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What Do We Owe the Pro Se Litigant?

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What Do We Owe the *Pro Se* Litigant?

Providing a better level of service to our *pro se* patrons

By Nathan A. Preuss

If you have ever spent a shift or two at the reference desk of a law library that is open to the public, you will have some *pro se* litigant stories. Sometimes it seems like listening to the story is half the battle. Law librarians walk a fine line with this particular patron group that our colleagues in other types of libraries do not. If you have ever felt frustrated, drained, or even inspired by doing this important work, you are not alone, friend. This article is meant to amuse, encourage, and, despite myself, inform. Our patrons are not the only folks who want their say.

Well, I say it's our time! Librarians need to be heard, too! Without further ado, I proudly present a transcript of the olde time radio show, *The Nearly True Adventures of "The Librarian."*



The "Over-Dramatization" Part

NARRATOR: Can I share a story with you? It's mostly true, but a few names have been changed to protect the innocent . . . and the guilty. There was once a young and eager law librarian named Nath . . . er, Jackson. Yeah, Jackson. In the first few months of Jackson's career as a reference librarian at a public academic law library, he couldn't help enough. Faculty, students, and *pro se* litigants, ALL WERE EQUAL! ALL WERE ENTITLED TO READY ACCESS TO INFORMATION!

One day, Jackson, our young protagonist, is working a shift at the 'ref' desk. For some reason, everything looks

black and white. There is some cool jazz softly playing in the background, and rain clouds are making the day as dark as night. There is a street lamp lit at the end of every stack. *Library-noir, dig it?*

Jackson is lighting up another Lucky Strike. Then he puts away his custom lighter in the band of his fedora, just like his old man use 'ta. A strange woman walks in to the library.

CUE THE SAXAPHONE SOLO.

PRO SE PATRON: "I hear this is the place to come for answers." The distrust was dripping off her cheeks like raindrops.

JACKSON: "That depends on the questions, ma'am. I'm a law librarian. How can I help you?"

PATRON: "I've been through half

of the attorneys in the phone book, and they can't help me."

JACKSON: "Go on."

PATRON: "I'm looking for the book that has all the laws on divorce. I don't need any legal advice. I just need you to tell me what papers I need to file, exactly how long it will take to get this bastard out of my life, and how much of his money I'll get."

NARRATOR: Jackson's heart sinks like a sack of rocks in the Tennessee River. It is going to be a long shift. . . .

AND NOW A WORD FROM OUR SPONSER, ACME BRAND CATALOG CARDS!

END SCENE.

The "Confessional" Part

Spoiler alert: Jackson is based on yours truly. Granted, I do not smoke. And my library has not had streetlights at the ends of the stacks for months now. Eventually, my responsibilities at work increased. No longer did I wait expectantly at the reference desk to help anyone who walked within earshot, whether they needed it or not. Still helpful, yet, assistance had to be rationed out based on the category of the patron (faculty, student, attorney, general public), class prep, grading, committee work, and the occasional golden moment when scholarship could be done during business hours and not during evenings and weekends. Even the public service policies provide a governor to prevent my engine from revving too high in assisting those who represent themselves.

Yes, that's right . . . "I'm a librarian, not a lawyer. I can help you find and use resources that will help YOU find the answer to your problem." The words provide some comfort to me but not necessarily to the patron. Perhaps comfort breeds complacency.

Library school friends who were reference librarians at other types of libraries would make sour faces when I described a class of people in dire need of assistance who could only be helped so much, even during those halcyon days when time was abundant. On the other hand, grad school chums, landing at certain private academic law libraries, didn't mingle with *pro se* litigants at all. They weren't even allowed in the building. I became defensive with the reference purists and envious of the restricted law libraries.

What, if anything, does our profession owe to the *pro se* litigant? Does it matter that the ideals that brought many of us into this helping profession are necessarily challenged by the realities of many conflicting priorities? Perhaps it does not. If our ideals are not challenged by actual events, our ideals should probably be elevated. What if, however, we abandon our ideals for convenience? Has there ever been a crackdown on law librarians providing **too much** help to *pro se* litigants? I have been unable to find any evidence of such a purge. Perhaps these rogue librarians are rotting away in a CIA black site; "disappeared" to perpetuate the regime. *Tonight on 60 Minutes . . . tick-tock, tick-tock . . . the dark side of law librarianship.*

This is not a best practices article. Perhaps it's a critique of my weak points, and perhaps my profession's, using myself as exhibit A for the prosecution. While I hope, and usually believe, that I'm good at my job, I do not hold myself up as the model for assisting *pro se* litigants in the academic law library. I have occasionally spent too much time assisting a patron with whom I particularly empathize. I have also leaned too heavily on the I-can't-practice-law-without-a-license crutch to shrug off a particularly needy and uncooperative patron. Is the more pleasant patron more deserving of my assistance? Most of the time I do my best to walk the line, the patron is grateful, and I resume other duties guilt-free. But I want to learn how to better serve the outliers.

I am confident that there are model librarians at public law libraries, academic or otherwise, who can help me and the profession in striking the right balance between "practicing law without a license" and a "good luck with THAT" approach to helping the patrons who have the greatest need for assistance. Neither the over-eager nor the reluctant approach is best.

It is a precondition that in order to intentionally avoid reinventing the wheel, one must be aware of the wheel's existence. I may have just discovered that the wheel exists with some of the answers I sought in my quest to be a better guide to *pro se* litigants, but, by gosh, I'm not going to reinvent it. In the remainder of this article I discuss what I would like my library and myself to do to help our public services faculty and staff, and perhaps yours, provide a better level of service to *pro se* litigants.

The Part Where Fellow Librarians Share Highlights and Challenges of Helping *Pro Se* Litigants

Carolyn Hamilton, research services librarian and lecturer in law at the Alyne Queener Massey Law Library at Vanderbilt University in Nashville, Tennessee, shared with me the following:

"Vanderbilt Law Library is open to the public, and we do serve *pro se* patrons. This can be a challenging group to assist for a couple of reasons. First, I have difficulty not telling them "the answer" when I know what the law is or how it has been interpreted in the courts. The other, and more frequent, challenge that I run into is when I cannot help a patron find what they want.

"One example . . . is when [a patron] was here and wanted a [Tennessee Attorney General] opinion from 1956 or so. We covered every year except that one and I think two others. Every source we searched had the same gap in coverage (we think due to a flood). But that was disappointing.

"But there are successes that offset the frustrations. I really feel like I am helping *pro se* litigants when they come to the library with no prior knowledge of legal research and really need some assistance. One time, a patron came in to look for information about defamation and damages. She was completely unaware of how to start and did not know what to expect once she found it. We spent a great deal of time reviewing the sources to use and how to use the databases. Showing her the mechanics of our public access Westlaw subscription was really challenging because she was not very computer literate, but once she learned the basics she developed a confident attitude and found what she needed.

"Another challenge is presented when a patron calls to ask for information over the phone. We are not permitted to read a statute to them, even without offering an interpretation. That type of hindrance impairs our ability to provide easy access to the law and also makes us appear unhelpful. One way around this is sending an email with the text of the statute attached in the form of a PDF. But still, this impairment goes against a lot of what we learn in law school about client counseling and how to help our clients.

"When I was a student, I had a very hard time convincing the *pro se* patrons that they could not hire me to do research for them. It can be a difficult conversation to have because I find that there is a fine line between declining that kind of offer and stating firmly how much I am able to help them.

"I don't encounter that much now as a librarian, but I also do not tell the patrons that I am a lawyer, much less a licensed Tennessee attorney. They don't seem to think that I have the education that I have."

Jessica Panella, Head of Access Services at the University of Connecticut School of Law Library in Hartford, emphasized the eleventh-hour-syndrome and the power of leveraging resources from other entities that are geared toward assisting the *pro se* litigant:

"A common challenge is patrons who come in late in the evening for a court date the next day. Reference staff may be unavailable, and the patron is understandably stressed. It's a tricky situation where we try to balance the services we can provide against the patron's need. The patron doesn't understand why we can't help him, so we'll assist as much as possible. Frequently, we'll also show the patron websites that he can use from home or somewhere with wi-fi after the library is closed. I once recommended that a patron who had a computer but no internet go to a 24-hour diner with wi-fi to continue his research.

"State and judicial law library websites are very helpful, and we rely on them heavily. In Connecticut we can point them to the State Law Library, Connecticut Judicial Court websites, and CTlawhelp.org."

The "Let's Do Something About It" Part

My library serves the faculty, students, and staff of the University of Tennessee College of Law, the local bench and bar, the greater University of Tennessee community, and the general public, more or less in that order of precedence. Therefore, it is not feasible for my institution to raise the *pro se* patron to the highest priority when we are continually seeking to provide greater services with dwindling resources. That being said, time can be found to better serve **any and all** of our patron groups. Efficiency strikes me as the name of the game. So how can we be more efficient in serving the *pro se* patron?

First, all faculty and staff in any library should have clear guidelines and training on policies pertaining to all patron groups. With regard to public patrons, *pro se* litigants specifically, some conversations about the nuanced approach to whether and how to provide assistance must be an ongoing conversation. An honest dialogue about the difficulties of helping this group should be more than a water-cooler decompression session. It should help inform members of the public services team on areas of strength and weakness so that consistent, excellent service is provided to all patrons.

Second, we must be prepared to provide tailored information to this group. Existing reference guides, typically written for law students or attorneys, are likely to be insufficient in helping the general public better understand the complicated endeavor of researching the law. Perhaps by selecting the handful of topics that the general public most commonly brings to your library, you could create a relatively short list of research guides written specifically for that audience. This is a diverse audience, so, while the physics professor could understand a research guide written for a high school dropout, the reverse may not be true. I would also like to see these particular research guides made available in print. These guides can be handed out at the reference and circulation desks, so the public patron can take it along throughout the library. Again, this is a diverse population, but it includes the patrons who are least likely to be computer savvy. The bench and bar of your jurisdiction may make materials, such as forms, available for free online. In the past few years, the Tennessee state courts have made available forms that

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Amendment rights to carry a firearm, even in a quiet place like the library,” and drew parallels between the restrictions placed on gun owners to that of a hypothetical law prohibiting library access to African Americans, invoking the historical specter of Jim Crow in the southern state.

On June 8, 2014, in Kalamazoo, Michigan, Mike Warren, a 31-year old father and small business owner, brought an FNS 9-millimeter handgun to the Kalamazoo Public Library’s Summer Reading Party, an event planned for children. He carried the weapon openly though he did possess a concealed weapons permit. Library officials invited him to leave the event even though local media later contended that Michigan law did not grant them the right to ban the gun. In 2012, Michigan’s Court of Appeals held that the Capital Area District Library’s ban on open carry weapons violated state gun regulations, which prohibit both district and public libraries from regulating gun practices. The Michigan Supreme Court refused to hear the case, leaving the ruling intact. Warren’s motivations for his actions, as reported on MLive.com, reveal the open carry mindset and the paradox of patrons who, while acting to ensure their own security, make others feel unsafe. He is quoted as saying, “I was there to protect my family. God forbid there was a

person who decided to shoot up the place, but I’d be the only one there who could do something about it.”

Open carry laws introduce additional uncertainty into the everyday life of the library. Georgia serves as a prime example. The Safe Carry Protection Act went into effect on July 1, 2014. The question of what exactly the implications are for libraries under this legislation has been a subject of contention. Referred to as the “guns everywhere bill” in the media, it is widely reported to allow firearms in municipal buildings, schools, public libraries, churches, unsecured airports, and bars.

Some of these newly granted rights are not as sweeping as might be first assumed. Georgia requires a permit or license to open carry, which makes its gun policies more restrictive than states such as North Carolina and Kentucky. Interestingly, Texas and South Carolina outright forbid open carry. As for guns in churches, pastors or church councils have the option of allowing guns in their churches but can also ban them. Bar owners have the option of posting a sign stating their businesses’ no guns policy. School districts have the possibility to allow some employees to carry firearms, but the controversial “campus carry” provision did not make it into the final bill. That said, conflicting language in the bill has created confusion on whether

weapons may, in fact, be carried on public college campuses. The state attorney general has stated that there is a general prohibition against carrying guns in a school safety zone, which includes technical schools, vocational schools, colleges, and universities, with an exception for people picking up students at the school who have guns secured in their vehicles. Guns are allowed in government buildings, except when that building has security personnel in place.

This has caused librarians to ask questions. As reported by NPR, Atlanta area public librarians understand that they fall into the unsecured government building provision and they will not be allowed to check to see if a patron has a gun permit. Hypothetical scenarios create uncertainty around the issue. For example, if a patron places a gun on a desk in a library populated by active children, can the librarian ask the patron to secure the weapon without violating the patron’s rights? For Atlanta librarians, this question did not have a clear answer. Similar questions are likely to occupy librarians and library administrators for the foreseeable future, and it is likely that answers may ultimately come from the courts. ■

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will be accepted by courts statewide. The State of Tennessee’s “*Pro Se* Litigant Filing Guide for the Appellate Courts of Tennessee” is available at www.tsc.state.tn.us/sites/default/files/docs/prosefilingguide3-31-10.pdf. The page for “Court-Approved Divorce Forms” in Tennessee is available at www.tsc.state.tn.us/help-center/court-approved-divorce-forms, and additional forms are provided at www.tsc.state.tn.us/forms-publications. If your state puts free, court-approved forms on a virtual silver platter, you simply can’t ignore it. Further, you should shout it from the rooftops! Figuratively shout, that is—we are talking about libraries, after all!

Third, take advantage of AALL and regional chapter resources. If you want to know whether the wheel has been invented by one of your colleagues, the AALL and regional chapter websites are a great place to start. A few good examples include www.aallnet.org/sections/sccll/toolkit/Best-Practices, www.aallnet.org/sections/sccll/toolkit/Self-Representation-Resources, and www.aallnet.org/sections/lisp/2014illinois.pdf, an excellent guide to assisting

pro se litigants, with some focus on Illinois. This third type of document is a useful reminder to library faculty/staff and literate *pro se* litigants. I would feel comfortable referring some public patrons to a guide like this along with some advice specific to their situation. Any law library would benefit from creating a jurisdiction-specific guide like this one.

Fourth, AALL and regional chapters must provide sessions at Annual Meetings where this dialogue can continue. Insular approaches to finding solutions stifle creative solutions. The odds are that if you are struggling in any aspect of your professional life, so are many of your colleagues. I am an academic law librarian, but I am 100 percent confident that I could stand to learn much from my colleagues in public law libraries when it comes to assisting *pro se* litigants, among other topics.

The Part Where I Wrap It Up

As with seemingly all things in this profession, we are never the “only one” struggling with any issue, and our colleagues are often the best resource

for support and assistance. Tailoring resources to this group is challenging. While almost all *pro se* litigants lack formal legal training, their education and literacy levels vary widely. However, plain English explanations, handouts, and other resources will likely be welcomed. Seek resources from other institutions, like AALL, regional chapters, and your state (or federal) websites that cater to the general public. Once we put a little extra prep time into completing these materials, it will make it easier to improve the level of service to this patron group without depleting the time we need to fulfill our other responsibilities. ■



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