundle usually consists of historic subscriptions and access to all other titles in the publishers list for a discounted fee. Although the price is usually high, it is sometimes much less than the cost to subscribe individually to each journal. Hence, its appeal to academic libraries: for the cost, even if high, patrons have access to a large catalog of academic journals electronically. According to the licensing agreements, the cost of the bundle goes up incrementally each year.

While all this sounds good, the bundle has brought many problems with it. First, publishers often make it difficult to ever save any money. For example,

under a more traditional pay-per-journal subscription model, if a library needed to cut costs, it could cancel some subscriptions to individual journals. However, with the bundle, canceling a journal is practically impossible. A "canceled" journal must be replaced in the bundle by another of the publisher's journals of equal or greater cost. In other words, while many bundle-type licensing agreements allow libraries to tweak which journals are included, they don't allow elimination of titles in order to lower the overall cost.

Second, once a library subscribes to a bundle it can be quite painful and expensive to get out of it. For example, if a contract for a bundle containing 3,000 journals is up for a renewal, a library might decide to forgo renewal and simply subscribe to the individual titles, say 800 out of the 3,000 that it judges would be useful to its faculty and students. However, the individual 800 subscriptions would often cost almost the same, if not more, than the entire bundle of 3,000. In other words, a library will pay dearly for the freedom to choose its titles fully and the right to cancel them as needed and at the same time lose access to 2,200 titles, which, though perhaps unnecessary for the work of the university, might have been helpful to some. On top of that, the process of figuring out which titles are actually used can be difficult.

Third, while some publishers allow libraries to tweak the title list, as I explained before, others do not. Titles in a bundle may be subject to change, meaning that a journal that was previously accessed by a student may be gone the next week. Also, publishers often offer a confusing array of bundles, some of which may overlap. It may be necessary to purchase several bundles, which will include titles that do not interest the library, to get all volumes of a title that is of interest to the library. In sum, while bundles may be a good deal (or at least seem like a good deal at first) for some libraries, the negative consequences may surface several years down the road, perhaps after budget cuts, at which point they may be difficult and expensive to unwind.

In a study to be published in the spring issue of *Research Library Issues*, Karla L. Strieb, associate director for collections, technical services, and scholarly communications at Ohio State University Libraries, and Julia C. Blixrud, assistant executive director, scholarly communications, at the Association of Research Libraries (ARL), examine the state of large-publisher journal bundles. They report that,

according to a 2012 survey of ARL members, more than 90 percent of ARL libraries have subscribed to bundles from many of the large publishers of academic journals. For example, 92 percent of ARL libraries have bundles with Elsevier, 95 percent with Springer, 96 percent with Wiley, and 97 percent with the American Chemical Society. All of these percentages are increases from the 2006 survey.

So, what are the implications of this mess for law librarians and law libraries? First, I think it's worthwhile to take a moment to be thankful for our rare vendor relations and collection development good fortune in the area of academic journals.

Because most of the law-themed academic journals are published independently by law schools rather than by large commercial publishers, our journals cost much, much less than academic journals in many other disciplines. In the sciences, a single journal subscription typically might cost as much as \$8,000! In addition, and leaving aside the issue of access versus ownership (which is also an issue with the bundles), most law journals are available from many difference sources. A significant proportion is included in Westlaw and Lexis. The majority of law school-published journals, back to volume 1 of each, are available on HeinOnline for a price that would only cover a few science journals. Many are also in full text on the Index to Legal Periodicals and Books, and there are even some available on JSTOR. In sum, for our academic journals, we in the law library community are largely exempt from the complex, confusing, and very expensive dealings with commercial publishers with which nonlaw academic librarians are struggling. This is certainly not to say we do not have our own similar or parallel struggles, but when it comes to academic journals, we have it easy!

Now that we've taken a moment to appreciate a rare instance of comparatively easy vendor relations, what other implications of the journal bundle controversies might there be for law librarians? First, we should recognize that we are only partially exempt from the bundling issues. Although most academic journals are independently published by law schools, some are published by commercial publishers. And while law

libraries are unlikely to have a need to subscribe to a large multidisciplinary bundle, some of the related difficulties may impact law libraries' subscriptions to those journals. Perhaps a law library depends on a university's main library for some of those commercially published law journals, which may be part of a large bundle that is vexing the main library. Also, as the work of law faculties becomes more and more interdisciplinary, professors may need access to nonlaw academic journals (in the social sciences most likely, I imagine), which may bring bundling and other related issues to the front doorstep of the law library.

Finally, though we may have a small spot of luck on the issue of academic journals, we face similar vendor relations challenges for other types of resources. Perhaps we can look to how nonlaw academic librarians are dealing with their challenges for ideas about how we might (or might not) confront ours. One example is the issue of nondisclosure clauses in bundling license agreements. According to Strieb and Blixrud, "[t]he ability to share information about contract terms, as well as pricing information—and thus allow the research library community to collectively advance its positions regarding access to content—is dependent upon knowledge of what is in the agreements." This view appears to be gaining strength with ARL members. The 2012 ARL survey shows that an increasing number of ARL libraries are working to adhere to ARL's 2009 statement "encouraging members to refrain from signing nondisclosure clauses in their licenses." In that survey, about half of the ARL members indicated that they refuse to sign contracts with nondisclosure clauses, a marked increase from the 2003 survey addressing the same issue.

Law librarians can be grateful that we have easy and (relatively) inexpensive access to the academic law journals compared with academic journals of other disciplines. However, we certainly have our own similar issues, and it is worthwhile to communicate with our colleagues in nonlaw libraries and to learn from how they work to confront vendor relations issues that may be more similar to ours than we originally realize.