1-1-2002

The Way We Were and What We "B"

Kelly Kunsch

Recommended Citation

The Way We Were and What We "B"

Kelly Kunsch

ABSTRACT. This article describes the changes over the past 20 years in the job of reference librarian. Using typical reference questions and quotes from leading law librarians in the early '80s, the author compares current practice and explains the differences in the time, place, and manner of legal reference. Although answering questions may be done today more quickly and efficiently than 20 years ago, the increase in demand and expectations make the job more challenging than ever. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <getinfo@haworthpressinc.com> Website: <http://www.HaworthPress.com> © 2002 by The Haworth Press, Inc. All rights reserved.]*

KEYWORDS. Reference Librarians, change in law librarianship, legal research, literature of law librarianship

> To remain vital, a profession such as our own needs a living and growing body of published research to serve as a record of its accomplishments, to educate its newer members, and to stimulate the individual growth and development of its membership.
>
> –*Richard A. Danner*[1]

INTRODUCTION

Judging from our professional literature and presentations, the field of law librarianship is heavily populated with futurists.[2] I choose not to join them. I have tested my prescience in Las Vegas. If not riches, at least I came away with an understanding of my limitations. My only contribution to the "science" of futurism is to predict that most of the

Kelly Kunsch is affiliated with the Seattle University School of Law.

speakers and authors will be wrong. After all, if they really could spot future trends, wouldn't they have moved all their retirement from CREF to TIAA during the past year?[3]

What I *can* do is look backward. I can also look backward from a fairly unique perspective. In a profession of movers and shakers, I have remained *in situs* for almost 20 years: twenty years as a Reference Librarian at a law school. One might question, just what value can such a perspective supply? Like Monet's series of paintings "Mornings on the Seine," a single vantage point allows the viewer to focus[4] exclusively on the subject being viewed or portrayed. Through the varying appearances of the subject over time, the observer gains a better understanding of the reality.

As I think back to what I did 20 years ago and compare it to what I do now, my first answer is that I do the same thing. Only the resources have changed. But in analyzing particular transactions, I believe that the context of the job has changed and because of this, the job itself has changed.

The approach that follows is to quote the leading authorities of their day to show how legal research worked 20 years ago.[5] The quotations are about the *mechanics* of reference and so they are taken primarily from the prominent legal research texts at the time. The older approach to reference is then compared with the current possibilities. Finally, I offer some conclusions about the changes in being a reference librarian in the last 20 years.

The purpose of this piece is as much to rediscover our sacred texts as to engage in personal reminiscences. Perhaps it may stimulate some of those newer to our profession to look more closely at our history and its relationship to the present.[6]

TIME

Question Presented: I heard that the U.S. Supreme Court decided a case today, [could you] get me a copy of it?

Cohen & Berring, *How to Find the Law* (8th Ed. 1983):

> *United States Law Week* is a two-volume looseleaf service . . . It reproduces, in a looseleaf format, the full text of every opinion of the United States Supreme Court. The unique value of *U.S. Law Week* is the speed with which it prints and distributes these opin-

ions. Because even the fastest advance sheet of the *Supreme Court Reporter* or *Lawyers' Edition 2d* will not arrive for several weeks after the rendering of a decision, there is a need for a service that provides faster access to these important decisions. To answer this need, *U.S. Law Week* photographically reproduces the text of the decision from the slip opinion, adding no headnotes or editorial comment. The decisions in the weekly issues of *U.S. Law Week* reach subscribers within a few days of their issuance by the Supreme Court.[7]

. . . [LEXIS and WESTLAW] provide machine access to the text of the decisions of the United States Supreme Court . . . Neither provides complete historical coverage of past Supreme Court decisions, but both are constantly extending their data bases retrospectively. The databases normally contain the text of opinions well before the publication of advance sheets. Both WESTLAW and LEXIS have pledged to have the full text of all U.S. Supreme Court opinions within 72 hours of decision, which would make them faster than even *U.S. Law Week* or *Supreme Court Bulletin* . . .[8]

DISCUSSION

This question is easily answered today by any Reference Librarian, most law students, some practicing attorneys, and one or two law faculty members. United States Supreme Court opinions are available within minutes of publication via the Internet on both proprietary and nonproprietary websites. This points out a major change in the job of a Reference Librarian–information seems almost immediately available on the web or through other electronic means. This is a positive for users because they get what they want sooner. But what is positive for a user may not be entirely so for the Reference Librarian. It is positive in that a question can be concluded sooner rather than put in abeyance until the arrival of the information. But what is less positive is the increase in expectations by the users. Today's users expect immediacy not just with Supreme Court opinions and other documents that are widely and quickly disseminated. Users have transferred immediacy from where it should be expected to where it should not be expected. The expectations created above have extended both vertically and horizontally. For example, they have extended vertically from the U.S. Supreme Court to lower federal courts to state courts and municipal courts. They have extended also to international courts to foreign courts (no matter how

technologically advanced) to translations of foreign courts and ever on-
ward. Expectations have extended horizontally to legislation, adminis-
trative decisions, and government and corporate reports. In short, users
now expect that whatever they seek is currently available somewhere
on the Internet and the burden is passed to the Reference Librarian to
suggest where or, God forbid, suggest that it is not there.

   Incidentally, when patrons in a law library spoke about a Lexis or
Westlaw computer, they meant the computer or password. There was a
single dedicated computer for each service and one password for the en-
tire school–and it was not a multi-user password. There was one user at a
time. And there was rarely any waiting. Of course, nobody used the ser-
vices as surrogate copiers then. This was in large part because printouts
came out as a long scroll of paper. A large printout was cumbersome and
an unattended printer could produce the mother of all tapeworms.

PLACE

Question Presented: I'm trying to get my damage deposit back from
my landlord. Is there somebody that can help me?

Mary K. Sanders in Mueller & Kehoe, *Law Librarianship: A Handbook*
(1983):

> A reference desk should be placed prominently in the flow pattern
> of library traffic and clearly identified so that the users will not
> have to search to find the reference staff . . .[9]
>   . . . If a librarian hides behind a counter stacked with files
> and books and looks busy, only the most persistent patron will be
> served.[10]

DISCUSSION

   Twenty years ago a reference librarian battled on a single front: the
reference desk. As in most onslaughts, there was more than one flank to
that front. Thus, in those days, besides assisting persons physically at
the desk, the librarian might also be assailed via telephone. But even so,
patrons were channeled one at a time via a busy signal, hold button, or
failure to answer. An occasional mail foray added to the burden.

   We now toil in a minefield of voicemails, faxes and e-mails added to
the continuing fronts named above. Demands can stack up throughout

the day, after hours, and on weekends. While a reference librarian answers one phone number, questions may be mounting on another. The patron's prior need to physically find the librarian is gone. In a word, reference has become ubiquitous and, in a sense, so has the reference librarian. We can walk but we cannot hide. That being so, there is more demand on a typical reference staff. In recognition of this, some law libraries have moved to tiered reference where the circulation desk offers the initial line of fire, sending patrons to the reference librarian's office when necessary. Other law libraries have eliminated the reference desk entirely.

Question Presented: I need references and statistics that are probably more social science than legal, where should I look?

Jacobstein & Mersky, *Fundamentals of Legal Research* (2d ed. 1981):

> There are many other databases that may be useful in legal research. Unlike *Lexis* or *Westlaw*, most of these are not full text but rather consist of abstracts or indexes of articles and documents. Companies specializing in providing on-line databases make these databases available to subscribers. In some instances special terminals are needed; in others, access may be made through word processing systems now prevalent in many law firm offices. Most university libraries and some larger law libraries offer the services of searching these databases. A few most relevant to legal research are:
>
> > CIS Index
> > Legal Resource Index
> > The Information Bank
> > Newspaper Index
> > Psychological Abstracts[11]

DISCUSSION

There are laws for all of life. It should be no surprise then that legal research has always involved finding some information that is not typically housed in a law library. Twenty years ago, the best a reference librarian could do was to refer a patron to a library where the information was (or was likely to be) available. The resources mentioned by Professors Jacobstein and Mersky were useful in obtaining bibliographic cita-

tions to such information but ultimate access to the documents required exiting the law library.

Today, there are the legions of nonlegal database on Lexis, Westlaw, and other databases that law libraries have access to. Additionally, the governments of the world make both legal and nonlegal information and statistics available via the Internet. Corporations, nongovernmental organizations and private individuals also create documents on subjects both legal and nonlegal. The entire text of nonlegal material of all kinds is now available from inside the law library. Even foreign language materials are available. The problem is finding it.

An important attribute in providing reference service is an understanding of the subject matter. That is why many libraries desire legal training when hiring a law reference librarian. Now, however, with requests for material outside of law being asked in the law library, an understanding of other fields is gaining in importance. Each field has its own jargon and often the publication of documents varies by subject and jurisdiction. If, for example, German courts do not include the names of the litigants in their published decisions, one should not use party names as search terms. In short, reference librarians today are asked to know about more subjects and to understand geographical idiosyncrasies unlike ever before.

MANNER

Question Presented: I can't find any authority on this legal issue, where else can I look?

Price & Bittner, *Effective Legal Research* (4th Ed. 1979):

> Finding the law may be compared to playing golf. Seldom does a player make a hole in one or cover the course by use of a single club. Similarly, most legal research problems require the use of more than one source and index to the law. Seldom is one approach a sufficient safeguard upon either the scope or the completeness of a search. The skillful and imaginative interplay of various means of finding the law is the mark of the successful searcher.
>
> This book presents . . . six [sic] approaches to legal research. To a large degree, a person's decisions regarding research techniques are a matter of personal taste and judgment. You should acquaint yourself with these techniques . . . but feel free to de-

velop your own method of combining various research tools. More important than following any step-by-step procedure is the development of thorough and efficient research habits and a familiarity with the variety of research tools so that you accomplish your goal efficiently without sacrificing thoroughness.

1. *Table of cases approach . . .*
2. *Key Number approach . . .*
3. *Annotated Reports System approach . . .*
4. *Fact or descriptive-word index approach . . .*
5. *Analytical or topic approach . . .*
6. *Words and phrases approach . . .*
7. *Treatises approach . . .*[12]

DISCUSSION

The first paragraph in the above quotation remains entirely true (although the part about using a single golf club on an entire course is strained). There are many ways to do research, and the smart researcher will double check accuracy by using multiple approaches. As for the second paragraph, even in their day, it was bold of any authors to present a finite number (be it six or seven) of approaches to legal research. To do so is exposing oneself to sure criticism. Even so, Price, Bitner and Bysiewicz did not omit any major resources existing at the time. Yet, what is intriguing is that all of the named approaches are based on some sort of bibliographic control. It might be a table or an index or some other compilation, but a researcher was entirely reliant on the abilities of others who had previously processed the information.

With the advent of full-text searching, that is no longer the case. Researchers (among them reference librarians) still *can* rely on indexes, digests, and tables, but they no longer have to. If a patron can't find authority, the librarian can suggest trying the digest, the ALRs, a host of secondary sources and, now of course, a search online in any of the thousands of databases available, or even that wild frontier currently called the Internet.

In short, there are not only more of the resources than there used to be, but also new resources and new ways to search them.

Question Presented: Does the library have copies of [a neighboring city's] ordinances?

Cohen & Berring, *How to Find the Law* (8th Ed. 1983):

The Card Catalog

Because most legal materials are self-organizing serials, law libraries were slow in developing sophisticated card catalogs, and law was the last of the major disciplines to utilize classification schemes for books arrangement. The most widely used law classification, that of the Library of Congress, has not yet been completed today and a number of large research law libraries are still using local schemes . . .

Today most law libraries have adopted the near universal cataloging format and rules used by virtually all research libraries. As card catalogs have grown more and more expensive to maintain and cumbersome to use, many libraries are now exploring (and some are already adopting) microform and computer alternatives. Cooperative, computer-based library networks are now generating catalog cards in most large libraries, including those in law schools. Although card catalogs in research libraries may be replaced in the near future by on-line computer systems, a brief reminder of the main features of the card catalog may still be useful here. For most of us, it will remain the primary search tool for legal treatises–at least until the next edition of *How to Find the Law*.

The card catalog is an alphabetical index of all books and materials in a particular library, providing access by author, subject, titles and occasionally also by special forms (e.g., looseleaf services, legislative histories, trials, etc.). Some catalogs have *one* alphabetical arrangement for author, title and subject, while others are divided, with authors and titles in one section, and subjects in another.[13]

DISCUSSION

Searching a card catalog required a more thorough knowledge of the cataloging rules than searching today's online counterparts. A major reason for this is the typical online catalog's ability to perform keyword searching. For example, in searching to find whether a library has a particular municipal code, you no longer have to know that the municipality was usually the author and the municipality's name was not a part of the title (much less the first word in it).

As Morris Cohen and Bob Berring recognized, they were writing in a transition period. At the then recently named Marian G. Gallagher Law Library in Seattle (where I worked), recent materials were in the microfiche catalog (of which we had multiple copies, including copies at the reference desk); the microfiche reader sat at each station like its offspring the computer would in later years. Older materials at that library were not included in the microfiche but were in *the* (meaning "the only one") card catalog outside of the reference office. Check-in records and shelf lists that provided further information about particular titles were in a separate area: technical services. Thus, knowing the date of publication was more important then than now. Browsing was more cumbersome in both fiche and cards than it is clicking on a subject heading or author's name and, of course, there were no limiting functions. And finding out whether a particular serial issue had been received was a form of exercise.

King County [Washington] Law Library (where I worked part-time) was one of those libraries Cohen and Berring mention that classified and shelved books by its own unique scheme. The scheme grew organically and not necessarily logically. For example, when the library purchased its first book discussing computers (specifically computer contracts), it was shelved in the contracts section. Then each additional book on computers–whether it dealt with contracts or not was also shelved in the contracts classification. Intentionally or not, librarians could become gatekeepers to the information housed in their collections.

Skills of today's Reference Librarians are more transferable within libraries. Libraries use the same classification systems and often the same bibliographic utilities. This is a good feature for a profession that at least in academia, usually demands geographical mobility in exchange for upward mobility.

Question Presented: I looked in the catalog and the library doesn't have what I want. What can I do?

Cohen & Berring, *How to Find the Law* (8th ed. 1983):

> If after searching your own library's collection, you find that it lacks materials that you need and have already identified, they may be obtainable *without* going to another library. Many libraries are now linked by computer terminals and can search each other's catalogs. The needed item may be in another collection and may be borrowed by interlibrary loan. Even if your library lacks a computer link to other collections, the *National Union Catalog*, or regional union catalogs can be used to find lending locations.[14]

DISCUSSION

It used to be so simple. You got good at using your catalog and if your library did not have an item, you knew it. No question. Then the options were two: interlibrary loan or go elsewhere. There were no hidden items that the library "had" because it had *access* to them. Not so anymore. Even if a library does not physically possess a certain piece of information, that is barely past the starting point of modern reference. The librarian must determine if it might be one of the millions of documents in Lexis, Westlaw, or some other database. If not (or for some this step might come first), the librarian can search the Internet to see if the document is residing (like Fivel) somewhere out there–which is usually much easier said than done. Even after finding what appears to be valuable information, there is a new twist. Now reference librarians must be able to determine both the authenticity and currency of information they obtain. Formerly, the publication process and its costs generally insured reliability. That is no longer the case. And woe to the reference librarian who provides the wrong information and makes a fool of the master.

Question Presented: How do I use this thing?

Rosalee M. Long, Harry S. Martin III & Robert L. Buckwalter in Mueller & Kehoe, *Law Librarianship: A Handbook* (1983):

> The format of material received by a library is a common factor that may limit or adjust otherwise straightforward policies of collection or retention. Newspapers, for example, pose particular handling problems, and many law libraries will limit the number of newspaper-type publications received and may retain those publications only if available in microform.
>
> Other formats may not be collected by some librarians as a matter of policy, irrespective of subject or jurisdiction. Few law libraries have adequate facilities for manuscript materials, which pose special problems of storage and inventory control. Audio-visual materials are becoming more prevalent in many law libraries, but even so only certain types may be collected. Cassette tapes may be acquired but not reel-to-reel. Three-quarter-inch videotapes may be preferred to one-half-inch tapes or to films. Prints and photographs may not be collected.
>
> With the increasing appearance of legal material in nonbook formats, some media policy must be considered.
> . . . The growing popularity of microforms in law libraries

makes a separate microform policy a must. Will the library collect only diazo as opposed to silver halide? Will there be a preference? Will there be a preference for microfiche over film, or only for certain types of materials? Will negative film be preferred to positive or vice versa? Will certain reduction ratios not be acquired? How strong will these preferences be? Are these preferences based on any reasons other than the equipment available?[15]

DISCUSSION

Alas, gone are the days of the diazo/silver halide debates. The past 20 years have seen major changes in publishing formats. These changes, for purposes of this article, are important in that they have required the addition of what I term "ancillary skills and knowledge" to reference librarians abilities today. By "ancillary," I mean skills and knowledge not directly related to the information itself. They often encompass the medium on which the message is presented. Primarily they derive from the computer. You did not and don't need to understand logging, milling, printing, or binding to help a patron find information in a book. The same cannot always be said of information in other formats. The few ancillary skills that were important 20 years ago included knowing how to thread microfilm or remove paper jams from copy machines. Accession of information through the computer, however, requires a requisite knowledge of computers and computer usage. A reference librarian today must at least minimally understand:

- the computer itself (what plugs where and which switches need to be turned)
- manipulation of the operating system (usually Windows; possibly DOS)
- file management
- various software applications
- browsers

Combining all of the above is the catchall "troubleshooting." If a user's computer doesn't function properly, the reference librarian is asked to determine why. That translates into which of the above has gone wrong? Or is it something else? It may be a problem with hardware, software, connectivity, or compatibility (among others). For the librarian with enough computer savvy that word of it gets around, lines can be long, but time and patience is usually short.

While understanding search engines and online search strategies are new aspects of reference, they are not exactly the ancillary understandings of which I speak. They relate directly to the information itself and can be analogized to understanding controlled vocabulary twenty years ago.

However, another area where ancillary knowledge is becoming increasingly important is writing. Reference librarians have always done some writing. Twenty years ago, the reference staff compiled bibliographies and created research guides. The "publishing" of these was done on a typewriter. There was little ancillary knowledge necessary in operating a typewriter. With word processing, some additional skills were required. Now much of the writing or publishing done by reference librarians is done on the web. This increasingly requires knowledge and skills in the area of web construction and design. Making the information available is not enough. It must be presented in a manner that reflects well on the author and the sponsoring institution.

Related to the above ancillary skills and knowledge is the constant need for training and relearning. As new applications replace old ones, today's reference librarians must understand the changes in capabilities and protocols of the many databases and programs they use. Once you learn something today, you are not done learning it. This was not so before. Occasionally, the library got a new photocopier or microfilm reader. Sometimes a publisher would add a new feature to a looseleaf service. Change today is a daily occurrence.

Question Presented: Do you know someone in [a foreign jurisdiction] who can help us on this question?

William D. Murphy in Mueller & Kehoe, *Law Librarianship: A Handbook* 777-78 (1983):

> . . . Today there are a great number of library organizations with varying purposes. Most of these organizations cater to special or local interests. A few are important to all librarians, and some draw their members from more than one country. Perhaps the fact that there is no profession more dependent on cooperation and communication than is librarianship explains the great number of organizations.
>
> For law librarians, certain of these organizations are vital. Even from the beginning of their careers, law librarians should affiliate with and participate in those organizations that will aid them best to–

1. Establish and maintain communication with others associated with or contributing to law librarianship.
2. Keep abreast of developments in librarianship, and especially law librarianship, via meetings, activities and publications.
3. Make a personal contribution to the continuing development of law librarianship.[16]

DISCUSSION

Professional organizations remain integral to librarians–especially reference librarians–because they provide a forum for networking, and one of the most valuable resources in doing reference is other librarians. The organization itself, however, is no longer the exclusive, or even primary, mode for librarian interactivity. This function has been dramatically augmented by the listserv. Reference librarians now utilize each other's expertise and contacts on a daily basis. Perhaps more importantly, they can tap a vast pool of librarians with a single request to a discussion group like law-lib or stumpers. And they can exchange with librarians they have never even met before. Through the internet, reference librarians share knowledge, anecdotes, and sympathies. In essence, the listserv has become the global water cooler.

CONCLUSION

For some of you, this article might have been an opportunity to relive a bygone era–the law librarian's version of Mayberry (or perhaps nearer to the mark: *That 70's Show*). For others, it is a glimpse into an unknown history through echoing voices of our profession. They are voices worth listening to.

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. There are many more comparisons that could be given of what happened 20 years ago as opposed to today. However, adhering to my device, it is difficult to find quotes from 20 years ago that one can even analogize to problems such as ringing cell phones ringing, crashing computer networks, and the learning styles derived from MTV and the sound bite.

Since this *is* a conclusion, I would like to make at least one conclusion. The job is more challenging now than it was 20 years ago. To begin with, there is more to know. More time has passed so there is more history. More information has been disseminated over the intervening years and it is more readily available. There are more formats that information is published in. Using them often requires more knowledge and even aptitudes that were not necessary before. There are more people asking for reference help and more ways for them to ask. And because more can be done, and it can be done faster and perhaps in a more usable format to the patron, the expectations are higher. In fact, that is probably *the* word that differentiates the reference librarian's context from what it was one score ago: "expectation." Today's reference librarian, despite all the advantages given by technology, is burdened with higher expectations. And it is those expectations that make the job more challenging today than yesterday.

And, like it or not, that is good for the profession.

NOTES

1. Richard A. Danner, *From the Editor*, 77 LAW LIBR. J. 431, 433 (1984-85).

2. The most recent annual meeting had numerous programs discussing "new realities" and the future including "Technology Crystal Ball" and "New Roles? Retooling Yourself for Work in the 21st Century." Speakers projected the future of the legal education, law librarians, books, technology, government regulation, and even a piece of furniture (the reference desk).

3. To nonacademics, CREF is the main stock based retirement package for law school employees, TIAA is the main alternative, an annuity. To future readers, the stock market had a bad year from late 2000-2001. As Dizzy Dean would have said, it slud. N.B. Most futurists in our profession tend to be high-level academics. I believe it to be caused by the excess time they have with which to muse.

4. The word "focus" may not seem well chosen in a simile using Monet. However, knowing what professional colleagues have offered about my prior viewpoints, I am comfortable with any comparisons.

5. In doing so, I will make true the suggestion of one of the profession's true visionaries, Marian G. Gallagher. Almost 20 years ago, she wrote: "There are those who wonder whether 1983 is the best possible time to publish a description of law librarianship. It is a time of accelerating change when none of us can predict with any assurance what law libraries will be like in the future and do not want to attempt to do so in print. Broad strokes outlining where law librarianship will go from here could be a dangerous undertaking at best and this collection does not purport to be a guide to the law libraries of the future. While it may very well serve the manual writers of the Golden Jubilee as useful reminders of what went before, its value now is in its currency." Marian G. Gallagher, in Foreword to 1 Heinz Peter Mueller & Patrick E. Kehoe, *Law Librarianship: A Handbook,* xix (AALL 1983).

6. Almost 20 years ago, Bob Berring wrote an article in this journal titled "How to be a Great Reference Librarian." One of the first suggestions he made was to read some of the older texts on legal research in order to understand the conceptual basis of legal information (in particular, he mentioned Fredrick C. Hicks, *Materials and Methods of Legal Research with Bibliographical Manual* (West 1923)–actually, there are several editions of the work). Ironically, earlier editions of Professor Berring's own work (with Morris Cohen) can be treated similarly now. Robert C. Berring, *How to be a Great Reference Librarian*, 4:1 LRSQ 17, 19-20 (1984).

7. Morris L. Cohen & Robert C. Berring, *How to Find the Law* 46 (West 8th Ed. 1983).

8. *Id.* at 47.

9. 1 Mueller & Kehoe, *Law Librarianship: A Handbook 190* (1983).

10. *Id.* at 195-96.

11. J. Myron Jacobstein & Roy M. Mersky, *Fundamentals of Legal Research* (Foundation Press 2d ed. 1981) at 446-47.

12. Miles O. Price, Harry Bitner & Shirley Raissi Bysiewicz, *Effective Legal Research* 438-47 (Little Brown 4th Ed. 1979). The Fourth Edition was the last revision of this important treatise and therefore, the one in use 20 years ago.

13. Cohen & Berring *supra* note 7, at 453.

14. Cohen & Berring *supra* note 7, at 523.

15. Rosalee M. Long, Harry S. Martin III & Robert L. Buckwalter in 1 Mueller & Kehoe *supra* note 5, 249-50.

16. 2 Mueller & Kehoe, *supra* note 5, 777-78.