

THE CRIV SHEET

THE NEWSLETTER OF THE COMMITTEE ON RELATIONS
WITH INFORMATION VENDORS

VOLUME 39, NO. 3 / MAY 2017





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EDITOR'S CORNER

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Hello again, everyone. It is impossible to believe that it is almost time for us to gather in Austin for this year's AALL Annual Meeting & Conference. On behalf of *The CRIV Sheet* subcommittee, I am proud to present the third and final issue of *The CRIV Sheet*, Volume 39.

As outgoing editor, I owe a big debt of gratitude to *The CRIV Sheet* subcommittee: Alana Bevan, Gilda C. Chiu, and Charles A. Pipins II. Without their dedication, time spent reaching out to AALL members, willingness to offer ideas, and otherwise general support, none of the articles we presented to you this year would have been possible. I also want to thank CRIV Chair Diana C. Jaque and Vice Chair, James C. Gernert for their unwavering support and input throughout the year. It has been my pleasure to work with them, and an honor to serve as *The CRIV Sheet* editor during my final year on CRIV. I would also like to thank all of the authors who have contributed articles this year and have helped us stay abreast of developments in the marketplace, as well as up-to-date on issues of importance to the profession. Finally, a tip of my hat to my predecessor, Alexa Robertson, whose constant grace during her tenure as editor was one of my many guiding lights this year.

On that note, in this issue of *The CRIV Sheet*, we offer you articles on a variety of topics. First, Sarah C. Slinger and Nicholas Mignanelli write about the preservation of government information. In their article, Slinger and Mignanelli present the history of information preservation during presidential transitions, discuss protective legislation, and present current efforts to safeguard government information.

Next, Cynthia Condit discusses the recent spate of litigation involving PACER. Condit's piece gives background on previous availability of court documents, discusses the evolution of PACER, and takes us through five lawsuits filed against PACER, including the issues involved.

The third article highlights some of the programs being presented at this year's AALL Annual Meeting in Austin that are of interest to CRIV readers.

Finally, we conclude this issue with summaries from CRIV's semiannual conference calls with Thomson Reuters and Bloomberg BNA.

Your comments, letters, and suggestions are always welcome and appreciated. Feel free to reach out to any member of *The CRIV Sheet* subcommittee: **Valerie Carullo**, **Alana Bevan**, **Gilda C. Chiu**, or **Charles A. Pipins II**. If you would like to write for *The CRIV Sheet* or offer suggestions for content for future *CRIV Sheet* issues, please contact CRIV's incoming chair, **James C. Gernert**.

FROM THE CHAIR

DIANA C. JAQUE

UNIVERSITY OF SOUTHERN CALIFORNIA LAW SCHOOL

The 2017 year is spinning by. As I write this introduction, it is already mid-March. This issue of *The CRIV Sheet* previews several programs for the AALL Annual Meeting in Austin. It's hard to believe that it is really that time again. The programs profiled in this issue run the gamut. Perhaps the most interesting program—from a CRIV perspective—is “Information Asymmetry and the Rise of Consultants in Contract Negotiations.” Another can't miss program is the “CRIV Vendor Roundtable.” CRIV's incoming chair, James C. Gernert, will be leading this roundtable on a topic about vendor relations. Follow the *CRIV Blog* for the announcement of this year's topic.

This issue also includes an article to bring AALL members up-to-date on the status of the PACER litigation. In addition, with the transition in the federal government, the library community is concerned about changes to government websites and the preservation of important government information on the internet. An article addressing law librarian's efforts to preserve this information can also be found within this issue. Finally, as most members are aware, CRIV appoints several of its committee members to act as liaisons with Bloomberg BNA, LexisNexis, Thomson Reuters, and Wolters Kluwer. The most recent set of meeting notes from January's Thomson Reuters and February's Bloomberg BNA call have been included in this issue. In addition, meeting notes from each vendor liaison call are posted to the *CRIV Blog*. All of the articles within this issue of *The CRIV Sheet* are worth your time for either a quick perusal or a more leisurely read.

CRIV Sheet editor, Valerie Carullo, and her team consisting of members Alana Bevan, Gilda C. Chiu, and Charles A. Pipins II, have now completed their final issue of the 2016/2017 volume; kudos to each one of them for bringing interesting and well-written content to the AALL membership. If you have a suggestion for future content, please contact CRIV's incoming chair, James C. Gernert, with your ideas and suggestions for the upcoming volume of *The CRIV Sheet*.

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crivblog.com

Cindy Hirsch
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THE TROUBLE WITH TRANSITIONS: PRESERVING GOVERNMENT RECORDS DURING A PRESIDENTIAL TRANSITION

SARAH C. SLINGER & NICHOLAS MIGNANELLI

DANIEL F. CRACCHIOLO LAW LIBRARY
THE UNIVERSITY OF ARIZONA COLLEGE OF LAW

“Life is pleasant. Death is pleasant. It’s the transition that’s troublesome.” Isaac Asimov

Times of transition from administration to administration are often, if not always, trying periods for the United States and its people. In particular, concerns arise over the preservation of documents from one administration to the next. This is especially true when the torch of executive power passes from one party to the other. Although preservation of information is a seemingly objective endeavor, it is difficult to abstain from politics when the documents involved are inherently political.

Recently, the Trump Administration has expressed its intentions to scale back the size of government and take key offices—such as the Department of Energy—in a new direction. Consequently, many have expressed concerns about the preservation of documents from the past eight years. Indeed, in the days leading up to the inauguration, climate change activists concerned about the impending fate of Environmental Protection Agency data collected over the last decade, organized “hackathons” to privately collect and preserve this information.

Meanwhile, at a press conference on January 9th, WikiLeaks founder Julian Assange announced that, “We are told that destruction of records is occurring now in different parts of the Obama administration in different departments or agencies.” He opined that, “One understands the political motivation for it, but to eliminate small political risks by destroying major elements of history is, frankly, an obscenity.”

Of course, the preservation of information during a presidential transition is an issue of concern regardless of the identities of the incoming and outgoing presi-

dents. Hours before the surprising events of that night took place; David S. Ferriero, Archivist of the United States, issued a memorandum on Election Day 2016 pleading with Senior Agency Officials for Records Management to ensure that agency information was properly safeguarded. Of course, Ferriero’s concerns about preservation are hardly new. History has taught us the importance of document preservation, and legislation has enshrined in our laws the conviction that our nation’s public documents must be collected, protected, and preserved for posterity.

Concerns about the preservation of government documents by presidential administrations—especially during the transition period from one administration to the next—are certainly not unfounded. History is replete with examples of administration officials destroying and obfuscating public documents. This behavior is neither uncommon, nor unique to one political party. Indeed, historical examples of this sort of activity can be found in the administrations of Presidents Nixon, Clinton, and Bush, demonstrating that the act is undeniably bipartisan. The concern that administration documents were not surviving presidential transitions rapidly came to the forefront after the Watergate Scandal.

Following his resignation on August 5, 1974, President Richard M. Nixon maintained that he owned all the documents and tapes created during his administration. Fearing the destruction of these materials, Congress passed the Presidential Recordings and Materials Preservation Act on December 19, 1974. This act provided for federal custody of the Nixon presiden-



tial records, which were to be preserved, processed, and made available to the public by the National Archives. Excluded by the act were purely personal documents and affects unrelated to President Nixon's official duties. Although a lengthy court battle ensued following enactment, the U.S. Supreme Court upheld the statute in the 1977 case of *Nixon v. General Services Administration*.

In 1978, Congress passed the Presidential Records Act (PRA), which applied the principles of the Presidential Recordings and Materials Preservation Act to all presidential and vice presidential records after January 20, 1981. This statute requires the collection, maintenance, and preservation of all documents created or received by the president and vice president. Even at the close of the presidential term, these documents remain the property of the federal government. The act demands that all "documentary" materials be preserved. As a side note, given President Trump's propensity to use social media accounts such as Twitter to communicate, it is likely that Tweets may fall within the purview of the Act. Thus, the deletion of Tweets could then be considered the destruction of presidential documents and, given the increasing prevalence of social media use, could pose problems for future presidents as well.

Despite the clear aims of the PRA, missing items—especially during times of presidential transition—continued to pose a problem. In 2001, Congress alleged that the outgoing Clinton administration had engaged in both document destruction and property damage at the White House. Likewise, the Bush administration was accused of deleting or losing at least 22 million emails that had been sent from the White House through private servers. Despite Assange's claims, it seems that President Obama has attempted to avoid the folly of past administrations by crafting policies of preservation with the aid of the National Archives and Records Administration (NARA), e.g., the White House website (ObamaWhiteHouse.gov), along with its social media accounts, have already been archived online and remain accessible to users.

Another important piece of protective legislation is the Presidential Libraries Act of 1955 (PLA). Indeed, it is the driving force behind records management within the Office of the President. Presidential libraries are archives, museums, and learning centers dedicated to preserving and granting public access to information about a particular presidency. The first of these entities was the Franklin D. Roosevelt Presidential Library, which opened on June 30, 1941. Seeking to break with the tradition of leaving the final disposition of presidential papers to chance, President Roosevelt financed and constructed his library to house the papers and memorabilia he had accumulated in his public life.

Seeking to replicate his efforts, Congress passed PLA to encourage future executives to donate their materials and privately raise the funds necessary to build a library dedicated to their presidency. Once built, the NARA would operate and maintain it. In 1978, this legislation was updated by the PRA to reflect that records which document the official duties of the president are property of the United States Government and that presidential libraries serve as repositories for these records.

Currently, there are fourteen presidential libraries administered by NARA's Office of Presidential Libraries: the Herbert Hoover Presidential Library and Museum (West Branch, Iowa); the Franklin D. Roosevelt Presidential Library and Museum (Hyde Park, New York); the Harry S. Truman Presidential Library and Museum (Independence, Missouri); the Dwight D. Eisenhower Presidential Library, Museum, and Boyhood Home (Abilene, Kansas); the John F. Kennedy Presidential Library and Museum (Boston, Massachusetts); the Lyndon Baines Johnson Library and Museum (Austin, Texas); the Richard Nixon Presidential Library and Museum (Yorba Linda, California); the Gerald R. Ford Presidential Library (Ann Arbor, Michigan); the Jimmy Carter Library and Museum (Atlanta, Georgia); the Ronald Reagan Presidential Library (Simi Valley, California); the George Bush Presidential Library and Museum (College Station, Texas); the William J. Clinton Presidential Center and Park (Little Rock, Arkan-



sas); the George W. Bush Presidential Center (Dallas, Texas); and the Barack Obama Presidential Center (soon to be in Chicago, Illinois).

Regardless of whether President Trump seeks to comply or avoid compliance with the records management statutes, the buck does not necessarily stop with him. A consortium of libraries and organizations—consisting of the Library of Congress, the U.S. Government Publishing Office, the Internet Archive, the California Digital Library, and libraries at the George Washington University, the University of North Texas, and Stanford University—have united to serve as another safeguard for ensuring the preservation of government records. Called the “End of Term Presidential Harvest,” the project seeks to comb through .gov websites from the Obama Administration to preserve materials and identify sites or information that are at risk for removal.

Other projects aimed specifically at preserving environmental information have also risen. The Environmental Data and Governance Initiative (EDGI), a team of academics and nonprofit organizations, is currently in the process of archiving public environmental information through online tools and collaborative research. One of EDGI’s collaborators is Data Refuge, a group of academics, artists, students, scientists, and teachers who work to protect information and develop best practices for data storage. Relatedly, a joint project of the University of Pennsylvania and the University of Toronto has also commenced in the months since the election. The Climate Mirror Project seeks to archive federal climate

change data and store that content digitally at sites around the world.

These projects are just the beginning of a concerted and private effort to ensure that the government is not the sole preserver of our public records. There is an expectation—in both the minds of the American people and in the laws of our country—that government records be preserved. Information must pass from one administration to the next so that future holders of the Office of the President can build upon the work of previous occupants. Despite our desire for a smooth carryover of records, this has not always been the reality of a presidential transition. Indeed, despite legislation and public expectations, past administrations have proven that a second line of defense is necessary to conserve information in the maelstrom that is the presidential transition period.

Legislation such as the Presidential Libraries Act and the PRA have paved the way for record preservation in those uncertain periods between administrations, but many argue that even these efforts fall short. A second line of defense is still needed, and many groups have begun to rise to the challenge. A variety of institutions have established several different projects aimed at filling the gap and sharing responsibility for records maintenance. Hopefully, this work will result in fewer records lost and the opportunity to hold the government accountable for those that do. Maintaining our records through administrations is not only good practice, but also good politics.

PACER FACES SPATE OF LITIGATION

CYNTHIA CONDIT

DANIEL F. CRACCHIOLO LAW LIBRARY
THE UNIVERSITY OF ARIZONA COLLEGE OF LAW

Over the past two-and-a-half years, five lawsuits have been filed against the administrators of the federal court’s Public Access to Court Electronic Records System, also known as PACER. All of the lawsuits

focus on the PACER fee system in some way, although other issues related to PACER are mentioned in the complaints. Two of the lawsuits have been dismissed. Two others have survived motions for dismissal, and



one lawsuit has been certified as a class action. The final lawsuit, filed in November 2016, currently has a pending motion for dismissal.

The fact that the administrators of PACER are facing legal action is not, perhaps, surprising. Complaints about oversight of PACER's management, its dated interface and search capabilities, and questions about its fee structure stretch back to the early 2000s. Yet, at the time PACER was introduced, it was viewed as a technological breakthrough, providing unprecedented public access to court documents.

PACER Beginnings

Roll back the years to the late 1980s, when paper was still king. Accessing court documents required a visit to the courthouse where court clerks located dockets that could be reviewed on-site or copied for a whopping fifty cents a page. At the same time, computer sales had started to skyrocket, the World Wide Web was in its infancy, and libraries had quickly recognized the value of an online public access catalog (OPAC) system, and were creating applications to manage and search collections. Not far behind, the **Judicial Conference of the United States** proposed opening a system called PACER to provide public access to federal case information. The responsibility of managing the new system fell to the **Administrative Office of the U.S. Courts** (AOUSC or AO).

Michael Kunz, a former clerk for the Eastern District of Pennsylvania **recalls**, "PACER was one of the most significant progressive steps in implementation of technologies in the courts. It brought information from the clerk's office to desktop computers located in law offices, government agencies, business entities, and the news media. Stakeholders in the justice system overwhelmingly endorsed it as an efficient system."

During the 1990s, the Judicial Conference also began to develop a Case Management/Electronic Case Files system (CM/ECF), which would permit electronic filing and updating of court records. The days of rushing to the courthouse before five o'clock closing

time were coming to an end and a digital connection between PACER and CM/ECF was forged.

Initially, users accessed PACER using terminals with dial-in telephone modems, paying by the minute. In 1998, PACER transitioned to web-based access. To use PACER online, individuals had to register for an account and agree to pay an access fee of \$7 cents per page to retrieve documents. In relatively short order, federal courts adopted online filing and by 2007, use of the CM/ECF and PACER systems was nearly **universal**. In 1999, there were **39,408 registered** PACER users. By 2013, **more than a million users** were accessing the system.

A Self-Supporting System from the Beginning

When the federal judiciary was authorized to build PACER, no general revenue funds were provided for the initiative. Instead, in the Judiciary Appropriations Act of 1991, Congress mandated that the Judicial Conference set user fees to fund PACER. (See Pub. L. No. 101-515, Title IV, § 404, 28 U.S.C. § 1913 note). The fees were to be deposited into the Judiciary Automation Fund (now the Judiciary Information Technology Fund or JITF) to reimburse expenses for providing the service. (See 28 U.S.C. 621(c)(1)(A)).

Some argue that access to these judicial documents should be free. Others, including the plaintiffs in one of the currently pending lawsuits, want the fees to align with the current requirements prescribed in the E-Government Act of 2002. When Congress enacted the Act, it addressed concerns that the fees might be in excess of what it cost to run PACER by amending prior statutory language that stated the Judicial Conference "shall hereafter" prescribe reasonable fees, and replacing it with "may, only to the extent necessary" prescribe reasonable fees. (See Pub. L.107-347, Title II, § 205). Presumably then, if the cost of running PACER was less than what the fees generated, the fees would be reduced.

Fees Generated and Cost to Run PACER Diverge

Since the enactment of the E-Government Act of 2002, the AO has increased user access fees twice. In 2005, the fee increased to \$8 cents per page, and in 2012, \$10 cents per page. Other fees also increased, such as the maximum cap for individual searches of more than 30 pages. The AO has never explained how it arrived at these figures. A per-page fee is charged for every search, even if a search does not yield any results. Exemptions are available, although difficult to obtain, while some documents are free.

Over the years, PACER fees have generated substantial revenue—more, it appears, than what is necessary to run the PACER system. The excess funds have been used to pay for other costs of the Judiciary’s public access program. For instance, at the [end of 2006](#), the Judicial Conference’s JITF had a surplus of almost \$150 million, of which \$32 million was from PACER fees. The AO stated it used the excess funds to pay for items in the judiciary’s information technology program so they would not have to obtain appropriated funds from Congress.

In their [December 2012](#) Electronic Public Access Program Summary, the AO acknowledged PACER fees were “used to pay the entire cost of the Judiciary’s public access program, including telecommunications, replication and archiving expenses, the CM/ECF system, bankruptcy noticing, Violent Crime Control Act Victim Notification, online juror services, and courtroom technology.”

Clearly, the AO takes the view that the cost of running PACER encompasses the entirety of the judiciary’s public access program, and that it is complying with the requirements of the E-Government Act of 2002. Others, however, argue that the Act dictates that PACER user fees are meant only to fund the costs of operating PACER itself.

The Lawsuits

One of the active lawsuits addresses the differences in interpretation of whether or not PACER user fees

should fund more than just the cost of operating PACER. The other two active lawsuits address specific issues related to PACER fees.

Think Computer Foundation & Think Computer Corporation (5:14-cv-02396-BLF) The first lawsuit was filed by Think Computer Foundation and Think Computer Corporation, both run and owned by Aaron Greenspan. The pro se lawsuit did not survive long. Filed on May 23, 2014, it was dismissed on December 4, 2014, hampered by Greenspan’s desire to fight a procedural issue at the same time. Greenspan’s argument that the PACER user fees collected by the AO violated the E-Government Act of 2002 never reached discussion of its merits.

Fisher I (and Fisher II) (Fisher I: 1:15-cv-01575-TCW) Bryndon Fisher filed a class action lawsuit in the Court of Federal Claims on December 28, 2015 (*Fisher I*), and the next day filed a similar class action (*Fisher II*) in the Western District of Washington. Defendants in *Fisher II* filed a motion to dismiss based on the “first-to-file” rule. Because the *Fisher II* lawsuit was similar to the *Fisher I* lawsuit filed in the Court of Federal Claims and easily met the three-factor test, the Court dismissed *Fisher II*.

Fisher I, still ongoing, alleges PACER overcharges because of a faulty pricing formula. Fisher hired expert computer consultants who, after conducting an investigation, discovered a systemic error in the system. PACER docket sheets are formatted in HTML, which requires charging by the byte, instead of by the page. Converted, a billable page is equal to 4,320 bytes. Fisher’s experts discovered that the system counts the bytes in case captions of an HTML formatted docket report five times when a case caption is more than 850 characters long. Depending on how long a case caption might be, a user could be charged for an additional page or two.

Defendant’s motion to dismiss argued that the PACER Policy and User Manual requires a person to exhaust all administrative remedies before filing a



lawsuit. Specifically, someone who believes their bill is an error must first notify PACER's Service Center within 90 days and submit a special request form. Fisher did neither. The Court rejected the defendant's argument stating, "it is not even clear from the language in the PACER documents that users 'must alert the PACER Service Center to any errors in billing within 90 days of the date of the bill ... and submit a Credit Request Form.'" Further, the Court said there was neither a review process in place for any AO decisions nor anything that qualified as an administrative remedy.

In response to the defendant's argument that Fisher's breach of contract claim was ineffective, the Court stated that the AO is authorized by statute to administer PACER, and thus has authority to contract on behalf of the Government. As to whether Fisher could recover, the Court pointed out that courts dislike conditions unless the language leaves no room for doubt. Here, the Court stated that "there is room for plenty of doubt and the language in PACER's documents cannot be construed as conditional."

The *Fisher I* scheduling status order was due on March 10, 2017. The preliminary settlement talks appeared to be productive as the parties requested an extension to continue discussions. A final report is expected by April 21, 2017 at the latest.

National Veterans Legal Services Program et al. (1:16-cv-00745-ESH) Three nonprofits (National Veterans Legal Services Program, National Consumer Law Center, and Alliance for Justice) filed a class action lawsuit on April 21, 2016. The lawsuit has survived a motion to dismiss and has been certified as a class action.

The plaintiffs challenge the legality of the current fees charged by PACER based on the requirements of the E-Government Act of 2002, claiming that the fee schedule is higher than necessary to cover costs of operating PACER.

Defendants filed a motion to dismiss on first-to-file grounds (citing *Fisher I*) and failure to state a claim

because plaintiffs did not present the challenge to the PACER Service Center first. The Court dismissed the first argument stating that the *Fisher I* case challenges an aspect of formula that PACER uses to convert docket reports into billable pages, whereas *National Veterans* challenges the fee schedule itself. The Court rejected the second argument pointing out that the *Fisher I* court had already ruled on the PACER notification requirement and *National Veterans* did not have to notify or submit a request to PACER. In an aside, the Court added that this was of no concern since the plaintiffs were not arguing a billing error.

The Court also certified the lawsuit as a class action, making two modifications. It set specific dates for the six-year recovery period and it modified the class definition to exclude class counsel in the case along with federal government entities.

Of interest is the Court's directive in the scheduling order that the parties conduct limited discovery in an effort to establish:

1. What portion of fee revenue during the class period was in excess of the amount necessary to fund PACER?
2. What portion of PACER fee revenue funded/supported EC/ECF and other administrative initiatives and programs?
3. What the average per-page PACER fee was during the class period?

D'Apuzzo (0:16-cv-62769-RNS)

The most recent lawsuit was filed November 22, 2016 in the Southern District of Florida. In this third class action suit, Theodore D'Apuzzo alleges that he was improperly charged for accessing judicial opinions, which have been freely available on PACER since 2005.

At the crux of this case is how a judicial opinion is defined. The E-Government Act of 2002 does not define judicial opinion. The Judicial Conference defines written opinions as "any document issued by a judge or judges of the court sitting in that capacity, that sets forth a reasoned explanation for a court's decisions."



However, the Judicial Conference left the responsibility for determining which documents meet this definition with the authoring judge.

D'Apuzzo claims that the definition has been applied inconsistently and that court documents that satisfy the definition are not flagged as judicial opinions, resulting in a charge to the user.

Defendants filed a motion for a temporary stay of discovery on March 13, 2017, with the plaintiff filing a response in opposition the next day. On March 17, the Court granted the defendant's motion for an extension of time to file a response to the plaintiff's response to the defendant's motion to dismiss. Interestingly, the defendant's utilized the same arguments in their motion to dismiss in *D'Apuzzo* that have been rejected in *Fisher I* and *National Veterans*. We may see fresh arguments in their upcoming response, due March 24, 2017. Also on March 17, the plaintiff submitted a joint proposed scheduling order stating that the parties do not anticipate settlement at this time, as well as the plaintiff's intent to seek class certification.

Final Thoughts

PACER faced complaints for years, but no one filed a lawsuit until recently. Why? [According to Deepak Gupta](#), a member of the team of lawyers for *National Veterans*, it was difficult “to identify a legal pathway to take the issue to court.” To get around the judiciary's exemption from the Administrative Procedure Act, plaintiffs have turned to the [Little Tucker Act](#), which “provides jurisdiction to recover an illegal exaction by governmental officials when the exaction is based on an asserted statutory power.” So far, under this direction, the lawsuits appear to be moving forward positively for the plaintiff's. Greater openness, transparency, and accountability about PACER could be around the

corner—you might just see a notice to join a class action in your email come late spring.

Editor's Note: This article was finalized in mid-March. The current active cases are moving along pretty quickly and each docket is updated often, so it is likely that some of the information included has changed. Check the dockets for additional information on the current status of each case.

THE CRIV SHEET: RECOMMENDED PROGRAMS FOR THE 2017 AALL ANNUAL MEETING & CONFERENCE

The 2017 AALL Annual Meeting & Conference will take place in Austin, Texas from July 15-18, 2017. As you plan your [conference schedule](#), here are a few programs that CRIV recommends:

UNDERSTANDING THE HUMAN ELEMENT IN SEARCH ALGORITHMS

Sunday, July 16
11:30 a.m.-12:30 p.m.
ACC-Room 17AB

This program introduces a study of search algorithms in WestlawNext, Lexis Advance, Fastcase, Google Scholar, Ravel, and Casetext. These algorithms are created by humans who have made multiple choices about how the search will be carried out, and what material will be used to enhance search results. The researcher does not know what those choices were, but the choices have a dramatic effect on the search results each database returns. Every algorithm works in a unique matrix of assumptions, biases, and enhancements, referred to as an algorithmic worldview—and those worldviews vary widely. Therefore, even when the search and jurisdiction for the search are identical, each database returns unique cases that can add to the resolution of a legal problem.

THE LAW LIBRARY AS TECHNOLOGY LABORATORY

Sunday, July 16
11:30 a.m.-12:30 p.m.
ACC-Room 18CD

The law library is to law librarians as laboratories of the university are to chemists and physicists. The revised ABA Standard 601(a)(4) requires that the law school library “remains informed on and implements, as appropriate, technological and other developments affecting the library’s support for the law school’s program of legal education.” When discussing how law libraries can meet this standard, the phrase “library lab” is

frequently offered as a potential solution—but what is a library lab? It certainly is not the previous lab model of rows of desktop computers, but simply knowing what it is not won’t move us toward our goal of supporting legal education. What technologies will it employ? What kind of physical space will it occupy? How will funding be obtained? Similarly, private law firms are also beginning to create library labs or genius bars to facilitate the learning of software products, apps, and new tools to help lawyers become more efficient and mobile. Perhaps there are commonalities in their approach. Come learn from your fellow colleagues who have deployed technology laboratories within their law libraries.

CRIV VENDOR ROUNDTABLE

Sunday, July 16
1:00 p.m.-2:00 p.m.
Hilton-Governor’s Ballroom Salon A

Keep an eye on the [CRIV Blog](#) for forthcoming details.

DEEP DIVE: HOW ARTIFICIAL INTELLIGENCE WILL TRANSFORM THE DELIVERY OF LEGAL SERVICES

Monday, July 17
9:45 a.m.-12:15 p.m.
ACC-Grand Ballroom F

Artificial intelligence (AI) is changing the way lawyers think, the way they do business, and the way they interact with clients. AI is more than legal technology; it will revolutionize the legal profession. Due to the disaggregation of legal tasks fueled by globalization, technological advances, and the economic downturn, AI is a new engine for “better, faster, cheaper” delivery of certain legal services. For example, several corporate

legal departments, law firms, and service providers utilize AI for review and standardization of documents. The list of potential tasks for which AI can be used is growing rapidly. AI's impact on the corporate end of the legal market is in its incipient stage, but its impact on efficiency, risk mitigation, and the time and cost of human review is significant.

INFORMATION ASYMMETRY AND THE RISE OF THE CONSULTANTS IN CONTRACT NEGOTIATIONS

Monday, July 17
2:00 p.m.-3:00 p.m.
ACC-Room 12AB

There has long been an imbalance of information in the legal contracts marketplace. Librarians are often in the dark as to what is a “fair price,” or, at the least, the “market price.” This program proposes that this “information asymmetry,” has driven the rise of consultants in the legal industry, specifically in contract negotiations. A panel of law library managers and consultants will discuss how the consultant-law firm relationship can work to provide some balance to this dynamic. Panelists will also review best practices and procedures for communicating with vendors and carrying out negotiations once a third party is involved, as well as what is on the horizon in the legal contracts marketplace.

WATSON IN THE LAW LIBRARY: USING AI AND MACHINE LEARNING TO BUILD THE 21ST CENTURY LIBRARY

Monday, July 17
2:00 p.m.-3:00 p.m.
ACC-Room 18AB

By now, everyone has heard about AI generally, and IBM Watson in particular. Media coverage has often portrayed these technologies as “robot lawyers” or job killers, or harbingers of the apocalypse. Despite fascination with AI in pop culture, machine learning actually represents a number of different technologies, many of which will be used in law libraries. In this session,

Fastcase CEO Ed Walters, who teaches about AI in the law at Georgetown University Law Center, and Brian Kuhn, from the IBM Watson team focusing on legal information, will discuss uses of AI in the library and beyond.

MONEYBALL FOR LAWYERS: HOW LEGAL ANALYTICS IS TRANSFORMING THE BUSINESS AND PRACTICE OF LAW

Tuesday, July 18
11:00 a.m.-12:00 p.m.
ACC-Room 12AB

Imagine you could make a data-driven prediction about how opposing counsel, a judge, or a party to litigation or a transaction, will behave. What if you could anticipate the results a specific legal strategy or argument will produce? Would you continue relying exclusively on traditional legal research and reasoning to inform the advice you give clients, the documents you draft, the negotiations you conduct, and the arguments you make? Or, would you integrate legal analytics into your lawyering—in other words, “Moneyball” for lawyers? Find out how legal analytics and data-driven decisions can give you a significant and lasting competitive advantage.

COOL TOOLS CAFÉ

Tuesday, July 18
2:30 p.m.-3:30 p.m.
ACC-Room 9ABC

One of the most attractive features of the Cool Tools Café, for both the presenters and attendees, is the casual atmosphere. Gathering in small groups, participants will learn about emerging or existing technologies from librarians who have implemented these technologies in their own libraries. This more intimate setting allows for the opportunity to discuss why the technologies are useful, how they work, and how they can be implemented. Tools for legal research, collaboration, marketing services, instruction, productivity, citation, presentation, and website functionality are examples of past demonstra-



tions. The variety of the demonstrations epitomizes the dynamic role of today's legal information professional.

A WHIRLWIND TOUR OF THE HITS AND HYPERBOLE IN LEGAL RESEARCH AND WORKFLOW PRODUCTS

Tuesday, July 18
2:30 p.m.-3:30 p.m.
ACC-Grand Ballroom F

Celebrate the power of gatekeeping. That gate swings both ways, so information professionals play an important role in “curating” products for their organizations. Two experienced information professionals will offer a fast-paced tour of the best new products and product features and highlight some “head scratchers” and product gaffes. Speakers will also highlight 30 to 40 hits and misses in the legal information landscape.

CRIV LIAISONS TO VENDORS

CRIV holds semiannual calls with four legal vendors: Bloomberg BNA, LexisNexis, Thomson Reuters, and Wolters Kluwer. CRIV publishes notes from the calls as they become available both in *The CRIV Sheet* and on the *CRIV Blog*. For this issue, we have notes from recent calls with Thomson Reuters and Bloomberg BNA.

CRIV / THOMSON REUTERS SEMIANNUAL CALL

GILDA C. CHIU

In January, CRIV had its semiannual AALL/Thomson Reuters vendor relations conference call. Present on the call were Gilda C. Chiu (CRIV vendor liaison) and Lori Hedstrom (National Manager of Library Relations for Thomson Reuters). The following items were discussed on the call:

A member asked to inquire about any changes to the shipping schedule for bound volumes. They have noticed that shipping has changed from a more regular schedule (a couple of times every week) to once a month, with deliveries spanning about a week. They have found it to be very disruptive to their workflow and would like to know if there has been a delivery schedule change and whether this is a temporary or permanent change.

Hedstrom indicated that this change was implemented in mid-2015. It supports continuous improvement efforts in driving internal efficiencies by reducing material handling and eliminating operations, and provides additional savings in shipping costs. It also addressed customer feedback regarding package

handling by combining multiple shipments into a single ship group so customers did not have to handle packages multiple times.

An AALL member from an academic library submitted an issue to CRIV about the inaccurate records available for Westlaw through the Ex Libris Community Zone. The member has been in contact with both Thomson Reuters and Ex Libris about the issue since October 2015, and has received no solution from either party. She compiled a timeline for all of her interactions with both companies about the issue, which was sent to Thomson Reuters before the call. This member is not the only librarian seeking resolution of this issue as several other librarians have reached out to CRIV also wanting a solution. Various emails were compiled and sent to Thomson Reuters to review before the call. Given how many librarians have been vocal about wanting a solution, the need for this issue to be resolved as soon as possible was stressed.

Hedstrom was unaware of this issue prior to receipt of the call agenda. In her initial investigation, she has

identified two teams with whom she will work to solve this concern, in partnership with Zach Gose, academic regional field manager, who has been involved. Progress updates will be sent to CRIV for publication in the *CRIV Blog*, and the final report will appear in the next print issue of *The CRIV Sheet*.

Recent or Forthcoming Changes/Developments Regarding Thomson Reuters Products/Policies

Westlaw–Fall 2016

Released Statutes for Research Recommendations, Best Portion Navigation, Superbrowse for Regulations, and Court Level sorting. Account team members and librarian relations managers can provide training on any of these elements members would like to explore.

Westlaw–February 2017

Secondary Sources are essential for providing guidance and analysis in every area of the law. A redesign of these resources on Westlaw allows users to secure a strong starting point for finding leading caselaw, and to cite widely respected sources as persuasive authority in arguments to the court. This effort was undertaken to optimize the online user experience and address customer feedback by simplifying how users find, access, and navigate this content with new filter and sort options:

- Table of Contents—full searchable table of contents available on both the publication’s landing page and when viewing a document
- Reading Mode—aggregate multiple documents into a single display

- Scope Screen—additional relevant information including a description of the content and links to other relevant secondary sources
- Pinpoint Linking for Rutter Group Publications—user go directly to the cited paragraph in these popular California publications

Westlaw–Coming Spring 2017

Thomson Reuters anticipates having statutes recommendations in Folder Analysis and will continue the iterative product development and maintenance process, making small changes as customer requests are collected and ranked for prioritization.

Practical Law–In progress 2017

- Continued expansion of jurisdictional content
 - Concentrating on top jurisdictions
 - Developing state-specific versions of key resources in each practice area
- Cross Practice Collections – Life Sciences, Financial Services
- New Subtopic – Out of Court Restructurings (Bankruptcy)
- New “What’s Market” databases
- Enhancements to Practical Law and Practice Point
 - Tasks in Practice Point search results
 - Start-Ups and Small Business page
- Business Law Center research library integration

CRIV / BLOOMBERG BNA SEMIANNUAL CALL

DIANA C. JAQUE

On February 9, CRIV had its semiannual call with Bloomberg BNA. In attendance were Mike Bernier (BBNA); Kate Hagan (AALL); Brian Houk (BBNA); Diana C. Jaque (CRIV vendor liaison); and Rick Montella (BBNA).

New Bloomberg BNA products, policies, and other issues of interest to AALL members were discussed on the call. This spring, Bloomberg Law will launch natural language searching. In addition, there is full integration with primary law content within the Bloomberg Law Practice Centers. Regarding

the issue, Bloomberg BNA provided the following statement:

Bloomberg BNA is in the process of rolling out new “Practice Centers on Bloomberg Law,” which are the next-generation versions of Bloomberg BNA Resource Centers. The new Practice Centers include features and functionality long requested in the Resource Centers, including enhanced search, customizable alerting, a full collection of case law, and a citator. Over the past year Bloomberg BNA



has launched a new Tax Practice Center and a Privacy and Data Security product—both of which have been well received by clients—to better serve the legal market. Clients of these Resource Centers are being upgraded to the Bloomberg BNA Practice Centers on Bloomberg Law as their subscriptions renew. Recognizing that all firms are different, Bloomberg BNA's approach—as always—is to partner with clients to help them realize the increased value of these enhancements and to provide them with options.

Additional Bloomberg BNA Practice Centers will be released throughout 2017, leveraging the upgraded features and functionality of Bloomberg Law, while providing the familiar, value-driven content our clients have come to rely on from Bloomberg BNA.

There are currently plans in the works to build out more workflow and visualization tools within each Practice Center, along with enhanced research trial capability and additional alerts and news items. Right now, Bloomberg BNA is concentrating on increased content and functionality. In the second quarter of 2017, customers can look forward to seeing the evolution of labor and employment, intellectual property material, and healthcare publications.

The Business Intelligence Center on Bloomberg Law has also been enhanced. It is now possible to monitor various industries or sectors on a custom dashboard. As many firms and companies have intranets, the process is designed to be similar—entirely customizable, and can be shared with other end users. In addition, at no upcharge to customers, Judicial Analytics has been added to Bloomberg Law. This includes representational analytics and should assist firms in business development and litigation strategies.

In the academic market, Bernier indicated that Bloomberg BNA has launched a series of webinars and continues to issue a quarterly newsletter. Bloomberg Law is shifting from a focus on 1Ls to advanced legal research and clinics and will no longer use student representatives. The general emphasis has shifted in order to help create practice-ready graduates. Effective immediately, law firm and law school relationship managers have been merged into one unit called Client Success so that law firm expertise can be shared with academic customers.

Finally, there are expanded MARC records for Bloomberg Law. Concerning the records, they are open to communicating with catalogers and VRAG members directly. They have been contacted by various catalogers and have worked to incorporate suggestions into the records.

Bloomberg Law will once again be sponsoring AALL's Annual Meeting as a Gold Sponsor. In addition, a special committee is being convened to examine both the *AALL Guide to Fair Business Practices for Legal Publishers and the Procurement Toolkit* and *Code of Best Practices for Licensing Electronic Resources*. A committee will be appointed soon.

An AALL member asked if BBNA would be raising its prices for its tax vertical, requiring firms that wish to get its Tax Management Portfolios to subscribe group-wide to one of its tax libraries. Currently, to obtain the Portfolios digitally or in print, BBNA requires a subscription to content that many customers do not want. Firms with large tax practices seem to feel coerced to purchase BBNA's tax products solely because the Portfolios are valued. According to Montella, most large firms purchase Bloomberg BNA products on a practice group basis. This allows for better workflows and yields a lower effective price per user. As Bloomberg BNA prepares for the move from Resource Centers to Practice Centers on Bloomberg Law, they found that only a small number of firms, less than 20 percent, were selecting just a few individuals as designated users. Bloomberg BNA feels that the fair way to price their resources is at the practice group level. As a result, those with just a few seats will potentially see a significant price increase. Their suggestion is for firms to work with Bloomberg BNA to discuss multiyear contracts in which prices are gradually adjusted upwards. Additional questions regarding this issue can be sent to [Mike Bernier](#).

CRIV inquired if there is a current plan to sunset BNA.com, Bloomberg BNA responded that no date has been set. The Bloomberg BNA website continues to be updated in real time for the foreseeable future.



www.aallnet.org