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## **Cold Case - One Ordinary Law Librarian Assists in Solving a 53-Year-old Mystery and Learns a Lesson about How Law Students Treat Legal Research**

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# Cold Case

*One ordinary law librarian assists in solving a 53-year-old mystery and learns a lesson about how law students treat legal research*

by Joyce Manna Janto



“ **One of her students was wondering about the charge and punishment for someone arrested for a hit and run in which the victim died...in 1953. ”**

Every year I face a new group of one  
Ls in my legal research class, and I  
tell them that legal research is easy.  
And every year, they tell me the only reason  
I think legal research is easy is because I  
already know how to do it.

While my students are correct in recognizing experience as a factor in the ease of legal research, there are other reasons they find the research process difficult. One issue is proximity. Many feel that first-year students, who have a limited need for research skills outside of the legal research class, are simply not ready to learn this skill. The theory is that people more readily learn a skill when they perceive the need for, or have suffered from the lack of, the skill.

Another issue may be one of format. Students are more comfortable with online sources—classes that emphasize print sources may turn them off. Another issue identified is the lack of context in legal research programs. This theory posits that first-year students have a difficult time grasping the concepts needed in legal research because they do not understand the underlying legal issues.

There are also issues that are generational. Since the 1990s, students have shown a marked decrease in their ability to find, synthesize, and analyze information, according to Edward Tenner's article, "Searching for Dummies," in the March 26, 2006, *New York Times*. Students today also lack an understanding of the realities of the information marketplace and are impatient with the research process. They are used to typing a query into Google and receiving an answer in seconds. These things, I feel, cause the most difficulties for novice researchers. All of these problems were graphically illustrated for me by a reference question I received in the fall semester of 2006.

### The Main Themes

My first legal research class is held during orientation. Since my students have no context, I try to keep this class general. I focus on four main themes. The first is the need for good research skills. I remind the students that strong research skills are necessary not only for law school, but for the rest of their career.

The next is the need for a researcher to be a creative thinker, or to use the current cliché, to think outside of the box. A client doesn't come into your office saying they have a tort problem or a contract problem; he comes in because a neighbor is driving him nuts by mowing the lawn with a power mower at 7 a.m. on Sundays. A good researcher takes that fact and translates it

into the legal concepts of nuisance or noise pollution.

Third is the need to find the right law for the occasion. Does state law, federal law, or a municipal ordinance cover the situation of your client with the noisy neighbor? I also emphasize that what makes the law "right" is not just a matter of subject matter or jurisdiction. Time is also an essential feature. When did this action happen? This concept has been easier to teach since the debut of the television program "Cold Case." I ask my students, when the "Cold Case" squad finally solves the crime, under what law is the felon charged?

The final issue is one of location. Where will you find the law you need? Will it be online? In a book? Will you have to use a combination of sources?

### Location, Location, Location

This issue is the one with which my students have the most trouble. These Millennials have grown up using computers. To them, IMing, e-mailing, and Googling are a way of life. While their computer skills may be excellent, they lack one of the fundamental understandings of any skilled researcher: information is a product.

Even the Internet, like any other provider of information, operates on the law of supply and demand. In 1999 Professor Penny Hazelton published an article, "How Much of Your Collection is Really on WESTLAW or LEXIS-NEXIS," in *Legal Reference Services Quarterly*. It details a study she conducted to determine the overlap of the print collection and the materials available online. At the time, Hazelton concluded that roughly 10 to 15 percent of the print collection at the University Washington Law Library was duplicated online.

In the intervening years, the Internet has grown by leaps and bounds. And with the advent of "Google Books," there may come a time when a much greater percentage of the materials held by an academic law library will be available online. But I predict that it will never be 100 percent. What will be missing? Older non-treatise legal materials that were published before the Internet became the new reality.

The Internet is a living thing. Information put up now will live on, but no one bothers to go back and fill in the "old stuff." The reasons for this are ones of utility and priorities. Very few people need the "old stuff." Why expend the effort on information that will be of interest to only a few users? If there is no demand and no market, there will be no product.

The types of legal materials that are not

available on the Internet are primarily the ones that are used by only a few researchers. Old statutory codes are a prime example of the type of material needed occasionally by a researcher. Lexis and Westlaw are adding older versions of codes, but usually the effort stops at 1989. This is a sensible business decision considering how rarely they will be used. Even the Georgetown Law Library's Historical State Code Project envisions potential purchasers acquiring print copies ([www.ll.georgetown.edu/states/historic\\_codes/index.cfm](http://www.ll.georgetown.edu/states/historic_codes/index.cfm)).

You are more likely to find an old code or session law in microfiche than online. And Millennials, who are already reluctant to touch books, blanch at the thought of microforms.

The other assumption of novice researchers is that if the material isn't available online, then it is on a nearby shelf. They have no idea of how difficult it may be to maintain a research-oriented, historical collection. Consider the example of state codes. One would think that academic libraries would be the logical choices to locate these materials. But of the seven law schools in the state of Virginia, only the University of Richmond's collection comes close to being complete. County law libraries in Virginia may or may not hold this type of material.

The libraries in the large, urban areas of the state tend to be better funded and have more extensive resources. If rural libraries exist, they tend to be less rich in resources. Almost no firm libraries hold this type of material.

In Virginia, your most reliable sources for old Virginia codes are located in the state capital. You have four libraries to choose from: the State Library, the State Historical Society, the State Law Library, and the library of the Division of Legislative Services. This may sound adequate until you consider the size of the state of Virginia. A lawyer practicing in the southwest corner of the state is geographically closer to the capitals of six other states than to the city of Richmond. (Those states are Indiana, Kentucky, North Carolina, Ohio, Tennessee, and West Virginia. As Edith Ann would say, "You can look it up.")

It was this inaccessibility that led to my involvement in a 53-year-old crime.

### The Cold Case Begins

My first involvement with this "cold case" came from an alumna. She is a legal specialist with the Virginia State Police and teaches a class that is attended by troopers from all over the state; this class concludes with a tour of our library. This time, in

addition to arranging a date, she had a reference request.

One of her students was wondering about the charge and punishment for someone arrested for a hit and run in which the victim died...in 1953. This, I thought, would be a simple request.

What kind of law did we need? Since it involved an area heavily regulated by the state, we needed statutory. Where could we find it? Like many researchers, I find statutes much easier to use in print than online. I knew it would be easy to determine the relevant code section in force in 1953 since the current code of Virginia was re-codified in 1950.

A quick check of the current code led me to the relevant section on leaving the scene of an accident (*Virginia Code Annotated* § 46.2-894 (2005)). The historical information gave me the original section number as it appeared in 1950 (*Virginia Code Annotated* § 46-189 (1949)). By comparing the 1949 volume of the 1950 code (don't ask) containing the relevant section and the 1958 volume (the next superseded volume), I learned that the section had not been amended until 1958. Therefore, the information in the 1949 volume was in force in 1953.

According to that volume, in 1953 a person involved with a hit and run, in which death occurred, would be charged with leaving the scene of an accident (*Virginia Code Annotated* § 46-189 (1949)). The punishment would be a confinement in the penitentiary for not less than one year or more than five years; by confinement in a jail for not more than one year; a fine of not less than \$25; or both (*Virginia Code Annotated* § 46-190 (1949)).

At this point, my students would make their first mistake. A novice would have stopped after reading the statute because it gave a complete answer to the question asked. The more experienced researcher knows that the annotations offer a more detailed understanding of the statute.

The annotations changed the answer to this question. An annotation quoting a 1936 case indicated that a person convicted of manslaughter could also be charged with the crime of hit and run for the same incident (*Henson v. Commonwealth*, 165 Va. 821). I assumed the converse would be true and expanded my research.

I pulled the case and discovered that Virginia case law interpreted "running" to

be the crime in a hit and run. Any injury from the accident would be a separate charge. A death that resulted from the "hit" would be charged separately as manslaughter. I Shepardized the case and found it was still controlling law in 1953.

Going back to the *Virginia Code*, I determined that in 1953 involuntary manslaughter was a felony, punishable by a term of one to five years in a penitentiary, or, at the discretion of the jury, with a term of not more than one year in jail, a fine not to exceed \$1,000, or both (*Virginia Code Annotated* § 18-34 (1949)). I photocopied the relevant statutes and the case, ready to be picked up by the requestor.

### A Twist in the Plot

After the library tour I learned more about my cold case from the state trooper involved. He was stationed in Carroll County, which is located in southwest Virginia, near the North Carolina border. The population is under 30,000. The percentage of residents with a high school degree is 64 percent and with a college degree is 9 percent. The median income is \$32,812; the percentage of population below the poverty line is 13. This is a poor county with few resources.

The commonwealth attorney in Carroll County had a problem. The previous summer a 76-year-old man about to undergo open-heart surgery confessed to killing a man in a hit and run accident when he was 24 years old. The

died; how could this be considered a misdemeanor? Like my students, I lacked the needed context. I combed the criminal statutes circa 1953 and found nothing. It took someone very familiar with this particular box, my state trooper, to come up with a potential charge.

In Virginia, reckless driving—driving in such a manner as to cause damage to a person or property (*Virginia Code Annotated* § 46-208 (1949))—is a misdemeanor. A liberal interpretation of the statute could consider death as damaging to a person.

### Back to the Books

Finding the proper version of the reckless driving statute was not as easy as my previous forays into the *Virginia Code*. And if I found it tedious, imagine how a student would react. Furthermore, the majority of my students have never done an in-depth research project. They have never had to consult primary sources. They lack the basic skill of crosschecking documents to piece together the correct information.

A comparison of the reckless driving and the penalty statutes as they appeared in the 1949 and 1958 volumes of the code showed that while the reckless driving statute as published in the 1949 volume was in force in 1953, the penalty statute had been amended in both 1950 and 1952.

While our collection of superseded volumes of the code is comprehensive, our collection of pocket parts is not. We do not have any pocket parts prior to 1954, and the

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commonwealth attorney now had a 53-year-old crime to prosecute, but he was unsure of the status of the law in 1953. Knowing the trooper was coming to Richmond for a class, he passed along the reference question. The trooper was grateful that I had located the answer. I told him that I would be willing to do any more research, if needed.

Soon after, the trooper called back. He wanted to know if I could find a misdemeanor that would fit the situation. It seems the commonwealth attorney didn't want to bring a felony charge. This is where the lack of context trips up the researcher. It's hard to "think outside of the box" when you don't know the parameters of the box.

As a researcher with no experience with criminal law, I was stymied. A man had

collection is spotty until the late 1970s. This meant that I would have to use the *Acts of Assembly*.

Armed with the original volume of the relevant 1949 volume, the 1958 replacement volume, the 1950 regular session *Acts of Assembly*, and the 1952 extra session of the acts, I was able to piece together the relevant penalty. In 1950, the penalty for reckless driving had been strengthened (1950 *Virginia Acts* 396). In 1952 the penalty section had been amended to take the punishment out of the traffic code and into criminal procedure when there was a case of serious bodily injury (1952 *Virginia Acts Ex. Session* 44).

I now had to research a different statute, § 19-265. I ran into a small problem. The

first replacement volume for this section, after the 1949 volume, was dated 1960. Surprise!

In 1960, section 19 had been re-numbered. A quick perusal of the new section 19-1 failed to turn up any mention of the punishment for a misdemeanor. I jumped to another tool foreign to my students—the comparison tables. Unless a student has the opportunity to take an advanced legal research class, he or she would most likely not have exposure to this type of tool.

Using the tables, I determined that § 19-265 had become § 18.1-9. And here, I was very lucky. Our collection had the 1960 pocket part that contained the newly revised section 18.1. The legislative history made it clear that the section had not been amended since 1949, only placed in a different portion of the code. The penalty for reckless driving in which the driver caused serious bodily harm would be a fine not exceeding \$500 or confinement in jail not exceeding 12 months or both (*Virginia Code Annotated* § 19-265 (1949 and Supplement 1953)). I made photocopies of everything I had looked at and faxed it to my contact in Carroll County.

### For the Record

Next I received a phone call from the commonwealth attorney. He wanted me to walk him through the research process so that he could answer any questions the judge might have for him. This is another point that students fail to grasp. Legal research is not something that you undertake to produce a written product or find “the answer.” Keeping track of your research is an integral part of your case. The judge or supervising partner might want to know what sources you consulted.

The commonwealth attorney informed me that he would be going before the judge the following month. He had already gone before the grand jury and received an indictment for involuntary manslaughter, but hoped the information I provided would help convince the judge to accept a lesser plea.

While I considered this reference question extremely interesting, but only moderately challenging, I soon discovered my students thought otherwise. A group of them came across me in the library doing this work. What was I doing with all of those books? I explained the project; as might be expected the legal issues intrigued them. However, the required process for obtaining this information horrified them.

The old volumes, the tables, the session laws, and the crosschecking needed to trace the statutes amazed them. They couldn't believe that it was so hard and time-consuming. They did not believe that the process I was describing was actually quick and fairly easy.

I discovered that my students have a completely different attitude as to how much time a research task should take. An informal survey of my students revealed that they would consider that they had worked for a “long time” on a fairly straightforward, moderately difficult problem after 20 minutes. This seems amazing until you consider that this is the generation that grew up using the remote control to flip through hundreds of channels, who use digital cameras to instantly view photos of an event before the event is even over, and who would never dream of sending a letter though the U.S. mail.

Learning legal research skills may not be as easy as I tell my students, but it also is not as hard as they think. The challenges facing librarians teaching legal research are myriad and some are out of our control. The best we can do is try to give our students the context, the training in basic sources, and the understanding that sometimes the task may take longer than expected. After that, all we can do is hope for the best.

Epilogue: On February 22, 2007, Verlyn Brady, who had been charged with involuntary manslaughter, pled guilty to reckless driving in the 1953 death of George Dalton. The judge fined him \$500 and sentenced him to serve two years of unsupervised probation. But this was truly a case of justice delayed, justice denied. The descendants of Dalton were gratified, but surprised by the case. It seems “everyone” had always known that Elden Martin, who as a teen-ager at the time and had a reputation for “hot-rodding,” had caused the accident that killed Dalton. Martin died in 1991, according to “No Jail Time in 1953 Hit-and-Run,” in the February 23, 2007, issue of the *Richmond Times-Dispatch*. ■

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