

# LAW LIBRARY JOURNAL

## ARTICLES

On Embracing the Research Conference [2019-2]

*Alyson M. Drake* 7

Physician-Assisted Death: A Selected Annotated  
Bibliography [2019-3]

*Alyssa Thurston* 31

"A Day in My Law Library Life," Circa 2018 [2019-4]

*Scott Frey* 71

Sticking to the Union? A Study on the Unionization of  
Academic Law Libraries [2019-5]

*Sarah C. Slinger* 105

Retrospective: 30 Lessons Learned (and a Few Strokes  
of Luck) at The Crossroads [2019-6]

*James S. Heller* 121



## American Association of Law Libraries

### Editorial Staff

Editor: Tom Gaylord  
Publications Manager: Heather Haemker  
Production: ALA Production Services

### 2018–2019 Association Officers

Femi Cadmus, President; Michelle Cosby, Vice President/President-Elect; Luis Acosta, Secretary; Jean L. Willis, Treasurer; Gregory R. Lambert, Immediate Past President; Elizabeth G. Adelman, Mary Jenkins, Meg Kribble, June Hsiao Liebert, Jean P. O'Grady, Karen Selden, Board Members; Vani Ungapen, Executive Director.

### 2018–2019 *Law Library Journal* Editorial Board

Tom Gaylord, Chair; Helane E. Davis, Edward T. Hart, Benjamin J. Keele, Kelley Louis, Lacy Rakestraw, I-Wei Wang, Members; Heather Haemker, Staff Liaison.

*Law Library Journal*® (ISSN 0023-9283) is published quarterly in the Winter, Spring, Summer, and Fall by the American Association of Law Libraries, 105 W. Adams Street, Suite 3300, Chicago, IL 60603. Telephone: 312.939.4764; fax: 312.431.1097; email: aallhq@aall.org. Member subscriptions are \$35 per year; nonmember subscriptions are \$125 per year; individual issues are \$31.25. Periodicals postage paid at Chicago, Illinois, and at additional mailing offices. POSTMASTER: Send address changes to *Law Library Journal*, AALL, 105 W. Adams Street, Suite 3300, Chicago, IL 60603.

Advertising Representatives: Innovative Media Solutions, 320 W. Chestnut Street, PO Box 399, Oneida, IL 61467. Telephone: 309.483.6467; fax: 309.483.2371; email: bill@innovativemediasolutions.com.

All correspondence regarding editorial matters should be sent to Tom Gaylord, *Law Library Journal* Editor, Northwestern Pritzker School of Law, Pritzker Legal Research Center, 375 E. Chicago Ave., Chicago, IL 60611. Telephone: 312.503.4725; email: tom.gaylord@law.northwestern.edu.

This publication is provided for informational and educational purposes only. The American Association of Law Libraries does not assume, and expressly disclaims, any responsibility for the statements advanced by the contributors to, and the advertisers in, the Association's publications. Editorial views do not necessarily represent the official position of the Association or of its officers, directors, staff, or representatives. All advertising copy is subject to editorial approval. The Association does not endorse or make any guarantee with respect to any products or services mentioned or advertised in the publication. *Law Library Journal* is printed on acid-free paper.

### Notice

All articles copyright © 2019 by the American Association of Law Libraries, except where otherwise expressly indicated. Except as otherwise expressly provided, the author of each article in this issue has granted permission for copies of that article to be made for classroom use or for any other educational purpose provided that (1) copies are distributed at or below cost, (2) author and journal are identified, and (3) proper notice of copyright is affixed to each copy. For articles in which it holds copyright, the American Association of Law Libraries grants permission for copies to be made for classroom use or for any other educational purpose under the same conditions.



## Table of Contents

From the Editor: Here Comes the Sun [2019-1] *Tom Gaylord* 5

### General Articles

On Embracing the Research Conference [2019-2] *Alyson M. Drake* 7

Physician-Assisted Death: A Selected Annotated Bibliography [2019-3] *Alyssa Thurston* 31

“A Day in My Law Library Life,” Circa 2018 [2019-4] *Scott Frey* 71

Sticking to the Union? A Study on the Unionization of Academic Law Libraries [2019-5] *Sarah C. Slinger* 105

Retrospective: 30 Lessons Learned (and a Few Strokes of Luck) at The Crossroads [2019-6] *James S. Heller* 121

### Review Article

Keeping Up with New Legal Titles [2019-7] *Benjamin J. Keele* 145  
*Nick Sexton*

### Regular Features

*Practicing Reference . . .* *Mary Whisner* 157

Tuesday Morning Detective Work [2019-8]



## From the Editor: Here Comes the Sun\*

Tom Gaylord\*\*

¶1 It's not very sunny in Chicago as I write this, more overcast and wintry and such. But readers who know me probably aren't surprised to see me lead off my first issue as editor of *Law Library Journal* with a shout out to the Beatles.

¶2 Welcome to the first issue of volume 111 of *Law Library Journal*. It is with great humility, some trepidation, and (admittedly) a dash of impostor syndrome<sup>1</sup> that I begin my journey as editor for the next five years. I look forward to carrying on the *Journal's* prominence as the preeminent publication in our field, though I am not above (or, perhaps to some of you, below) making some changes along the way.

¶3 We have a newly constituted editorial board, with three academic librarians, two court librarians, and a law firm librarian. While LLJ has always been and will continue to be primarily academic-heavy, I hope that greater diversity on the board will attract more submissions from nonacademics who seek a greater voice in our flagship publication and in the law library literature in general.

¶4 I thank AALL for this opportunity and will strive, in return, to live up to the high expectations consonant with the position. I also thank James Duggan for his outstanding work at the helm over the previous five years and for helping me along as I get my feet wet. Also deserving of thanks (and perhaps preemptive apologies) is Heather Haemker, publications manager for AALL, for the help already provided and the sure-to-be-more-of-it-to-come.

¶5 Finally, thanks to my first boss and mentor, Keith Ann Stiverson, for setting me on the career path that led to this point. I could not have asked for a better mentor. And thanks to my current boss, George Pike, and to Northwestern Pritzker School of Law, both for encouraging this endeavor and for offering me the resources to, fingers crossed, make it a successful one.

¶6 I prefer to keep things brief, so I will end there. I look forward to hearing from readers (AALL members and nonmembers alike), authors, and those who might just be thinking of putting pen to paper. Though I'm writing this in December, by the time you read this in late February, perhaps *Here Comes the Sun* will be just around the corner weather-wise, rather than simply playing in my head. Then again, living in Chicago, probably not.

---

\* © Tom Gaylord, 2019.

\*\* Faculty Services & Scholarly Communications Librarian, Pritzker Legal Research Center, Northwestern Pritzker School of Law, Chicago, Illinois.

1. See, e.g., Lacy Rakestraw, *How to Stop Feeling Like a Phony in Your Library: Recognizing the Causes of the Imposter Syndrome, and How to Put a Stop to the Cycle*, 109 LAW LIBR. J. 465, 2017 LAW LIBR. J. 23.



## On Embracing the Research Conference\*

Alyson M. Drake\*\*

*Research conferences belong in every research instructor’s arsenal. In addition to having multiple pedagogical benefits, legal research conferences help students prepare for practice and comprehend that analysis is a critical part of legal research. And for instructors, conferences serve as a time to engage actively in the learning process and to receive feedback.*

Introduction . . . . .	7
Pedagogical Benefits of Conferencing with Law Students . . . . .	8
Students Receive Individualized Feedback . . . . .	8
Students Practice Self-Direction and Self-Assessment . . . . .	11
Instructors Better Understand How Students Learn . . . . .	12
Learning Styles Are Used to Best Advantage . . . . .	13
Collaborative Style Appeals to Millennial Learners . . . . .	14
Importance of Legal Research Conferences . . . . .	15
The Analytical Process Is Centered in the Research Stage . . . . .	15
Preparing for Practice . . . . .	18
How to Structure Research Conferences . . . . .	19
Timing in the Semester . . . . .	19
First-Year Skills Courses . . . . .	19
Upper-Level Research Courses . . . . .	20
Setting the Agenda and Tone . . . . .	21
Setting the Agenda . . . . .	21
Setting the Tone . . . . .	25
Concluding the Conference . . . . .	26
Conclusion . . . . .	26
Appendix A . . . . .	27
Appendix B . . . . .	28

### Introduction

¶1 Analytical thinking begins during the research phase of the writing process. After all, students cannot—or at least should not—write until they have found

---

\* © Alyson M. Drake, 2019. Many thanks to Jennifer Mart-Rice and Franklin Runge for reviewing drafts of this article and offering valuable feedback. I am also thankful to Desiree Hemphill for her excellent research assistance. This work was made possible by the support of the Texas Tech University School of Law.

\*\* Assistant Director for Public Services, Director of the Excellence in Legal Research Program, and Adjunct Professor, Texas Tech University School of Law.

appropriate authorities on their issues, and they cannot find appropriate authorities without significant analysis and organization of the issues before them. Furthermore, they cannot conclude their research without critical thinking about whether they have identified all of the underlying issues and found authorities that both answer all the questions that have arisen and allow for effective comparison with their own client's facts. In fact, many students struggle with the research process for just these reasons. As novice legal thinkers, the research process can be a significant barrier. Others simply do not engage in much analysis at all, viewing research as a task to gather sources that *seem* helpful, without giving enough thought to how they will use the sources they find. This results in their doing a poor initial analysis and then having to engage in a second round of analysis when it is time to write, which necessitates rereading all the sources.

¶2 Individual student conferencing is a typical part of the law school experience, particularly in first-year skills courses where most students meet with their instructors several times during the academic year. Most often, these first-year meetings focus on the legal writing process as students work to produce their first closed and open memos and appellate briefs. While legal writing conferences are undoubtedly a critical part of law students' learning, an oft-forgotten component of these meetings is a discussion of the research component inherent in those writing assignments. In legal writing conferences, discussion of the authorities is generally limited to how to use the authorities the students have already located, at which point the students have already struggled immensely with their analysis. One solution for curbing the frustrations many students feel during this process is for instructors to hold one-on-one research conferences with each student prior to writing. In these meetings, instructors can help students with the analytical component of the research process as well as practical skills like locating authorities in an efficient manner and organizing their research in a way that facilitates moving from the research phase to the writing phase.

¶3 Part 1 of this article discusses the benefits conferencing has for both students and instructors. Part 2 argues that legal research conferences are a critical component of law students' skills education, both to prepare them to engage in legal analysis and to ready them for practice. Finally, Part 3 discusses the practical considerations of introducing legal research conferences into the curriculum.

## Pedagogical Benefits of Conferencing with Law Students

### Students Receive Individualized Feedback

¶4 Individualized feedback is rarely given in the traditional law school setting of a large lecture hall and the traditional grading schema of a single exam at the end of the semester.<sup>1</sup> However, as the emphasis on lawyering skills continues to increase and experiential learning hours gain greater traction in the legal curriculum,<sup>2</sup> individualized feedback will become even more important. In fact, ABA Standard 304 on simulation courses requires "opportunities for performance [and] feedback

---

1. Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 LAW LIBR. J. 59, 78, 2002 LAW LIBR. J. 4, ¶ 69.

2. See generally Alyson M. Drake, *The Need for Experiential Legal Research Education*, 108 LAW LIBR. J. 511, 2016 LAW LIBR. J. 26.

from a faculty member.”<sup>3</sup> The Standard also calls for “direct supervision of a student’s performance.”<sup>4</sup> As conferences often take place in skills-focused courses qualifying as simulations, the instructor’s direct supervision and feedback is more than just ideal for student learning; it is required under the Standards.<sup>5</sup> Direct supervision is most easily achieved by one-on-one interactions between the instructor and the student.<sup>6</sup>

¶5 Even when the ABA Standards do not require individualized feedback, there are numerous pedagogical reasons to provide it. Perhaps the largest benefit of holding research conferences is the near guarantee that a student will hear the one-on-one, face-to-face feedback given. According to DeSanctis and Murray, most learning takes place via an “extended give-and-take process: the student-[researcher] executes an assignment, and the [instructor] reviews the work product and provides extensive commentary on what worked well and what could be improved going forward.”<sup>7</sup> While this evaluation of a student’s work can come in the form of written feedback, students benefit more from the chance to talk about their research in a one-on-one atmosphere, where they can ask questions about their instructor’s commentary.<sup>8</sup> Conferences give students and faculty the opportunity to discuss large-scale issues in detail and break them down, a much less cumbersome task than a student trying to sort through pages of detailed written feedback.

¶6 An in-person meeting between student and instructor forces the student to reflect on his or her performance in a way that simply skimming an instructor’s comments cannot. For one, nothing guarantees that every student reads or fully understands the written comments.<sup>9</sup> During an in-person meeting, the instructor and student are able to collaborate in moving the student forward in the learning process. This “[c]areful, rigorous, guided and structured reflection on performance increases the learning of both skill and substance.”<sup>10</sup> An in-person meeting allows students to hear and absorb the feedback, as well as to ask questions related to it.<sup>11</sup> Students are able to voice their concerns without having to schedule an appointment or stop by during office hours, which some students find intimidating.<sup>12</sup>

---

3. AM. BAR ASS’N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015–2016, at 17 (2015) (Standard 304(a)(ii)) [hereinafter ABA STANDARDS].

4. ABA STANDARDS, *supra* note 3 (Standard 304(a)(i)).

5. *See generally* Drake, *supra* note 2.

6. *See, e.g.*, Suzanne Rowe, *Out of the Glass Cockpit: Teaching Legal Analysis in Legal Research*, 20 J. LEGAL WRITING INST. 41, 44 (2015) (“A teacher with a group of even twenty students will be unable to monitor and refine twenty paths simultaneously.”).

7. Christy DeSanctis & Kristen Murray, *The Art of the Writing Conference: Letting Students Set the Agenda Without Ceding Control*, 17 PERSP. 35, 35 (2008).

8. *Id.*

9. Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 OHIO N.U. L. REV. 227, 236 (2015) (“[S]tudents in the worst-case scenario are not even reading the feedback, and many of those who do read it are not able to understand it or use it to improve.”); Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 268 (2004) (“[W]ritten comments are often confusing and susceptible to misinterpretation.”).

10. Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLINICAL L. REV. 143, 153 (2006).

11. *See* DeSanctis & Murray, *supra* note 7.

12. Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247, 253–54 (1993).

¶7 The variety of available research platforms and search strategies means there is no single “right way” to research a legal issue. But classroom instructors must appeal to the most common denominator.<sup>13</sup> Teaching to the median can bore and thus lose students who have advanced beyond the average skill level. Alternatively, it can leave behind struggling students who most need instruction.<sup>14</sup> But face-to-face meetings allow students to receive individualized feedback about their specific issues and research strategies. Conferences are often students’ most meaningful learning experiences, as they are keyed directly to what each individual student needs.<sup>15</sup>

¶8 These conferences, then, fill another necessary goal of legal education under the ABA Standards—an opportunity for formative assessment and feedback. Under Standard 314, the ABA mandates that law schools “utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”<sup>16</sup> The ABA defines formative assessment methods as “measurements at different points during a particular course or at different points over the span of a student’s education that provide meaningful feedback to improve student learning.”<sup>17</sup> Formative assessment gives students an opportunity to practice new skills and to make their “thinking visible to both teacher[] and student[].”<sup>18</sup> Instructors cannot make visible each individual’s thinking in a classroom setting because their attention is spread across the entire class. Conferences are an effective way to measure individual student improvement.

¶9 Formative feedback is defined as “information communicated to the learner that is intended to modify his or her thinking or behavior for the purpose of improving learning.”<sup>19</sup> Effective feedback engages students and helps them to learn to self-assess their work, ultimately building self-confidence.<sup>20</sup> Studies show that

[a]dults are usually highly motivated to learn and are willing to engage in participatory learning methods such as discussion, simulation, and small group activities. However, adult learners quickly withdraw their participation if they feel that the education is not meeting their needs, does not connect with their past experiences, or is conducted at a level they find incomprehensible.<sup>21</sup>

Conferences thus allow instructors to meet students where *they* are and students to connect their learning to their individual life experiences.

13. See DeSanctis & Murray, *supra* note 7, at 36; see also Wellford-Slocum, *supra* note 9, at 265 (“[T]he learning that takes place in the classroom is, of necessity, general, [so] that forum cannot adequately address the myriad of thinking . . . problems students face . . .”).

14. See DeSanctis & Murray, *supra* note 7, at 36 (explaining that group settings force instructors to teach to the median skill level).

15. See Wellford-Slocum, *supra* note 9, at 266 (noting that conferences “allow[] the professor to focus on the specific needs of individual students and to work with each student from that student’s unique reference point and stage of cognitive development”).

16. ABA STANDARDS, *supra* note 3, at 23 (Standard 314).

17. *Id.* (Interpretation 314-1).

18. Herbert N. Ramy, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837, 844 (2013).

19. Valerie J. Shute, *Focus on Formative Feedback*, 78 REV. EDUC. RES. 153, 154 (2008).

20. Bloom, *supra* note 9, at 234.

21. Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. REV. 941, 942 (1997).

## Students Practice Self-Direction and Self-Assessment

¶10 Individual conversations between instructors and students can result in much greater understanding and motivation on the part of students.<sup>22</sup> Studies show that when students take responsibility for their own learning and become skilled at self-critique, they are more likely to succeed in law school.<sup>23</sup> This happens most readily when formative assessment and self-critique opportunities are inserted into the curriculum.

¶11 Research conferences can help meet both of these goals. By having students fill out questionnaires identifying what they think they have done well and what they have struggled with ahead of the conference,<sup>24</sup> they have the opportunity to self-assess and then compare their assessment with the instructor's while engaging in dialogue during the conference. Not only does this allow students to learn to critically assess their skills, but it requires them to become active members in their learning process.<sup>25</sup> Conversing about assignments and research problems, then, stimulates independent learning and deepens understanding of legal issues.<sup>26</sup> By considering certain questions, such as what they are struggling with, rather than just walking through the assignment to identify specific errors, students can learn how to answer their own questions.<sup>27</sup>

¶12 One-on-one dialogues become especially important for students who are either above or below the class's median skill level. In a class setting, instructors must rely on identifying general problems that need addressing, but one-on-one conferences allow instructors to focus on the specific problems students are having and to suggest strategies to address those exact issues.<sup>28</sup> Conferences also afford students the opportunity to explain their intentions, giving the instructor a clearer view into how they think.<sup>29</sup> This, in turn, allows the instructor to suggest strategies tailored to each student.

¶13 Furthermore, for many students, verbalization and discussion are the best avenues to clear thinking. Talking through legal rules and their thought processes with someone better versed in legal analysis helps them to better understand the legal issues.<sup>30</sup> Active learning, including discussion, helps students to develop higher-level thinking.<sup>31</sup> Discussing the legal issues involved in an assignment helps students feel as though they are collaborating alongside the instructor in their learning process.<sup>32</sup>

---

22. Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education*, 17 *BIOCHEM. EDUC.* 140 (1989) ("Frequent faculty-student contact in and out of classes is the most important factor in student motivation and involvement. Faculty concern helps students get through rough times and keep on working.").

23. Bloom, *supra* note 9, at 230.

24. See Appendix A, *infra*.

25. Bloom, *supra* note 9, at 243–44.

26. Gerald F. Hess, *Value of Variety: An Organizing Principle to Enhance Teaching and Learning*, 3 *ELON L. REV.* 65, 81 (2011).

27. DeSanctis & Murray, *supra* note 7, at 38.

28. See *id.* at 36 (noting that one-on-one writing conferences allow instructors to "tie instruction to the particular paper and focus on what to do next, suggesting strategies for the writer to use rather than merely identifying problems").

29. See *id.* at 37.

30. *Id.*

31. Hess, *supra* note 21, at 943.

32. See *id.* (discussing the value of collaboration between student and instructor in the learning process).

¶14 In addition, one-on-one conferences can create a relationship between the instructor and student that leads to more engaged students. As Kent Syverud writes in his article *Taking Students Seriously*: “Your students will know whether you like and respect them, and if they know that you do not, you will fail as a teacher.”<sup>33</sup> Conferences help students and instructors to develop a mutual respect, as the instructor has more time to show that he or she values each student as an individual, which can be more difficult to do in a classroom setting.<sup>34</sup> Conferences, when structured appropriately,<sup>35</sup> also allow students to drive the interaction. When students feel valued and heard by their instructors, they are more likely to remain engaged in the learning process.<sup>36</sup>

¶15 Finally, conferences give instructors time to check in with their students. Research and writing instructors, as some of the few instructors in the law school giving regular assignments throughout the semester, are better situated to monitor their students’ well-being and academic success. In conferences, instructors can check in with their students one-on-one, in an atmosphere where students are less likely to be self-conscious. Upon finding or being told directly by a student that he or she is struggling, either with research and writing or with law school work in general, instructors can direct students to the appropriate law school department for additional help. Likewise, instructors can forward any concerns—or even accompany a student directly—to campus mental health resources.

### Instructors Better Understand How Students Learn

¶16 Without question, one-on-one conferences can be time consuming for instructors, as they must first familiarize themselves with students’ strengths and weaknesses and then actually meet with students.<sup>37</sup> But conferences allow instructors to more actively engage in the learning process and to receive feedback.<sup>38</sup> By meeting with students individually, instructors better understand how the students in their classes learn.<sup>39</sup> It also provides instructors with important intelligence on what is and is not working well in the classroom and allows them to “make adjustments during the course to ensure students are learning the important content and skills.”<sup>40</sup> As such, conferences can help shape classroom dynamics and “maximize student learning.”<sup>41</sup>

¶17 Once meeting with all of his or her students, the instructor has a clearer picture of global issues with which the class is struggling. These issues can then be shared with the entire class. This allows students who had more significant issues in different areas and who may not have had a chance to discuss these global issues in their individual conferences to benefit from the classroom discussion.<sup>42</sup>

33. Syverud, *supra* note 12, at 247.

34. Hess, *supra* note 21, at 942.

35. *See infra*, pp. 21-25.

36. *See* Syverud, *supra* note 12, at 254.

37. DeSanctis & Murray, *supra* note 7, at 35.

38. Gerdy, *supra* note 1, at 65, ¶ 25 (“Effective, learner-centered assessment enables teachers to answer two key questions: What have my students learned and how well have they learned it? How successful have I been at accomplishing the goals and objective I have set . . . ?”).

39. Hess, *supra* note 26, at 87.

40. *Id.*

41. *Id.* at 90.

42. DeSanctis & Murray, *supra* note 7, at 37.

¶18 Finally, conferences allow the instructor to get to know students better as human beings. As students become more comfortable with the instructor, they are more willing to ask questions inside and outside of the classroom, which can result in increased learning.<sup>43</sup> If students feel that their learning is important to the instructor, they are also more likely to become self-motivated to continue engaging in the learning process.<sup>44</sup>

### Learning Styles Are Used to Best Advantage

¶19 Unlike the traditional lecture format that most law school instructors employ, research conferences can be adapted to appeal to all learning styles. Learning styles are defined as “the way in which individuals ‘begin[] to concentrate on, process, [internalize,] and remember new and difficult [academic] information’ or skills.”<sup>45</sup> Studies have shown that college students perform at higher levels when the instructional method used aligns with their individual learning styles.<sup>46</sup> In testing law students for learning styles, researchers found that law students fit into each of the different learning styles.<sup>47</sup> Most law students have primary, secondary, and even tertiary strengths, meaning that they use various learning styles when absorbing new materials.<sup>48</sup> As such, teaching solely by lecture and written practice exercises is unlikely to fully engage all students.

¶20 Students who learn best via auditory methods, approximately 26 percent of law students in a study by Boyle & Dunn in the late 1990s, remember approximately three-quarters of a 50-minute lecture.<sup>49</sup> Just as these students remember much of what they hear in a traditional lecture,<sup>50</sup> they will recall much of the discussion in a research conference focusing directly on their individual strengths and weaknesses. Conversely, those with low auditory strengths struggle greatly to learn through listening and need teaching methods that differ from the traditional law school lecture.

¶21 Students with high visual strengths, 8 percent in the Boyle & Dunn study, remember what they read or what they see.<sup>51</sup> For these students, a visual component is critical to their learning.<sup>52</sup> Tools such as a research log work well for most visual learners, probably more so than lectures or research exercises. The visual device helps them to more easily see the patterns that evolve. Instructors can draw or use images or flowcharts for students during conferences to help them better understand how to organize their research and as aids in their analysis.<sup>53</sup>

---

43. See Syverud, *supra* note 12, at 254.

44. See *id.*

45. Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 214 (1998) (quoting RITA DUNN & KENNETH DUNN, *TEACHING SECONDARY STUDENTS THROUGH THEIR INDIVIDUAL LEARNING STYLES 2* (1993)).

46. *Id.* at 215.

47. *Id.* at 224.

48. *Id.* at 226 (recommending a certain sequence for ideal learning: (1) introducing the material using a student’s primary strength; (2) reinforcing the material using a secondary or tertiary strength; and (3) having students utilize “the newly acquired knowledge in a creative way to ensure application of knowledge”).

49. *Id.* at 227–28.

50. *Id.* at 228.

51. *Id.*

52. *Id.* at 228–29.

53. One way to do this is for professors to demonstrate to students how to draw a spectrum for a legal issue. For example, say that the student is researching whether an unoccupied RV counts as a

¶22 Students with high tactual strength, 21 percent of law students, learn best by using their fine motor skills—often through writing, drawing, or doodling.<sup>54</sup> Research instructors would do well to provide students with a copy of their draft research during conferences, so students can manipulate their research organization by taking notes on the page. Students might best be able to explain their thought process by charting or graphing, and research instructors can allow for that flexibility when conferencing with these students in a way they may not be able to in the classroom. For these students especially, using a pre-conference questionnaire to self-evaluate their strengths and weaknesses can be a useful tool,<sup>55</sup> as they can brainstorm on paper prior to the conference to get their minds engaged.

¶23 Finally, students who are kinesthetic learners, 16 percent, remember best by doing.<sup>56</sup> One helpful way to reach these students is role-playing.<sup>57</sup> In research conferences, the student might play the part of the junior partner and relay his or her research findings to the senior partner. Kinesthetic learners should bring their laptops to the conference so instructors can explain the ideal research methodology while the students walk through a relevant database themselves to reinforce learning. These students also sometimes learn best while moving,<sup>58</sup> so the option of a “walk-and-talk” research conference might also be beneficial.

¶24 Many students have strengths in two or even three areas,<sup>59</sup> so incorporating learning tools directed at a diversity of methods is the most likely way to guarantee student learning. This is especially true in initial meetings, in which the instructor does not know the student’s learning preferences yet. After getting to know students better, instructors can tailor conferences more directly to students’ preferred learning types. Research conferences, as a tool that can appeal to all four learning types, are a helpful teaching strategy to introduce into one’s arsenal to ensure student learning. They can more easily be adapted to students’ individual learning strengths than the classroom setting and result in greater comprehension for each student.

### Collaborative Style Appeals to Millennial Learners

¶25 In addition to benefiting different types of learners, research conferences are likely to appeal to the average Millennial learner, the generational group into which most current law students fit. Millennials tend to share a number of learning and societal characteristics.<sup>60</sup> A few of these characteristics are particularly well matched to the personalized, more flexible environment provided in research conferences.

---

habitation in the burglary context. No cases in their jurisdiction directly answer that question. They should see how other non-houses have been treated by courts. Professors can draw a spectrum and have students place how those other non-houses have been treated—as habitations or as not being habitations—and then have students determine where the unoccupied RV might fit among those authorities by comparing and contrasting facts and the courts’ reasoning.

54. Boyle & Dunn, *supra* note 45, at 229.

55. See Appendix A, *infra*.

56. Boyle & Dunn, *supra* note 45, at 231.

57. *Id.* at 231–32.

58. *Id.*

59. *Id.* at 244.

60. See, e.g., Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 8–14 (2013) (enumerating the specific characteristics of the Millennial learner); Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] Like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM. & RHETORIC 153, 154 (2011) (describing Millennials as “special, sheltered, confident, team-oriented, conventional,

¶26 Millennials are used to teamwork and collaborative educational techniques,<sup>61</sup> having grown up in classrooms using peer-learning techniques. They are not only comfortable with this collaborative education but have come to “expect a collaborative learning environment.”<sup>62</sup> They are eager for and may even expect teacher-student collaborative opportunities, being used to a “‘co-partnership’ with supervisors and teachers.”<sup>63</sup> In fact, due to this upbringing, Millennials may be somewhat uncomfortable engaging in autonomous thinking.<sup>64</sup> Because of this lack of confidence in working independently, research conferences become even more important, as they are an opportunity for students to still work collaboratively and keep the sense of connectedness they crave, while being guided by the instructor to be more self-sufficient thinkers.

¶27 Millennials are also used to personalized educational experiences,<sup>65</sup> in which they are guided through the educational process and “assisted often when the task required independent, creative thinking and decision-making skills.”<sup>66</sup> However, Millennials crave the chance to work alongside veteran colleagues, want to be treated as partners in their learning process, and desire to be included in their own goal setting.<sup>67</sup> Research conferences give them a chance to partner with more experienced professionals and to be active in their own learning experiences while forcing them to engage in the analytical processes with which they may be less familiar. Research conferences recognize and fulfill the Millennial law student’s need for collaborative, personalized learning, while helping them overcome their generation’s trademark struggle to engage in independent thinking by allowing them to practice such thinking directly under the guidance of their instructors.

## Importance of Legal Research Conferences

### The Analytical Process Is Centered in the Research Stage

¶28 A common misconception has it that research is largely a mechanical function rather than an analytical exercise.<sup>68</sup> As Barbara Glesner Fines aptly notes,

---

pressured, and achieving”); Brittany Stringfellow Otey, *Millennials, Technology, and Professional Responsibility: Training a New Generation in Technological Professionalism*, 37 J. LEGAL PROF. 199, 206–13 (2013) (listing Millennial characteristics).

61. See Susan Azyndar, *Work with Me Here: Collaborative Learning in the Legal Research Classroom*, 1 LEGAL INFO. REV. 1, 3 (2015–2016) (“[T]his group experienced collaborative learning extensively in prior schooling, comfortably adopts this educational strategy, and even much prefers this kind of learning environment.”).

62. Benfer & Shanahan, *supra* note 60, at 11.

63. *Id.*

64. Otey, *supra* note 60, at 207.

65. Kari Mercer Dalton, *Bridging the Digital Divide and Guiding the Millennial Generation’s Research and Analysis*, 18 BARRY L. REV. 167, 171 (2012) (“Millennials have come to expect products and services to have as many ‘personalization and customization features as possible’ to accommodate an ever-evolving series of demands, interests, and preferences.”).

66. Benfer & Shanahan, *supra* note 60, at 12.

67. *Id.* at 13 (“They expect to work with supervisors who treat them as equals rather than with supervisors who act in an authoritarian manner or enforce a hierarchical structure.”).

68. See Paul D. Callister, *Thinking Like a Research Expert: Schemata for Teaching Complex Problem Solving Skills*, 28 LEGAL REFERENCE SERVS. Q. 31, 48 (2009) (noting that faculty members have deprioritized legal research because it lacks “critical reasoning”); Genevieve Blake Tung, *Academic Law Libraries and the Crisis in Legal Education*, 105 LAW LIBR. J. 275, 286, 2013 LAW LIBR. J. 14, ¶ 23

The conflation of research instruction with bibliographic instruction has hindered the development of research pedagogy even within the community of experts. To truly improve legal research instruction, the pedagogy must be developed to recognize the analytic and creative aspects of the research process as research, rather than thinking of research instruction as nothing more than mastering a set of finding tools.<sup>69</sup>

¶29 In reality, research is a highly analytical task.<sup>70</sup> As such, it is a mistake to hold off on student conferences until the writing stage of an assignment, bypassing the part of the process that for many students is the most frustrating.<sup>71</sup> By the time students begin writing a memo or appellate brief in their first-year classes, they should have already spent hours engaged in complex issues of legal analysis.<sup>72</sup>

¶30 Legal educators have noted for decades that legal research is “more than a mechanical examination of texts.”<sup>73</sup> The MacCrate Report states that “the formulation and implementation of a research design are analyzed as processes which require a number of complex conceptual skills.”<sup>74</sup> This stems from the fact that research is largely a problem-solving endeavor, which by its very nature is analytical.<sup>75</sup> From the moment a student or attorney is presented with a factual scenario, he or she must consider what the problem is and a strategy to answer it effectively and efficiently.<sup>76</sup> As students develop a research plan, they must consider what the broad-scale issues are and what resources they should look at first to begin answering their questions.<sup>77</sup> As students begin to locate authorities, they must constantly evaluate whether and how those sources are relevant to their identified issues.<sup>78</sup> Eventually, students must use synthesis to determine whether the authorities they have identified fully answer their problem.<sup>79</sup> As Sarah Valentine notes, “[t]he process of legal research *cannot* be mechanically divorced from legal analysis and reasoning.”<sup>80</sup>

---

(“Too often, though, legal research is assumed to be something straightforward and nonintellectual that can be easily mastered by new law students . . .”); Sarah Valentine, *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 U. BALT. L. REV. 173, 198 (2010) (“Legal research is generally compartmentalized within the legal academy as an easily learned, routine, and repetitive activity unconnected to legal analysis . . .”).

69. Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills Throughout the Curriculum*, 2013 J. DISP. RESOL. 159, 186.

70. *Id.*; see also Rowe, *supra* note 6, at 42 (“[R]esearch is an analytical process, not an automatic system of document retrieval.”).

71. Valentine, *supra* note 68, at 179 (noting that students can be “overwhelmed by the ocean of information they must manage, search within, and understand”).

72. Fines, *supra* note 69, at 186 (“[E]xpert legal research involves the same kind of issue identification and analysis as is the standard fare of a law school exam bluebook.”).

73. A.B.A. TASK FORCE ON LAW SCH. & THE PROFESSION, LEGAL EDUCATION & PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 163 (1992) [hereinafter MACCRATE REPORT].

74. *Id.*

75. See Valentine, *supra* note 68, at 200 (noting that legal research involves “creative problem-solving”).

76. *Id.* at 207.

77. *Id.* at 210. It would be impossible to do legal research without analyzing, synthesizing, and applying the information found, both to the original issue and to the research plan developed to address the issue. The process of legal research requires an ability to determine legal context, assess the law found in the process, and understand how what is found relates to specific situations. *Id.* at 210–11.

78. Ian Gallacher, *Forty-Two: The Hitchhiker’s Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151, 158 (2006).

79. Valentine, *supra* note 68, at 201.

80. *Id.* at 211 (emphasis added).

¶31 Like the MacCrate Report, the American Association of Law Libraries' *Principles and Standards for Legal Research Competency* makes it clear that legal research requires analysis.<sup>81</sup> Two of the standards are explicit about this need: Principle III, "A successful legal researcher critically evaluates information," includes skills such as judging reliability, fine-tuning research questions, and finding and evaluating contradictory authority.<sup>82</sup> Principle IV, "A successful legal researcher applies information effectively to resolve a specific issue or need," includes synthesizing research problems, identifying unresolved issues, "incorporat[ing] analogous background as appropriate if research has not clearly resolved all ambiguities or uncertainties within the issue posed," and assessing the effectiveness of prior strategies.<sup>83</sup>

¶32 Even the principles that seem to have less to do with analysis include analytical tasks. For example, Principle I, "A successful legal researcher possesses foundational knowledge of the legal system and legal information sources," includes the ability to select appropriate and effective sources.<sup>84</sup> Principle II, "A successful legal researcher gathers information through effective and efficient research strategies," includes "[analyzing] research results using prior knowledge and experience on the topic in particular, as well as one's general knowledge of legal principles" and "[developing] an appropriate research plan for each discrete issue."<sup>85</sup> As such, waiting to hold a conference until after the student has already struggled through the critical analysis integral in the research process makes little sense. First, this sends the faulty message that research is a mechanical task. Second, it wastes students' time, as they engage in the analysis intrinsic to research while gathering sources and then repeat their analytical work—usually by rereading all their sources—when it is time to write.

¶33 Given how enmeshed analysis is with the research process, meeting with students during the research phase when they are deeply entrenched in analysis is a better pedagogical tool. Students will be able to verbalize what key issues they have identified, how and why they are relying on particular authorities, and how these authorities are answering those issues before getting bogged down in the equally difficult task of expressing their findings in writing. A research conference will allow them to reason out their analyses before they put pen to paper.<sup>86</sup> In fact, meeting during the research phase will likely produce better analyzed and written first drafts of memos and appellate briefs.

¶34 Finally, meeting at this critical point in the process emphasizes the importance of legal research as a highly critical lawyering skill. In the legal curriculum, research has been relegated to the background.<sup>87</sup> Bringing it to a place of prominence in students' educational experience is particularly important given that attor-

---

81. See AM. ASS'N OF LAW LIBRARIES, PRINCIPLES & STANDARDS FOR LEGAL RESEARCH COMPETENCY (2013), <https://www.aallnet.org/advocacy/legal-research-competency/principles-and-standards-for-legal-research-competency/> [<https://perma.cc/U8AN-SGNZ>] [hereinafter PRINCIPLES & STANDARDS].

82. *Id.* at 6–7.

83. *Id.* at 7–8.

84. *Id.* at 4.

85. *Id.* at 5–6.

86. This is not to say that students will not continue the analytical process while writing. As they write, they may come to find that there are lingering, unanswered questions that require further research.

87. Drake, *supra* note 2, at 529.

neys are spending approximately a third of their time conducting legal research.<sup>88</sup> Research conferences are one way to illustrate this to students.

### Preparing for Practice

¶35 Holding research conferences also helps prepare students for their lives as attorneys. The abilities to collaborate on and communicate about legal issues are key lawyering skills.<sup>89</sup> Research conferences give students the chance to collaborate with another legal professional—their instructor—and to learn how to effectively discuss the authorities they have located and how they are relevant to the legal issues before them.

¶36 As Susan Azyndar recently noted, “collaboration and teamwork have been recognized as pillars of the [legal] profession.”<sup>90</sup> No attorney can succeed in his or her profession without collaborating with others: clients; supervising attorneys; colleagues within their practice group; judges; and nonlawyers related to the legal arena, such as police officers, psychologists, and the like.<sup>91</sup> Collaboration is the result of “a group of knowledge workers integrat[ing] their individual expertise in order to deliver high-quality outcomes on complex issues, typically extending over time and across discrete projects as they identify new approaches and initiate further engagements.”<sup>92</sup> It allows individuals to be partners in the process, as they advise and engage one another.<sup>93</sup>

¶37 Scholars have noted that Millennials’ tendency to work in groups has hampered their ability to think independently.<sup>94</sup> Research conferences, when structured appropriately, afford instructors the opportunity to help students cultivate the ability to think for themselves, to evaluate their own thought processes by asking questions, and to learn to talk about these issues in an organized and coherent manner. Conferences give students the chance to simulate talking to a fellow attorney or supervisor effectively and efficiently and to learn to self-critique their analytical processes.<sup>95</sup> Finally, conferences enable instructors to positively model appropriate meeting behavior, such as being prepared and being collaborative.<sup>96</sup> They also give students the opportunity to learn to listen, receive feedback, and resolve conflict.<sup>97</sup>

¶38 While critics may argue that writing conferences afford students the same opportunity to collaborate, practice listening, and receive feedback, writing conferences rightly tend to focus a great deal on the mechanics and organization of the

88. STEVEN A. LASTRES, REBOOTING LEGAL RESEARCH IN A DIGITAL AGE 1 (2012), [https://www.lexisnexis.com/documents/pdf/20130806061418\\_large.pdf](https://www.lexisnexis.com/documents/pdf/20130806061418_large.pdf) [<https://perma.cc/BCF5-B4KA>].

89. ABA STANDARDS, *supra* note 3, at 16 (Standard 303(a)(3)).

90. Azyndar, *supra* note 61, at 5.

91. *Id.* at 6, 8; John Lande, *Reforming Legal Education to Prepare Law Students Optimally for Real-World Practice*, 2013 J. DISP. RESOL. 1, 14 (noting that studies of client satisfaction have found attorneys’ communication skills to be lackluster).

92. Heidi K. Gardner, *Effective Teamwork and Collaboration*, in *MANAGING TALENT FOR SUCCESS: TALENT DEVELOPMENT IN LAW FIRMS* 146 (Rebecca Normand-Hochman ed., 2013).

93. *Id.*

94. See *supra* note 63 & accompanying text.

95. See Wellford-Slocum, *supra* note 9, at 311.

96. See *id.* at 292 (“[B]y building positive, encouraging, and collaborative relationships with students, the law professor models for students how to create such relationships later with their own clients.”).

97. Azyndar, *supra* note 61, at 9–10.

writing, as this new style of writing is so foreign to students. Research conferences give students a chance to focus more on the authorities they have located and how those authorities are relevant to the issues they are investigating, without having to focus on the challenging tasks of communicating those issues in writing. Students must be able to learn to effectively discuss issues they are researching, and not just in writing.

¶39 According to AALL's Task Force on Identifying Skills and Knowledge for Legal Practice, 35 percent of attorneys begin their research by seeking advice from another attorney.<sup>98</sup> Another 29 percent do so occasionally.<sup>99</sup> Likewise, other studies have shown that attorneys often draw on their colleagues' expertise.<sup>100</sup> As such, it is critical that students develop the skill to speak intelligently about hierarchy of authorities and how specific authorities are relevant to the legal issues they are researching, as well as be able to discuss their analytical processes aloud. Students also need to learn to discuss their research strategies with colleagues, so that they can practice incorporating others' advice about their strategies, what sources to consult, and so on. While students could get a chance to practice this in class, a research conference simulates the one-on-one experience that happens in practice.

### How to Structure Research Conferences

¶40 An instructor could add research conferences to his or her syllabus in any number of ways. This section presents one option for incorporating research conferences into both first-year skills courses and upper-level research courses.

#### Timing in the Semester *First-Year Skills Courses*

¶41 Finding a place to add a research conference in an already packed first-year syllabus may seem challenging. But the benefits to students are more than worth the effort.

¶42 In first-year skills courses, two conferences are recommended. The first is a conference held in the first week or two of school to simply get to know students. The goal of this set of conferences is to build a relationship that the instructor and student can use throughout the semester. This rapport building goes a long way in having subsequent successful conferences, of both the research and writing varieties.

¶43 These conferences can be as short as 15 minutes and can take place in the instructor's office or a more casual setting, such as the law school's café or even outdoors. Colleagues at other law schools have held these initial meetings in small groups, but one-on-one meetings between individual students and the instructor allow them to have real conversations and ensure that one student's time is not monopolized by an over-eager classmate.

---

98. ALL-SIS TASK FORCE ON IDENTIFYING SKILLS AND KNOWLEDGE FOR LEGAL PRACTICE, A STUDY OF ATTORNEYS' LEGAL RESEARCH PRACTICES AND OPINIONS OF NEW ASSOCIATES' RESEARCH SKILLS 10 (June 2013), <http://www.aallnet.org/sections/all/committees/practicetf/final-report-07102013.pdf> [<https://perma.cc/PZP9-EFHZ>].

99. *Id.*

100. See Azyndar, *supra* note 61, at 13 (describing studies where attorneys look to their colleagues for advice).

¶44 The second conference is the substantive one. In this model, first-year skills instructors ideally will discuss the sources in the closed memo at length with students in class, asking them to unpack how each source would be applied to the client's facts before any discussion of writing begins. Including a few unhelpful sources in the closed memo packet will help students to better understand that not all sources that seem relevant are. A discussion of the level of analysis required in the research process at this juncture is critically important so students do not focus on writing as the focal point of the course. Then, the research conferences would be scheduled approximately a week after the open memo problem has been distributed to the students. This allows students a week to try to locate sources, analyze their usefulness, and organize their research in some fashion before meeting with their instructor.

¶45 Holding conferences in place of one or more of the classes for this week will save the instructor time, as these conferences should be at least 30 minutes long, but this may be difficult with all the other material to be covered. However, after meeting with the instructor, students should have a much better handle on how to use the sources in their memos, likely producing a higher-quality writing product for their open memo drafts.

### *Upper-Level Research Courses*

¶46 With the focus of upper-level research courses being squarely on research, it is easier for the instructor to create a syllabus that incorporates multiple research conferences. A minimum of three conferences is recommended.

¶47 The first conference, like in the first-year skills class, should be held in the first two weeks of class. Unlike the first-year skills class, this conference should serve a dual purpose. In addition to serving as a get-to-know-you conference, it should be combined with a short research exercise, such as developing a research plan or conducting background research on a client problem using secondary sources. The conference should be scheduled for 30 minutes, with the time split between relationship building and discovering where students are in terms of their research abilities at the start of the semester, since students often come into these classes with highly variable ability levels.<sup>101</sup>

¶48 Scheduling the second and third conferences will depend in part on the structure of the course. If the course is a simulation with client problems, the conferences should be scheduled approximately a week after two of the client problems are introduced. This will give students time to conduct research before meeting. If the course is not a simulation and covers, for example, a different type of resource each class, consider combining a few of the resources for a larger problem so students will have the opportunity to undertake a problem more similar to what they would see in practice. Then, schedule conferences for the week after these assignments.

¶49 Regardless of scheduling, these conferences should be scheduled for a minimum of 30 minutes. Why two conferences? They serve as a strong formative and individualized assessment tool for the instructor to ensure that the students are

---

101. See Gerdy, *supra* note 1, at 81, ¶ 80 (noting that teachers frequently need to “assess where the students are at the beginning of the course to determine what remedial work and review will be required”).

moving forward throughout the course of the semester. The conferences will build on each other.

## Setting the Agenda and Tone

### *Setting the Agenda*

¶50 For both first-year skills courses and upper-level research courses, the instructor should set the agenda for the first conference. One way to formulate questions is to consider what would be helpful to know about students.<sup>102</sup> There are two main fields of inquiry. First, learn something about each student. Where is the student from? Why did he or she come to law school? Are there areas of law that particularly interest the student? This line of questioning allows instructors to get to know their students, to make connections, and to have topics of conversation with them in subsequent meetings.<sup>103</sup>

¶51 Second, an instructor should figure out each student's research background. Has he or she worked as a paralegal? Did the student clerk for a judge? What was the student's undergraduate major? The answers can help when discussing research with them later on and to get an idea of where their baseline skill levels might be.

¶52 First conferences for an upper-level course should add a third level of inquiry: what are students hoping to get out of the course? Distributing a short preconference questionnaire is one way to stimulate the conversation.<sup>104</sup> Questions that might be used on the questionnaire include:

- What are you hoping to get out of this course?
- What are your researching strengths?
- What are your researching weaknesses?
- What are three types of sources that you need to learn to use more effectively?
- If you were going to know how to perform one research skill at the end of this course that you don't know how to do now, what would it be?
- What area of law are you hoping to practice?

The instructor could also ask about students' comfort levels with particular types of resources.<sup>105</sup>

¶53 Asking only the first question will result in fairly vague answers like wanting to be more efficient or faster. The second two questions will usually result in fairly vague answers, such as being proficient at Westlaw or Lexis or not being good enough at Boolean searching. The question asking about three types of sources they need to learn to use more effectively will require students to think more specifically

102. See, e.g., *id.* (recommending a questionnaire at the outset of a course asking, for instance, what are the student's short-term goals for the course and how this course might relate to their future).

103. See Wellford-Slocum, *supra* note 9, at 306 ("Open questions about the student's interests, professional goals and concerns give the student permission to talk freely and openly."). Rapport-building questions "also signal that the professor is interested in the student as a person." *Id.*

104. See Appendix B, *infra*.

105. See *id.*; see also Gerdy, *supra* note 1, at 81, ¶ 80 ("A more specific questionnaire can ask students to respond to subject-related queries in an attempt to check their knowledge before moving on to more advanced topics."). Gerdy notes that these questionnaires work particularly well for upper-level research courses "where teachers must often assess where the students are at the beginning of the course to determine what remedial work and review will be required." *Id.*

about what they have struggled with before. The final two questions allow the instructor to tailor research assignments to students' particular interests and goals for the course, which can increase each student's interest in completing the research problem. For example, if half the class is interested in criminal law, the instructor can make one of the client problems a criminal law matter.

¶54 The answers to these questions can stimulate fruitful conversation during the conferences. Even the first two questions are information about students' broad goals for the course. The answer "I want to be more efficient" can lead to a conversation about why that student feels like his or her research is not efficient right now. Beyond creating points for discussion in the conference, the questions can also help the instructor shape the syllabus to ensure that students get what they hoped out of the course by semester's end. Knowing students' expectations for the course also provides instructors with a helpful measure of each student's progress to check across the semester in conferences and written assignments.

¶55 In the subsequent conferences, the instructor might try using a different questionnaire, which allows the student to effectively set the agenda for the conversation to take place.<sup>106</sup> The questionnaire seen in Appendix A, which builds off of Blaustone's feedback model and Rodriguez's adaptation of that model into a written questionnaire, requires students to identify both the strengths and weaknesses of their research attempts, allowing them to gain important practice in self-critique.<sup>107</sup> In addition, it results in students coming to the conference prepared to discuss specific questions and issues, which can help "promote self-sufficiency and independence."<sup>108</sup> Instructors should explain the purpose of the questionnaire to students prior to their filling it out for the first time.<sup>109</sup>

¶56 The first question requires the students to identify aspects of their research that they feel were done well.<sup>110</sup> The questionnaire should instruct the student to be specific about what resources, methods, or analysis they feel they succeeded at using or doing.<sup>111</sup>

¶57 As Blaustone notes in her feedback model, most students are unfamiliar with being asked to examine what they have done well, and may be vague.<sup>112</sup> Blaustone strongly recommends giving students time to reflect in depth on what they have done well, rather than rushing into the negatives.<sup>113</sup> Not only does this set a positive tone for the meeting, but it "reinforce[s] the premise that *all* performance

106. See Appendix A, *infra*.

107. The questionnaire I use in the second and third conferences in my course is based on the feedback model outlined in Blaustone, *supra* note 10, at 143–63. Blaustone's method is designed to provide feedback to students completing clinical tasks, but it is easily adapted to a questionnaire and format that is useful for research conferences with students. Sheila Rodriguez previously adapted steps one and four of Blaustone's method to a questionnaire for her legal writing students. Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. DET. MERCY L. REV. 207, 223 (2009).

108. Wellford-Slocum, *supra* note 9, at 283.

109. Rodriguez, *supra* note 107, at 224–25 ("If students do not understand why they are devoting time to filling out forms and evaluating their [work], they will be less inclined to provide meaningful commentary.")

110. See Appendix A, *infra*.

111. *Id.* Rodriguez also recommends including a note that students are not allowed to leave questions blank on the feedback form. Rodriguez, *supra* note 107, at 224.

112. Blaustone, *supra* note 10, at 155.

113. *Id.*

contains strengths as well as areas to target for further improvement.”<sup>114</sup> By reflecting on their strengths prior to coming to the conference, students are engaging in self-critique, a critical lawyering skill. During the conference, the instructor can confirm whether the students’ assessment of their work matches his or hers, helping students to improve their ability to assess their own work moving forward.

¶58 The second question on the questionnaire asks the student to identify challenges he or she encountered during the research process and to recognize areas that require improvement or further research.<sup>115</sup> Again, the student should strive to be specific about what resources, methods, or analysis they feel weak in using or doing.<sup>116</sup> Filling out this part of the questionnaire also allows the student to practice assessing his or her work product and lets the student effectively set the agenda for what will be discussed during the conference time.<sup>117</sup> It also allows those students who may be more introverted to get their thoughts together before having to converse with the instructor.

¶59 Students should submit the questionnaires to the instructor at the same time that they submit their work product, or at least 24 hours prior to their conference, to give the instructor time to review. The instructor should make notes on the students’ performance, marking specific examples of where each student struggled and succeeded prior to reading the students’ questionnaires, so as not to be influenced or sidetracked by students’ self-critiques. The instructor then needs to analyze the students’ responses and see whether the students’ identified strengths and challenges align with the instructor’s perceptions.

¶60 Once in the conference, it is the instructor’s job to stick to the agenda set out by the student. Doing so strongly indicates to the student that his or her voice matters and that the instructor cares about the student’s concerns.<sup>118</sup> The conference should begin with the instructor providing positive reinforcement for those research strengths identified by the student.<sup>119</sup> In the case that the instructor does not entirely agree with the student’s purported strengths, he or she should still identify a point that showed the student’s potential in that area.<sup>120</sup> Then, the instructor can illustrate how the student could further improve.<sup>121</sup> After discussing the strengths identified by the student, the instructor can point out additional areas where the student succeeded or showed potential for success.<sup>122</sup> These should be “strengths that the student may have initially dismissed or undervalued.”<sup>123</sup> In the upper-level research course, if there are multiple research conferences, the instruc-

---

114. *Id.* at 156; see also Rodriguez, *supra* note 107, at 217 (“Positive feedback enhances perceived competence, which tends to increase intrinsic motivation.”).

115. See Appendix A, *infra*.

116. See *id.*

117. See Wellford-Slocum, *supra* note 9, at 312 (“Explicitly encouraging students to share in the responsibility of evaluating their work also strengthens their intrinsic motivation to excel because students are thereby more inclined to internalize their role as the ultimate owner of the work product.”).

118. Blaustone, *supra* note 10, at 157.

119. See *id.*; see also Wellford-Slocum, *supra* note 9, at 323 (noting that cognitive psychology “suggest[s] that professors not simply discuss the weaknesses” in a student’s work, but also recognize “where students have succeeded”).

120. Blaustone, *supra* note 10, at 157.

121. *Id.*

122. *Id.*

123. Rodriguez, *supra* note 107, at 222.

tor can also point out the student's improvements over the course of the class. This helps the student build self-confidence.<sup>124</sup> Once the student sees how the instructor perceives his or her work positively, he or she is often better able to give a balanced self-critique next time.<sup>125</sup>

¶61 After discussing the successes, it is time to turn to the challenges. Again, the instructor should begin by addressing those problems identified by the student, to show respect for the student's agenda.<sup>126</sup> As Professor Wellford-Slocum notes in her article on writing conferences:

Some of a student's concerns are likely to overlap with the professor's own concerns . . . . Because students are more receptive to critiquing their own work when they have initiated the questions that inspire the critique, it is far more effective to discuss these issues in response to a student's question rather than forcing the student to defend his reasoning in response to the professor's critique.<sup>127</sup>

¶62 If the instructor feels a point made by the student accurately identified a weakness, he or she should comment on how better to handle that situation the next time.<sup>128</sup> Students are often too hard on themselves, so it is also an opportunity for the instructor to point out where students have handled something better than they thought.<sup>129</sup> Finally, after addressing the student's concerns, the instructor should turn to those problem areas the student did not identify.<sup>130</sup> This should be limited to major research and analysis issues that have not been touched on before or that were not discussed at length earlier in the discussion.<sup>131</sup>

¶63 Blaustone notes that although this may be an uncomfortable part of the discussion for students, "any such feelings of unease will have been ameliorated in large part by the student's previously having taken ownership of the discussion."<sup>132</sup>

¶64 The students and instructor should also discuss what further research needs to be done. Many students struggle with knowing when to stop researching, and this may be reflected in their responses on the questionnaire. The conference is a good opportunity for the instructor to reinforce that if (1) the student has answered all the questions set out in his or her research plan, and (2) the student is coming across the same sources repeatedly, he or she may stop. This emphasizes to students the importance of strategizing their research prior to jumping into the resources and helps them learn when to stop, a skill that normally only comes with experience.

¶65 Finally, in the third conferences, an instructor requires students to simulate a scenario in which they report their findings to a senior partner. In these conferences, students should still complete the same preconference questionnaire. How-

124. Blaustone, *supra* note 10, at 157.

125. *Id.* at 158.

126. *Id.*; see also Wellford-Slocum, *supra* note 9, at 313–14 ("If a student has a concern that is not being addressed because the professor elects first to pursue another line of inquiry, the student is less likely to be fully attentive to that dialogue.").

127. Wellford-Slocum, *supra* note 9, at 313.

128. See Blaustone, *supra* note 10, at 158.

129. *Id.*

130. *Id.* at 159.

131. *Id.*

132. *Id.*; see also Rodriguez, *supra* note 107, at 217 ("Including positive components, such as praise and encouragement, in feedback helps to ameliorate the potentially ego-threatening effects of criticism and increases the likelihood that a student will accept the feedback.").

ever, rather than diving immediately into what they have done well, students are able to practice discussing legal issues with a colleague. Because students have hopefully had a constructive conferencing experience with the instructor earlier in the semester, they are less nervous about presenting their research and discussing their analysis of issues. Once students report on their research, the instructor should turn to the preconference questionnaire to drive forward the agenda using the steps described above, but include feedback on, and discussion of, the students' oral communication skills.

### *Setting the Tone*

¶66 In setting the tone for the conferences it is important both to remember that the students are human beings and to show empathy for them as novice researchers.<sup>133</sup> This means asking how they are doing and actually listening and then responding appropriately to that answer. Students can tell when their instructors are asking them a rote question and do not care about the answer. While it is important not to let their concerns—about law school, life, or whatever—overtake the purpose of the research conference, it is important to take a few minutes to converse with them.<sup>134</sup> Not only does this show them that their instructor cares, but it sets them at ease for a conference that does require self- and instructor-critique, which is not the easiest task to undertake on a good day.

¶67 After engaging in some small talk—or deeper talk, depending on the student—it is helpful to remind the student of the goals of this conference: his or her continued improvement as a researcher and a lawyer. It benefits students to be reminded that research is a skill that takes practice to improve upon. Reminding students that the discussion will be centered on their answers to the questionnaire will help them to feel like partners in the discussion before it begins.

¶68 Continuing this positive tone during the dialogue between the student and instructor is also vitally important.<sup>135</sup> Often this is conveyed through nonverbal communication, such as leaning toward the other participant to show interest, and smiling or nodding while holding eye contact to demonstrate collaboration and encouragement.<sup>136</sup> Another important consideration is the seating arrangement. As one scholar notes, “[a] professor who faces students from behind a desk subtly reinforces the traditional hierarchy of control between student and law professor that is not conducive to building a collaborative working alliance.”<sup>137</sup> Sitting next to a student at a table may help the student feel more comfortable and better view the conference as a cooperative partnership.

---

133. See Syverud, *supra* note 12, at 250 (“[Y]ou should show, sometimes quite subtly, that you understand and are sympathetic to the problems that they are having even if you yourself are now an expert who no longer has these problems.”); Wellford-Slocum, *supra* note 9, at 299 (“Empathy is the ability to enter another’s world and somehow convey that we understand that world *as if we were ourselves experiencing it.*” (emphasis in original)).

134. See Wellford-Slocum, *supra* note 9, at 298 (“The collaborative working alliance requires not just that the student and professor have a congruency of purpose, but also that the student experiences the professor as genuinely empathetic.”).

135. *Id.* at 301.

136. *Id.* at 301–03.

137. *Id.* at 304.

### Concluding the Conference

¶69 It is important to end by reminding students of their strengths and, in the case of third conferences, to point out where they have improved over the semester. It is particularly helpful if the instructor can point out the student's improvement in the areas related to the student's purported goals for the course, as indicated on the first questionnaire.

¶70 Instructors should consider ending the conference with goal setting.<sup>138</sup> This not only ensures that students are comprehending the areas in which they need improvement,<sup>139</sup> but it allows students to retain their sense of collaboration in the meeting. Have students jot down three goals for their next assignment and then go over these goals. If the student is missing one or more of the important points from the instructor's feedback, the instructor should suggest one more recommended goal, focusing on the most critical area in which the student needs to improve. The instructor should then photocopy this list of goals so he or she can review it prior to the next conference or assignment and be sure to address the student's goals the next time he or she is providing feedback, whether in conference discussions or in written comments on assignments.

### Conclusion

¶71 Though time consuming, research conferences should be integrated into every research course. Not only do one-on-one interactions between students and instructors motivate student learning, but the individualized formative feedback allows each student to improve in the areas in which he or she is struggling. Research conferences also help prepare students for the practice of law, as they learn to communicate their research and analytical thinking orally and to self-critique their work.

¶72 Conferences serve a second important purpose: they allow instructors to emphasize the importance of research in legal practice. Research conferences demonstrate to students that research is a highly analytical and often creative task, not just a rote task of gathering potentially helpful sources. This, in turn, teaches students not to procrastinate engaging in this analysis until they are staring down a writing deadline. Students will learn to engage with their analysis fully while researching—which should be one of every research instructor's goals for his or her students.

---

138. See *id.* at 346 (“In this phase of the conference, the student should summarize the important themes of the conference and his immediate goals following the conference.”).

139. See Rodriguez, *supra* note 109, at 222 (“[B]efore concluding the conference, the teacher might resolve any uncertainty by confirming the student's overall understanding of the feedback.”).

## Appendix A

### Texas Legal Research Preconference Questionnaire

1. What do you feel went successfully during this research assignment? Please be specific about what resources you used well, what methods or strategies you used successfully, and where you feel your analysis was particularly strong.

---

---

---

---

---

2. What challenges did you encounter during this research assignment? Please be specific about what resources you had difficulty using, what methods or strategies didn't work as well, and any issues you had trouble resolving using the authorities you located.

---

---

---

---

---

3. Do you have any questions for me?

---

---

---

---

---

**Appendix B**

**Texas Legal Research Preconference Questionnaire**

1. What are you hoping to get out of this course? Please be specific.

---

---

---

---

---

2. What are your researching strengths?

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

3. What are your researching weaknesses?

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

4. What are three types of sources that you need to learn to use more effectively?

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

5. If you were going to know how to perform one research skill at the end of this course that you don't know how to do now, what would it be?

---

---

---

---

---

6. What area of law are you hoping to practice?

---

---

7. On a scale of 1 (being least comfortable) to 10 (being most comfortable), how comfortable do you feel researching the following types of resources?

- |                        |   |   |   |   |   |   |   |   |   |    |
|------------------------|---|---|---|---|---|---|---|---|---|----|
| a. Binding case law    | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| b. Statutes            | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| c. Regulations         | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| d. Court Rules         | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| e. Legislative History | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| f. Forms               | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| g. Secondary Sources   | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |



## Physician-Assisted Death: A Selected Annotated Bibliography\*

Alyssa Thurston\*\*

*Physician-assisted death (PAD), which encompasses physician-assisted suicide and physician-administered euthanasia, has long been controversial. However, recent years have seen a trend toward legalizing some form of PAD in the United States and abroad. The author provides an annotated bibliography of sources concerning PAD and the many issues raised by its legalization.*

Introduction . . . . .	32
A Note About Terminology . . . . .	33
Case Law, Legislation, and Related Resources . . . . .	35
U.S. Supreme Court Cases . . . . .	35
States Where Physician-Assisted Suicide Is Legal . . . . .	39
California . . . . .	39
Colorado . . . . .	41
District of Columbia . . . . .	41
Hawai'i . . . . .	41
Montana . . . . .	42
Oregon . . . . .	43
Vermont . . . . .	44
Washington . . . . .	45
Other States . . . . .	45
Current Awareness Resources . . . . .	48
Legalizing Physician-Assisted Death . . . . .	48
General Overviews . . . . .	48
Support for Legalization . . . . .	50
Against Legalization . . . . .	52
Selected Topics in Scholarship on Physician-Assisted Death . . . . .	53
Abortion and Reproductive Rights . . . . .	53
Capital Punishment and Prisoners' Rights . . . . .	54
"Death Tourism" . . . . .	55
Ethics and Morality . . . . .	56
Impacts on Vulnerable Populations . . . . .	57
Practitioner Experiences and Perspectives . . . . .	62

---

\* © Alyssa Thurston, 2019.

\*\* Head of Reference Services, Pepperdine University School of Law Library, Malibu, California.

Religion and Spirituality . . . . .	63
The Terminology of Physician-Assisted Death . . . . .	64
International and Comparative Experiences . . . . .	64
Bibliographies and Resource Guides . . . . .	69

## Introduction

¶1 Physician-assisted death (PAD) encompasses two means of dying: physician-assisted suicide and physician-administered euthanasia.<sup>1</sup> Physician-assisted suicide involves a physician prescribing life-ending medication to a patient, who then self-administers that medication.<sup>2</sup> In physician-administered euthanasia, the physician will administer the lethal medication to the patient, such as by injection.<sup>3</sup>

¶2 In the United States, the question of whether to legalize physician-assisted suicide in particular has long been controversial.<sup>4</sup> In recent years, however, there has been a drastic shift in public opinion,<sup>5</sup> with a number of national and state polls conducted since 2012 showing strong and steady support for legalization among a majority of Americans.<sup>6</sup> This corresponds with a trend of increased legalization of PAD both in the United States and around the world. In the United States, as of 2018, physician-assisted suicide is now legal in seven states and the District of Columbia,<sup>7</sup> and nearly two dozen states considered relevant legislation that year.<sup>8</sup>

1. L.W. SUMNER, *PHYSICIAN-ASSISTED DEATH: WHAT EVERYONE NEEDS TO KNOW* 34 (2017).

2. *Id.* The broader term “assisted suicide” encompasses when anyone, not just a physician, provides aid or means for another to take his or her own life. *Assisted Suicide*, BLACK’S LAW DICTIONARY (10th ed. 2014).

3. SUMNER, *supra* note 1. Another term for physician-administered euthanasia is physician-assisted euthanasia. See, e.g., Paul T. Menzel, *Advance Directives, Dementia, and Eligibility for Physician-Assisted Death*, 58 N.Y.L. SCH. L. REV. 321, 322 n.2 (2013/2014); Catherine S. Shaffer et al., *A Conceptual Framework for Thinking About Physician-Assisted Death for Persons with a Mental Disorder*, 22 PSYCHOL., PUB. POL’Y & L. 141, 142 n.4 (2016). The broader term “euthanasia” encompasses involvement in the procedure by any third party. *Euthanasia*, BLACK’S LAW DICTIONARY (10th ed. 2014). Some literature will further distinguish between “voluntary,” “involuntary,” and “nonvoluntary” euthanasia, as well as “active” and “passive” euthanasia. Voluntary euthanasia means the patient has consented to the procedure, whereas in involuntary euthanasia the patient can consent but has not done so, and nonvoluntary euthanasia is of an “incompetent, and therefore nonconsenting, person.” *Id.* Active euthanasia is performed with the help of a third party, such as a physician, whereas passive euthanasia refers to withdrawal or refusal of life-sustaining treatment or sustenance. *Id.*

4. Browne Lewis, *A Deliberate Departure: Making Physician-Assisted Suicide Comfortable for Vulnerable Patients*, 70 ARK. L. REV. 1, 5 (2017) (“The physician-assisted suicide battle has been and continues to be fought in the legal court and in the court of public opinion.”).

5. Michael Lipka, *California Legalizes Assisted Suicide Amid Growing Support for Such Laws*, PEW RES. CTR. (Oct. 5, 2015), <http://www.pewresearch.org/fact-tank/2015/10/05/california-legalizes-assisted-suicide-amid-growing-support-for-such-laws/> [<https://perma.cc/NUK7-JXV7>].

6. *Polling on Voter Support for Medical Aid in Dying for Terminally Ill Adults*, COMPASSION & CHOICES (Jan. 18, 2017), <https://compassionandchoices.org/wp-content/uploads/2018/07/FS-Medical-Aid-in-Dying-Survey-Results-FINAL-1.18.17-Approved-for-Public-Distribution.pdf> [<https://perma.cc/KV3J-M7XA>].

7. *State-by-State Guide to Physician-Assisted Suicide*, PROCON.ORG (July 9, 2018), <https://euthanasia.procon.org/view.resource.php?resourceID=000132> [<https://perma.cc/2ACT-U8KA>].

8. *Take Action In Your State*, DEATH WITH DIGNITY NAT’L CTR. (Nov. 12, 2018), <https://www.deathwithdignity.org/take-action/> [<https://perma.cc/8DAM-KWT2>]. This resource uses the term “death with dignity” to refer to physician-assisted suicide. See “A Note About Terminology,” *infra*, for more information on the variety of terms in use to describe physician-assisted death.

Internationally, several countries or territories have already legalized or are considering legalizing physician-assisted suicide, physician-administered euthanasia, or both.<sup>9</sup>

¶3 This bibliography compiles selected secondary and primary materials on PAD. Secondary sources include books, book chapters, law review and law journal articles, bibliographies, websites, and current awareness materials, and are mostly limited to publication dates of 2007–2018.<sup>10</sup> Many of these materials discuss multiple issues within the broader topic of PAD, and I have categorized them by subject based on what I perceive to be their primary themes.

¶4 Most of the included materials focus on the United States, but a number of sources also discuss other countries, and one section is devoted to international experiences with PAD. In addition, PAD is often debated alongside other end-of-life topics, such as withdrawal or refusal of medical treatment,<sup>11</sup> palliative care,<sup>12</sup> hospice care,<sup>13</sup> or the use of advance directives,<sup>14</sup> and some of the scholarship listed in this bibliography concurrently address one or more of these subjects in depth.

### A Note About Terminology

¶5 It is impossible to wade into the subject of PAD without addressing terminology. Anyone researching this topic will quickly encounter a number of other terms, including “physician-assisted dying,”<sup>15</sup> “death with dignity” or “dying with dignity,”<sup>16</sup> and “aid in dying” (sometimes preceded by “physician” or “medical”).<sup>17</sup> (Variations for many of these terms exist; for instance, “doctor” or “provider” might appear in lieu of “physician” or “medical,”<sup>18</sup> or “facilitated” may substitute for “assisted.”)<sup>19</sup> Other possibilities (though rarer) include “patient-directed dying” and

9. Ezekiel J. Emanuel et al., *Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe*, 316 JAMA 79, 80 (2016). See “International and Comparative Experiences,” *infra*, for more information on the legal status of physician-assisted death in selected countries.

10. Materials were reviewed for inclusion up through August 2018.

11. A patient can refuse or stop any type of life-extending medication or treatment at any time. *End-of-Life: Options for Care and Choice*, COMPASSION & CHOICES, <https://www.compassionandchoices.org/wp-content/uploads/2018/03/FS-End-of-Life-Options-for-Care-and-Choice-FINAL-4.1.16-Approved-for-Public-Distribution.pdf> [<https://perma.cc/WG4S-DBG7>].

12. Also called “pain and symptom management,” palliative care involves the use of medication or therapies to provide patient comfort. *Id.* A patient seeking palliative care need not be terminally ill. *Id.*

13. Hospice care focuses on providing comfort and care to a patient who has six months or less to live. *Id.*

14. Advance directives document “[a] patient’s medical preferences for care if and when they become incapacitated . . .” Kathryn L. Tucker, *When Dying Takes Too Long: Activism for Social Change to Protect and Expand Choice at the End of Life*, 33 WHITTIER L. REV. 109, 134 (2011).

15. Lawrence O. Gostin & Anna E. Roberts, *Physician-Assisted Dying: A Turning Point?*, 315 JAMA 249, 249 (2016).

16. See, e.g., Kathryn L. Tucker & Fred B. Steele, *Patient Choice at the End of Life: Getting the Language Right*, 28 J. LEGAL MED. 305, 309 (2007); *Terminology of Assisted Dying*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/terminology/> [<https://perma.cc/7FWW-D8M5>].

17. *Terminology of Assisted Dying*, *supra* note 16.

18. See, e.g., Tucker & Steele, *supra* note 16; John M. Burman & Cameron T. Pestinger, *Implementing Provider Aid in Dying in Wyoming*, 17 WYO. L. REV. 1 (2017).

19. See, e.g., Browne C. Lewis, *A Graceful Exit: Redefining Terminal to Expand the Availability of Physician-Facilitated Suicide*, 91 OR. L. REV. 457 (2012).

“hastened death.”<sup>20</sup> California’s and Colorado’s statutes legalizing physician-assisted suicide both employ the phrase “end-of-life option.”<sup>21</sup>

¶6 Probably the greatest consistency about the terminology of PAD is the general lack of agreement on standard definitions or usages for many of these phrases. There is no uniformity in word choice among national or state medical associations,<sup>22</sup> in the titles or text of the laws in states where physician-assisted suicide is legal,<sup>23</sup> or in the media.<sup>24</sup> In fact, in the United States, disputes over what constitutes the proper or most neutral terminology for PAD are possibly just as great as the ongoing debates over its legalization.<sup>25</sup> Both proponents and opponents staunchly advocate for different language choices—and for good reason, given that the level of public support for legalization can vary depending on the language used in surveys and polls.<sup>26</sup>

¶7 The widespread divergence on what constitutes the proper terminology is accompanied by a lack of consistency in the usage of many of those terms when discussing PAD. For instance, some authors and advocacy groups have adopted the specific phrase “physician-assisted death” (or, alternatively, “physician-assisted dying” or “aid in dying”) as a replacement for describing physician-assisted suicide, which has become a particularly controversial term.<sup>27</sup> Moreover, in defining these

20. See, e.g., Tucker & Steele, *supra* note 16.

21. *Death with Dignity Acts*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/learn/death-with-dignity-acts/> [<https://perma.cc/X38S-5XQJ>].

22. See *Medical Professional Associations that Recognize Medical Aid-in-Dying*, COMPASSION & CHOICES (Mar. 2, 2018), <https://compassionandchoices.org/wp-content/uploads/2018/06/FS-Medical-Professional-Associations-that-Recognize-Medical-Aid-in-Dying-10.29.18.pdf> [<https://perma.cc/62TM-2GYK>].

23. Oregon, Washington, and the District of Columbia titled their physician-assisted suicide laws as “Death with Dignity Acts,” while California elected “End of Life Option Act” and Colorado “End-of-Life Options Act.” *Death with Dignity Acts*, *supra* note 21. California and Colorado also use the term “aid-in-dying” in the text of their laws. CAL. HEALTH & SAFETY CODE § 443.1(a) (West 2016) (referring to the medication authorized under the act as an “aid-in-dying drug”); COLO. REV. STAT. ANN. § 25-48-102(7) (2017) (defining “medical aid-in-dying”).

24. See Katy Butler, *Aid in Dying or Assisted Suicide? What to Do When Every Phrase is Fraught*, CTR. FOR HEALTH JOURNALISM (Oct. 26, 2015), <https://www.centerforhealthjournalism.org/2015/10/23/aid-dying-or-assisted-suicide-what-do-when-neutral-terms-can%E2%80%99t-be-found> [<https://perma.cc/H637-SVUE>].

25. See, e.g., *id.*; KEVIN L. YUILL, ASSISTED SUICIDE: THE LIBERAL, HUMANIST CASE AGAINST LEGALIZATION 10 (2013) (“Such is the cultural divide on the issue that neither side will even agree on the terms used. In fact, the words themselves have become a key battleground for the two sides of the debate [over legalization].”).

26. Public support for legalization tends to decrease when the word “suicide” is applied in describing physician-assisted suicide in polls and to increase when alternative terminology is used. Arthur G. Svenson, *Death with Dignity’s Emerging Conceit: Could Vacco v. Quill Be Losing Its Appeal?*, 31 U. LA VERNE L. REV. 45, 47 (2009). In a May 2013 Gallup poll, for instance, 70 percent of U.S. adults expressed approval for legalizing physician-assisted suicide when it was described as “end[ing] the patient’s life by some painless means.” That figure dropped to 51 percent when the procedure was instead described as “assist[ing] the patient to commit suicide.” Lydia Saad, *U.S. Support for Euthanasia Hinges on How It’s Described*, GALLUP (May 29, 2013), <http://news.gallup.com/poll/162815/support-euthanasia-hinges-described.aspx> [<https://perma.cc/23U2-YBMM>].

27. Some authors and groups have labeled the term “physician-assisted suicide” biased, insensitive, and more for its inclusion of the word “suicide.” See, e.g., Tucker & Steele, *supra* note 16, at 312 (calling physician-assisted suicide a “pejorative phrase” and a “value-laden term”); *Terminology of Physician-Assisted Dying*, *supra* note 16 (calling the phrase “inaccurate, inappropriate, and biased”); Butler, *supra* note 24 (“‘Suicide’ . . . is not inaccurate, exactly [when using it in the phrase ‘physician-assisted suicide’], but the associations are clinical, judgmental, legalistic, even freighted with the notion of sin.”).

substitutes, some will explicitly differentiate them from physician-administered euthanasia<sup>28</sup> even as others use the same phrases to encompass both procedures.<sup>29</sup>

¶8 In sum, researchers on this topic should be generally aware of the many wording options that exist and their various potential applications. In this bibliography, I use “physician-assisted death” in the title and section introductions and define it as covering the two distinct procedures of physician-assisted suicide and physician-administered euthanasia. In my source annotations, however, I generally attempt to employ authors’ original terminology choices when referring to forms of PAD. This is in recognition of the possibility that given the larger social and political conflicts over the vocabulary and legalization of PAD, some authors may have selected particular terms based on personal motivations or beliefs.

## Case Law, Legislation, and Related Resources

### U.S. Supreme Court Cases

¶9 The U.S. Supreme Court has directly addressed PAD in several cases, which are listed and summarized below. These are followed by a selection of secondary materials that primarily focus their discussions on one or more of these cases.

*Gonzales v. Oregon*, 546 U.S. 243 (2006).<sup>30</sup>

Then attorney general John Ashcroft had issued an interpretive rule under the federal Controlled Substances Act (CSA) prohibiting physicians from prescribing life-ending medication to terminally ill patients, arguing that this was not a “legitimate medical purpose” (p.256) under the CSA. The state of Oregon, which had recently enacted its Death with Dignity Act, was among the plaintiffs that challenged the rule. The U.S. Supreme Court held that the CSA did not authorize the barring of physicians’ prescription of lethal medication when a state legally permitted the practice.

*Vacco v. Quill*, 521 U.S. 793 (1997).

The U.S. Supreme Court held that New York’s law criminalizing assisted suicide did not violate the Equal Protection Clause of the Fourteenth Amendment. The law was applied equally to all state residents, and the state made a rational distinction in banning assisted suicide while still permitting the practice of withdrawing life-sustaining treatment.

---

28. See, e.g., David Orentlicher, *Aging Populations and Physician Aid in Dying: The Evolution of State Government Policy*, 48 IND. L. REV. 111, 111 n.2 (2014) (excluding euthanasia from the author’s definition of “physician aid in dying,” his chosen term for physician-assisted suicide); Timothy E. Quill & Bernard Sussman, *Physician Assisted Death*, HASTINGS CTR., <https://www.thehastingscenter.org/briefingbook/physician-assisted-death/> [<https://perma.cc/5HLD-EPJ7>] (equating physician-assisted death and physician-assisted suicide, and differentiating both from voluntary active euthanasia); *Terminology of Assisted Dying*, *supra* note 16.

29. See, e.g., SUMNER, *supra* note 1; Menzel, *supra* note 3; Shaffer, *supra* note 3; Maria T. CeloCruz, Note, *Aid-in-Dying: Should We Decriminalize Physician-Assisted Suicide and Physician-Committed Euthanasia?*, 18 AM. J.L. & MED. 369, 369 (1992) (“This Note distinguishes two components of aid-in-dying: physician-assisted suicide and physician-committed voluntary active euthanasia.”). Note that while a few authors conflate physician-assisted suicide and physician-administered euthanasia, both the legal and medical fields do treat them as distinct. Shaffer, *supra* note 3, at 142 n.4.

30. Some scholarship on *Gonzales v. Oregon* focuses primarily on administrative law analysis. I have excluded most of these sources to maintain this bibliography’s central emphasis on materials discussing the law and policy of physician-assisted death.

*Washington v. Glucksberg*, 521 U.S. 702 (1997).

Four physicians, a nonprofit, and three terminally ill patients sued the state of Washington, arguing that its law prohibiting assisted suicide violated the Fourteenth Amendment's Due Process Clause. The U.S. Supreme Court held that the right to assisted suicide was not protected by due process. Such a right was not fundamental, and the ban on assisted suicide was rationally related to the state's interests, including preserving human life, preventing suicide, protecting the integrity of the medical profession, and protecting vulnerable groups.

Chamberlain, Katherine A. "Looking for a 'Good Death': The Elderly Terminally Ill's Right to Die by Physician-Assisted Suicide." *Elder Law Journal* 17, no. 1 (Spring 2009): 61–93.

This student note addresses the inconsistencies in the U.S. Supreme Court's acknowledgment of a constitutional right to refuse unwanted medical treatment but not to choose physician-assisted suicide. Chamberlain makes the case that the Court should acknowledge a constitutional right to the latter based on the right to privacy, due process, and equal protection; the greater weight of patients' "personal interest" (p.72–73) in having this option versus state interests in prohibiting it; and the strength of the protections built into Oregon's Death with Dignity Act.

Critser, Rebecca. "Assisted Suicide: Is the *Cruzan* 'Unqualified State Interest in the Preservation of Human Life' a Legitimate State Interest?" *NAELA Journal* 13, no. 2 (Fall 2017): 71–95.

In this student article, Critser looks closely at one of the state interests identified in *Glucksberg*, that of an "unqualified interest in the preservation of human life," which first arose in the earlier U.S. Supreme Court case of *Cruzan v. Director, Missouri Department of Health*.<sup>31</sup> She discusses guidelines for identifying a legitimate state interest and evaluates their application in *Glucksberg*, *Cruzan*, and other cases addressing end-of-life care.

Elliott, Michael S. "The Commerce of Physician-Assisted Suicide: Can Congress Regulate a 'Legitimate Medical Purpose?'" *Willamette Law Review* 43, no. 3 (Summer 2007): 399–420.

This student comment uses the Supreme Court's reasoning in *Gonzales* as a starting point to analyze whether Congress may define a "legitimate medical purpose" under the CSA—and, if it may, whether the U.S. Constitution's Commerce Clause or Spending Clause authorizes Congress to preempt physician-assisted suicide laws via regulation of life-ending medication.

Foley, Elizabeth Price. "Constitutional Death." In *The Law of Life and Death*, 152–99. Cambridge, Mass.: Harvard University Press, 2011.

Foley asks whether the constitutional guarantees of liberty and privacy allow for the right to commit suicide or to receive assistance from others in doing so. She traces the evolution of the relationship between the U.S. Constitution and end-of-life issues, including physician-assisted suicide, as reflected in significant court opinions such as *Glucksberg* and *Quill*. Foley concludes that "courts have a difficult time grappling with the relationship between the Constitution and death" (p.199) and proposes that legislatures are best equipped to resolve the issues in this area.

---

31. 497 U.S. 261 (1990). *Cruzan* was a landmark case involving withdrawal of life-sustaining medical treatment from an incompetent patient. The U.S. Supreme Court upheld a Missouri state requirement of "clear and convincing evidence" of a patient's wish to remove such treatment.

Hansen, Alexa. "Unqualified Interests, Definitive Definitions: *Washington v. Glucksberg* and the Definition of Life." *Hastings Constitutional Law Quarterly* 36, no. 1 (Fall 2008): 163–89.

This student work argues that in *Glucksberg*, the U.S. Supreme Court "neglected to answer what should have been a key question: what is life and when does it end?" (p.163). Hansen proposes that using "whole brain death" (p.164) as a "bright line definition" (p.164) for the end of life would have impacted the Court's analysis in weighing the patient's right to liberty and autonomy against a state's interest in preserving life.

Hassel, Diana. "Sex and Death: *Lawrence's* Liberty and Physician-Assisted Suicide." *University of Pennsylvania Journal of Constitutional Law* 9, no. 4 (April 2007): 1003–32.

Hassel looks at the implications of the U.S. Supreme Court's reasoning about personal liberty in *Lawrence v. Texas*<sup>32</sup> (which struck down a Texas sodomy law based on violation of due process) for the developments in debates over liberty and autonomy for the terminally ill following *Glucksberg*. She examines parallels between "doctrinal and political changes" (p.1013) in attitudes toward gay rights leading up to *Lawrence* and similar shifts regarding physician-assisted suicide after *Glucksberg*.

Hilliard, Bryan. "The Politics of Palliative Care and the Ethical Boundaries of Medicine: *Gonzales v. Oregon* as a Cautionary Tale." *Journal of Law, Medicine & Ethics* 35, no. 1 (Spring 2007): 158–74.

Hilliard frames a discussion of *Gonzales's* implications for medical professional ethics and patient care against the "politics of palliative care" referenced in the article's title. According to this concept, concern for the "sanctity of life" (p.166) is paramount and requires keeping patients alive at all costs, and the federal government should regulate physician and patient activity to ensure that this standard is met.

Legault, Melissa. "I Don't Want to Die, But I Am Dying': Reexamining Physician-Assisted Suicide in a New Age of Substantive Due Process." *Arizona Law Review* 60, no. 2 (Summer 2018): 509–37.

This student note contends that *Glucksberg* represented an "interrupt[ion of] the trajectory" (p.512) of substantive due process jurisprudence. This is because cases both preceding and following *Glucksberg* have emphasized "protecting personal autonomy, protecting intimate decisions, and maintaining dignity" (p.513), as opposed to *Glucksberg's* focus on "history and tradition" (p.522), in recognizing fundamental constitutional rights such as abortion and same-sex marriage. Legault proposes a new test for substantive due process that could result in the U.S. Supreme Court's eventual recognition of a fundamental right to physician-assisted suicide.

Levy, Ken. "*Gonzales v. Oregon* and Physician-Assisted Suicide: Ethical and Policy Issues." *Tulsa Law Review* 42, no. 3 (Spring 2007): 699–729.

Levy covers the majority, concurring, and dissenting arguments in *Vacco*, *Glucksberg*, *Gonzales*, and other U.S. Supreme Court cases relating to end-of-life issues. He then analyzes ethical and policy questions related to physician-assisted suicide and questions whether more states should legalize the procedure.

---

32. 539 U.S. 558 (2003).

Myers, Richard S. "The Constitutionality of Laws Banning Physician Assisted Suicide." *BYU Journal of Public Law* 31, no. 2 (2017): 395–408.

Following the U.S. Supreme Court's recognition of a fundamental right to same-sex marriage in *Obergefell v. Hodges*<sup>33</sup> using an "expansive understanding of substantive due process" (p.395) that "reaffirm[s] [an] autonomy rationale" (p.409), Myers explores the reasons why, given the chance, the U.S. Supreme Court is likely to revisit and eventually overrule its holdings in *Glucksberg* and *Quill*.

Myers, Richard S. "Obergefell and the Future of Substantive Due Process." *Ave Maria Law Review* 14, no. 1 (Fall 2016): 54–70.

Myers compares the two different approaches to substantive due process in *Glucksberg* and *Obergefell*. He explores the implications of *Obergefell*'s "explicit reject[ion] of *Glucksberg*'s methodology" (p.65) and the Court's more recent emphasis on personal autonomy for the future of the *Glucksberg* holding, as well as the possibility that the Court will one day strike down state laws prohibiting assisted suicide.

"Symposium on *Glucksberg* and *Quill* at Ten: Death, Dying, and the Constitution." *Michigan Law Review* 106, no. 8 (June 2008): 1453–1667.

This symposium gathered prominent constitutional law scholars to analyze the constitutional issues that arose out of *Glucksberg* and *Quill* (with a particular focus on the former), as well as the various debates surrounding physician-assisted suicide that came to the fore in the following years. Article topics include an evaluation of the Supreme Court's decision in *Glucksberg*,<sup>34</sup> the constitutional law implications of *Glucksberg* and *Quill*,<sup>35</sup> the suitability of more states legalizing physician-assisted suicide,<sup>36</sup> and medical perspectives on the effectiveness of the safeguards built into Oregon's Death with Dignity Act.<sup>37</sup>

VanStory, Scarlett. "Death with Dignity Lives On: Why the Right to Physician-Assisted Suicide Is Not 'Dead and Buried' after *Glucksberg* and *Quill*." *Adelphia Law Journal* 18 (2012–2013): 1–27.

This student comment advocates for the U.S. Supreme Court to recognize an expanded constitutional right to physician-assisted suicide, and for that right to be accessible not just to terminally ill patients but also to "incurably ill patients suffering intractable pain" (p.26). VanStory examines the Court's reasoning in *Glucksberg*, *Quill*, and *Gonzales* and analyzes the multiple state interests involving physician-assisted suicide that the Court has articulated. She also looks at the effects of legalized physician-assisted suicide in Oregon and Washington and provides suggestions for states considering future legalization.

33. 135 S. Ct. 2584 (2015). *Obergefell* held that the right to marry for same-sex couples is protected by due process and equal protection under the U.S. Constitution.

34. Erwin Chemerinsky, *Washington v. Glucksberg Was Tragically Wrong*, 106 MICH. L. REV. 1501 (2008).

35. Randy E. Barnett, *Scrutiny Land*, 106 MICH. L. REV. 1479 (2008); Cass R. Sunstein, *Due Process Traditionalism*, 106 MICH. L. REV. 1543 (2008).

36. Kathryn L. Tucker, *In the Laboratory of the States: The Progress of Glucksberg's Invitation to States to Address End-of-Life Choice*, 106 MICH. L. REV. 1593 (2008).

37. Herbert Hendin & Kathleen Foley, *Physician-Assisted Suicide in Oregon: A Medical Perspective*, 106 MICH. L. REV. 1613 (2008).

### States Where Physician-Assisted Suicide Is Legal

¶10 Physician-assisted suicide is currently legal in California, Colorado, Hawai'i, Montana, Oregon, Vermont, Washington, and the District of Columbia.<sup>38</sup> Physician-administered euthanasia is illegal throughout the United States.<sup>39</sup>

¶11 Six states and D.C. have passed laws permitting physician-assisted suicide, while in Montana it is legal via a 2009 state supreme court decision.<sup>40</sup> Under the existing state laws, a terminally ill, mentally competent patient with six months or less to live, resident in the jurisdiction, and meeting other specific requirements may, under certain conditions, legally request a prescription for and then self-administer lethal medication to hasten his or her death.<sup>41</sup>

¶12 In this section, I list references to relevant state laws and cases, scholarship, and government and nongovernment websites, organizing these materials by jurisdiction.

#### California

¶13 California's End of Life Option Act (ELOA) was signed into law on October 5, 2015, and is modeled mostly on Oregon's Death with Dignity Act.<sup>42</sup> The impetus for the law's passage derives from the story of Brittany Maynard, a 29-year-old California woman who was diagnosed with incurable brain cancer in 2014 and moved to Oregon to legally access the option of physician-assisted suicide.<sup>43</sup> Maynard actively advocated for the passage of a law legalizing physician-assisted suicide in California, working with pro-legalization organizations and taking her case to the state legislature and governor.<sup>44</sup> Less than three months after her death, the California Senate introduced the bill that ultimately resulted in the ELOA.<sup>45</sup> Maynard's efforts have been credited with shifting momentum toward more states recently considering the legalization of physician-assisted suicide.<sup>46</sup>

¶14 The ELOA faced immediate court challenges after its passage, and in May 2018, a California district court judge overturned it on grounds of violation of the state constitution.<sup>47</sup> The state's Fourth District Court of Appeal ultimately reversed that decision in late 2018; however, the new ruling did not address the constitutionality of the ELOA, and future legal challenges are likely.<sup>48</sup>

38. *State-by-State Guide to Physician-Assisted Suicide*, *supra* note 7.

39. *Id.*

40. FAQs, DEATH WITH DIGNITY NAT'L CTR., <https://www.deathwithdignity.org/faqs/> [<https://perma.cc/XN3J-RAKG>].

41. *Id.*

42. Arthur G. Svenson, *Physician-Assisted Dying and the Law in the United States: A Perspective on Three Prospective Futures*, in EUTHANASIA AND ASSISTED SUICIDE: GLOBAL VIEWS ON CHOOSING TO END LIFE 3, 13 (Michael J. Cholbi ed., 2017).

43. *Id.* at 11.

44. *Id.* at 12.

45. *Id.*

46. Lipka, *supra* note 5.

47. *California*, DEATH WITH DIGNITY NAT'L CTR., <https://www.deathwithdignity.org/states/california/> [<https://perma.cc/E29K-67SX>].

48. Brian Melley, *California Court Reverses Ruling Against Assisted Suicide*, ABC NEWS (Nov. 28, 2018), <https://abcnews.go.com/Health/wireStory/california-court-tosses-lawsuit-challenging-assisted-suicide-59473916> [<https://perma.cc/932X-5XTV>].

CAL. HEALTH & SAFETY CODE §§ 443–443.22 (West 2016)—End of Life Option Act. California Department of Public Health Center for Health Statistics and Informatics. *End of Life Option Act*. <https://www.cdph.ca.gov/Programs/CHSI/Pages/End-of-Life-Option-Act-.aspx> [<https://perma.cc/7ZC5-KDBF>].

The Medical Board of California. *End of Life Option Act—Effective June 9, 2016*. [http://www.mbc.ca.gov/Licensees/Physicians\\_and\\_Surgeons/End\\_of\\_Life\\_.aspx](http://www.mbc.ca.gov/Licensees/Physicians_and_Surgeons/End_of_Life_.aspx) [<https://perma.cc/SM8Z-SW79>].

Benassini, Michael. “A Proposal for Proper Procedure: The Aid-in-Dying Process for Californians with Disabilities.” *U.C. Davis Law Review* 51, no. 4 (April 2018): 1717–50.

This student note argues for the insufficiency of the California Department of Developmental Services’ emergency regulations, adopted in response to the End of Life Option Act’s passage, that limit access to legal aid-in-dying procedures for California “residential patients”<sup>49</sup> with developmental disabilities.

Economou, Elias Ross. “What About Families? A Different Perspective on Physician Assisted Suicide in California.” *Whittier Journal of Child and Family Advocacy* 7, no. 2 (Spring 2008): 253–76.

Adding a little-discussed perspective to the legal literature on physician-assisted death, this student work looks at the “familial ramifications” (p.254) of legalizing physician-assisted suicide, labeling the families of terminally ill patients who might access the procedure as “the most overlooked interest group” (p.255) in the debates. Economou also includes perspectives on physician-assisted suicide from physicians and medical associations, a history of related case law, and coverage of earlier attempts to legalize physician-assisted suicide in California.

Mikochik, Stephen L. “Unwelcome Guests: Disabled People and the New Eugenics.” *University of St. Thomas Law Journal* 13, no. 1 (Fall 2016): 88–99.

This article is written mostly in the form of a letter to California governor Jerry Brown following the 2015 passage of California bill A.B. 15, which became the End of Life Option Act. Mikochik critiques the bill’s provisions, particularly as to how they might affect individuals with disabilities, and ultimately urges Brown to veto the bill.

Sung, Christine. “Deciding with Dignity: The Terminally Ill Patient’s Right to Information About the California End of Life Option Act.” *Hastings Constitutional Law Quarterly* 44, no. 1 (Fall 2016): 89–113.

A “conscience clause” in the California End of Life Option Act permits physicians to decline either to provide their patients with information about patients’ rights under the Act or to refer their patients to a physician who will provide that information.<sup>50</sup> Sung’s note assesses whether this clause violates California patients’ right to privacy under the state constitution or the doctrine of informed consent.

---

49. Benassini more fully defines a residential patient as “an individual with a developmental disability who lives, and receives various support services, in a residential developmental center operated by the California Department of Developmental Services.” Michael Benassini, *A Proposal for Proper Procedure: The Aid-in-Dying Process for Californians with Disabilities*, 51 U.C. DAVIS L. REV. 1717, 1720 n. 10 (2018).

50. Christine Sung, Note, *Deciding with Dignity: The Terminally Ill Patient’s Right to Information About the California End of Life Option Act*, 44 HASTINGS CONST. L.Q. 89, 90–91 (2016).

Thyden, Amanda M. “Death with Dignity and Assistance: A Critique of the Self-Administration Requirement in California’s End of Life Option Act.” *Chapman Law Review* 20, no. 2 (Spring 2017): 421–45.

This student note evaluates California’s requirement that terminally ill patients be able to self-administer life-ending prescription medication. Thyden believes that this requirement is overly broad and ambiguous, limiting, and altogether unnecessary in practice, and argues in favor of its removal from the law.

### Colorado

¶15 Colorado voters passed Proposition 106, Access to Medical Aid in Dying, on November 8, 2016, by 65 percent to 35 percent.<sup>51</sup> The state’s End of Life Options Act became law on December 16, 2016.<sup>52</sup>

COLO. REV. STAT. §§ 25-48-101 to -123—Colorado End-of-Life Options Act (2017). Colorado Department of Public Health & Environment. *Medical Aid in Dying*. <https://www.colorado.gov/pacific/cdphe/medical-aid-dying> [<https://perma.cc/R6LW-6KB2>].

### District of Columbia

¶16 The District of Columbia Council approved a physician-assisted suicide bill on November 15, 2016, and the D.C. mayor signed the bill on December 20, 2016.<sup>53</sup> The D.C. Death with Dignity Act went into effect on February 18, 2017.<sup>54</sup> There have been U.S. congressional attempts to repeal the Act, including the introduction of resolutions disapproving of the law and via policy riders in government funding bills, but such efforts have so far failed.<sup>55</sup>

D.C. CODE §§ 7-661.01 to .17 (2018)—Physician-Assisted Death.

DC Health. *Death with Dignity Act of 2016*. <https://dchealth.dc.gov/page/death-dignity-act-2016> [<https://perma.cc/98JT-CKSY>].

### Hawai‘i

¶17 Hawai‘i is the most recent state to legalize physician-assisted suicide. On April 5, 2018, the state governor signed the Our Care, Our Choice Act into law.<sup>56</sup> The Act took effect on January 1, 2019.<sup>57</sup>

H.B. No. 2739 H.D. 1, 29th Leg. (Haw. 2018)—Our Care, Our Choice Act.

51. *Colorado*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/states/colorado/> [<https://perma.cc/AZF6-WHNK>].

52. *Id.*

53. *District of Columbia*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/states/district-of-columbia/> [<https://perma.cc/5ELW-4582>].

54. *Id.*

55. *Senate Appropriations Committee Praised for Leaving D.C. Death with Dignity Law Intact*, COMPASSION & CHOICES (June 22, 2018), <https://compassionandchoices.org/news/senate-appropriations-committee-praised-leaving-d-c-death-dignity-act-intact/> [<https://perma.cc/AL8C-ET48>]. For more on the U.S. Congress’s role in the governance of the District of Columbia, see *D.C. Home Rule*, COUNCIL OF D.C., <http://dccouncil.us/pages/dc-home-rule> [<https://perma.cc/8Y45-FED3>].

56. *Hawai‘i*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/states/hawaii/> [<https://perma.cc/3FJB-2DL2>].

57. *Id.*

Tucker, Kathryn L. "Aid in Dying: An End of Life-Option Governed by Best Practices." *Journal of Health & Biomedical Law* 8, no. 1 (Spring 2012): 9–26.

This article, published prior to the legalization of physician-assisted death in Hawai'i, looks at whether medical care standards and best practices in the state might previously have been sufficient to make aid in dying available to state residents without legislative action.

### Montana

¶18 Physician-assisted suicide has been legal in Montana since 2009 via a state supreme court decision, *Baxter v. Montana*.<sup>58</sup> State legislative efforts to overturn *Baxter* have failed to date,<sup>59</sup> but at the same time, post-*Baxter* attempts to pass a law affirmatively permitting physician-assisted suicide in the state have also not come to fruition.<sup>60</sup>

*Baxter v. Montana*, 224 P.3d 1211 (Mont. 2009).

A terminally ill patient, four physicians, and the nonprofit Compassion & Choices challenged the constitutionality of Montana's statutes allowing for prosecution of physicians who assist patients with dying under certain circumstances, arguing that the state constitution permitted aid-in-dying based on the rights to privacy and dignity. The Montana Supreme Court found that physician aid-in-dying was not against state public policy and that a patient's consent to aid-in-dying shielded a participating physician from liability.

Saunders, William L. "Assisted Suicide: Montana Supreme Court Avoids State Constitutional Issue; Holds Consent Defense Available for Homicide Prosecution." *Engage: The Journal of the Federalist Society Practice Groups* 11, no. 2 (September 2010): 114–18. <https://fedsoc.org/commentary/publications/assisted-suicide-montana-supreme-court-avoids-state-constitutional-issue-holds-consent-defense-available-for-homicide-prosecution> [<https://perma.cc/G5AT-UW4T>].

Saunders summarizes the history of *Baxter* and U.S. Supreme Court treatment of right-to-die issues, including assisted suicide, and contrasts *Baxter* with decisions from other state courts addressing assisted suicide. He then analyzes the *Baxter* holding with particular emphasis on the public policy concerns that it raises.

Tucker, Kathryn L. "Privacy and Dignity at the End of Life: Protecting the Right of Montanans to Choose Aid in Dying." *Montana Law Review* 68, no. 2 (Summer 2007): 317–33.

This article, published two years prior to *Baxter*, catalogs the reasons that the Montana Supreme Court would have eventually been likely to hand down such a decision. For support, Tucker examines Montana case law on the state constitution's right to privacy and points to the success of Oregon's Death with Dignity Act, increased social acceptance of aid-in-dying, and Montana's support of pain management and end-of-life care.

---

58. *Montana*, DEATH WITH DIGNITY NAT'L CTR., <https://www.deathwithdignity.org/states/montana/> [<https://perma.cc/HV24-T6YU>].

59. In March 2017, for instance, the Montana House rejected a bill that would have allowed for prosecution of doctors who participate in an assisted suicide and would have made patient consent unavailable as a defense. Tripp Baltz, *Montana House Scuttles Bill Allowing Aid-in-Dying Prosecution of Doctors*, BLOOMBERG BNA HEALTH L. & BUS., Mar. 2, 2017 (available on Bloomberg Law).

60. *Montana*, *supra* note 58.

### *Oregon*

¶19 Oregon was the first state to legalize physician-assisted suicide. On November 8, 1994, Oregon voters approved the Death with Dignity Act (DWDA) initiative by a margin of 51 percent to 49 percent.<sup>61</sup> A court challenge to the Act's implementation resulted in a temporary injunction that was lifted on October 27, 1997.<sup>62</sup> A November 1997 ballot measure asked voters to repeal the initiative but failed by 20 percent of the vote.<sup>63</sup> The provisions of Oregon's DWDA have provided a model for other state laws that have since legalized physician-assisted suicide.<sup>64</sup>

OR. REV. STAT. §§ 127.800 to .995 (2017)—Oregon Death with Dignity Act.

DuVivier, K.K. "Fast-Food Government and Physician-Assisted Death: The Role of Direct Democracy in Federalism." *Oregon Law Review* 86, no. 4 (Winter 2007): 895–972.

This article focuses on how the citizen initiative process in the states "contribut[es] to one of the goals of federalism . . . by fostering innovation by allowing the states to serve as . . . laboratories" (p.899). The author highlights the passage of Oregon's DWDA as an example of how the citizen initiative process can promote social reform.

End of Life Choices Oregon. <http://eolcoregon.org/> [<https://perma.cc/86TL-5Z8G>].

Hiscox, Wendy E. "Physician-Assisted Suicide in Oregon: The 'Death with Dignity' Data." *Medical Law International* 8, no. 3 (September 2007): 197–220.

Hiscox examines empirical data on physician-assisted suicide in Oregon gathered from 1997–2006, and identifies evidence that the safeguards written into Oregon's DWDA are falling short in their goal of preventing patient abuse.

Jackson, Ann. "The Inevitable—Death: Oregon's End-of-Life Choices." *Willamette Law Review* 45, no. 1 (Fall 2008): 137–60.

Noting that hospice patients are a majority of those who have used Oregon's DWDA, Jackson seeks to illuminate the experience of physician-assisted death in Oregon from the perspective of hospice care. She first provides a history of the law's passage and a deep dive into its provisions and requirements, and legal challenges to the Act. She also reviews the demographics of patients who died after accessing the DWDA, comparing them to patients who died in hospice and patients who did not use the law but died of the same diseases as hospice patients.

LaFrance, Arthur. "Physician Assisted Death: From Rhetoric to Reality in Oregon." *Wyoming Law Review* 8, no. 1 (2008): 333–46.

This article consists of a transcript of lectures delivered by bioethics professor LaFrance 10 years after the passage of Oregon's DWDA. LaFrance provides an overview of the law's requirements and statistics on how it has been used. He also addresses criticisms of the practice of physician-assisted death and considers potential challenges to the validity of the DWDA in the wake of *Gonzales v. Oregon*.

---

61. *Frequently Asked Questions: About the Death with Dignity Act*, OR. HEALTH AUTH., <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Pages/faqs.aspx> [<https://perma.cc/3PAT-XL9G>].

62. *Id.*

63. *Id.*

64. Svenson, *supra* note 42, at 9–10, 13.

McMurry, Glen R. "An Unconstitutional Death: The Oregon Death with Dignity Act's Prohibition Against Self-Administered Lethal Injection." *University of Dayton Law Review* 32, no. 3 (Spring 2007): 441–59.

This student comment, observing that the Oregon DWDA's prohibition on administering life-ending medication via lethal injection essentially requires eligible patients to be able to swallow the medication, argues that such a restriction is unconstitutionally discriminatory against terminally ill patients who would be physically incapable of doing so but who otherwise meet the requirements of the law.

Oregon Health Authority. *Death with Dignity Act*. <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/index.aspx> [<https://perma.cc/ER4E-3H7A>].

Page, Andrew R. "What's the Cost of Living in Oregon These Days?—A Fresh Look at the Need for Judicial Protections in the Death with Dignity Act." *Regent University Law Review* 22, no. 1 (Fall 2009): 233–57.

This student work argues that Oregon's DWDA lacks adequate safeguards to prevent potential abuse of senior citizens with terminal illnesses and puts forth reasons that the law's existing requirements of capacity, terminal disease, and voluntary choice may not be met in practice. Page advocates for the establishment of a judicial review process to be completed before a patient can obtain life-ending medication in Oregon.

### Vermont

¶20 Vermont was the third state to legalize physician-assisted suicide and the first to do so using the legislative process.<sup>65</sup> The Vermont Patient Choice and Control at the End of Life Act (PCEOL) was signed into law on May 20, 2013, and was mostly modeled on Oregon's law, with the exception of the inclusion of a provision that would "sunset" Oregon-style safeguards against abuse on July 1, 2016.<sup>66</sup> In May 2015, that sunset provision was removed by state Senate Bill 108.<sup>67</sup>

VT. STAT. ANN. tit. 18, §§ 5281–5293 (2018)—Patient Choice at End of Life.

Vermont Department of Health. *Patient Choice and Control at End of Life*. <http://www.healthvermont.gov/systems/patient-choice-and-control-end-life> [<https://perma.cc/Q6FB-UU58>].

Tucker, Kathryn L. "Vermont's Patient Choice at End of Life Act: A Historic 'Next Generation' Law Governing Aid in Dying." *Vermont Law Review* 38, no. 3 (Spring 2014): 687–99.

Written prior to the removal of the 2016 sunset provision, this article reviews key aspects of the two phases of the Vermont Patient Choice at the End of Life Act as it was originally passed in 2013. It also compares aid-in-dying practices in the states of Washington, Montana, and Hawai'i.

65. *Id.* at 10.

66. *Id.*

67. *Vermont*, DEATH WITH DIGNITY NAT'L CTR., <https://www.deathwithdignity.org/states/vermont/> [<https://perma.cc/47B3-H6H7>].

### Washington

¶21 Influenced by the successful passage of legislation in Oregon, Washington was the second state to legalize physician-assisted suicide when voters approved initiative I-1000 on November 4, 2008.<sup>68</sup> On March 5, 2009, the Washington Death with Dignity Act took effect.<sup>69</sup> Its wording replicates almost all of that used in the Oregon law.<sup>70</sup>

WASH. REV. CODE §§ 70.245.010 to .903 (2017)—Washington Death with Dignity Act.

Washington State Department of Health. *Death with Dignity Act*. <http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/DeathwithDignityAct> [<https://perma.cc/E6GF-V9YG>].

Magnuson, Jared B. “Let Your Conscience Be Your Guide: Comparing and Contrasting Washington’s Death with Dignity Act and Pharmacy Regulations After the Ninth Circuit’s Decision in *Stormans, Inc. v. Wiesman*.” *Georgia Law Review* 52, no. 2 (Winter 2018): 613–50.

In its 2015 decision in *Stormans, Inc. v. Wiesman*,<sup>71</sup> the Ninth Circuit held that pharmacists were required to dispense emergency contraception under Washington State’s pharmacy regulations even if they have religious objections to doing so.<sup>72</sup> By contrast, Washington’s Death with Dignity Act allows healthcare providers to opt out of dispensing life-ending medication or indeed participating in any other part of the process allowed by the law.<sup>73</sup> This student note explores the “inconsistencies in [these] laws regarding the protection of religious liberty and conscience” (p.617).

### Other States

¶22 As of the publication of this bibliography, physician-assisted suicide is illegal in at least 39 states.<sup>74</sup> This section of the bibliography includes a selection of recent state court cases addressing challenges to existing state laws criminalizing physician assistance with dying, followed by secondary sources discussing legalization efforts or advocating for or against legalization in some of the states.

*Morris v. Brandenburg*, 376 P.3d 836 (N.M. 2016).

Plaintiffs, including a patient diagnosed with uterine cancer and a doctor, sought a declaratory judgment that New Mexico’s statute criminalizing assisted suicide could not be used to prosecute physician aid in dying and that the statute itself was unconstitutional. The trial court ruled that the law at issue did apply to physician aid in dying, but that the state constitution provided a fundamental right to physician aid in dying. The Court of Appeals, in a divided opinion, overturned the

68. *Washington Death with Dignity Act: A History*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/washington-death-with-dignity-act-history/> [<https://perma.cc/2KCE-TQ6C>].

69. *Id.*

70. Svenson, *supra* note 42, at 9.

71. 794 F.3d 1064 (9th Cir. 2015).

72. Jared B. Magnuson, Note, *Let Your Conscience Be Your Guide: Comparing and Contrasting Washington’s Death with Dignity Act and Pharmacy Regulations After the Ninth Circuit’s Decision in Stormans, Inc. v. Wiesman*, 52 GA. L. REV. 613, 613 (2018).

73. *Id.* at 616–17.

74. *State-by-State Guide to Physician-Assisted Suicide*, *supra* note 7 (noting that 36 states’ laws explicitly outlaw assisted suicide, that 3 states prohibit it by common law, and that in 4 other states the law is silent or unclear on the matter).

trial court's ruling on the question of constitutional rights. The Supreme Court of New Mexico affirmed, finding that state law criminalizing physician aid in dying did not violate physicians' due process rights.

*Myers v. Schneiderman*, 85 N.E.3d 57 (N.Y. 2017).

Plaintiffs had sought a declaratory injunction against prosecution of physicians who assist with suicide in violation of New York State's criminal laws. A New York appellate court ruled that New York laws provided a basis to prosecute physicians who assist with suicide and that these laws did not contravene the state constitution. On appeal to the state's highest court, the plaintiffs also asked for a ruling declaring a constitutional right to aid in dying, which they sought to distinguish from assisted suicide. The N.Y. Court of Appeals ruled that no such constitutional right exists, that New York's assisted suicide laws did not violate equal protection or due process, and that state laws criminalizing assisted suicide still applied to physicians.

Burman, John M., and Cameron T. Pestinger. "Implementing Provider Aid in Dying in Wyoming." *Wyoming Law Review* 17, no. 1 (2017): 1–21.

Burman and Pestinger argue that while a 2012 amendment to the Wyoming state constitution means that Wyoming adults may already legally choose provider aid in dying, this right should still be codified in state law. They provide proposed legislation for the state legislature's consideration.

Leppert, Kelsey. "From Karen Ann Quinlan to Brittany Maynard: Advanced Health Care Directives and the Road to Aid-in-Dying Legislation in Iowa." *Drake Law Review Discourse* 65 (January 2016): 1–27. <https://lawreviewdrake.files.wordpress.com/2016/02/leppert-final-uploaded.pdf> [<https://perma.cc/NDY4-A9EJ>].

This student note covers U.S. Supreme Court jurisprudence on, and current legal treatment in the state of Iowa of, end-of-life decisions, including the right to refuse medical treatment and aid in dying. Leppert makes the case for Iowa's historical progressiveness regarding certain civil rights issues and advocates for the passage of an aid-in-dying law in Iowa modeled on those in Oregon, Washington, and California.

Orlando, Stephen J. "The Doctor Will See You for the Last Time Now: Physician-Assisted Suicide in Massachusetts." *Suffolk University Law Review* 46, no. 1 (2013): 243–61.

In 2012, Massachusetts voters defeated a bill to legalize physician-assisted suicide. This student note covers the history of legislation on physician-assisted suicide in the United States and the history of the 2012 Massachusetts bill in particular, reviewing and responding to the various objections of the bill's opponents. Orlando also speculates on the possibility of the legalization of euthanasia and physician-assisted suicide for minors in the United States.

"Symposium: Aid-in-Dying Legislation in Connecticut." *Quinnipiac Law Review* 34, no. 4 (2016): 609–800.

In addition to reviewing the status of aid-in-dying legislative efforts in Connecticut,<sup>75</sup> this symposium issue's articles address Catholic perspectives on various end-of-life options,<sup>76</sup> conversations on disability and end-of-life choices,<sup>77</sup>

---

75. Tim Appleton et al., *Legislative Panel: Aid-in-Dying Legislation in Connecticut*, 34 QUINNIPAC L. REV. 647 (2016).

76. Janeane Lubin-Szafranski & Gregory J. Pepe, *Catholic Doctrine and Aid in Dying*, 34 QUINNIPAC L. REV. 667 (2016).

77. Lynette Cederquist & Ellen Waldman, *Palliative Care and End-of-Life Options*, 34 QUINNIPAC L. REV. 627 (2016).

and issues related to the availability of medication used for aid in dying.<sup>78</sup>

“Symposium: Establishing New Rights: A Look at Aid in Dying.” *New Mexico Law Review* 48, no. 2 (Symposium 2018): 233–329.

This symposium’s article topics include a critique of the New Mexico Supreme Court’s decision in *Morris v. Brandenburg*;<sup>79</sup> a history of attempts to legalize aid in dying in the United States through litigation, legislation, or other means;<sup>80</sup> state civil rights jurisprudence in New Mexico;<sup>81</sup> the likelihood of greater expansion of civil rights under state constitutions, rather than the U.S. Constitution;<sup>82</sup> and the flaws inherent in courts following *Glucksberg*’s approach to substantive due process.<sup>83</sup>

Tucker, Kathryn L. “Give Me Liberty at My Death: Expanding End-of-Life Choice in Massachusetts.” *New York Law School Law Review* 58, no. 2 (2013/14): 259–76.

Tucker writes that legalization of aid in dying may not be necessary in a state such as Massachusetts. She examines relevant state criminal laws and laws pertaining to medical autonomy and end-of-life care, and compares aid-in-dying practices in those states where it is currently legal. Tucker concludes that Massachusetts professional medical practice standards likely permit physicians to prescribe aid-in-dying drugs without being subject to criminal prosecution.

Tucker, Kathryn L., and Christine Salmi. “End-of-Life Care in Idaho: Law, Medicine, Policy, and Geography.” *The Crit: A Critical Studies Journal* 3, no. 2 (Summer 2010): 1–19.

Tucker and Salmi compare Idaho legislation governing end-of-life care with the relevant law in the bordering states of Oregon, Washington, and Montana, and advocate for the legalization of aid in dying in Idaho “by incorporating this intervention into medical practice subject to standard of care” (p.3).

Wingfield, Katherine Ann, and Carl S. Hacker. “Physician-Assisted Suicide: An Assessment and Comparison of Statutory Approaches Among the States.” *Seton Hall Legislative Journal* 32, no. 1 (2007): 13–64.

A detailed matrix lists all state statutes that either explicitly or implicitly legalize or criminalize physician-assisted suicide or assisted suicide generally. It is followed by a discussion of the similarities and differences among them. While the laws in some states have changed since this article’s publication, it is still an excellent starting point for state-by-state research on the topic.

78. Taimie Bryant, *Aid in Dying: The Availability of Ideal Medication for Use in “Right to Die” Jurisdictions in the United States*, 34 QUINNIPIAC L. REV. 705 (2016).

79. Paola V. Jaime Saenz, *Morris v. Brandenburg: Departing from Federal Precedent to Declare Physician Assisted Suicide a Fundamental Right Under New Mexico’s Constitution*, 48 N.M. L. REV. 233 (2018); Kathryn L. Tucker, *A Nadir of State Constitutional Jurisprudence: Failing to Protect Terminally Ill Patients’ Choice for a More Peaceful Death in New Mexico*, 48 N.M. L. REV. 315 (2018).

80. Thaddeus Mason Pope, *Legal History of Medical Aid in Dying: Physician Assisted Death in U.S. Courts and Legislatures*, 48 N.M. L. REV. 267 (2018).

81. Linda M. Vanzi et al., *State Constitutional Litigation in New Mexico: All Shield and No Sword*, 48 N.M. L. REV. 302 (2018).

82. Erwin Chemerinsky, *State Constitutions as the Future for Civil Rights*, 48 N.M. L. REV. 259 (2018).

83. Laura Schauer Ives, *The Decisions We Are (or Are Not) Free to Make, for Now*, 48 N.M. L. REV. 324 (2018).

## Current Awareness Resources

Bloomberg BNA Health Law and Business News (recently superseding BNA Health Care Policy Report and BNA Health Law Reporter).

Users can find in-depth news articles and legal analysis on recent state legislative or judicial developments related to physician-assisted death. The most useful search terms for locating more recent pieces appear to be “assisted suicide” or “physician-assisted suicide”/“doctor-assisted suicide,” “aid in dying,” or “death with dignity.”

*Compassion & Choices*. <https://www.compassionandchoices.org/> [<https://perma.cc/36JF-4DTM>].

Compassion & Choices, formerly known as the Hemlock Society, is an advocacy nonprofit “committed to improving care and expanding choice at the end of life,”<sup>84</sup> including working to expand access to legal medical aid in dying throughout the United States. Its website offers up-to-date press releases on relevant legislative and court updates, as well as helpful fact sheets on various end-of-life issues.

*Death with Dignity National Center*. <https://www.deathwithdignity.org/> [<https://perma.cc/X9DR-A63V>].

The Death with Dignity National Center is a nonprofit organization promoting the adoption of state laws modeled on Oregon’s Death with Dignity Act. This website includes information on current state laws permitting physician-assisted death and resources on how to access those laws, as well as legislative activity updates from other states. A large educational section contains information for assisted dying advocates, healthcare providers, and patients and families; information on religious perspectives on assisted dying; and a number of resource lists for further reading and research.

*Patients Rights Council*. <http://www.patientsrightscouncil.org/> [<https://perma.cc/H3YG-6BZZ>].

The nonprofit Patients Rights Council was formerly known as the International Task Force on Euthanasia and Assisted Suicide. Much of this website is somewhat clunky in appearance, and some portions are not kept current, but the pages covering state legislative developments regarding physician-assisted dying are consistently up to date. Users can browse a general newsfeed or locate news links by jurisdiction. The site also maintains an annually updated list of states whose legislatures have considered bills legalizing physician-assisted death in a given year, dating back to 1994.

## Legalizing Physician-Assisted Death

### General Overviews

¶23 The materials in this section provide neutral overviews of the legal arguments for and against legalizing physician-assisted death or information about the background behind various legalization efforts in the states.

Cassity, Shelly A. “To Die or Not to Die: The History and Future of Assisted Suicide Laws in the U.S.” *Journal of Law & Family Studies* 11, no. 2 (2009): 467–75. Also appears in *Utah Law Review*, 2009, no. 2: 515–23.

---

84. *About Compassion & Choices*, COMPASSION & CHOICES, <https://www.compassionandchoices.org/who-we-are/> [<https://perma.cc/JFV8-K5B6>].

This brief student note provides a history of relevant laws on suicide and assisted suicide in the United States from the colonial period to the twentieth century, as well as an overview of the legalization of assisted suicide in Oregon, Washington, and Montana and an analysis of the future of assisted suicide laws in the United States. Cassity concludes by summarizing the potential downfalls in both legalizing and not legalizing assisted suicide.

Jackson, Emily, and John Keown. *Debating Euthanasia*. Vol. 3, *Debating Law*. Oxford: Hart, 2012.

The first half of this book consists of Jackson's arguments in favor of legalizing euthanasia and assisted suicide under limited circumstances. In the second half, Keown contends that decriminalizing either procedure is ethically impermissible and would pose special dangers for vulnerable populations. Throughout their respective sections, the authors each respond to the perspectives of their coauthor and to other arguments that have been advanced on either side of the debate.

Lopes, Giza. *Dying with Dignity: A Legal Approach to Assisted Death*. Santa Barbara: Praeger, 2015.

This book offers a comparative examination of the development of laws decriminalizing assisted death in the United States and in Europe. Lopes traces a path from the first euthanasia bills proposed in the early twentieth century to the more recent legalization of physician-assisted suicide in several states. Next, she contrasts the history of assisted death laws and practices in Switzerland with those in the Netherlands, Belgium, and Luxembourg. Finally, Lopes assesses the involvement of members of the medical profession in assisted death.

Stefan, Susan. *Rational Suicide, Irrational Laws: Examining Current Approaches to Suicide in Policy and Law*. New York: Oxford University Press, 2016.

This book provides information on the history and legal status of assisted suicide in the United States and internationally. It addresses a slew of legal and policy considerations pertaining to suicide, suicide prevention, and assisted suicide—including constitutional law issues, mental illness, and involvement in assisted suicide by medical and psychiatric professionals. The appendices include a "Model State 'Assisted' Suicide Statute," which is offered as an alternative to current state laws permitting the practice and as a suggestion for states that might be considering its legalization.

Sumner, L.W. *Physician Assisted Death: What Everyone Needs to Know*. New York: Oxford University Press, 2017.

The chapters in this volume are presented in the form of frequently asked questions on physician-assisted death and other end-of-life issues. Sumner covers relevant terminology, the legal and ethical cases for and against physician-assisted dying, and what law reform centering on legalizing forms of physician-assisted death might look like and how it might occur (e.g., via the legislature, courts, or voter referenda).

Svenson, Arthur G. "Physician-Assisted Dying and the Law in the United States: A Perspective on Three Prospective Futures." In *Euthanasia and Assisted Suicide: Global Views on Choosing to End Life*, edited by Michael J. Cholbi, 3–28. Santa Barbara: Praeger, 2017.

The author discusses three potential paths toward expanded legalization of physician-assisted dying in the United States: state laws, state courts, and the U.S. Supreme Court. First, he examines the effect of the passage of Oregon's Death with Dignity Act and the later passage of similar laws in Vermont and California. Next, he looks at examples of successful court challenges to state laws criminal-

izing physician-assisted dying and analyzes the issues involved with “judicially driven legalization” (p.18). Finally, he evaluates the likelihood of the Supreme Court some day overturning its decisions in *Glucksberg* and *Vacco*.

Tucker, Kathryn L. “When Dying Takes Too Long: Activism for Social Change to Protect and Expand Choice at the End of Life.” *Whittier Law Review* 33, no. 1 (Fall 2011): 109–60.

Tucker reviews various methods that have been used to address the legality of end-of-life options and aid in dying. These include the citizen initiatives that led to the passage of the Oregon and Washington Death with Dignity Acts; federal and state laws that prohibit physician-assisted suicide or that deal with other end-of-life issues such as pain management, patient counseling, and advance directives; and litigation efforts. She also covers the aid-in-dying terminology battles and advocates for professional medical standards to govern aid in dying if a state’s laws do not explicitly permit or forbid the practice.

### Support for Legalization

¶24 The works in this section advocate in favor of legalizing physician-assisted death in more states or for expanding the provisions of existing legislation.

Ball, Howard. *At Liberty to Die: The Battle for Death with Dignity in America*. New York: New York University Press, 2012.

Ball’s central premise is that the U.S. Constitution provides for the freedom of terminally ill patients to choose physician-assisted death. He details the history of relevant U.S. Supreme Court cases and of efforts to legalize physician-assisted death in the United States, either through the courts or through passage of state legislation.

Bryant, David. “The Need for Legalization and Regulation of Aid-in-Dying and End-of-Life Procedures in the United States.” *Quinnipiac Health Law Journal* 18, no. 2 (2015): 287–324.

This student note summarizes the legal status of physician-assisted suicide in the United States and abroad and observes the increasing acceptance of legalized end-of-life procedures in most jurisdictions. He advocates for the establishment of federal laws and uniform regulations governing both physician-assisted suicide and euthanasia in the United States, arguing that doing so would better respect patient autonomy and protect patients from potential abuse.

Mason, Emily R. “Ignoring It Will Not Make It Go Away: Guidelines for Statutory Regulation of Physician-Assisted Death.” *New England Law Review* 45, no. 1 (Fall 2010): 139–66.

This student note argues for express statutory regulation of physician-assisted death, even in states such as Montana where legalization may come via court decision, to best protect patient rights and vulnerable patients. Mason examines existing legislation authorizing physician-assisted death in Oregon and Washington and in other countries, and proposes a statutory framework for the regulation of physician-assisted death in the rest of the states.

Porter, Jennifer. “Who Lives? Who Dies? Who Decides?” *Georgetown Journal of Law & Public Policy* 14, no. 2 (Summer 2016): 599–614.

This student note examines the different means of legalization of physician-assisted suicide in the states thus far, from ballot measures to court decisions to laws passed by state legislatures. Porter advocates for the third option as the most effective means for states to exercise their sovereignty and create a right to physician-assisted suicide out of respect for patient autonomy.

Reynolds, Lindsay. "Losing the Quality of Life: The Move Toward Society's Understanding and Acceptance of Physician Aid-in-Dying and the Death with Dignity Act." *New England Law Review* 48, no. 2 (Winter 2014): 343–70.

This student note contends that religious opposition, confusion over the provisions in Death with Dignity Acts, and fears over "slippery slopes" have been the main obstacles to more widespread legalization of physician aid in dying in the United States. Reynolds argues that not only should physician aid in dying be legalized, it should also be extended to patients who are not terminally ill. She also explores how the law of wills and trusts could possibly be applied to typical concerns over legalized physician aid in dying.

Shibata, Benjamin. "An Ethical Analysis of Euthanasia and Physician-Assisted Suicide: Rejecting Euthanasia and Accepting Physician Assisted Suicide with Palliative Care." *Journal of Legal Medicine* 37, nos. 1–2 (January-June 2017): 155–66.

Shibata evaluates the ethical and moral permissibility of euthanasia and physician-assisted suicide via the medical principles of autonomy, nonmaleficence, beneficence, and justice, as well as the patient rights versus physician obligations implicated by assisted dying. He also suggests that existing laws include a requirement that a patient seeking to access physician-assisted suicide consult with a palliative care physician, in order to provide certain patients with additional options for care and comfort.

Silverman, Alexi. "Physician-Assisted Suicide: Removing Residency Requirements in the U.S. to Comport with an International Right to Health." *San Diego International Law Journal* 19, no. 1 (2017): 193–224.

In this student comment, Silverman advocates for amendments to U.S. state laws permitting physician-assisted suicide that would make the procedure accessible to nonstate residents. Such potential changes, she argues, have bases in constitutionality, morality, and a right to health (the latter having been recognized in international jurisdictions).

Smith, Stephen W. "Some Realism About End of Life: The Current Prohibition and the Euthanasia Underground." *American Journal of Law & Medicine* 33, no. 1 (2007): 55–95.

Smith asks whether current prohibitions against both physician-assisted suicide and euthanasia are actually effective in reducing or eliminating these practices, or whether legalization would better stem instances of abuse. He evaluates multiple arguments against legalization that arise from both patient- and healthcare provider-centered perspectives, such as the efficacy of current medical ethics standards, patient autonomy, and consequences for both patients and physicians stemming from the lack of regulation.

Sumner, L.W. *Assisted Death: A Study in Ethics and Law*. Oxford: Oxford University Press, 2011.

Part 1 covers a number of ethical considerations on assisted death, while part 2 looks at the legal status of euthanasia and assisted suicide in several jurisdictions, both in the United States and overseas, that prohibit or regulate those practices. Sumner lays out a model policy for jurisdictions that may consider legalizing at least one of the two forms of assisted death, while responding to arguments opposing legalization and questions regarding its impact.

White, Christina. "Physician Aid-in-Dying." *Houston Law Review* 53, no. 2 (2015): 595–629.

This student comment advocates for the legalization of physician aid in dying throughout the United States, whether through a U.S. Supreme Court decision finding a constitutional right to aid in dying or via actions by state legislatures or courts. It summarizes U.S. Supreme Court case law relevant to physician aid in dying and the relevant laws or decisions in Oregon, Washington, Vermont, and Montana.

Whitefield, Ashley. "End of Life Care: Why Living Wills Are Ineffective and Why Death with Dignity Acts Are a More Effective Approach." *Annals of Health Law Advance Directive* 22 (Spring 2013): 32–43.

This student article contends that living will<sup>85</sup> statutes, which have been adopted in most states, are ineffective compared to Death with Dignity Acts in providing terminally ill patients with control over their end-of-life care. Whitefield outlines the "inefficiencies" (p.35) of living wills and discusses how Death with Dignity Acts comparatively allow the terminally ill to exercise more autonomous end-of-life decision making.

### Against Legalization

Gorsuch, Neil M. "A Reply to Raymond Tallis on the Legalization of Assisted Suicide and Euthanasia." *Journal of Legal Medicine* 28, no. 3 (July-September 2007): 327–32.

Gorsuch responds to a review by physician Raymond Tallis of Gorsuch's 2006 book *The Future of Assisted Suicide and Euthanasia*. Tallis wrote in this review that legalization of physician-assisted suicide benefits society overall and reduces human suffering, and that any associated slippery slope concerns can be avoided. To Gorsuch, these are broad assumptions that do not tell the whole story of the impact of legal assisted suicide on patients and society.

Klothen, Kenneth. "Tinkering with the Legal Status Quo on Physician Assisted Suicide: A Minimalist Approach." *Rutgers Journal of Law and Religion* 14, no. 2 (2013): 361–87.

While Klothen supports the idea of a moral right to physician-assisted suicide, he is against its widespread legalization, which he believes would lead to an undesirable increase in its use. He offers suggestions for how to protect physicians from criminal prosecution in states where it is still illegal, such as the creation of defenses of consent, compassion, and medical necessity.

Smith, Wesley J. "Assisted Suicide: Bad Medicine and Even Worse Public Policy." *Thomas M. Cooley Law Review* 24, no. 1 (2007): 99–122.

Smith believes that legalized assisted suicide and euthanasia are societal ills. He draws upon extensive studies and data from the Netherlands to support his view, and argues that statistics on the use and impact of assisted suicide in Oregon are unreliable and cannot form a basis to claim that legalized assisted suicide is safe. He is also concerned with potential economic pressures on both doctors and patients and possible abuse of elderly and disabled patients.

---

85. A living will is a type of advance directive. *Advance Directive: Creating a Living Will and Health Care Power of Attorney*, AARP, <https://www.aarp.org/caregiving/financial-legal/info-2017/living-will-power-of-attorney.html> [<https://perma.cc/GZ5N-NWHZ>].

Stern, Ruth C., and J. Herbie DiFonzo. "Terminal Ambiguity: Law, Ethics and Policy in the Assisted Dying Debate." *Boston University Public Interest Law Journal* 17, no. 1 (Fall 2007): 99–140.

The authors argue against legalized assisted dying, as "however humanely practiced, [it] is [still] the taking of life" (p.139). They instead promote the improvement of palliative care options to alleviate end-of-life health burdens and greater involvement by medical professionals in efforts to improve care for dying patients.

Wagner, William, John S. Kane, and Geoffrey Gismondi. "Physician-Assisted Killing Laws, Constitutional Authority, and the Conscience of a Nation: *Two Worldviews*." *Thomas M. Cooley Law Review* 24, no. 1 (2007): 123–68.

The "two worldviews" of the title refer to (1) a "divinely revealed . . . [and] inviolable objective standard that killing a human being is always wrong" (p.134), which is reflected in state laws that prohibit assisted suicide; and (2) a "subjective, morally relative worldview" (p.133) that life has value only in some circumstances, which the authors claim is personified by Oregon's Death with Dignity Act and favored by proponents of legalizing assisted suicide. The authors cover the legislative history of the Controlled Substances Act (CSA) and its amendments as well as the impact and limitations of the Supreme Court's decision in *Gonzales v. Oregon*, and contend that Congress could amend the CSA to preempt state laws that permit assisted suicide. They conclude by reflecting on the potential dangers to society of legalizing assisted suicide.

## Selected Topics in Scholarship on Physician-Assisted Death

### Abortion and Reproductive Rights

¶25 Some legal scholarship has linked the movement to legalize physician-assisted death in the United States to the ongoing debates over abortion rights. Patient autonomy, the right to privacy, and the preservation of life are a few of the topics that are raised regarding both issues in the works listed below.

Busscher, David. "Linking Assisted Suicide and Abortion: Life, Death, and Choice." *Elder Law Journal* 23, no. 1 (2015): 123–49.

Busscher sees the "same fundamental tension" (p.127) in the issues of both abortion and assisted suicide: namely "individual choice in what is done to one's body, even if that involves terminating a life, versus state interest in preserving life or potential life" (p.127). Based on this connection, he argues in this student note against further legalization of assisted suicide and for banning it where it is currently legal.

Gentry, Sarah M. "The Right to Die with Dignity: Death, Your Body, and Privacy." *George Mason University Civil Rights Law Journal* 28, no. 2 (Spring 2018): 203–39.

This student comment asserts that the U.S. Supreme Court erred in *Glucksberg* and that the right to choose assisted death should be protected in the same manner as the right to choose an abortion. Gentry writes that the U.S. Supreme Court should apply the same analytical framework used in *Roe v. Wade*<sup>86</sup> to assisted death in finding that the right to privacy afforded by the Fourteenth Amendment's Due Process Clause protects the right to choose assisted dying.

---

86. 410 U.S. 113 (1973). *Roe* held that "[t]he right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy," but "this right is not unqualified and must be considered against important state interests in regulation." *Id.* at 153–54.

Kim, Phillip. "Navigating the Maze of End-of-Life Decisions Regarding the Rejection of Life Sustaining Treatment, Medical Futility, Physician-Assisted Death, and Abortion." *SMU Science and Technology Law Review* 14, no. 1 (Fall 2010): 127–57.

This student comment examines the four end-of-life issues listed in the title in relation to each other. Kim explores the legal and policy background and current state of the law relevant to each, primarily through the lens of the constitutional right to personal autonomy.

Lindgren, Yvonne. "From Rights to Dignity: Drawing Lessons from Aid in Dying and Reproductive Rights." *Utah Law Review* 5 (2016): 779–829.

Lindgren contrasts the more widespread legalization of aid in dying in recent years with the similarly increasing common passage of greater abortion restrictions in some states. Her article "consider[s] the extent to which these two movements trace opposing trajectories between healthcare and rights framings" (p.783).

Price, Richard S., and Thomas M. Keck, "Movement Litigation and Unilateral Disarmament: Abortion and the Right to Die." *Law & Social Inquiry* 40, no. 4 (Fall 2015): 880–907.

Some social progress has been achieved not through legislation but primarily through court victories, which has given rise to a "backlash critique" (p.881) that such change not only is "democratically illegitimate" (p.880) but also instigates greater political mobilization by opponents of certain social movements. The authors review litigious and legislative activity in the abortion and assisted suicide movements to explore what the role of the judicial system can and should be in effecting social change.

### Capital Punishment and Prisoners' Rights

¶26 A more recent topic in legal scholarship is the connection between patient access to physician-assisted death and the rights of prisoners who have been sentenced to death. Issues that have been explored in this area include the treatment of both prisoners' and patients' dignity in death,<sup>87</sup> and the relationship between the right to physician-assisted death and the right of death row prisoners to request expedited executions.<sup>88</sup>

Loveland, Kristen. "Death and Its Dignities." *New York University Law Review* 91, no. 5 (November 2016): 1279–1315.

In this note, Loveland explores the concept of dignity in constitutional law and compares its treatment in assisted suicide versus death penalty jurisprudence, finding an emphasis on individual dignity in the former and on society's dignity in the latter. She suggests ways for these two areas to incorporate the other's notion of dignity.

Pormeister, K., M. Finley, and J.J. Rohack. "Physician Assisted Suicide as a Means of Mercy: A Comparative Analysis of the Possible Legal Implications in Europe and the United States." *Virginia Journal of Social Policy & the Law* 24, no. 1 (2017): 1–23.

In 2014, the Belgian Court of Appeal granted the request of a prisoner who had

87. Kristen Loveland, Note, *Death and Its Dignities*, 91 N.Y.U. L. REV. 1279 (2016).

88. Meredith Martin Rountree, *Criminals Get All the Rights: The Sociolegal Construction of Different Rights to Die*, 105 J. CRIM. L. & CRIMINOLOGY 149 (2015).

been sentenced to life in prison to access physician-assisted suicide (though the request was never carried out).<sup>89</sup> The authors explore the potential effects of opening up the right to physician-assisted suicide in this fashion in both Europe and the United States, including what it would mean for “the right to die in the wider catalogue of human/fundamental rights, and the role of death as a punishment carried out by the custodial state” (p.4).

Rountree, Meredith Martin. “Criminals Get All the Rights: The Sociolegal Construction of Different Rights to Die.” *Journal of Criminal Law and Criminology* 105, no. 1 (Winter 2015): 149–202.

Rountree studies the phenomenon of death row prisoners seeking to hasten their executions, comparing and contrasting courts’ treatment of this population’s “right to die” with that right as it is understood in a medical context. Exploring various reasons for “the disparity in how the law treats . . . desires to die” (p.187), she concludes that there has been a “marginalization” (p.202) of death row prisoners in this regard and presents a case for a change to the legal standard for adjudicating prisoners’ requests for speedier executions.

Walthour, Melanie. “Competently, Knowingly, and Voluntarily Dying with Dignity: Why States That Allow Defendants to Volunteer for Execution Should Allow Terminally Ill Patients to Die in a Dignified and Humane Manner.” *Arizona Summit Law Review* 9, no. 2 (Spring 2016): 437–75.

This student work draws parallels between patient use of physician-assisted suicide and death row inmates’ willing abandonment of their appeals in order to move forward with their executions. Walthour argues that both are examples of individuals willingly expediting their deaths and proposes that the many states that already permit the latter also pass death with dignity laws legalizing physician-assisted suicide.

### “Death Tourism”

¶27 One phenomenon related to physician-assisted death is that of individuals traveling abroad to seek assistance with dying when their home jurisdictions do not permit it. The following materials address some of the issues associated with such activity, which is variously called “death tourism,”<sup>90</sup> suicide tourism,<sup>91</sup> or “travel for assisted suicide.”<sup>92</sup>

Cohen, I. Glenn. “Medical Tourism and Ending Life: Travel for Assisted Suicide and Abortion.” In *Patients with Passports: Medical Tourism, Law and Ethics*, 315–70. New York: Oxford University Press, 2015.

The author establishes that international law does not prohibit a home country from criminalizing travel by its citizens for the purposes of obtaining legalized assisted suicide or abortion abroad. He then evaluates whether a home country should criminalize this type of travel or the speech of doctors who may advise patients to travel abroad for these purposes.

---

89. K. Pormeister et al., *Physician Assisted Suicide as a Means of Mercy: A Comparative Analysis of the Possible Legal Implications in Europe and the United States*, 24 VA. J. SOC. POL’Y & L. 1, 3–4 (2017).

90. Alexander R. Safyan, *A Call for International Regulation of the Thriving “Industry” of Death Tourism*, 33 LOY. L.A. INT’L & COMP. L. REV. 287, 288 (2011).

91. Hadeel Al-Alosi, *A Time to Fly and a Time to Die: Suicide Tourism and Assisted Dying in Australia Considered*, 17 MARQ. BENEFITS & SOC. WELFARE L. REV. 257, 259 (2016).

92. I. Glenn Cohen, *Traveling for Assisted Suicide, in EUTHANASIA AND ASSISTED SUICIDE: GLOBAL VIEWS ON CHOOSING TO END LIFE* 373, 374 (Michael J. Cholbi ed., 2017).

Cohen, I. Glenn. "Traveling for Assisted Suicide." In *Euthanasia and Assisted Suicide: Global Views on Choosing to End Life*, edited by Michael J. Cholbi, 373–91. Santa Barbara: Praeger, 2017.

Adapted from several of Cohen's previous works on the same subject, this book chapter provides an overview of medical tourism generally and suicide tourism in more detail. Cohen covers how international law, domestic law, and EU law have treated (and should treat) suicide tourism, with a particular focus on examples from the United Kingdom.

Safyan, Alexander R. "A Call for International Regulation of the Thriving 'Industry' of Death Tourism." *Loyola of Los Angeles International and Comparative Law Review* 33, no. 2 (Winter 2011): 287–319.

This student note compares the legalization of assisted suicide and euthanasia in the United Kingdom, the United States, the Netherlands, and Switzerland. Safyan evaluates the potential of each jurisdiction as a "death tourism destination" (p.293) and argues that death tourism requires some type of regulation, preferably via nonbinding legal instruments such as a United Nations General Assembly recommendation.

Srinivas, Rohith. "Exploring the Potential for American Death Tourism." *Michigan State University Journal of Medicine and Law* 13, no. 1 (Winter 2009): 91–122.

This student work considers the feasibility of two possible means by which the federal government or state governments could stop travel by Americans to undergo legal assisted suicide or euthanasia in other jurisdictions. One is to impose restrictions on travel for such purposes; the other is to pass laws banning Americans from accessing these procedures in jurisdictions where they are legal.

### Ethics and Morality

Kamisar, Yale. "Are the Distinctions Drawn in the Debate about End-of-Life Decision Making 'Principled'? If Not, How Much Does It Matter?" *Journal of Law, Medicine & Ethics* 40, no. 1 (Spring 2012): 66–84.

Kamisar is concerned with the validity of lines that have been demarcated within certain end-of-life issues. Comparing and contrasting arguments on all sides by ethicists, physicians, and the courts, he addresses the different legal treatment for physician-assisted suicide and the withdrawal of life-sustaining treatment; whether proponents of legal physician-assisted suicide can truly also be against euthanasia; why physician-assisted suicide should be limited only to terminally ill patients; and the effect of the U.S. Supreme Court's embrace of the "principle of double effect"<sup>93</sup> on the debates surrounding physician-assisted suicide, palliative care, and terminal sedation.

Orentlicher, David. "Aging Populations and Physician Aid in Dying: The Evolution of State Government Policy." *Indiana Law Review* 48, no. 1 (2014): 111–23.

Within the recent trend of more states moving to legalize physician aid in dying for the terminally ill, Orentlicher observes a weakening of the distinction between physician aid in dying and the traditionally more accepted option of withdrawal of life-sustaining treatment. He discusses the implications of this change on the public's moral views on end-of-life choices that hasten death.

---

93. According to the "principle of double effect," it would be morally acceptable for a physician to administer large doses of painkillers to a patient with the sole goal of relieving his or her pain, even if doing so also eventually results in the patient's death. Yale Kamisar, *Are the Distinctions Drawn in the Debate about End-of-Life Decision Making 'Principled'? If Not, How Much Does It Matter?*, 40 J.L. MED. & ETHICS 66, 76 (2012).

Stern, Ruth C., and J. Herbie DiFonzo. "Stopping for Death: Re-Framing Our Perspective on the End of Life." *University of Florida Journal of Law and Public Policy* 20, no. 3 (December 2009): 387–437.

The authors seek to go beyond the debates surrounding legalization of assisted suicide by "reflect[ing] upon . . . the conditions at ground zero in the assisted suicide debate: the quality of life of those near death, as well as their expectations for care and how a reasonable society might fulfill them" (p.391). Topics addressed include the physical, emotional, and mental suffering of patients; factors that might lead certain patients to decide to access or reject assisted dying; the role and importance of doctor-patient communication in end-of-life decision making; the rising cost of healthcare; and perceived shortcomings in existing laws, such as Oregon's Death with Dignity Act, in confronting some of these issues.

### Impacts on Vulnerable Populations

¶28 A frequent topic in scholarship on physician-assisted death is how legalization might affect members of typically vulnerable communities, including the poor, the elderly, minors, and patients with disabilities or mental illness (especially dementia). Commonly discussed issues include the possibility of coercion of or influence over such individuals,<sup>94</sup> the implications that arise if a patient lacks the competence to make a fully informed decision in selecting physician-assisted death,<sup>95</sup> and insufficient access to the option for certain groups.<sup>96</sup>

Battin, Margaret P. "Physician-Assisted Dying and the Slippery Slope: The Challenge of Empirical Evidence." *Willamette Law Review* 45, no. 1 (Fall 2008): 91–136.

Battin participated in the publication of a 2007 study that used data from Oregon and the Netherlands to "consider whether there is evidence of disparate impact on people in vulnerable groups" (p.100) when it comes to the availability of physician-assisted dying in those jurisdictions. In this article, Battin summarizes the methodology and results of the 2007 study and addresses objections to it that later arose.

Bollman, Cyndi. "A Dignified Death? Don't Forget About the Physically Disabled and Those Not Terminally Ill: An Analysis of Physician-Assisted Suicide Laws." *Southern Illinois University Law Journal* 34, no. 2 (Winter 2010): 395–415.

This student comment argues for amending Oregon's and Washington's Death with Dignity Acts to make them accessible to (1) individuals with physical disabilities who may be physically unable to self-administer the medication; and (2) those who do not have terminal illnesses but still may endure great physical or mental suffering.

Chhikara, Neelam. "Extending the Practice of Physician-Assisted Suicide to Competent Minors." *Family Court Review* 55, no. 3 (July 2017): 430–43.

This student note proposes amending state laws that permit or decriminalize physician-assisted suicide to remove age restrictions on access to physician-assisted suicide. Chhikara outlines ways to establish a terminally ill minor's competency to give informed consent in electing the procedure.

---

94. See, e.g., Anne Marie Su, *Physician Assisted Suicide: Debunking the Myths Surrounding the Elderly, Poor, and Disabled*, 10 HASTINGS RACE & POVERTY L.J. 145 (2013).

95. See, e.g., Menzel, *supra* note 3.

96. See, e.g., Neelam Chhikara, *Extending the Practice of Physician-Assisted Suicide to Competent Minors*, 55 FAM. CT. REV. 430 (2017).

Compton-Brown, Anne. "Examining Patient Integrity and Autonomy: Is Assisted Death a Viable Option for Adolescents in the United States?" *Annals of Health Law Advance Directive* 23 (Spring 2014): 86–100.

This student article advocates for the passage of laws in the United States similar to those in Belgium and the Netherlands that make legal assisted death available to certain terminally ill children and adolescents. This is based on the notion that patients in this age group are as capable as adults in exercising personal autonomy with such choices, as long as those laws mirror those in Belgium and the Netherlands by providing procedural safeguards protecting younger patients from coercion.

Crossley, Mary. "Ending-Life Decisions: Some Disability Perspectives." *Georgia State University Law Review* 33, no. 4 (Summer 2017): 893–922.

Crossley elaborates on some disability rights advocates' concerns regarding the legalization of physician-assisted suicide and the right to terminate unwanted medical treatment. These concerns include a history of discrimination by health professionals against the disabled; medicine's "incomplete and skewed understanding" (p.901) of what it means to be disabled; the perception that the disabled are a burden; and the "primacy of autonomy" (p.905) for disabled individuals. With the goal of opening up better understanding of these issues for the nondisabled, Crossley then draws parallels with concerns about racial justice and policing that have been long expressed by the African American community.

Dore, Margaret K. "Death with Dignity': A Recipe for Elder Abuse and Homicide (Albeit Not by Name)." *Marquette Elder's Advisor* 11, no. 2 (Spring 2010): 387–401.

Dore discusses potential shortcomings in Oregon's and Washington's Death with Dignity Acts, including the lack of a requirement that the patient be competent at the time of taking the medication and the possibility that someone other than the patient could administer the lethal dose. She asserts that these and other holes in the laws create the possibility for elder abuse, patient coercion, or even involuntary homicide.

Franklin, Katie. "Physician-Assisted Death, Dementia, and Euthanasia: Using an Advanced Directive to Facilitate the Desires of Those with Impending Memory Loss." *Idaho Law Review* 51, no. 2 (2015): 547–74.

This student article proposes extending the authority of guardians of patients with dementia to making decisions about those patients' end-of-life care, including whether to resort to physician-assisted death, pending the existence of an advance directive laying out that person's wishes.

George, Katrina. "A Woman's Choice? The Gendered Risks of Voluntary Euthanasia and Physician-Assisted Suicide." *Medical Law Review* 15, no. 1 (Spring 2007): 1–33.

George looks at data on women electing to access physician-assisted suicide and euthanasia, asking whether they truly exercised personal choice or whether "oppressive influences" (p.33) were at play. These influences might include "structural inequalities . . . disparities in power . . . [or] social and economic disadvantage and oppressive cultural stereotypes that idealise feminine self-sacrifice and reinforce stereotyped gender roles of passivity and compliance" (p.2–3). She makes the case that increased legalization of physician-assisted suicide and euthanasia might actually threaten, rather than enhance, female patients' autonomy.

Golan, Ofra G. "End-of-Life Care." In *The Law and Ethics of Dementia*, edited by Charles Foster, Jonathan Herring, and Israel Doron, 393–419. Oxford: Hart, 2014.

Golan lays out what various countries' laws say about allowing individuals with dementia to access legal options for physician-assisted death, compared to how those laws actually work in practice. An extensive table summarizes the legal status in nearly 40 countries of euthanasia, assisted suicide, withdrawal of life-sustaining treatment, and advance directives.

Katz, Sydni. "A Minor's Right to Die with Dignity: The Ultimate Act of Love, Compassion, Mercy, and Civil Liberty." *California Western International Law Journal* 48, no. 2 (Spring 2018): 219–46.

Katz believes that state laws allowing physician-assisted suicide should be accessible to terminally ill minors of any age. She draws on psychology research addressing "the cognitive development of children, their ability to make rational decisions, and their view of death" (p.230), as well as case law addressing the "mature minor doctrine" that allows children under 18 to make their own healthcare decisions if they have full understanding of the "risks, consequences, and nature of treatment" (p.236). She also examines the Belgian and Dutch right-to-die laws that open up access to legal physician-assisted suicide or euthanasia to certain minors, proposing that their provisions in this respect be a model for existing state laws.

Lewis, Browne. "A Deliberate Departure: Making Physician-Assisted Suicide Comfortable for Vulnerable Patients." *Arkansas Law Review* 70, no. 1 (2017): 1–55.

Lewis addresses ethical issues stemming from loopholes or lack of proper safeguards in state laws permitting physician-assisted suicide. These mainly impact patients who are "included but not protected" (p.34)—i.e., those terminally ill patients in certain groups who may meet all requirements to access physician-assisted suicide, but who may be at risk of abuse under the laws' current structures. These may include the elderly and disabled, the mentally ill, low-income patients, patients of color, and individuals excluded from accessing legal physician-assisted suicide (such as minors and patients who are ill but not terminally so). Lewis proposes amending existing laws to better protect certain categories of patients and to open up access to legal physician-assisted suicide for others.

Lewis, Browne C. "A Graceful Exit: Redefining Terminal to Expand the Availability of Physician-Facilitated Suicide." *Oregon Law Review* 91, no. 2 (Winter 2012): 457–93.

Lewis covers how existing state laws attempt to address concerns over the potential impacts of legal physician-facilitated suicide on vulnerable groups, such as the poor and the elderly. She also discusses items that the laws do not address but should, such as death tourism, the question of what happens to unused medication obtained under the laws, and the issue of "doctor shopping" (p.482) (finding a physician willing to sign off on a patient's competency to choose physician-facilitated suicide). Lewis also advocates for the expansion of existing laws to make the procedure available to individuals with incurable brain disorders or who have terminal illnesses with a life expectancy beyond six months.

Menzel, Paul T. "Advance Directives, Dementia, and Eligibility for Physician-Assisted Death." *New York Law School Law Review* 58, no. 2 (2013/14): 321–45.

Menzel recommends allowing patients, while they are still competent, to create advance directives that would allow them to elect physician-assisted death in

the event of severe dementia. He addresses common concerns about the use of advance directives for patients with the condition and proposes guidelines for when they should be used and followed.

Mitchell, John B. "Physician-Assisted Suicide and Dementia: The Impossibility of a Workable Regulatory Regime." *Oregon Law Review* 88, no. 4 (Winter 2009): 1085–1137.

Mitchell addresses "the impossibility of a legal regime that can acceptably regulate PAS [physician-assisted suicide] and dementia" (p.1092). This impossibility lies in the fact that individuals with dementia will generally lack mental competence and the abilities to remember or evaluate information, all of which are needed to make a truly fully informed and autonomous decision. Mitchell also outlines why living wills that may be created prior to the onset of dementia might not provide sufficient protections for these patients.

*Not Dead Yet*. <http://www.notdeadyet.org> [<https://perma.cc/2X6K-YVWZ>].

Not Dead Yet is a disability rights group that actively opposes legalized assisted suicide and euthanasia, calling these procedures "deadly forms of discrimination against old, ill and disabled people."<sup>97</sup> A regularly updated blog updates readers on the group's legislative and advocacy activities, which are far-ranging and include op-eds and newspaper articles, amicus brief filings, legislative testimony on proposed state bills, and comments on proposed regulations. Readers can also access a "Disability Rights Toolkit for Advocacy Against Legalization of Assisted Suicide," which provides guidance for engaging in further advocacy on the issue.

Ouellette, Alicia. "Context Matters: Disability, the End of Life, and Why the Conversation Is Still So Difficult." *New York Law School Law Review* 58, no. 2 (2013/14): 371–89.

Ouellette seeks to illuminate the "disconnect" (p.374) between disability rights advocates who oppose choice-in-dying laws and those who favor such laws, a conflict that exists despite both sides' common goal of "ensuring respect for all persons at the end of life" (p.375). She examines the experience of patients with disabilities in the U.S. healthcare system and the reasons why many disabled distrust it, and recommends strategies for choice-in-dying advocates to work with the disability community to reach common ground.

Penn, Jonathan. "Life, Liberty, and the Pursuit of Death of the Inconvenient Other." *Marquette Elder's Advisor* 11, no. 1 (Fall 2009): 165–80.

This article approaches the possibility of expanded legalization of physician-assisted suicide in the United States from the Older Americans Act of 1965's requirements that the federal government promote the well-being of older Americans. Penn draws parallels between the growth of the abortion rights and pro-physician-assisted suicide movements, finding an overall trend of a "diminished view of the sanctity of life" (p.170) and expressing concern that the federal government and the states will be motivated to legalize physician-assisted suicide to avoid financial support of the country's growing elderly population.

Player, Candice T. "Death with Dignity and Mental Disorder." *Arizona Law Review* 60, no. 1 (Spring 2018): 115–61.

Player proposes that laws permitting physician-assisted dying should cover not just the terminally ill but also competent psychiatric patients with mental disorders such as depression. She extends familiar moral arguments for permitting

---

97. *Who We Are*, NOT DEAD YET, <http://notdeadyet.org/about> [<https://perma.cc/X4RL-53L2>].

physician-assisted dying to cover at least some categories of competent, mentally ill patients, and also responds to common objections to doing so. Player highlights the protections and procedures built into Oregon's Death with Dignity Act as a potential template for expanding state laws accordingly.

Schwartz, Lara. "Advocates of Dignity Can Do Better than Death." *Savannah Law Review* 3, no. 1 (2016): 185–206.

Schwartz believes that death with dignity laws actually "equate disability with indignity" (p.197), and that these laws do not expand but rather limit end-of-life choices. For example, they do not guarantee access to nondeath alternatives such as palliative or hospice care, and may actually encourage those with disabilities to end their lives rather than pursue more expensive life-prolonging options. Schwartz looks to the disability rights movement as an essential partner in crafting death with dignity laws.

Shechtman, Benjamin L. "Freedom and Compassion for All: The Physically Incapacitated Have a Human Right to Assisted Death." *Temple International & Comparative Law Journal* 24, no. 2 (Fall 2010): 507–37.

This student comment approaches advocating legalization of various forms of assisted death from the premise that there is a "fundamentally unfair aspect of the otherwise reasonable proscription of assisted suicide" (p.509). That is, an able-bodied individual generally has the capacity to commit suicide, whereas someone who is disabled may not have that same capacity even though he or she evinces both competence and free will. The author argues that the right of the disabled or incapacitated to assisted death is a human right based on personal autonomy.

Stillman, Adam. "Moving the Needle: A Call to Change Age Restrictions in American Physician-Assisted Suicide Laws." *Southern California Interdisciplinary Law Journal* 26, no. 1 (Fall 2016): 275–98.

This student note argues for passage of a law in the United States permitting terminally ill children under 18 to legally access physician-assisted suicide, provided a physician has deemed the minor patient competent. Stillman looks at examples of European laws with limited age restrictions on accessing physician-assisted suicide and explores the implications of *Glucksberg* and other case law on any right minors may have to die with dignity. He highlights U.S. case law providing that minors have the right to challenge commitment to mental institutions and argues that children under 18 could meet the threshold of the requirements of different standards of competence to elect the option of physician-assisted suicide.

Su, Anne Marie. "Physician Assisted Suicide: Debunking the Myths Surrounding the Elderly, Poor, and Disabled." *Hastings Race and Poverty Law Journal* 10, no. 1 (Winter 2013): 145–76.

This student work examines empirical evidence of the impact of Oregon's and Washington's Death with Dignity Acts, finding that their safeguards sufficiently protect against any real risk of coercion of vulnerable individuals. Su argues that the lack of legal access to physician-assisted suicide in most of the country actually poses more harm to vulnerable individuals by denying them autonomy over their personal medical decisions. A detailed chart delineates substantive similarities and differences between Oregon's and Washington's death with dignity laws.

Tucker, Kathryn L. "Building Bridges Between the Civil Rights Movements of People with Disabilities and Those with Terminal Illness." *University of Pittsburgh Law Review* 78, no. 3 (Spring 2017): 329–50.

Tucker advances the argument that the disability rights movement in the United States (which has traditionally opposed legalized aid in dying) and the pro-aid-

in-dying movement have enough common ground (such as support for the right to personal autonomy) that the former should reconsider its position to support legalization of aid in dying.

### Practitioner Experiences and Perspectives

¶29 Much of the literature on physician-assisted death emphasizes the needs and rights of patients. This section lists materials focusing on the experiences or perspectives of medical and mental health professionals who might be involved with patient care at various stages in the process.

¶30 A 2016 online survey of U.S. physicians showed that 57 percent supported legalization of physician-assisted suicide, an increase from 54 percent in 2014 and 46 percent in 2010.<sup>98</sup> However, the American Medical Association and the American Nurses Association officially oppose physician and nurse participation in the process.<sup>99</sup> The American Psychological Association takes a neutral stance.<sup>100</sup>

Darr, Kurt. "Physician-Assisted Suicide: Legal and Ethical Considerations." *Journal of Health Law* 40, no. 1 (Winter 2007): 29–63.

Darr is primarily concerned with the issues that physicians and healthcare organizations face surrounding their participation in physician-assisted suicide. Among the topics covered in this article are the role of Dr. Jack Kevorkian<sup>101</sup> in bringing physician-assisted suicide to the forefront of society's consciousness and a comparison of the law and impact in Oregon and the Netherlands, with a particular focus on physicians' experiences in both jurisdictions.

Johnson, Shara M., et al. "What Patient and Psychologist Characteristics Are Important in Competency for Physician-Assisted Suicide Evaluations?" *Psychology, Public Policy, and Law* 21, no. 4 (November 2015): 420–31.

State laws permitting physician-assisted suicide may require mental health professionals to determine whether a patient seeking out the process is sufficiently competent to make an informed decision. The authors review past studies on

98. *Physician-Assisted Death: Where Do You Stand?*, MEDSCAPE (Jan. 12, 2017), <https://www.medscape.com/viewarticle/874341> [<https://perma.cc/X24C-XEG2>].

99. *Decisions Near the End of Life H-140.966*, AM. MED. ASS'N, <https://policysearch.ama-assn.org/policyfinder/detail/Decisions%20Near%20the%20End%20of%20Life?uri=%2FAMADoc%2FHOD.xml-0-497.xml> [<https://perma.cc/C53B-H7KG>] ("Physicians must not perform euthanasia or participate in assisted suicide. . . . [T]he societal risks of involving physicians in interventions to cause patients' deaths is too great to condone euthanasia or physician-assisted suicide at this time."); *Position Statement: Euthanasia, Assisted Suicide, and Aid in Dying*, AM. NURSES ASS'N (Apr. 24, 2013), [https://www.nursingworld.org/~4ae33e/globalassets/docs/ana/euthanasia-assisted-suicideaid-in-dying\\_ps042513.pdf](https://www.nursingworld.org/~4ae33e/globalassets/docs/ana/euthanasia-assisted-suicideaid-in-dying_ps042513.pdf) [<https://perma.cc/XGX2-FM33>] ("The American Nurses Association (ANA) prohibits nurses' participation in assisted suicide and euthanasia because these acts are in direct violation of *Code of Ethics for Nurses with Interpretive Statements* (ANA, 2001 . . .), the ethical traditions and goals of the profession, and its covenant with society.").

100. *Resolution on Assisted Dying and Justification*, AM. PSYCH. ASS'N (Aug. 2017), <https://www.apa.org/about/policy/assisted-dying-resolution.aspx> [<https://perma.cc/SB9J-U9GM>] (stating that "the American Psychological Association take[s] a position that neither endorses nor opposes assisted dying at this time," but also advocating for ways in which the Association "will assist in preparing the profession to address the issue of assisted dying," such as by advocating for further research into the issue, for better end-of-life care, and for policies aimed at reducing patient suffering).

101. Dr. Kevorkian, an advocate for physician-assisted suicide in the 1990s, assisted more than 100 patients with ending their lives and was eventually convicted of murder. Ann M. Murphy, *Aid in Dying: United States and Around the World*, in *BEYOND ELDER LAW: NEW DIRECTIONS IN LAW AND AGING* 199, 201 (Israel Doron & Ann M. Soden eds., 2012).

mental health professionals' perspectives on physician-assisted suicide and summarize their own study surveying over 200 licensed psychologists from Oregon and Montana. The study asked what factors psychologists most prioritize in determining a patient's competence and sought to evaluate how psychologists' personal attitudes toward physician-assisted suicide may impact that determination.

Murphy, Sean. "Legalization of Assisted Suicide and Euthanasia: Foundational Issues and Implications." *BYU Journal of Public Law* 31, no. 2 (2017): 333–94.

Against the backdrop of the history and impact of Canada's legalization of assisted suicide and euthanasia in 2016, Murphy emphasizes the experiences and perspectives of Canadian physicians with religious or conscience-based objections to participating in physician-assisted death and the related "broader implications for law and fundamental freedoms" (p.335).

Quill, Timothy E. "Physicians Should 'Assist in Suicide' When It Is Appropriate." *Journal of Law, Medicine & Ethics* 40, no. 1 (Spring 2012): 57–65.

Quill, a physician and palliative care consultant who was a lead plaintiff in *Vacco v. Quill*, emphasizes the importance of ensuring quality palliative or hospice care for terminally ill patients before selecting "last resort options" (p.59), such as refusing medical treatment, palliative sedation, or physician-assisted death. He discusses the ethical implications for physicians involved with such options and the need for these practices to be open and legal.

Shaffer, Catherine S., Alana N. Cook, and Deborah A. Connolly. "A Conceptual Framework for Thinking about Physician-Assisted Death for Persons with a Mental Disorder." *Psychology, Public Policy, and Law* 22, no. 2 (May 2016): 141–57.

The authors observe the recent increase in the number of jurisdictions around the world extending access to physician-assisted death for individuals with a mental disorder. They review the development of this trend and develop a series of questions for consideration in evaluating whether physician-assisted death should be available to these individuals. Each question is accompanied by a background note and information for further discussion.

### Religion and Spirituality

Fulginiti, Adam. "The Soul and Its Impact on Life and Death Choices: A Constitutional Study of Abortion, the Right to Die, and Other Bioethical Dilemmas." *Rutgers Journal of Law & Religion* 11, no. 2 (Spring 2010): 459–94.

This student note is concerned with how assisted suicide, the withdrawal of life-sustaining treatment, and the right to abortion intersect with "the concept of the soul" (p. 460), which the author calls "a fundamental aspect of human existence . . . [that] can provide society with a broader understanding of the events that occur at both the beginning and end of life" (p.460). Regarding forms of dying, Fulginiti compares legal and religious (Christian and Catholic) definitions of death and justifications for permitting or denying these options from both perspectives.

Rubin, Edward. "Assisted Suicide, Morality, and Law: Why Prohibiting Assisted Suicide Violates the Establishment Clause." *Vanderbilt Law Review* 63, no. 3 (April 2010): 761–811.

Rubin argues that laws prohibiting assisted suicide violate the First Amendment's Establishment Clause, as "opposition to assisted suicide aligns with the Christian religion" (p.797) and current laws prohibiting the practice reflect "efforts . . . to impose a religiously based morality on those who would otherwise choose an alternative approach" (p.766). Rubin discusses how suicide has been linked to

different moral systems throughout Western history and demonstrates how current rationales for criminalizing assisted suicide conflict with “proffered secular justifications” (p.797).

Tucker, Kathryn L. “The Campaign to Deny Terminally Ill Patients Information and Choices at the End of Life.” *Journal of Legal Medicine* 30, no. 4 (October-December 2009): 495–514.

Tucker critically addresses the involvement of organizations and institutions on the “Religious Right” (p.495) that have worked to influence U.S. law and policy on end-of-life care, including advocating against further legalization of aid in dying in the states.

### The Terminology of Physician-Assisted Death

Svenson, Arthur G. “Death with Dignity’s Emerging Conceit: Could *Vacco v. Quill* Be Losing Its Appeal?” *University of La Verne Law Review* 31, no. 1 (November 2009): 45–66.

The “emerging conceit” of this article’s title refers to an “evolution of terminology” (p.61) in describing physician-assisted dying that explicitly does not mention suicide. Svenson theorizes about the potential impact of this evolution on more state courts striking down state laws outlawing physician-assisted dying, based on equal protection guarantees.

Tucker, Kathryn L., and Fred B. Steele. “Patient Choice at the End of Life: Getting the Language Right.” *Journal of Legal Medicine* 28, no. 3 (2007): 305–25.

Tucker and Steele review the varied terminology used to refer to aid in dying, distinguishing between words and phrases they deem “value-neutral” (p.308) or “[v]alue-laden” (p.308) and discussing why word choice matters in debates over the issue. They also describe how and why Oregon’s Department of Human Services discontinued use of the phrase “physician-assisted suicide” in favor of “Death with Dignity.”

### International and Comparative Experiences

¶31 Internationally, some form of physician-assisted death is currently legal via legislation or court decision in Belgium,<sup>102</sup> Canada,<sup>103</sup> Colombia,<sup>104</sup> Japan,<sup>105</sup> Luxembourg,<sup>106</sup> the Netherlands,<sup>107</sup> Switzerland,<sup>108</sup> and the Australian state of Victoria.<sup>109</sup> The criteria and requirements for legal physician-assisted death vary by jurisdiction.<sup>110</sup> For instance, the Netherlands and Belgium permit certain categories of minors to access their laws, whereas other jurisdictions require patients to

102. Emanuel, *supra* note 9.

103. *Id.*

104. *Id.*

105. Jun Hongo, *Euthanasia: The Dilemma of Choice*, JAPAN TIMES, Feb. 15, 2014, <https://www.japantimes.co.jp/life/2014/02/15/general/euthanasia-the-dilemma-of-choice/#.WyhrVIpKjIU> [<https://perma.cc/2F5V-6FFT>].

106. Emanuel, *supra* note 9.

107. *Id.*

108. *Id.*

109. Adam Baidawi, *Euthanasia Law Passes in Australia for First Time*, N.Y. TIMES, Nov. 29, 2017, <https://www.nytimes.com/2017/11/29/world/australia/australia-euthanasia-victoria-assisted-dying.html> [<https://perma.cc/Z899-BSBE>]. Victoria’s law will take effect in 2019. *Id.*

110. Emanuel, *supra* note 9, at 80–81.

be at least 18 years old.<sup>111</sup> In Switzerland (the first country to decriminalize assisted suicide in 1942), anyone may assist a patient with suicide provided the person assisting has “no selfish motive”; in addition, residents of other countries are permitted to travel there to seek assistance with suicide.<sup>112</sup>

¶32 The following materials analyze or compare laws, cases, or the practice and impact of physician-assisted death in countries where physician-assisted death is legal or address the possibility of legalization in other jurisdictions.

Al-Alosi, Hadeel. “A Time to Fly and a Time to Die: Suicide Tourism and Assisted Dying in Australia Considered.” *Marquette Benefits & Social Welfare Law Review* 17, no. 2 (Spring 2016): 257–84.

Al-Alosi notes that some Australian citizens have traveled abroad to take advantage of legal assisted suicide. He covers the history of past attempts to legalize euthanasia and assisted suicide in Australia, as well as Australian assisted suicide case law. He discusses the relevant law in the United Kingdom and the policy on prosecuting assisted suicide cases there; he then considers arguments for and against prosecuting assisted suicide cases in Australia.

Álvarez del Río, Asunción, Julieta Gómez Ávalos, and Isaac González Huerta. “Euthanasia and Assisted Suicide: Attitudes and Policies in Mexico.” In *Euthanasia and Assisted Suicide: Global Views on Choosing to End Life*, edited by Michael J. Cholbi, 45–69. Santa Barbara: Praeger, 2017.

The authors ask whether it might be possible to legalize assisted suicide or euthanasia in Mexico, where special challenges to legalization include the country’s majority Catholic population and high rate of poverty. In addition to exploring possible means of future legalization, they address laws relevant to end-of-life care and medical decision-making and public opinion in Mexico toward physician-assisted dying.

Brown, Stephen. “*Gross v. Switzerland* and Right to Die Jurisprudence in the European Court of Human Rights.” *Chicago-Kent Journal of International and Comparative Law* 14, no. 2 (2014): 1–11.

Brown examines trends in decisions related to assisted suicide and euthanasia that have been issued by the European Court of Human Rights since 2002, finding that “the court is inexorably moving towards acceptance of a universal right to die” (p.1).

Cleary, Carol C. “From ‘Personal Autonomy’ to ‘Death-on-Demand’: Will *Purdy v. DPP* Legalize Assisted Suicide in the United Kingdom?” *Boston College International and Comparative Law Review* 33, no. 2 (Spring 2010): 289–304.

In the United Kingdom, the crime of assisting in a suicide has run up against the recent trend of British citizens traveling to access legal assisted suicide in Switzerland.<sup>113</sup> *Purdy v. DPP* was a 2009 U.K. case arising out of this trend and provided that the country’s director of public prosecutions must clarify whether and when to prosecute those who provide assistance in suicide.<sup>114</sup> This student note analyzes the *Purdy* court’s reasoning and the implications of the decision for the future of legalized assisted suicide in the United Kingdom.

111. *Id.* at 80.

112. *Id.*

113. Carol C. Cleary, *From “Personal Autonomy” to “Death-on-Demand”: Will Purdy v. DPP Legalize Assisted Suicide in the United Kingdom?*, 33 B.C. INT’L & COMP. L. REV. 289, 289–90 (2010).

114. *Id.* at 295–96. The DPP issued final guidelines in 2010. Dir. Pub. Prosecutions, *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide*, CROWN PROSECUTION SERV. (Feb. 2010), [http://www.cps.gov.uk/publications/prosecution/assisted\\_suicide\\_policy.html](http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html) [https://perma.cc/KNU4-EKFF].

Cohen, Dana M. "Looking for a Way Out: How to Escape the Assisted Suicide Law in England." *Emory International Law Review* 24, no. 2 (2010): 697–734.

Assisting in a suicide is illegal in England, yet the country's Director of Public Prosecution's (DPP) guidelines for prosecuting such cases are inconsistently applied.<sup>115</sup> Reconciling this would require either changing the law to permit assisted suicide or amending the DPP policy to fall in step with existing legal requirements.<sup>116</sup> Cohen advocates for the latter option and suggests how to revise the DPP policy "to clarify the law, create consistency, and protect the vulnerable" (p.734).

Cohen-Almagor, Raphael. "The Assisted Dying Bill for England and Wales." In *Euthanasia and Assisted Suicide: Global Views on Choosing to End Life*, edited by Michael J. Cholbi, 29–44. Santa Barbara: Praeger, 2017.

Cohen-Almagor looks at the evolution in public attitudes toward legalization of physician-assisted suicide in the United Kingdom and proposes a set of guidelines for legalization based upon his research on related laws in other countries.

Cohen-Almagor, Raphael. "Euthanasia Policy and Practice in Belgium: Critical Observations and Suggestions for Improvement." *Issues in Law & Medicine* 24, no. 3 (Spring 2009): 187–220.

Cohen-Almagor offers insight into how Belgium's law permitting euthanasia has been applied in practice, based in part on his interviews conducted with Belgian scholars and medical practitioners. He outlines concerns about end-of-life practices in Belgium, especially those that arose following the euthanasia law's passage in 2002, and concludes by offering suggestions on how to improve euthanasia law and practice in the country.

Ebbott, Kristina. "A 'Good Death' Defined by Law: Comparing the Legality of Aid-in-Dying Around the World." *William Mitchell Law Review* 37, no. 1 (2010): 170–205.

This student article provides a thorough historical background of societal attitudes toward aid in dying in the Western world from antiquity to the present, as well as legislative background and information on the effects to date of relevant laws in the Netherlands, Belgium, Luxembourg, Switzerland, Oregon, and Washington State. The author concludes by comparing those features of each jurisdiction's law that she finds more successful.

Griffiths, John, Heleen Weyers, and Maurice Adams. *Euthanasia and Law in Europe*. Oxford: Hart, 2008.

This book covers the history, practice, and effects of various laws governing euthanasia and assisted suicide in Europe. While the Netherlands and Belgium are the main focus, the authors include detailed profiles of the relevant laws in other jurisdictions, including England and Wales, France, Italy, Scandinavia (Norway, Denmark, and Sweden), Spain, and Switzerland.

Hardes, Jennifer. *Law, Immunization and the Right to Die*. Abingdon, UK: Routledge, 2016.

Hardes draws philosophical connections between the two seemingly unrelated subjects of assisted dying and immunization. The latter is fundamentally about shielding the self: medical immunization protects from disease, and political

---

115. Dana M. Cohen, *Looking for a Way Out: How to Escape the Assisted Suicide Law in England*, 24 EMORY INT'L L. REV. 697, 697–99 (2010).

116. *Id.* at 700.

immunity protects from legal problems. An individual electing the option of assisted dying, she claims, similarly functions as a “closure off from others” (p.8), in that it raises issues of “social and economic norms of privacy, individual self-interest and a desire not to burden, or be burdened by, others” (p.7–8). To Hardes, both assisted dying and immunization thus have implications for the relationship between the individual and the wider community. In exploring these ideas in depth, the book focuses on assisted dying case law in countries including Canada and the United Kingdom.

Hoffman, Stephen. “Euthanasia and Physician-Assisted Suicide: A Comparison of E.U. and U.S. Law.” *Syracuse Law Review* 63, no. 3 (2013): 383–97.

This article provides a succinct overview of the laws governing physician-assisted suicide and euthanasia in the United Kingdom, the Netherlands, Switzerland, and selected U.S. states. Hoffman also analyzes physician liability for participating in euthanasia or physician-assisted suicide in various jurisdictions and the common law defense of medical necessity.

Jones, David Albert, Chris Gastmans, and Calum MacKellar, eds. *Euthanasia and Assisted Suicide: Lessons from Belgium*. Vol. 42, *Cambridge Bioethics and Law*. Cambridge: Cambridge University Press, 2017.

This book aims to unify research on legalized euthanasia in Belgium to explore its impact on Belgian society and to provide guidance for other countries that may be considering legalization. The chapters in part 1 discuss the Belgian law and its implementation and compare it to similar laws in Luxembourg, the Netherlands, and the United States. Part 2 relates euthanasia to other end-of-life issues, including palliative care and terminal sedation. Part 3 examines the effect of legal euthanasia on members of vulnerable groups, such as children, the disabled, and those with psychiatric illness or dementia. Part 4 highlights philosophical and bioethical issues that have emerged from Belgium’s legalization of euthanasia. Three appendices contain the text of the Belgian Act on Euthanasia in Dutch, French, and an unofficial English translation.

Lewis, Penney. *Assisted Dying and Legal Change*. Oxford: Oxford University Press, 2007.

Lewis compares various approaches to legalization of assisted suicide and euthanasia in different jurisdictions. These include arguments based on human rights (which have been put forth in the United States, the United Kingdom, and Canada); compassion (the basis for a previous legalization proposal in France); and the “duty-based defence of necessity” (p.76) for those who assist in a patient’s death (the basis for the legalization of euthanasia in the Netherlands). A primary theme of the book is that a legalization approach used in one jurisdiction may not translate well to another.

Lewis, Penney, and Isra Black. “Adherence to the Request Criterion in Jurisdictions Where Assisted Dying Is Lawful? A Review of the Criteria and Evidence in the Netherlands, Belgium, Oregon, and Switzerland.” *Journal of Law, Medicine & Ethics* 41, no. 4 (Winter 2013): 885–98.

Lewis and Black review the various requirements for requesting assistance with dying in four jurisdictions in the United States and Europe where some form of it is legal. They then review research studies, empirical data, and more to evaluate whether these requirements were met, with the goal of establishing the validity of requests for assistance with dying.

Lewy, Guenter. *Assisted Death in Europe and America: Four Regimes and Their Lessons*. Oxford: Oxford University Press, 2011.

Lewy provides an in-depth look at the background and practice of legalized assisted death in the Netherlands, Belgium, Switzerland, and Oregon. He cites comprehensive data and research in offering neutral perspectives on the laws' implementation and societal impact, while also addressing problem areas or issues left unresolved in each jurisdiction.

McLean, Sheila A.M. *Assisted Dying: Reflections on the Need for Law Reform*. New York: Routledge-Cavendish, 2007.

McLean addresses arguments for and against the legalization of assisted dying in the United Kingdom. She summarizes various views on assisted dying in the United Kingdom and previous legislative activity on the issue; she then evaluates distinctions that are often drawn between different forms of assisted dying. She also considers the experience of legalized assisted dying in the Netherlands and Oregon before exploring how legalization might occur in the United Kingdom.

Murphy, Ann. "Aid in Dying: United States and Around the World." In *Beyond Elder Law: New Directions in Law and Aging*, edited by Israel Doron and Ann M. Soden, 199–215. New York: Springer, 2012.

Murphy provides an accessible introduction to the legal developments on aid in dying in the United States and worldwide, positing that the overall debates over aid in dying boil down to "individual autonomy versus societal religious values" (p.214). In addition to summarizing the history and state of the relevant law in jurisdictions where aid in dying has been legalized, she outlines significant cases from countries where aid in dying is still criminalized and provides information on the "Out of Free Will" movement in the Netherlands, which works to expand that country's existing assisted dying law.

Pickett, Jackson. "Can Legalization Improve End-of-Life Care? An Empirical Analysis of the Results of the Legalization of Euthanasia and Physician-Assisted Suicide in the Netherlands and Oregon." *Elder Law Journal* 16, no. 2 (2008): 333–73.

This student article compares case law and statutes on physician-assisted dying in the Netherlands and Oregon (with far greater emphasis on the former), and evaluates empirical data on the use and impact of legal physician-assisted suicide or euthanasia from both jurisdictions. The author, who also has a medical background, uses this analysis to offer suggestions for further improvement of end-of-life care and pain management.

Tiedemann, Marlisa, Julia Nicol, and Dominique Valiquet. *Euthanasia and Assisted Suicide: International Experiences*. Ottawa: Library of Parliament, April 8, 2011 (revised October 25, 2013). [http://publications.gc.ca/collections/collection\\_2011/bdp-lop/bp/2011-67-eng.pdf](http://publications.gc.ca/collections/collection_2011/bdp-lop/bp/2011-67-eng.pdf) [<https://perma.cc/7N23-GBDW>].

This report from Canada's Library of Parliament summarizes legal developments and laws on assisted suicide and euthanasia in the United States, the United Kingdom, the Netherlands, Australia, Belgium, Switzerland, France, Luxembourg, and Colombia.

Tindell, Jennifer. "To Be, or Not to Be: A Global Perspective on Physician-Assisted Suicide." *Journal of International Aging Law & Policy* 9 (Fall 2016): 151–78.

Tindell covers the terminology associated with physician-assisted suicide; state laws and cases legalizing physician-assisted suicide in the United States; statistics from Oregon, Washington, and Switzerland on the demographics of patients in

those jurisdictions electing physician-assisted suicide; the status of legal physician-assisted suicide in Canada, Belgium, Switzerland, and the Netherlands; and the role of patient autonomy in the debates.

Tretyakov, Konstantin. "The Right to Die in the United States, Canada, and China: Legal Fictions and Their Utility in a Comparative Perspective." *University of Pennsylvania Journal of Law and Social Change* 21, no. 2 (2018): 79–120.

Tretyakov analyzes and compares U.S. courts' disparate treatment of the withdrawal of life-sustaining treatment and terminal sedation (which are legal in the United States) and of physician-assisted suicide and voluntary active euthanasia (for which no constitutional right has yet been found). He attributes this inconsistency to the courts' differing interpretations of causation and intention (the two "legal fictions" of the article's title) in withdrawal cases versus assisted suicide and euthanasia cases. He then contrasts Canadian and Chinese courts' approaches to these types of the right to die in emphasizing "the importance of a morally neutral doctrine of the right to die" (p.120), which U.S. courts and legislatures should implement.

Youngner, Stuart J., and Gerrit K. Kimsma, eds. *Physician-Assisted Death in Perspective: Assessing the Dutch Experience*. New York: Cambridge University Press, 2012.

This book offers an exhaustive look at the history, regulation, and impact of legalized physician-assisted suicide and euthanasia in the Netherlands. The featured articles, all by Dutch scholars and clinicians, are "intended to present the next phase in Dutch empirical, legal, and ethical developments" (p.xvi–xvii) in this field.

Ziegler, Stephen J. "Collaborated Death: An Exploration of the Swiss Model of Assisted Suicide for Its Potential to Enhance Oversight and Demedicalize the Dying Process." *Journal of Law, Medicine & Ethics* 37, no. 2 (Summer 2009): 318–30.

Ziegler compares the regulation of assisted suicide in Oregon and Switzerland. He favors the latter jurisdiction's approach due to the prospect of better government oversight over assisted suicide, more thorough patient assessment due to reduced physician involvement, and the potential for "demedicalization of death" (p.326) (because of, for instance, the room for greater assistance and advocacy by Swiss right-to-die organizations).

## Bibliographies and Resource Guides

Aggerbeck, Valerie, Deborah Hackerson, and Mary Wells. "Bibliography: Life Issues in Legal Scholarship." *University of St. Thomas Journal of Law & Public Policy* 6, no. 1 (Fall 2011): 206–21.

This unannotated bibliography compiles books, treatises, and legal periodical articles published from 2005 to 2011 that address physician-assisted suicide and euthanasia, as well as suicide, abortion, and infanticide.

Wester-Mittan, Candle M. *Physician-Assisted Death: Four Views on the Issue of Legalizing PAD: A Legal Research Guide*. Buffalo: William S. Hein, 2009.

This annotated bibliography organizes sources into four categories: proponent, opponent, neutral, and international/comparative perspectives on physician-assisted death. Each section lists and annotates relevant books, law review articles, existing statutes and case law, and websites. Two appendices contain full-text reprints of the Oregon and Washington Death with Dignity Acts.



## “A Day in My Law Library Life,” Circa 2018\*

Compiled by Scott Frey\*\*

*Inspired by “A Day in My Law Library Life,’ Circa 1997,” this compilation collects descriptions of a day in the lives of law librarians in 2018. The descriptions provide a current snapshot and historical record of the law library profession, with similarities to, and differences from, the profession of 1997.*

Introduction . . . . .	71
Why Record a Day in the Law Library Life? . . . . .	71
Recording and Comparing Law Library Life in 1997 and 2018. . . . .	72

### Introduction

#### Why Record a Day in the Law Library Life?

¶1 What happens in a day in your life as a legal information professional? How does your day compare to other law librarians’? And how does it compare to what you or other librarians did months or years ago, or might do in the future?

¶2 In 1997, Frank Houdek gathered responses to the request, “Describe a single day in your law library life.” Houdek published the compilation of descriptions as “A Day in My Law Library Life,’ Circa 1997.”<sup>1</sup> He also compiled excerpts from earlier articles by law librarians into a companion piece, “Day in the Law Library Life, Circa 1910–1920.”<sup>2</sup>

¶3 “A Day in the Life” wasn’t a new concept in 1997.<sup>3</sup> An article ten years earlier centered on “a day in the life” of one law librarian.<sup>4</sup> Another pre-1997 piece described a week in the life,<sup>5</sup> and a third piece encompassed, in effect, a month in the life.<sup>6</sup>

---

\* © Scott Frey, 2019.

\*\* Reference Librarian, Western State College of Law Library, Irvine, California.

1. Frank G. Houdek, comp., “A Day in My Law Library Life,” *Circa 1997*, 89 LAW LIBR. J. 157 (1997).

2. Frank G. Houdek, comp., *A Day in the Law Library Life, Circa 1910–1920*, 89 LAW LIBR. J. 239 (1997).

3. See (or hear), e.g., THE BEATLES, *A Day in the Life*, on SGT. PEPPER’S LONELY HEARTS CLUB BAND (Parlophone 1967).

4. Tom Woxland, *A Day in the Life of a Law School Reference Librarian*, 7 LEGAL REFERENCE SERVS. Q. 111 (1987).

5. Nicholas Pengelley, *Diary—A Week in the Life of a University Law Librarian*, 2 AUSTL. L. LIBR. 199 (1994).

6. Fritz Snyder, *Law Librarian’s Journal*, LEGAL REFERENCES SERVS. Q., Nos. 1–2, 1988, at 253; see also Joseph A. Custer, *Law Librarian’s Journal: Over 10 Years Later*, LEGAL REFERENCE SERVS. Q., no. 4, 2001, at 23 (covering a month in 1999).

¶4 Since 1997, various law librarians have recorded, in some form, a “day in the life.” Perhaps most prominently, AALL held a “Day in the Life” photo contest annually from 2005 through 2016.<sup>7</sup> A 2007 issue of *Law Library Lights* was devoted to “A Day in the Life of a Law Librarian.”<sup>8</sup> And other articles have described a “day in the life” or something similar.<sup>9</sup>

¶5 Why might we depict a day in the law library life to fellow legal information professionals or beyond?<sup>10</sup> I suspect the main reason is that informing people about what we do relates to what we do in general: connecting people with information. Giving information about our daily work sheds light on services that can help people find legal information.

¶6 A side benefit of recording information about what we do is that we—and future readers—can learn about law librarians’ work over time.<sup>11</sup> Using this and Houdek’s articles, one may compare law librarians’ activities in the 1910s, 1997, and 2018. And future legal information professionals may compare their workdays with prior days.

### Recording and Comparing Law Library Life in 1997 and 2018

¶7 I came across Houdek’s compilations in 2017, 20 years after they were published<sup>12</sup>—and 100 years after the law library life of the 1910s.<sup>13</sup> This serendipity led me to propose a sequel.<sup>14</sup>

¶8 As Houdek did,<sup>15</sup> I solicited contributions from a large group of legal information professionals, requesting them each to “describe a single day in your law library/legal information professional life.”<sup>16</sup> I asked them to choose a day in the

7. See AALL, *2016 Day in the Life Photo Contest*, <https://web.archive.org/web/20161121094647/http://aallnet.org/hc/NewsCallout/2016DILContest.html>; Holly M. Riccio, *A Day in the Life of the Law—AALL Public Relations Committee to Sponsor Photo Contest That Showcases the Profession*, AALL SPECTRUM, Dec. 2004, at 6.

8. See 50 LAW LIBR. LIGHTS, no. 2, 2007. Another issue focused on the “Life Cycle of a Law Librarian.” 51 LAW LIBR. LIGHTS, no. 4, 2008.

9. See, e.g., Todd Bennett, *A Day in the Life of a Law Librarian*, RECORDER (June 26, 2006), available on Lexis Advance, <https://advance.lexis.com/api/permalink/1c0e4f51-2ed2-4837-a011-02f523f6919d?context=1000516>; Jamie Sommer, *A Day in the Life: U of I Library Student Visits CALL Libraries*, CALL BULL., Summer 2010, at 26; cf. LIBRARY DAY IN THE LIFE PROJECT, <http://librarydayinthelife.pbworks.com/w/page/16941198/FrontPage> [<https://perma.cc/DX8F-QP28>] (eight rounds from July 2008 to February 2012, “librarians, library staff and library students from all over the globe shared a day (or week) in their life through blog posts, photos, video and Twitter updates”).

10. Alternatively, why might we describe what we do, without limitation to one person on one day? Describing a day in a library may involve the activities of other librarians and may benefit from the context of other days. See Cynthia Brown & Allison C. Reeve, *At Littler Mendelson, Tradition Meets Innovation*, *infra* at 80, ¶38 (“addressing one day’s activity requires a broad view of the myriad activities swirling in the department”).

11. See Houdek, *supra* note 1, at 157 (indicating that the 1997 compilation sketched “for current readers, but also for those of tomorrow, what it is like to be a librarian”); Houdek, *supra* note 2, at 240 (the quotations in the 1910s compilation were “not just for historical interest but also for what they tell us about ourselves and the defining issues of our profession”).

12. Cf. BEATLES, *supra* note 3 (“It was twenty years ago today . . .”).

13. I had a preexisting interest in the history of law librarians’ views, including librarians of the 1910s. See Scott Frey, *A History of the Future of Law Libraries*, AALL SPECTRUM, June 2015, at 9.

14. I am grateful to Frank G. Houdek and James E. Duggan for encouraging and providing advice for my work on this project.

15. See Houdek, *supra* note 1, at 158.

16. I included legal information professionals outside law libraries among my solicitations.

second half of January 2018,<sup>17</sup> and to provide the title and nature of their position and a bit of context for their story (for example, their level of experience, the nature of the library).

¶9 Six 2018 responders also participated in 1997. Ten are new to this project. The participants are directors, associate or assistant directors, public service librarians, and technical service librarians, with various job titles. They work in academic, law firm, county, and court law libraries. Their workplaces are located in sixteen states in various parts of the country.

¶10 I expected that law librarians' roles and daily activities in 2018 would be similar in essence to those in 1997. However, I also anticipated that the details—especially regarding technology and, to some extent, the settings and staff sizes—would have changed.<sup>18</sup>

¶11 I leave it to each reader to discern key similarities or differences between the 1997 and 2018 descriptions. But I have a few observations regarding technology.

¶12 In 1997, legal research was shifting from physical materials to online resources,<sup>19</sup> and the Internet and computer technology were having a growing impact on librarians and libraries.<sup>20</sup> By 2018, the shift had largely occurred, though print materials still matter.<sup>21</sup> Moreover, technology has changed, though one may debate whether the changes are evolutionary or revolutionary.<sup>22</sup>

However, the people who chose to participate are essentially all law librarians working in law libraries. One of the law firm librarians works in an "Information Resource Center." Carol Bannen, *A Day in the Life of a Law Firm Librarian and Records Director Redux*, *infra*, at 77 n.\*; Carol Bannen, *A Day in the Life of a Law Firm Librarian and Records Manager*, in Houdek, *supra* note 1, at 162 n.\*, 163 ("the Information Resource Center (a.k.a. the library)"). Another firm's library is called the "Knowledge Desk." Brown & Reeve, *supra* note 10, at 80, ¶40.

17. The first day of the time frame was Tuesday, January 16, since Monday, January 15, was a holiday (Martin Luther King, Jr., Day).

18. See Kelly Kunsch, *The Way We Were and What We "B,"* LEGAL REFERENCE SERVS. Q., no. 1, 2002, at 97 (comparing reference librarianship at that time to twenty years' prior and concluding, "The job of being a reference librarian has stayed the same in that we still strive to accurately provide the necessary information in an expedient and pleasant manner. The job is different, however, not only in the tools we use, but also in the context we work within." *Id.* at 109.).

19. See, e.g., Dwight King, in Houdek, *supra* note 1, at 187 ("Realizing that Net skills are vital for a reference librarian, I've vowed to spend more time becoming one with my Netscape."). *But cf.* Joe K. Stephens, in Houdek, *supra* note 1, at 208 ("Influenced more by the hyperbole of the Information Age than by first-hand knowledge, many judges believe that books—and libraries—will be obsolete within a very few years, and some argue that it is a waste to put any more of the taxpayers' money into books."). Incidentally, the 1997 compilation contained only one reference to card catalogs: "our old catalog, a dying breed in state court libraries." Janice K. Shull, *Snapshop of a Cataloger, or What Does a Systems Librarian Really Do?*, in Houdek, *supra* note 1, at 204.

20. See, e.g., Karen Westwood, *Life on the Phone*, in Houdek, *supra* note 1, at 231 (while concluding that the phone was more important technology to her work than a computer, also noting "I use the Internet whenever possible, am getting to be an expert online searcher, and delve into other library catalogs by dialing in.").

21. See Ellie Margolis & Kristen Murray, *Using Information Literacy to Prepare Practice-Ready Graduates*, 39 U. HAW. L. REV. 1, 3–4 (2016):

New graduates are likely to encounter a divide between their tech-heavy lives and the less technological world of those they are working for. When new lawyers enter practice, expected to be "practice-ready" from day one, they will have to be able to use both old and new technologies to carry out the tasks of lawyering and be able to bridge the gap between them, conversant in both languages and able to adapt to the rapidly changing world of law practice.

22. One of the librarians in 1997 asserted that "our profession is, always has been, and always will be, dedicated to helping people locate and use legal information. It makes no difference how automated our methods might become; there is a person behind every request we fill." J. Wesley Cochran,

¶13 I think it is both illuminating and fun to find technology-related terms that appeared in the 1997 descriptions of law library days but not in the 2018 descriptions, or vice versa.<sup>23</sup>

¶14 For example:

1997:

- rolodex<sup>24</sup>
- terminals<sup>25</sup>
- “East Coast Internet addresses”<sup>26</sup>
- “dialing in”<sup>27</sup>
- fax<sup>28</sup>
- CD-ROM<sup>29</sup>
- computer-assisted legal research/CALR<sup>30</sup>
- microforms<sup>31</sup>
- floppy disk<sup>32</sup>

---

in Houdek, *supra* note 1, at 167–68. However, patrons may make different requests to law librarians in light of technological changes. And technology may change how the work is done. See, e.g., Nancy L. Strohmeier, *The Day of the Dwarfs*, in Houdek, *supra* note 1, at 220–21 (“I dream of the day when I can do a computerized rendition of my lecture, complete with digitized graphical images sent out to the networked computers of the students. It could happen; it’s not just a fairy tale anymore.”).

23. Of course, some technology is largely the same, such as email. In addition to technology, you might also compare product names—e.g., for legal research platforms or integrated library systems—or cultural references in 1997 and 2018. My favorite is “face-book,” Laura Orr, *It’s a Small Fish—Someone’s Got to Duplicate It*, in Houdek, *supra* note 1, at 198; surprisingly, “Facebook” doesn’t appear in the 2018 contributions. You’ll find differences in capitalization—e.g., “WESTLAW” in 1997 versus “Westlaw” in 2018—and hyphenation—e.g., “e-mail” versus “email.” Also, some terms take on new meanings—an “index” might refer to a listing of terms and page numbers in the back of a book in 1997 but alternatively to searchable terms in a database in 2018. See Victoria Szymczak, *Emergency Meetings and an Eclectic Hum*, *infra*, at 95; Della H. Darby, *Metadata and So Much More*, *infra*, at 85.

24. Rhea Ballard-Thrower, *If Only the Desk Could Talk*, in Houdek, *supra* note 1, at 161.

25. Bannen, *Records Manager*, *supra* note 16, at 163; Ladd Brown, *Internet ’97*, in Houdek, *supra* note 1, at 165; Robert C. Vreeland, *What Do You “Do,” Anyway?*, in Houdek, *supra* note 1, at 228.

26. Bannen, *Records Manager*, *supra* note 16, at 163 (“[W]e find out that our Internet provider has lost the connection in Chicago and we can’t contact any East Coast Internet addresses.”).

27. Westwood, *supra* note 20, at 231 (“delve into other library catalogs by dialing in”); see also Shull, *supra* note 19, at 204 (“I enter OCLC via the Internet, a faster, easier, and cheaper method than using a dedicated phone line as we did formerly.”).

28. E.g., Brown, *supra* note 25, at 165. Brown also uses the term “telefacsimiles”—apparently as deliberately antiquated language. *Id.*

29. Karen Brunner, *No Two Days are Alike . . .*, in Houdek, *supra* note 1, at 166; James E. Duggan, *It’s a Mad, Mad, Mad, Mad, Mad World*, in Houdek, *supra* note 1, at 170; Patricia Wellinger, *Rushing Today, Preparing for Tomorrow*, in Houdek, *supra* note 1, at 228. One librarian in 1997 refers to “CD-ROM technologies, networks, towers, jukeboxes, terminators (!), and SCSI cards . . .” Mark Mackler, *A Day in My Law Library Life, or It’s Never Easy*, in Houdek, *supra* note 1, at 170.

30. J. Wesley Cochran, *supra* note 22, at 167; Duggan, *supra* note 29, at 170; Vreeland, *supra* note 25, at 227. A librarian in 2018 says, “I need to provide training on what folks used to call CALR but now is simply: legal research training.” Anna Russell, *A Day in the Life of an Alaska District Law Librarian: “It’s Snowing and There Might Be Moose,” infra*, at 93, ¶114.

31. E.g., Jean McKnight, *My Day at Work (and You’re Welcome to It)*, in Houdek, *supra* note 1, at 192. The only reference I noticed to microforms in the 2018 descriptions came in conjunction with the phrase “as we contemplate purging fiche and film.” Merle J. Slyhoff, *Dear Diary—Fast Forward 21 Years . . .*, *infra*, at 94, ¶129.

32. Melissa Serfass, *A Job with a Slash in It*, in Houdek, *supra* note 1, at 202; Mary Whisner, *It’s the Variety*, in Houdek, *supra* note 1, at 232.

- video and audio tapes<sup>33</sup>

2018:

- HeinOnline<sup>34</sup>
- iPad<sup>35</sup>
- institutional repository<sup>36</sup>
- streaming<sup>37</sup>
- blockchain and smart contracts<sup>38</sup>
- document automation<sup>39</sup>
- scanning, digitization<sup>40</sup>
- metadata<sup>41</sup>
- e-books<sup>42</sup>
- blogs<sup>43</sup>

¶15 A disclaimer: a compilation article like this one cannot provide a complete record.<sup>44</sup> This article consists of writings by several legal information professionals during one period of time in the United States. The participants do not include most legal information professionals and none in other countries. They do not include paraprofessionals or other library staff members. The descriptions do not include audio or video. They might omit painful or difficult subjects—such as harassment or discrimination<sup>45</sup>—and activities that are deemed unimportant.

¶16 But we know from training and experience that while we cannot provide perfect information, we can provide good information that suffices (or more than suffices) for the user's needs. Descriptions by several law librarians can be a helpful

33. Wellinger, *supra* note 29, at 229 ("videotapes"); Whisner, *supra* note 32, at 232 ("audiotape").

34. Bannen, *Redux*, *supra* note 16, at 78, ¶27 ("We love HeinOnline, which makes a lot of retention decisions very easy."); Mary Whisner, *Another Day in My Thirty-Year Law Library Life*, *infra*, at 102, ¶173 ("Assuming that they would prefer a PDF, I look to see whether it's on the journal's website or HeinOnline.").

35. Bannen, *Redux*, *supra* note 16, at 78, ¶29. Surprisingly to me, there was no mention of iPhone or Android in the 2018 descriptions. *Cf.* Whisner, *supra* note 34, at 101 n.76 (mentioning her "smartphone"). Maybe iPhones and Android phones are now just part of everyday life and not particularly worth noting. *Cf.* James E. Duggan, *It's Still a Mad, Mad World*, *infra*, at 87 n.57 (referring to a BlackBerry, saying, "Some call my affection for this device outdated, but I prefer to term it 'vintage'"). One description mentions text messages. Kincaid C. Brown, *Buckets*, *infra*, at 84, ¶60.

36. Brown, *supra* note 35, at 84, ¶59; *see also* Sharon Bradley, *A Day in the Life of a Special Collections Librarian*, *infra*, at 79 n.48 (referring to Digital Commons).

37. Russell, *supra* note 30, at 93, ¶123; *see also* Duggan, *supra* note 35, at 87, ¶75 ("YouTube"); Slyhoff, *supra* note 31, at 95, ¶131 ("Netflix").

38. Sarah Gotschall, *A Day in the Life of a Law Librarian in 2018*, *infra*, at 89, ¶86.

39. *Id.*; Brown & Reeve, *supra* note 10, at 82, ¶46.

40. Darby, *supra* note 23, at 85, ¶66; Szymczak, *supra* note 23, at 96, ¶141.

41. Darby, *supra* note 23, at 85, ¶66; *see also* Brown & Reeve, *supra* note 10, at 81, ¶45 ("tagging").

42. Brown & Reeve, *supra* note 10, at 82, ¶46; *see also* Whisner, *supra* note 34, at 103, ¶179 ("Kindle").

43. Brown & Reeve, *supra* note 10, at 83, ¶50; Whisner, *supra* note 34, at 103, ¶175.

44. Other articles and projects may fill in some gaps. *Cf.* Vanessa Christman, *The Rural Reality: Rural Librarians Deserve and Need Your Attention*, AALL SPECTRUM, Sept.–Oct. 2012, at 30 (describing a day in the life in a small rural law library and advocating for more understanding of small law libraries by librarians in larger law libraries).

45. *See, e.g.,* Kelly Jensen, *The State of Sexual Harassment in the Library*, BOOKRIOT (Nov. 24, 2007), <https://bookriot.com/2017/10/24/sexual-harassment-library/> [<https://perma.cc/39GB-QEM5>].

starting point for understanding law librarians' workdays and comparing them to law librarians' workdays in other times or places.<sup>46</sup>

¶17 I hope that the experiences and perspectives in the following descriptions provide you with insight into the law library life, circa 2018.

Scott Frey

### **“A Day in My Library Life,” Circa 2018**

Carol Bannen <i>A Day in the Life of a Law Firm Librarian and Records Director Redux</i> . . . . .	77
Sharon Bradley <i>A Day in the Life of a Special Collections Librarian</i> . . . . .	79
Cynthia Brown and Allison C. Reeve <i>At Littler Mendelson, Tradition Meets Innovation</i> . . . . .	80
Kincaid C. Brown <i>Buckets</i> . . . . .	83
Michelle Cosby <i>A Typical Day with a Dash of Crisis Mode</i> (January 19, 2018) . . . . .	84
Della H. Darby <i>Metadata and So Much More</i> (January 25, 2018) . . . . .	85
James E. Duggan <i>It's Still a Mad, Mad World</i> . . . . .	86
Sarah Gotschall <i>A Day in the Life of a Law Librarian in 2018</i> (January 17, 2018) . . . . .	88
Dwight King <i>Today Dwight Will Give the Research Strategy Lecture</i> (January 23, 2018) . . . . .	90
Margot McLaren <i>A Day in the Life of a Law Librarian</i> . . . . .	91
Anna Russell <i>A Day in the Life of an Alaska District Law Librarian: “It’s Snowing and There Might Be Moose”</i> . . . . .	92
Merle J. Slyhoff <i>Dear Diary—Fast Forward 21 Years</i> . . . (February 5, 2018) . . . . .	94

---

46. See Houdek, *supra* note 2, at 1 (indicating that descriptions by law librarians in 1997 and quotations from 1910s law librarians allow some comparison of a day in the life of law librarians from each era).

Victoria Szymczak <i>Emergency Meetings and an Eclectic Hum</i> .....	95
Karen Westwood <i>A Day in the Law Library Life</i> (January 23, 2018).....	97
Ronald E. Wheeler <i>Everything from Soup to Nuts: The Full Plate of Academic Law Library Directorship</i> (January 24, 2018).....	99
Mary Whisner <i>Another Day in My Thirty-Year Law Library Life</i> (Tuesday, January 16, 2018) ...	101

### **A Day in the Life of a Law Firm Librarian and Records Director Redux\***

Carol Bannen\*\*

¶18 I wrote a description of a day in my work life back in 1997.<sup>47</sup> Here I am in 2018 at the same place, supervising the same departments, and in many instances doing the same thing, but with different technology and a few different people.

¶19 I have been with the same firm for over forty years. The technology has changed, but the essence of the job stays the same: get the right information to the right person in the right time.

¶20 I arrive early to work ahead of everyone else on the floor. I pull out of my snowy driveway leaving my husband with the snowblower and find the roads are not too bad. The first crisis of the day is the broken coffee maker. After reporting it, I head to another floor to find coffee to drink while I read the *Wall Street Journal*. I check my email and find some research requests. There are no voicemails since email is the main communication technique for most.

¶21 Today a couple of the IRC (Information Resource Center) staff are on vacation, so I get to do some research. After everyone is here we have a triage meeting and make sure no one has too much to do and that every request has an owner. I do some due diligence research on a potential client and research an issue for one of our employee benefits attorneys.

¶22 I am next off to the monthly meeting with the other directors and managing partner/CEO. I get an update on firm initiatives and hear from other directors. We are in the midst of remodeling and downsizing a floor, so there are issues to deal with, especially from the Records Department's standpoint. Moving to a more paper-light practice is a slow but sure process that has become more urgent as attorneys and staff get closer to moving offices.

¶23 One of the assignments from the directors' meeting is to create a budget for the next fiscal year (six months away) by next week! The board of directors retreat has been moved up this year, and the directors would like to have departmental

---

\* © Carol Bannen, 2019.

\*\* Director of Information Resources, Reinhart, Boerner, Van Deuren, S.C., Milwaukee, Wisconsin. *Editor's note:* Carol retired in December 2018 as this issue was going to press.

47. *Editor's note:* Bannen, *Records Manager*, *supra* note 16, at 162.

budgets and a document outlining all major initiatives, including staffing and space. After the excitement died down, the directors decided we needed to do a forecast for only five or six major budget items. Luckily the format of the report stayed the same from last year, so modifying it won't be too bad. I have my future initiatives well in mind.

¶24 Next I track down a *Wall Street Journal* article the CEO remembers reading on how the new tax law changes will affect law firms. After reviewing the status of the outstanding research requests, I get a request from Marketing to see whether I have an old sweatshirt and cup with a firm logo from our last move in the 1990s. As a longtime employee and pack rat, I know I can locate them at home.

¶25 I next dive into some contract negotiations with two of our larger vendors. In between contracts I discover our invoice Access database is not compacting correctly, which results in a visit with the Help Desk. Enterprise access to a local publication is not working, so I schedule a meeting to demonstrate our issues in person with the publisher. Another vendor has not applied our check properly, and one of the attorneys has lost access to a product. Accounting sends me a copy of the canceled check. The vendor agrees it has the money, and the attorney gets access.

¶26 The Records Department gives me an update about clearing files before the remodeling. As we remodel a floor, another floor needs to be cleared. We have an email discussion about who the paper-heavy people are. I have an in-person discussion with Human Resources about the best way to approach some of these people. They will take the first crack at it, but we are making amazing progress.

¶27 The discussion about paper gets me a little nervous about where we are with the library collection. I do another walk through the collection and count shelves. The book collection is in pretty good shape, but the periodical collection still needs some work. We love HeinOnline, which makes a lot of retention decisions very easy.

¶28 The Hires and Terms email comes out. I find two new hires and one departure listed along with a law clerk hire. In addition to identifying what licenses everyone will need depending on their practice, I have to identify licenses to delete. Professional Development emails me about setting up orientation for the new hires and scheduling our legal research classes for the law clerk.

¶29 It is now midafternoon and there are no emergencies, so I have the privilege of heading out with my eighty percent schedule. I know my staff in the IRC and Records have everything under control. But there is still that iPad at home with the work email on it that gets checked periodically during the late afternoon and evening after the snow shoveling.

## A Day in the Life of a Special Collections Librarian\*

Sharon Bradley\*\*

¶30 The day starts like most:

- a brief follow-up with a colleague about a discussion we had yesterday;
- a scan of the email inbox;
- anything I can deal with in five minutes, then just do it (David Allen, author of *Getting Things Done*, says just do it if it takes less than two minutes, but I need to give myself more time);
- move other items into to-do;
- review the calendar (my love of the bullet list is deep and profound, hence this bullet list).

¶31 The first item on the calendar is the Library Leadership Team (LLT) meeting at 10 A.M. I've already reviewed the agenda and printed a couple of relevant documents. The LLT meets every two weeks, and all of the librarians are members. The group approves policy changes, discusses management issues within the library, and tries to facilitate communications. At this meeting, we were also finalizing our strategic plan for the next two years. We've put a lot of effort into developing a new set of goals, first during our annual retreat in December, then at an LLT meeting two weeks ago, and now in our final review. Lots of wordsmithing, but it's important that it reflect what we'd like to be working on and be a balance between specificity and flexibility.

¶32 I had to meet with a student from my legal research class. He did not do as well on the final exam as he had expected. All of our students arrive with outstanding grades and LSAT scores. They were at the top of their undergraduate class, but the odds are that will not be true in law school. The curve is cruel.

¶33 Next is a lunchtime gathering of faculty and staff for the dean's annual review of the state of the law school. How are we doing in terms of admissions, job placement, and fund-raising? Very well, thank you for asking. By the time I had arrived all of the vegetarian sandwich options were gone. I really don't think the meat eaters should take our vegetarian options—and they took all the chips.

¶34 Then some actual special collections activity. I had to return three portraits to storage. I'm responsible for the school's portrait collection, which means moving some items around, arranging for someone to come bang nails into the walls, and ordering placards for each item as it goes on the wall. We've recently begun sending items to an art conservator. When I say "we," I mean "me"; I take the items to Atlanta. Items that are not going for a while end up in my storage room. Some time ago I created an online gallery<sup>48</sup> to keep track of them all.

¶35 The law library has a book repair workroom staffed by students. Here's a tip: hire art students. They like working with their hands and don't mind getting messy. We were running low on a few items, so I took the opportunity to walk to a nearby drugstore to buy isopropyl alcohol. It's used to make a consolidant for the leather-

---

\* © Sharon Bradley, 2019.

\*\* Special Collections Librarian, University of Georgia School of Law Library, Athens, Georgia.

48. Portrait Gallery, Digital Commons: A Service of the UGA Law Library, <http://digitalcommons.law.uga.edu/portrait/> [<https://perma.cc/N6UL-ZHPP>].

bound books. I've learned the hard way not to stick my nose into the container while mixing the stuff.

¶36 The day ended with work on the new SEAALL<sup>49</sup> website. We're switching to a service called Wild Apricot, which also has membership management features. There's a steep learning curve, but a great part of my job is getting to spend time learning about new applications and services. I'm also lucky, as my institution values support of the profession and encourages involvement with our professional organizations.

¶37 So, a fairly typical day. The great thing about being a special collections librarian in a law library is that I have a wide variety of typical activities including teaching and presenting, creating research guides, cataloging items for the rare book room or the archives, and organizing displays.

### **At Littler Mendelson, Tradition Meets Innovation\***

Cynthia Brown\*\* and Allison C. Reeve\*\*\*

¶38 Check in on the library at Littler Mendelson and you'll find books shipping to one of over sixty practice offices nationwide, legislative histories identifying legal intent, orientations teaching advanced research skills, and case law holding the winning argument. This is what one would expect in a law firm library. However, what frequently surprises peers is finding librarians managing the firm's internal knowledge stores, tracking legislation, distributing current awareness, developing firm business through competitive intelligence, and researching legal updates for compliance toolkits. For Littler, addressing one day's activity requires a broad view of the myriad activities swirling in the department.

¶39 Via a request management system, attorney and staff requests are collected, tagged for type of research, and assigned to one of three library teams. Throughout the day, librarians receive requests ranging from "how do I order business cards?" to "can you send me all litigation against this company in time for my meeting at 2:00?" They triage the questions, answering over 27,000 requests in 2018. Through strategic cross-training and request type recognition, the library smoothly handles the inevitable ebb and flow of request levels. Attorneys receive the same quality service whether it is a slow summer week with 400 requests, or the fall rush with requests surging to over 600 a week.

¶40 Three teams of research librarians (RLs) and assistant librarians (ALs) staff the library, known to Littler as the Knowledge Desk, with expertise in legal research and sophisticated experience with technology and competitive intelligence. Those on the reference team complete traditional legal research and collection management operations, specializing in employment and labor compliance and litigation. Team members pull complaints, collect verdict and settlement data, identify legal authority, and manage print and online resource development requests. If attorneys and staff need training, Littler does not rely on vendors but puts training in the

---

49. *Editor's note:* Southeastern Chapter of the American Association of Law Libraries.

\* © Cynthia Brown and Allison C. Reeve, 2019.

\*\* Director of Research Services, Littler Mendelson, P.C., Fresno, California.

\*\*\* Library Manager, Littler Mendelson, P.C., Kansas City, Missouri.

hands of expert researchers who can guide attorneys and staff to the most useful and effective legal information.

¶41 The original library team, where the most recognizable information work occurs, is the reference team. When an AL on this team turns on her computer, she will be sure to find a handful of overnight complaint requests sitting in her email. The early shift starts at 7 A.M. CST, and the attorneys look forward to finding promptly delivered documents when they arrive at the office. Once the queue of overnight requests clears out, the reference AL can expect the flow of new tickets to be strong and steady all day. A few minutes will be carved out to wrap up longer background checks or collection projects, but the reference AL is the front line for the Knowledge Desk. She fields questions, answers the phone, and triages workloads among a staff of twenty librarians all day.

¶42 The day starts similarly for a reference team RL. She has likely been contemplating how to wrap up the large legal research question from last week and is expecting a follow-up email from her discussion with the shareholder the prior evening. Checking her open requests, the RL evaluates her workload and determines how many new research projects she can take in the next few hours. Throughout the day, she will pull samples of jury awards, locate authority in case law, identify resources relevant to patron needs, and negotiate follow-up questions and project deadlines.

¶43 The strategic team is where legal information professional skills start to go beyond the traditional boundaries of law librarianship. The team's work includes current awareness, newsletters, case filing reports, litigation tracking, initial case dossiers, business intelligence, and resource evaluation. The library plays an integral role in current awareness for both attorneys and clients. Each morning, news is clipped for multiple, topic-specific newsletters; current legislation is tracked and summarized for *Littler GPS*,<sup>50</sup> and daily filings are reported to keep attorneys abreast of immediate client needs. Business research librarians regularly work with firm business development, marketing, and legal project management teams to identify external and internal knowledge. Through savvy research skills and business databases, these librarians compile the most useful tidbits on company profiles, litigation, news, and executives, and deliver a concise package of intelligence, making a client phone call or pitch a winning encounter.

¶44 Long and continuous firm projects drive the strategic team's AL. Every day a new legislative tracking report is produced, and each morning guarantees new requests to assist with initial case dossiers or business intelligence reports. ALs create new docket reports each morning and deliver them to the attorneys assisting in client development efforts. By afternoon, a strategic AL will take a call from a knowledge management (KM) attorney about a new project requiring AL expertise in tracking and organizing information and developments. The rush of constant tickets is not the same as for the reference team, but the strategic team continues day after day on critical firm and client projects.

¶45 The strategic RL similarly knows what lies ahead in her day. News clipping, legislative tracking, business research, and case tracking and tagging are her first priorities. Her schedule will consist of evaluating new research and efficiency tools,

---

50. *Editor's note: Littler GPS*, LITTLER MENDELSON P.C., <https://www.littler.com/service-solutions/littler-gps> [<https://perma.cc/4ZH8-5TZZ>].

consulting new firm projects, and providing insight on legislative trends. The strategic RL can plan her morning to complete duties due by noon and schedule her afternoon to accommodate firm-initiative projects, knowing that in three months' time her afternoon will be busy with new endeavors.

¶46 The knowledge team is where Littler really gets creative. This innovative group bridges attorneys, staff, and clients with Littler's collective experience and knowledge, compiling and delivering presentations, memos, forms, and subject-matter experts; and keeping the online portal stocked with relevant user guides, demos, links to publications, and contacts. Littler's Knowledge Management Department offers a variety of service solutions providing attorneys and clients with direct access to client toolkits, practice group email distribution lists, template storage sites, various e-books published by KM attorneys, document automation software, and extranets designed to enhance client communications. The Knowledge Desk is strategically positioned to connect this compiled knowledge to those who rely on the expert information. By managing content of client-facing extranets, training users, researching legal updates, and providing immediate distribution of sample documents and Littler's publications, the team frees attorney time for client services and interpretation.

¶47 The Knowledge Desk AL is certain that requests are waiting when she turns on her computer. Requests for Westlaw IDs, vendor issue solutions, and state survey delivery are constant. Any one of these internal ready reference issues arises each night. Similar to the reference team's workflow, the Knowledge Desk AL takes the bulk of requests this team receives and provides quick answers to keep the attorneys working.

¶48 The Knowledge Desk RL has far less certainty in her day than the reference and strategic librarians. Her internal research questions are unlikely to go over one or two days, but there will be ten to twelve today. Attorneys looking for a subject-matter expert on a very narrow issue will require research from several different databases to ensure a good match. Survey requests for topics not previously created will send the librarian on a search through internal and external resources. Training new employees and coordinating new vendor launches are fit in between requests. Connecting attorneys with Littler's collective knowledge keeps the Knowledge Desk RL poised in a position of connection between thousands of documents and attorneys. No one can tap into the collective knowledge of Littler attorneys like the Knowledge Desk librarian.

¶49 The Knowledge Desk is an integral component of the KM Department, affording innovative opportunities beyond basic legal research and adding valuable services to the firm and clients. This value comes in the form of saved time and, ultimately, money. As a firm focused solely on the practice of labor and employment law, attorneys and researchers at Littler are experts in the field, and the Knowledge Desk harnesses that intelligence for targeted dissemination. For any given project or attorney request, internal firm resources may be tapped as well as the physical collection and legal research databases. It is the evaluation, compilation, organization, and distribution of these materials that gives a competitive edge. The Knowledge Desk bridges information needs and answers through its one-stop shop for all KM and library research.

¶50 Through the library's internal marketing team, the Knowledge Desk remains at the forefront of attorneys' minds. Not only do attorneys receive weekly research blogs and firm-wide announcements, but ceramic coasters bearing the Knowledge Desk name and motto remind them every time they pick up their coffee mugs: *#KnowledgeDesk: Your Answer is Here*.

¶51 Through the years, Littler's expert library has evolved into an information hub for the KM innovations the firm is known for, such as Littler GPS, the *Littler On* treatise series, and daily published legal updates called "Littler ASAPs."<sup>51</sup> As one shareholder recently remarked, "The Knowledge Desk is the best thing Littler has ever done." On a daily basis, Littler librarians demonstrate their expertise in legal research and beyond, helping to advance the profession into the legal information of the future.

## Buckets\*

Kincaid C. Brown\*\*

¶52 Each day in the law library is different, but I have found that each of the individual tasks, projects, and responsibilities that I take care of each day can be placed in one of several buckets that return on a daily or weekly basis. My buckets today are as follows:

¶53 *Bike to/from work*. On my way to work, as I avoid ice patches and bad drivers, I think about the top things I want to get accomplished today. If I'm lucky, I will get one or two finished. On my way home, I think about what went well and what I hope to finish tomorrow.

¶54 *Supervision and management*. I had a number of meetings today in this bucket: one about a personnel issue; an impromptu meeting about the library budget, discussing the projections and where we stand; and a meeting with a few other supervisors about the staff schedule for opening the library. There are days, certainly, where this bucket takes most of the day, just not this day.

¶55 *Teaching*. During winter terms I co-teach Advanced Legal Research. Next week, I lead the statutes and session laws class. I like to use a flipped classroom model and today am working on the exercises to run through during the class itself. There is no lunchtime faculty talk today, so I eat at my desk and see that the Vermont legislature decriminalized marijuana possession. I turn that into an exercise as I know Lexis and Westlaw will not incorporate this revision into the Vermont statutes by the time of Monday's class, making this a great example of the need to verify statutory language through the session laws. I also revise an exercise proving the importance of using secondary sources, not just in case law research but also in statutory research (especially for researchers who, in this case, might not look for a definition for "waters of this state").

¶56 *Coffee*. Aside from my morning cup at home, only two more (big ones) today. I take the stairs up, to get a bit of exercise. Sadly, I must make the pot of the good stuff both times so as to avoid drinking the weak alternative that tastes like dirty water.

---

51. *Editor's note: News & Analysis*, LITTLER MENDELSON P.C., <https://www.littler.com/news-analysis> [<https://perma.cc/7WZP-Y5P4>].

\* © Kincaid C. Brown, 2019.

\*\* Assistant Director, University of Michigan Law Library, Ann Arbor, Michigan.

¶57 *Collection development.* This can be a mix of meetings, decisions regarding specific titles, and project work, as it is today. I have a meeting with the director and one of the selectors about several subscriptions and whether they should be renewed. I saw in *Above the Law* that a report covering the quality of jobs for law school graduates was released online. Not trusting the permanence of reports released on the web, we print and bind reports that researchers might want down the road. Accordingly, I select this report to be printed and bound. I also make a couple of retention decisions and select a few books for our legal fiction collection.

¶58 *Email.* Since email can take over a day, I am trying the work productivity method of scheduling times of the day for email. Some days I am good at keeping away from my inbox; days when I have a lot of meetings or where I am procrastinating, I often will check email more frequently. I am pretty on task today and there are no fires to put out, so I am able to sequester my email time effectively. I read through and respond to a bunch of internal library emails. I take a look at an announced electronic resource trial, respond to a call for volunteers to judge the law school moot court competition, and agree to participate in the Leadership Academy mentoring program. I also get a couple of emails from faculty for things I don't do anymore that I pass on to the appropriate people—for example, I haven't dealt with new Lexis and Westlaw passwords for a decade and lost the ability when the vendors updated their systems a few years back.

¶59 *Projects.* These vary, obviously. Today, I work on our project to complete the backfiles of the Michigan law journals in the institutional repository, loading volume twelve of *Michigan Journal of Race & Law*.

¶60 *Miscellaneous meetings.* Two today, one with the library's Library Management System Committee, where we discuss outstanding items that need to be fixed and options for sending text messages for overdues, and the other for the General Counsel's Advisory Committee, a committee of the UM Senate Assembly.

¶61 But, of course, my youngest son thinks that compared to the drudgery of school, work is all eating donuts, sipping soda, and playing computer games . . .

### **A Typical Day with a Dash of Crisis Mode\***

Michelle Cosby\*\*

¶62 As the associate director, I oversee the day-to-day management of the law library. What does that mean? Well, that can vary by the day. Sometimes it means handling human resources-related issues, such as special leave requests or questions about time sheets. Oftentimes it means back-to-back meetings. Meetings with librarians, meetings with other senior administrators in the college, and meetings on campus.

¶63 Today was a mix of the typical with a dash of crisis mode. The day before, the sprinkler system in the College of Law burst, causing damage to multiple floors of the buildings, and displacing many faculty and staff. Several of the displaced faculty were relocated to study rooms in the law library. The law library director

---

\* © Michelle Cosby, 2019.

\*\* Associate Director and Associate Professor, University of Tennessee College of Law Library, Knoxville, Tennessee.

was overseeing this process, so most of my attention was on “regular” library activity.

¶64 The day began with a demo from a potential new vendor. After that, I met with our head of Public Services and our IT analyst to see whether there was a way to create a BibTeX file that put citations in *Bluebook*<sup>52</sup> format for uploading scholarship to the university’s Faculty Information System, Elements. The law library faculty meet regularly, and today was one of our meetings. We discussed the state of the building along with other initiatives and projects going on this semester. My last *scheduled* meeting of the day was a one-on-one with a law library department head.

¶65 I emphasize scheduled because, as usual, a few unscheduled meetings came up, mostly addressing time sheets. The university closed early and opened late during this pay period, which usually creates questions on how to properly account for time. In addition, I was part of the team that evaluated flooded offices to see whether there were any library books that could be salvaged. I ended up staying a bit late today to finish up some volunteer work for a committee that I am on.

### Metadata and So Much More\*

Della H. Darby\*\*

¶66 Today is Thursday, January 25, 2018, and we are focusing on the law library archives, one of several responsibilities of the Metadata Department. Harnessing the power of our abundance of student employees, we are working to build an index to the various alumni resources that are housed in the archives. On this day, the department is collectively engaged in multiple indexing, transcription, and digitization projects that will improve access to information about Cumberland alumni.

¶67 One of my weaknesses is that I will hire virtually any student applicant who qualifies for Federal Work Study. Last semester I left the job advertisement up too long, so now I have eleven students popping in at various times of the day. Keeping eleven students productively engaged can be a challenge, especially if their shifts overlap, so it is incumbent upon me to have both short- and long-term assignments to channel their energies. After twenty-seven years managing student employees in school and academic libraries, I have learned they are most productive when working on something that appeals to them. Fortunately, the interests and abilities of these eleven students are far-ranging and can be applied to a plethora of tasks.

¶68 Three students work in tandem to index, and proofread the indexing of, two student publications of the 1960s to 1990s. They enjoy reading the articles and have discovered that the issues of concern to students haven’t changed much in 50 years—there will never be enough parking! Another student proofreads the transcribed personal data about law students and graduates who are listed in the pre-1970 Cumberland catalogs. It is evident that in the early decades of the law school there were many more students than graduates. Two other students transcribe information about Cumberland alumni from nineteenth-century fraternity direc-

---

52. *Editor’s note*: THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 20th ed. 2015).

\* © Della H. Darby, 2019.

\*\* Metadata Librarian, Lucille Stewart Beeson Law Library, Cumberland School of Law, Samford University, Birmingham, Alabama.

tories. Fascinating and sometimes tragic information is included in the notes about these alumni. Yet another student researches notable Cumberland alumni who have served as judges or politicians. We started this particular project in response to a query from the alumni office. For all these projects, the students enter the descriptive metadata into Excel spreadsheets, which reside in a Dropbox folder to allow flexibility of work location. When the transcribing, indexing, and proofreading are completed, the spreadsheet data will be converted to MARC records and loaded into a reference database. Another student continues working on a colossal project to digitize our composite photos, both group and individual. He photographs the photographs, crops them, and uploads them to Flickr. He also creates and manipulates metadata about each image to ensure the greatest accessibility.

¶69 As students come and go throughout the day, the metadata creation progresses. In my office, between the inevitable questions that arise, I work through the final stages of normalizing the metadata about our 1866 to 1869 alumni. By combining the metadata for multiple sources into a single spreadsheet, I discover variations in the spellings or formats in which students' names were entered in the original publications. To provide uniformity of description, I select the most common and most complete "authorized" form of the name and then add entries for the variations. At last, using MarcEdit, I create 586 records and add them to the database. Twenty-two years done and 148 to go! Whew.

¶70 It is a complex dance with many moving parts, but each student has become proficient with his or her portion of the choreography. The ultimate goal of these various projects is a searchable database that will allow our users to discover the Cumberland publications in which the alumni they are searching for are mentioned or to connect to a digital image. Each step in the dance is performed with the intent of increasing this discoverability.

### It's Still a Mad, Mad World\*

James E. Duggan \*\*

¶71 A lot has happened in the twenty years or so after my first "Day in My Law Library Life" piece.<sup>53</sup> I've risen through the ranks to become an academic law library director and tenured law professor. I escaped the cold winters of Illinois, moved to New Orleans, and became reacquainted with the traditions of civil law. I served as president of AALL in 2008 to 2009<sup>54</sup> and was fortunate enough to be elected to the AALL Hall of Fame in 2014.<sup>55</sup> I even became editor of *Law Library Journal* in 2014 (and followed in the footsteps of my mentor, Frank Houdek, who published the original "Day in My Law Library Life" compilations).<sup>56</sup> Even with twenty years of experience, every day feels like a new adventure.

---

\* © James E. Duggan, 2019.

\*\* Director of the Law Library and Associate Professor of Law, Tulane University Law School, New Orleans, Louisiana.

53. See Duggan, *supra* note 29, at 169.

54. James E. Duggan, *Innovate: Your Challenge for the Year (From the President)*, AALL SPECTRUM, Sept./Oct. 2008, at 6.

55. Pauline M. Aranas, *Introducing the 2014 Hall of Fame Inductees: AALL Honors Bredemeyer, Danner, Duggan, and Maes*, AALL SPECTRUM, June 2014, at 34, 35.

56. After a five-year term, this is the first issue following my editorship. See James E. Duggan,

¶72 My morning begins with a quick review of my electronic calendar, to see what's in store for the day ahead. I then scan my BlackBerry<sup>57</sup> for overnight emails and texts from library staff, faculty and administrative colleagues, and the dean to see whether anything needs immediate attention. Sure enough, the dean is asking permission to use a room in the law library for a reception, and a faculty colleague wants the library to purchase a somewhat expensive monograph. Both requests are readily granted by return e-mail, and I head to work.

¶73 I try to be at the law library by 7:30 A.M. (8:00 A.M. at the latest). That way I have some time to organize my day, see which staff are on the vacation/sick leave calendar, and draft my to-do list, and return any telephone messages from the day before. Today I call a law firm that wants to donate a complete run of law reviews from the 1980s and 1990s (which I must unfortunately decline, as we already have multiple copies in print and are covered by HeinOnline as well as Lexis Advance and Westlaw).

¶74 I next review my notes and slides for my advanced legal research class that I am scheduled to teach at 11:30 A.M. Today's lecture is the first of two on legislative history, and I am hopeful that I can build on the success of last week's presentations of statute research and teach my students about why they are the likeliest to be asked to compile a legislative history.<sup>58</sup> In addition, I need to craft an assignment that requires students to use the appropriate databases<sup>59</sup> that I will demonstrate in class.

¶75 During class I quickly review *Bluebook* citation errors from last week's assignment, then launch into why understanding legislative history is an important part of the legal research tool box. Before students' eyes can glaze over, I play a YouTube version of Schoolhouse Rock's "I'm Just a Bill"<sup>60</sup> to remind them how the legislative process works. I then follow up with compilations of legislative history for legislation that students might be interested in, for example, bills that examine consolidating or exempting student loan debt.

¶76 After class (which lasts for an hour and twenty-one minutes, per ABA requirements), I head out for a quick lunch with another faculty colleague, then return to the law library to review and approve acquisition invoices and Hein GreenSlips<sup>61</sup> for possible monograph orders (which are routed to librarians for their examination).

¶77 I then tackle the filing of the next loose-leaf release of the *CCH Standard Federal Tax Reporter*, which, thanks to the Tax Cuts and Jobs Act of 2017,<sup>62</sup> looks to be nearly 500 pages. This takes me almost an hour and a half to file, as it is the type of loose-leaf filing where most of the pages are replaced one or two pages at a time. Our beloved loose-leaf filer retired last year, and rather than replace her, all the

---

*From the Editor: The Last Chapter*, 110 LAW LIBR. J. 445, 2018 LAW LIBR. J. 19.

57. Some call my affection for this device outdated, but I prefer to term it "vintage."

58. Typically, no one except the librarian knows how to do it!

59. E.g., ProQuest Congressional, Congress.gov, Westlaw's U.S. Code Congressional & Administrative News, Lexis Advance's Legislative Histories.

60. TheGreatWorker, *I'm Just a Bill (Schoolhouse Rock!)*, YouTube (Sept. 1, 2008), <https://www.youtube.com/watch?v=tyeJ55o3El0> [<https://perma.cc/P9XV-SH8Z>].

61. See *Electronic Greenslips*, WILLIAM S. HEIN & Co., <https://www.wshein.com/electronic-greenslips/> [<https://perma.cc/NU26-3NAD>].

62. Pub. L. No. 115-97, 131 Stat. 2054 (2017).

librarians and staff (as well as student workers) were assigned individual loose-leaf titles to file.<sup>63</sup>

¶78 After finishing my filing, I leave for the University Senate meeting, which meets at 3:00 P.M. This body, which consists of representatives of faculty, staff, students, and administrators, meets approximately three to four times per semester to review committee recommendations, vote on curricular matters, and hear updates about university matters.

¶79 The meeting runs long, and I don't return to my office until after 4:30 P.M. I return a few phone calls and emails, then start on cite checking and editing a couple of *Law Library Journal* manuscripts that are due for the next issue. I work until 5:30 P.M., when it's time to leave for a law school-sponsored constitutional law lecture, which is held in the law school's auditorium. It is an interesting talk, but I feel my energy wane, and as 7:00 P.M. rolls around, I'm on my way home.

¶80 Working in a law library still feels like a mad, mad world, but one I wouldn't trade for anything!

### A Day in the Life of a Law Librarian in 2018\*

Sarah Gotschall\*\*

¶81 A day in the life! Well, January 17, 2018, was already underway when I received an email from Scott Frey at 11:41 A.M., asking whether I wanted to contribute to his "A Day in My Law Library Life, Circa 2018" project. He had just read my blog post about the future of the law librarian profession in 2027.<sup>64</sup> He wrote that "you need not describe your day with an eye towards the future." Well, too late! Like any pink elephant, once pointed out, it is hard to ignore.

¶82 Usually in my days of life, I procrastinate on stuff, but new and improved 2018 Sarah decided to strike while the iron was hot! I began to recreate the workday, which wasn't difficult because only two hours and forty-six minutes had elapsed.

¶83 Work, where is that? For the last twelve years I have worked at the University of Arizona's James E. Rogers College of Law Library as a reference librarian and professor of practice. Before that, I worked in the customer support department of LexisNexis, helping customers with their research questions.

¶84 Circa 8:55 A.M.: The morning started badly when I woke up with a cold, again! Lately, if I stayed in bed every time I had a cold, I would never actually go to work, so off I went. Of course, illness doesn't usually put one in the mood for work, so I wandered around complaining to coworkers about my cold and the day's cryptocurrency crash. Lacking the energy for continued wandering, I returned to my office and plunked down at my computer.

---

63. I'm still not sure how I was assigned *this* particular title . . .

\* © Sarah Gotschall, 2019.

\*\* Reference Librarian and Professor of Practice, University of Arizona Law Library, Tucson, Arizona.

64. *Editor's note:* Sarah Gotschall, *The Year 2027: The Future of Academic Law Libraries/Librarians*, RIPS LAW LIBR. BLOG (Jan. 16, 2018), <https://ripslawlibrarian.wordpress.com/2018/01/16/the-year-2027-future-of-academic-law-libraries-librarians/> [<https://perma.cc/RQ95-NQ8G>].

¶85 9:20 A.M.: As usual, the first non-wandering action of the day was checking my email and calendar. Sensing my delicate state, Outlook blessed me with no email requiring a response and nothing on my calendar until after lunch.

¶86 9:30 A.M.: Feeling lifeless, I examined my to-do list for something requiring little thought or effort. My colleagues and I are co-teaching a law practice management and technology course for the first time this semester, beginning in March. It is a survey course, and my section concerns legal analytics, blockchain and smart contracts, and document automation/legal expert systems. The previous day I started a LibGuide for my topics. I had already formatted the guide and done research on my course materials for the curriculum proposal, so, even in my weakened state, it was easy to cut, paste, and edit stuff.

¶87 I didn't think about it at the time, but after Scott's email the future was on my mind, and I was reminded that we decided to teach the class in part due to the amount written and said about the need for law librarians to expand our bailiwick of skills and activities to "stay relevant" in the future.

¶88 11:00 A.M.: Bored with the LibGuide, I worked on my legal analytics exercise for my first day of class. Finding that we once again somehow lost access to Ravel Law Analytics, I went to my coworker's office to complain about it. I thought that my exercise would be more interesting if it covered more than Bloomberg Law Litigation Analytics and the limited Lex Machina analytics that currently appear in Lexis Advance. Of course, it is always possible that LexisNexis will have already incorporated their newly acquired Ravel Law Analytics into Lexis Advance by March.

¶89 11:41 A.M.: I received Scott's email! I responded that I was interested in submitting to his project and started reconstructing my day thus far. As I typed, the pink elephant kept trumpeting "future future future" since my day in the life . . . didn't need to be about the future.

¶90 11:55 A.M.: All this futuristic thinking led me to ponder that supposed educational wave of the future, online education! More specifically, I pondered whether my coworker's newly online advanced legal research class had stolen any more of my students from my old fashioned, in-person administrative law research class. In the past few semesters, we both usually had approximately seven students, but since going online for the first time this semester, he had twenty-five students and I had only three! Well, hopefully three, I thought as I logged into the university system to check to see whether anyone had dropped. No one had dropped yet, but, of course, I went to my coworker's office to—you guessed it—complain!

¶91 I was just kidding, of course. I am all about anything that makes law school more enjoyable for students so if they want to take their classes from the comfort of their beds, I am all for it. I am considering making the move for my own class next semester.

¶92 12:11 P.M.: Finally feeling better, I spent my lunch hour walking around campus with another librarian. We racked our brains for decent gossip, fluffing up the smallest tidbit . . .

¶93 1:15 P.M.: Back at my desk, I was delighted that it continued to be a refreshingly light email day. I answered a few emails and put an upcoming presentation by the online learning folks in my calendar.

¶94 1:25 P.M.: I went to look for, but failed to find, one of our library fellows (student employees with JDs who have fellowships for library school) to see what we should do to prepare for our upcoming substantial paper research presentation.

¶95 1:35 P.M.: A former student stopped by to visit me, and then I went to visit some friends in another department.

¶96 1:50 P.M.: Time got away from me and I rushed back to my office to prepare for my 2:00 meeting with a clinical professor who requested a presentation on land use law research for her class the following week.

¶97 2:00 P.M.: The newly hired professor was a very nice woman who claimed to be a former research student of mine from 2008. This really threw me since neither her name nor face seemed remotely familiar! Pushing fears of early (well, at least kind of early) onset dementia aside, I took notes on the specific sources she wanted covered. I explained that I usually make a LibGuide for presentations and promised to email a draft of it to get feedback the following Monday.

¶98 2:30 P.M.: I started on the above-mentioned LibGuide.

¶99 They day went on, but alas, I am out of my allotment of words!<sup>65</sup>

### Today Dwight Will Give the Research Strategy Lecture\*

Dwight King\*\*

¶100 “I’m here to give you a research strategy for your moot court problem and remind you of a few things you probably forgot about legal research over the winter break.” That’s how I began my lecture to those 1Ls who could attend the 10:00 A.M. section. (I would repeat the lecture again at 4:00 P.M. for the rest of the 1L class.) Legal research and legal writing are taught in two separate courses at Notre Dame. We join forces at the beginning of the spring semester for this single lecture. I’m always hopeful that their immediate need to apply what I teach them will encourage the students to pay close attention. I’m discouraged by the yawns I see. Their polite applause at the end leaves me skeptical as to whether my demonstration of ways to research Oregon law on investigatory stops was successful. Oh well, as with so much of what we teach them about legal research—they’ll thank me later!

¶101 Not long after returning to my office, I was met by the journal editor who had emailed me the night before for help with a few *Bluebook*<sup>66</sup> citations that had bewildered the initial cite checkers. We searched Westlaw’s *Secondary Sources* database for sample law review cites to the U.S. National Archives, the Canadian Library and Archives, and the Avery Brundage Collection at the University of Illinois Archives. I wish the *Bluebook* would provide sample cites to archives! I’ve used the *Bluebook* for over thirty-five years. The students consider us librarians to be the citation experts; however, I have to admit that I still do a lot of “best guessing.” Together, the editor and I finally found some samples she liked.

¶102 Next up, could I help a faculty member find an authoritative source stating that an Alabama death row inmate had committed suicide? She had sent me an excerpt of an article from an Alabama newspaper commenting on the event. It took a while for me to find the full text on Lexis, but in the end, she thought she still needed something more. She found mention of the suicide on several death row

---

65. *Editor’s note:* The author has informed this editor (the compiler) that nothing much exciting happened after 2:30 P.M. on this day in the life.

\* © Dwight King, 2019.

\*\* Associate Director for Patron Services, Notre Dame Law Library, Notre Dame, Indiana.

66. *Editor’s note:* BLUEBOOK, *supra* note 52.

blogs, but she was hoping for better. I wanted to impress her with my librarian prowess by finding mention of the event in a major publication on a database of which she wasn't aware. I searched for quite a while, but to no avail. I finally had to call her and confess that what we were both finding through Google was all that was available. She's very nice; she thanked me for looking and told me not to worry for now. Maybe she would just have to simply cite herself as the authoritative source. She had worked on the case pro bono when she was practicing. She knew what had happened to her former client.

¶103 We have a general LL.M. program at Notre Dame. Most of the students are international students. I teach them U.S. legal research in the fall semester. One of my former students came to my office seeking assistance with citing a source he had found on Westlaw. He wasn't sure what kind of source it was. None of the examples from the citation cheat-sheet I had given him last semester seemed to cover the situation. With a little looking, we finally concluded that he had found the electronic version of a nonconsecutively paginated periodical. My former student was very grateful, "Thank you, Mister Dwight!"

¶104 It was time now for the 4:00 P.M. research strategy lecture. I had tweaked my PowerPoint a little bit from this morning. I even noticed a slight mistake about which key number I had used to get that "one good case." Fortunately, no one had pointed it out. I called Matt in the IT Department asking whether I might use the lapel microphone this time. Perhaps if I could move around a bit this time instead of just standing behind the courtroom podium, as I had done in the morning, I could reduce the number of yawns during the afternoon session! At 4:40 P.M., I concluded and asked whether there were any questions. No one raised a hand. "Well, if you have questions later, remember that all of the reference librarians are happy to help you. Good luck with your briefs!"

¶105 I went back to my office and had a late lunch before going home.

## **A Day in the Life of a Law Librarian\***

Margot McLaren\*\*

¶106 The most rewarding aspect of my law library work is cataloging and bar-coding all of the titles at Western State College of Law Library into the library's online catalog using OCLC's new integrated library system, World Management Services (WMS).

¶107 I was hired as a technical services librarian on September 2, 2016, to catalog the library's entire collection using OCLC WMS; to train library staff members on how to use OCLC WMS to check in and bar-code serial continuations (such as loose-leaf updates, pocket parts and supplements, journals, newspapers, and magazines); and to set up the circulation module so faculty, staff, and students can check out library materials.

¶108 What led me to pursue librarianship as my career? Word of mouth. A woman whom I met back in the summer of 1980 noticed that I enjoyed frequenting rare booksellers in downtown Newport, Rhode Island, and in Keene, New Hamp-

---

\* © Margot McLaren, 2019.

\*\* Technical Services Librarian, Western State College of Law Library, Irvine, California.

shire. She told me that University of Rhode Island offered a master's degree in library and information studies. I was so overjoyed at hearing this wonderful news and opportunity, that in the middle of my sophomore year, I decided to become a librarian. After I completed my undergraduate studies, I entered University of Rhode Island's Graduate School of Library and Information Studies in the fall of 1983.

¶109 In the spring of 1984, I enrolled in a cataloging course (at that time it was a required course). My cataloging professor taught us first how to catalog books on a 3 × 5 card, and then how to catalog on OCLC (URI's GSLIS had an account with OCLC). She made the cataloging class so enjoyable that I instantly fell in love with cataloging because it reminded me of my undergraduate days when I was a math major, learning a set of formulas to solve complex mathematical equations. In cataloging, the student learns a set of cataloging rules to create bibliographic records, so patrons can locate library materials easily.

¶110 At Western State College of Law Library, I begin my day by cataloging the remaining titles on the book cart and creating new spine labels for the Library of Congress call numbers that have been reclassified. After I finish labeling the monographs, I go back into the stacks to reshelve the books. Then I reload my book cart with another round of books, totaling around 50–60 items. Today, I cataloged seventy-seven books in 6.5 hours. Since September 2016, I have cataloged 5312 titles.

### **A Day in the Life of an Alaska District Law Librarian: “It’s Snowing and There Might Be Moose”\***

Anna Russell\*\*

¶111 I am a U.S. Courts branch librarian, and I love my job. The Ninth Circuit Courts Library primarily serves over 400 judges and 5000 court staff in the Ninth Circuit. Headquartered in San Francisco, we have branches throughout the nine most western states. In addition to serving the federal courts, we provide limited service to other federal agencies, state and local courts, members of the bar, and the public.

¶112 As a court librarian, you have the ability to immerse yourself in all aspects of librarianship, from cataloging, collection development, procurement, and acquisitions to public services, facilities management, and archives.

¶113 In preparation for this piece, I took a look at *Law Library Journal's* 1997 Special Feature<sup>67</sup> on a Day in the Life. One commonality that stood out after two decades is the law librarian's unique work feature of rarely having a set routine. Depending on your main work requirements, you may have set times of the year where you expect to be working on the same topics, but even these will usually be new experiences every time.

¶114 For an example of a typical day, I like to start with the typical items I work on at any given time. I need to check in with my patrons on a regular basis to see what research support I can provide. I need to process new titles into my library collection, using the ILS and physical check-in processes. I need to manage tech-

---

\* © Anna Russell, 2019.

\*\* Anchorage Branch Librarian, U.S. Courts Library, Anchorage, Alaska.

67. Houdek, *supra* note 1, at 231.

nology issues that come up on hardware and software. I need to provide training on what folks used to call CALR but is now simply "legal research training." And then there are the unexpected projects like determining whether there might be a federal entity that loans federal fine art out for display to the public or planning a wellness space in the library where patrons could drink tea and take a few moments to relax.

¶115 7:30 A.M.: Begin the day, turn on the lights, unlock the library, set up the tea area, turn on the computer, and check email.

¶116 9:00 A.M.: Allow members of the public open access to the library.

¶117 12:00 P.M.: Put a stop to whatever I am doing at the time to take a lunch break; maybe it's checking in library materials, or maybe working on archiving the history of the federal court in my area. In this instance, I think it was answering email.

¶118 1:40 P.M.: Greet a patron who's entered the library, searching for § 1983 in the U.S. Code.<sup>68</sup> Providing the patron with the primary law is the first step. I also share a couple guides on understanding 1983 claims.

¶119 3:15 P.M.: I receive a big smile and thank you from the grateful patron who appreciated the extra resources I provided.

¶120 3:20 P.M.: I am late closing the library to the public; normally I close at 3:00 P.M.

¶121 4:00 P.M.: I am done for the day; I put on my gym clothes and head out to exercise.

¶122 As access to online resources shrinks to narrowed subscription groups, I've appreciated the creativity and surprising amount of quality service I provide as an information professional. Finding ways to provide current useful content to as many patrons as possible is a continual process. I spend time daily talking to law clerks and other court personnel to learn the most pressing legal issues. I talk with judges to get a sense of their strategic goals to be ready to provide them with the necessary resources. And when the rare prisoner calls to ask for primary law, I make sure to find a way to help.

¶123 In 2018, my library's value is often found in the connections I make and the inviting space I provide. Setting up activities that bring people together (whether or not the theme is of a legal nature) is a main feature in my work. I recently set up a group viewing party for a streaming lecture on the Supreme Court's October Term 2017 legal issues. I am not sure it gets much better than donuts, coffee, and a good intellectual group program.

¶124 As far as the moose go, I've learned that they are much faster than they look. Due to their unpredictable behavior, they are more dangerous to the casual observer than your typical bear. But they are majestic creatures, and when one moseys by your building early one weekday morning, you can't help but feel it is going to be another interesting day.

---

68. *Editor's note*: 42 U.S.C. § 1983 (2012).

## Dear Diary—Fast Forward 21 Years . . . \*

Merle J. Slyhoff\*

¶125 February 5, 2018

¶126 Dear Diary,

¶127 Over the weekend I found my diary from 1997. It opened to February 25, 1997, and there was an entry where I had described a day at work.<sup>69</sup> Might be time for an update!

¶128 Wow! Some things have changed drastically, and some seem to be the same. I'm still at Biddle Law Library at Penn but my title has changed . . . again. Now I'm Collection Development and Resource Sharing Librarian, the collection development component going back to my original position here at Biddle oh-so-many years ago! My days are now spent overseeing interlibrary loan and doing collection development for U.S. law. Other duties now include reference desk duty and serving as liaison to our six student journals, plus associated and additional tasks. Like 1997, I still wear many hats!

¶129 Emails continue to play an important role in everyday work, but they no longer come from the same lists since my job functions have changed. They now focus on OCLC and other ILL news, various publisher emails trying to get me to buy their latest database or book (although I'm not quite sure why the rep thinks an academic law library would be interested in buying a freshmen English textbook), emails from Penn law journal editors unable to locate a source, or a faculty member responding to my request for an overdue ILL book to be returned with my promise of getting another copy. Right now email is heavy with replies to my question asking company reps whether certain microfiche content is available in their companies' databases as we contemplate purging fiche and film. Happy to say the answers so far have been yes to online accessibility!

¶130 It was a busy day—an early meeting of law school staff brought the sobering reality of how to deal with our students who may be going through stress or distress. Certainly a sad reminder of the difficult times our student body (and everyone!) is facing. And a confirmation that our jobs as law librarians extend beyond our knowledge of what's in the books and the databases. Our personal contact with the students plays an important role in the overall operation of the law school and the lives of the law students.

¶131 On a cheerier note, I did Roving Reference today! You may remember a few years ago I told you I had developed a program where I go to the main student area and set up roving reference—I now go weekly and take my sign and my laptop and the big monitor is there waiting for me. I really enjoy Roving Ref and it now seems to be considered a normal activity by the students and faculty. “Oh, there's Merle. Must be Roving Ref day,” “Hey, since I see you here it reminds me I wanted to ask you to buy this book and route it to me,” “I'm working on an assignment. Can you help me find something?” My take-ref-to-them seems to have caught on. And my hook this year? Movies! IT worked with me to show DVDs so I no longer have to rely on the few “play now” law-related titles in my Netflix account. This

---

\* © Merle J. Slyhoff, 2019.

\*\* Collection Development and Resource Sharing Librarian, Biddle Law Library, University of Pennsylvania, Philadelphia, Pennsylvania.

69. *Editor's note:* Houdek, *supra* note 1, at 206.

week I showed *The Fighting Temptations* from our DVD collection. Seeing Beyoncé on the big screen surprised some, but I assured them there was a law-related aspect to the film. And free books! I take "extra" books and put them on the table with a Free Books sign. Definitely grabs their attention, and the students get to take an older casebook, a duplicate copy of a book in the collection, donated books we don't need, or a novel a staff member brought in.

¶132 After Roving Ref, one of our database reps had an update session. I like it when my colleagues challenge the reps, especially if they're expressing concerns and raising issues. The companies need to know how the academic users react to their products. Interesting session, but the yummy lunch he provided far exceeded the content!

¶133 A late afternoon meeting with one of our journal research editors provided me with an update on their spreadsheet for keeping track of sourcehunt resources in their office and the status of their Research Editor Manual that spells out their procedures for associate editors and placing ILLs.<sup>70</sup> I hate when the journals recreate the wheel every year because they have to start from scratch! Continuity, folks, continuity!

¶134 In between the highlights of the day, I put out ILL fires, double-checked some titles that we can cancel, and added books to my display, "Biddle Law Library Collections: Expect the Unexpected."

¶135 So, Diary, it was just another day at Biddle with the many hats that I wear still getting shuffled around. I guess I should give you an update more often than once every twenty-one years, especially since my Day in the Life entry in 2039 won't have any mention of Biddle Law Library!

¶136 Oh, and I forgot the best news of all!!! I'm going to bed a bit early tonight. You see, I was up very late last night because . . . THE EAGLES WON THE SUPER BOWL AGAINST THE PATRIOTS!!!!!! First time the team has held the Lombardi trophy!!! GO EAGLES!!! And goodnight . . . But first a few Words With Friends games with my law library colleagues around the country because networking is so important!

### Emergency Meetings and an Eclectic Hum\*

Victoria Szymczak\*\*

¶137 The doors at the University of Hawaii School of Law Library open to the public at 8:00 A.M. on most weekdays. But not today. The student assigned to open the library today overslept. Things happen. Fortunately, one of our veteran student workers, Troy, was already in the library printing out his notes for class. He pitched in when he saw that the doors were still closed at 8:05 and got things rolling. Thank the stars for Troy and for our popular twenty-four-hour access cards that we provide for all of our students and faculty. Without the access card, Troy would have been waiting outside with our alumnae and public patrons. Meanwhile, the law

---

70. *Editor's note: See Merle Slyhoff, Sourcehunts and Interlibrary Loan Materials: One Library's Best Practice*, SCHOLASTICA BLOG (Sept. 25, 2015), <https://blog.scholasticahq.com/post/sourcehunts-and-interlibrary-loan-materials-one-library-s-best-practice/> [<https://perma.cc/SKP7-RRVW>].

\* © Victoria Szymczak, 2019.

\*\* Law Library Director and Associate Professor of Law, William S. Richardson School of Law, University of Hawaii at Manoa, Honolulu, Hawaii.

library coffee klatch gets the coffee maker going, the circulation counter gates rise up, and we are ready for a new day in paradise.

¶138 Early in the morning, the Library Art Committee asks for an emergency meeting with me. Our third annual art exhibit opens on March 22, and the committee is busy with invites, art submissions, and catering. Apparently one of our alumnae, who now lives in New York City, would like to submit a piece. She sent photographs of three works and asked us to choose which one she should send. Once the exhibit is over, she is going to donate the work to us. Thankfully, I am pleasantly surprised by her work and delegate the choice back to the committee. This should be a group decision, not mine alone.

¶139 Later that day, one of our recurring visiting professors from the East Coast tracks me down. On her flight over she sat next to an amateur painter who lives in Massachusetts. She wants to know whether he could submit his work for the art exhibit. The theme of the show is “Currents” and the painting is titled “Disappearing Island.” He has never exhibited his work before and would be thrilled if he could participate. Again, I take a deep breath. Again, I am pleasantly surprised with the thumbnail picture she shows to me. Our annual art show is going global! Hopefully, we will see some local contributions soon.

¶140 This same afternoon, one of our reference librarians is contacted by a faculty member who is leading a roundtable. She needs immediate help locating the regulations known as the Baby Doe Regulations, issued under CAPTA, 42 U.S.C. §§ 5101–5119(c).<sup>71</sup> Normally, this is not such a big deal; however, the librarian cannot seem to find current regulations for the statute. Wondering whether our usual online database providers have messed up the regulations files (again), she expresses her concern to our electronic services librarian. Now there are two people looking frantically for these regulations. Bingo! They find that the regulations were repealed via executive order and get back to the faculty member to deliver the news before her testimony. I am not sure that this is what she wanted to hear, but we do not make up the law—we find it.

¶141 As dinner time rolls around, our evening students start rolling in to print out their notes and get some last-minute reading in before classes begin. Our evening manager is reviewing pending projects to make sure nothing is left undone before she cracks the whip and gets our student workers focused on indexing and scanning archival papers in preparation for an international public event on March 4. The collection contains the papers of the late Professor John Van Dyke. Speakers and visitors will be flying in from the mainland, Korea, and the Pacific islands to commemorate his research and advocacy on behalf of the environment and indigenous peoples. She is ahead of deadline, but we are all a bit nervous to be hosting such an important event for the law school. Before I leave for the day, we have an impromptu meeting to highlight outstanding matters. This includes design, floor layout, poster boards, catering details, and invitations. The governor wants to know whether he will be speaking and whether the first lady is invited. We outline a plan with assignments for everyone on staff, and I see the relief in the evening manager's face. We all work together at our library.

---

71. *Editor's note:* Child Abuse Prevention and Treatment Act of 2010, 42 U.S.C. §§ 5101–5119(c) (2012).

¶142 As I walk to my car, the sun is setting and I am grateful for the wonderful people with whom I work and the eclectic hum of the University of Hawaii School of Law Library.

### A Day in the Law Library Life\*

Karen Westwood\*\*

¶143 Tuesday, January 23, 2018

¶144 7:45 A.M.: Email message upon arrival: employee whose Monday flight was cancelled due to Minneapolis snowstorm won't be rebooked in time to make it in to work today. Plan to cover his afternoon reference shift.

¶145 8–10 A.M.:

- Sign authorizations for expenses—books, supplies, etc.
- Arrange to return *Selecting and Implementing an Integrated Library System* by Richard Jost to Mitchell Hamline School of Law. Make plans to catch up with colleagues while there.
- Work on upcoming Kaizen Event (county-offered program that helps employees break down a process into its individual parts—resulting in employee empowerment and increased efficiency).
- Schedule meeting with a Hennepin County statistician relating to an article I am writing with a law firm colleague.

¶146 9:30 A.M.: Take break to buy “Snow Day Doughnuts” for staff. Just seems like a good idea. It's cold out there, and we all have more shoveling to do at home after yesterday's storm.

¶147 10–11 A.M.: GARE Meeting—Government Alliance for Racial Equity works with entities around the country to achieve racial equity and advance opportunities for all. Our law library is partnering with Hennepin County Libraries on this, and I have been asked to take on leadership duties for the second cohort of GARE training attendees. This is a yearlong commitment and is a great opportunity to work on this important topic as well as work more closely with public library colleagues.

¶148 11 A.M.–12 P.M.:

- Email a request for housing attorney to make a presentation to “Street Voices of Change,” a group of homeless and formerly homeless advocates.
- Send email to court contact reporting on our first legal clinic (held Monday in the snowstorm!) in conjunction with CAIR-MN (Council on American Islamic Relations—Minnesota Chapter).
- Review title purchases and renewals. I check nearly every title for usage stats and to see whether it continues to fit in our collection development plan.

---

\* © Karen Westwood, 2019.

\*\* Director, Hennepin County Law Library, Minneapolis, Minnesota.

¶149 12:00–12:30 P.M.: Eat a quick lunch brought from home.

¶150 12:30–5:00 P.M.: Reference desk shift.

Sample questions:

- Locate “Guardian’s Annual Well-Being Report” form—from nonattorney patron.
- Receive gift of several packages of Post-It Notes (“Thanks for all the help!”)—from nonattorney patron.
- Can we locate an unpublished BIA opinion?—from law firm librarian.
- Where do we keep *Minnesota Practice*?—from an attorney.
- Multiple book location and photocopy requests—from attorneys, county staff, and nonattorney patrons.

Slow afternoon, so during the shift I also:

- Review donated local legal newsletters—check to see whether they fill any gaps we might have.
- Email the State Law Library, asking whether it would like any of the local newsletters that we determined we didn’t need.
- Remember that the front door has not been completely closing when locked. Email staff to remind them to pull door all the way closed when closing the library. Send maintenance request for review of the door mechanism.
- File loose-leaf updates for *Milgrim on Trade Secrets* and *Chisum on Patents*.

¶151 4:00 P.M.: Other reference librarian goes home early, sick. Not likely that he’ll be back tomorrow.

- Wipe down reference desk, phone, and keyboard with hand sanitizer—sick librarian was on desk in morning. Probably of only talismanic benefit at this point.

¶152 5:00 P.M.: Close library; make mental list of what to do tomorrow:

- Plan to arrive at work in time to open library in event snowbound colleague has not made it back to the state yet.
- Email court colleague whom I learned in today’s meeting is also involved with GARE. Any potential for partnership in that work?
- Work on communication plan to better promote our next clinic.

¶153 My tasks as director of the Hennepin County Law Library fall into a few general buckets, as illustrated by this log. First, I handle the administrative tasks you might expect—budgeting, bill paying, and so on. Second, I keep my hand in reference work—we have a small enough staff that it is necessary, but it also keeps up my skills, and I love reference questions. Third, I’m a communicator and promoter—sharing the value of the law library and looking for ways to partner with other entities. Our mission statement reads, “In support of access to justice, the Hennepin County Law Library ensures access to the body of law and legal materials for all.” Tuesday, January 23, 2018, wasn’t a very exciting day, but every day that I keep that mission front and center is a successful day in the law library life of a public law library director.

## Everything from Soup to Nuts: The Full Plate of Academic Law Library Directorship\*

Ronald E. Wheeler\*\*

¶154 I have been a professional law librarian for seventeen years, and this is my third academic law library directorship. BU is the fourth-largest private university in the United States and the nation's third-largest private urban university. The law school is highly ranked and regarded, and the law library serves a talented and prolific faculty, a J.D. enrollment of about 700, and a robust cohort of LL.M. students from foreign countries that numbers close to 200. We have twenty-two total law library staff, with eleven professional librarians, if you include me.

¶155 On Wednesday, January 24, 2018, I arrived at my office in the Fineman and Pappas Law Libraries on the third floor of the Boston University School of Law at 8:00 A.M. On the way to the office, I stopped at Dunkin' Donuts, which is just about a block away, to pick up two donuts and a small coffee. I always try to eat and pump up on caffeine before teaching.

¶156 I was particularly careful to be prompt that morning because the seminar course that I am teaching this semester, Critical Race Theory (CRT), meets from 8:30 A.M. to 10:30 A.M. I knew that I needed to review the assigned article once more and think about the learning outcomes I had formulated with regard to that article.

¶157 I find that I really enjoy teaching seminar courses such as this one. I teach CRT as a survey of the literature of critical race legal theorists and the body of work they have produced since the 1980s. Thus, it is a course in which the students read weekly academic articles and write one- to two-page weekly reflection papers about them. I then facilitate a class discussion of the articles with an eye toward teasing out a couple of main themes that I use as learning outcomes. During the course, the students produce a paper and I impose strict deadlines throughout for choosing a topic, producing an outline, producing a detailed outline with sources identified, producing a draft of the paper, and finally producing a final paper. My goal here is to teach students about creating a research plan and carrying it through to fruition.

¶158 So, in this thirty minutes before my class I reviewed my learning outcomes for this class meeting, skimmed the article, ate my donuts and drank my coffee, and printed out a class list to use as an attendance sheet. I then walked hurriedly out of my office, up a flight of stairs to the fourth floor of the building, and directly to my class, which is held in room 417.

¶159 For the next two hours, I facilitated a discussion of the article *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, by Derrick Bell. This discussion was lively, so my job as facilitator was relatively easy. The fifteen students in my course are excellent and diverse. They even include an LL.M. student from China and a graduate student from the School of Public Health. The discussion felt enlightened, insightful, and thoughtful. I was also able to bring in my own knowledge of the issues surrounding busing that occurred in 1975 in Detroit, which the article discussed, since I was attending a Detroit public school during that time. Although that reality made me feel ancient, the students seemed to appreciate my firsthand knowledge and experience.

---

\* © Ronald E. Wheeler, 2019.

\*\* Director, Fineman and Pappas Law Libraries, and Associate Professor of Law and Legal Research, Boston University School of Law, Boston, Massachusetts.

¶160 After class, from about 10:30 A.M. to 11:45 A.M., I sat at my desk and tried to complete mundane and somewhat clerical tasks that are nonetheless absolutely necessary. I emailed students about various matters, including their enrollment status and whether they had been formally admitted off of the class waitlist. I downloaded and printed out each of my fifteen students' papers for the week and put them in my bag to read at home. I also edited my Blackboard Learn course site by editing the syllabus, adding to the online calendar, and amending some of the weekly topics. The final clerical task I performed was to record the attendance information for today's CRT class.

¶161 From about 11:45 to 12:45 I went out to lunch. I don't always take an hour lunch. Most days I grab something quick to eat at my desk. However, at 1:00 P.M. I was chairing a faculty committee meeting that I was dreading. So I decided to take an hour, get out of my office, and have a leisurely lunch to think through my strategy for this upcoming meeting. I ordered my go-to dish, the warm calamari salad, at a local restaurant called Scoози.

¶162 When I returned from lunch, one of the meeting attendees had already arrived, so I grabbed my materials from my office and went directly to the law library conference room, located in our law library administrative suite about three offices away from mine.

¶163 The faculty committee I am co-chairing is called the Community and Inclusion Committee. It is, in effect, our law school's diversity committee, and its charge includes the following tasks:

1. Review the results of the student climate survey with an eye toward drawing conclusions and making recommendations.
2. Work with Student Affairs to draft an executive summary and final report (that draws conclusions and makes recommendations) to be shared with the entire community.
3. Present results to the faculty.
4. Follow up on possible professional development for faculty.
5. Continue to engage with Student Affairs around programming relevant to diversity and inclusion.
6. Strategize with Student Affairs and the First Generation Professionals group regarding enhanced programming for that population.
7. Continue strategizing around programming and events responsive to conservative students.
8. Respond to events as they occur.

¶164 On this day, the committee was meeting to decide what needed to be done with our first draft of the Climate Survey's Summary Report. The meeting was fraught, from my perspective, because I was in fundamental disagreement with my co-chair about the usefulness of the student climate survey and about the significance of certain findings. Ultimately, it was decided that certain revisions had to be made to the draft summary report, and that when the revisions were made by those assigned to them, they were then to be sent to me. My job became to harmonize all of the rewrites and to draft a cohesive and meaningful report. This was decided after about an hour of fairly disagreeable back and forth between myself and my co-chair about various issues. The meeting felt long and stressful, and I was glad when it finally ended.

¶165 At 2:00 P.M. I had a meeting with the dean of the law school, Maureen O'Rourke. Dean O'Rourke is currently serving as the chair of the ABA Council on Legal Education and Admission to the Bar. She is the dean who hired me into this job two years ago, and she is a fantastic and intense boss. I meet with her monthly for one-on-one meetings like this one, and I also meet with her every other week as part of the Dean's Management Committee, which is composed of all of the assistant and associate deans and other senior managers like myself. At this meeting we discussed the progress of the Climate Survey Summary Report, which I am currently working on. We also discussed my Critical Race Theory course and how it was going. She asked me to teach this course as a favor to her, so she is interested in its success. As is sometimes the case, law library issues or projects often get discussed with her via email, and it is the interpersonal stuff with colleagues, like my interactions with the co-chair of the Community and Inclusion Committee, that must be discussed in person.

¶166 From that meeting I rushed to room 417, where I co-teach the 1L legal research and writing course we call Lawyering Skills. I teach that course, which runs throughout both the fall and spring semesters, with Director of Legal Writing Robert Volk. The class meets twice a week for an hour each on Wednesdays and Fridays. Since my role in this particular class meeting was minimal, I was at ease and not worried about reviewing course materials.

¶167 When the Lawyering Skills class ended at 3:30, I returned to my office to do some cleanup tasks like organize papers, file papers, make notes on my day for this article, and revise my electronic calendar. Earlier in the week, I had slipped leaving the building and I broke my near-fall with my right hand. In doing so, I jammed the three middle fingers on my right hand. By 4:00 P.M., my fingers were still feeling sore and I feared one might be broken, so I left my office to go over to the occupational therapy office, where I could be seen right away. They have an X-ray machine there, and my hope was that they could let me know what I needed to do to heal. That is where I ended my workday.<sup>72</sup>

## Another Day in My Thirty-Year Law Library Life\*

Mary Whisner\*\*

¶168 I arrive at 8:45. On my way to my office, I stand in my colleague Maya's door and talk to her about an announcement she's preparing to alert our faculty to PolicyMap,<sup>73</sup> a new database from the campus library system that she has explored.

¶169 Once I'm sitting at my desk, I know I should think about what my day and week will be like, so I check my calendar. (This is the first day back after a three-day weekend.) Planning ahead doesn't come naturally to me, so I have to remind myself to do it. Today, I don't have any meetings or classes. On Thursday, I have a training session for visiting scholars. On Friday, my colleague Crystal and I are speaking to

---

72. *Editor's note:* The author reports that none of his fingers were broken, in fact, and that they healed well.

\* © Mary Whisner, 2019.

\*\* Research Services Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law, Seattle, Washington.

73. POLICYMAP, <https://www.policymap.com> [<https://perma.cc/9VDL-WKQP>].

a legislation class. Even though that is three days away, preparation is on my mind. I thought about it when I was in on Sunday, because I thought the class was early in the week. Once I saw that it wasn't until Friday, I allowed myself to work on the SSRN<sup>74</sup> research guide I wanted to finish. Now I think I'll start the day with a couple of SSRN maintenance tasks: posting final versions of a couple of papers that are up in draft. It's not that the SSRN updates are urgent, but I think I can take care of them fairly quickly and have them out of the way. I'm confident that I'll be able to do enough prep for the legislation class before Friday. I'm not a stranger to the topic: one advantage to being at this stage in my career.<sup>75</sup>

¶170 But first I need to turn on my computer. I'll open up my email and see whether there's anything I need to reply to quickly. Maya sent me her draft announcement, so I spend a few minutes checking out her links and then play around with the database myself. It's really cool, but I don't want to get sucked in. It's a tough balance.<sup>76</sup>

¶171 At 9:36 I send an email message to the faculty with a link to our updated guide on SSRN.<sup>77</sup> I also send a quick note to our law school's new contact at SSRN. Still reviewing email, I see a message from a graduate, sharing an article from the *American Journal of Public Health* about opioids and hepatitis. I look at the journal's website and see that the current issue has several interesting articles on the opioid crisis, so I send links to GallagherFYI-Health, the listserv we have for our health law folks.<sup>78</sup>

¶172 After two hours looking at email, replying to email, exploring a database, and sending messages to faculty, I realize I've been sitting way too long. My shoulders are getting tense. I need to get up and walk around. I'll take a walk out to the Reference Office to say hi to the intern on duty. On the way, I run into another intern I haven't talked to since the Christmas break. We chat about the idea he's working on for his major paper. In the Reference Office, I greet the two interns finishing up the 9 to 11 shift as well as the one starting the 11 to 1 shift.

¶173 Back at my desk, an alert from Westlaw leads me to an article about the quality of federal databases.<sup>79</sup> I think our administrative law faculty will be interested, so I'll send it. Assuming that they would prefer a PDF, I look to see whether it's on the journal's website or HeinOnline. Nope, and the version the author has on SSRN is just a draft. So I send the citation to the faculty members, explaining that it's on Westlaw and Lexis and will probably be on the journal's website and HeinOnline soon. While I am on the law review's homepage, I spot an article in the

74. *Editor's note*: Social Science Research Network.

75. Earlier this month I marked my thirtieth anniversary here.

76. For this project, I logged my activities by muttering into my phone, using the voice recognition feature in the Notes app. "Sucked in" displayed as "CEFTIN." "Tough balance" came out "cut fillets." Sure, it's a smartphone, but it's not that smart.

77. Mary Whisner, SSRN, GALLAGHER LAW LIBRARY: RESEARCH GUIDES, <https://guides.lib.uw.edu/law/ssrn> [<https://perma.cc/QR93-GHP3>].

78. For more about our current awareness lists, see "GallagherFYI Lists," in Mary Whisner, *Staying Current*, GALLAGHER LAW LIBRARY: RESEARCH GUIDES, <http://guides.lib.uw.edu/law/staying-current/GallagherFYI> [<https://perma.cc/8MF5-BSUV>].

79. Nathan Cortez, *Regulation by Database*, 89 U. COLO. L. REV. 1 (2017). The alert is what I call my "vanity" alert, which tells me when something of mine has been cited. Cortez mentions one of my *Law Library Journal* columns at 12, n.48.

journal's online companion that I know will interest another professor. I send her a note, and less than an hour later she sends me a note saying "ooh thanks."

¶174 I log in to SSRN and update a professor's paper on SSRN, changing the "forthcoming" citation to the final one. Was it three hours ago that I thought I could take care of updating three papers on SSRN quickly?

¶175 I skim an email message from the American Constitution Society. That leads me to take a look at the ACS blog.<sup>80</sup> I send three posts about sexual harassment policies to the professor teaching employment law.

¶176 At 1:00 I get an email listing questions that the visiting scholars have submitted to help me prepare for the Thursday presentation. The questions are diverse, as are the visiting scholars' overall projects. Many of the questions can be addressed with the general skills I would cover in any presentation (how to use the catalog, how to search for journal articles, where to find nonlegal databases, etc.). I will use the scholars' questions in my demonstration to illustrate the skills.

¶177 At 1:09, I take stock. There is plenty more work to do, but it's a good idea to go take the dog to the park and enjoy the fresh air and sunshine. In late 2008, I was allowed to go from 8-hour days to 6.5-hour days (.8125 FTE). This has been a boon for my mental health: I can take the dog for a walk during what passes for daylight here in Seattle's gray winters, and I have the flexibility to run errands when I want to. I approach my work schedule flexibly: I show up when needed, even if that means a longer day here and there.

¶178 At 2:40, I'm back at my desk. I notice some mud spatters on my pants—a risk of going to the dog park. If I need to look decent, I sometimes cover up my work clothes with rain pants, but I didn't today. I update the second and third papers on SSRN. I email the professor.

¶179 At 4:00 I have a visit from the part-time faculty member who is teaching race and the law. I talk to him about his research projects (hunger strikes, history of race). I give him my personal copy of a book that I also have on Kindle.<sup>81</sup> He is wowed by HeinOnline's collection, *Slavery in America and the World: History, Culture & Law*. I also show him the Dream Hoarders game,<sup>82</sup> which illustrates aspects of privilege.

¶180 After my visitor leaves, I return to email. I respond to a message from an associate dean. At 5:36 I turn off my computer and head home. Even at just over eighty-percent-time, I feel like I've had a full day, packed with my beloved variety.<sup>83</sup>

80. *Editor's note: ACSblog*, AM. CONST. SOC'Y, <https://www.acslaw.org/acsblog> [<https://perma.cc/7D4M-YRGG>].

81. IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* (2016).

82. *Are You a Dream Hoarder?*, BROOKINGS INST. (June 19, 2017), <https://www.brookings.edu/interactives/are-you-a-dream-hoarder/> [<https://perma.cc/T4SZ-9YVM>]. The game is inspired by RICHARD V. REEVES, *DREAM HOARDERS: HOW THE AMERICAN UPPER MIDDLE CLASS IS LEAVING EVERYONE ELSE IN THE DUST, WHY THAT IS A PROBLEM, AND WHAT TO DO ABOUT IT* (2017). I haven't read it yet, but I'd like to.

83. And I like variety. See Whisner, *supra* note 32, at 231.



## Sticking to the Union? A Study on the Unionization of Academic Law Libraries\*

Sarah C. Slinger\*\*

*This article analyzes the responses of law library directors to a survey assessing rates of unionization, experience with unionization, and attitudes on unionization. These results ultimately show that while there is a low rate of unionization in academic law libraries, unions may become more prevalent in the future.*

Introduction . . . . .	105
Methodology . . . . .	106
Opinions About Unionization . . . . .	107
Separate Unions: One Size Does Not Fit All . . . . .	109
Slow Growth for Unions . . . . .	109
Relations with Staff . . . . .	110
Avoid or Be Encouraged by a Unionized Library? . . . . .	111
Conclusion . . . . .	112
Appendix A . . . . .	114
Appendix B . . . . .	116
Appendix C . . . . .	119

### Introduction

¶1 In 1936, President Franklin Delano Roosevelt reportedly mused, “If I had to work in a factory, the first thing I’d do is join a union.”<sup>1</sup> It’s no wonder FDR expressed such a pro-union sentiment: abusive practices by employers ran rampant throughout the country, and unionization provided much needed bargaining power and protection for vulnerable workers. Luckily, for those of us in law librarianship, our profession has rarely needed the protections that aggressive unioniza-

---

\* © Sarah C. Slinger, 2019. The author would like to thank Dean Michael Chiorazzi of the University of Arizona’s James E. Rogers College of Law for his invaluable input as an editor, and for helping to disseminate and create the accompanying survey. I am also extremely grateful for the guidance and feedback provided to me on the edits to this article by Dean Michael J. Slinger of Widener University Delaware Law School and Reference Librarian Cynthia Condit of the University of Arizona’s Cracchiolo Law Library. The title, *Sticking to the Union*, is from WOODY GUTHRIE, *Union Maid* (Keynote 1940).

\*\* Librarian Assistant Professor & Reference Librarian, University of Miami School of Law, Coral Gables, Florida.

1. Franklin D. Roosevelt, quoted on CIO recruitment poster (1940), <https://digital.lib.umd.edu/image?pid=umd:460549> [<https://perma.cc/A39V-H5VK>].

tion offers. But in 1972, Oscar M. Trelles studied a new trend among law school libraries: unionization.<sup>2</sup> He focused mainly on labor laws and whether libraries (both public and private) were then legally able to unionize. Since Trelles's article, nearly nothing has been published on unionization in law libraries.<sup>3</sup> Anecdotally, however, there has long been talk about the effects of unions on job performance and library administration. There has also been speculation about the possibilities of the growth of unionization in academic law libraries, given the fact that job insecurity and little to no annual pay raises have become quite normal in many law school libraries due to the downturn in law school and university budgets, also resulting in staff terminations and other practices that reduce salaries and add extra duties to ever shrinking staffs.

¶2 Several library directors have told me that they would welcome an article that looks at some of the questions surrounding unions and academic law libraries. Therefore, my purpose in researching this topic was to undertake a study of the prevalence of unionization in academic law libraries. I also surveyed current academic law library directors to find out what their attitudes are regarding law library unionization and how they think unionization has affected relations between employers and employees. In the 46 years since Trelles's study, the landscape of law library unions has changed. My study reveals that although some academic law libraries have had four decades or more of union presence, the majority of institutions have not embraced unionization. But it is conceivable that due to deteriorating job security issues, many nonunionized law school libraries may face a push for unionization in the coming years. Therefore, the time is ripe to examine how unionization affects our profession, for good or for bad.

## Methodology

¶3 To most efficiently study the prevalence of unions in academic law libraries, as well as to ascertain opinions on a union's efficacy and effect on manager-staff relations, I created a survey consisting of 10 questions that I sent with a Survey Monkey email link to every current law school library director. Questions included the factual such as whether a union existed in the law library and who within the library was a union member (i.e., librarians or staff). But I also wanted to ascertain the opinions of directors on questions of how unionization affected relations between management and staff and the efficient running of the law library.

¶4 The survey was administered anonymously; thus, this study does not include a comprehensive list of all U.S. academic law library unions. However, some idea of the prevalence of unions is ascertainable from the respondents' answers to the question of whether a union existed in the law library at all. In addition, the survey was designed so that all respondents could participate, regardless of whether a union existed at their institutions. Questions 2 to 7 were designed to

---

2. Oscar M. Trelles, *Law Libraries and Unions*, 65 *LAW LIBR. J.* 158 (1972). Trelles was an assistant law librarian at the University of Toledo when he wrote his article.

3. By contrast, unionization in other types of academic libraries is better documented. For a short, selected bibliography on academic library unions, see Appendix C. The articles in the appendix were selected because they are either the most recent, the most on-point or related to academic library unionization, or the most cited. The bibliography represents just a small slice of the literature.

be skipped by those whose institutions did not have a union; the remaining questions asked the opinion of all respondents. The complete survey questions with answer choices are reported in Appendix A.

¶5 As previously mentioned, the survey was sent to every law library director at an ABA-accredited law school. Of the 200 schools with full accreditation, I received 130 responses, translating to a 65 percent overall response rate. A caveat: as many respondents skipped some questions, the total response pool number varies from answer to answer. Each table indicates the total number of responses for that question, as well as the response rate for that question out of the total number of overall respondents.

¶6 Finally, because the survey was disseminated only to directors, who are by duties and definition managers, opinions about unionization are analyzed from this perspective. The opinion as to the efficacy and desirability of unions may vary among nonmanagerial members of the law library staff.

### Opinions About Unionization

¶7 Unions have been a hot button issue in most industries, and law librarianship has proved no different. To gauge the opinion of directors concerning unions in the law library, the survey posed the question, “In your opinion as a manager and director, do you believe there are benefits to unionization? Are there significant disadvantages?” Most responses to this question presented a mixed view; unionization results in some advantages and some disadvantages. Few respondents took an extreme view about unions: they are entirely good for the library or they are all bad for the library.

¶8 Many respondents did elaborate on what they perceived were benefits of unionized law libraries: better salaries, protection from unfair termination, protection of benefits, and the ability to enforce certain educational and skills standards. One respondent also said the elimination of favoritism was a favorable side effect of union protections. Transparency and clearly defined processes toward addressing grievances were also mentioned as definite benefits of union protection.

¶9 Several of those surveyed lauded unions as a vehicle that allows employees to become involved in administrative matters. One respondent stated that unions create a collective force of employees who can create actual positive change, change that a single employee could not accomplish alone. Another response indicated that unionization places employees on more equal footing with faculty at their university, and similarly stated that the union gives employees “more say in university governance.”

¶10 Respondents also pointed to the ability of the union to decrease the administrative load on directors. For instance, one director observed that “in a union shop, it’s easier to deal with pay scales and raises . . . usually the union takes care of all that.” Another director mentioned that the “union [is] expected to do the negotiating.” Another common thread among those responses that perceived unions as advantageous was the protection of jobs during difficult financial times.

¶11 Several respondents viewed unions as necessary for protecting employees during (as one respondent characterized it) “massive administrative layoffs” at their institution. One respondent stated that in an era where “many universities are act-

ing as corporations and discharging folks with little notice or compensation,” unions provide much needed security.

¶12 Among the disadvantages listed, the most common theme was frustration over promotion and termination decisions. The most prevalent concern was not being able to easily terminate problem or otherwise underperforming employees.

¶13 Conversely, some respondents mentioned the reverse: that promoting an employee also proves difficult under union rules.

¶14 Other respondents listed union inefficiency as a drawback. For example, in the arena of salary negotiation, one respondent reported that the unionized staff ultimately negotiated a lower salary than nonunionized staff. According to several respondents, lack of timeliness also affected contract negotiations and general redress of grievances. On the other end of the spectrum, some expressed concern over the influence of unions and their ability in some institutions to become too powerful and apply pressure to harmfully resist the library administration and threaten unfair strikes against their institution. In the same vein, one respondent noted that unionization tends to create an unnecessarily adversarial relationship among staff and managers. In fact, one response called this atmosphere a “defend everyone to the death” culture.

¶15 Interestingly, one respondent perceived a racial element of unionization, recounting how union leaders were slow to redress a harassment situation among two employees, which the respondent believed stemmed from the fact that the alleged harasser was white while the complainant was not.

¶16 Another issue noted by many was frustration over the emphasis on seniority within the union. One respondent stated that when layoffs occurred, support staff that had institutional knowledge but less seniority within the union were let go first. This resulted in an inexperienced but more senior employee taking over the position of the recently let go employee. The respondent noted with frustration that this outcome ended with the senior employee eventually leaving, but the director, because of union rules, was still unable to rehire the former, less-senior employee.

¶17 Due to the rigidity of union rules, some directors observed how difficult it was to change employee job descriptions. This was reported to be especially frustrating given the dynamic and rapidly changing nature of law librarianship. Among those with these concerns, several respondents indicated the inability to change job descriptions for unionized jobs made the jobs out of date given the demands placed on “21st century [law] librarians.” One respondent stated that they are “wary of . . . [organizations] that reduce flexibility . . . when libraries need flexibility to stay relevant.” The same respondent also expressed worry over any entity that would “stifle creativity, limit employee growth, and prevent innovation in the library.” Yet another response indicated that the job security provided by unionization may disincentivize employees from acquiring new skills and developing professionally as library services and knowledge change. Given the necessity of constant innovation and change in law librarianship, a great many respondents expressed similar unease over stunting the profession with inflexible rules.

¶18 Several respondents indicated that while in general they viewed unions favorably, a union was unnecessary or of “negligible” value in an academic setting. One director remarked that a union “only makes you do what you should have been doing anyway.” Another respondent stated that unions provide benefits that

employees often have or should have anyway. Also noted was the fact that human resources departments are already equipped to handle employee disputes and issues as efficiently as a union would be. Another remark surmised that unions, while beneficial, add “an extra layer of bureaucracy.” Some nonunionized library directors also pointed out that their libraries appear to be functioning sufficiently well without a union.

### Separate Unions: One Size Does Not Fit All

¶19 A common theme among respondents is the absence of combined unions that include all classifications of employees. The majority of respondents who reported having law library unions noted either that these unions were for library staff only or that they existed in two separate unions, one for law librarians and one for staff.<sup>4</sup> One possible explanation for the infrequency of combined librarian-support staff unions is the different education levels, interests, and responsibilities held by the two groups. For support staff, union membership is more attractive as it provides job security and bargaining power. Conversely, librarians often already have some sort of secure status.<sup>5</sup> In addition, law librarianship in academia almost universally requires professional certifications such as the MLIS (or equivalent), the JD, and a baccalaureate degree. These requirements make law librarianship a more specialized and professional field and afford librarians greater bargaining power.

### Slow Growth for Unions

¶20 It is very evident from those surveyed that there has been minimal growth of unions in academic law libraries.<sup>6</sup> As opposed to other academic libraries, many of which have unions representing their employees,<sup>7</sup> academic law libraries are still largely unrepresented by a union, with just 28 percent of respondents indicating the presence of a union. The majority of respondents (67 percent) indicated that no union, either for librarians or staff, existed at their law libraries.<sup>8</sup> The presence of unions at academic law libraries has not experienced much growth or change in recent years. Survey results indicated that the majority of existing library unions were formed decades ago, most from the 1960s to the early 1990s.<sup>9</sup>

¶21 Overall, it appears that union growth stagnated between 1993 and 2016.<sup>10</sup> Therefore, there is no question that academic law libraries have generally been slow to adopt unions. However, it is possible that in the near future academic law libraries will be more inclined to form unions as a method of protection against layoffs and downsizing. As law school enrollment declines and budgetary concerns

---

4. Of the 57 respondents to question 2 (Are librarians and support staff in the same union at your law library?), only 1 respondent, or 1.75 percent, indicated membership in one union.

5. For instance, tenure, academic appointments, and continuing status.

6. Two respondents indicated union formation in 2016 and 2017.

7. Kathleen de la Peña McCook, *Unions in Public and Academic Libraries: Appendix 2*, *ENCYCLOPEDIA OF LIBRARY AND INFORMATION SCIENCES* 5342, 5345 (3d ed. 2009).

8. Out of 130 respondents total, 87, or 67 percent, indicated no union membership, while 36, or 28 percent, indicated union membership for either librarians, staff, or both.

9. See Appendix B, tbl. 10.

10. There is a gap of 23 years between the last reported union formations in 2016–2017 and the next most recent union in 1993.

become more prevalent among institutions, unionization is one method of attempting to secure both staff and librarian positions against draconian university cut backs. Unions are one of the few forces that could protect employees from abusive university policies.<sup>11</sup> In their individual answers, many respondents specifically mentioned job security as a main benefit of unionization.

¶22 Further, it seems that for most directors, unions are generally viewed as somewhat useful organizations. Over half of all respondents indicated at least a partial pro-union attitude, with 54 percent responding that they saw some benefits to unionization.<sup>12</sup> Given this viewpoint, it would appear that many directors would be amenable to unionization in the law library.

### Relations with Staff

¶23 A key question concerning unionization is how forming a union will affect a director's relations with the staff and vice versa. While most directors purported to be pro-union, many conceded that there are serious flaws with unionization, such as creating an "us against them" atmosphere in the library. Of the responses to the question, "On balance, do you believe that unionization has improved or worsened your relations with your staff?," the majority of directors indicated mixed feelings. Six, or 10 percent, of respondents believed that relations between director and staff had worsened, while 49, or 82 percent, believed that relations were mixed.

¶24 Those that indicated that relations had been strained due to unionization noted that they felt the union protected some problematic behaviors. Respondents expressed concern over union protection of problem or underperforming employees most frequently.<sup>13</sup> Relatedly, another respondent noted the difficulty in rewarding high-performing staff. Also mentioned were unreasonable staff expectations and a polarized, inflexible workplace. One respondent observed that unionization also caused disproportionate responses to minor problems and formal conflicts emerging from minor issues.

¶25 Not all respondents viewed director-staff relations post-unionization so unfavorably. Five respondents indicated that unionization actually improved relations with staff members. Two of these five respondents stated that unionization provided better protection and raises for their employees. Standardized rules were also cited by two respondents as making benefits and working conditions fairer to all employees. In response to this question, the majority of respondents did not believe that relations with staff had been primarily harmed or benefited. Rather, 82 percent (or 49 out of 60 responses) believed that relations had both suffered and been helped by unionization. For instance, one respondent opined that some staff

---

11. Roy M. Mersky, *Administration of Academic Law Libraries*, in *LAW LIBRARIANSHIP: A HANDBOOK* 13, 59–60 (Heinz Peter Mueller & Patrick E. Kehoe eds., 1983).

12. Fifty-two, or 54 percent, of respondents answered they saw both benefits and disadvantages to unionization. Only 15, or 15 percent, clearly indicated perceiving mainly benefits from unionization. Twenty-three, or 24 percent, of respondents indicated only disadvantages associated with unionization.

13. In addition to similar responses to the survey's eighth question asking whether the respondents saw disadvantages to unionization, three respondents out of six total (or 50 percent) who perceived relations as worsening after unionization noted that protection of bad employees was a major problem.

were pleased with the union's rules whereas other staff members were not. Three respondents elaborated that staff grievances were no longer under the director's control but instead fell to the union. This removed responsibility from the director but also removed the director from playing a role in solving or mediating internal conflict. On the plus side, removing the director from grievance resolution may actually improve the director's relations with staff as the director is no longer seen as an arbiter of staff conflict but as an impartial observer.

¶26 Interestingly, three respondents indicated that relations with staff both initially improved and were later harmed because while unionization pleased the staff at first, the union's inefficiency ultimately proved harmful. Similarly, another respondent stated that the idea of the union was helpful in theory, but that it has had only a nominal impact in practice. Other respondents noted that unionization complicated relations with staff,<sup>14</sup> deprived directors from making small adjustments for their employees, and stunted employee professional growth.<sup>15</sup>

### Avoid or Be Encouraged by a Unionized Library?

¶27 This study sought to determine whether experiences or ideas about unionization would affect a director's career moves. Overall, it seems that the majority of directors<sup>16</sup> would not be swayed one way or the other by a library's unionization. However, a surprisingly high number of respondents (25, or 20 percent) indicated, "absolutely, I would avoid a unionized library."<sup>17</sup> The fewest responses (9, or 7 percent) indicated that they would be encouraged to pursue a position at a union shop law library.

¶28 These responses continue the trend of uncertainty or mixed feelings concerning unionization. Some of this ambivalence about unionization may be due to the fact that a majority of directors surveyed had little to no experience managing unionized librarians and staff. Indeed, most directors have never been a member of a union,<sup>18</sup> and very few are currently union members or have held union membership in the past.<sup>19</sup> One can then infer that attitudes concerning unions are unformed in most directors' minds or are based on hearsay or prior held biases. Those directors with union experience tended to have stronger feelings regarding whether they would consider a move to a unionized law library (either absolutely avoiding such a career move or being encouraged by the presence of a union). The uncertain feelings of directors without such experience would most likely be changed by exposure to a union, either as a manager or a member.

---

14. Three out of 49 respondents (6 percent).

15. The respondent who expressed frustration over the lack of professional development available to unionized staff also noted that working conditions did improve for staff after unionization.

16. Eighty-eight out of 122 (72 percent).

17. See Appendix B, tbl. 7.

18. See Appendix B, tbl. 8, reporting 84 percent of respondents (108 out of 129 total) have never held union membership.

19. *Id.* Out of 129 respondents, only three (or 2 percent) directors were current union members. Eleven percent (14 directors) were past union members. Four, or 3 percent, indicated "other," and noted alternative forms of membership or nonlibrary union membership.

## Conclusion

¶29 Unionization is certainly not the best solution for all professions or industries. In fact, such organized collective bargaining practices have been slow to catch on in law libraries. While other types of academic libraries have much more experience with unionization, academic law libraries are still overwhelmingly union-free shops. Some of the general conclusions drawn from this survey are as follows:

- Unionization is still relatively rare in academic law libraries, with only 28 percent of respondents indicating unionized staff or librarians. More than half, 67 percent of respondents, stated that there were no unions at their institutions.<sup>20</sup>
- A majority of academic law library directors have no experience either belonging to or managing a union. Eighty-four percent of respondents stated they had never belonged to a union, whereas only 11 percent stated they were a past union member and a mere 2 percent stated they are a current union member.
- A lack of experience with unions means that, at least in academic law libraries, attitudes toward unionization are still developing. Many negative and positive attitudes are not the result of experience, but stem from prior notions, hearsay, or personal biases.
- While some respondents felt strongly enough to indicate feeling only negative or positive emotions toward unions, most respondents had mixed feelings.
- Some of the most common issues with unionization in academic law libraries include administrative impracticability and inflexibility, lack of professional growth, internal conflict created from a tenuous work atmosphere, inefficiency of the union or redundancy when HR is capable of handling the same duties, the inability to reward high performing employees, and the possibility of protecting underperforming employees.
- Some of the most commonly reported benefits of unionization include greater job security, enhanced benefits, an equitable work atmosphere, and greater bargaining power for nonprofessional employees.
- Of those academic law libraries with unions, most contain a separate union for law librarians and support staff. In addition, more libraries reported unionization only for support staff.

¶30 In the future, the landscape of unionization in law libraries is likely to trend upward. As law school budgets and enrollments shrink, it is possible that employee benefits will be scaled back and cutbacks and layoffs will continue. The protection from abusive employer practices and the added job security is a definite benefit of unionization and one that will likely foster more support for unionization. In addition, the generally mixed feeling about unions may mean that directors and staff will be more open to creating a union shop at their law libraries. Very few respondents in the study felt strongly negative about managing unionized staff. Most, in fact, had little experience with unions thus far. Therefore, it seems that many direc-

---

20. It is likely that this number is slightly larger given that respondents who are not involved in unionized libraries were perhaps less likely to respond to these survey questions.

tors would be welcoming, or at least amenable, to the creation of unions for librarians and/or staff.

¶31 It is unclear whether librarian-only unions will continue to form at the same pace as support staff unions. The inclination from this study is that higher numbers of academic law librarians already possess some form of job security or bargaining power in comparison to support staff. Since this is the case, it is likely that more support staff unions (instead of librarian unions) will be on the increase. However, librarian-only unions may become more prevalent at institutions that do not afford any protective status to its librarians, and especially in those institutions where librarians have been victimized by forced layoffs, no pay raises, and other abusive treatment. Although many respondents indicated that they were pro-union in general, there seems to be a sense among many directors that librarian unions are unnecessary and ineffective in an academic law library setting. In particular, they are concerned about potential administrative problems in managing librarians who share a union with the main university's librarian union. There are also questions as to whether a union is better able to handle grievances and conflict resolution than human resources departments, which are often well equipped to perform these functions.

¶32 If unions continue to form in academic law libraries, and in this economic climate this is entirely possible, then directors will continue to gather experience with unionized employees. Hopefully, this study will help better prepare directors to think about how they must learn to work with these unions. Those strongly against unions, and even those with mixed feelings, must learn to cooperate with unions and union procedures. Directors must become more comfortable in relinquishing some authority for the good of employer-employee relations. When management demonstrates a willingness to work with and not against its employees, hostility can often be avoided. Open communication with employees and familiarity with collective bargaining agreement procedures will be key to running a harmonious unionized workplace. Paramount in dealing with unionized staff is to prevent an atmosphere that feels as though it is "us against them." Open and direct communication can prevent resentment or hostility from creeping into the law library. In addition, if the director has an effective working relationship with the union, then drafters of the union contract may take account of concerns expressed by the director and opt for more flexible terms. Finally, if unionization is to continue, directors and managers must learn to take the horror stories with a grain of salt and not fear the union. While unions do potentially present significant disadvantages to management, they can also be useful tools for creating job security, remove some of the management burden from directors' shoulders, and create a more egalitarian work environment that is beneficial to all. Over time, it is likely employees will feel more of a need for unionization and this trend will continue to grow. If it does, directors can face this challenge with preparedness, honest communication, and an open mind.

## Appendix A

### Survey Questions

#### Question 1

Are the librarians or support staff unionized at your law library? If your answer is “No,” please skip to Question 8 after responding.

- a. Yes, our librarians only
- b. Yes, our support staff only
- c. Yes, both our librarians and support staff
- d. No, neither our librarians nor our support staff
- e. Other (please specify)

#### Question 2

Are librarians and support staff in the same union at your law library?

- a. Yes, we have one union for everyone
- b. No, there separate unions for librarians and support staff
- c. Don't know
- d. Other (please specify)

#### Question 3

When was this union formed?

#### Question 4

What is the name of your union(s)? Where are the rules published? (OPTIONAL)

#### Question 5

If your library has a union, are any of the support staff or librarians not members?

- a. Yes
- b. No
- c. Don't know
- d. Other (please specify)

#### Question 6

How satisfied do your employees appear to be with their union?

- a. Don't know
- b. Very dissatisfied
- c. Somewhat dissatisfied
- d. Neutral
- e. Somewhat satisfied
- f. Very satisfied

#### Question 7

On balance, do you believe that unionization has improved or worsened your relations with your staff?

- a. Yes, they are improved
- b. No, they are worsened
- c. Other

**Question 8**

In your opinion as a manager and director, do you believe there are benefits to unionization? Are there significant disadvantages?

**Question 9**

Would the fact that a union exists deter you from seeking employment as a director in a law library that you were otherwise interested in?

- a. Absolutely, I would avoid a unionized library
- b. No, in fact, it would encourage me
- c. It would not affect my decision either way

**Question 10**

Are you now or have you ever been a member of a union (in the law library)?

- a. Yes, I am currently a union member
- b. Yes, I am a past union member
- c. No, I have never been part of a union
- d. Other (please specify)

## Appendix B

### Tables

**Table 1**

#### Number of Unionized Law Libraries<sup>21</sup>

Yes, there is a union	36 (28%)
No, there is no union	87 (67%)
Other	7 (5%)

**Table 2**

#### Breakdown of Unionized Law Libraries<sup>22</sup>

Librarians Only	1 (3%)
Support Staff Only	21 (58%)
Both	14 (39%)

**Table 3**

#### Division of Union<sup>23</sup>

Same Union for Librarians & Staff	1 (2%)
Different Unions	12 (21%)
Other	44 (77%)

**Table 4**

#### Optional Membership in Unionized Libraries<sup>24</sup>

Yes	11 (24%)
No	14 (30%)
Don't Know	2 (4%)
Other	19 (42%)

21. There were 130 responses to this question, indicating a 100 percent response rate.

22. These numbers are taken out of 36 total respondents.

23. There were 57 responses to this question, or a response rate of 44 percent.

24. Forty-six responses were collected for a response rate of 35 percent.

**Table 5**Satisfaction with the Union<sup>25</sup>

Don't Know	8 (20%)
Very Dissatisfied	0 (0%)
Somewhat Dissatisfied	1 (2%)
Neutral	12 (30%)
Somewhat Satisfied	17 (41%)
Very Satisfied	3 (7%)

**Table 6**Improved vs. Worsened Relations with Staff (Director's Opinion)<sup>26</sup>

Improved	5 (8%)
Worsened	6 (10%)
Other	49 (82%)

**Table 7**Union as a Deterrent in Employment<sup>27</sup>

Yes	25 (21%)
No	9 (7%)
Neutral	88 (72%)

**Table 8**Union Membership among Directors<sup>28</sup>

Yes, currently a member	3 (2%)
Yes, past member	14 (11%)
No, never a member	108 (84%)
Other	4 (3%)

---

25. Percentages are taken out of 41 total respondents.

26. A total of 60 responses were recorded.

27. There were 122 respondents for this question.

28. There were 129 total responses recorded for this question.

**Table 9****Benefits vs. Disadvantages of Unionization (Director's Opinion)<sup>29</sup>**

Mostly advantages	15 (15%)
Mostly disadvantages	23 (24%)
Both advantages and disadvantages	52 (54%)
Neither	7 (7%)

**Table 10****Union Formation Breakdown by Decade<sup>30</sup>**

Don't Know	28 (57%)
N/A	10 (20%)
2010–present	2 (4%)
2000–2010	0 (0%)
1990–2000	2 (4%)
1980–1990	2 (4%)
1970–1980	3 (6%)
1960–1970	2 (4%)
1950–1960	0 (0%)
1940–1950	0 (0%)
1930–1940	0 (0%)
1920–1930	0 (0%)
1910–1920	0 (0%)
1900–1910	0 (0%)
Total	49 <sup>31</sup> (38%)

29. Out of 130 total survey respondents, 97 answered this question for a response rate of 75 percent. Percentages for this table are taken from a total of 97 respondents.

30. Please note that percentages total 99% rather than 100% due to rounding.

31. Out of a total of 130 respondents, 49 responses to this particular question were recorded.

## Appendix C

### Academic Library Unions: A Selected Bibliography

- Anderson, Renee N., John D'Amicantonio, and Henry DuBois. "Labor Unions or Professional Organizations: Which Have Our First Loyalty?" *College & Research Libraries* 53, no. 4 (1992): 331–40.
- Applegate, Rachel. "Who Benefits? Unionization and Academic Libraries and Librarians." *Library Quarterly* 79, no. 4 (2009): 443–63.
- Hovenkamp, Tina Maragou. "Unionization and Job Satisfaction Among Professional Library Employees in Academic Research Institutions." *College & Research Libraries* 56, no. 4 (1995): 341–50.
- Kusack, James M. *Unions for Academic Library Support Staff: Impact on Workers and the Workplace*. Westport, Conn.: Greenwood Press, 1986.
- Lee, Deborah O., Kevin E. Rogers, and Paul W. Grimes. "The Union Relative Wage Effect for Academic Librarians." *Industrial Relations* 45, no. 3 (2006): 478–84.
- Weber, Mark. "Support Staff Unions in Academic and Public Libraries: Some Suggestions for Managers with Reference to the Ohio Experience, 1984–1990." *Journal of Library Administration* 17, no. 3 (1993): 65–86.



## Retrospective: 30 Lessons Learned (and a Few Strokes of Luck) at The Crossroads\*

James S. Heller\*\*

*According to legend, blues guitarist Robert Johnson sold his soul to the devil to be successful. This article traces a 40-year career in law librarianship full of unforeseen events, both bad and good decisions, and sometimes just good luck. Hopefully, the lessons learned along the way will make others' professional lives easier than Robert Johnson's.*

¶1 I suspect that few of you who are reading this thought you would have a career as a law librarian—or any type of librarian—when you were a child. Flash back to 1958:

Mommy: What do you want to be when you grow up, Jimmy?

Jimmy (age 8): I want to be a law school librarian, Mommy. It looks like fun. I can work with smart people who want to help other people and answer questions and teach and write articles and attend conferences and have 5 weeks of vacation every year.

It didn't happen that way, of course. But sixty years later, it would have been a good answer to my mom's question. And far more realistic than playing shortstop for the Detroit Tigers.<sup>1</sup>

¶2 In the next few pages I will tell you how I got to where I am today, a few months from my retirement. If you are thinking “musings of an old man,” I guess they are. But my goal is to share some of the things I learned during my 40 plus years as a law librarian.

¶3 As for the title, capitalizing the “T” in “The Crossroads” is not an error. We come to crossroads every day when we make decisions; some are minor, some are important. Others are *really* important, like decisions to quit or take a job. As for the article's style, the changes between past and present tense are intentional. This may not be grammatically correct, but I think it's more interesting this way.

¶4 I learned four major lessons during my career. They appear below in the “30 Lessons Learned,” but I want to emphasize them now. The first is Baseball Hall of Fame catcher Yogi Berra's line, “When you come to a fork in the road, take it.” Nike

---

\* © James S. Heller, 2018. The title is taken from one of my favorite albums, *RETROSPECTIVE: THE BEST OF BUFFALO SPRINGFIELD*, and the song *Crossroads* by Robert Johnson. Thanks to Fred Dingley, Michael Umberger, and Beta Labanish for reviewing the article. Credit any errors and anything you don't like about the article to me, not them.

\*\* Director of the Law Library, Professor of Law, and Professor of Public Policy at the College of William & Mary.

1. See *DETROIT TIGERS*, <https://www.mlb.com/tigers> [<https://perma.cc/PTY2-LFSQ>]; *Detroit Tigers*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Detroit\\_Tigers](https://en.wikipedia.org/wiki/Detroit_Tigers) [<https://perma.cc/Q95A-XPCS>].

put it another way: “Just Do It.” Use your best judgment—which often includes first seeking input from others—and make a decision. Usually you’ll be right. If you’re not, fix it. The second follows from the first: it’s fine to make mistakes, but try to learn something from them. The third is that many things in life are unplanned—including your career. Stuff happens. The last one is very simple: hire great people.

¶5 It may help to give you a brief outline of my career in reverse chronological order—sort of like the film *Memento*.<sup>2</sup> Here are some highlights:

- 1988–2018: Director of the Law Library and Professor at William & Mary
- 1983–1988: Director of the Law Library and Professor of Law at the University of Idaho
- 1980–1983: Head of the Civil Division Library, U.S. Department of Justice
- 1977–1980: Associate Law Librarian for Reader Services at George Washington University
- 1976–1977: Library student at UC Berkeley
- 1973–1976: Law student at the University of San Diego
- 1972–1973: Permanent substitute teacher at Central High School in Detroit<sup>3</sup>
- 1967–1971: Undergraduate student at the University of Michigan
- 1965–1967: Mumford High School, Detroit, Michigan<sup>4</sup>

Now let’s proceed in chronological order.

¶6 After getting my undergraduate degree at the University of Michigan in 1971, I traveled a bit and then took a job as a permanent substitute teacher at Central High School. While working at Central, I applied for a teaching job in Australia and to several law schools in California. (If you are from cold and dreary Detroit, it’s easy to be enamored with warm and sunny southern California.) Looking through the 1972 *Pre-Law Handbook*<sup>5</sup> I saw that there were three law schools in San Diego. Two looked promising, but I didn’t know which one was “better.” A friend of mine, who in 1972 was a 1L at Hastings, told me that USD was the better school. So that’s where I went. Let’s call this—

¶7 **Lesson #1 and Stroke of Luck #1:** Talk to someone who knows the answer—or knows someone who does. As for USD, I did pretty well and played in a band. Forty-five years later, my best friends are those with whom I went to law school.<sup>6</sup>

2. *Memento*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Memento\\_\(film\)](https://en.wikipedia.org/wiki/Memento_(film)) [<https://perma.cc/C7CD-T3NC>]; *Memento*, ROTTEN TOMATOES, <https://www.rottentomatoes.com/m/memento/> [<https://perma.cc/LE7P-P3AQ>].

3. Detroit’s first public high school, whose alumni include singer Anita Baker and former U.S. senator Carl Levin. See *Central High School (Detroit)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Central\\_High\\_School\\_\(Detroit\)](https://en.wikipedia.org/wiki/Central_High_School_(Detroit)) [<https://perma.cc/J67A-3A28>].

4. *Mumford High School*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Mumford\\_High\\_School](https://en.wikipedia.org/wiki/Mumford_High_School) [<https://perma.cc/2KM5-QNQQ>]. I had to mention Mumford because Eddie Murphy, as Alex Foley in the film *Beverly Hills Cop*, wears a “Mumford Phys. Ed. Dept.” t-shirt.

5. ASS’N OF AM. LAW SCHS. & LAW SCH. ADMISSION TEST COUNCIL, 1972–73 PRE-LAW HANDBOOK (1972).

6. The National Lawyers Guild chapter at the University of New Mexico Law School offers some pretty good suggestions on surviving law school. See *How to Survive in Law School . . . With Your Sanity and Principles Intact*, UNIV. OF N.M. SCH. OF LAW, <http://lawschool.unm.edu/students/organizations/nlg/survive.html> [<https://perma.cc/R3HW-D9YJ>].

¶8 Work study jobs were plentiful, and I ended up working at the USD Law Library circulation desk. Checked out and reshelfed books, filed BNA releases . . . the typical stuff we did in the days of print. During my second year my roommate and I got part-time jobs working for a solo practitioner. As a 3L, in addition to working for the lawyer, playing in the band, and working in the law library, I did an externship at the San Diego City Attorney Office.<sup>7</sup>

¶9 I was offered a job with the lawyer but wasn't excited about practicing law. I didn't think I had the temperament; juggling dozens of cases at the same time would keep me up at night. I enjoyed working in the law library under Myra Saunders,<sup>8</sup> who had just begun her career as head of circulation at USD. (Myra would attend law school at USD and eventually became director of the UCLA Law Library.) I had some conversations with Joe Ciesielski<sup>9</sup> (the director of the USD Law Library), with Myra, and with two bandmates who worked in the library (Joe Simpson and Larry Dershem) and thought, "maybe I'll be a law librarian." Maybe . . . maybe not.

¶10 Showing great commitment to a career in librarianship, I applied to only one library school—UC Berkeley. It was in-state and had a one-year program. To see whether I meant more to Berkeley than it did to me—a 3L's ego can be quite astounding—I told the school that I wouldn't take the GRE because I was a third-year law student and would then study for the California bar exam. Accept me and I'm yours. Reject me and I practice law. Berkeley accepted me and gave me a free education and a job as a work study student in the library at the Center for the Study of Law and Society.<sup>10</sup>

¶11 **Lesson #2:** Don't be afraid to ask. If someone says "no," you aren't worse off than you would have been had you not asked the question. This applies to negotiating with publishers, too; you often can get significant discounts for digital products.<sup>11</sup>

¶12 After taking the California bar exam, I went home to Detroit for a few weeks and took a side trip to Ann Arbor. I figured I'd pop into the University of Michigan Law Library and introduce myself to the director, Beverley Pooley,<sup>12</sup> whom I had never met.

7. See *Office of the City Attorney*, CITY OF SAN DIEGO, <https://www.sandiego.gov/cityattorney> [<https://perma.cc/59HS-YWXX>].

8. Myra Kathleen Saunders, *Faculty Profiles*, UCLA LAW, <https://law.ucla.edu/faculty/faculty-profiles/myra-kathleen-saunders/> [<https://perma.cc/5ALD-JNEW>].

9. Ciesielski served as director of the USD Law Library from 1969–1987 and then taught at the law school until his death in 1989 at age 49. See *Memorials*, 21 AM. ASS'N OF LAW LIBRARIES NEWSL. 240 (1990).

10. See *Center for the Study of Law & Society*, BERKELEY LAW, <https://www.law.berkeley.edu/research/center-for-the-study-of-law-society/> [<https://perma.cc/WEA3-527T>].

11. See Carolyn O'Hara, *How to Negotiate Nicely Without Being a Pushover*, HARV. BUS. REV. (Apr. 9, 2015), <https://hbr.org/2015/04/how-to-negotiate-nicely-without-being-a-pushover> [<https://perma.cc/V8P5-CXFM>]; *Copyright Crash Course: Negotiating with Publishers*, UNIV. OF TEX. LIBRARIES, <https://guides.lib.utexas.edu/copyright/negotiate> [<https://perma.cc/79DN-XF6X>]. You can find helpful information on negotiating, and dozens of other topics, in *ACADEMIC LAW LIBRARY DIRECTOR PERSPECTIVES: CASE STUDIES AND INSIGHTS* (Michelle M. Wu ed., 2015).

12. *History and Traditions: Beverley J. Pooley*, UNIV. OF MICH. LAW SCH., [https://www.law.umich.edu/historyandtraditions/faculty/Faculty\\_Lists/Alpha\\_Faculty/Pages/BeverleyPooley.aspx](https://www.law.umich.edu/historyandtraditions/faculty/Faculty_Lists/Alpha_Faculty/Pages/BeverleyPooley.aspx) [<https://perma.cc/WU9J-8CV5>].

Me: Hi. Is there a chance Ms. Pooley is here?

Law Library Desk Attendant: Oh . . . It's Mr. Pooley. Unfortunately he is out of town. Would you like to meet with Margaret Leary,<sup>13</sup> the associate law librarian?

Me: No, that's OK. Thanks anyway.

Yes, Beverley Pooley was a man, born in England, where Beverley was not an uncommon male name.<sup>14</sup> And if I couldn't talk to the director, I wasn't going to talk to anyone. So thank you, but no. I don't need to meet Margaret Leary.

¶13 *Lessons #3(a) and (b)*: Don't be cocky, and do your research. I should have known that Beverley Pooley was a man, and I should have been excited to meet with Margaret. She succeeded Pooley as director at Michigan and served as AALL president in 1988–1989.

¶14 In August 1976, after taking the California bar exam, I moved to Oakland to work toward my MLS at UC Berkeley.<sup>15</sup> I knew that Myron Jacobstein<sup>16</sup> was the director of the Stanford Law Library because we used the book *Fundamentals of Legal Research* that he coauthored with Roy Mersky<sup>17</sup> in our 1L Legal Research class at USD. I also knew that Prof. Jacobstein was pretty important in the law library profession; he was vice president/president-elect of AALL in 1977–1978 and would serve as president in 1978–1979. Before I left San Diego, I sent a letter to Prof. Jacobstein explaining that I had finished law school at USD, would soon attend library school at Berkeley, and hoped to meet him before classes began in September. Prof. Jacobstein graciously invited me to check in with him when I got to Berkeley and asked me to send him my résumé.

¶15 After getting established in Oakland, I put on my only pair of khaki pants and a button-down shirt, drive down to Palo Alto, go to the law library, and see Prof. Jacobstein's secretary. She does the intercom thing on the phone, tells him that I am waiting outside, and a minute later he opens his door and welcomes me to Stanford. I enter his office and sit down.

13. *Faculty Biographies, Leary, Margaret A.*, UNIV. OF MICH. LAW SCH., <https://www.law.umich.edu/FacultyBio/Pages/FacultyBio.aspx?FacID=mleary> [<https://perma.cc/VVM9-U2UH>].

14. But in the twenty-first century, "Beverley" has grown out of fashion. Sarah Young, *36 Baby Names Are at Risk of Extinction in the UK*, INDEPENDENT (Mar. 30, 2017), <http://www.independent.co.uk/life-style/baby-names-extinct-uk-2017-dying-out-sally-donna-nigel-sharon-debra-derek-geoffrey-maureen-roy-a7658531.html> [<https://perma.cc/PZ5C-8WJM>].

15. Berkeley no longer offers the MLS degree. The School of Librarianship has gone through several name and programmatic changes: School of Library and Information Studies (SLIS) in 1976, School of Information Management and Systems (SIMS) in 1994, and School of Information in 2006. *History*, BERKELEY SCH. OF INFO., <https://www.ischool.berkeley.edu/about/history> [<https://perma.cc/WH2C-D7MA>].

16. Jacobstein worked at Columbia and the University of Colorado before becoming director of the Stanford Law Library in 1963. See *Joseph Myron (Mike) Jacobstein, 1920–2005, Hall of Fame Induction: 2010*, AALL, <https://www.aallnet.org/inductee/josephjacobstein/> [<https://perma.cc/LG23-CEGG>]; Morris Cohen, *Remembrances of J. Myron Jacobstein*, 97 *LAW LIBR. J.* 641, 2005 *LAW LIBR. J.* 39; *J. Myron Jacobstein, Longtime Law Professor and Law Librarian, Dead at 85*, STANFORD NEWS SERV. (Apr. 12, 2005), <https://news.stanford.edu/pr/2005/pr-jacob-041305.html> [<https://perma.cc/X6K4-384B>].

17. *In Memoriam, Professor Roy M. Mersky 1925[–]2008*, UT NEWS (May 7, 2008), <https://news.utexas.edu/2008/05/07/in-memoriam-professor-roy-m-mersky-19252008> [<https://perma.cc/ZN26-4R6E>]; see also WILLIAM J. CHRIS, ROY M. MERSKY: AN ORAL HISTORY INTERVIEW (2008); *Roy M. Mersky, 1925–2008 Hall of Fame Induction: 2010*, AALL, <https://www.aallnet.org/inductee/roymersky/> [<https://perma.cc/L6ML-TEZE>].

Jacobstein: It's nice meeting you, Jim. But I have to say that I'm a little disappointed.

Me: [Speechless. What did I do wrong? Should I have worn a tie? Was my shirt improperly buttoned . . . my zipper open?]

Jacobstein: When I received your résumé in the mail I saw that you were from Detroit. I also was raised in Detroit. And then I saw that you taught at Central High School. I went to Central about 40 years ago. And then, after talking to you on the phone, I was certain you were black. I was excited; we need more minorities in our profession.

¶16 Well, there was nothing I could do about that. Our conversation continued as one might guess. Prof. Jacobstein asked about growing up in Detroit. I told him that I graduated from Mumford High, and that my mother went to Central. (Apparently he and my mom overlapped for a year or two.) It was a pleasant conversation, and six months later I was taking the legal research class he taught in Berkeley's MLS program. It so happened that Prof. Jacobstein took ill for a week or two and asked me to substitute-teach the class. I can't recall exactly what topics I covered, but it probably was the very nearsighted (me) teaching the blind (my classmates).

¶17 *Stroke of Luck #2*: I meet an important law librarian, we're both from Detroit, and he and my mom graduated from the same high school where I taught many years later.

¶18 I'm now in library school at Berkeley and working 10 hours a week in the library of the Center for the Study of Law and Society. It's early 1977; time to search for a job. Two opportunities in academic law libraries look somewhat appealing: a reference librarian position at Louisiana State University and head of reader services at George Washington University. I also receive a phone call from Roy Mersky at the University of Texas inviting me to come to Austin—at my expense. I tell Prof. Mersky (years later I call him “Roy”) that I can't afford to pay for a flight to Austin, and think that's the end of it. I had yet to learn how Roy Mersky operated.

¶19 Lance Dickson,<sup>18</sup> the director at LSU's Law Library, invites me to interview in Baton Rouge. I happily accept. Within 24 hours I receive a call from Roy at UT:

Roy: I understand that you are going to interview at LSU. You can piggyback a flight to Austin when you go to Baton Rouge, and I'll pay for it.

Me: That sounds fine, Prof. Mersky. But I'll first have to check with Prof. Dickson to see if it is OK with him.

Roy: I already talked to Lance. It's fine with him.

¶20 I call Lance, who verifies that this is OK. (He is one of many law library directors who early in their careers worked for Roy.) I visit Baton Rouge and am very impressed with Lance and the LSU Law Library. I'm not familiar with the Deep South, however. When we leave the library at the end of the visit, Lance wants to impress me with their historic collection. He pulls a worn leather-bound book from the shelf, opens it up, and out falls a large (and thankfully dead) cockroach.<sup>19</sup>

¶21 It was then on to Austin. The staff seemed impressed that UT paid for me to come to Austin, as that wasn't Roy's *modus operandi*. Neither were hotels. Bob

---

18. Dickson left LSU in 1987 to assume the directorship at the Stanford Law Library. See *Lance E. Dickson*, STANFORD LAW SCH., <https://law.stanford.edu/directory/lance-e-dickson/> [<https://perma.cc/Y3FU-5ZAH>].

19. See Harry Ransom Center, *Approaches to Insect Problems in Papers and Books*, UNIV. OF TEX. AT AUSTIN, <http://www.hrc.utexas.edu/conservation/resources/insects/> [<https://perma.cc/QNL3-43T7>].

Berring<sup>20</sup> was the deputy at UT, and I stayed at his house during my visit. I thought it was a bit strange that I didn't know what job I was interviewing for; apparently Roy's staff didn't either. It looked like Roy was checking me out, probably at the recommendation of Mike Jacobstein. In later years, Roy would tell me that I was the only person who turned him down for his or her first job as a law librarian. I told Roy that he never offered me a job.

¶22 Sometime that spring, a reference librarian position opened up at Boalt. I had gotten to know Bob Doyle,<sup>21</sup> the head of reference services, quite well. It was arranged that I would have that job come August. I called to thank Lance Dickson for offering me a job at LSU, but told him that I would begin my career at Berkeley. I also called Roy to tell him that I'd be at Berkeley. (I guess I could have said that I wouldn't accept the job he hadn't offered me.) I hadn't heard back from George Washington, so I didn't have to call Hugh Bernard, the director.

¶23 Life is looking good; I would stay in California, keep my apartment in Oakland, and have a job at one of the best law libraries in the United States working with Bob Doyle. In June I would finish library school and head back to Detroit to visit family and old friends for a few weeks.

¶24 Before I left for Detroit, I asked Bob Doyle about a contract. Bob told me they'd have one for me pretty soon. On to Detroit, where a strange thing happened: I get a letter from Mr. Bernard offering me a job as head of reader services at GW. Strange because (1) I had never heard back from GW after submitting my application months earlier; (2) I hadn't interviewed at GW, in person or over the phone; and (3) why would they hire me, fresh out of school, as a department head?

¶25 I again called Bob Doyle about a contract. Bob told me they should have it for me when I returned to Berkeley at the end of July. Knowing about birds and hands, I called Hugh Bernard, thanked him for the offer, and asked if I could have two weeks to decide. A few days later I bought a used Plymouth, picked up two people in Ann Arbor who wanted a ride to California and would share gas bills, and headed west on I-94.

¶26 I got to Oakland Thursday, July 28, with an appointment to meet with Bob the next morning, planning to sign the contract and begin work on Monday, August 1. When I saw Bob Friday morning and his first words were "Let's go have a cup of coffee," I figured something wasn't right. It wasn't. Someone who was interested in the reference librarian position filed a complaint because the law library hadn't advertised the position. Bob said (1) I couldn't start work on Monday; (2) they would re-advertise the position; and (3) they still hoped to hire me.

¶27 I called Mike Jacobstein at Stanford to seek his counsel. After telling Mr. Jacobstein (I always called him "Mr. Jacobstein") what just happened and that I had an offer from GW, he said "Go to GW."

¶28 I went to Bob's office and told him I was going to GW. I also said that I wanted to meet with his director, Val Mostecky. Summoning up everything I learned in the contracts class I took at USD a few years earlier, I told Mr. Mostecky that I

---

20. Robert C. Berring, Jr., *Faculty Profiles*, BERKELEY LAW, <https://www.law.berkeley.edu/our-faculty/faculty-profiles/robert-berring/> [<https://perma.cc/N5T5-XGL6>]; see also HeinOnline, *Interview with Robert C. Berring by Patrick Kehoe, Oral History of Law Librarianship*, YouTube (Oct. 24, 2013), <https://www.youtube.com/watch?v=A0DEYvmQM8w> [<https://perma.cc/6KAR-6BX2>].

21. Francis R. (Bob) Doyle, 1938-, *Hall of Fame Induction: 2010*, AALL, <https://www.aallnet.org/inductee/francisdoyle/> [<https://perma.cc/9VAD-Q5YY>].

relied on assertions that I would have a job at Berkeley, had to pack up and move 3000 miles to Washington, D.C., and was financially harmed by what had transpired. Within an hour I had a check in my hand. Time to pack up and head east.

¶29 **Lesson #4:** If a bird flies into your hand (the offer from GW), don't let it fly away or crush it; you may need it later.

¶30 I now have two cars in Oakland: the Plymouth I bought in Detroit a few weeks ago and my 1967 Chevy Nova. Within a week I sell the Chevy, get out of my lease, say goodbye to some friends, and call my friend Joe Simpson in San Diego (Joe was head of technical services at the USD Law Library and the bass player in our band) and ask if he wants to drive to D.C. with me. Joe says "sure." I get a trailer hitch for the Plymouth, put my stuff in a U-Haul, and head down Highway 1 toward San Diego.

¶31 We left San Diego on August 16, 1977—the day Elvis died. We drove east on I-40, taking a photo of ourselves standing on a corner in Winslow, Arizona.<sup>22</sup> A few days later we landed in Washington, D.C. I'd begin work at GW in less than a week and had to find a place to live.

¶32 I happen upon an apartment complex in Glover Park. Ms. Jones, the kindly middle-aged manager of the complex, says, "I'm sorry, but we don't have anything available and we have a long waiting list." I engage in some casual conversation with Ms. Jones, making sure to tell her that I'm a librarian who will start work at GW in a few days. She opens up a notebook, thumbs through it for a few seconds, and says, "You're in luck. We do have an available apartment."

¶33 **Lesson #5:** Landlords like to rent to librarians. They think we're bookish and quiet.

¶34 It's my first day at work at GW as associate law librarian for reader services. My work space is a cubby adjacent to the circulation desk, which is on the third floor of the Jacob Burns Law Library, a facility not at all designed for students. I'm in charge of circulation, interlibrary loans, reference . . . and serials control. Why serials was part of Reader Services I didn't know, but I never questioned it. Reference was me; there were no other reference librarians on GW's staff, although the associate director, Bob Bidwell, enjoyed helping when he had time.

¶35 That afternoon I walk around the library and see a wall full of books bound in blue buckram: the *Federal Register*. Standing in front of the books is a fellow dressed in a suit and tie who appears to be about 30 years old. He looks confused, so I ask whether he needs some help.

Man in suit: I'm trying to find the index to the *Federal Register*, but don't see it here.

Me: I don't think there is an index to the *Register*.

Man in suit: I'm pretty certain there is.

Me: I don't think so.

Man in suit: Who *are* you?

The man in the suit was Jim Hambleton.<sup>23</sup> Jim was a librarian at Arnold & Porter going to GW's law school at night. He knew a whole lot more about legal research than I did.

---

22. Our band is called Winslow Ridge, named after the Eagles' song *Take it Easy*. See *Standin' on the Corner Park*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Standin%27\\_on\\_the\\_Corner\\_Park](https://en.wikipedia.org/wiki/Standin%27_on_the_Corner_Park) [<https://perma.cc/KZ33-EZ6B>].

23. *An Oral History of Law Librarianship: James E. Hambleton*, HEIN BLOG (Nov. 17, 2016), <https://www.wshein.com/blog/2016/11/17/an-oral-history-of-law-librarianship-james-e-hambleton/> [<https://perma.cc/JRQ3-AUPX>].

¶36 *Stroke of Luck #3*: Meeting Jim Hambleton, who has been a close friend for 40 years. *Lesson #6*: Try to help people. Even when you can't answer their question right away—or make a fool of yourself—you will learn something. And you may find a new friend.

¶37 Hugh Bernard was a supportive director. Within a short period of time he agreed to our hiring two new reference librarians, one specializing in government documents, the other in audio-visual support. New to the law school and trying to promote my being there, that fall I began writing a humorous (at least I thought it was) research column in the law school newspaper called “In Between the Sheets.” Borrowing from the Rolling Stones,<sup>24</sup> I wrote in the first article, “The title of the column is self-explanatory—all answers can be found in between the sheets of paper in any number of legal publications.” Not long thereafter, the editor of *Law Library Lights*, the newsletter of the Law Librarians' Society of Washington, D.C. (LLSDC),<sup>25</sup> asked whether they could add “Sheets” as a regular column in the newsletter. Of course I readily agreed.

¶38 *Lesson #7*: If you write something, someone may actually want to publish it.

¶39 I attended my first AALL Annual Meeting in Rochester, New York, in July 1978. AALL used to have three-day institutes, and I went to one in Buffalo that was held right before the Rochester meeting. AALL limited the number of attendees at the institutes, and there were maybe sixty to seventy in Buffalo. The institutes were a great way for someone new to the profession to start out. In Rochester I hung out with several people I met in Buffalo, and did so at AALL meetings many years thereafter.

¶40 Roy Mersky coordinated the Buffalo institute. At the closing dinner Roy had the attendees come to the podium where he passed out certificates and made a few comments. More formal clothes were appropriate for an event like this, and I was wearing the only suit I owned—a horrible plaid number. Roy calls my name, I come up to get my certificate, and Roy says in the microphone “somewhere in Texas there's a horse that's very cold tonight.” I bought a new suit when I returned to D.C.

¶41 The years of 1978 and 1979 were auspicious ones. We had great luck with the law library's first two college interns, Eileen McCarrier for the fall 1978 semester, and Janet Crowther for spring 1979. Their experience at GW working mostly with Reference/Audio-Visual Librarian Kathy Larson confirmed their interest in librarianship, and both have had successful careers.<sup>26</sup> In 1979 I also hired several GW law students to work in our library. Just about all of them followed me to the

---

24. See (or hear) the Rolling Stones' song *Live with Me* from their 1969 album LET IT BLEED, [https://en.wikipedia.org/wiki/Live\\_with\\_Me](https://en.wikipedia.org/wiki/Live_with_Me) [<https://perma.cc/2ZHK-UDRG>].

25. LAW LIBRARIANS' SOC'Y OF WASH., DC, <http://www.llsdc.org/> [<https://perma.cc/PH6C-YNDZ>]. LLSDC's newsletter archive goes back only to September/October 1998.

26. After I went to the Civil Library at DOJ in February 1980, Eileen followed later that year and became the assistant Civil Division librarian. She is manager of research services at Pillsbury, Winthrop Shaw Pittman in McLean, Virginia. After her internship at GW, Janet went to the U.S. Court of Claims/Court of Customs Appeals, to Kirkland & Ellis (both D.C. and Chicago), to the Idaho State Library, and to the Williamsburg Regional Library, where she's the deputy director. If you're wondering why Janet has lived in both Moscow, Idaho, and Williamsburg, Virginia, it's because we got married thirty-two years ago. *Stroke of Luck #4*: (Get really good interns.); *Lesson #8*: (Marry one of them.)

Department of Justice after I began working there in February 1980. Two, Donna Bausch<sup>27</sup> and Linda Corbelli,<sup>28</sup> became law librarians.

¶42 **Lesson #9:** Hire smart, hard-working students, give them interesting things to do, and they may follow the same career path as yours. (If you missed Lesson #8, it's in note 26.)

¶43 I left GW in February 1980 after a couple of interesting experiences with the law faculty and library administration. One day in the spring of 1979, while having coffee in the library's seventh floor lounge, I heard yelling coming from Mr. Bernard's office around the corner. I went to see what the commotion was about, and there was one of the faculty members whom I'll call Prof. H: "How would *you* like it if someone did this to your office?" he yelled, then put his meaty arm on Bernard's desk and swept it clean. Mr. Bernard was not young, and he wasn't big. Here's how I recall the conversation:

Me: Excuse me. Is there anything I can help with?

Prof. H: Who are you?

Me: I'm Jim Heller, the head of public services.

Prof. H: Are you the one who had a student come into my office?

Me: Yes. We do an annual inventory of books in faculty offices. I sent all faculty members a memo and asked you to let me know if you wanted to be in your office when the inventory takes place.

Prof. H: I'll get you.

¶44 As Prof. H lunges at me, Mr. Bernard comes up from behind, puts Prof. H in some kind of judo hold, and drives him out the door. This was quite a feat; Prof. H was probably 5'6" and weighed 200 lbs. Mr. Bernard was about 5'6" and weighed 130. As he's being unceremoniously escorted from the library, Prof. H yells at me, "I have a gun in my office and I'll use it if I have to."

¶45 **Lesson #10:** Don't tangle with someone a lot smaller than you; he may know judo . . . or worse.

¶46 Mr. Bernard told me not to worry about Prof. H; he wouldn't shoot me. I made an appointment to speak with Jerome Barron,<sup>29</sup> the dean of GW's law school, who pretty much told me the same thing. I contacted GW's personnel department (like every other place, it's called Human Resources now), and they told me that while a faculty member or a student could file a complaint against a professor, a staff member had no such right. So I contacted the university police. They visited Prof. H's office and confiscated the gun that was in his desk.

¶47 **Lesson #11:** You don't have to take "no" for an answer.

¶48 What prompted me to leave GW was an incident that happened later that fall. Sometime in mid-November 1979, on a Monday, Mr. Bernard calls and asks me to come to his office.

27. Donna is the law librarian for the Norfolk Law Library and executive director of the Norfolk & Portsmouth Bar Association.

28. Linda is a research librarian at the Supreme Court of the United States Library. She held prior positions at the Executive Office of the President Law Library, the Association of the Bar of the City of New York, and the Law Library of Congress.

29. *Jerome A. Barron*, GW LAW, <https://www.law.gwu.edu/jerome-barron> [<https://perma.cc/9SE3-J6J5>]; see also *Jerome A. Barron*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Jerome\\_A.\\_Barron](https://en.wikipedia.org/wiki/Jerome_A._Barron) [<https://perma.cc/9AAP-DHPT>].

Mr. Bernard: Mr. Heller, your future at GW hangs by a shoestring.

Me: Excuse me?

Mr. Bernard: Your future here hangs by a shoestring because of what happened this weekend.

Me: I have no idea what you're referring to.

Mr. Bernard: Prof. X just came into my office, and he told me that you had a student call him at his home to ask about a book that the professor had checked out from the library.

Me: I don't know what you are talking about.

Mr. Bernard: Did you tell a student that Prof. X had checked out a book the student wanted, and then gave the student his phone number?

Me: No. I don't know anything about this.

Mr. Bernard: I'm sorry then. Maybe you can find out what happened.

¶49 Apparently a law student came to the circulation desk that past weekend when one of our student workers was staffing the desk. The student couldn't find a particular book in the stacks, so he asked the circulation desk student whether it was checked out. The circulation desk student looked through the manual records (we kept a cardboard card in the back of a book; when the book was checked out we put the card in a file box at the circulation desk) and found that the book was checked out to Prof. X. The student who wanted the book, on his own accord, called Prof. X at his home and asked when he planned to be done using it. Prof. X was so upset that a student phoned him at home that he complained to Mr. Bernard.

¶50 After having my boss accuse me of something that I didn't do—or even know anything about—I went to my desk and typed a resignation letter. It probably went something like this: “I hereby resign my position as Associate Law Librarian for Reader Services effective February 22, 1980. Thank you for the opportunity to work at GW. I learned a great deal in this, my first professional job.” I put the letter in an envelope and delivered it to Mr. Bernard. (I picked February 22 for two reasons: first, it was George Washington's birthday so I thought that was kind of clever; second, it gave me three months to find another job.)

¶51 A short time later Mr. Bernard called, apologized, and asked me to withdraw my resignation. I told him I wouldn't. Mr. Bernard must have spoken to the dean, because the next day Jerome Barron asked me to come to his office where he, too, asked me to reconsider. I gave Dean Barron the same answer I gave Mr. Bernard. I was leaving GW.

¶52 *Lesson #12*: It's much easier to quit a job without another one lined up if you don't have responsibility for other people, like a spouse and/or kids. I don't recommend this for everyone, but three decades later both of my sons did the same thing.

¶53 The best-connected law librarian in Washington, D.C., in 1979 was Maureen Moore,<sup>30</sup> head librarian at the U.S. Department of Justice. A few days after I resigned my phone rings.

Maureen: Hi Jim. This is Maureen Moore. I understand you are leaving GW.

Me: Hi Maureen. How do you know? This just happened.

Maureen: I have my ways. Are you free for lunch sometime next week?

---

30. See AALL, *Maureen M. Moore*, REFLECTIONS ON LAW LIBRARIANSHIP: A COLLECTION OF INTERVIEWS 195 (1988).

At that lunch Maureen offered me a job as the head of DOJ's Civil Division Library, explaining that it could use some new blood. In February 1980 I joined DOJ—and at a huge salary increase.

¶54 I learned a lot during my two and a half years at GW, often by making mistakes. Most important, I learned that I had a lot to learn. There would always be people who knew more than me, and they invariably were willing to share what they knew. I tried to do the same. At GW, I wanted our student workers to learn all sorts of things—especially about legal research. When I was trying to answer a research question and student assistants were around, I'd ask them to come with me and we would work on the problem together. (Remember that legal research was done in print sources, so we would move around the library to locate the necessary materials.) A half dozen GW law students followed me to DOJ, as did Kathy Larson, who became head of DOJ's Civil Rights Division Library in April 1980.

¶55 So now I'm at DOJ. The 300+ Civil Division attorneys are spread among three buildings. The Main Justice Building on Pennsylvania Avenue houses the Federal Programs and Appellate staff; the Torts and Commercial Litigation units are in separate buildings a few blocks away. The "home" of the Civil Division library is in the main building. My first day I walk around, introduce myself to the lawyers and other DOJ librarians, and sit down with Maureen Moore to get a sense of how the main and division libraries operate and what she expects of me.

¶56 The Civil Division library needed work. The collection was not properly maintained, and the attorneys were getting little help from the staff. An example about the collection: I had a large office, and there was a locked door within it. One of our staff members was a young man named Charles.

Me: Charles, what's in the closet?

Charles: Your office key should open it. But when you do, stand back.

¶57 I unlock the door. Books and boxes pile out. I look in. Hundreds of never-opened boxes, pocket parts, and shrink-wrapped books. For the last couple of years, newly received volumes for titles like the *USCA* and West digests were thrown into the closet, along with issues of the *Congressional Record* and *Federal Register*, pocket parts, CCH releases, and the *DOJ Manual*. Civil Division attorneys were using materials one or two years out of date. Then again, maybe they weren't; maybe they gave up some time ago and were using the Antitrust Library across the hall or the main DOJ library.

¶58 The first order of business was telling the attorneys that the library's collection would soon be in good shape. With the help of a couple of students who followed me to DOJ we got everything updated within a few weeks and promoted the fact that the collection was current and the staff was there to help.

¶59 **Lesson #13:** Libraries are like restaurants. A restaurant that has a nice (or at least interesting) atmosphere, good food, and good service will have new—and repeat—customers.

¶60 Besides offering a current collection and solid research assistance, we did other things to get more customers. The Civil Library collection was shelved in a long corridor outside my and a lot of attorneys' offices. That corridor was the "highway" for the Civil Division; it led to the Great Hall of Justice on one end (the Hall featured two partially nude statutes that former attorney general John Ashcroft

covered with drapes in 2002),<sup>31</sup> and to more lawyers' offices on the other, including the assistant attorneys general and other supervisors.

¶61 Outside my office, attached to one of the shelf ends about seven feet from the floor, was a rectangular sign holder. Every morning I placed a piece of cardboard in the sign with a Latin word or phrase on one side and an English translation on the other. Depending on what side of the corridor you were coming from, you could try to translate Latin to English, or English to Latin. Knowing that many people were sports fans, in the morning I clipped the baseball, football, basketball, and/or hockey results and standings from the *Washington Post* and taped it to the end panel under the English/Latin sign.<sup>32</sup>

¶62 Signs and scores worked pretty well, but we had to establish a reputation for good and prompt research. It didn't take long to see that one of our staff members was not well suited for the job. DOJ head librarian Maureen Moore agreed. She moved that person to a different division, and we hired Eileen McCarrier, our first library intern at GW who was finishing her library degree. Pretty soon we were running at full speed.

¶63 **Lesson #14:** If you want to lead a horse to water, you must have water.  
**Lesson #15:** If you want the horse to drink, have good water.

¶64 While I was at Justice I joined the AALL Copyright Committee. I can't recall why, but Lolly Gasaway,<sup>33</sup> director of the University of North Carolina Law Library who was chairing the committee, may have asked me. Someone—maybe Lolly—asked me to write a report for AALL to the U.S. Copyright Office on the King Research study on library copying.<sup>34</sup> So I did. Then Roger Jacobs,<sup>35</sup> who was the librarian of the Supreme Court of the United States at that time and served as AALL president from 1981–1982, suggested I submit it to *Law Library Journal* for publication. And the *Journal* published it.<sup>36</sup> I learned a lot more about copyright and libraries, which is mainly what I wrote and talked about for the next 30 years.

¶65 **Lesson #16:** When you come to a fork in the road, take it. (Yogi Berra)<sup>37</sup>

¶66 The DOJ job was great—and I also got to play shortstop on the Civil Division softball team. But I wanted to get back to academia and began to look for law school jobs after a couple of years. It took a full year, after interviewing at several law schools, to finally find a good fit at the University of Idaho College of Law.<sup>38</sup>

31. *Cover-Up at Justice Department*, CBS NEWS (Jan. 29, 2002), <https://www.cbsnews.com/news/cover-up-at-justice-department/> [<https://perma.cc/84PN-AWKM>]. The drapes came off three years later. Dan Eggen, *Sculpted Bodies and a Strip Act at Justice Dept.*, WASH. POST (June 25, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/24/AR2005062401797.html> [<https://perma.cc/X2KD-LC2C>].

32. A decade later at William & Mary we hired a local company to bring in and staff a muffin and coffee cart in the library lobby. Different product but same effect: it brought people in.

33. *Laura N. Gasaway*, UNC SCH. OF LAW, <http://www.law.unc.edu/faculty/directory/gasawaylauran/> [<https://perma.cc/V97R-B5J5>].

34. KING RESEARCH, INC., *LIBRARY PHOTOCOPYING IN THE UNITED STATES: WITH IMPLICATIONS FOR THE DEVELOPMENT OF A COPYRIGHT ROYALTY PAYMENT MECHANISM, A SUMMARY* (1978).

35. *Roger Jacobs*, UNIV. OF NOTRE DAME, THE LAW SCH., <https://law.nd.edu/directory/roger-jacobs/> [<https://perma.cc/R3F3-257T>]; see also AALL, *supra* note 30, at 117 (*Roger F. Jacobs*).

36. James S. Heller, *Report to the Copyright Office by the American Association of Law Libraries*, 75 LAW LIBR. J. 438 (1982).

37. *Yogi Berra*, WIKIQUOTE, [https://en.wikiquote.org/wiki/Yogi\\_Berra](https://en.wikiquote.org/wiki/Yogi_Berra) [<https://perma.cc/6ESV-DWVT>] (noted as a misattribution).

38. COLL. OF LAW, UNIV. OF IDAHO, <https://www.uidaho.edu/law> [<https://perma.cc/VU6H-QBVL>].

¶67 A couple of unsuccessful interviews stand out. I'll call them Law School A and Law School B. Law School A arranged what I'll call a "passive interview" for the library director position. For a couple of hours I was told to sit in a small room where faculty who wanted to see me would stop by; fewer than 10 did. Either the faculty weren't interested in me, they weren't interested in the next law library director, or they weren't interested in the library. Any of these by themselves would be fatal, and I withdrew my application.

¶68 Law School B was a unit of a religious university. A day after returning home from the interview I received a phone call from one of the associate deans telling me that the law school would not consider me further. When I asked why, he told me that I said "Jesus Christ" during my presentation to the faculty. I clearly wasn't a good fit for them.

¶69 **Lesson #17:** Before you take a job, make sure that you are a good fit for the institution, and that the institution is a good fit for you.

¶70 The University of Idaho<sup>39</sup> was perfect. I was ready to leave D.C., and Moscow<sup>40</sup> seemed like a great college town. I was hired to take over from a fine gentleman named Walter McLeod, who was retiring as law library director. The small law school was the right size for a new director: 300 students, fewer than twenty faculty, and a nine-person library staff.

¶71 At Idaho you could get things done. If you wanted to see the dean, just pop in. If you wanted control over teaching legal research to the 1Ls, you came to the right place. I think I was able to add a bit of energy to a very good and experienced staff.

¶72 **Lesson #18:** Energy is contagious. Staff feed on it, and it spreads to those who use your library. It was true at GW, at DOJ, and at Idaho.<sup>41</sup>

¶73 Being close in age to the students (I was 33) helped me relate to them, but as I got older I found it wasn't critical. Humor certainly helps. Both at GW and Idaho I introduced myself to the 1Ls by showing them that I was in their shoes not long ago, and that while the first year of law school can be stressful, if I got through it they would, too. I had an old backpack I used in law school, filled with a Frisbee, a couple of old Gilbert outlines, a baseball glove, a tennis racket, a Wiffle Ball, a harmonica, a Sports Illustrated magazine, a couple of empty beer cans, and a few other things I can't recall. At orientation I showed the 1Ls my backpack, told them that in it was what it held when I finished law school in May 1976, and then took out each item. It wasn't *all* true, but it made the new law students relax, laugh, and know that I was on their side.

¶74 I also told the GW and Idaho students—and tell the William & Mary students to this day—about an experience I had in civil procedure class my first semester at USD. Our civil procedure professor was a fellow named Ed Philbin,<sup>42</sup> a former

39. UNIV. OF IDAHO, <https://www.uidaho.edu/> [<https://perma.cc/9WSJ-DP48>].

40. MOSCOW, IDAHO, OFFICIAL WEBSITE, <https://www.ci.moscow.id.us/> [<https://perma.cc/3FNA-TBA8>]; *Moscow, Idaho*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Moscow,\\_Idaho](https://en.wikipedia.org/wiki/Moscow,_Idaho) [<https://perma.cc/VE8Q-YSYG>].

41. Joseph Folkman, *Mood and Engagement Are Contagious*, FORBES (Apr. 2, 2014), <https://www.forbes.com/sites/joefolkman/2014/04/02/mood-and-engagement-are-contagious/#4ea1d0275529> [<https://perma.cc/DLZ8-EKK3>]; see also John Rampton, *5 Rules for Creating Contagious Positivity in Your Workplace*, BUS. COLLECTIVE, <https://businesscollective.com/5-rules-for-creating-contagious-positivity-in-your-workplace/#> [<https://perma.cc/7LQ5-GSS2>].

42. Edward Philbin, *Washington Post Obituary* (Mar. 16, 2014), LEGACY.COM, <http://www.legacy.com>

military guy who later retired as a major general in the U.S. Air Force. Philbin was a big man, maybe six-two and 200 lbs. The film *The Paper Chase*<sup>43</sup> was just coming out, and Philbin taught like Prof. Kingsfield: the professor calls on a student, the student stands up and speaks, and the professor tears him or her apart.

¶75 The second week of our civ pro class we were to discuss the notoriously difficult case *Pennoyer v. Neff*.<sup>44</sup> I had read the case several times and still didn't understand it. We were already afraid of Philbin, and the possibility of being called on to brief *Pennoyer* gave all of us a case of High Anxiety.<sup>45</sup>

Prof. Philbin: Today we will look at the case *Pennoyer v. Neff*. Let's see . . . Mr. Heller. Tell me about the case.

Me: [I stand up and babble for a couple of minutes. What little I knew about *Pennoyer* left my head as soon as Philbin called my name.]

Prof. Philbin: That will be enough, Mr. Heller. I'll try someone else . . . and will get back to you later in the semester, assuming you are still in law school at that time.

Here's the irony: About six weeks later Philbin has a heart attack. He wasn't there at the end of the semester. I was.

¶76 **Lesson #19:** What goes around comes around, so treat people well.

¶77 Back to Idaho. I'm not manic about it, but I like order. The UI Law Library was orderly, except for the ground (basement) floor. The top two floors were carpeted and well maintained, and the students were respectful of one another. The concrete floor and unfinished walls made the basement a different world. It had library carrels, tables, and chairs. But a certain breed of students considered the basement their living (and sometimes bed) room, bringing in lounge chairs, sofas, and refrigerators. There probably were radios and TVs, too. The basement bothered me, but it shouldn't have. Students who wanted a quiet place to study used the top two floors. Students who wanted something different had the basement.

¶78 **Lesson #20:** Every place has its own culture. Don't try to change an institutional culture in one fell swoop; incremental changes can lead to larger ones later on.<sup>46</sup>

¶79 The activity I enjoyed most at Idaho was teaching legal research. The students were welcoming, and I tried to make research engaging . . . even fun. I designed a program with a lecture, followed by library labs. I'd lecture to the entire class, and later that week groups of about twenty students would come into the library to work on problems for an hour or so with me, the head of public services, and our reference librarian there to guide and help.

.com/obituaries/washingtonpost/obituary.aspx?fhid=3060&n=edward-philbin&pid=170182717 [https://perma.cc/4SE8-CG3E].

43. *The Paper Chase (film)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/The\\_Paper\\_Chase\\_\(film\)](https://en.wikipedia.org/wiki/The_Paper_Chase_(film)) [https://perma.cc/SA6G-W2NB].

44. 95 U.S. 714 (1878); *Pennoyer v. Neff*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Pennoyer\\_v.\\_Neff](https://en.wikipedia.org/wiki/Pennoyer_v._Neff) [https://perma.cc/3226-4Y4G].

45. *High Anxiety (1977)*, IMDB, <http://www.imdb.com/title/tt0076141/> [https://perma.cc/ZV7J-CDD5]; see also *High Anxiety*, WIKIPEDIA, [https://en.wikipedia.org/wiki/High\\_Anxiety](https://en.wikipedia.org/wiki/High_Anxiety) [https://perma.cc/RM34-834X].

46. Robert H. Schaffer, *To Change the Culture, Stop Trying to "Change the Culture,"* HARV. BUS. REV. (Dec. 6, 2012), <https://hbr.org/2012/12/to-change-the-culture-stop-try> [https://perma.cc/VAA7-8BZN]; see also Jon R. Katzenbach, Ilona Steffen & Caroline Kronley, *Cultural Change That Sticks*, HARV. BUS. REV., July–Aug. 2012, at 110.

¶80 As for the presentations, legal research isn't con law or torts. You don't have interesting cases like the constitutionality of forcing U.S. citizens of Japanese descent into internment camps<sup>47</sup> or the liability of parents for the torts of their minor children.<sup>48</sup> To try to keep the students' interest, I had a Henny Youngman<sup>49</sup> pull-out tape measure with jokes. When a student (or I) thought it would help—two or three times during a fifty-minute class—he or she would ask me to pull a joke from the tape:

"I've been in love with the same woman for 41 years. If my wife finds out, she'll kill me."

"A man goes to a psychiatrist. The doctor says, 'You're crazy.' The man says, 'I want a second opinion!' The doctor says, 'Okay, you're ugly too!'"

"Some people ask the secret of our long marriage. We take time to go to a restaurant two times a week. A little candlelight, dinner, soft music and dancing. She goes Tuesdays, I go Fridays."

¶81 It's Monday, January 7, 1985, and I had just returned from the annual meeting of the Association of American Law Schools. Dean Sheldon Vincenti<sup>50</sup> comes into my office around 11:00 A.M.

Dean Vincenti: How was AALS, Jim?

Me: Pretty good, Sheldon. Attended some good programs and saw friends and librarian colleagues.

Dean Vincenti: Jim, you do a pretty good job teaching legal research. How would you like to teach legal writing, too?

Me: That could be interesting, Sheldon. When?

Dean Vincenti: This semester. Next week.

Me (after coming up for air): I guess I can give it a shot, but I can't guarantee anything.

Dean Vincenti: Great.

¶82 I have a week to put together a legal writing course. The dean didn't tell me why he needed someone to teach legal writing on such short notice, and I didn't ask. I suspected that whoever taught the course in the past wasn't happy about something. Maybe it was compensation. That wouldn't be a problem; I was in such shock that I didn't ask the dean for more money. I just had to put a course together in a week.

¶83 I can't recall how I selected the texts for the course—maybe I contacted colleagues who taught writing and asked for their advice—but I settled on Dernbach and Singleton's *A Practical Guide to Legal Writing and Legal Method* and Wydick's *Plain English for Lawyers*.<sup>51</sup> The course included writing an office memo, an appel-

47. *Korematsu v. United States*, 323 U.S. 214 (1944).

48. *Garratt v. Dailey*, 46 Wash. 2d 197, 279 P.2d 1091 (1955). (My roommate during law school was Dennis Daley, who remains a great friend 45 years after we met. I always told Dennis he should name his first son Garratt Victor, or "Garratt V. Daley." Dennis didn't take my advice; he named his son Sam.)

49. *Henny Youngman*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Henny\\_Youngman](https://en.wikipedia.org/wiki/Henny_Youngman) [<https://perma.cc/8BJM-FZPK>].

50. Volume 38, issue 3, of the *Idaho Law Review* (2002) was dedicated to Dean Vincenti upon his retirement. In addition to the introduction by the editors, there are tributes from Prof. John A. Miller, Prof. Monique C. Lillard, and former student Erik K. Peterson (JD 1987); see also *Obituary: Sheldon A. Vincenti*, MOSCOW-PULLMAN DAILY NEWS (Apr. 6, 2010), [http://dnews.com/obituaries/obituary-sheldon-a-vincenti/article\\_0ad4adb3-1eab-56ce-b376-07bacafaa4d8.html](http://dnews.com/obituaries/obituary-sheldon-a-vincenti/article_0ad4adb3-1eab-56ce-b376-07bacafaa4d8.html) [<https://perma.cc/H43Q-B4UP>].

51. Years later, after teaching writing in William & Mary's Legal Practice Program from 1989–1995, I still think these were superb books.

late brief, and a mock appellate argument. I wanted to make this realistic for the students, with materials they could work with. The solution: cases that were on the docket of the Idaho Court of Appeals.

¶84 I phoned the Office of the Idaho Attorney General<sup>52</sup> and told the directors of the civil and criminal units that I was just asked to teach legal writing at UI and needed a civil and a criminal case that weren't too complex. They agreed to sift through their case files, and by the end of the week I received two boxes, each with a dozen or so case files including briefs and trial transcripts. I sifted through the files and selected two cases that we would use in class—interesting ones that would be argued in the Court of Appeals that spring.

¶85 The live cases really engaged the students, far more than fictional ones taken from a textbook. That both would be argued that spring made the students even more interested, especially when I arranged for one to be argued in the law school's courtroom.

¶86 *Lesson #21:* To engage your students, make it real . . . or at least meaningful.<sup>53</sup> Students take the research class more seriously when what they have to do is tied to their legal writing problem.

¶87 To this day I recall—and very much regret—a huge mistake I made when I reviewed one student's appellate moot court oral argument. She was very passive, almost submissive, and I said her presentation reminded me of a dog that had been beaten. The student was visibly crushed by my insensitivity.

¶88 *Lesson #22:* It's fine to offer constructive criticism and ask pointed questions, but never say something that can be taken as an insult. The same applies to in-class student-to-student discussions: they may critique one's positions, but not the person.

¶89 Taking a step back a couple of years, in D.C. I met Sally Wiant,<sup>54</sup> the director at Washington & Lee, and we shared a mutual interest in copyright. I'm not sure how it happened (Sally probably does; she has the far better memory), but after I got to Idaho we decided to coauthor a copyright book for librarians, which was published in 1984 as part of the AALL Publication Series.<sup>55</sup>

¶90 As the years passed I learned a lot more about copyright law. It was time for a major update, and Hein published *The Librarian's Copyright Companion* in

52. HOME—IDAHO OFF. OF ATT'Y GEN., <http://www.ag.idaho.gov/index.html> [<https://perma.cc/P4TL-9YLB>].

53. The American Bar Association's Section on Legal Education and Admissions to the Bar has an increased emphasis on experiential legal education that one can see in Standards 303 and 304. ABA, 2018–2019 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, [https://www.americanbar.org/groups/legal\\_education/resources/standards.html](https://www.americanbar.org/groups/legal_education/resources/standards.html) [<https://perma.cc/W843-XE2Z>]; see also Robert Dinerstein, *Experiential Legal Education: New Wine and New Bottles*, SYLLABUS, Winter 2012–2013, at 2; Brian McNeill, *Honors College Revamps Curriculum to Emphasize Collaboration and Experiences, and to Solve Real Problems Facing Richmond*, VCU NEWS (Feb. 26, 2018), [https://news.vcu.edu/students/Honors\\_College\\_revamps\\_curriculum\\_to\\_emphasize\\_collaboration](https://news.vcu.edu/students/Honors_College_revamps_curriculum_to_emphasize_collaboration) [<https://perma.cc/LVS8-ZCYL>]; *Experiential Learning*, UNIV. OF TEX. AT AUSTIN FACULTY INNOVATION CTR., <https://facultyinnovate.utexas.edu/experiential-learning> [<https://perma.cc/KXG2-LADP>].

54. Sarah K. Wiant, WASHINGTON & LEE UNIV., <https://law.wlu.edu/faculty/emeritus-faculty/sally-wiant> [<https://perma.cc/2T89-UMAA>]; Sarah K. Wiant, 1946–, AALL, <https://www.aallnet.org/inductee/sarahwiant/> [<https://perma.cc/7HDD-FXUY>]; see also Interview by Patrick Kehoe with Sarah K. Wiant, Professor of Law & Former Director of the Law Library, Washington & Lee Univ., in Lexington, VA (May 13, 2013).

55. JAMES S. HELLER & SARAH K. WIANT, COPYRIGHT HANDBOOK (1984).

2004.<sup>56</sup> Several years later I asked two of our reference librarians, Paul Hellyer and Ben Keele, if they were interested in coauthoring a second edition. They were. And we did.<sup>57</sup>

¶91 **Lesson #23:** Make connections. Who you know is as important as what you know.<sup>58</sup>

¶92 As for connections, there is one I did not make until I moved back east in 1988, but to whom I was “sort of” introduced in 1987. I got a call from my friend and colleague Wes Cochran,<sup>59</sup> who had relocated from Gonzaga to Texas Tech. The slate of officers for the AALL 1987–1988 Executive Board had been announced, and Wes urged me to vote for Carol Billings<sup>60</sup> for vice president/president-elect. I didn’t know Carol (she was director of the Law Library of Louisiana), so I voted for the academic library candidate, Margaret Leary. Margaret won, but Carol did become AALL president in 1995–1996. More on that later.

¶93 I got married in Moscow in October 1985, after Janet (my wife) got a job with the Idaho State Library as the public library consultant for northern Idaho. Janet remarked that she moved from the seventieth floor of the Standard Oil Building in Chicago where she had worked for Kirkland & Ellis<sup>61</sup> to the basement of the Moscow Public Library.<sup>62</sup> The Idaho job was very interesting; Janet worked with dozens of libraries in northern Idaho—from the well-funded Coeur d’Alene Public Library<sup>63</sup> to a 200-sq. ft. cabin open two days a week and staffed by retirees. It also prepped her for a career move from law libraries to public libraries.

¶94 We thought about moving back east, closer to our families, and in March 1988 I was invited to apply for the director position at the William & Mary Law Library. We ended up in Williamsburg, me at W&M,<sup>64</sup> Janet at the Williamsburg Regional Library.<sup>65</sup>

¶95 **Lesson #24:** I like being a big fish in a small pond,<sup>66</sup> but you need to figure out what works best for you. The University of Idaho worked well for me, and for a

56. JAMES S. HELLER, *THE LIBRARIAN’S COPYRIGHT COMPANION* (2004).

57. JAMES S. HELLER, PAUL HELLYER & BENJAMIN J. KEELE, *THE LIBRARIAN’S COPYRIGHT COMPANION* (2d ed. 2012).

58. Fredric Neuman, “*It’s Not What You Know. It’s Who You Know*,” *PSYCH. TODAY* (June 11, 2014), <https://www.psychologytoday.com/us/blog/fighting-fear/201406/its-not-what-you-know-its-who-you-know> [https://perma.cc/E9DL-LNPG]; see also Rob Jenkins, *Sometimes It Is Whom You Know*, *CHRON. HIGHER EDUC.* (May 1, 2013), <https://www.chronicle.com/blogs/onhiring/sometimes-it-is-whom-you-know/38239> [https://perma.cc/6D4G-23LZ].

59. J. Wesley Cochran, *Faculty Directory*, SCH. OF LAW, TTU, [http://www.depts.ttu.edu/law/faculty/j\\_cochran.php](http://www.depts.ttu.edu/law/faculty/j_cochran.php) [https://perma.cc/DPG4-H3ZG].

60. See Carol Bredemeyer, *Marian Gould Gallagher Distinguished Service Award Goes to Three Perennially Active*, *AALL SPECTRUM*, June 2007, at 22; Interview by Frank Houdek with Carol D. Billings, Retired Director, Law Library of La., in New Orleans, LA (July 14, 2014).

61. KIRKLAND & ELLIS, LLP, <https://www.kirkland.com/> [https://perma.cc/4PFS-CED9].

62. HOME—LATAH CTY. LIBRARY DIST., <https://www.latahlibrary.org/> [https://perma.cc/7E8P-KK3R].

63. COEUR D’ALENE PUB. LIBRARY—HOME, <http://www.cdalibrary.org/> [https://perma.cc/E9GJ-92V5].

64. WILLIAM & MARY LAW SCH., <http://law.wm.edu/> [https://perma.cc/D2EV-CJBC].

65. HOME—WILLIAMSBURG REG’L LIBRARY, <https://www.wrl.org/> [https://perma.cc/X9QW-TLR9].

66. See MALCOLM GLADWELL, *DAVID AND GOLIATH: UNDERDOGS, MISFITS, AND THE ART OF BATTLING GIANTS* (2013); Larry Kim, *Why It’s Better to Be a Big Fish in a Small Pond*, INC. (June 10, 2015), <https://www.inc.com/larry-kim/why-it-s-better-to-be-a-big-fish-in-a-small-pond.html> [https://perma.cc/59M5-4LRF]. For a contrary view, see Bruce Sandy, *Large Firms Don’t Want to Hire Big Fish from Small Pond*, *GLOBE & MAIL* (Mar. 26 2017),

host of other law librarians who spent time there. At Idaho, I worked closely with Trish Cervenka<sup>67</sup> and George Pike.<sup>68</sup> Trish was a UI law student who worked in the law library as a 3L and was so good we hired her as a reference librarian when she graduated. Trish decided to leave Idaho to pursue her MLS at the University of Iowa, and we hired George, who also had been a UI law student, to serve as acting reference librarian. Idaho also was good for Rita Reusch,<sup>69</sup> Bobbie Studwell,<sup>70</sup> Lynn Foster,<sup>71</sup> and Lei Seeger, all of whom spent time at UI, and all of whom became directors elsewhere. Idaho also gave me an opportunity to get involved in West-Pac<sup>72</sup> and to help jump-start the short-lived Northwest Consortium of Law Libraries.<sup>73</sup>

¶96 So it's back across the country, 2600 miles to Virginia. During a two-day interview one has little time to assess a law school, its law library, and the parent university. Even if you do a lot of research beforehand, which I did, you can't know the place until you spend considerable time there. It didn't take long to realize that Williamsburg was an unusual town. The "downtown" is Duke of Gloucester St., owned by the city, but really a part of Colonial Williamsburg.<sup>74</sup> More like "Disneyland 1775" than a real downtown, it wasn't my cup of tea. There also were some surprises at work.

¶97 As in most universities, the fiscal year for William & Mary is July–June. I began work August 1, 1988, a month into the new fiscal year. I soon found out that the library's budget from the prior year ran out in mid-April, and that 30 percent of the current materials budget had been expended in July. The problem was less a matter of the library not having enough money than it was how that money was being spent. The problem was serials—pesky things akin to razor blades and printer toner where the initial cost is nothing compared to what you'll pay later.

¶98 A review of all of our subscriptions was in order. Many cancellations were easy, and within three years we canceled nearly 700 subscriptions. Our collection budget improved a lot my first decade at W&M, but then it stalled. Today, it is

---

<https://www.theglobeandmail.com/report-on-business/careers/career-advice/experts/large-firms-dont-want-to-hire-big-fish-from-small-pond/article13100250/> [<https://perma.cc/6YPH-6EGA>].

67. *Patricia Cervenka*, MARQUETTE UNIV. LAW SCH., <https://law.marquette.edu/faculty-and-staff-directory/detail/2659431> [<https://perma.cc/RB74-GN88>].

68. *George H. Pike*, *Research & Faculty*, NORTHWESTERN PRITZKER SCH. OF LAW, <http://www.law.northwestern.edu/faculty/profiles/GeorgePike/> [<https://perma.cc/4S49-BCES>].

69. *Rita Reusch*, S.J. QUINNEY COLL. OF LAW, <https://www.law.utah.edu/profile/rita-reusch/> [<https://perma.cc/5F6U-LAWR>].

70. Kaylyn Zurawski, *An Oral History of Law Librarianship: Roberta (Bobbie) Studwell*, HEIN BLOG (Feb. 26, 2016), <https://www.wshein.com/blog/2016/02/26/an-oral-history-of-law-librarianship-roberta-bobbie-studwell/> [<https://perma.cc/S4AR-U6JR>].

71. *Lynn Foster*, *William H. Bowen School of Law*, UNIV. OF ARK. AT LITTLE ROCK, <http://ualr.edu/law/faculty/faculty-members/lynn-foster/> [<https://perma.cc/UWZ9-WTUX>].

72. *Western Pacific Chapter*, AALL, <http://chapters.aallnet.org/westpac/> [<https://perma.cc/4GT6-5YGY>]. In the fall of 1987, WestPac Vice President/President-Elect Judy Meadows asked me to serve as program chair for the November 1988 meeting in Coeur d'Alene, Idaho. I decided to do something different—the entire program would be on Western Legal History. I took flak from some people who thought the topic was hardly relevant to working law librarians, but I wasn't to be swayed.

73. For an interesting article on the birth and death of the consortium, see Judith Meadows, *The Northwest Consortium of Law Libraries Experience*, 85 LAW LIBR. J. 775 (1993).

74. COLONIAL WILLIAMSBURG, <https://www.colonialwilliamsburg.com/> [<https://perma.cc/JC93-RYS7>].

pretty much what it was in 1997. Fortunately, I love canceling what's not needed, and the migration from print to digital makes cancellations easy.<sup>75</sup>

¶99 *Lesson #25*: To build a good collection, you must get rid of what's *not* needed. A good manager should be frugal, "characterized by or reflecting economy in the use of resources."<sup>76</sup> This is very different from "cheap." A frugal person buys what's needed and it must be of good quality. It's true for shoes, cars, anything electronic . . . and library materials.<sup>77</sup>

¶100 Building (and cutting) the collection, it turned out, also applied to the staff. At first it was building. When I arrived in 1988, Associate Law Librarian Marty Rush was the only JD on staff other than me, and Teresa Schmidt was the reference librarian. Teresa left not long after I arrived, and we were able to hire two JD reference librarians, Mary Grace Hune and Rick Buchanan. With a more robust staff, in August 1989 those of us with JDs began teaching the legal research component in the school's Legal Practice Program. We still do this today, now with six JD librarians.

¶101 Our professional staff has been pretty stable: a head of Research and Instructional Services (Chris Byrne, who arrived in 1997), three reference librarians (Fred Dingley in 2001; Paul Hellyer in 2005; and Michael Umberger, 2013–2016 and 2017–present), a head of Access Services (Martha Rush until her retirement in 2009, then Jennifer Sekula, who has been with us since 1999), and a head of Technical Services (Sue Welch until 2004, Kevin Butterfield from 2004–2009, and since then, Linda Tesar). In 2010 we created a new professional position to develop and manage digital resources and our scholarship repository when Lauren Seney, who had been with us for several years, received her MSIS.

¶102 Reducing the size of our staff happened primarily in Technical Services due to attrition. It used to take 3 hours to sort the mail; today it takes about 15 minutes. With no more CCH or BNA print services and many fewer titles needing pocket parts or other supplementation, the little filing that needs to be done is handled by those working the circulation desk.

75. All told, we have canceled about 3000 subscriptions since I arrived at W&M 30 years ago. As noted earlier, sometimes one thing can turn into another. I spoke at a program on collection development and weeding at the 2000 SEAALL Annual Meeting in San Juan, Puerto Rico, and there was an encore performance at a VALL meeting due to interest in the (hit) song *Weed-O*. As in the film *20 Feet from Stardom*, which won the best feature documentary Oscar in 2014, the backup singers will remain anonymous. See *20 FEET FROM STARDOM*, <http://twentyfeetfromstardom.com/> [https://perma.cc/JZ6M-H3ZR]. The presentation turned into something more permanent—an article in *AALL Spectrum*. James S. Heller, *Collection Development and Weeding à la Versace: Fashioning a Policy for Your Library*, *AALL SPECTRUM*, Feb. 2002, at 12. Later that year, *Spectrum* published my article on technical services that also used a clothing theme. James S. Heller, *Finding a New Balance: Technical Services Meets Adidas*, *AALL SPECTRUM*, Nov. 2002, at 16. Both are available at *Scholarship Repository*, WILLIAM & MARY LAW SCH., <http://scholarship.law.wm.edu/> [https://perma.cc/F5F6-N5FD].

76. *Frugal*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/frugal> [https://perma.cc/X6JD-UU77]. For more about frugality, an article reviewing Emrys Westacott's *The Wisdom of Frugality: Why Less is More—More or Less* cites, among others, Adam Smith, Ben Franklin, Henry David Thoreau, Ralph Waldo Emerson, and Plato. See Joe Pinsker, *Frugality Isn't What It Used to Be*, *ATLANTIC* (Oct. 22, 2016), <https://www.theatlantic.com/business/archive/2016/10/frugality/504428/> [https://perma.cc/8QDQ-DY6X].

77. Only the "quality" part of frugality applies to guitars; buy good stuff. The quantity part does not; buy what you want, not just what you need. As for needs versus wants, see *You Can't Always Get What You Want*, WIKIPEDIA, [https://en.wikipedia.org/wiki/You\\_Can%27t\\_Always\\_Get\\_What\\_You\\_Want](https://en.wikipedia.org/wiki/You_Can%27t_Always_Get_What_You_Want) [https://perma.cc/SY82-6VKV].

¶103 As in other libraries, there has been a transition from classified/paraprofessional staff to librarians. In 1980 we had 13 staff members: 4 librarians and 9 classified. In 1990 there were 5 librarians, 10 classified, and 1.5 FTE part-time hourly. When the staff reached its peak size in 2000, we had 7 librarians, 10 classified, and 2.5 FTE hourly. Today the staff has 8 librarians, 7 classified, and 1 FTE hourly.

¶104 *Lesson #26*: “You better start swimmin’ or you’ll sink like a stone. For the times they are a-changin’.”<sup>78</sup> In the changing environments of legal education and legal publishing, you must be nimble—not *willing* to change, but *eager* to change.

¶105 Enough about staff for now. In 1993 Carol Billings was elected vice president/president-elect of AALL. I voted for her this time. Carol was all about *change*. For the 1995 AALL Annual Meeting in Pittsburgh that concluded her term as president, Carol wanted to do something very different: two days of the meeting would be a National Conference on Legal Information Issues “to bring together law librarians and other movers and shakers in the legal, information, publishing, and government communities to talk about the evolving issues in the dissemination of legal information.”<sup>79</sup> Carol asked me to serve as program chair for the annual meeting and national conference. And I did.

¶106 Carol and I—and I think many others—considered the conference a rousing success. When I was elected vice president/president-elect in 1998, I decided to do something similar at the 1999 Annual Meeting in Washington, D.C. For some inexplicable reason, the AALL hierarchy didn’t want to call it the Second National Conference on Legal Information Issues. So I called it “At the Crossroads: Information Management, Technology and Policy.” It was a second National Conference in all but name.<sup>80</sup> Program chair Tim Coggins<sup>81</sup> and his committee did a fantastic job, and AALL’s 92nd Annual Meeting was the highest attended of all time.<sup>82</sup>

¶107 In June 2002 I was visited by Lynda Butler, the law school’s vice dean. In a conversation reminiscent of the one I had with Sheldon Vincenti at Idaho in 1985, Lynda asked me whether I was interested in teaching the required Law and Public Policy (LPP) course in W&M’s master’s degree Public Policy Program. I was intrigued and told her I wanted to get more information before making a decision. A few days later I met with Lynda and told her “yes,” on two conditions: (1) that I would co-teach the course with Chris Byrne, our head of research and instructional

78. *The Times They Are A-Changin’*, OFFICIAL BOB DYLAN SITE, <https://bobdylan.com/songs/times-they-are-changin/> [<https://perma.cc/3X27-7B9D>]; see also Ilona Boniwell, *Living in Flow: What Is It and How to Enter the Flow State?*, POSITIVE PSYCHOLOGY.ORG (July 11, 2008), <http://positivepsychology.org.uk/living-in-flow/> [<https://perma.cc/3ZVJ-EDAB>]; Matthew Jones, *5 Easy Steps to Get in the Zone Every Single Day*, INC. (July 20, 2016), <https://www.inc.com/matthew-jones/5-easy-steps-to-find-your-flow-every-single-day.html> [<https://perma.cc/A8SJ-9JSY>]; Daniel McGinn, *Build a “Quick and Nimble” Culture*, HARV. BUS. REV. (Jan. 7, 2014), <https://hbr.org/2014/01/build-a-quick-and-nimble-culture> [<https://perma.cc/RNU4-CWLb>].

79. *The National Conference on Legal Information Issues: An Interview with Carol Billings and Jim Heller*, 26 AALL NEWSL. 117 (1994).

80. “A rose by any other name would smell as sweet.” WILLIAM SHAKESPEARE, *ROMEO AND JULIET* act 2, sc. 2.

81. See *Timothy L. Coggins 1948–*, AALL, <https://www.aallnet.org/inductee/timothycoggins/> [<https://perma.cc/M7QN-S6DS>].

82. Email message from Pam Reisinger, Director of Meetings, AALL, to James S. Heller (Apr. 30, 2018, 13:16 EDT) (on file with author).

services; and (2) that we would get paid. (I wasn't going to make the same mistake I made seventeen years earlier.) Lynda agreed, and Chris and I teach LPP to this day.

¶108 *Lesson #27*: See Lessons 16 and 21.<sup>83</sup>

¶109 Change is good. Our facility needed a very different kind of change. Pinterest images of “retro” and “vintage” colors<sup>84</sup> don't at all do justice to what this library looked like. Orange, green, and brown never looked good in kitchens or bathrooms. They looked worse in our library, which was designed in the mid-1970s and opened in 1980. Carpet, chairs, walls—orange, green, or brown. And to further emphasize the “autumn” hue, the carrels, tables, and shelf end panels were oak. But like many things, first you are startled, then you adjust, and finally you tune out . . . or try to.

¶110 What we couldn't ignore was the functional outdatedness of the library. We set the stage for a library expansion/renovation project during ABA sabbatical inspections of 1995 and 2002, noting such things as lack of space for students and staff, technological limitations, and noncompliance with the Americans with Disabilities Act (even though we were grandfathered). We did a preplanning study in 1999–2000 with the architectural/engineering firm HSSM from Washington, D.C., which later became part of SmithGroup. Together we came up with a building design, floor plan, and cost estimate. We figured SmithGroup would get the project should it move forward.

¶111 Move forward it did. The first two barriers were internal: the law school and college administrations. That the ABA panned our facility, along with comparisons I gave them of other Virginia and “peer” law school libraries, convinced them. The more difficult ones were the Virginia Department of Planning and Budget, the Virginia State Council on Higher Education (SCHEV), and the William & Mary Board of Visitor's Buildings and Grounds Committee. We had to convince them of the need to renovate and expand our library, and then they would prioritize our project among dozens of other state projects.

¶112 The latter two groups were given library tours, and what seemed to impact our visitors were (1) that the facility looked somewhat shabby; (2) that more than 40 percent of our book collection already was in microformat; (3) that only a handful of the carrels, and none of the tables, had electrical connections; (4) that the carrels were filled with books; and (5) the small size of the individual study rooms.

¶113 SCHEV sent one representative to tour our library, and the last thing I showed her were the individual study rooms. Each was slightly larger than a telephone booth, and to enter you had to push a small (maybe 20-inch-wide) door into the room. Then you pressed yourself up to the desktop and closed the door behind you. Or you tried to. Our zaftig SCHEV guest couldn't get into the room, and I

---

83. Teaching Law and Public Policy to graduate students has been intellectually challenging, interesting, and a lot of fun. To make it real (Lesson 21), much of the course focuses on four cases that will be heard by the U.S. Supreme Court that term. We also take students to Washington, D.C., to hear oral arguments in one or two of the cases, and we usually meet with a Justice. For more information on LPP, see *The Required Law & Public Policy Course in the College of William & Mary's Masters of Public Policy Program: 25 Years of Lessons*, 9 WM. & MARY POL'Y REV. 73 (2017).

84. *Retro Color*, PINTEREST, <https://www.pinterest.com/pin/173388654374318764/> [<https://perma.cc/DK5B-R3Q3>]; *Vintage Orange, Brown, Yellow and Green*, PINTEREST, <https://www.pinterest.com/cassykbooby/vintage-orange-brown-yellow-and-green/> [<https://perma.cc/2HDL-6LZF>].

knew we were good. A few weeks later SCHEV gave us a “1” for need—the highest ranking.

¶114 *Stroke of Luck #5*: The SCHEV representative.

*Lesson #28*: Some things take a lot of time, but don’t give up. Lots of things had to happen before our project began. It took years to get (1) endorsement by the law school administration; (2) support from the W&M administration; (3) approval from SCHEV and a high “need” ranking; (4) approval from the Virginia Department of Planning and Budget; and (5) money. Funding arrived when Virginia voters passed a statewide bond referendum for capital projects. Construction began in spring of 2005, and the project was completed in July 2007.<sup>85</sup>

¶115 *Stroke of Luck #6* appeared in the fall of 2003. Shelley Dowling, recently retired as librarian for the Supreme Court of the United States, had moved to Williamsburg with her husband. Shelley wanted to work, and we hired her to be a part-time reference librarian and to help with the building project. Shelley and the rest of our staff proved instrumental to the success of the project, which both transformed the library and how our students treated it.

¶116 Great though they were, SmithGroup weren’t hired as the architects. A not-so-funny thing happened on their way to the college. Those in public institutions know that there are stiff requirements for building projects. Architects and contractors must dot all i’s and cross all t’s. There are no exceptions. On-the-day responses to the college’s “Request for Qualifications” had to be submitted for our \$16 million project. SmithGroup hired a courier to deliver the documents to us. The courier headed out from D.C. to Williamsburg early that morning, with about six hours to get here for what would normally be a three-hour trip. Apparently, the driver decided to stop for a relaxing lunch on the way; maybe some shopping at the outlets, too. He arrived 10 minutes late. The “no exception” rule applied, and SmithGroup was excluded from consideration.

¶117 *Lessons #29(a) and (b)*: Roseanne Roseannadanna said, “It’s always something. If it ain’t one thing, it’s another.”<sup>86</sup> Don’t wait until the last minute to do something. And sometimes it’s better—easier, quicker, and of higher quality—to do it yourself.

¶118 In 2005 our library began focusing on George Wythe, America’s first law professor here at William & Mary.<sup>87</sup> Wythe attended the Second Continental Congress and the Constitutional Convention, and was a signer of the Declaration of

85. See James S. Heller, 51, 36, 127, *Hike: Justifying a Law Library Renovation and Expansion Project (Part I)*, TRENDS IN LAW LIBR. MGMT. & TECH., 2003, no. 1, at 1; *id.*, (Part II), no. 2, at 4. For a thorough discussion of library design and construction, see STEPHEN G. MARGETON, DESIGNING LAW AND OTHER ACADEMIC LIBRARIES: BUILDING UPON CHANGE (3d ed. 2017).

86. Gilda Radner’s character Roseanne Roseannadanna in *Saturday Night Live*. See *Roseanne Roseannadanna*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Roseanne\\_Roseannadanna](https://en.wikipedia.org/wiki/Roseanne_Roseannadanna) [<https://perma.cc/M29N-3FQV>].

87. Colonial Williamsburg’s synopsis of Wythe’s life can be found here: <http://www.history.org/almanack/people/bios/biowythe.cfm> [<https://perma.cc/MK3N-RR24>]. For more on Wythe, see JOHN BAILEY, JEFFERSON’S SECOND FATHER (2013); JOYCE BLACKBURN, GEORGE WYTHE OF WILLIAMSBURG (1975); BRUCE CHADWICK, I AM MURDERED: GEORGE WYTHE, THOMAS JEFFERSON, AND THE KILLING THAT SHOCKED A NEW NATION (2009); ALONZO THOMAS DILL, GEORGE WYTHE, TEACHER OF LIBERTY (1979); ROBERT BEVIER KIRTLAND, GEORGE WYTHE: LAWYER, REVOLUTIONARY, JUDGE (1986); SUZANNE HARMON MUNSON, JEFFERSON’S GODFATHER: THE MAN BEHIND THE MAN: GEORGE WYTHE, MENTOR TO THE FOUNDING FATHERS (2018).

Independence. He was mentor to Thomas Jefferson, who studied at William & Mary from 1760–1762 and had served as Wythe’s legal apprentice from 1762–1765. By the time Jefferson became governor of Virginia in 1779, he was convinced that the new nation needed lawyers with a formal legal education. That year, at Jefferson’s urging, the W&M Board of Visitors made Wythe Professor of Law and Police (“police” meant government or policy in the eighteenth century).<sup>88</sup> I add this background on Wythe because he may be the most unknown among the Founders. (Only half of his head made it into John Trumbull’s famous painting of the signing of the Declaration of Independence.<sup>89</sup>)

¶119 Kevin Butterfield, our head of Technical Services from 2004–2009, came up with the idea that we should try to replicate the law books in Wythe’s personal library. When Butterfield left in 2009 we had 33 titles. Linda Tesar, Butterfield’s successor, convinced me that we should not limit Wythe’s Library to only his law titles. Today we have more than 300 titles that represent the entire range of Wythe’s interests, including cooking, economics, history, literature, mathematics, philosophy, religion, science, travel—and, of course, law.

¶120 Two Wythe-related initiatives took place while we built Wythe’s Library. The first was our interest in telling Wythe’s story. Wythepedia, created by Tesar and Steve Blaiklock (our library’s circulation supervisor), began as a tool to highlight the collection but grew to include all aspects of Wythe’s life and careers.<sup>90</sup> The second was a place to show off this collection, and we created the George Wythe Room in 2015.

¶121 Two other significant projects were our Scholarship Repository<sup>91</sup> and New Books Alert (NBA). We weren’t on the cutting edge, but we were a pretty early adopter using Bepress’s Digital Commons<sup>92</sup> platform. Under the direction of Digital Initiatives Librarian Lauren Seney, who supervised an army of students the first couple of years, the Repository has become the digital archives for the entire law school. We developed NBA, which went live in 2013, from whole cloth. Developed by Jennifer Sekula, it’s an effective way to inform a faculty member of newly received books pegged to his or her interests.

¶122 **Lesson #30:** Hire great people and give them room to grow and innovate. This doesn’t mean that you let your staff run with any ideas they come up with. (This has happened with tech-savvy people who spoke a language I didn’t always understand.) Encourage creativity, but you need to match institutional goals with individual skills. For us, George Wythe’s Library, Wythepedia, and NBA are good matches.<sup>93</sup>

88. See Francis M. Dodsworth, *The Idea of Police in Eighteenth-Century England: Discipline, Ref-ormation, Superintendence, c. 1780–1800*, 69 J. HIST. IDEAS 583 (2008).

89. See *Declaration of Independence (Trumbull)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Declaration\\_of\\_Independence\\_\(Trumbull\)](https://en.wikipedia.org/wiki/Declaration_of_Independence_(Trumbull)) [<https://perma.cc/SR68-ZKRP>]; see also *Depictions of Wythe*, WYTHEPEDIA: THE GEORGE WYTHE ENCYCLOPEDIA, [http://lawlibrary.wm.edu/wythepedia/index.php/Depictions\\_of\\_Wythe](http://lawlibrary.wm.edu/wythepedia/index.php/Depictions_of_Wythe) [<https://perma.cc/AG2E-P4GX>].

90. Wythepedia, which has 7 million views since its inception, can be accessed here: [http://lawlibrary.wm.edu/wythepedia/index.php/George\\_Wythe](http://lawlibrary.wm.edu/wythepedia/index.php/George_Wythe) [<https://perma.cc/E5BY-GTXE>].

91. See *Scholarship Repository*, *supra* note 75.

92. *Digital Commons*, BEPRESS, <https://www.bepress.com/products/digital-commons/> [<https://perma.cc/M89T-95TK>].

93. See Patty McCord, *Hiring the Best People*, HARV. BUS. REV. (Jan. 2, 2018), <https://hbr.org/ideacast/2018/01/hiring-the-best-people> [<https://perma.cc/Y5KH-UGF2>]; Patty McCord, *How to Hire*, HARV. BUS. REV., Jan.–Feb. 2018, at 90.

¶123 I will end this retrospective with one more comment on staff. Although I focused on librarians, paraprofessionals are the heart and soul of the library. The first people users encounter when they enter your library—at least here at W&M—are members of the circulation staff. Because the folks at your circulation desk are so visible, they get all sorts of questions. Where are the restrooms? Where can I find a book? How do I connect my laptop to the wifi? How do I get the printers to work? And so on. Behind the scenes are the technical services staff who order, receive, process, pay for, and catalog your materials. Little happens without them. And your administrative assistant does anything and everything to make you—and your library—successful. No job is too small or too large for Betta Labanish, whom I hired in February 1989 and who helped make happen everything that has been accomplished at the William & Mary Law Library.

¶124 That's it. After 40 years, this is my Retrospective . . . for what it's worth.<sup>94</sup> It has been a great career, working with terrific people and doing interesting things. As George and Ira Gershwin wrote, "Who could ask for anything more?"<sup>95</sup>

---

94. The song *For What It's Worth* was written by Stephen Stills and performed by Buffalo Springfield. For information about the song, see *For What It's Worth*, WIKIPEDIA, [https://en.wikipedia.org/wiki/For\\_What\\_It%27s\\_Worth](https://en.wikipedia.org/wiki/For_What_It%27s_Worth) [<https://perma.cc/K8BB-DADW>]. To hear the song: *Buffalo Springfield—For What It's Worth 1967*, YOUTUBE, <https://www.youtube.com/watch?v=gp5CrSXkJY> [<https://perma.cc/B8MG-WQB5>].

95. See *I Got Rhythm*, WIKIPEDIA, [https://en.wikipedia.org/wiki/I\\_Got\\_Rhythm](https://en.wikipedia.org/wiki/I_Got_Rhythm) [<https://perma.cc/ZAU9-68WJ>].

## Keeping Up with New Legal Titles\*

Compiled by Benjamin J. Keele\*\* and Nick Sexton\*\*\*

### Contents

<i>We Can Do IT: Women in Library Information Technology</i> edited by Jenny Brandon, Sharon Ladenson, and Kelly Sattler	reviewed by Carey Sias	146
<i>Millennial Leadership in Libraries</i> edited by Ashley Krenelka Chase	reviewed by Lora Johns	148
<i>RBG</i> directed by Julia Cohen and Betsy West	reviewed by Kelly M. Leong	150
<i>Blockchain and the Law: The Rule of Code</i> by Primavera De Filippi and Aaron Wright	reviewed by Matt Timko	151
<i>The Yale Law School Guide to Research in American Legal History</i> by John B. Nann and Morris L. Cohen	reviewed by Jennifer L. Behrens	152
<i>The Right of Publicity: Privacy Reimagined for a Public World</i> by Jennifer E. Rothman	reviewed by Tracy Eaton	154

---

\* The works reviewed in this issue were published in 2018. If you would like to review books for "Keeping Up with New Legal Titles," please send an email to [sdemaine@iu.edu](mailto:sdemaine@iu.edu) and [azyndar.1@osu.edu](mailto:azyndar.1@osu.edu).

\*\* Research and Instructional Librarian and Lecturer in Law, Ruth Lilly Law Library, Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana.

\*\*\* Clinical Assistant Professor of Law and Head of Access Services, Kathrine R. Everett Law Library, University of North Carolina School of Law, Chapel Hill, North Carolina.

Brandon, Jenny, Sharon Ladenson, and Kelly Sattler, eds. *We Can Do IT: Women in Library Information Technology*. Sacramento, Calif.: Library Juice Press, 2018. 236p. \$22.

*Reviewed by Carey Sias\**

¶1 Librarianship has been a profession dominated by women over the past several decades, whereas information technology (IT) jobs are primarily held by men. What happens when these worlds collide? Libraries are undergoing a rapid shift from print materials and physical services to digital collections and online services. The distinction between fields has begun to blur as libraries adapt to current technology trends, but societal and cultural expectations can be slow to catch up. *We Can Do IT: Women in Library Information Technology* is a collection of personal narratives from (mostly) women about tensions inherent in the field, where one's gender, background, and education create a unique set of professional challenges. The essays represent a variety of perspectives from academic, public, and corporate librarians. Contributors are managers, systems librarians, emerging technology librarians, web developers, administrators, programmers, catalogers, and consultants.

¶2 Many have shared similar experiences and describe pervasive examples of sexism: women kept out of key conversations, assigned clerical tasks in addition to regular job responsibilities, actively discouraged from working on technical projects, seeing their contributions minimized or attributed to men. A number of writers came into library IT positions through nontraditional avenues. Several women describe how their lack of formal education in computer science, coupled with societal expectations and biases about gender roles in the workplace, made them afraid of being perceived as incompetent and caused them to question whether they belong in the field. Others came to libraries from technical backgrounds and found that in the world of IT their librarian titles are more disparaged than their gender. Christina Mune captured this set of challenges: "Whether a woman in library IT is traditionally trained in her technology role or inhabiting it from the pathway of digital librarianship, emerging technologies, or technical services she is likely struggling against not only gender equity issues as an IT person, but also against library and/or librarian stereotypes" (p.202).

¶3 Essays touch on multiple topics but are organized into five sections: #Advice, #Observations, #CareerPath, #Challenges, and #ChangeAgents. The table of contents lists additional hashtag themes for each piece. It is unclear whether the editors or authors assigned the tags, and I questioned why some were applied. For instance, many essays touch on #ImpostorSyndrome, but few are tagged as such. Other tags are similar but separate: #DontFearFailure, #Confidence, and #BeConfident are listed individually and yet address the same underlying subject matter. Beyond the five primary sections, I found it difficult to scan the table of contents to identify essays with similar content. An index of all tags and corresponding essays would significantly improve usability. From my perspective, the social media-inspired hashtags are a cute idea but require further streamlining and indexing to benefit a print publication.

---

\* © Carey Sias, 2019. IT Manager and Interim Assistant Director of Technology Services, Jenkins Law Library, Philadelphia, Pennsylvania.

¶4 Many authors are honest about feeling inadequate, discouraged, and angry at times in their careers. Several note that women often underestimate their abilities while men are more likely to overestimate theirs, and such tendencies toward self-doubt can easily become a self-perpetuating reality. *We Can Do IT* left me with a positive message, namely that women are poised to lead library IT initiatives. Narratives demonstrate how a willingness to learn and take on opportunities outside one's comfort zone are greater indicators for success than a formal computer science background. An outsider perspective is particularly valuable when facilitating communication between technical and nontechnical users or designing user-centered applications: "As women, we are aware that things are not always designed with us in mind, and that understanding helps us look to the needs of others" (p.191). Contributors describe benefits of a background in customer service or humanities, particularly how the soft skills they acquired became essential to their success in library IT positions. Proficiencies in business management, data analysis, and critical thinking are always in demand, while technical requirements, such as knowing certain programming languages, are subject to market trends. Effective project managers must lead, analyze, delegate, and articulate the service direction that a tool like programming can take, regardless of their expertise in writing code.

¶5 Readers of all genders and technical backgrounds can learn from *We Can Do IT*, but this book is especially pertinent to women entering the profession or advancing their careers in library and technology fields. As a librarian who recently transitioned from reference to IT management, I was heartened by the diverse perspectives and underlying similarities of essays shared in this collection. Contributors' resilience and dedication are particularly apparent in their advice for women getting started. They urge readers to seek out technical roles, teach themselves computer skills, ask questions, make mistakes, and become involved in mentorship and networking. Initiatives such as the Library Information Technology Association (LITA) and its Women in Information Technology Interest Group, LibTech Women, and Code4Lib offer a wealth of resources and opportunities to make connections with other women in the field. Like many contributors, my education and background differ from the typical IT professional and lead me to question whether I belong in the field. One of my favorite lines beautifully refutes and explains impostor syndrome as it relates to library IT: "In a profession in which lifelong learning is an ethos, why should we ever consider ourselves impostors? We're just always in that process of becoming" (p.204). Libraries already provide information *and* technology: computer hardware, software, wi-fi access, digital collections, online services, and education for patrons learning how to use it all. As librarians, we are information professionals in the process of becoming better troubleshooters, problem solvers, and leaders in library technology: we *can* do IT.

Chase, Ashley Krenelka, ed. *Millennial Leadership in Libraries*. Getzville, N.Y.: William S. Hein & Co., 2018. 453p. \$99.

*Reviewed by Lora Johns\**

¶6 Type the words “Millennials are killing . . .” into Google Search, and the autocomplete feature will suggest everything from “capitalism” to “mayonnaise.” They have taken the blame for the death of at least 70 commodities and industries—doorbells, golf, diamonds, restaurants, brick-and-mortar retail—in short, “everything.”<sup>1</sup>

¶7 The one institution Millennials have not murdered is the library. Instead, they have revived it: Millennials frequent their public libraries more than any other adult generation.<sup>2</sup> They expect libraries to provide not just books but information literacy, community outreach, and opportunities for learning and creativity.<sup>3</sup> As Millennial librarians eye leadership positions, the old guard must acknowledge the lofty aspirations they bring to librarianship—and the reality that both the profession and its up-and-coming workforce have been irreversibly reshaped by the Great Recession. Millennials are “killing” old institutions and practices because the world has changed, and they have adapted a new way of living in it.

¶8 *Millennial Leadership in Libraries*, edited by Ashley Krenelka Chase, targets library professionals from every age group, from the Silent Generation to Millennials. It is a collage of chapters roughly organized into a pentaptych, each section painting a separate but interrelated portrait: why libraries need Millennial leadership; intergenerational conflict; Millennial skills and leadership styles; recruiting Millennials; and Millennial career planning. At the same time, it seeks to persuade older professionals to accept the inevitable transformation accompanying the march of time and to inspire the younger generation to embrace or even accelerate it. The Baby Boomers who currently dominate library leadership will find assurances that Millennials are not so different from them after all—or, if they are, the library can tame their unruly tendencies and leverage their unique aptitudes into benefits. For the Millennials, the book describes a future in which their leadership transforms libraries into bastions of equal access to information, diversity, social justice, and innovation—if they toe the line between traditionalism and progressivism.

¶9 At the heart of all libraries lies a long-standing tension: simultaneous pulls toward tradition and toward progress. Indeed, the very introduction to this book hints at this dichotomy—and especially at the fear of change. The editor, a self-described Millennial, writes almost apologetically that “whether any of us like it or

---

\* © Lora Johns, 2019. Faculty Services Librarian, Lillian Goldman Law Library, Yale Law School, New Haven, Connecticut.

1. Amanda Cioletti, *Millennials are Killing Everything*, LICENSE GLOBAL, Oct. 2017, at 6.

2. Abigail Geiger, *Millennials are the Most Likely Generation of Americans to Use Public Libraries*, PEW RESEARCH CENTER (June 21, 2017), <http://www.pewresearch.org/fact-tank/2017/06/21/millennials-are-the-most-likely-generation-of-americans-to-use-public-libraries/> [https://perma.cc/XK8E-VUR3]; Abigail Geiger, *Most Americans—Especially Millennials—Say Libraries Can Help Them Find Reliable, Trustworthy Information*, PEW RESEARCH CENTER (Aug. 30, 2017), <http://www.pewresearch.org/fact-tank/2017/08/30/most-americans-especially-millennials-say-libraries-can-help-them-find-reliable-trustworthy-information/> [https://perma.cc/A2SU-V4Q9].

3. John B. Horrigan, *Libraries 2016*, PEW RESEARCH CENTER (Sept. 9, 2016), <http://www.pewinternet.org/2016/09/09/2016/Libraries-2016/> [https://perma.cc/6JT4-JPKE].

not, ‘the Millennials are coming’” (p.xii). Indeed, a motif that ties together even the most disparate chapters is wariness: toward Millennials, toward Baby Boomers, toward change, toward staying the same.

¶10 While the book purports to be a guide for and about librarians of a certain age, the generational angle is less central to its core message than its title implies. The just-so explanations for why Millennials behave as they do belie this theme by contradicting one another: Millennials need too much hand holding and request too much feedback, but at the same time they are independent self-starters. Millennials lack work ethic, yet they are highly committed and motivated and eagerly seek out professional development. Such incongruous assertions suggest that these traits are not attributable to the age group per se. To their credit, many chapters point out that using such a broad brush to color a generation spanning a quarter of a century grossly oversimplifies matters. As one contributor points out, “in general, people are people” (p.xxiii).

¶11 Much like the Myers-Briggs personality test attempts to group nuanced individuals into easily generalizable “types,” reducing Millennials to a set of vague characteristics provides a comforting, if not wholly accurate, framework for grappling with large, unwieldy issues.<sup>4</sup> Fixating on teasing out the precise differences between generations threatens to obscure the bigger picture: librarians’ concerns and aspirations for the profession’s future. The lens of generational differences, then, provides the greatest analytical value when we use it to elucidate the real issues underlying points of intergenerational conflict. The most salient concerns revolve around questions of hierarchy and teamwork; loyalty and lack of job security; structural and cultural issues like lack of transparency; stereotypes and underrepresentation of women in library leadership; and economic pressures leading to personnel problems. More optimistically, some chapters envisage a future of better life balance, lifelong learning and continuing individual growth, increasing technological savoir-faire, and passionate activism for social justice issues like access to information and community service. *Millennial Leadership in Libraries* is at its strongest when it addresses these broader themes, for instance by engaging in serious self-reflection on the past and future of workplace culture and identity, or by exhorting Millennials to envision—and create—a better, more inclusive workplace, especially for women and other underrepresented minorities.

¶12 Many contributors write with a tone of hesitancy or insecurity when contemplating generations other than their own. The majority at least mention mentorship as a tool to resolve conflicts and achieve goals. Indeed, most tout it as a powerful corrective to the tensions between the old managers (accustomed to strict hierarchies, institutional loyalty, and ladder climbing) and the new leaders (who tend toward collaborative work, lateral moves, and diffuse responsibilities). The book’s strategies for intergenerational mentoring promise to both raise new librarians into leadership positions and decrease the fear and friction between generations.

¶13 While mentoring certainly has a role to play, it cannot solve every problem. For one thing, it cannot increase opportunities for traditional advancement as man-

---

4. See, e.g., David J. Pittenger, *Measuring the MBTI . . . And Coming Up Short*, 54 J. CAREER PLANNING & EMPL. 48 (1993) (explaining that MBTI results were highly variable over time and therefore a poor basis for drawing significant conclusions about personality).

agement positions are eliminated and seasoned librarians postpone retirement. Thus, several valuable chapters urge Millennials to make a plan for creating informal leadership opportunities even under suboptimal conditions and developing a personal career philosophy to guide them through the trials to come—and help them remember why they wanted to become library leaders in the first place.

¶14 Whether a veteran manager seeking reassurance or advice on mentoring the next generation, or a budding Millennial leader seeking concrete guidance on how to build a meaningful and fulfilling career in the changing library landscape, *Millennial Leadership in Libraries* offers something of value for everyone who cares about librarianship's future.

Cohen, Julia, and Betsy West, dirs. *RBG*. New York: Magnolia Pictures, 2018. 98 mins.

*Reviewed by Kelly M. Leong\**

¶15 While I have always been a fan of Justice Ruth Bader Ginsburg's legal arguments and poise on the bench, I never knew she was a horrible cook. That statement very much sums up the documentary *RBG*. The film struck a captivating balance between discussing Justice Ginsburg's personal life and her legendary legal life.

¶16 There is no doubt the U.S. Supreme Court has been transformed in recent decades not just by its members but by the increased media coverage of Supreme Court opinions. Once celebrities only within legal circles, the previously obscure Justices now find themselves thrust into the spotlight. Justice Ginsburg, recently nicknamed Notorious R.B.G., has perhaps garnered more attention than others. She has been called an icon. She has been parodied on *Saturday Night Live* (which she thought was very funny). And now she is the subject of a documentary.

¶17 *RBG* is a collection of interviews (with Justice Ginsburg, her friends and family, politicians, and activists), public appearances, and archival material (including family photographs and video, and audio from her arguments before the Supreme Court and during her time as a Justice). While the film follows a fairly linear historical path from her childhood onwards, the interspersing of recent interviews from a diverse group of friends, family, acquaintances, and fans discussing their affinity for and memories of Justice Ginsburg provides humor and insight into her personal and professional lives.

¶18 The filmmakers look at Justice Ginsburg's life through the lens of the gender issues she has experienced, the cases she has litigated before the Court, and the cases in which she has written opinions as a Justice. Justice Ginsburg recalls that while at Harvard Law School with eight other female students, the dean questioned whether the enrolled women were taking a seat from a man. After graduation, she found it difficult to find legal work, like many female attorneys at the time. Eventually, she became a professor at Rutgers School of Law where she taught a course on gender in the law. The documentary highlights her approach to litigating gender issues before Court, including her arguments in *Frontiero v. Richardson*,<sup>5</sup> in which

---

\* © Kelly M. Leong, 2019. Head of Reference, Fordham University School of Law, New York, New York.

5. 411 U.S. 677 (1973).

she argued that a female service member deserved an increased housing allowance for her husband, just as male service members did for their wives; and in *Weinberger v. Wiesenfeld*,<sup>6</sup> in which she argued that widowers caring for children deserved equal Social Security survivor benefits.

¶19 The love story of Justice Ginsburg and her late husband, Martin, was a surprising and poignant aspect of the documentary. “I have had the great fortune to share life with a partner truly extraordinary for his generation.”<sup>7</sup> They met while in college at Cornell. They then attended law school together at Harvard, though Justice Ginsburg would later graduate from Columbia. Mr. Ginsburg was his wife’s biggest champion. The documentary highlights Mr. Ginsburg’s great support for his wife’s love of the law and his efforts to support her nomination to the Court.

¶20 Beyond the unexpected love story, I must say one of my favorite parts of the documentary is when she displays and discusses her collars. There are specific collars she wears for majority opinions and dissenting opinions. On occasion, she receives new collars as gifts. The collars are part of the iconography of her time as a Justice.

¶21 *RBG* is a light-filled documentary of one of the first female Supreme Court Justices. It highlights the struggles that Justice Ginsburg endured to become a Justice and the support she was given from those she loved along the way. Most important, it reminds us of her enduring conviction for equality.

De Filippi, Primavera, and Aaron Wright. *Blockchain and the Law: The Rule of Code*. Cambridge, Mass.: Harvard University Press, 2018. 300p. \$35.

*Reviewed by Matt Timko\**

¶22 *Blockchain and the Law: The Rule of Code* reveals the myriad ways in which blockchain technology has far greater potential than simply bitcoin. Primavera De Filippi and Aaron Wright demonstrate how blockchain technology is currently being used and how further possible uses have profound consequences for governments, legal relationships, and law enforcement around the world.

¶23 The primary goal of the book is to identify how blockchain technology fits into lawmaking and government formation. To support this endeavor, the book provides extensive explanations about the technology and current uses of blockchain technology in legal systems around the world. The book is a tremendous introduction to blockchain technology, as well as all the related and supportive technologies needed for a blockchain to operate. Divided into five parts, the book has three sections examining blockchain technology, current legal uses (such as intellectual property and contract law), and the legal implications of and for blockchain technology in the future. The book does an excellent job scaffolding the complex technological information to guide those unfamiliar with the content toward the book’s conclusion.

¶24 Written primarily for newcomers to blockchain, the book begins with an introduction to the technology itself. It does a masterful job explaining the techni-

---

6. 420 U.S. 636 (1975).

7. *Nomination of Ruth Bader Ginsburg, to be Associate Justice of the Supreme Court of the United States Before S. Comm. on the Judiciary*, 103d Cong. 54 (1993) (statement of Judge Ginsburg).

\* © Matt Timko, 2019. Academic Technologies and Outreach Services Librarian, David C. Shapiro Memorial Law Library, Northern Illinois University College of Law, DeKalb, Illinois.

cal aspects of a blockchain without condescending to the reader. If there is a flaw in the explanation, it is that, at times, the terms of art are introduced with the assumption that the reader has a greater understanding of the technology. This is most apparent when the authors speak about common Internet protocols (for example, the TCP/IP model); almost all readers will use and recognize these by acronym, but they might not understand them in a full technical sense. However, these examples are rare and forgivable given the sheer amount of technological explanation the book seeks to synthesize in the early chapters.

¶25 The middle section (chapters 3 to 7) thoroughly explores what readers will recognize as contemporary legal examinations of blockchain technology on contracts and intellectual property. Furthermore, the analysis clearly and surgically examines why a blockchain is such a unique and secure technology to use in these examples. The authors' analysis of the way a blockchain does and can operate within securities markets helps to clarify in a very practical sense many of the technical aspects the book has discussed up to that point. Within these first two sections of the book, the authors foreshadow the thesis discussed in the last two sections (chapters 8 through 12): the opportunities blockchain technology affords for lawmaking and illegitimate uses that open an entirely new realm of possibilities for blockchain's potential. Building upon the analysis of the private regulatory framework of a blockchain (which the authors refer to as *lex cryptographica*), the analysis of the dual implications of blockchain technology for the law is a sobering crescendo to the work and will give readers much to think about.

¶26 This book is terrific for both those who are novices and those who are experts in the field of blockchain technology. The diagrams and figures used in the book do relatively little to help us understand the complex systems surrounding blockchain technology. Fortunately, the authors do a wonderful job of explaining the information in a way that most readers will find intuitive or, if not intuitive, at least digestible. The overview of blockchain technology, as well as the practical impact on the law and legal systems, adds a core piece to the growing literature on blockchain technology and is essential for any competent understanding of the legal implications of blockchain technology.

Nann, John B., and Morris L. Cohen. *The Yale Law School Guide to Research in American Legal History*. New Haven, Conn.: Yale University Press, 2018. 349p. \$35.

*Reviewed by Jennifer L. Behrens\**

¶27 On paper, the pitch sounds nearly impossible: an affordable one-volume paperback reference that covers key research sources and techniques, spanning sixteenth century English legal principles to the present-day American legal system, suitable for audiences ranging from seasoned legal historians to novice interdisciplinary researchers. But that was the goal for Yale law librarians and research professors John B. Nann and the late Morris L. Cohen with *The Yale Law School Guide to Research in American Legal History*, the newest entry in the Yale Law Library Series in Legal History and Reference.

---

\* © Jennifer L. Behrens, 2019. Acting Interim Director, Head of Reference Services, and Senior Lecturing Fellow, J. Michael Goodson Law Library, Duke University School of Law, Durham, North Carolina.

¶28 The introduction acknowledges the dual (and, at times, dueling) audiences for a text like this: legal researchers and historians. Legal researchers likely have had more grounding in the modern American legal system, its core publications, and legal research basics, but may lack familiarity with the historical context and terminology necessary to research earlier eras. Conversely, historians may be better equipped to navigate obscure sources and formats but will be stymied without a basic understanding of the concept of *stare decisis* and the interplay between the courts, legislatures, and executive branch agencies in shaping the law. Readers from both categories will likely appreciate the introduction's six-step checklist for "Coordinating Historical Legal Research," which offers a handy framework for approaching any legal history research project.

¶29 The majority of the book is organized chronologically, although the amount of time covered by each chapter varies widely. Chapters 2 ("English Foundations of American Law, 1500s–1776") and 3 ("Colonial Law, 1600s–1770s") each span multiple centuries; Chapter 4 narrows its focus to a single, eventful decade ("Constitutional Law, 1780s"). Chapters 5, 6, and 7 each span between 50 and 80 years, their respective eras concluding in 1870, 1930, and the 2010s. The final four chapters abandon chronological in favor of topical organization, focusing on "Archives and Practice Materials," "International and Civil Law in the United States," "Language and Biography," and "Nonlaw Research." In recognition of their audiences' disparate experience levels and research needs, the authors provide a useful bibliography of additional recommended reading at the end of each chapter, including "Important Sources Mentioned in this Chapter," key databases, topical bibliographies, and other relevant categories specific to the chapter's topic.

¶30 Throughout the work, the authors distill complex topics into succinct and accessible overviews for the nonlegal audience. More experienced legal researchers may glaze over the familiar basics, but Nann and Cohen skillfully weave additional details into the source descriptions that elevate the text beyond mere introduction. For example, a section on federal courts efficiently summarizes the historical development of Article III courts and their expansion over the years. The section concludes with a four-page table of "States within each circuit over time," condensing centuries of changes into a surprisingly useful chart that underscores the authors' advice to understand the court structure and appellate process of a jurisdiction at the particular time under research.

¶31 At times, the guide can sag under the weight of its ambition to serve multiple audiences. Each chapter concludes with a hypothetical "Research Example," which suggests a desire for the title to be used as not only a reference work, but also a potential textbook for law school or library school classes. Selected sample topics vary depending on the subject of the chapter, as does the success of this approach. The most effective deployment comes late in the text, where the "Language and Biography" chapter compares and unpacks the competing historical dictionary definitions for the same term. While the other research examples are reasonably brief, walking the reader through several of the sources discussed in each chapter, text-only descriptions of search result screens and website 404 errors are not terribly illustrative. (Perhaps a spinoff condensed and illustrated textbook version, similar to West's *Legal Research Illustrated* abridgement of *Fundamentals of Legal Research*, would serve the student market more effectively.) For more experienced researchers who wish to bypass the general background information and textbook-

style content, the book's detailed index will allow them to quickly pinpoint the discussion of desired source titles and topics.

¶32 Such minor stylistic quibbles seem inevitable with a book that covers so much historical ground for such a broad potential audience, and they are not intended to downplay the magnitude of the authors' multiyear effort in crafting *The Yale Law School Guide to Research in American Legal History*. The title remains a remarkable achievement and is an essential reference volume for academic law libraries. With its inexpensive price and accessible treatment of legal concepts, it would also be a very useful addition to the collections of many general academic and public libraries.

Rothman, Jennifer E. *The Right of Publicity: Privacy Reimagined for a Public World*. Cambridge, Mass.: Harvard University Press, 2018. 240p. \$39.95.

*Reviewed by Tracy Eaton\**

¶33 Although perhaps not as well known as the right of privacy, the right of publicity is a right that Jennifer Rothman makes clear from the beginning is one that affects us all. It is the right to control how others can use one's name and image, and Rothman's introduction hooks the reader from the beginning by name-dropping famous examples. Some of the mentioned cases include Vanna White's successful lawsuit against Samsung for using a wigged robot on the set of *Wheel of Fortune* in an advertisement; the Rosa Parks Institute's suit against Target to enjoin them from selling plaques honoring the activist; and Michael Jackson's heirs' ongoing battle with the Internal Revenue Service over the value of the right to use his name and image. However, this is not a right afforded only to celebrities; when granted by a state, it is a right available to all individuals.

¶34 *The Right of Publicity: Privacy Reimagined for a Public World* has three parts and an epilogue, each named after a physics concept. Part I, "The Big Bang," explores the evolution of the right of publicity from its origins in the right of privacy. The right of publicity, or the right to control the use of a person's name and image, is governed almost entirely by state and common law. No federal statute addresses this right, and only one U.S. Supreme Court case even touches on it. Rothman traces the term "right of publicity" to *Haelan Laboratories v. Topps Chewing Gum*,<sup>8</sup> a case involving a dispute between two companies regarding the use of a baseball player's image. By noting that a "man has a right in the publicity value of his photograph"<sup>9</sup> in that case, the federal courts involved themselves in developing and expanding this "new" right.

¶35 Part II, "The Inflationary Era," traces the development of the right of publicity post-*Haelan*, during which courts transformed it into a transferable, property-like right, with federal courts anticipating and speculating about what state courts would do in these cases. Rothman attributes the expansion of the right of publicity to two specific occurrences: first, the U.S. Supreme Court's hearing of its only right of publicity case to date, *Zacchini v. Scripps-Howard Broadcasting*;<sup>10</sup> and

---

\* © Tracy Eaton, 2019. Library Specialist, University of North Texas at Dallas College of Law, Dallas, Texas.

8. 202 F.2d 866 (2d Cir.), cert. denied, 346 U.S. 816 (1953).

9. *Id.* at 868.

10. 433 U.S. 562 (1977).

second, Elvis Presley's death. In *Zacchini*, the Court defined the right of publicity as a "person's right to control commercial display and exploitation of his personality and the exercise of his talents,"<sup>11</sup> and distinguished it from the right of privacy as a distinct species of intellectual property right. Also, a plethora of cases stemming from the use of Elvis's name and likeness for commercial gain after his death led to some states passing statutes designed to protect the postmortem right of publicity. Rothman asserts that the combination of these two things led to the creation of a broad publicity right that extends well beyond its privacy right roots. She notes that more than 30 states have right to publicity laws that differ greatly in scope and length of coverage; she also provides some detail as to common variations among the statutes.

¶36 In Part III, "Dark Matter," Rothman explains her argument that the right of publicity, as it exists today in its many iterations, goes too far. First, she strongly disagrees that the right of publicity should be transferable because this means that ownership of a person's identity can be placed in the control of a third party. She includes familiar celebrity cases, such as Ron Goldman's family's request to control O.J. Simpson's right of publicity, and Brooke Shields's mother's transfer of her child's rights to support her argument. Another problem with the right of publicity in its expanded state conflicts with the First Amendment. Just as the state statutes granting the right lack consistency, so is the consideration of when protection of a right of publicity impinges on another's First Amendment rights. No less than five balancing approaches have been used to make this determination, which leads to different outcomes on similar facts. Finally, protection of the right of publicity can also create conflict with federal copyright law, which Rothman argues leads to further inconsistency.

¶37 She wraps up the book in the epilogue, "The Big Crunch," with her recommendations for how the right of publicity should be narrowed and made more consistent among the states. The right of publicity should (1) apply equally to public and private figures; (2) allow recovery for financial and personal injuries; (3) be more limited in scope; (4) not be transferable; (5) limit duration of any postmortem right; and (6) limit negative impact on rights protected by the First Amendment and federal copyright law. Given social media and the rich pop culture that exists today, Rothman's book is certainly timely. It also is a comprehensive, yet readable, look at the evolution of the publicity right. The intended audience is law students, law faculty, and practicing attorneys. It would be of particular interest in any class focusing on the right to privacy or to any scholar conducting research in this area. Rothman's use of famous examples throughout the book make it especially appealing to readers. One addition that could improve the book would be the inclusion of an appendix with citations, and possibly a summary of the current content, to the state statutes creating a right to publicity in the more than 30 states that have adopted one. *The Right of Publicity* is a great addition for any academic law library.

---

11. *Id.* at 569.



## Tuesday Morning Detective Work\*

Mary Whisner\*\*

¶1 I've been feeling nostalgic for the days when I often saw lots of people during a reference shift. It wasn't uncommon to have more than one patron in the reference office and to be juggling phone calls at the same time. Sometimes two librarians or a librarian and an intern would be kept busy. Not every shift was like that, even during the peak seasons when first-year students had research assignments, and I can't say that every busy shift was fun and invigorating. But still, I miss them.

¶2 Where has everyone gone? A lot of students and other researchers are getting what they need (or what they think they need) on their computers, either in the library or at home.<sup>1</sup> But some researchers get stumped and still figure out to come to us, and when they do, their questions can be much more interesting and challenging than some of the questions that filled our busy shifts years ago. I don't have to teach law students how to Shepardize in print (even though I was pretty good at it), but there are still some questions left for me. Like the one I faced on a recent Tuesday morning.

¶3 A law student had met with me the week before to talk about her research project related to the Department of Agriculture's Dietary Guidelines. After a productive meeting, she went off to do more research. She hit a dead end and wrote to me. She'd found an article in a public health journal that stated: "initial resistance by the Department of Agriculture during the Nixon administration to begin the Special Supplemental Nutrition Program for Women, Infants, and Children demonstration program was countered successfully by a lawsuit."<sup>2</sup> The article didn't give details about the case but cited only: "Leonard RE. Recalling WIC Program's 1960s humble beginnings. *CNJ Weekly Report*. 1994;24:4-7."<sup>3</sup> And there the trail stopped. The student hadn't been able to find the article in *CNJ Weekly Report*, and searching in Westlaw hadn't yielded the case. Could I help? Because of this one question, I stayed busy during my reference shift—even though only one or two people walked through the door.

¶4 I started with the citation to *CNJ Weekly Report*. Our university library system has an eJournal called *CNJ: Caring Nursing Journal*. It didn't seem to be a likely

\* © Mary Whisner, 2019. I'm grateful to Sara Bensley and Laina Johnson for commenting on a draft of this piece.

\*\* Research Services Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law.

1. See Mary Whisner, *The Pajama Way of Research*, 99 *LAW LIBR. J.* 847, 2007 *LAW LIBR. J.* 51.

2. Mariana Chilton & Donald Rose, *A Rights-Based Approach to Food Insecurity in the United States*, 99 *AM. J. PUB. HEALTH* 1203, 1205 (2009).

3. *Id.* at 1210 n.48.

match, since it's from an Indonesian university. And it only began publication in 2017,<sup>4</sup> over twenty years after the article we were looking for. "CNJ" also shows up in the catalog in a government publication, *Notices of Judgment Under the Federal Food, Drug, and Cosmetic Act. Cosmetics*. The abbreviation "C. N. J." refers to "notices of judgment . . . dealing with cosmetics."<sup>5</sup>

¶5 I searched using Google, Google Scholar, and Google Books. Google Books gave me my first good clue, a classified ad in *Mother Jones Magazine*:

"If you're serious about the politics of food, you need the Community Nutrition Institute's weekly newsletter. Monitors issues from farm to table. Write: CNJ Weekly Report, Box M, 1146 19th Street N.W., Washington, D.C. 20036."<sup>6</sup>

¶6 It struck me as odd that an organization whose initials were "CNI" would publish something named "CNJ Weekly Report," but I'd work with it. I searched Google for community nutrition institute and found a skimpy LinkedIn entry.<sup>7</sup> That linked to one employee on LinkedIn, Rod Leonard.<sup>8</sup> That gave some confirmation that I was on the right trail, because the author of the elusive article was R.E. Leonard.

¶7 Back in the university library's catalog, I searched for Community Nutrition Institute. There was a record for "CNI Weekly Report." So "CNJ" was a typo—in both the endnote we started with and in the *Mother Jones* classified ad. But according to the catalog entry, *CNI Weekly Report* ceased publication in 1982 and was continued by *Nutrition Week*. Back in Google, I found other sources citing the article, but using the new title for the newsletter. Our library system doesn't have *Nutrition Week*, but if the student decides she needs it, she can request it through interlibrary loan.

¶8 I decided I had pursued that lead far enough and—like the student before me—turned to federal cases in Westlaw. Thinking that the agency would have been one of the parties, I tried searching for **ti(agriculture u.s.d.a. & "special supplemental nutrition program")**. Since we knew that it was during the Nixon administration, I limited dates to after 1968 and before 1975. No luck. I tried using the names of Nixon's secretaries of agriculture (Hardin and Butz) instead of the agency name. Still nothing. That didn't mean that there wasn't a "lawsuit"—just that it didn't result in an opinion or order that was in Westlaw.

¶9 I switched to law reviews, and searched for **w.i.c. "special supplemental" /p u.s.d.a. agriculture hardin butz /p lawsuit sue\***. I didn't find much, but I was delighted to find this:

When WIC was first established by Congress as a pilot program in 1972. . . USDA initially declined to implement it, leading FRAC to sue USDA for release of appropriated

4. CARING NURSING JOURNAL, <https://journal.umbjm.ac.id/index.php/caring-nursing/issue/archive> [<https://perma.cc/5ZGQ-ZJV2>].

5. James C. Munch & James C. Munch, Jr., *Notices of Judgment—Cosmetics*, 14 FOOD DRUG COSM. L.J. 399, 399 (1959).

6. Mother Jones, Jan. 1981, at 64, *available at* <https://books.google.com/books?id=c-YDAAAAMBAJ&lpg=PA64&dq=%22cnj%20weekly%20report%22&pg=PA64#v=onepage&q=%22cnj%20weekly%20report%22&f=false> [<https://perma.cc/G3BG-UDHH>].

7. *Cnty. Nutrition Inst.*, LINKEDIN, <https://www.linkedin.com/company/community-nutrition-institute/> (last visited Dec. 1, 2018).

8. *Rod Leonard*, LINKEDIN, <https://www.linkedin.com/in/rod-leonard-3268b286/> [<https://perma.cc/9J7F-3SV4>].

funds.<sup>162</sup> USDA argued that WIC would duplicate its existing efforts under the Commodity Supplemental Food Program, a direct distribution program that provided surplus commodities to pregnant women, infants, and children.<sup>163</sup> In 1973, a federal judge ordered USDA to implement the program.<sup>164</sup>

<sup>162</sup> FRAC History, *supra* note 160; Victor Oliveira et al., USDA Economic Research Service, Food Assistance and Nutrition Research Report No. 27, The WIC Program: Background Trends, and Issues 7 (2002), available at [http://www.ers.usda.gov/media/327914/fanrr27c\\_1\\_.pdf](http://www.ers.usda.gov/media/327914/fanrr27c_1_.pdf)

<sup>163</sup> See Eileen Kennedy & Edward Cooney, *Development of the Child Nutrition Programs in the United States*, 131 J. NUTRITION 431S (2001).

<sup>164</sup> OLIVEIRA, *supra* note 162.<sup>9</sup>

This was very exciting. All I'd have to do is follow note 164 to note 162 to the paper by Oliveira et al. Except (you probably saw this coming), the URL in note 162 didn't lead to the paper by Oliveira et al.<sup>10</sup> But I plugged the title into Google and found the paper in a couple of places. One on USDA's website has a URL that is similar to the broken link<sup>11</sup>—but it only includes the first four pages. A site at the University of Minnesota has the full 44-page report.<sup>12</sup> As promised in the law review article, page 7 mentions the case: “USDA took little action and in 1973 a Federal court judge ordered the agency to implement the program.”<sup>13</sup> That didn't give us details about the case, but I thought it was progress to have a government report, rather than a citation to a newsletter we couldn't find.

¶10 But could there be more? When a federal court orders around a federal agency about a new program, it's newsworthy. And one paper likely to cover it is the *Washington Post*. Our university library system subscribes to a ProQuest module that includes the *Post*, 1877-2001. I searched for articles between December 1972 and January 1974 and found gold: *Contempt Charges Filed Against USDA over Food Program*.<sup>14</sup>

The contempt charge was filed by New York City's Food Research and Action Center with U.S. District Court Judge Oliver Gasch, who ordered the department in two separate decisions last summer to put the program into operation and spend the \$40 million Congress had appropriated for it.<sup>15</sup>

---

9. Lindsay F. Wiley, *The U.S. Department of Agriculture as a Public Health Agency? A “Health in All Policies” Case Study*, 9 J. FOOD L. & POL'Y 61, 84–85 (2013).

10. To see the 404 error message I saw, visit [<https://perma.cc/6DUG-22HR>].

11. VICTOR OLIVEIRA ET AL., USDA ECON. RES. SERV., FOOD ASSISTANCE & NUTRITION RES. REP. NO. 27, THE WIC PROGRAM: BACKGROUND, TRENDS, AND ISSUES (2002) (first four pages), [https://www.ers.usda.gov/webdocs/publications/46648/15831\\_fanrr27fm\\_1\\_.pdf?v=41063](https://www.ers.usda.gov/webdocs/publications/46648/15831_fanrr27fm_1_.pdf?v=41063) [<https://perma.cc/ER4W-BBFB>].

12. VICTOR OLIVEIRA ET AL., USDA ECON. RES. SERV., FOOD ASSISTANCE & NUTRITION RES. REP. NO. 27, THE WIC PROGRAM: BACKGROUND, TRENDS, AND ISSUES (2002), <https://ageconsearch.umn.edu/bitstream/33847/1/fa020027.pdf> [<https://perma.cc/2QTD-J3QN>].

13. *Id.* at 7. By the way, a newer edition of the report does not have this sentence. VICTOR OLIVEIRA & ELIZABETH FRAZÃO, USDA ECON. RES. SERV., ECON. INFO. BULL. NO. 134, THE WIC PROGRAM: BACKGROUND, TRENDS, AND ECONOMIC ISSUES, 2015 EDITION (2015), [https://www.ers.usda.gov/webdocs/publications/43925/50999\\_eib134.pdf?v=42402](https://www.ers.usda.gov/webdocs/publications/43925/50999_eib134.pdf?v=42402) [<https://perma.cc/A6NP-SMXQ>].

14. Austin Scott, *Contempt Charges Filed Against USDA over Food Program*, WASH. POST, TIMES HERALD, Nov. 9, 1973, at A5.

15. *Id.*

I also found a story about the November contempt proceeding in the *New York Times* (also via ProQuest Historical Newspapers).<sup>16</sup> I didn't find anything about the "two separate decisions last summer," but the student has a lot of clues and search terms to use if she wants to pursue that question.

¶11 This project was a lot of fun. But the university doesn't employ me just so I have interesting ways to spend my mornings. More important is that I was able to help a student find information that she needed and, by explaining how I found it, I taught her some research skills that she can use on her own. The students might not be swarming the reference office to ask for help finding the digest volume they need for their homework or to have us explain one more time what the *Shepard's* codes mean. But I think this new kind of busy can be better than that. Even students with good skills can use our expertise.

---

16. *Agriculture Department Sued by City Group on Impoundment*, N.Y. TIMES, Nov. 9, 1973, at 7.

