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Golf Buddy Reference Questions*

Mary Whisner**

Responding to a reference question that began as a casual dispute between a golfer and his buddy about legal procedure leads Ms. Whisner to consider the appropriate way to respond to inquiries from public patrons.

A caller recently introduced his reference question by saying, “This might seem funny, but I was playing golf yesterday.”¹ He explained that while on the links, his golf buddy had made the statement that a person who did not have assets could go to a court and get a certificate stating that he or she was judgment-proof. The golfer disagreed with his buddy, responding that such a certificate would only come up as part of a specific dispute. So, to settle this question, the golfer asked me, a reference librarian at the local law school: “is it possible to get a certificate from a court saying you are judgment-proof?”

In our Reference Department, we—like most law librarians—steer clear of interpreting or explaining the law to public patrons. Instead we help them use the library and other resources. So while I did tell the golfer that I had never heard of such a proceeding, I also told him he was welcome to come to the library to do some research of his own on the question. To that he asked if there was someone at the library who could advise him on the law. “No,” I answered, repeating that he was welcome to use the library. I said I was not sure what he would be able to find, but I could give him some ideas. First, he should look in a law dictionary, and I confirmed that *Black’s Law Dictionary* had an entry. I flipped through the index to the *Revised Code of Washington* and told him that there was no entry for “judgment-proof,” but there were about three pages of entries under “judgments” and he

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1. What was funny about golfing was that we have not had good weather for it. *See, e.g.,* Florangela Davila, *Sick of Being Soggy? Join the Club—Threemonth Rain Total Is Record*, SEATTLE TIMES, Feb. 6, 1999, at A1 (27.44 inches of rain in Seattle in November 1998–January 1999 set a new record; previous peak for this period was 27.13 in 1955–56). I remarked to the caller that it *had* been damp; he assured me that he really had been golfing, but added that that was not why he was calling.

might find something of interest there. He might also try a legal encyclopedia. The golfer seemed to lose interest in pursuing the question as it became clear that it would require some work on his part. I was intrigued, however, and decided to look a little further and make notes in our reference log, just in case he did come in later.

First I ran a search in *Legal Resource Index*, one of my favorite tools for questions that I do not really know what to do with. It often turns out that *someone* has written a law review article using the term the patron is looking for. Indeed, there were articles with the phrase “judgment-proof” in the title. A couple were false drops (as in the phrase “summary judgment proof”). Several were serious law and economics pieces² that would probably be hard for the golfer (or most lawyers) to understand. Nothing seemed likely to illuminate the golfer’s question.

I checked the indexes to legal encyclopedias. *Am.Jur.2d* had a cross-reference from “judgment-proof” to something about comparative negligence and a judgment-proof joint tortfeasor; *C.J.S.* did not have anything under “judgment-proof.”

As I gave more thought to the question, the whole concept began to seem ludicrous. Why on earth would any state set up a system where a person could get a certificate declaring the person to be judgment-proof? What if he or she inherited a million dollars or won the lottery or even got a good job the day after the certificate was issued? How would people behave if they had these certificates? “Hey, look at me, I’m setting off dynamite in the playground! Don’t think of suing, though, because I’m judgment-proof!” No, issuing certificates like that just did not seem like a good idea. In fact, it seemed so much at odds with how our legal system works that I did not think it likely that the golfer—no matter how hard he looked—would find sources to explain why the procedure did not exist. It is often very hard to prove a negative.

For that matter, the *golfer’s* idea—namely, that a court declares someone to be judgment-proof in the context of a particular dispute—did not make sense either. A plaintiff can win a case and have a judgment entered against the defendant, only to discover that the defendant is broke. But then the plaintiff might watch the defendant to see whether the defendant comes into property (against which the plaintiff could get a lien) or gets a job (so the wages could be garnished). This analysis is supported by Bryan Garner’s explanation of the term:

judgment-proof; execution-proof. Both of these phrases, in reference to a judgment-debtor, mean “having insufficient assets to satisfy a money judgment.” Although *judgment-proof* is much more common, *execution-proof* is more accurate: the judgment-creditor may have had little difficulty obtaining the judgment (i.e., winning the lawsuit), but collecting on the judgment through execution may be another matter entirely. Thus, the penniless loser is insulated not from judgment but execution.³

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2. Mattias K. Polborn, *Mandatory Insurance and the Judgment-Proof Problem*, 18 INT’L REV. L. & ECON. 141 (1998); Kyle D. Logue, *Solving the Judgment-Proof Problem*, 72 TEX. L. REV. 1375 (1994); S. Shavell, *The Judgment Proof Problem*, 6 INT’L REV. L. & ECON. 45 (1986).
 3. BRYAN GARNER, A DICTIONARY OF MODERN LEGAL USAGE 482 (2d ed. 1995).

Finding Garner's discussion was a relief. This is something that we could show the golfer if he came in that might make sense to him. I am always happier with a source to show a patron than I am engaging in raw speculation.

I do not think it would be practicing law at the reference desk to discuss with the patron why it would not make sense for there to be a "judgment-proof certificate." Nonetheless, it is dicey to do so. First, the reference librarian risks offending the patron. Imagine if the golfer and his buddy came in and I exclaimed (as I did to some of my colleagues): "That's a crazy idea! Why would a court issue a certificate like that?!?" Even low-key questions—like "How long do you think such a certificate would be valid?" and "What do you think would happen if a person with a certificate won the lottery?"—might be experienced by the patron as impertinent or offensive.

In some ways a worse risk is that the patron will *enjoy* the conversation and want more. Suppose the golfer calls back and I explain why I think no court would want to issue a certificate as his buddy describes. Maybe he likes my explanation, so he says: "Well, tell me what you think about *this . . .*" and launches into a whole series of questions, say, about the state's mandatory automobile insurance program, the tort system, juries, O. J. Simpson, and so on. It all might be very interesting, but the Reference Office is not the Nineteenth Hole and I am not another golf buddy. It is not my job to have a bull session.

It is not unusual for a public patron to try to engage us in such conversations, but it is wise to turn the topic to research. As my colleague Peggy Jarrett suggests, we can listen to the patron ramble about a legal problem or a social issue, politely nodding from time to time, and then ask: "What were you hoping to find in the library?" I want to treat each patron with respect and civility, but I do not want to be put in the position of expressing opinions on questions like "Don't you think the way the teacher treated my son is evidence of sex discrimination?" or "Isn't the IRS trampling on our rights?" I try to turn the opinion question into one about sources or research strategies by saying, for example, "Would you like to find books and articles about sex discrimination in schools?" or "Would you like to look at a book we have called *Stand Up to the IRS*?" This is so even when the patron is fired up about an issue that I also care about (and on the same side). When an undergraduate Women's Studies student comes in to research a paper on sexual harassment or lesbian mothers, she does not need a librarian to say "What a great topic, let me tell you what *I* think." What she needs is a reference librarian who can help her use *LRI* to find periodical articles, the catalog to find books, the digest system to find cases, and so on.

This is not to say that we never explain anything to public patrons. In fact, one could find many lessons about the legal system embedded in our everyday reference exchanges. For example, in explaining why the case a patron heard about is not published, we might quickly outline the stages of a lawsuit and say that the case might have been settled, might have ended with a jury verdict, or, if appealed,

might not have yet received a final opinion from the appellate court. Likewise, suggesting that a patron should begin looking for information about negligence in the *Washington Practice* volume on tort law,⁴ we might talk very generally about the difference between civil and criminal law and say why we are opening up a book about torts. We conduct legal reference within a framework of knowledge about the legal system. As we help patrons find appropriate sources in our library, we often do explain bits of that framework to them; our role in public education about law is worthwhile and important. Nonetheless, I think it is important to stay close to the sources—to offer a book on the legal system or family law or to show the patron how to use the index to the annotated statutes—rather than to become freelance lecturers on miscellaneous legal topics.

The intern had suggested that the caller consult an attorney, had offered our list of free and low-cost legal services,⁵ and had invited the caller to come in to the library if he wanted to do his own research. Is it merely coincidental that we have two callers asking about judgment-proof certificates? Has the topic been on some radio talk show recently, so that two callers independently wanted to know more about it? Or were the two callers one and the same? Perhaps the intern's answers were not what the caller wanted to hear so he invented the golf buddy story to see if the next person on duty would interpret the law for him.⁶ If so, then that is another reason not to get drawn too far into a "golf buddy" conversation. If we will not explain the law to someone who calls and says, "Tell me how to get a judgment-proof certificate to protect my assets from my daughter," then we should not explain the law to someone who casts the question as: "My golf buddy and I were just wondering . . ."

4. DAVID K. DEWOLF & KELLER W. ALLEN, *TORT LAW AND PRACTICE* (1993).

5. See Univ. of Wash. Sch. of Law, Marian Gould Gallagher Law Library, *Free or Low-Cost Legal Advocacy, Information, and Referral for King County Residents* (visited 22 Feb. 1999) <<http://lib.law.washington.edu/ref/freecost.html>>.

6. Thanks to Marc Lampson, the intern who suggested these possibilities.