



**SWALL**  
BULLETIN  
Southwestern Association of Law Libraries

Spring 2012

Volume 35, Issue 2

## From the Bench: President's Letter



Mon Yin Lung  
Associate Director  
O'Quinn Law Library  
University of Houston Law Center

This is the second and last message I send as the president of SWALL. As the end of my presidency draws near, I feel grateful, and for many reasons: I am fortunate to be given this opportunity to serve SWALL—an organization I have belonged to for the last twenty-eight years and through which I met so many fine colleagues and built life-long friendships. During this year I have had the opportunity to serve with so many fine librarians. First I want to thank the members of the Executive Board: Immediate Past President Michelle Rigual, Vice-President/President Elect Robert Hu, Secretary DeCarlous Spearman, and Treasurer Jennifer Laws. Thank you for your support and understanding. We worked together through so many issues and concerns. Although we did not agree with each other all the time, we always worked to get the job done. I think the U.S. Congress should follow our example.

But my biggest thanks go to the [committee chairs and members](#). These are the people doing the real work. Some of them have taken on more than one role, but all contribute their time and efforts to make SWALL a better organization:

Archives—Heather Kushnerick and Julie Sams: many thanks for sorting out all our utterance and keeping the record;

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Constitution and Bylaws—the Super Bs (Barbara Bintliff, Dan Baker, Melissa Bernstein, and Kathleen Bransford) have reviewed the whole bylaws and made proposals of amendments. They re-enforce our infrastructure;

Finance—Jennifer Laws, Jane O'Connell, and Spencer Simons had to review and decide on many grants;

Grants—David Gay, Chris Dykes, and Kasia Solon have been working non-stop for the whole year to handle a large amount of grants. Thank you, thank you, thank you;

Legal Information Services to the Public—the hard work by Mike Martinez, Amy Hale-Janeke, and Peggy Martindale keeps SWALL its non-profit status;

Life Membership/Memorials—I do not know how they did it, but Richard Ducey and Sharon Wayland are arguably the best informed members on SWALL membership. They keep such a good record on people beginning their golden age;

Local Arrangements—Robert Hu, Katy Stein, Mary Forman, Stacy Fowler, Jennifer Laws, and Mike Martinez give us the first full length meeting in two years;

Locations for Future Meetings—Elizabeth Schneider and David Gay pave the way for SWALL to return to Phoenix and beyond;

Membership—Laura McKinnon, Cassie Bruner, and Jennifer Laws (ex officio) keep the most timely record of our members;

Nominating—Amy Hale-Janeke, Evelyn Beard, and Marquita Harnett labor over finding our future leaders;

Private Law Libraries—Riva Laughlin and Mimi Greenwood have tried their best to bring firm librarians back to SWALL;

Public Relations—Michelle Rigual and Faye Hadley serve as our public faces;

Publications—Elizabeth Caulfield, Richard Guajardo, Emily Lawson, and DeCarlous Spearman (ex officio) give us the true sense of community throughout the year by reviving the SWALL Bulletin. Great job, guys!

Special Government Relations Committee—Michelle Rigual, David Gay, and Aperna Sherman have been busy keeping track of the state and federal legislative activities;

Special Handbook Committee—Sharon Blackburn and Lou Lindsey work hard with the Bylaws people to update our operation manual;

Special State, Court, County Law Libraries Committee—Peggy Martindale, Kathleen Bransford, Virginia Eldridge, and Leslie Prather-Forbis shoulder the duty of bringing state, court, and county librarians back to SWALL;

Webmaster—Emily Lawson performs wonders: she shows the world who we are and what we do in the most favorable way.

Last and most, I want to give my personal thanks to three people:

Robert Hu: Thanks, Bob, for taking care of both Programs and Local Arrangements while giving me support in many ways;

Barbara Bintliff: Thanks, Barbara, for giving me your precious time and valuable advice when you yourself have so much to take care of. You have always been so kind to me since long ago;

Spencer Simons: Thanks, boss, for lending me your ear, your practical advice, and especially keeping the sense of humor when I need it the most.

I am a very lucky gal.

## **Transcript: SWALL Business Meeting Minutes**

SWALL Business Meeting Minutes  
November 4, 2011  
Lawrence, Kansas, SWALL-MAALL Joint Meeting

These minutes are unofficial until approved by the membership.

Members present:<sup>1</sup> Dan Baker, Stephanie Bassinger, Natalie Bejarano, John Butler (UNT student), Yvonne Chandler, Barbara Fullerton, Mimi Greenwood, Robert Hu, Lisa Goodman, Kat Greene, Mon Yin Lung, Jennifer Laws, Emily Lawson, Leslie McGuire, Laura McKinnon, Lisa Rush, Elizabeth Schneider, Katy Stein, DeCarlous Spearman, Timothy Wilson.

Meeting called to order by SWALL President Mon Yin Lung.

There being no more than 20 SWALL members attending, she announced that there was not a quorum. For this reason, the [minutes of the business meeting held at Philadelphia](#) could not be voted into the record. She proceeded with Committee reports:

Constitution and Bylaws Committee: Dan Baker gave the report on behalf of Committee Chair Barbara Bintliff. He introduced the members of the Committee, and briefly reported on several proposed amendments. Among the changes to be considered was to create a standing Committee on State, Court, and County Law Libraries.

Finance Committee: Treasurer Jennifer Laws spoke for members Jane O'Connell and Spencer Simons. She brought to the meeting a financial statement, which will be published in the next issue of the SWALL Bulletin. She has been keeping up with the IRS filing and busily processing the membership dues. And while SWALL financially is very healthy, she still had not been able to access the money in the savings account due to technicalities. She will work with former Treasurer Kris Helge to solve this problem. The MAALL-SWALL meeting seemingly will break even.

Grants Committee: Committee members are David Gay (Chair), Chris Dykes, and Kasia Solon. Because no Committee members attended the meeting, Mon Yin delivered the Committee report. For the Lawrence meeting, there were three \$700 grants. Recipients Jennifer Laws, Emily Lawson, and Lisa Rush were introduced to other members. Their reports on the Lawrence meeting will be published in the next issue of the SWALL Bulletin. Mon Yin stated that the third round of grants for the San Antonio meeting will be announced soon and encouraged people to apply.

Local Arrangements Committee: Committee members include Bob Hu (co-chair), Katy Stein (co-chair), Charles Finger, Mary Forman, Stacy Fowler, Jennifer Laws, and Mike Martinez. Katy reported on the hotel arrangement and its unusually low rate and exceptionally good food and service, the planned events, the confirmed sponsorship from the vendors, and the Committee's efforts to recruit exhibitors. A good time will be had by everyone.

Locations of Future Meetings: Elizabeth Schneider and David Gay co-chair the committee. David being absent, Beth reported that AZALL welcomed SWALL to hold the 2013 annual meeting in Phoenix. Mon Yin supplemented that Michelle Rigual, speaking for DALL, also invited SWALL to meet in Dallas/Fort Worth in 2014.

Program: Chair Bob Hu reported the names of the Committee members as Stephanie Bassinger, Kathleen Bransford, Chris Dykes, and Katy Stein. He announced that the deadline for proposals has been extended to the middle of November so SWALL can have the best programs possible.

Publications: Emily Lawson submitted the Committee report by thanking members for their submission of information. She reported on the revival of the SWALL Bulletin and encouraged people to contribute. As the SWALL webmaster, Emily also thanked members for

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sending SWALL information to be posted on the website. Mon Yin took the opportunity to encourage members, especially newer members from academic libraries, to take advantage of the opportunity to start publishing.

Special Committees: Mon Yin reported that there are three special committees this year. In addition to the Handbook and SCCLL special committees, SWALL has a Government Relations Committee, chaired by Michelle Rigual. In 2011, the Texas Legislature tried to close the State Law Library, and Michelle spearheaded the effort to submit SWALL's opposition, so she was the right choice.

Membership Committee: Chair Laura McKinnon read the names of the Committee: Cassie Bruner and Jennifer Laws (ex officio). She gave a detailed, analytical report on the membership:

Total members: 182 (same as last year)

Academic: 122 (120 last year)

Private firm: 30

State, court, and county: 20

Student members: 6 (all from UNT)

Lifetime members: 4

Mon Yin commented that as recently as 2003-04, SWALL had around 280 members. In 2009-10, SWALL counted only 179 members--losing more than a third of the total membership. SWALL needs to review its membership base and do some strategic planning, which may include holding more meetings in Texas; Texas meetings usually attract a larger attendance. She mentioned, as an example, that one Austin meeting attracted a huge crowd (around 120), while there were only 15 members attending the joint meeting with SEAALL in Atlanta. Yvonne Chandler commented that out-of-Texas meetings usually attract fewer people, and that most of the people who did not attend were firm people, who have had a hard time getting funding for trips outside of Texas. Mon Yin pointed out that SWALL also lost SCCLL members and that was precisely why SWALL needs an SCCLL committee. She thanked everybody for coming and urged members to take advantage of the networking provided by SWALL.

No report from the following committees: LISP, Life Membership/Memorials, Nominations, Private Law Libraries, Public Relations, Recruitment, Special Committee on Handbook, and Special Committee on State, Court, County Law Libraries.

There being no new business, the meeting was adjourned.

Minutes recorded by DeCarlous Spearman.

<sup>1</sup>There being no sign up sheet, the membership list was put together by DeCarlous Spearman and Mon Yin Lung after consulting the SWALL attendance file supplied by the Lawrence Local Arrangement. We apologize for any omissions and welcome corrections.

## Pro Forma: Treasurer's Annual Report

Jennifer Laws, SWALL Treasurer  
 Librarian  
 Fifth Circuit Court of Appeals, San Antonio

Report at November 2011 Lawrence, KS SWALL-MAALL Joint Meeting

## Statement of Cash Flows

### SOUTHWEST ASSOCIATION OF LAW LIBRARIES Checking Account Only FOR APRIL - OCTOBER 2011

#### Cash received

Cash received from member dues	2,760.00	
Cash received in donation	30.00	
Cash received from HALL/SWALL joint meeting	1,500.95	
Cash received from LISP 2011	205.00	
Other		
Net cash received		4,495.95

#### Expenditures

Cash paid for supplies	(128.24)	
Cash paid for other operating expenses		
Cash paid to AALL for services	(35.20)	
Cash paid for AALL grants	(1,190.00)	
Cash paid for SWALL reception at AALL	(1,983.44)	
Cash paid for		
Net expenditures		(4,377.79)
Increase (decrease) in cash during the period		118.16
Cash balance at the beginning of the period		12,659.92
Cash balance at the end of the period		12,778.08

**Amount committed to grants for MAALL/SWALL Meeting: \$2,100.00**

## Outside Counsel

Designed by law librarians, for law librarians, the [AALL Annual Meeting](#) is an event you look forward to every year. Join nearly 2,000 of your colleagues from across the country to find out what they are doing in their libraries.

# AALL 2012

105th Annual Meeting & Conference  
Boston, MA | July 21-24



This year in Boston, July 21-24, you can look forward to:

- [Keynote speaker Richard Susskind](#)
- [Nearly 100 educational sessions](#)
- [A bustling Exhibit Hall featuring about 100 vendors](#)
- The return of the [Association Luncheon](#)
- Connecting with the people who understand the issues you face every day

<http://www.aallnet.org/conference>

## Headnotes: Membership Committee's Annual Report

Laura McKinnon, SWALL Membership Committee Chair  
Public Services Librarian  
Dee J. Kelly Law Library  
Texas Wesleyan School of Law

Report at November 2011 Lawrence, KS SWALL-MAALL Joint Meeting

- 183 members, one more than last year
- 123 academic (120 last year)
- 30 private (31 last year)
- 20 public (24 last year)
- 6 student members (3 last year)
- 4 life (4 last year)

## Headnotes: SWALL Annual Meeting, Program Committee

Robert H. Hu, Chair, Program Committee  
Director and Professor of Law  
Sarita Kenedy East Law Library  
St. Mary's University School of Law

Come to the SWALL Conference for a Great Educational Experience

The 2012 SWALL conference promises to be an inspiring educational experience for all thanks to the hard work of the Program Committee. In addition to the many substantive program sessions, there will be three plenary speakers to talk about interesting topics. The opening luncheon on Thursday will feature Charles E. Cantu, Dean and Distinguished Professor of Law at St. Mary's University. Dean Cantu is a native of San Antonio, and will likely talk about the history of the city. Over the breakfast on Friday, Michael Ariens, Professor of Law at St. Mary's University and a legal historian, will discuss his newly published book, *Lone Star Law: A Legal History of Texas*. The book was published last year and has received great reviews. During the Saturday breakfast, Barbara Bintliff, Library Director and Professor of Law at University of Texas at Austin, will speak about authentication and preservation of electronic legal information. Join us in San Antonio for an inspiring, educational experience.

## Headnotes: SWALL Annual Meeting, Local Arrangements Committee

Katy Stein, Co-Chair, Local Arrangements Committee  
Faculty Services Librarian & Assistant Professor  
Sarita Kenedy East Law Library  
St. Mary's University School of Law

SWALL 2012 Frequently Asked Questions

As the SWALL Annual Meeting draws ever more near, I'm sure our members are burning with excitement and maybe a few questions. The following are just a few tidbits, tips, and ideas to help you plan your ultimate SWALL Meeting. Please visit the [SWALL annual meeting website](#) for more information, or email [Katy Stein](#) with any questions. We look forward to being your hosts in San Antonio this March!

### **What's the best way to get from the airport to the Menger Hotel?**

The Menger Hotel is less than eight miles from the airport, allowing for easy travel. Your best options for travelling from the San Antonio International Airport to the Menger are either to take a taxi or the airport shuttle. The taxi fare from the airport to the Menger will be around \$25. Or, you may take the [GoAirportShuttle](#), San Antonio International Airport's authorized shuttle service,

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with shuttles departing from the airport to downtown every 15 minutes. Book online for a reduced rate of \$17 one-way, or \$32 roundtrip.

### **Where is the Menger Hotel, and is it close to the River Walk?**

The Menger Hotel is located at 204 Alamo Plaza, San Antonio, TX 78205. It is located directly across the street from the Alamo in the heart of downtown San Antonio. The River Walk can be accessed from Rivercenter Mall, directly behind the Menger. Click here for a map of the [River Walk](#).

### **Where can I park during the meeting?**

For those of you arriving by car, the Menger offers valet parking with in-and-out privileges for \$25/day. There are also various surface lots and garages near the hotel with various hourly rates, including a lot at Houston & Elm streets, behind the Alamo. Here is [more parking information](#).

### **Any speakers I can look forward to?**

Charles Cantu, Dean of St. Mary's University Law School, will be welcoming everyone to the meeting, and sharing some insight into the San Antonio area. On Friday, Professor Michael Ariens of St. Mary's will introduce us to Texas' curious legal history and his book, *Lone Star Law*. On Saturday, Barbara Bintliff, Director of the Tarlton Law Library/Jamail Center for Legal Research will update us on the current state of the Uniform Electronic Legal Material Act.

### **What are some nearby attractions?**

Just within walking distance? How about the Alamo, the River Walk, the Institute of Texan Cultures, the San Antonio Children's Museum, La Villita, Tower of the Americas, just to name a few. Read more at [Visit San Antonio.com](#).

### **Will there be any social events to look forward to?**

Thursday night's opening reception and dinner will be held at the Institute of Texan Cultures, a one of a kind museum of Texas history and culture. Friday will include a reception at St. Mary's University Law School and Sarita Kenedy East Law Library, followed by dine-arounds on the River Walk.

### **Can I tour a Texas distillery?**

Yes, for those who would be interested, there will be a private tour of Ranger Creek Brewing & Distilling, on Saturday, March 31, from 2-4 p.m. [Ranger Creek](#) is Texas' only combined brewery/distillery, and during the tour you will learn how to make beer and bourbon. Take the standard beer tour for \$10, which includes a full "brewstillery" tour, a souvenir pint glass, and Texas-size samples of three different beers. To sign-up, contact [Mary Forman](#).

### **Is the Menger Hotel Haunted?**

There have been numerous reports of ghostly sightings at the Menger, but there's no way to be

sure. You can find out more about the hotel's history, and perhaps its "lingering" guests at the [Texas State Historical Association](#).

### **Will I have the opportunity to see a 4 time NBA championship team?**

The San Antonio Spurs will be playing at home on Saturday March 31, at the AT&T center at 7:30pm. If you want to see Tim Duncan and the rest of the Spurs take down the Indiana Pacers, get your tickets [here!](#)

### **What about an Andy Warhol exhibit at a world-class art museum?**

Funny you should ask! The McNay Art Museum will be exhibiting, "Andy Warhol: Fame and Misfortune," with over 150 pieces from all variety of media. The McNay is less than five miles from the Menger Hotel. You can find out more at [mcnayart.org](#).

### **What will the weather be like?**

Expect warm spring weather, hopefully accompanied by lots of sunshine! In late March, San Antonio averages low temperatures of around 50 degrees, and highs in the mid-70s.

### **Where can I find more information about activities events and restaurants in San Antonio?**

Visit the [San Antonio Convention and Visitors' Center website](#) for sample itineraries, restaurant, and attraction, and activity guides.

## **Headnotes: SWALL Lawrence Travel Grant Reports**

Jennifer Laws  
Librarian  
Fifth Circuit Court of Appeals, San Antonio

SWALL Grant Recipient: 2011 SWALL-MAALL Joint Meeting Report

A very haphazard summary and report

Thanks to the generosity of my SWALL colleagues, I was able to attend the MAALL-SWALL 2011 joint meeting in Lawrence, KS on November 3-5, 2011. I have attended numerous SWALL, AALL, and SLA conferences. I have always come away in awe of the intelligence and generosity of my law library colleagues; the MAALL-SWALL joint meeting was no exception. In addition to excellent programs, great networking, and tons of fun, I managed to work through all five stages of grief. Grief? This probably merits some explanation.

*I graduated from the University of Kansas in 1994. I loved my KU experience. Please imagine the hoard of undergraduate memories I trundle around with. Now please imagine how I felt when I heard that my favorite undergraduate watering hole (The Crossing) and eateries (Yellow Sub and Glass Onion) had been torn down to build the MAALL-SWALL joint meeting hotel. Conflicted would be an understatement.*

Denial: Surely they didn't tear down The Crossing to build the conference hotel. That's simply not possible. The hotel must be somewhere else, maybe off to one side. Right. Everything's fine.

Anger: What the heck? Who would do such a thing? No, not Yellow Sub and Glass Onion. What kind of person does such a thing? Who would take away the vegetarian subs and milkshakes and cheap beer? Just let me at that developer, I'll tell them a thing or two: I hate you and your ugly hotel. That'll show 'em!

Bargaining: Maybe I'll go to the meeting but I won't stay in the conference hotel. How can I meet on the bones of my dead youth? I bet there's an eco-friendly vegan bed and breakfast where I could stay. Right. That's a good compromise. Here's another: I'll go to the meeting but I won't have a good time. Yeah, that'll show 'em.

Depression: What's that you say Mr. Federal Government? No more money for professional development? But what am I to do? I was going to stay in the eco-friendly vegan gluten free holistic bed and breakfast. I thought I might facilitate a book talk during the MAALL/SWALL meeting. Oh, forget it, I don't need to go. The Crossing is gone anyway; why would I want to go? I'll just stay home and file some more pocket parts. Bleh.

Acceptance: Wow, SWALL will give me a grant to attend? My colleagues are working hard to make it possible for me to attend? A few old friends still live in Lawrence and want to get together? My program proposal was accepted? Free State still makes beer?

It slowly dawns on Jennifer that yes, indeed, things change but some things do last: friendship, collegiality, great conversation, fond memories, and beer.

I am grateful to the presenters and speakers at the joint MAALL/SWALL meeting. The presentations were strong right from the start. Thanks are due to Dean Mazza for his presence at the opening luncheon; it means a lot for the dean to come talk to the librarians. It tells us a lot about the KU Law community. Matt, Rhonda, Chris, and Keith Ann did a terrific job at the "Primary Legal Materials" presentation. As a colleague noted, this presentation alone was worth the cost of the meeting. Lisa and Laura's presentation about Election Law was extremely well-timed given the on-going redistricting litigation here in the San Antonio federal court. Therese helped screw my head on straight about the challenges we're all facing with WestlawNext and Lexis Advance. Marianne Wessen blew me away with her discussion of "A Death at Crooked Creek." I'd heard the story about John Hillmon before but her presentation filled in many blanks and revealed some pretty exciting new information. My state, court, and county law library colleagues provided an exciting and stimulating roundtable discussion. Nothing beats the drama of the county law libraries!

What to say about Stephen Ramsay's presentation? My first reaction: too short! Don't sit down now, I want to hear more! He was interesting, funny, geeky, provocative – everything I enjoy in a speaker. Perhaps the incredibly rich chocolate cake influenced my experience, but he was awesome. I'm not going to attempt to evaluate my own performance during "What's Next Gen

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X?” I hope that the short session at least got folks thinking about the issues of a four-generation workplace and about how to make the most of their own work and career. Life is too short to not have a little fun at work. Do you think Stephen Ramsay hates his job? I bet not.

The hospitality of the Wheat Law Library was fantastic. Thank you to Joyce and everyone at the Wheat Law Library for everything. It’s important to remember: sometimes you learn great things at a professional meeting outside of the formal sessions. To have a successful meeting experience you must keep your mind and heart open to such experiences.

I give many thanks to the SWALL community for its generosity. Without it, I would not have been able to attend the MAALL-SWALL joint meeting. It was a terrific and productive experience, both personally and professionally. I look forward to seeing my colleagues when we gather for SWALL 2012 in San Antonio, March 29-31, 2012 at the historic Menger Hotel. You might want to look for me in the Menger Bar with the rest of the Local Arrangements Committee.

*Note: An exact replica of London’s House of Lord’s Pub, the Menger Bar is where Teddy Roosevelt recruited his Rough Riders. Built in 1887, this establishment has a paneled ceiling of dark cherry wood, beveled mirrors from France, and the original brass spittoons provided for the convenience of its early customers. Once the site of more cattle deals than any place in Texas, the Menger Bar has been voted one of the Top Ten Most Historic Bars in the United States.*

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Emily Lawson  
Reference/Research Librarian  
O’Quinn Law Library  
University of Houston Law Center

#### SWALL Grant Recipient: 2011 SWALL-MAALL Joint Meeting Report

The SWALL-MAALL Joint Meeting held in Lawrence, Kansas, November 3-5, was a wonderful opportunity for me to learn and grow professionally. I want to say a very big “Thank You” to SWALL and the Grants Committee for providing me with a grant to attend the meeting. As a member of the SWALL-MAALL Joint Meeting Education Committee, I helped to select the programming for the meeting, so it was very fulfilling to see in person some of the programs that I became excited about so many months ago.

I arrived in Lawrence on Thursday to cool weather (something I had been missing in Houston) and plenty of great programs. That afternoon I was looking forward to the session *At the Ballot Box and Beyond: Researching Election Law* by Lisa Goodman and Laura McKinnon from Texas Wesleyan School of Law, and it did not disappoint. I thought the topic was exceptionally timely given the upcoming 2012 election and the handout provided a number of useful resources for

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getting my research started in the distinct areas that make up election law. Later that evening over dinner, we were all treated to a bit of storytelling by Marianne Wesson from the University of Colorado Law School. She discussed the mystery of the *Hillman* case, its link to Lawrence, and how she arrived at her theory about who really died at Crooked Creek.

Friday started out with breakfast at the SWALL Business Meeting, which allowed us all to hear about the work of our organization over the past year or so. It also gave me a chance to meet some of my SWALL colleagues and put faces with some of the names I have come to know as the SWALL webmaster. After the business meeting, I was off to get ready for my program. I served as a co-coordinator and co-speaker for the two-part program on state legislative research. We had a great line-up of speakers representing six SWALL and MAALL states and I am so thankful for all of their hard work! I may be biased, but I thought it was a very informative and interesting program!

After breathing a sigh of relief, I was able to settle in to the keynote address by Stephen Ramsay from the University of Nebraska-Lincoln over a delicious lunch. Mr. Ramsay's intriguing presentation focused on helping us to determine "what we don't know we don't know." After lunch, I got my tech fix with a very practical program demonstrating Adobe Connect by Glen McBeth from Washburn University School of Law. It was fascinating to hear about how another academic law library is using this technology to provide continuing education opportunities for lawyers. For my last session of the day, I attended a program by Dan Baker, one of my colleagues at the University of Houston Law Center, about new changes found in the most recent edition of the Bluebook. I learned a great deal about the most significant changes and that my colleague knows way more about the Bluebook than I ever could!

Later that afternoon, I was able to get some time away from the gorgeous Oread Hotel and take a ride across the KU campus for a tour of the Dole Institute of Politics. The highlight of the tour was the chance to see the Dole archive in the lower level of the facility. It included a vast amount of Bob Dole's papers as well as objects relevant to Senator Dole's political career. One interesting aspect of the archive was the large collection of elephant figurines given to Senator Dole as gifts symbolic of the political party to which he devoted his career. After the tour, I got a chance to walk from the hotel to downtown Lawrence with some of my SWALL colleagues to have dinner at the famous Free State Brewing Company. It was nice to be able to see some of the city and the lively downtown area lined with unique shops and restaurants.

On Saturday morning, we all headed over to the KU law school for breakfast and more great programs. While there, I had the pleasure of attending Kerry Altenbernd's session *Films, Free-Staters, and Fauvists* regarding the ways his county law library has promoted itself to the Lawrence community. I was especially glad to hear about his Reels of Justice Film Series, which not only shows law-related films, but also brings in local attorneys to discuss the legal issues involved in the films and whether they reflect the reality of the legal system. For my final session

of the conference, I attended a program from the librarians at the Washington University Libraries regarding their legal encoding project. Although some of the specifics of LegalXML and metadata are a little outside of my area of expertise, it was still fascinating to hear how they tackled such a daunting project.

Overall, the SWALL-MAALL Joint Meeting was a very professionally enriching experience. I am very grateful that I had the chance to gather together with so many talented librarians and I would encourage SWALL members to apply for grants to attend future meetings. Thank you again for the opportunity!

### **Headnotes: Thoughts on the SWALL-MAALL Joint Meeting in Lawrence**

Leslie B. McGuire  
Librarian  
U.S. Courts Library, Tulsa

#### My Thoughts on the SWALL-MAALL Joint Meeting in Lawrence, KS

Apart from arriving in Lawrence on Wednesday afternoon in a cold downpour that continued well into the evening, I thought the joint SWALL/MAALL meeting in November went flawlessly. It was a pleasant drive up from Tulsa for me and my roommate, Melanie Nelson from the University of Tulsa College of Law. Neither of us had ever been to Lawrence, so we ignored the rain and went downtown to explore a few of the many shops Wednesday afternoon, and got a bite to eat that evening.

On Thursday, I was able to speak with Dick Spinelli from Hein and tell him how much I enjoy Hein Online's webinars. There were several other vendors represented in the exhibit hall, and it was enjoyable talking to many of them. Thursday noon, the meeting officially started with the opening luncheon, followed by a choice of several interesting sessions. I attended one on the need to preserve and authenticate primary legal materials, a technology petting zoo and finally one on open source software and cloud computing.

That evening, there was a fabulous dinner and engaging speaker. Even though I had attended Prof. Wesson's session on Crooked Creek at AALL in Denver, her talk remained compelling the second time around, especially given the additional material and slides. Her passion for her topic is contagious. The food at this meeting just kept on coming, and it was all good. The new Oread Hotel did a great job for us and was a pleasant venue. Abundant free parking would have been a bonus, but we managed fine without it.

Friday promised a full day of sessions and meetings, starting with the SWALL breakfast and business meeting, followed by a roundtable discussion with other SCCLLs. I was able to attend only Part II of the six-state legislative research sessions, but was able to obtain handout materials

for most of the states – very helpful. I'll admit that my roommate and I played hooky Friday afternoon and went back downtown. It was a beautiful fall afternoon, and it seemed a shame to spend it all indoors, so we wandered the shops and the park. We then visited the art center before meeting some Arkansas librarians for a delicious dinner at one of the many downtown restaurants.

Saturday morning, KU's Wheat Law Library generously hosted a continental breakfast and tours of the library. Both of the sessions I attended there were extremely interesting: one by the local Douglas County law librarian discussing his non-traditional outreach activities, and another on a fascinating library digitization project, where the presentation software itself played a big part in the appeal of the program. They even provided us a terrific box lunch, which we ate before hitting the road for the trip home

The Lawrence meeting definitely was worth the four-hour drive from Tulsa! The local arrangements committee did a fabulous job and planned a great meeting for us. It was wonderful to see everyone and the sessions were well worth my time.

### **Expert Testimony: 6th Annual Texas Tech Law School Faculty Update**

Elizabeth Caulfield  
Head of Reference and Instruction Librarian  
Texas Tech University School of Law Library

#### 6<sup>th</sup> Annual Texas Tech Law School Faculty Update

On December 1 and 2, 2011, the Texas Tech University School of Law held its annual continuing legal education event for attorneys. The State Bar of Texas approved the 6<sup>th</sup> Annual Texas Tech Law School Faculty Update for Legal Services Attorneys, Public Interest Practitioners, and Pro Bono Attorneys for nine CLE hours. At the event, Texas Tech University School of Law professors discussed recent legislative changes to a wide range of areas of the law and shared practice tips. Although this piece is lengthy, I hope that the variety of topics discussed by the presenters will allow legal information professionals working in different practice areas the chance to glean something of interest.

#### **Civil Procedure**

After the introduction by Dean Darby Dickerson and Prof. Larry Spain, Prof. Dustin Benham started the proceedings. A professor of Legal Practice, Prof. Benham spoke about Appellate Practice Basics for the Public Interest Practitioner.

He focused on civil appeals in state courts, specifically initiating a public interest appeal without “unfortunate incident” and getting an indigent client into court without paying a large appellate fee. Successfully filing for appeal requires appealing from the proper order, at the proper time,

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using proper filings.

Prof. Benham devoted a considerable portion of his talk to determining if a trial court order is appealable. Such determination depends on whether the order is a final judgment or interlocutory order. Even interlocutory orders may be appealable; the key is studying the language in the order to determine if the order is final and appealable. Prof. Benham referenced the 2001 Texas case, *Lehman v. Har-Con Corp.* for analysis of the appealability issue. He proceeded to discuss changes made during the 2011 Texas Legislative session for appeals from interlocutory orders.

His discussion of the proper time for filing appeals involved Texas Rules of Appellate Procedure 26.1 and 26.3.

Filing properly, or perfecting the appeal, requires filing the notice of appeal, filing the docket statement, and paying the filing fee (or establishing indigence). For this part of the discussion, Prof. Benham discussed Texas Rules of Appellate Procedure 25.1 and 28.3, and Texas Rules of Civil Procedure 5 and 42.3. The discussion of filing properly for indigent clients included references to Texas Rule of Appellate Procedure 20.1. (The concept of indigence was affected by the Texas Legislature in 2011; these changes involved the presumption of a parent's status as indigent during the appellate process.) Another part of filing properly involves requesting the record, specifically pleadings and motions from the clerk and the testimony and other events that the reporter records from the reporter, as per Texas Rule of Appellate Procedure 35.3.

Prof. Benham ended his discussion with more practice tips, one of which reminded practitioners that perfecting the appeal does not suspend enforcement of the judgment. The appellant must supersede the judgment by providing security via Texas Rule of Appellate Procedure 24.

### **Family Law**

Prof. Charles P. Bubany gave the second session called Family Law Legislative Update. Prof. Bubany regularly teaches Texas Criminal Procedure and Constitutional Criminal Procedure and will teach a class in Torts in the Spring 2012 semester. He addressed significant legislation relating to family law passed by the 82nd Texas Legislature, including changes to the law on spousal maintenance, protective orders, paternity, and child support and the enactment of the Uniform Collaborative Family Law Act in a new chapter of the Family Code.

A snapshot of some of the sections Prof. Bubany covered includes 7.009 regarding fraud on the community estate, 84.006 which makes admissible in protective order hearings statements by children age twelve or younger describing alleged family violence against the child, and 160.307 which changes the procedure by which a signatory may rescind an acknowledgement or denial of paternity.

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## Using Technology

Uwe Beltz, Associate Director for Law Library and Computing, presented the next session, Keeping Up with the Law: Technology and Updating. Prof. Beltz began by sharing Amit Agarwal's explanation of the Internet in periodic table form. Agarwal authors the technology blog, [Digital Inspiration](#). Prof. Beltz's presentation focused on finding information, saving links, and keeping up with the news.

The [Search Engine Market Share pie chart](#) at [StatOwl](#) shows that computer users turn to [Google](#) far more than options like [Bing](#), [Yahoo](#), [Ask](#), or [AOL](#) to find information. Prof Beltz pointed out the usefulness of [Advanced Search](#) features in Google, including phrase searching, word elimination, searching by file type or domain, and page specific tools that find pages similar to a URL or that link to a URL. Yahoo Search queries can be restricted to perform searches in particular types of information (i.e., blogs).

Law librarians know the usefulness of [Google Scholar](#) as a free alternative to Westlaw and Lexis for finding law review articles and cases. So Prof. Beltz shared this aspect of Google as well, pointing out that researchers can set up e-mail alerts to learn when additional items related to a search are added to the database. In November, Google added [My Citations](#), allowing writers to track citations to their articles. Prof. Beltz informed the audience that they can also design their own Google search engine, choosing the websites it will search and installing it on their webpages. He demonstrated the websites that he selected for the Tech Law Search engine he designed through Google.

Next, Prof. Beltz compared the hybrid (part-free, part-pay) website, [Lexis Web](#) with [Findlaw's LawCrawler](#). In his opinion, Lexis Web outperforms Findlaw's search engine. He suggested using Lexis Web to search for information but being prepared to find it elsewhere because information via Lexis Web is not always free.

Moving on to link saving, Prof. Beltz discussed RSS feeds. By setting up RSS feeds, users direct new information posted at their favorite websites to come to them rather than manually going to websites to check for it. If a researcher creates a search that is particularly effective, s/he can also get updates on the search through an RSS feed, without having to rerun the search.

Prof. Beltz mentioned law related sites that provide content through RSS feeds: the [Supreme Court of Texas](#), the [Law Library of Congress](#), and the [Texas Legislature](#). He recommended reviewing the results from the feed pages of these sites to determine if it would be worthwhile to add the feeds to RSS aggregators.

RSS feed subscribers can use either RSS readers or e-mail accounts to accept RSS feeds. Prof. Beltz demonstrated Google Reader and Yahoo Reader. He showed how the feed from his Yahoo search is sent to his reader and the reader is updated on an ongoing basis. He used

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[ImageShack](#) to display a picture of the plethora of aggregators for setting up feeds: Google, Yahoo, Technorati, etc. A February 2011 ABA Journal article describes the usefulness of RSS feeds for lawyers: [RSS, Not RIP: Tool that brings the news to you is still useful](#). For those who need a refresher about RSS feeds, he suggested reading, [What is RSS?](#) and watching [RSS in Plain English](#).

For storing links as favorites that can be accessed from any computer, Prof. Beltz recommended [Delicious](#), which even allows users to share their favorites with others. The sharing feature is how users can employ Delicious to find as well as save links they might be interested in. Some law-related websites like Cornell's [LII](#) contain a bookmark tagging and social networking tool, such as the Toolbox for Federal Rules of Appellate Procedure. This tool allows users to save links (i.e., from the rules) directly into a tool like Delicious. Researchers can use [AddThis](#) to find other sites that will allow them to save their favorites.

Prof. Beltz ended his talk by sharing information about how to learn who owns a website (try [Whois](#) and [ICANN](#)) and tips for sending letters online (try [Send USPS Certified Mail](#) and [L-Mail](#)). And he provided names of experts in law and technology for further exploration: Jonathan Zittrain, Lawrence Lessig, Amit Agarwal, and David Pogue.

### **Estate Planning**

Prof. Gerry Beyer presented a session entitled Courthouse Morals and Legislative Developments: A Review of Recent Cases and Legislation Impacting Texas Estate Planners. He teaches courses such as Wills and Trusts, and Estate Planning.

Prof. Beyer infused his talk with humor, asking attendees whether Texans now have a law that allows them to collect snakes and lizards along the side of the road? (Yes.) Can Texans catch catfish with their bare hands? (Yes. Texans are legally permitted to noodle.) If sentenced for a drug offense in Texas, can a finger of the convicted person be amputated at the first joint, with subsequent joints and fingers amputated for more offenses? (No. This bill failed years ago because, the story goes, the Legislature was concerned that having missing fingers would be a status symbol among drug offenders.)

His talk brought attendees up to date both on case law and legislative developments in the estate planning area. In the legislative realm, in Texas the Probate Code will be replaced with the Estates Code on Jan. 1, 2014.

Regarding the formation of wills, Texas approved a one-step will execution procedure. A self-providing affidavit can be the last provision of the will. Only one set of signatures is needed. The statute includes the language that should be added to a will. This streamlines the procedure. It should be noted that wills can still be executed the traditional, more complicated way.

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During 2011, the Texas Legislature made a big legislative change regarding pretermitted children, or children born or adopted after will execution. The change involves the scenario in which a husband in his will leaves everything to his wife. After the will is executed, if a child is born outside of this marriage (i.e., as the result of an affair), the child produced as a result of the affair cannot reduce the surviving spouse's inherited share by more than one-half. The moral of this situation is to plan for children that might be born after the will is executed.

On to case law...

Regarding testamentary intent, Prof. Beyer referenced the case *In re Estate of Hendler*. The *Hendler* case teaches attorneys that they should instruct clients not to make self-help changes to their wills. The case also addresses the concept of whether a pretermitted child is "otherwise provided for."

Prof. Beyer referenced the case, *In re Estate of Fuselier*. This case instructs attorneys on several vital items: never execute joint wills; non-holographic wills should be witnessed by two disinterested people; and never have the testator sign multiple original wills because problems arise if you cannot find both of them. Prof. Beyer wisely shared that a will is a death deed transferring property at death. Wills are different from contracts.

In *Haisler v. Coburn*, a stepdaughter was unable to undo the probate of a will, even though she had strong evidence that the will was forged. The court decided that the order admitting the will to probate could be set aside only if there had been extrinsic fraud which prevented her from litigating her rights. Once a forged will is admitted to probate, it may be difficult to reverse the process even if the forgery is clear.

In the case *In re Estate of Rogers*, the decedent died intestate. Heirs were determined, and administrators were appointed. A will was discovered three years later. Beneficiaries of this will then filed to probate it. The court found that the issue was not addressed by Probate Code sec. 73, which allows four years to probate a will. The court had already entered final judgment and the judgment was not appealed in a timely manner. Prof. Beyer warned that this situation could give rise to nefarious conduct by relatives.

Prof. Beyer proceeded to cover a variety of other legislative and case law developments, including multiple will applications, notices to beneficiaries, and independent administrators' use of affidavits in lieu of inventories. He ended his presentation by sharing that Civil Practice and Remedies Code section 132.001 permits the use of unsworn declarations by prisoners. When the section was amended in 2011, it was not clear whether the restriction of this use to inmates remains. The bill analysis from the House indicates that anyone (even non-prisoners) can use this type of declaration; but the analysis of the engrossed version left out the language that would lead to the same conclusion.

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### **The Role of the Public Defender**

Donnell Yandell is the Chief Public Defender for the Caprock Regional Public Defender Office. He presented Ethical Considerations in Managing a Public Interest Caseload: The Caprock Regional Public Defender Officer as a Case Study. The Caprock office covers sixteen counties in Texas.

In 2001, Texas passed the Texas Fair Defense Act (FDA) to streamline the process of defending indigent clients. The FDA provides minimum requirements for an indigent defense plan. The Texas Commission on Indigent Defense is tasked with implementing the FDA. The Commission administers formula and discretionary grants to individual counties and oversees each county's indigent defense plan.

The Caprock office was created because of the inadequate appointment rate of attorneys for the indigent clients who need them. Appointment rates were low because of the expense to attorneys (especially as reflected in travel time), the hassle of appointing attorneys, the area's culture, the fact that it is easier to process rather than defend cases, and defendants' lack of education about their rights to an attorney.

The regional office alleviates the problem of lack of attorneys; it allows for sharing the expense of indigent defense across multiple counties; and it ensures consistency of representation. Prof. Yandell shared that it costs approximately \$38 per day to house inmates. The office tries to enforce the FDA and its own standards to move prisoners through the system and save money.

Prof. Yandell proceeded to discuss standards for caseload maximums. Limiting the number of cases that an attorney handles is important; criminal cases for public defenders are more difficult since the publication of National Advisory Commission Criminal Justice Standards and Goals: The Defense in 1973. DWI cases are now more complicated; defendants can no longer spend a night in jail to get rid of the charge. He referred to applicable sections of the Texas Rules of Professional Conduct, i.e., 1.01, 1.03, and 6.01.

He also referenced the standards in Latest Guidelines on Workloads: Eight Guidelines of Public Defense Related to Excessive Workloads, August 2009. These guidelines address standards for interviewing clients, conducting investigations, performing legal research, monitoring attorney workloads, supervising less experienced attorneys, and meeting professional and ethical duties to the client, including the duty to notify the appropriate person if the defender's workload is unreasonable. In discussing these guidelines, Prof. Yandell referenced Texas Disciplinary Rules of Professional Conduct 5.01 and 5.02.

Prof. Yandell concluded by asking what the Caprock Regional Public Defender's Office could do for those in attendance. He cited the statistic provided by the Texas Tribune on September 12,

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2011 that since 1992, Texas has paid over forty million dollars to compensate people who collectively spent more than seven hundred years in jail for crimes they did not commit.

### **The IRS**

Prof. Bryan Camp teaches, among other classes, Tax and Tax Administration. He offered the next session, Dealing with the IRS. Prof. Camp worked as an attorney at the IRS Office of Chief Counsel's National Office for a number of years. He designed his presentation to help attendees understand something of the IRS "black box," by helping them figure out where they should turn for assistance when dealing with tax issues. Luckily for taxpayers, the IRS (aka "the Service") has a good website.

The IRS has two main processes: 1) Tax Determination and 2) Tax Collection. Tax Determination deals with the filing of returns and auditing. (Auditing means selecting returns and examining them). Tax Collection involves liens, levies, and setoffs. Prof. Camp shared that once the liability is determined, a taxpayer receives a formal assessment, which has the same force as a court judgment. So the assessment is the bridge between tax determination and tax collection. Tax Collection occurs in three stages: sending of notices, the automated collection system, and field collections. For those who won't or can't pay, there are such alternatives as Offer in Compromise, Installment Agreement, Currently Not Collectible status, Collection Due Process procedures, and Spouse Relief.

The Service is divided into Operating Divisions that address different populations of taxpayers, from individual wage earners, to large corporations, to tax exempt organizations. Each of these divisions has a service function and a compliance function, found both in large campus facilities (formerly known as service centers) and in smaller field offices. At campuses, employees called audit specialists work with taxpayers by phone or mail. Field offices employ higher-level employees, called Revenue Agents. The compliance function also deals with collections, again at both the campuses and field offices. Taxpayers may obtain assistance with collection issues through the call centers at campuses and through walk-in taxpayer centers in field offices.

Taxpayers may obtain assistance with preparing tax returns by phone, 800.829.1040 or via the Taxpayer Assistance Center. A taxpayer advocate is available for those people with significant hardships. The taxpayer advocate program has a national number, 877.777.4778. Taxpayers seeking this kind of assistance should file a Form 911. Prof. Camp advised that taxpayers send a copy of this form to the party that the taxpayer is having problems with because this will elevate the case.

Prof. Camp has found that there are two problems with over-automated systems designed to assist taxpayers: where clients actually live and where the IRS has recorded as their last known address may be not be the same, and clients may improperly mail documents. The problem is

that if taxpayers do not respond in a way that the computers recognize as a response, then assessment and collection will proceed. Improper mailing by using the wrong address or failing to use correct postage obviously can result in information not reaching the IRS. Using the wrong size envelope is also problematic as machines open the mail; wrong-sized envelopes will not be opened by machines.

One attendee asked about identity theft: If a person is the victim of identity theft, doesn't the IRS computer processing system recognize that tax returns are being filed for the same social security number from many different states? Unfortunately, it does not. Prof. Camp suggested searching the terms identity theft at the IRS website; this search should bring up information regarding the Identity Protection Specialized Unit.

Prof. Camp advised that one of the best things to do when dealing with the IRS is to find a human being who sympathizes with the taxpayer. He stressed that the service is not a black box. Taxpayers can get help one way or another.

He referenced several permissions forms. Form 2848: Power of Attorney gives the taxpayer access to taxpayer records. Form 8821: Tax Information Authorization permits a third party to see the taxpayer's information that is designated on the form. Form 4506: Request for Tax Form is used to request a copy of one's tax return. Prof. Camp advised attendees never to let their clients sign blank forms 8821 or 4506.

Other tips include using the Tax Professionals tab at the IRS website and reading the Internal Revenue Manual for assistance. Attorneys may want to use the link under More Topics. To help one's client it is important to know where the client is in the process, Tax Determination or Tax Collection. Such clarification helps an attorney know what options are available to help the taxpayer. For example, taxpayers who are facing enforced collection, such as liens, levies, or setoffs, generally will not be able to obtain the same kind of relief as taxpayers who are in the tax determination process, such as those facing audit or in receipt of a Substitute for Return from the IRS. However, Prof. Camp pointed out that a taxpayer may be able to get back to the Tax Determination stage (from the Tax Collection stage) by going through "Audit reconsideration."

He pointed to the following useful references: [ABA Tax Section publications](#); Robert Nassau, [How to split the tax baby: what would Solomon do?](#); and [his own writings](#).

### **Nonimmigrant visas**

Gabriella Manolache, Managing Director of the International Employment Services Department at the TTU Health Sciences Center gave the next presentation, Give Me Your Huddled Masses Yearning to Be Free, or How About All Those NIVs. (NIV's refers to nonimmigrant visas.) She began by referring attendees to some helpful websites: 1) [American Immigration Lawyers Association](#), specifically the Cases and Decisions tab. The Featured Topics tab directs

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researchers to information regarding subjects like visas, GC's (green cards), asylum, and removal. 2) [U.S. Citizenship and Immigration Services](#). At this site, the Laws tab leads to policy memoranda. Also accessible from this section are immigration handbooks and the adjudicator's field manual. The Services tab allows attorneys to register for automatic case updates upon the submission of an immigration application.

She mentioned that some immigration attorneys invest in an immigration software program (like [INSZoom](#), [LawLogix](#), or [Cerenade.com](#)) or a form filler. Immigration attorneys might also wish to use the free forms at [U.S. Citizenship and Immigration Services](#).

Common nonimmigrant visas include: B-1 (a visitor visa for a business traveler) and B-2 (a visitor visa for a person travelling for pleasure, tourism, or medical treatment). When applying for such visas, B-1 and B-2 visitors should be able to prove to the consulate that they harbor the requisite nonimmigrant intent necessary for this kind of status. Business visitors must prove 1) un-abandoned foreign residence, 2) entry for a temporary period, and 3) business activity within the scope of regulations. Director Manolache mentioned activities permitted by business visitors: taking orders for goods manufactured abroad, negotiating contracts, consulting with business associates, litigating, participating in conventions/conferences/seminars, and undertaking research.

Other NIV's include TN (a Trade NAFTA visa for citizens of Canada and Mexico), F-1 (a visa for students), H-1B (a visa for foreigners working in "specialty occupations"), and J-1 (a visa for exchange visitors).

TN visas are intended to remove barriers to trade and investment in the United States, Canada, and Mexico. The TN visa is strictly a nonimmigrant visa; no dual intent is allowed.

Students with F-1 visas can work 20 hours per week on campus and can get CPT, or Curricular or Practical Training.

The J-1 Exchange Visitors program is administered by the State Department rather than the U.S. Citizenship and Immigration Services. There are about fifteen J-1 statuses.

A two-year home residency requirement under sec. 212(e) of the Immigration and Nationality Act is imposed on some J-1 holders. An attorney can initially determine whether a client is subject to 212(e) by first looking on the visa stamp or DS-2019 form for a notation. (Look for subject or not subject.) The next step would be for the attorney to obtain an advisory opinion from the State Department verifying whether his/her client is subject to sec. 212(e). If an exchange visitor is subject to sec. 212(e), s/he can apply for a waiver, fulfill the two year home residency requirement in the designated country, or temporarily change to an allowable nonimmigrant status within the U.S.

The H-1B visa allows for employment (full or part-time) of specialized workers if their profession requires at least a bachelor's degree. The job typically must require a BA or BS degree which is relevant to the field the person will be working in.

Director Manolache remarked that the H-1B work visa is a good option for F-1 students completing their 12-month work authorization, for J-1 exchange visitors who have obtained a waiver, and for B-1 business visitors who have been offered employment in the U.S. She recommended reading 8 USC sec. 1101 for more information.

H-1B is different from other nonimmigrant visas because it is a dual intent visa. The government gives out 65,000 of these per year but there are many organizations (like institutions of higher education) that are exempt from the 65,000 numerical cap.

Director Manolache moved on to discuss green cards. People who wish to apply for a green card can use a marriage-based or employer-sponsored application. Marriage-based applicants will be interviewed; if a marriage is less than two years old at the time of the Green Card interview, the applicant is eligible for a conditional green card. As for the employer-based route, there are five employment-based immigrant categories and only 140,000 such green cards are issued annually.

She mentioned the Diversity Visa Program, a type of green card lottery for foreign nationals from eligible countries. (These are countries from which foreign nationals generally don't emigrate.)

Ms. Manolache suggested reading *Dual Representation in Immigration Practice: The Simple Solution is the Wrong Solution* at 5 Geo. Immigr. L. J. 58 (Fall 1991). She also recommended checking the [Visa Bulletin](#) each month.

Director Manolache ended her talk by mentioning some of the common complaints against immigration attorneys: failure to file timely petitions, failure to communicate or respond to repeated inquiries, and incompetence. She advised that it is important to sign up for case alerts after filing any kind of immigration application for a client.

### **Limited Scope Representation**

Prof. Larry Spain conducted the last session, Ethical Issues with Limited Scope Representation. Prof. Spain administers Texas Tech Law School's Civil Practice Clinic and teaches classes such as family law, professional responsibility, and an advanced ADR clinic.

He began by noting the reluctance by attorneys to engage in limited scope representation. He referenced a 2009 [white paper](#) by the Maryland Access to Justice Commission. (See, p. 74.)

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Prof. Spain explained that limited scope representation is also known as unbundled legal services. Rather than providing full representation, a lawyer provides representation only for specific tasks related to a legal matter while the client self-represents with respect to the remaining tasks. It can be likened to providing legal services a la carte (e.g., document review, drafting, preparing or responding to discovery, consultation, coaching, limited appearances, etc.)

To proceed with limited scope representation, an attorney should create a Limited Scope Representation Agreement which outlines the responsibility of the attorney, the tasks that will be the client's responsibility, and the risks assumed by the client under limited representation.

The benefits of limited representation are many: it provides increased access to legal services for prospective clients unable to afford counsel – it is a form of rationing limited legal services; it expands the pool of attorneys willing to perform pro bono services; it is a better alternative than pure self-representation – pro se parties benefit by being better informed (by having access to affordable, skilled, limited legal assistance) and thus able to represent themselves; lawyers benefit by gaining the opportunity to provide services to low and moderate income individuals who otherwise would forego retaining an attorney.

Courts benefit because pro se litigants better understand court procedures, submit higher quality briefs and pleadings, and are better prepared to represent themselves in court.

Prof. Spain demonstrated that limited scope representation is ethical by analyzing relevant Texas and ABA rules of professional conduct.

Under the Texas Disciplinary Rules of Professional Conduct 1.02, a lawyer may limit scope, objectives, and general methods of representation if the client consents after an attorney-client consultation. There are risks regarding what the client may assume about the representation, so attorneys should develop something in writing which communicates to prospective clients exactly what limited scope representation is and why it may offer an advantage to the client.

ABA Model Rule 1.2(c) provides similar direction to the attorney. Comments 6 and 7 to 1.2 discuss when it is ethical for attorneys to offer services on a limited scope basis.

ABA Formal Ethics Op. 07-446 (May 5, 2007) addresses whether the Model Rules of Professional Conduct require a lawyer performing only specific limited duties for a client to disclose the extent of such assistance to the tribunal or adverse parties. The ABA found that the nature of such representation is not material and need not be disclosed.

Even with limited scope representation, attorneys must adhere to the traditional ethical duties of providing competent and diligent representation, maintaining the duty of confidence, following the general duty not to communicate with another person known to be represented by counsel, and avoiding conflicts of interest and running conflicts checks.

The Limited Scope Representation Subcommittee of the Self-Represented Litigant's Committee of the Texas Access to Justice Commission is attempting to expand the use of limited scope representation by educating judges, court personnel, and the bar. Assisted pro se projects, local court rules, and standing orders with respect to limited scope representation are other initiatives.

To facilitate this type of representation, legal practitioners can also evaluate additional rule changes that may be necessary to Rule 10 of the Texas Rules of Civil Procedure regarding withdrawal as counsel. Some states have rules permitting limited appearances that allow withdrawal without leave of court. The legal profession can also clarify the permissibility of drafting documents for filing without disclosure to the tribunal, clarify the permissibility of communication with a party who receives limited scope representation, and allow lawyers who draft pleadings for individuals to rely on the individual's representation of the facts in the absence of reason to believe the representations are false or materially insufficient so as to require independent inquiry.

Prof. Spain ended his talk with a discussion of best practices for limited scope representation. Attorneys should assess at the outset whether a case is appropriate for this type of representation. Is the case too complex or technical, or does it affect fundamental rights? Does the client have unrealistic expectations or limited capacity? Are there language barriers?

Attorneys must evaluate whether the limitations placed on the scope of representation are reasonable. Will there be a capable person to decide strategy, gather information, draft documents, appear in court or for mediation, negotiate with the opposing party or counsel?

Limited scope representation should be limited to areas where the attorney has expertise and declined for last minute emergencies. Declining representation should be documented in writing.

Lastly, attorneys must document the instructions provided to such clients, as well as document when the tasks for which they were retained are completed and when the representation ends.

### **Briefing the Case: Promoting Access While Restricting Access at Public Law Libraries**

Jeff B. Woodmansee  
Faculty Research Support & Reference Librarian  
Bowen School of Law Library  
University of Arkansas at Little Rock

#### Promoting Access While Restricting Access at Public Law Libraries

One of the means by which law librarians working at public institutions that provide Internet access can restrict patron exposure to potentially objectionable content is to use a technique known as

filtering, a process by which content is blocked from view by these patrons. The act of filtering is viewed by some as a necessary evil given the wide open availability of content on the web; alternatively, it is viewed as an act of censorship that violates a patron's constitutional right to free speech. Because of their roles as facilitators of access to information, libraries also necessarily function as protectors of the right to receive information. Public law libraries serve their communities in a similar fashion, albeit with a more focused role of providing access to legal materials and governmental information. With few exceptions, libraries that are open to the public through taxpayer funds are recognized by courts as government actors who must act within the boundaries of the First Amendment. For this reason, libraries that receive government funding or that allow public access – including academic, county, and court law libraries – must be mindful when deciding whether to limit or remove certain content. This can be a difficult line to walk when dealing with the Internet due to the amount of information available; there is undoubtedly a need to ensure that one patron's access to objectionable material does not prevent others from comfortably and freely using the library. However, Internet filters that categorically restrict access to certain material, if not currently seen as a free speech violation, may be viewed as such in the near future.

### **Introduction**

Controversies involving restrictions to content and materials accessible through publicly-funded libraries have typically not involved law libraries in litigation, forcing law librarians to turn their attention to other public library cases for general guidance about First Amendment compliance issues. With the ever-expanding universe of the Internet, including the shift of so many print reference materials to online-only formats, public law libraries certainly share similar problems when it comes to managing patron access to illegal and controversial materials available online. Generally, courts have measured a library's compliance with the First Amendment by the conformity of the collection decisions to that library's overall mission. Viewed along a continuum of obligations under the First Amendment, courts may require the most neutrality from public libraries with missions to serve entire communities, slightly less neutrality from law libraries with missions to serve particular patron groups' legal research needs, and even less neutrality from public school libraries whose mission narrowly serves the curricular needs and requirements of the students attending the school (Klinefelter, 2010). Law librarians need to understand the application of the First Amendment in these contexts in order to make informed decisions when it comes to selecting materials and deciding what, if any, restrictions will be made regarding public access to the Internet.

### **The library as public forum and what that means**

Whether freedom of speech is applicable to a situation depends, first, on the location of the speech. Without question, government officials have less authority to restrict speech in a public

forum, a place that by tradition has been open for free expression, such as streets, public parks, and sidewalks. For the most part, this limitation on speech restriction extends to a “limited public forum,” a place that the government has opened for use by the public for expressive activities. In both public forums and limited public forums, restrictions on speech are subject to the highest form of judicial review, strict scrutiny, and content-based restrictions will be upheld only if the restriction is necessary to achieve a compelling government interest and no less-restrictive alternatives are available.

Though there is some disagreement among the courts whether public libraries are traditional public forums or limited public forums, the majority of courts tend to assume the latter. First Amendment restrictions suggest that publicly funded law libraries should follow adequate procedures before enforcing policies that could interfere with library patrons’ access to library resources. Regardless, it is agreed by all that libraries are subject to the constraints of the First Amendment. Being a limited public forum means only that a library may impose reasonable, content-neutral restrictions on speech and the right to receive information such as limiting library access to certain hours or days or limiting Internet access to patrons with library cards.

### **Censorship as defined by the courts**

The right to receive information as a function of the First Amendment’s freedom of speech and of the press clauses lies at the heart of most landmark library access litigation. Attempts by libraries to go beyond such content-neutral limitations on the access to information have generally been met with disfavor by federal courts (Mart, 2003). In terms of library censorship issues, the case most frequently cited in discussions is *Board of Education v. Pico* (1982), wherein the Supreme Court struck down a school board’s decision to remove “filthy” books from a public school library. The *Pico* court stated that “the discretion of the States and local school boards in matters of education must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.” This interpretation has been more generally applied to public law libraries. Courts are reluctant to characterize the First Amendment as a positive right that requires the government to affirmatively do something, such as purchase a particular book or even keep it on the shelves. But in determining that the school board’s decision did not satisfy this requirement, a plurality of the Court explained:

We think that the First Amendment rights of students may be directly and sharply implicated by the removal of books from the shelves of a school library. Our precedents have focused not only on the role of the First Amendment in fostering individual self-expression but also on its role in affording the public access to discussion, debate, and the dissemination of information and ideas. And we have recognized that the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. In keeping with this principle, we have held that in a variety of contexts the

Constitution protects the right to receive information and ideas. This right is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the sender's First Amendment right to send them: The right of freedom of speech and press embraces the right to distribute literature, and necessarily protects the right to receive it. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.

More importantly, the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom.

457 U.S. at 866-67 (internal citations omitted).

*Pico* has been cited numerous times by lower federal courts dealing with issues of library censorship. Notably for purposes of this discussion, in *Sund v. City of Wichita Falls* (2000), the rationale in *Pico* was applied to a public library's decision to move some children's books to the "adult" section of the library. The district court in *Sund* determined that "the right to receive information is vigorously enforced in the context of a public library, the quintessential locus of the receipt of information, [and] government officials may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."

The *Sund* court also explained that the rationale of *Pico*, which was a school library case, had "even greater force when applied to public libraries" because, while school have an inculcative function that allows them some discretion in curricular matters, public libraries do not. Instead, public libraries are "designed for freewheeling inquiry." Finally, in *Sund*, the court noted that it did not matter that the books were only to be moved, rather than removed from the library, because "even where a regulation does not silence speech altogether, the Supreme Court has given the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content."

One might well argue that any restrictions to content and materials within law library collections, particularly if applied to providing access to the law, would frustrate the First Amendment goal of democracy. Selectivity in library collections, however, is not only a function of necessity due to limited resources, but also a function of design. Law libraries especially have a purpose or mission that requires them to make selections based on the content of materials (Klinefelter).

### Internet filtering in the First Amendment context

Because of the novelty of the Internet, far less case law exists to answer this question. In *Mainstream Loudoun v. Board of Trustees* (1998), a district court rejected the idea that internet filtering was a valid restraint on the time, place, or manner of access to information. The court explained that no library had a duty to provide Internet access but, once it chose to provide access, it must do so in a constitutional manner. Filtering that made certain websites unavailable based on their content was not allowed.

In December 2000, Congress passed the *Children's Internet Protection Act* (CIPA), which requires all schools, libraries, museums, and other public institutions to have some type of filtering mechanism in place in order to receive federal funding for computers or Internet access. Another federal court tackled this question when dealing with a provision in the CIPA that required libraries to install Internet filters in order to receive certain federal funds. The district court held that a library's Internet access "uniquely promotes First Amendment values in a manner similar to traditional public fora," and the restriction in the federal statute was found to be unconstitutional.

One cannot paint a perfectly clear picture on the issue of Internet filtering, however, because, on appeal from the district court, the U.S. Supreme Court overturned the lower decision and found that the provision in the Children's Internet Protection Act was not unconstitutional. In reaching this decision, the Court in *United States v. American Library Association* (2003) said that a library's determination of which websites to allow patrons to access was no different than its decision on which books to acquire. Additionally, the Court said that the Internet was not a traditional public forum because it did not exist when the concept of traditional forums was developed, nor was it a limited public forum because the government did not "open" the Internet – rather than the library – for public discourse.

By focusing on whether the Internet itself was a public forum, the Supreme Court sidestepped the real issue somewhat. The argument that filtering websites was similar to acquiring books seems somewhat flawed; a library that provides Internet access begins by having access to all of the Internet, then it decides which websites to filter out. This is far more analogous to *removing* books from an existing collection than it is to acquiring them. The Internet is a collection of information. To pare out parts of that information seems no different than pulling encyclopedia volumes out of a collection because the content of those volumes is offensive. For this reason, the decision seemingly represented a temporary departure from a very clear line of cases and reasoning.

Since *ALA*, most litigation in this area has taken place in the lower courts. In 2009, a California district court applied a reasonableness standard of review to a community college library's Internet use policy in *Crosby v. South Orange County Community College District*. There, a

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campus policy restricted Internet usage to “appropriate academic, professional and institutional purposes,” including a prohibition on the viewing or sending of “obscene, indecent, profane, lewd, or lascivious material.” A student challenged the restrictions after an incident in the school library in which a campus security officer asked him to stop viewing “pornographic” images downloaded to a social networking website. The district court found that the college library was analogous to a public library and cited *American Library Ass’n* in determining that library Internet use was not a traditional or designated public forum. In reviewing the school’s policy and its designation of the library as a nonpublic forum, they found the standards for reasonableness were not intended to suppress a particular viewpoint and ruled for the college.

In 2010, a challenge to a Washington public library’s refusal to disable Internet filters was filed in *Bradburn v. North Central Regional Library District*. The Washington Supreme Court ruled that state constitutional protections for speech did not require the library to unblock web sites for access to all constitutionally protected speech. However, the court did find that the library would be required to unblock access to sites inadvertently restricted by the filtering software if the website content was consistent with the library’s mission, collection policy, and any applicable CIPA-compliance requirements. As in *Crosby*, the court applied nonpublic forum standards to the publicly-funded library and placed an emphasis on the library’s overall mission.

### **Conclusion**

Librarians should be defenders of access to information and freedom of speech. At the same time, public librarians and library staff must be defenders of *everyone’s* ability to use the library, which can seriously be impaired if pornography and other objectionable material is viewed on public computers in front of other patrons. Public law libraries, which have a mission of providing access to legal materials to patrons, should be given even more leeway in trying to discourage this sort of patron behavior because of the unique service they provide to their communities – and recent court decisions seem to reaffirm this notion.

One can use the example of pornography to demonstrate how public law librarians can shield patrons from objectionable material while respecting First Amendment free speech rights. Using Internet filters to broadly cut out large chunks of the Internet, even if technically not violative of the First Amendment today, may be found to breach it tomorrow. An easier way to restrict the viewing of pornography in the library is to clearly state that the public viewing of objectionable material constitutes sexual harassment of the other patrons and that the library reserves the right to notify authorities if incidents of harassment occur. The librarian could simply contact the police if a patron does not respond to warnings and requests that he or she cease viewing the material. The solution is not perfect – few ever are – but it would be a viable option in most jurisdictions, and it would allow the library to prevent the viewing without resorting to a broader form of censorship.

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In January 2010, WestlawNext and Lexis for Microsoft Office were unveiled at the Legal Tech trade show in New York. Both products, with their natural language and Google-like search capabilities, promised simplified research and workflow collaboration for attorneys, paralegals, law students, and law librarians.

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