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FROM THE EDITOR'S DESK

During the past year we have published a number of substantive articles in our newsletter. Hopefully, they have been beneficial as well as informative. As always, topic suggestions are welcome for future issues. With several substantive articles included in our final issue of the year, I will only wish our students well as they graduate or leave for the summer. Remember -- if questions arise, we are only a telephone call away!

...MR

THE BAR EXAMINATION IN VIRGINIA: A RIGOROUS EXPERIENCE

"Not until the bar shall awaken to the necessity of imposing the most stringent requirements for admission to practice, and thus preclude therefrom all such as have not the most undoubted qualifications, will the

profession of law be an honor unto itself, or anything but a target for idle and sarcastic remark and ridicule."

"Admission to the Bar." 1 Albany Law Journal 350, 351 (1870).

As third-year students ready their applications in preparation for the Virginia bar examination in July, perhaps a historical overview of the origins of the exam will prove interesting.

Early Admission to the Bar. In the 1700s, Virginia maintained a separation between the upper and lower bar. The General Court appointed a permanent examining board composed of its own members or of attorneys practicing before it who were compensated from application fees.

Jefferson and Wythe were instrumental in changing this system to banish gradations of rank and privilege within the profession and decentralize the licensing mechanism by shifting responsibility from a compensated board to the judges themselves. Unfortunately, these changes weakened the examination system and allowed almost all applicants entrance to the bar.

For a brief period, from 1842 to 1849, Virginia had a statute that bestowed a "diploma privilege" under which a graduate of a college of university law school did not need a license. This law effectively benefitted only the College of William and Mary and the University of Virginia at the expense of their rival private law schools. The statute was repealed in 1849 after

UVA Professor John B. Minor argued strongly against its continuance.

During the ensuing period, until the late 1800s, aspiring lawyers had only to apply to circuit judges, who would verify the applicants good character and examine the applicant. Although two judges were supposed to administer this minimal examination, usually only one examined and the other then added his signature to the certificate. The majority of examinations were farces, and even those judges who administered a severe test passed all applicants regardless of their answers.

Development of a Bar Examination. In 1888, the Virginia State Bar Association was formed. At its first meeting a standing committee on legal education and admission to the bar was created. This committee's first directive was "to draft an act making the examination for admission to the bar a rigorous experience." W. Hamilton Bryson, Legal Education in Virginia 1779-1979: A Biographical Approach. Charlottesville, VA: University Press of Virginia, 1982, at 57.

Its first draft act, which required a bar examination conducted by three attorneys, was defeated in the General Assembly. In 1895, the committee presented to the Association two proposed bills. The first proposal, which the committee favored, set up boards of bar examiners. The second proposal transferred responsibility for examination from the circuit judges to the Supreme Court of Appeals. This latter form of examination was endorsed by the Association and passed by the General Assembly in 1896.

Rules for the written bar examination were published that same year. Among the requirements stated in the rules were a certificate of moral character from two members of the bar and a six-month residency requirement. The examination was to be held

on the first Friday in July. Although written responses to the questions were required, an oral examination was conducted if doubt existed based on the written test.

A list of books to be studied included Blackstone's Commentaries; Minor's Institutes and Minor's Synopsis of the Criminal Law; and Greenleaf on Evidence. Specific subjects of coverage were Pleading, Principles and Practice of Equity, Law of Real Property, Law of Contracts, Law of Torts and the Code of Virginia. Finally, each applicant had to attest that he had "neither received nor given aid or assistance in any manner during this examination".

The First Bar Examination. The first bar examination was given on January 8, 1897 and consisted of 69 questions. Questions, listed under the specific subject headings of Real Estate, Contracts, Negotiable Paper, Sales, Partnership, Torts, Pleading, Equity, and Criminal Law, included:

- Define the word "land."
- What is the difference between a void and a voidable contract?
- What is the difference, both in form and effect, between a blank endorsement and a full endorsement?
- Can the title to personal property, after its sale and delivery to the vendee, be retained by the vendor until the purchase money is paid? If so, how?
- How may a partnership be formed and how dissolved?
- What degree of care or diligence does the law require of a person just before crossing a railway track?
- On whom is the burden of proof where the defence is the statute of limitations?
- State the difference between courts of law and courts of equity as to their procedure and the manner of administering justice.
- What are dying declarations, and when admissible as evidence?

Further Developments. In 1910, the Virginia Board of Bar Examiners was established to administer the examination thus relieving the court of this time-consuming responsibility.

Then, in 1934, the prerequisite of academic study was added to the bar examination process. Every applicant was required to have a degree from an ABA-approved law school or to have studied for two years in an accredited college or to have the equivalent of two years of undergraduate education. Two years later, the bar association pushed to get the act amended so that if an applicant did not graduate from a law school, he or she was required to add two years of reading law to the two years of college. Today, Virginia is one of a handful of states that allows individuals to sit for the bar after reading law without attending any law school.

Conclusion. The evolution of the bar examination in Virginia has continued to this day, most recently with the addition of the multistate component to complement the Virginia essay questions. The number of topics covered has expanded to over twenty, and the number of questions has decreased to twenty. However, the underlying objective of the Virginia bar exam has remained constant: to effectively test an applicant's familiarity with Virginia law. Indeed, the examination process has become more "rigorous" as the standards to which future Virginia attorneys are held have heightened.

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KF/272/S8/1983

...ST

UNITED STATES GOVERNMENT DOCUMENTS

The United States government is the largest "publisher" in the world. Many materials issued by government agencies are of particular interest to law libraries. Congressional bills, hearings, House and Senate reports, the Code of Federal Regulations, Congressional Record, Federal Register, and the United States Code, as well as texts of treaties and most federal administrative agency decisions are published by the U.S. government.

Law libraries may select free of charge one copy of government publications available through the government depository program. Marshall-Wythe selects approximately 1,000 current government document titles.

At the Law Library, government documents are shelved according to their use in the collection. Periodicals, such as the Army Lawyer, are shelved with other bound or current periodicals. Books are classified under the Library of Congress numbering system and shelved with

the treatises. Decisions of federal administrative agencies are classified and shelved with the Special Subject Reporters.

Some materials are shelved on the main floor in the government documents collection under a special Superintendent of Documents classification number. Many of these titles do not appear in LION, but should be listed in the "Serial Locator" binder located at the circulation desk. Many government documents are available only on microfiche. They are filed in the microforms room according to the Superintendent of Documents classification number.

Congressional material, from 1970 to date, is available at the Law Library in microfiche through the Congressional Information Service (CIS), a private publisher. Hearings from selected congressional committees, including the House and Senate Judiciary Committees, are also received in paper and shelved in the government documents collection.

Many government documents are fully cataloged and appear in LION. Please do not hesitate to ask the reference staff for assistance in locating any material that might be issued by the United States government. ...SW

LOOKING AT THE U.S. LEGAL SYSTEM: A COMPARATIVE PERSPECTIVE

To people from non English Common Law countries, their first impressions of the U.S. legal system may be that it is both massive and messy. In order to navigate through thousands of code and statute volumes, mountains of judicial opinions, hills of administrative regulations, and truckloads of secondary sources, the practitioner or researcher frequently finds himself or herself confused, frustrated,

and helpless. The most unusual, amazing, and difficult-to-understand thing for people unfamiliar with this system may be that court cases count, and that judges' opinions themselves are the law. Because the law is continuously revised by judicial decisions, the attorney or scholar can run into great trouble if s/he has not thoroughly searched the law of the moment which governs the issue at hand.

Compared to Common Law countries, life is relatively easier in the so-called Code System countries such as China, Japan, Germany, and France. In China, for example, law is created only by the national legislature, and statutes passed by lawmakers are subsequently codified into codes, which constitute the dominant sources of law. Government agencies, if authorized, may promulgate rules and procedures which implement the statutory provisions from which they derive. The judiciary enforces laws enacted by the legislature, but their functions are limited to implementing law, not interpreting or making law. Judicial decisions do not set precedents, and are binding only on the parties immediately involved. Law may be interpreted, amended, or repealed only by the legislature, and the judiciary does not have any role to play in the making of law, at least in theory. Therefore, any case coming before a court of law is treated as a new one, and the court, along with the attorneys involved in the litigation, looks at the relevant statutes, codes, and rules and procedures, and applies them to the facts to make a judgment. Once a judgement is rendered and executed, the court's opinion, or declaration of judgment, which normally does not exceed a few pages of standard letter size paper and never gets reported, becomes valueless, forgotten, and buried into files of documents. What a contrast to the U.S. system where lawyers and law students must learn to swim, on a daily basis, in the sea of court cases, which often question, criticize and contradict, rather than harmonize, compliment and accommodate, each other on the same issue.

While structural simplicity, easy operation and judicial efficiency are the obvious advantages associated with the Code System, this system has its own problems. For instance, the judicial branch of government under such a model, viewed from the Chinese experience, has too much autonomy in its application of the law. Because codes and statutes themselves are incapable of absolute comprehensiveness (in many cases they are intentionally left sketchy so as to accommodate future circumstances unforeseeable at the time of passage) and previous decisions have no precedent value, it is totally up to the reviewing court to decide how a statute ought to be (construed and) applied. As the courts are not bound by precedents, the excessive amount of discretion they enjoy could lead them to abuse of power on the one hand, while opening up the door to bribery on the other. For instance, people wishing to influence the outcome of a court's decision may readily accomplish such purpose by giving bribes to a judge, and the judge could unlawfully manipulate the case's outcome under the disguise of judicial discretion. This factor contributes to judicial corruption common among some Code System nations.

The differences between Common Law and the Code System are enormous, therefore it becomes necessary for the international practitioner to understand both systems in order to succeed in practice. Comparative studies in this field may provide insights which can help us better understand the strengths and weaknesses of our own system. ...HBH

LAST MINUTE ADVICE TO THOSE ABOUT TO LEAVE THE NEST

As the end of spring semester approaches, many students prepare to leave for jobs in law firms, government agencies, and the courts. You go to those jobs well trained. You have learned

about contracts, torts, and civil procedure. You have mastered interviewing clients, negotiating settlements, and arguing appeals. Hopefully, you understand the difference between a legal encyclopedia and a law digest. Like a mother sending her only child out into the world, however, I recently pondered what additional wisdom I could pass on to ensure your success. I mentally recited the litany of research techniques and strategies taught and I felt sure you were prepared.

One night, I awoke with a start. "**Nonlegal information sources**," I cried out. I had never mentioned the importance of nonlegal research. Luckily, I had time to correct this blatant omission. But, I thought, what should I tell you about these research materials? You are going to many different types of employment situations with differing information needs. What are the most important aspects of nonlegal research that would be helpful to all of you despite the nature of your legal practice? I spent a wakeful night pondering this question. By morning, however, I had outlined my message. So, dear students, read on. Tonight I will sleep knowing you are truly prepared to enter the real world.

The Essence of Nonlegal Research

I. OFTEN IN LAW PRACTICE YOU WILL NEED INFORMATION THAT DOES NOT HAVE A STRICTLY LEGAL ORIENTATION.

The law is a field of knowledge that is closely related to the interaction of people with each other, their environment and their culture. To represent the legal interests of your clients you will need to look at other disciplines, such as business, economics, psychology, sociology, statistics, medicine, and engineering. Defining your information needs will help determine which discipline's reference materials you need to consult.

II. YOUR SUCCESS IN LOCATING NONLEGAL INFORMATION WILL DEPEND UPON YOUR ABILITY TO DEFINE YOUR INFORMATION NEEDS.

As with legal research, you need to identify/define the kind of information you need. With legal research you are looking for legal authority -- cases, statutes, and regulations to back up your legal theories. With nonlegal research you are looking for factual authority; i.e., stating and trying to prove relationships between two or more factors to fit into your legal theories. Your first step will be to define those factors and relationships. Next, determine the depth of subject coverage you need. For example, do you need the most recent information or do you also need historical information? Do you want background commentary, found in an encyclopedia or popular magazine, or do you need in-depth analysis, found in a technical report? As mentioned above, part of this process also consists of defining the subject matter of the research question. This generally involves determining whether your problem falls into the fields of social sciences or science and technology.

III. BASIC SKILLS LEARNED TO LOCATE LEGAL INFORMATION CAN BE APPLIED TO THE PROCESS OF NONLEGAL RESEARCH.

A. Learn your subject.

First, you might want to familiarize yourself with the subject matter by referring to a general encyclopedia. Popular and general interest periodical literature also provide background information on current as well as historical subjects. The best place to obtain this type of information is a local public or academic library. A good general encyclopedia, such as the new Encyclopedia Britannica (EB), will provide historical development and current analysis of the subject. Encyclopedia articles

also include bibliographies that lead to additional information. Next, you might want to look at an index to the general periodical literature. Many public and academic libraries subscribe to CD-ROM indexes of periodical literature. If you want to examine these types of information sources before you leave for your summer employment, the law library has a copy of the new EB in the reference room. We also have on trial the General Periodical Index and the Readers' Guide Abstracts CD-ROM indexes to periodical literature.

B. Learn the literature of your subject

Just as you would refer to a handbook or guide to legal research to help you locate sources with legal information, you can consult research guides for assistance in locating nonlegal information. Even if you plan to have someone else perform the actual research, you should be familiar with the literature of your subject in order to judge whether your researcher has done a thorough job.

You can find research guides with broad general coverage and specific subject field coverage. The most useful research guides will describe research methods as well as list useful sources. The most widely used general research guide is Guide to Reference Books, 10th ed. by Eugene Sheey (1986). This one volume guide lists reference materials published on five broad topics: general reference works, humanities, social and behavioral sciences, history and area studies, science technology and medicine. Another general research guide that updates Sheey is American Reference Books Annual. This guide divides reference material into four topics: general reference works, social sciences (including history and area studies), humanities, and science and technology. To ascertain materials published by the government you should look at Guide to U.S. Government Publications by Donna Andriot (1992).

For analyses of the literature in a particular subject, you can find research guides on almost any subject field. Most of the special subject research guides will be listed in the general guides. Business research may be particularly interesting because the practice of law often touches on the field of business. Two useful guides to business research are Business Information Sources by Lorna M. Daniells (1985) and Business Information: How to Find It, How to Use It by Michael Lavin. (1992). The Daniells book includes a discussion of business research methodology and a guide to varied sources of business information grouped by management function. Lavin's book includes similar information but also includes business databases.

Because I can't begin to cover all the information you may need, where to find it, and how to use it, I will instead tell you about quick research guides and handbooks. Sherwood Harris's New York Public Library Book of How and Where to Look It Up. (1991) is one such guide. Most of the information in this guide could be found using other individual sources. The value of this source, however, is that it pulls all different types of often used sources into one small easy to use handbook. Harris's book is also unique in listing picture sources and special subject collections. Another quick guide is Lesko's Info Power (1990). This one volume paper handbook is part research guide and part directory. It includes sections on how to research for certain information as well as a directory of organizations and government agencies where you can get information on a particular subject.

IV. LEARN TO LOCATE SOMEONE WHO CAN FIND THE INFORMATION YOU NEED FOR LESS MONEY THAN IT WOULD TAKE YOU TO FIND IT YOURSELF.

When you are billing time at \$150/hour and juggling interests of many clients, often the best way to manage your time is to find someone else to do the work for you. Sometimes the quickest and cheapest way to get information is to call a librarian. Reference librarians in public and academic libraries answer hundreds of questions each day from people who need to know something in order to settle a bet or make an important business decision. And they do it for free! To use a library to its best advantage, you need to understand the mission of the library and patrons it serves. It is always a good idea to call the library first to see if it can handle your information needs.

To locate a library in your area refer to a library directory. The American Libraries Directory (annual), includes public, academic, government, and special libraries in the U.S. and Canada. The Directory of Special Libraries and Information Centers includes collections maintained by business organizations, nonprofit organizations, educational institutions, government agencies, private individuals and foundations, and many other types of organizations. If you need to locate a library by collection specialty, you may also want to look at the Subject Guide to Special Libraries -- Business, Government and Law Libraries.

Referring to a professional or trade association is another way to use time and money wisely to obtain the information. Many associations maintain staff members to answer public inquiries, and libraries with access to subject specific information. Some organizations also publish journals, newsletters and membership directories that can provide another source of information on a subject. The Encyclopedia of Associations (annual) is a directory that includes listings for national nonprofit membership associations, international associations, local and regional associations, and nonmembership associations if they disseminate information to the public.

Finally, the federal, state and local government produce huge amounts of information from compiled statistics to in-depth research reports. Access to this information may be no further away than your telephone. To locate officials within the federal government one source to look to is the Federal Yellowbook (quarterly). There are also the State Yellowbook and the Municipal Yellowbook to direct you to state and local officials who may help you with your information needs.

Conclusion

Unfortunately, I can only scratch the surface of nonlegal research in this limited space. With these recommendations, however, I hope you are better prepared to meet the challenges of the many research projects that await you this summer. The most important advice I can give you is don't be shy about finding someone who can help you locate the information you need, either librarian, government official, or someone within the law firm. And remember if you get really stuck, you can always phone home. ...MGH

BITS & BYTES

LEXIS and WESTLAW Passwords. On May 16, LEXIS and WESTLAW will deactivate passwords for the summer. If you are a member of law review or moot court, a faculty research assistant, or plan to attend summer school, you may request that your password capabilities continue through the summer. To keep your passwords active, submit a form to Mead Data Central and West Services by May 1. Forms are available in the Law Library Lobby, the Student Lounge, and the CALR training center.

LEXIS and WESTLAW have instituted a program this year allowing students access to job-searching databases. Although passwords will be deactivated during the summer for general purposes, students may use their password to access various databases that carry job information. Complete details are available

from the LEXIS and WESTLAW student representatives. ...MGH

IN BRIEF

Exam Period Typing Carrel Usage. There are six typing carrels which may be used for studying. A sign-up schedule for these carrels is available at the Circulation Desk. Typing carrels and the two Student Conference/Video Viewing Rooms (rooms 244 & 245) may NOT be used for taking exams. ...AF

Library Lockers. The deadline for locker clean-out and key return is Monday, May 10, 1993, by 5:00 p.m. Lockers must be emptied and the locker key returned (with barcode and key tag attached) to the circulation desk. There is a \$10.00 replacement charge for keys not returned. To continue using your locker during the summer session, you may fill out a locker renewal form in lieu of returning the key. Return the completed form to the circulation desk by the May 10 deadline to renew the locker.

Lockers will be available for the Summer Session as keys are returned from the Spring Semester. Any law student who needs a locker for the summer can obtain a key at the circulation desk. All locker keys must be returned at the end of the summer session for reassignment on a first-come-first-served basis on the first day of fall semester classes. ...AF

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