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SCALL Newsletter

President's Column

by James B. Senter
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Spring has sprung, and the first order of business is to congratulate **Vice President/President-Elect Jessica Wimer** for her outstanding Institute, *Think Inc.! : Corporate Research Today*, held at the Marriott Ventura Beach in March. The programs were all excellent and informative, the venue was wonderful, and best of all everyone had a great time talking and catching up on the latest resources and trends in corporate law. Well done, Jessica!

I would also like to thank the many volunteers and committee members who worked tirelessly with Jessica to make this one of the best institutes ever, especially: Lasca Alekseevna, Virginia Allen, Pauline Aranas, Stephanie Ball, Ramon Barajas, Jennifer Berman, Laura Cadra, Mark Gediman, Cindy Guyer, Cheryl Kelly, Lisa Hampton, Karen Lasnick, Larry Meyer, Paul Moorman, Wendy Nobunaga, Karen O'Donnell, Carolina Rose, Michael Saint-Onge, Lisa Schultz, and John Wilson. We truly have an extraordinarily talented and dedicated group of volunteers in SCALL. Please consider volunteering *your* time and *your* unique talents as well! I guarantee it will be a rewarding experience.

A big round of applause for our excellent speakers, who contributed some of the most substantive and engaging programming we've seen: Michael Chasalow, Sue Fong, Pam Friedman, Mark Gediman, Paula Hoffman, Greg Lambert, Melody Lembke, Tomas Lipinski, Patrick Meyer, Paul Moorman, Elizabeth Osborne, Michael Saint-Onge, Jim Sanders, Priscilla Stultz, David Wilcox, Leonette Williams, and Loye Barton Williams.

Thanks to all our sponsors, and *major thanks* to our Major Sponsors: Bureau of National Affairs (BNA), Continuing Education of the Bar (CEB), Daily Journal Corporation, LexisNexis, and Thomson West, and to contributors Courthouse News Service and Retrieval-It. This Institute could not have happened without your generous contributions and creative support! Special thanks also to LexisNexis for the Institute bags, the AALL/BNA Continuing Education Grants Program for sponsoring the Think Risk workshop, LexisNexis AtVantage for sponsoring the

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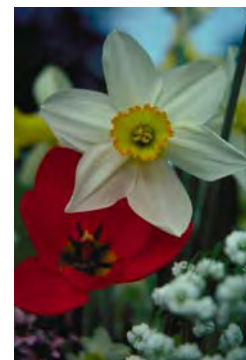
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Editor's Notes

by

Victoria Williamson

Spring is in the air and so are feelings of pride, joy, and a great sense of accomplishment among members of this year's Institute Committee, and rightfully so. The recently concluded 36th Annual Institute at Ventura Beach was a huge success, well-deserved credits and "bragging rights" to Vice-President/President-Elect Jessica Wimer and her Institute team.

Once again, SCALL surpassed its member's expectations for excellent programs and speakers, vendor exhibits, hotel and conference room accommodations at the Marriott. This year's theme, cleverly titled THINK INC., included sessions on Corporate Law 101, White Collar Crime and the Pre-Institute workshop "Think Risk: Assessing & Navigating Legal Risk in Law Libraries, a program made possible through an AALL grant. Highlights from these programs are reported in this issue. Thanks to John O'Donnell, Patricia Hart, and Gina Catalano (who coincidentally attended as one of SCALL's VIP guests), for sharing with us their take on these programs.

Those of us who make it a point to attend the SCALL Institute every year can attest to the fact that the programs presented during these Institutes just keep getting better and better each year. SCALL has definitely kept its tradition of presenting an Institute that is well worth its members' time, money, and energy. Once again, the standards for the next year's Institute have been raised.

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SCALL Newsletter Submission Deadlines

We welcome the submission of any articles of interest to the law library community. Contact Victoria Williamson, **SCALL Newsletter** Editor, at vwilliamson@sdcpll.org.

April 14, 2008
August 11, 2008
October 13, 2008
December 8, 2008

May / June 2008 issue
Sept. / Oct. 2008 issue
Nov. / Dec. 2008 issue
Jan. / Feb. 2009 issue



Think Risk! Assessing and Navigating Legal Risk In Law Libraries

A 2008 SCALL Pre-Institute Program Presented by Dr. Tomas Lipinski, Associate Professor,
School of Information Studies, University of Wisconsin-Milwaukee

Reviewed by Gina S. Catalano, Senior Reference Librarian,
San Diego County Public Law Library



Dr. Tomas Lipinski, author of *The Complete Copyright Liability Handbook for Librarians and Educators* and co-author of *The Library's Legal Answer Book*, discussed liability issues in copyright, licensing, confidentiality, and malpractice in regard to law libraries and librarians.

Given the ambitious nature of Dr. Lipinski's presentation and the uncertainty of the law in some areas covered, I am going to focus on the areas of law discussed that are more settled in nature and that can be readily summarized into concrete tips for law librarians.

Be Careful How You Display Copyrighted Material:

Some displays of copyrighted works lawfully in your possession can violate Title 17 of the United States Code, section 106, exclusive rights provision. Even if you lawfully have a copyrighted work in your possession, you must be careful not to violate the 'exclusive rights' provision when displaying the work. The law makes a distinction between public display (lawful use) and transmission (violation of copyright).

Dr. Lipinski used the example of a public display as "showing a copyrighted map or graph as part of a Power Point presentation on multiple workstations in a computer lab." Title 17 of the United States Code, section 109(c) states that a lawfully obtained copyrighted work can be displayed publicly, "either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located."

Dr. Lipinski explained that a copyright is infringed when an image is "transmitted by any method (by closed or open circuit television, for example, or by a computer system) from one place to members of the public located elsewhere." H.Rpt. No.94-1476, 94th Cong. 2d Sess. 80 (1976), reprinted in 5 United States Code Congressional and Administrative News 5659, 5694 (1976).

In the age of the Internet, computer networks, virtual meetings and online tutorials, the issue of unlawful transmission arises. Do you work in a situation where classes or presentations originally given onsite are now loaded as an online presentation to the Internet or your computer network? Are the presentations now available to people offsite

from the original location of the copyrighted work? If so, your library may be in violation of copyrights laws, without a specific exception or falling under fair use provisions.

Put Up Copyright Notices:

According to Dr. Lipinski, Title 17 of the United States Code, section 108(f)(1) insulates libraries from copyright infringement by its users if certain precautions are taken. Dr. Lipinski stated that section 108(f)(1) provides immunity "for infringement committed by patrons (students, parents, other members of the community), for unsupervised use of reproducing equipment, but a copyright warning statement [is] required." Dr. Lipinski further stated that in order for a library to invoke this immunity provision, a copyright warning statement should be placed on all **photocopiers, computers and scanners** in a prominent place on the machine.

The Issue of Malpractice:

For law firm librarians facing the issue of a possible malpractice claim, Dr. Lipinski stated that *Hu v. Fang*, 127 Cal. Rptr. 2d 756, (Cal. App. 2002) applies. In this case a paralegal mistakenly calendared a court appearance on the wrong date, causing the attorney to miss the court appearance. The court held that the lawyer was responsible for supervising the work of the paralegal and is therefore responsible for missing the court date. Dr. Lipinski interpreted this case to mean that the lawyer is "responsible for errors of non-lawyers such as paralegals and other staff including law librarians."

Dr. Lipinski cited two cases of interest for public and academic law librarians facing malpractice claims. The first is *Friedman v. Merck & Co.*, 131 Cal. Rptr. 2d 885, 906-907 and the second is *Pringle v. Meyerhoff*, 2004 WL 2786334 at *3 (unpublished). Both cases concluded that defendants were not responsible under the negligent misrepresentation claim, because the information provided to plaintiffs was not offered as part of a business transaction. Dr. Lipinski stated that since public and academic law libraries do not provide information as part of a commercial setting, there can be no liability for negligent misrepresentations to patrons.

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Think Risk! (cont.)

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Some good advice was quoted by Dr. Lipinski from Paul D. Healey's *Chicken Little at the Reference Desk: The Myth of Librarian Liability*, "[R]eference librarians working at a general reference desk should be careful not to engage in activities which could be seen as giving legal advice. This is partly in order to avoid being seen as engaging in the unauthorized practice of law, and partly to avoid raising the expectations of the patron that a duty of care exists. In this regard some sort of verbal disclaimer when dispensing legal information might be advisable" 87 *Law Library Journal* 515, 528 (1995).

Unauthorized Practice of Law:

Public law librarians often face patrons requesting assistance in choosing and completing forms, and interpreting legal terms. The following case law cited and discussed by Dr. Lipinski provides guidance to law librarians. It also offers a source to show patrons that what they are requesting does involve legal advice.

The selection and preparation of legal documents does require legal interpretation and therefore runs afoul of the unauthorized practice of law provision of California Business & Professions Code section 6126. Dr. Lipinski explained that the Court in *In Re Powell* concluded, "[a] non-lawyer engages in the unauthorized practice of law when he or she determines for a party the kind of legal document necessary in order to effect the party's purpose" 266 B. R. 450, 451 (N.D. Cal. 2001). Also, Dr. Lipinski pointed out

that the court in *In Re Reynoso*, stated "in a general sense, 'the practice of law...includes legal advice and counsel and the preparation of legal instruments and contracts'" 477 F.3d 1117, 1125 (9th Cir. 2007), quoting, *Baron v. City of L.A.*, 469 P.2d 353, 357 (Cal. 1970).

Often, patrons will approach the reference desk with a document or resource and ask, "What does this mean?" Unfortunately, because legal terms and concepts can be so complex there is often not a simple definition or explanation. Frequently, the answer to "What does this mean?" is "It depends." According to *In re Bernales*, "[i]nterpreting legal terms also constitutes the unauthorized practice of law" 345 B. R., 206, 216 (C.D. Cal. 2006).

Even though we may be telling patrons that we cannot personally tell them which form to use, help them fill out the forms or interpret legal terms, it is nice to know that we have case law on our side and now have sources to point them to explaining that what they are requesting of us is legal advice.

As stated earlier, this is just a selected summary of Dr. Lipinski's wonderful presentation. His three-hour pre-Institute workshop was loaded with information relevant to the legal risks involved in the law library community. Dr. Lipinski's presentation was recorded using an AALL grant and will be available soon for members at:

<http://www.aallnet.org/members/media.asp>

2008 SCALL Scholarship Recipients Announced

By Cheryl L. Kelly, Chair
SCALL Library School Liaison Committee

The SCALL Library School Liaison Committee is pleased to announce that it has voted to award scholarships to the following library school students:

Amy Bernocco (Anaheim, CA) — Amy is a current SJSU library school student and works as a research assistant at O'Melveny & Myers LLP in Los Angeles.

Esther Cho (Los Angeles, CA) — Esther currently attends the UCLA library program, is a reference intern at the UCLA Law Library and works as an assistant librarian at Proskauer Rose LLP in Century City.

Stephanie Plotin (Santa Monica, CA) — Stephanie also attends the UCLA library program, has a JD from UCLA Law School and is currently working as both a reference intern and a library assistant in the cataloging section of the UCLA Law Library.

Marianne Sterna (San Diego, CA) — Marianne attends the SJSU library program, has a Legal Assistant Certificate from the University of San Diego and works at the law library in the County of San Diego, Office of County Counsel.



President's Column (cont.)

(continued from page 1)

Competitive Intelligence workshop, and Daily Journal Corporation for printing the Institute materials. Also, thanks to our exhibitors: Daily Journal Corporation, Legislative Intent Service, LexisNexis, Loose Leaf Filing Service, Inc., Questel, Raymond Research, Thomson West, and William S. Hein & Co., Inc. And, last but not least, thanks to our Major Exhibitors: Bureau of National Affairs (BNA), Continuing Education of the Bar (CEB), Global Securities Information (GSI), Legislative Research, Inc., and 10K Wizard. SCALL members, please be sure to thank the sponsors, exhibitors, and contributors the next time you see them.

At the Institute we had the honor of hosting several VIP guests: NOCALL Vice-President/President Elect Kelly Browne, SANDALL Secretary Gina Catalano, and not one but two VIP guests from AALL: Executive Director Kate Hagan and Vice-President/President Elect James Duggan. We had the pleasure of hearing James Duggan address the crowd at our Saturday luncheon about current issues concerning AALL.

Speaking of AALL luminaries, we are all proud to show off our very own Diana Jaque, who is Chair of the Annual Meeting Program Committee this year. I'm sure Diana would love to see a big contingent of SCALL members in Portland; please plan on being there if you can. Diana spoke briefly at our Closing Banquet about a great opportunity to help staff the Hospitality Booth at AALL. Portland local arrangements folks could use your help, so please consider volunteering a little bit of time and your cheerful self to help make people feel welcome. I know from experience that greeting AALL members and helping them explore the many positive things the host city has to offer is fulfilling and fun.

And don't forget to mark your calendars for the Pacific Chapters Joint Reception, Saturday night before the Opening Event. This year it is hosted by LLOPS, Law Librarians of Puget Sound, and sponsored by Thomson West. You can make your housing reservations at the Annual Meeting website. Also, if funds are limited, keep in mind that AALL, SCALL and various SIS groups offer grants to cover registration, airfare, hotel and other costs.

By the time you read this, Jennifer Berman and the Nominations Committee will have announced a slate of outstanding candidates for the open Board, Secretary, and Vice-President/President Elect positions. Watch for your ballot in the mail soon, and don't forget to vote.

Finally, plans are in the works for the Spring Meeting, coming up on May 12th, location to be announced. Look for an email from our Programs Chair, Wendy Nobunaga, and make plans to attend.

Editor's Notes (cont.)

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Also in this issue, is a report about the new partnership formed between SCALL's Inner City Youth Internship Program (ICYIP) and Urban Education Partnership (UEP). Thanks to Brian Keefe for keeping us up on this recent development.

As an added bonus, we have included Margot McLaren's report on the Government Depository Library Council's Spring Conference presentation on GPO's Federal Digital System Update (FDSys) which was held in Kansas City, Missouri on March 31, 2008.



USC Speaker Warns About Contracts to Digitize Library Books

by Ed Butler, Branch Manager
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Contract issues between libraries furnishing hard copies and search engines scanning and digitizing them for online access were the subject of the speaker at the Nov. 7th Fall meeting of the Southern California Association of Law Libraries held at the Taix Restaurant in Los Angeles.

In exchange for transforming book content into digital format, providers such as Google set limits on usage that effectively channel searchers into the commercial system of the search engine, it was explained.

Libraries need to be wary in drafting contracts with Google or Microsoft, for example, to make sure they know what they're getting, explained Jack Lerner, visiting clinical assistant professor of law and acting director of the intellectual property and technology law clinic at the University of Southern California. A former intellectual property advocate, he recently moved to USC from Berkeley's Boalt Hall School of Law where he was clinical fellow at the Samuelson Law, Technology and Public Policy Clinic.

Lerner reported on data from a current study into contracts and policy associated with large scale digitization agreements between libraries and private entities.

Lerner said the study has found large differences between the terms of such contracts and their effect in practice.

He reviewed the benefits to libraries of collaborating with the search engines/digitizers, including aid to preservation of material, increased access, and expansion of use of the collection. Participating libraries can benefit from pooling scans and catalogue data, and enhancement of academic and scholarly research through "long tail studies" of obscure works kept in different places. Benefits include reducing the cost of research, developing new research indexes, analysis of use patterns, development of translation engines and annotation on a large scale superior to analogue alternatives.

Lerner said there are three major commercial players in the movement, Google, embracing both public domain and copyright-protected materials; Microsoft, using public domain material only; and Internet Archive.

In the process, libraries lend the hard copy to Google, for example, which bears the substantial expense of scanning it. A computer reads the document and creates a corresponding text document which can be made available for search, reaching deep within book text.

As part of the deal, the library gets a digital copy of the work but does not receive image coordinates allowing it to independently search the digital copy.

An alternative entity, the Open Content Alliance, does provide image coordinates, Lerner said.

The private provider such as Google chooses the material to be digitized.

Contract restrictions faced by participating libraries include prevention from making the library's digital copy publicly down-loadable, and prevention of their being searchable or indexable without going through the Google link.

Further, libraries are limited to non-commercial use of their copies and limited in sharing copies, and linkage to competing search engines is prevented.

Also, participating universities under the contracts have an affirmative duty to prevent infringement of rights of Google or Microsoft under the agreement. Sharing with commercial entities is barred, even for public domain documents.

In sum, "All roads lead to Google or Microsoft (in usage of search capability) depending on what digital material you're talking about," Lerner said.

He added that the Big Ten Conference libraries have collaborated this year to obtain joint use of their collections.

Privacy is another issue, Lerner said, as Google observes and collects information about what its users do online, via cookies and also the user's computer IP address. As to the permanency of such tracking records, Google now says they're maintained for 18 months. Lerner said participating libraries might contemplate confidentiality provisions to limit such snooping into use patterns.

On the issue of preservation of book content in digital format, Lerner says Google says it does not aim to provide that. It is expensive to reduce and transfer for the sake of preservation.

Lerner quoted a checklist for contract drafting: libraries consider freedom to share with other parties, preservation

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Digitize Library Books (cont.)

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of data, respect for public domain and copyright material, and standards for image quality and third party duties.

On a question about authenticity of digitized primary source law material, Lerner said many text reading errors have been identified, along with distortion of image. “If we go to an all-digital world, the authenticity issue is an important one,” he said.



White Collar Crime: Options May Mean Jail

A Program of the 2008 SCALL Institute, Ventura Beach

Presented by Jim Sanders, McDermott, Will & Emery

Reviewed by Patricia Pelz Hart, Lawyer/Librarian, Chapman University School of Law
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Fraud is the knowing misrepresentation of the truth, or concealment of a material fact, to induce another to act to his detriment. In the corporate world, securities issuance / trading and employment matters are areas in which fraud may occur.

Fraud was historically treated as a tort and handled as a civil matter. Businessmen found liable paid fines and agreed to change their behavior. Since the mid-1980's, however, frauds that did not exist in the past have arisen and corporate frauds have increasingly been prosecuted as white collar crimes. Businessmen found guilty now pay hefty fines and may go to jail.

Business fraud was the subject of **White Collar Crime**, the final program at the 36th SCALL Institute, March 14-15, 2008. The Institute took place at the Marriott Ventura Beach. Attorney **Jim Sanders**, a partner at McDermott Will & Emery, discussed the trend toward criminal prosecution, specific types of white collar crimes, and the resulting effects on law practices. Mr. Sanders has worked for the Securities and Exchange Commission (SEC) and as a federal prosecutor, and now handles corporate defense. His lively talk was a fitting end to the Institute, which had the theme of **Think Inc.: Corporate Research Today**.

The traditional SEC remedy to securities fraud was injunctive action. The SEC would require a consent decree in which the subject promised to cease the violation. The matter was referred for criminal contempt only after repeated failures to live up to the terms of the consent decree. During the six years Jim Sanders worked for the SEC, the agency never once referred a case for criminal prosecution.

The insider trading scandals of Ivan Boesky and Michael Milken occurred in the mid-1980's. Milken received a three-year sentence and spent one year in jail. He was eligible for parole after 1/3 of the time, and had to be paroled after 2/3 of the time served. The public was angry over the low sentences.

The **Federal Sentencing Guidelines** of November 1, 1987 changed the playing field. **Mandatory sentences** were established, which were determined on a point basis. The greater the monetary loss, the more points; the more points, the longer the sentence. Furthermore, a person convicted had to serve 85% of the time before being paroled.

Federal prosecutors all over the country began to emphasize white collar crimes. The SEC investigates but does not prosecute anyone. It can set a fine and take away a license. Prosecutors, by contrast, have full criminal investigatory powers. They obtain search warrants and search for evidence. Prosecutors realized business fraud cases were good cases to bring. They got a lot of bang for the buck and made people go away.

Business clients who formerly had to pay moderate fines and agree to terms were now faced with large fines and the possibility of jail. Clients asked their law firms for defense. Firms developed in-house departments to handle white collar defense.

The future re sentencing guidelines is uncertain. The Supreme Court has recently held that the guidelines are no longer mandatory and judges can go up or down when sentencing.

Sub-Prime Lending will be the hottest area in white collar crime for years to come. The problem area will be the rating of bonds used to market the loans to financial institutions. There is a possible investigation of Countrywide on the horizon.

Stock Option Backdating is a current white collar crime of choice. Backdating occurs when a person is hired and is given an option dated to a prior date when the stock was at a more beneficial price. Backdating also happens when an existing employee is given a backdated option.

Revenue Recognition Fraud is what Enron did. A company gets to the end of a quarter and is below the numbers it needs. The company instead reports it earned money this quarter that it "knows" it will earn the next quarter.

Insider Trading refers to buying or selling stock based on "inside" (material and non-public) information. When the SEC suspects insider trading, it asks who knew about the inside information. It matches the names of those who knew with the names of those who traded in the stock. It can thus find persons who have no outward connection to a company, such as an uncle of a staff member.

The SEC can also make **surprise phone calls**. People called will talk to the SEC and say yes, I made the buy.

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White Collar Crime (cont.)

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A company may seek **outside investigation by a law firm** when it knows it has a problem. The company forms a **special committee** of the board. An outside law firm investigates the situation. The outside firm contacts the government and says it has been authorized by the company to tell the government what it finds out. Reports are turned over to the SEC and the district attorneys. The company hopes there will be no prosecution.

Eliot Spitzer had a big impact when he was New York Attorney General. The SEC was very conservative in dealing with fraud. Spitzer had a different approach. He put things under a microscope and showed they were crimes. An example would be an analyst who recommended a stock even though he knew it had no value.

Late Trading cases are a function of the global marketplace in securities. Stock sold on a Saturday would be priced at next Monday's 4:00 p.m. price under a rule that

had developed over the years. Fraud could be committed when trading in other markets in different time zones, such as an Asian stock market, to take advantage of price differentials. Spitzer uncovered this fraud and pushed for its prosecution.

The concept of insider trading developed in the **Texas Gulf Sulphur** cases. The **classic theory** is when an insider goes home and tells his wife the inside information. The wife then trades under her maiden name. An alternative **misappropriation theory** covers those who do not work for the subject company but who instead work for a related business, such as a financial newspaper. The employee learns about the next day's stories and trades today based on that information.

The SEC has refused to define insider trading. Whatever is done, the SEC wants to say, "*That's it.*"

FDSys Update: 2008 Depository Library Council Spring Conference

Reported by Margot McLaren, Serials / Government Documents Librarian
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GPO staff members Mike Wash, Carrie Gibb and Selene Dalecky presented updates on GPO's Federal Digital System (FDSys) on March 31, 2008 at the 2008 Spring Federal Depository Library Conference and Depository Library Council Meeting in Kansas City, Missouri.

This plenary session addressed the status of the FDSys, a collaborative effort between the Harris Corporation and GPO's Program Management Office. On August 2, 2006, Harris Corporation was awarded a \$29 million contract by GPO to develop a strong and flexible digital system that will provide and protect permanent access to information from all three branches of the government. The FDSys started late last year, so in mid-February 2008, GPO reached an agreement with Harris Corporation to restructure the contract and to redefine the company's role and responsibility. Why the change? According to Mike Wash, the system design and development program was not meeting GPO's expectations, risking a 2008 launch and GPO's FDSys program management skills were considered stronger than those demonstrated by Harris. With GPO taking on more program responsibility, the risk factor for the system is lowered.

GPO has contacted subject matter experts to assist in system design activities and program support tasks and Harris is providing software development resources guided by GPO. This restructured team is proceeding to deliver the first release to meet the technical challenges and to lead the overall integrated activities. GPO is planning to release the FDSys to the public in phases.

The first phase of Release 1C2 is scheduled in late 2008. Release 1C2 enables the management of content and metadata in content packages; enhances the exchange of descriptive metadata between the FDSys and ILS; ensures content authenticity and digitally sign PDF documents; provides simple, advanced fielded, citation and Boolean searches; and enables collection-specific access features (such as browse); and content and metadata will be available for viewing, downloading and printing. The first phase will begin the replacement of *GPO Access* system, and migration of existing content collections while providing full functionality. The final transition of *GPO Access* to FDSys will occur after full functionality has been accomplished.

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Corporate Law 101

A March 2008 SCALL Institute Program Presented by
Michael Chasalow, Visiting Assistant Professor of Law, USC Law School
Reported by John O'Donnell, Head of Public Services, Whittier Law School Library
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"All those years in graduate school and you didn't make it to Business School?" states the program announcement for Corporate Law 101. In this hour and a half presentation, Michael Chasalow, a visiting USC law professor, basically covered a condensed version of a law school Corporations class as well as parts from two or three other classes he teaches. This was fortunate for me since I think I dozed off a bit in Corporations when I took that class a few years back. Professor Chasalow's entertaining PowerPoint slides made this an interesting and informative presentation.

Right off the bat Professor Chasalow made the point that corporate law does not necessarily involve difficult concepts but more involves its own specialized vocabulary. The trick to understanding a lot of the material involves understanding this unique vocabulary, states the professor. In addition, he boiled down corporate rules to rules you learned on the playground. For example, if you are going to do something you should tell someone, you should ask permission first, respect the rights of others and so forth.

Professor Chasalow discussed corporate law in light of a fictional company called "Designatoy." He traced the company from its inception all the way until its public offering. Roger and Rita, the creators of Designatoy, created a software product where kids can pick and design their own toy over the internet. The child chooses among several toys, customizes the toy to their tastes, builds the toy to the child's specifications, and ships the final product directly to the child.

To incorporate or not?

The very first thing Roger and Rita need to do is to pick a way of organizing themselves, a business structure. Professor Chasalow discussed the different "legal personalities" or ways Designatoy could be established. If they do not choose a particular legal entity Designatoy automatically become a partnership. This means that Roger and Rita would be personally liable for all of the company's actions and debts.

He discussed the traditional "look" of a corporation which includes shareholders, a board of directors, and officers. The corporation is a separate legal entity. Even though this legal personality is a fiction, the corporation is a real person in the eyes of the law. In other words, it can sue

people and others can sue it. Establishing a corporation also means that persons who start businesses can only risk or lose a certain amount, what is put into the corporation and not one's personal assets. Professor Chasalow emphasized how important the concept of limited liability has been in fueling many innovative businesses over history. In addition, the concept of separation of ownership and control means the people who own a business are not necessarily the ones who run the day-to-day operations of the business.

Professor Chasalow listed in chart form the general differences between a general partnership and a corporation. Some of these differences include: limited liability for the corporation, non transferable shares in a partnership, corporations can go on forever, partnerships end, corporations have centralized management, and partnerships have decentralized management. Finally both entities have fiduciary duties to different parties.

What type of corporation?

When most people think of a corporation they are thinking of a C corporation, your typical corporation. Another choice is an S corporation. These are usually a closed or privately held company. Professor Chasalow said that this type of corporation was created by the IRS to make things a little easier for entrepreneurs to get started. It has a simple structure with pass through taxation and limited liability. This means the owners are taxed, rather than the company. In a C corporation when the company makes money it pays taxes on that money; then the shareholders pay taxes again when dividends are issued. In an S corporation there is no double taxation, only the owner pays tax, not the corporation. Some of the tradeoffs for incorporating as an S corporation are that the number of shareholders is limited and only individuals can be shareholders.

Another choice is an LLC, a Limited Liability Corporation. This is a relatively simple organization. Professor Chasalow said that an LLC has all the benefits of a corporation and the benefits of a partnership combined. For example, an LLC has the flexibility you have in a partnership, but it has limited liability like in a corporation. Finally, an LLC has pass through taxation, members can manage the LLC, and the LLC is a private entity which cannot go public.

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Corporate Law 101 (cont.)

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How do you incorporate a business?

The “price” of giving a corporation limited liability is to file Articles of incorporation. These are filed with Secretary of State, no not Condoleezza Rice, Professor Chasalow joked, but the secretary of state of the state where you are incorporating (in this case California).

The articles of incorporation include: the name of the corporation, number of shares, name of each incorporator, and the registered agent. The registered agent is the person who is contacted if the corporation is sued. The articles of incorporation can sometimes be as little as a page long. Once this is done you are officially a corporation.

Once formed, Designatoy must follow the formalities of a corporation. If these formalities are not followed lawsuits may result. This is what is known as “piercing the corporate veil.” Some of these formalities include not commingling personal and corporate funds, and under capitalizing the corporation. Professor Chasalow showed an entertaining slide of a cartoon character who literally pierces a veil with a sword that comes threateningly close to the unfortunate corporate owner.

Separation of ownership and control

Once the business is incorporated, one must have an organizational meeting, draft and adopt bylaws, appoint officers, and issue stock.

Corporate law really focuses on the board of directors (control) and the shareholders (owners), said Professor Chasalow.

The rule of thumb is that a board of directors acts and shareholders react. Directors make most of the decisions. However, shareholders can approve board of directors, approve mergers and acquisitions, amend the articles of corporations, and pass non binding resolutions (e.g. environmental issues).

Board members have fiduciary duties. The two principle corporate fiduciary duties are the duty of care and the duty of loyalty. Duty of care means that as a board you need to be careful and thorough, but you do not need to be perfect. The duty of loyalty regulates self dealing, transactions by management, and corporate opportunities.

Can Designatoy be sued for a “bad” decision?

Business judgment rule

Say Designatoy makes a bad decision by trying to market a new line of toys called “frightening friends.” This turns out

to be a bad decision. Apparently parents were not interested in having their children frightened on a daily basis by the toys. Can they be sued for making such a bad decision?

The business judgment rule states that if the board of directors is exercising reasonable business judgment the law is not going to second guess them. This is providing that no one has self interest in making the decision, the decision was legal, the board of directors considered all of the information, and the decision was within scope of things that business does. The basic idea is that the law is not going to hold the board of directors to the highest level of scrutiny in order to allow the board the freedom to make decisions without the threat of a lawsuit in the back of their minds.

Professor Chasalow discussed the interesting example of a Federal Express policy that allows their drivers to block traffic and get tickets when delivering packages. In other words, management was saying to drivers that they would rather get the package to its destination on time and have their drivers get tickets (e.g. blocking traffic) than have their packages arrive late.

Professor Chasalow stated that this is not covered by the BJR because of the illegal behavior. However, the interesting situation is that the board still may still not be liable in this case. A court may decide that it is not a negligent business decision to allow the drivers to get parking tickets. He said it actually may be seen as a reasonable business decision if you whole business model is based on getting package to customers on time. Again, since getting parking tickets is illegal the BJR would not apply.

Capital Structure

Designatoy survives its bad decision of “frightening friends” but at this point it needs a large infusion of cash. Professor Chasalow discussed the advantages and disadvantages of choosing debt versus equity as a means of financing the company. Equity is stock and debt is a basically a loan.

-- Debt

Debt is usually structured as money that goes into the company and the lender receives interest, often times backed by some kind of security. In exchange for this increase in security the lender receives less interest. In general, is usually much less expensive to pay someone interest than to give someone a share (e.g. equity) in the company. However, a small company like Designatoy might not want debt because they may need all money available to grow the company.

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White Collar Crime (cont.)

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– Equity

Unlike debt, an investor will become a shareholder in a corporation. These investors will have a claim on the company's assets. They will also have a share after everyone else is paid. An investor has a bigger potential for risk as well as a bigger potential for reward. The investors are essentially sharing the risk with the company. Professor Chasalow mentioned that most CEO's will tell you that a blending of both equity and debt may be best.

Securities laws

So Designatoy decides to raise money through stock since they are a relatively small growing company. A company that issues stock is regulated by a wide range of securities laws. The purpose of these laws usually comes down to two issues: full disclosure and preventing fraud. The major rule discussed by Professor Chasalow was SEC Rule 10(b)(5).

Full disclosure means that investors should have all the information to make an informed decision. Disclosure has two components, both giving information, and not withholding material information that might shed further light on the situation. Anyone who makes a misleading statement is liable under 10(b)(5).

Time to “Go public!”

Professor Chasalow stated that up until this point in the presentation, he had mostly have been talking about a closely held, private company. These companies tend to have fewer owners and are not listed on any stock exchanges. A public company is one that is registered with Securities and Exchange Commission and is listed on a stock exchange. The stock of a public company can be freely traded. There are substantial more regulations that affect public companies than affect private companies (e.g. Sarbanes Oxley).

Designatoy “Goes public”

When a company “goes public” this means that the stock is no longer held by individuals and the stock will be held by the public. Typically, the company usually teams up with some investment bankers. Usually the owners hold onto their stock and the company issues brand new shares. The investment bankers put on what are called “road shows” which last a few months to a year. In these road shows the owners of the stock ask other potential investors (e.g. pension funds) if they want to buy, pre-sign up for stocks before the stock is offered to the public on a stock exchange. The day the company goes public these investors who pre-signed up for the stock can sell their shares. To be “public” really has more to do with the stock's status and not the company's status of a public offering on a stock exchange.

Professor Chasalow gave a nice summary of the presentation. He said that more often than not the answer to any corporate law question is “disclose and get permission.”

All of the laws, at least in theory are designed to push corporations toward very basic principles: be fair, be diligent, disclose, and get permission. Again, with these basic concepts, along with don't lie, cheat and steal, it all comes back to the rules you learned on the playground.

FDSys Update (cont.)

(continued from page 10)

The second phase (Release 1C3) is scheduled in mid 2009. In this release, Congressional submission of content and jobs (orders) will be provided, persistent names (Handles) will be assigned to content, and search and access functionality will be enhanced. The third phase (Release 1C4) is scheduled in late 2009. This release includes a documented interface (API) to allow searches by non-GPO systems, government agency submission of content and jobs (orders), navigation of relationships between publications, and e-mail and RSS notifications.

Carrie Gibb closed the session with an update on GPO's outreach efforts. The FDSys team provided a proof-of-concept demonstration to Congress, federal agencies and its library partners (including CENDI Web Harvesting Working Group, American Library Association, Office of the Clerk of the House, Office of the Secretary of State, National Digital Strategy Advisory Board).



Inner City Youth Internship Program Has New Partner

by **Brian Keefe, Argosy University**
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Each year the Inner City Youth Internship Program asks law related employers to take a summer intern or to make a donation so that we can place an intern at a nonprofit organization.

We are doing so again; but, for a time, it was not clear how this would happen.

For years, ICYIP had operated under the umbrella of an organization called Community Partners. It had both a 501(c)(3) tax-exempt status that allowed us to solicit tax-deductible donations as well as the staffing to process the payroll for any intern if that intern's employer did not want to do so themselves.

Last year, Community Partners informed us that it was terminating this arrangement. They said their organization intended only to be an incubator for small nonprofits, and that these entities had eventually to become self-sufficient. As small as we are, ICYIP had never expected to function independently. Community Partners worked with us to through last summer and then severed its ties.

We were really not capable of providing payroll services; and becoming our own 501(c)(3) entity would be both time consuming and would change our relationship with SCALL.

So, then, would the program end? Or, would it continue as a smaller version of itself only offering internships from employers who would pay the interns directly?

We looked to various groups to partner with us, but had difficulty finding one. Finally, we learned of a group that was eager to work with us.

With the approval of our Memorandum of Understanding with the Urban Education Partnership (UEP) by SCALL's Board, ICYIP has a new partner in our enterprise.

Like Community Partners, UEP has tax exempt status as a 501(c)(3) entity. It has the capability to process the payroll of any student intern for whom an employer wishes to contract this service.

For 20 years, the Urban Education Partnership has had as its mission to help students in high-need schools improve their academic achievement through collaboration with ed-

Lisa Baker, librarian at Musick Peeler & Garrett, with intern Chris Johnson and staffer Rose Pritchett.



Melody Lembke, Librarian, Los Angeles County Law Library with intern Anahi Diaz.

ucators, parents and the community. Every year, they serve more than 1,600 educators and 80,000 children in high poverty, multi-ethnic areas of Los Angeles County.

One of UEP's programs is their Career Academies. These provide learning communities in seven high-need high schools. They give more than 1,500 students rigorous college-prep education and industry-themed learning experiences. Eighty-nine percent of the students are economically disadvantaged.

ICYIP will take interns from these academies for its summer program. These students will have been interviewed by Urban Education Partnership staff and will have participated in workshops to prepare them for summer work.

ICYIP will continue to conduct its own workshop to orient the students to a legal environment. This arrangement should only improve the students' performance in their jobs.

This summer, again, we are asking you to help make L.A. a better community and to give some deserving young person a helping hand in their life and career.

Please see if your organization can employ an intern or make a donation to the Inner City Youth Internship Program.

ICYIP has only gotten better.

Thank you for your support.



Job Opportunities

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Click on any entry to see the complete job announcement. Updated: April 17, 2008

Library Assistant, Winston & Strawn LLP, Los Angeles, April 16

Librarians & Library Technical Assistants, California Department of Corrections and Rehabilitation, Statewide, April 15

Assistant Librarian, Legal; Infocurrent; Los Angeles, April 2

Law Library Director, Alameda County Law Library, Oakland, March 17

Law Librarian; California Court of Appeal, Third Appellate District; Sacramento, March 7

Librarian; Paul, Hastings, Janofsky and Walker LLP; Costa Mesa, February 23

Law Librarian; Procopio Cory Hargreaves & Savitch LLP; San Diego, February 20

Acquisitions / Electronic Information Librarian; Loyola Law School; Los Angeles, February 20

Acquisitions and Systems Librarian; UCLA Law Library; Los Angeles, February 7

Assistant Dean for Library and Research Services; University of the Pacific, McGeorge School of Law; Sacramento, February 1

Circulation Librarian, Pacific McGeorge School of Law, Sacramento, January 28







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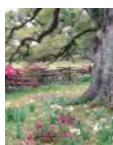
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