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Malaysia Historical Salvors Revisited:

John P. Given

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BY JOHN P. GIVEN*

I. INTRODUCTION

In 2008, I was privileged to have a comment selected for publication in Loyola of Los Angeles International & Comparative Law Review, discussing *Malaysia Historical Salvors, Sdn. Bhd. v. Government of Malaysia* (hereinafter *MHS v. Malaysia*), an arbitration case heard under the authority of the International Centre for Settlement of Investment Disputes ("ICSID").[1]

ICSID was established in 1966 by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.[2] Its primary purpose is to provide a forum for resolution of disputes between investors and host states, which raises confidence in the ability to resolve disputes thereby promoting international investment.[3] It remains the leading institution for this purpose, with 162 signatory and contracting states worldwide.[4]

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1. John P. Given, Comment, Malaysia Historical Salvors Sdn., Bhd. v. Malaysia: *An End to the Liberal Definition of Investment in ICSID Arbitrations*, 31 LOY. L.A. INT'L & COMP. L. REV. 467 (2009); *see* Malaysian Historical Salvors SDN, BHD v. Gov't of Malay., ICSID Case No. ARB/05/10, Award on Jurisdiction (May 17, 2007) [hereinafter Malaysian Historical Salvors, Award on Jurisdiction], http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C247/DC654_En.pdf.

2. *About ICSID*, ICSID, https://icsid.worldbank.org/en/Pages/about/default.aspx (last visited Mar. 2, 2019).

3. *Id*.

4. *Id.*; *see Database of ICSID Member States*, ICSID, https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx (last visited Mar. 2, 2019).

I chose to write about *MHS v. Malaysia* for several reasons. First, the facts were compelling; how many cases deal with sunken treasure? Dorian Ball's salvage company, Malaysia Historical Salvors, Sbn. Bhd. ("MHS"), expended huge effort to find and salvage the wreck of the *Diana*, an early nineteenth-century ship sailing from China which sank off the coast of Malaysia in the Strait of Malacca with eighteen tons of cargo.[5] Most of the goods were sold at auction, raising almost $3 million.[6] But according to MHS, the Malaysian government failed to honor the terms of the salvage agreement and ultimately paid only about half of the almost $2.4 million MHS expected to receive.[7]

Second, the case seemed like a perfect illustration of why the ICSID convention was needed; companies that invest time and money to assist foreign governments in projects for the benefit of those countries need a trusted neutral forum to resolve investment-related disputes. A robust legal and judicial system within a foreign state may provide some assurance to foreign investors, but it is unlikely to sufficiently allay reasonable concerns that courts or arbitrators within the host state will tend to favor the host country.[8] Without such a neutral forum, increased investor risk may limit economic development, especially in smaller and developing countries.

Finally, at the time I chose to write about *MHS v. Malaysia*, there seemed to be little published scholarship on the question of what constitutes "investment" under the ICSID Convention,[9] and because the case dealt only with that issue on fairly straightforward facts and with a well-written summary of the leading cases, it seemed an ideal case to frame and consider the relevant issues.

In Part II, I briefly summarize my 2009 comment. Part III discusses the annulment of the award on jurisdiction shortly after the 2009 note went to press. Part IV concludes that *MHS v. Malaysia* did not signal an end to the historically liberal approach to defining

5. Malaysian Historical Salvors, Award on Jurisdiction, ¶ 2.

6. *Id.* ¶ 3.

7. *Id.*

8. Note that the perception of (or actual) favoritism is not only a problem for foreign and developing nations. Diversity jurisdiction in United States federal courts serves the same purpose. *See*, *e.g.*, Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 553-54 (2005) (the purpose of diversity jurisdiction "is to provide a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants."); *see also* James M. Underwood, *The Late, Great Diversity Jurisdiction*, 57 Case W. Res. L. Rev. 179, 181-83 (2006).

9. *See, e.g.,* Given, *supra* note 1, at 472; *ICSID Arbitration: What Is An "Investment"?*, Thomson Reuters: Prac. L., Jun. 18, 2007, at 1, https://uk.practicallaw.thomsonreuters.com/2-368-0976?transitionType=Default&contextData=(sc.Default) (U.K.).

"investment" in ICSID jurisdiction. Part V provides a personal epilogue discussing my experience as a staffer and editor at Loyola of Los Angeles' International & Comparative Law Review.

II. A BRIEF SUMMARY OF THE 2009 *MHS V. MALAYSIA* COMMENT

A. "Investment" under ICSID.

Jurisdiction under the ICSID convention is limited "to any legal dispute arising directly out of an *investment*, between a Contracting State . . . and a national of another Contracting State." (emphasis added).[10] Thus, if an agreement does not constitute an "investment" under the ICSID Convention, then there is no jurisdiction. Surprisingly, given the importance of "investment," the Convention does not provide a fixed definition.[11] Considerable efforts were made to define "investment," including setting a minimum jurisdictional value, but the efforts were ultimately fruitless.[12] Arbitrators pondering this central jurisdictional question are left to consider the traditional hallmarks of investment and the primary purpose of the Convention—stimulation of economic development in the host state—to guide their interpretation of "investment," along with any additional guidance apparent in the relevant bilateral investment treaty ("BIT").[13]

Accordingly, the leading cases on ICSID jurisdiction at the time of *MHS v. Malaysia* all focus to some degree on economic development of the host state. The 'seminal award' on this question is *Salini v. Morocco*.[14] Some arbitral decisions express a preference for erring on the side of finding "investment" so disputes are more likely to be heard

10. Int'l Ctr. for Settlement of Inv. Disputes [ICSID], *ICSID Convention, Regulations and Rules*, art 25(1), at 18, ICSID/15 (Apr. 10, 2006) [hereinafter *ICSID Convention*], available at: https://icsid.worldbank.org/en/Documents/resources/2006%20CRR_English-final.pdf (comprising a collection of ICSID documents, including the full Convention on the Settlement of Investment Disputes Between States and Nationals of Other States).

11. CHRISTOPH H. SCHREUER, THE ICSID CONVENTION: A COMMENTARY 121 (2001).

12. *Id*. at 122-25. Ironically, the suggestion a minimum value should be adopted (the proposal was for a minimum of $100,000) was disapproved over concern that important test cases of little monetary value might be excluded, suggesting a very liberal jurisdiction was intended and agreed upon by the majority of Convention participants.

13. Malaysian Historical Salvors, SDN, BHD v. Government of Malay., ICSID Case No. ARB/05/10, Decision on the Application for Annulment, ¶¶ 58-61 (Apr. 16, 2009) [hereinafter Malaysian Historical Salvors, Annulment Decision], http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C247/DC1030_en.pdf.

14. *Id.* at ¶ 75 (citing Salini Construtorri S.P.A. v. Kingdom of Morocco, ICSID (W. Bank) Case No. ARB/00/4, Decision on Jurisdiction, 43-58, July 23, 2001, *reprinted in* 42 I.L.M 609, at 622).

on their merits.[15] Jurisdiction appears quite liberal; an investment need only contribute "in one way or another to the economic development of the host State," a standard that seems on its face fairly easy to meet.[16] Other cases suggest a stricter approach, requiring that economic development of the host state be "significant."[17] This approach may add a layer of uncertainty, since "significance" is also undefined and suggests a malleable eye-of-the-beholder standard.[18]

Individual terms of multifactor tests often overlap with one another.[19] Perhaps because of the overlap, judges and arbitrators may rely on one or two factors and ignore others.[20] Whether this is a feature or a bug is unclear.[21] In some contexts, at least, this does not appear to result in poor decision-making.[22] But why go through the pretense of analyzing multiple factors if only one or two predominate?[23]

B. Facts of MHS v. Malaysia.

MHS and Malaysia entered into an agreement whereby MHS would find and salvage shipwrecks off the coast of Malaysia and the parties would share the proceeds, with MHS receiving seventy percent, because it bore all of the risk in the 'no-finds, no-pay' salvage contract.[24] After MHS found the shipwreck of the *Diana*, the agreement

15. *See*, *e.g.*, Fedax N.V. v. Venezuela, Case No. ARB/96/3, Decision of the Tribunal on Objections to Jurisdiction, (July 11, 1997), 37 I.L.M. 1378, 1381-84 (1998).

16. Malaysian Historical Salvors, Award on Jurisdiction, *supra* note 1, ¶ 94 (citing Patrick Mitchell v. Dem. Rep. Congo, ICSID Case No. ARB/99/7, (emphasis removed)).

17. *See*, *e.g.*, Joy Mining Mach. Ltd. v. Arab Republic of Egypt, ICSID Case No. ARB/03/11, Award on Jurisdiction, ¶ 53 (Aug. 6, 2004) [hereinafter Joy Mining, Award on Jurisdiction], https://www.italaw.com/sites/default/files/case-documents/ita0441.pdf.

18. Note that adding a "consent to ICSID" jurisdiction term to the agreement where the parties agree that the agreement constitutes an "investment" for purposes of ICSID is considered insufficient to establish jurisdiction. *See* Given, *supra* note 1, at 475-76 (citing Joy Mining, Award on Jurisdiction, *supra* note 11, ¶ 53.).

19. *Id.* at 477.

20. *See* Barton Beebe, *An Empirical Study of the Multifactor Tests for Trademark Infringement*, 94 Cal. L. Rev. 1581, 1601-03 (2006) (discussing how focusing on core factors while excluding others does not result in poor decision making outcomes in the context of trademark confusion).

21. Lexin v. Superior Court, 47 Cal. 4th 1050, 1090 n. 20 (2010) (citing Raymond, The Hacker's Dictionary 97 (3d ed. 1996)).

22. Beebe, *supra* note 20, at 1602.

23. *See* Given, *supra* note 1, at 478. *See generally* Beebe, *supra* note 20, at 1600 (discussing what Professor Beebe refers to as "stampeding," a phenomenon I described in my 2009 comment as a 'piling on' effect).

24. Malaysian Historical Salvors, Award on Jurisdiction, *supra* note 1, at ¶ 10.

called for MHS to spend eighteen months on salvage operations.[25] The time to complete salvage work was extended by mutual consent of the parties; actual operations took almost four years.[26] Most of the 24,000 recovered items, primarily Chinese porcelain, were sold at auction, raising almost $3 million.[27] MHS argued the total raised would have been closer to $3.4 million had Malaysia not held valuable items out of the auction. MHS's expectation was thus to receive approximately $2.4 million. Malaysia paid only $1.2 million.[28]

Because the agreement included an arbitration provision, MHS arbitrated in Kuala Lumpur, but was denied relief. MHS appealed unsuccessfully, including to the Malaysian High Court. With no options remaining, MHS registered a request for ICSID arbitration.[29] Malaysia challenged ICSID jurisdiction on several grounds, chief among them that the salvage contract did not constitute an "investment" within the meaning of Article 25 of the ICSID Convention.[30] The sole arbitrator agreed, and the arbitration was dismissed.[31]

C. The MHS v. Malaysia Arbitrator's Analysis of "Investment."

The arbitrator reviewed previous ICSID cases and settled on a five-factor test considering the hallmarks of investment to determine whether the contract in *MHS v. Malaysia* constituted "investment." The five factors were: (1) regularity of profit and return; (2) the investor's contribution to the host State; (3) duration of the contract; (4) assumption of risks; and (5) economic development of the host State.[32]

The arbitrator excused MHS from having to satisfy the first hallmark, regularity of profit and return, finding that there was a "regular and steady accretion of investment" by MHS during the salvage work and an expected return once items were auctioned was sufficient.[33]

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25. Given, *supra* note 1, at 485.
26. *Id*. at 483-84.
27. Malaysian Historical Salvors, Award on Jurisdiction, at ¶ 13; Given, *supra* note 1, at 467; *see generally* DORIAN BALL, THE DIANA ADVENTURE (1995).
28. Malaysian Historical Salvors, Award on Jurisdiction, *supra* note 1, at ¶ 14.
29. Malaysian Historical Salvors, Award on Jurisdiction, *supra* note 1 at ¶ 10 (MHS's home country, the United Kingdom, and Malaysia are both signatories to ICSID and also are partners in a bilateral investment treaty).
30. Malaysian Historical Salvors, Annulment Decision, *supra* note 13, at ¶ 27.
31. *See id.* ¶ 10.
32. Given, *supra* note 1, at 476**.**
33. *See id.* at 470-80.

The analysis of the contribution hallmark was brief—all of three sentences—and the arbitrator's determination about the contribution hallmark was unclear. The arbitrator compared the ultimate value raised in the salvage auction with cases related to substantial infrastructure development (such as roads and power plants), which suggested the arbitrator deemed MHS's contribution not meaningful.[34]

The arbitrator determined the contract duration hallmark was not satisfied because the agreement called for only eighteen months of salvage work, and prior cases describe a duration of two to five years. The arbitrator decided that extension of duration by mutual agreement of the parties was a matter of fortuity. Even though the actual salvage work took nearly four years, which would easily satisfy the duration requirement according to the leading cases, the arbitrator determined the duration hallmark was only quantitatively, and not qualitatively met.[35]

The assumption of risks hallmark also appeared to be easily satisfied: MHS assumed all the risk in the 'no-finds, no-pay' contract, and Malaysia took no risk.[36] Previous cases required only that the parties share the risks.[37] The arbitrator nonetheless found the risk hallmark was not satisfied because the risk taken by MHS was a normal commercial risk, typical of salvage contracts.[38] The arbitrator again distinguished between quantitative and qualitative satisfaction of the risk hallmark, something not done in previous cases, and found it only quantitatively satisfied.[39]

The arbitrator found the first four hallmarks satisfied only superficially and therefore required a greater showing of economic development of the host state.[40] The arbitrator did not consider the economic development significant, because it was only short-term and not for great value to Malaysia. The arbitrator dismissed as speculative the long-term benefits of increased tourism and marine salvage training.[41] The salvage contract was determined not to be an "investment" under ICSID Article 25(1), and therefore no jurisdiction existed under ICSID to resolve the dispute over payment due.[42]

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34. *Id*. at 480-81.
35. *Id*. at 483-85.
36. *Id*. at 486.
37. *Id.*
38. *Id*. at 487.
39. *Id*. at 491.
40. *Id*. at 489-90.
41. *Id*. at 496.
42. *Id*. at 468.

D. Criticisms of the arbitrator's decision.

The 2009 paper was critical of the *MHS v. Malaysia* arbitrator's decision because at every opportunity it seemed to cut against MHS in a manner not consistent with previous cases. The analysis of overlapping categories resulted in a 'piling on' problem, with the actual contract value appearing to take on great significance, and perhaps even standing in as an approximation of the total economic development Malaysia had gained.[43] But even the arbitrator noted small investments are not categorically disqualified: "It should not be thought that investments of relatively small cash sums can never amount to 'investment.' Investments can be valued in ways other than pure cash, *e.g.* as human capital or intellectual property rights."[44] Previous cases agree that "whether an expenditure constitutes an investment or not is hardly to be governed by whether or not the expenditure is large or small."[45]

There was evidence that the *Diana* salvage work led directly to the development of the Malaysian economy through training and employment of local workers.[46] A transfer of knowledge from MHS to Malaysians led to the development of the Malacca Maritime Museum, which set up its own shipwreck and salvage company.[47] Proceeds of the salvage operation were used to finance further archaeological excavations, including a Dutch ship known as the *Nasau*. The *Nasau* was a historically significant find, as it had been involved in an important battle for control of the Strait of Malacca where both it and the wreck of the *Diana* were found.[48] The Muziam Negara Malaysia in Kuala Lumpur housed a special maritime exhibition due to the salvage work, and the Malacca Maritime Museum housed—and maybe still houses—items salvaged from the *Diana*.[49] Though the precise amount attributable to MHS may be difficult to calculate, the historic and cultural resources on display due to the direct work of MHS and indirectly due to the later salvage work of Malaysian workers trained to salvage other wrecks could be on display indefinitely.[50] These

43. *See generally* Beebe, *supra* note 20, at 1614 (discussing the "stampeding" phenomenon in multi-factor tests).

44. Malaysian Historical Salvors, Award on Jurisdiction, *supra* note 1, at ¶ 139.

45. Mihaly Int'l Corp. v. Sri Lanka, ICSID Case No. ARB/00/2, Award, ¶ 51 (Mar. 15, 2002), https://www.italaw.com/sites/default/files/case-documents/ita0532.pdf.

46. Given, *supra* note 1, at 494.

47. *Id*.

48. *Id*.

49. *Id.* at 495.

50. *Id*.

contributions by MHS leading to potentially significant economic development were all brushed aside as "speculative."[51]

III. ANNULMENT OF THE AWARD ON JURISDICTION

The 2009 comment was based entirely on the ICSID Award on Jurisdiction, decided May 17, 2007. Following issuance of the Award on Jurisdiction, MHS applied for an annulment of the Award on Jurisdiction, arguing the sole arbitrator exceeded his authority under Article 52(1)(b) of the ICSID Convention in determining ICSID had no jurisdiction over the dispute.[52] An ad hoc committee of three judges was assembled in the fall of 2007. It reviewed written submissions and arguments of the parties and issued its decision to annul the Award on Jurisdiction in early 2009.[53] One of the Ad Hoc Committee members, Judge Mohamed Shahabuddeen, dissented from the annulment decision, finding that the arbitrator's judgment was correct, but even if the decision was in error the arbitrator "did not manifestly exceed [his] powers."[54]

The annulled Award on Jurisdiction never considered whether the agreement might constitute "investment" under the 1981 BIT between the UK and Malaysia. After determining there was no ICSID jurisdiction, the arbitrator found it unnecessary to even consider the question.[55]

The ad hoc committee took a completely different approach. Its analysis began with a consideration of the common meaning of "investment" and its meaning under the BIT.[56] The ad hoc committee determined that the contract between MHS and Malaysia "is an investment . . . [t]here is no room for another conclusion."[57] The committee noted that in the BIT, "the sole recourse in the event that a

51. *Id*. at 496.

52. Malaysian Historical Salvors, Annulment Decision, *supra* note 13, at ¶ 27.

53. These documents were not available until after the 2009 note was completed and prepared for publication. *Id.* ¶¶ 25-26, 83.

54. Malaysian Hist. Salvors, SDN, BHD v. Malay., ICSID Case No. ARB/05/10, at ¶ 4 (Shahabuddeen, J. dissenting) (Feb. 9, 2009), http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C247/DC1031_en.pdf.

55. Malaysian Historical Salvors, Award on Jurisdiction, *supra* note 1, at ¶ 147. For a discussion on the dramatic rise in bilateral investment treaties and the corresponding increase in the number of cases brought under the ICSID Convention, *see* Sam Wesson, *Venezuela Undermines Gold Miner Crystallex's Attempts to Recover on Its ICSID Award*, 42.1 LOY. L.A. INT'L & COMP. L. REV (forthcoming May 2020).

56. Malaysian Historical Salvors, Annulment Decision, *supra* note 13, at ¶¶ 56, 57, 61.

57. *Id*. at ¶ 61.

legal dispute between the investor and the host State should arise which is not settled by agreement between them through pursuit of local remedies or otherwise is reference to the International Centre for Settlement of Investment Disputes."[58] The committee could not square the lack of jurisdiction with the intention of the UK and Malaysia in entering the BIT—if there were no ICSID jurisdiction, then "the investor is left without international recourse altogether."[59]

The committee also discussed the *travaux préparatoires* of the ICSID Convention, noting that "investment" was left deliberately undefined, and not even a low value minimum jurisdictional amount was included.[60] The committee noted that "a British proposal that omitted any definition of the term 'investment,' on the ground that a definition would only create jurisdictional difficulties, 'was adopted by a large majority[.]'"[61]

In light of the relevant history, the committee found the arbitrator committed "a gross error that gave rise to a manifest failure to exercise jurisdiction."[62] It did not, however, reinstate the arbitration, because "the decision as to whether there may be jurisdiction of an ICSID Tribunal in respect of the claim despite objections of Malaysia on still other grounds means that jurisdiction may be a matter for a newly constituted ICSID Tribunal to determine, should the Applicant seek its establishment."[63] MHS apparently never filed a subsequent ICSID request.

IV. CONCLUSION

Subsequent to the *MHS v. Malaysia* case, the general approach of tribunals considering whether ICSID jurisdictional requirements are met still favors consideration of the traditional hallmarks of investment as in the cases cited by the *MHS v. Malaysia* arbitrator. Some tribunals take a deductive approach, requiring at least some level of satisfaction of each hallmark, while others take an intuitive approach that considers the hallmarks holistically, where the absence of one or more hallmarks is not dispositive.[64] One case appears to add an additional jurisdictional

58. *Id*. at ¶ 62.
59. *Id.*
60. *Id*. at ¶¶ 63-65.
61. *Id*. at ¶ 66.
62. *Id*. at ¶ 74.
63. *Id*. at ¶ 81.
64. *The Salini Test in ICSID Arbitration,* ACERIS LAW (Sept. 16, 2018), https://www.acerislaw.com/the-salini-test-in-icsid-arbitration/.

requirement that the investment must be considered bona fide under the laws of the host state or there is no ICSID jurisdiction to resolve any disputes that may arise.[65]

The requirement of contribution to the economic development of the host state, relied on so heavily by the sole arbitrator in the annulled *MHS v. Malaysia* Award on Jurisdiction, is still considered somewhat controversial.[66] The logic of looking to the preamble of the ICSID Convention is evident and follows rules of interpretation as set out in the Vienna Convention on the Law of Treaties.[67] But contemporary ICSID cases place the preamble in an appropriate context, interpreting it not to require satisfaction of a separate economic development hallmark, as in the *MHS v. Malaysia* Award on Jurisdiction, but rather to see economic development "as a *consequence* and not as a *condition* of the investment."[68]

The modern trend thus appears to continue favoring a liberal approach to ICSID jurisdiction where the traditional investment hallmarks of contribution, duration, and risk are considered using a flexible, common-sense approach that honors the decision not to include a specific minimum jurisdictional amount in the ICSID Convention.[69]

V. Epilogue

Loyola Law School celebrates the 40th anniversary of the International & Comparative Law Review ("ILR") this year. I proudly served as a staffer in 2007-08 and a research editor in 2008-09. Staffing and editing a law journal is hard work, but there is a lot to be gained working as part of a large team producing legal scholarship. Especially for someone like me, who came to the law as a second career after

65. *See*, *e.g.*, Phoenix Action, Ltd. v. Czech Republic, ICSID Case No. ARB/06/5, Award, ¶ 102 (Apr. 15, 2009), https://www.italaw.com/sites/default/files/case-documents/ita0668.pdf.; *see also* Damon Vis-Dunbar, *Tribunal Disqualifies "Abusive" Claim by Phoenix Action Against Czech Republic*, IISD: INV. TREATY NEWS (Apr. 20, 2009), https://www.iisd.org/itn/2009/04/20/tribunal-disqualifies-abusive-claim-by-phoenix-action-against-the-czech-republic/.

66. *The Salini Test in ICSID Arbitration*, *supra* note 64.

67. *Id.* (citing Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1115 U.N.T.S. 331).

68. *Id*. (emphasis added) (citing Casado v. Republic of Chile, ICSID Case No. ARB/98/2, Award, ¶ 232 (May 8, 2008), https://www.italaw.com/sites/default/files/case-documents/ita0638.pdf. *See also* Malaysian Historical Salvors, Annulment Decision, *supra* note 13 at ¶ 30 (citing Casado, Award ¶ 232).

69. *The Salini Test in ICSID Arbitration*, *supra* note 64; *see also* Malaysian Historical Salvors, Annulment Decision, *supra* note 13, at ¶¶ 63-66.

working as a musician and composer for more than two decades, being part of ILR was a way to prove, perhaps most of all to myself, that I really belonged in law school. I only learned later that many of my peers (even now) also suffer from some degree of "imposter syndrome."[70] When my humble comment on *MHS v. Malaysia* was selected for publication in ILR volume 31, it was a welcome seal of approval.

As a staffer, slogging through hours of blue-booking assignments may not have been particularly fun, but the work taught me how I could use skills I had developed as a composer and orchestrator, such as attention to detail, in the legal realm. As a research editor, especially on an international law journal where sources for authors' papers are often spread far and wide, I learned to turn over every stone to find what I needed. As a writer I learned how hard it is to synthesize complex material from many sources into one reasonably clear and concise argument. I continue to rely on all of these skills on a day in, day out basis (though I am thankfully now permitted to use the California Style Manual, rather than Bluebook).

I am so grateful to Loyola for providing me an opportunity to be part of the law review tradition at ILR, where I learned so much and made so many wonderful friends, and also for inviting me to participate in ILR's 40th anniversary symposium. Here is to the next 40.

70. Even former First Lady Michelle Obama feels "imposter syndrome," so my colleagues and I are in great company. *See Michelle Obama: 'I still have impostor syndrome'*, BBC NEWS (Dec. 4, 2018), https://www.bbc.com/news/uk-46434147.