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SCALL Newsletter

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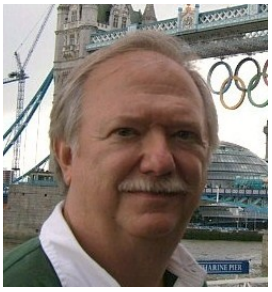
From the President ... by David Burch



While seasons are not that different in Southern California, there is something about Spring that makes one feel refreshed. Spring arrived on March 20, and on March 22 SCALL members and guests gathered in Riverside for the 41st annual SCALL Institute. A great time was had by all. Paul Moorman and his hard-working committee are to be congratulated for providing a stimulating set of programs in an attractive setting.

Spring is a time of renewal. For the religious among us, we celebrated Easter and Passover, a time to think of deliverance, perseverance, and rebirth. For others, it's the Easter Bunny and the promise of new life, even if the eggs are chocolate and the chicks marshmallow. As an organization, it is time for SCALL to have new beginnings by electing new officers. I would like to thank the Nominations Committee for its hard work in assembly a slate of new officers and board members.

A time of new beginnings is also a time to think about new duties and activities. An organization like SCALL exists only because individuals take time to work on committees. If you are not currently involved in any SCALL activities it is time to think about volunteering. Look over the list of committees to see if there is someplace you would like to serve. This newsletter you are reading is the product of one of those committees. Most of our current board members were once committee members, then committee chairs before moving on to become members of the board.

(Continued on page 5)

In This Issue ...

(click title to view)

RSVP for SCALL Spring Meeting 2013
Tuesday Apr. 23 at Chapman University in Orange

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Submission Deadlines

We welcome the submission of any articles of interest to the law library community. Contact Patricia Pelz Hart, ***SCALL Newsletter Editor***: *hart@chapman.edu*

All submissions should be received by the following dates:

May 13, 2013	May / June 2013 issue
September 9, 2013	Sept. / Oct. 2013 issue
November 11, 2013	Nov. / Dec. 2013 issue
January 13, 2014	Jan. / Feb. 2014 issue
March 10, 2014	Mar. / Apr. 2014 issue

Editor's Notes ... Patricia Pelz Hart

The stars certainly aligned for this issue about the 41st SCALL Institute. Articles about healthcare law are informative and comprehensive. Read them now or keep for later reference. You will have a good understanding of the present day law on healthcare. The article about the Mission Inn recounts its fascinating history. The photos of the Inn transport readers, via their eyes and minds, to a gorgeous location. The item about the new director of the Riverside County Law Library gives us all one more reason to think highly of Riverside.

Save the Date ...

SCALL Spring Meeting April 23.

Be Sure to Register

Please join your SCALL colleagues as we gather together in Orange County on **April 23** for the 2013 SCALL Spring Meeting!

The Spring Meeting will be held in the city of Orange at **Chapman University's law school**. Our topic will be "The Law of Climate Change: Adaptation and Financing," and our speaker will be Chapman University Associate Professor Dr. Deepa Badrinarayana. Dr. Badrinarayana has published several scholarly articles on climate change. As with all SCALL meetings, it will be a great opportunity to meet new colleagues and catch up with old friends while enjoying delicious food.

The timing: our Spring Meeting will begin at 5:30 p.m. with networking in room 237B of Kennedy Hall, the law school building. Dinner will follow in the same room at 6:15 p.m., and our presentation will begin at 6:45 p.m. The cost will be **$25.00 for members** and **$12.00 for students**.

RSVP. Please contact Patrick Sullivan directly by email at psullivan@jonesday.com **or phone at 213-243-2530 by 4:45p.m. Thursday Apr. 18.** The count is needed that day for the caterer. After contacting Patrick, please send in the RSVP form and your check

The menu: We will be feasting on a Tuscan buffet, featuring Grilled Sweet Italian sausage, Rigatoni Marinara w/Lemon Garlic Broccolini, Eggplant Caponata Salad and Focaccia Bread. Dessert will include White Chocolate Macadamia Nut cookies and Chocolate-Dipped Coconut Macaroons.

The details: Chapman Law School is located across the street from Chapman University, 370 North Glassell, Orange, CA 92866. Attendees must pay for parking. For parking, turn off Glassell at Sycamore, along the side of law school. Parking structure is two buildings back. (There is a low building between law school and parking structure.) Park in any open, non-reserved space. Get a parking ticket from machines near elevator on 1st or 3rd floors. Leave ticket on car dashboard.

Any questions can be directed to Patrick Sullivan at psullivan@jonesday.com or at 213.243.2530. Also, the Chapman Law School's website is: https://www.chapman.edu/law/

Heard Around Town ... by Larry Meyer

I hope everyone had a great time at the SCALL Institute. It was great seeing so many of you and catching up on everyone's latest news.

Congratulations to **Victoria Williamson**, who after a number of years working at the University of La Verne College of Law Library and San Diego County Public Law Library has returned to her Law Library roots in Riverside to become the new Director of the Riverside County Law Library. With Vicky's new position as Director, **Gayle Webb** once again leaves Riverside County Law Library to pursue retirement and travel, and we continue to wish her much enjoyment as she pursues those activities.

Patrick Sullivan, formerly with LexisNexis, is now the California Region Research Librarian at Jones Day. Patrick has been a member of SCALL since 2000 and has been an active member of the Program Committee, which he co-chairs.

Michele Lucero with the LAC Group has been busy working on an additional master's degree. This degree, from Pepperdine University School of Law is in Dispute Resolution. In her spare time, she has been teaching conflict resolution as an adjunct professor at Woodbury University.

Speaking of spare time activities, in the last column there was mention of an upcoming L.A. Lawyer's Philharmonic/ Legal Voices Concert in which **Robert Ryan** was participating. It has been reported to me that the program was well attended and was well received by those present. Hopefully, especially for those of us who missed the event, Bob will continue to update us on future concerts so that we may have the opportunity to attend one.

Lawrence R. Meyer *is Director of the Law Library for San Bernardino County in San Bernardino.*

Job Opportunities ... by Don Buffaloe

- Members Program / Education Partnerships Librarian; LA Law Library; Los Angeles, April 9
- Part-Time Law Librarian; California Court of Appeal, 6th Appellate District; San Jose, March 29
- Competitive Intelligence Analyst; Foley & Lardner LLP; Los Angeles, January 9
- Librarians & Library Technical Assistants, California Department of Corrections and Rehabilitation, Statewide, Ongoing

Don Buffaloe
Chair, SCALL Placement Committee
Email: Donald.buffaloe@pepperdine.edu

SCALL Grants for AALL 2013

The deadline for submitting grant applications for AALL in Seattle is **May 20, 2013.**

The grant application form is available at the SCALL web site: http://aallnet.org/chapter/scall/pdf/scallgrant.pdf

From the President *... continued*

The Programs Committee, Patrick Sullivan and Michelle Tolley co-chairs, has been active this year. We have had some stimulating programs in some very interesting locations. This spring the meeting location returns to Orange County with an April 23 meeting at Chapman University School of Law. I encourage everyone to attend.

So the theme of this message is a celebration of the work of our committees. All do the work that keeps SCALL going. Here is a list so I don't leave anyone out: Archives, Awards, Budget and Finance, Bylaws, Government Relations, Grants, Information Technology, Inner City Youth, Institute, Library School Liaison, Membership, Newsletter, Nominations, Placement, Programs, Public Access to Legal Information, Public Relations, and Relations with Vendors

David Burch *is Head of Library Computing at Loyola Law School in Los Angeles*

Membership News ... by Judy K. Davis

Welcome new members!

Kathy Crispi
Sales Manager
Continuing Education of the Bar

Holly Gale
Research Specialist
UC Irvine School of Law

Sarah Joshi
Account Manager
Continuing Education of the Bar

Lisa Junghahn
Research Librarian
Harvard Law School Library

Erin Kurinsky
Research Analyst
Gibson, Dunn & Crutcher

Sangeeta Pal
Public Services projects Coordinator
UCLA Law Library

Suzanne Smith
Sales Manager
Continuing Education of the Bar

Welcome, new student members!

Caitlin Hunter
Circulation Assistant
University of Denver Law Library

Kimberly Strand
San Jose State University

Welcome back, returning members!

Elizabeth Elliott
Paul Hastings
Knowledge Management Research Librarian

Announcements:

Elizabeth Cobarrubias's firm, formerly SNR Denton, is now Dentons US LLP.

Domonique Roberts, former library student member, is now a Pool Reference Librarian with Western State University College of Law.

Grace Rosales, former library student member, is now a Research Librarian with DLA Piper.

Any corrections, changes, or additions to your membership information, as well as any announcements for Membership News, should be sent to:

Judy K. Davis
Chair, SCALL Membership Committee
Phone: (213) 740-6482
Email: jkdavis@law.usc.edu

Why Tax Revenues Must Rise ... reported by George Carter ; photos by Tanya Cao

To kick off the 2013 SCALL Institute **Edward Kleinbard**, a professor of law at University of Southern California Gould School of Law, explained to those in attendance why tax revenues must rise. Kleinbard noted somewhat jokingly that he was a manic depressive and that he wanted to make sure everyone in attendance was as depressed as he. Not too hard of a task given the recent tax increases and the looming April 15 tax deadline.

Between a Rock and a Hard Place

Kleinbard provided a brief introduction to the rock and the hard place our country is in with regards to federal revenues and federal spending. At the conclusion of the fiscal crisis, John Boehner and Barack Obama reached an agreement that made the Bush tax cuts permanent for most income earners while raising the top marginal tax bracket. The employee portion of the payroll tax was increased back to 6.2%. Many economists consider the tax to be at 12.4% since employers must figure their portion of the payroll tax into the total cost of hiring an employee. The fiscal cliff deal raised $650 billion in new tax revenue over 10 years, or $750 billion if you include the savings that come from not paying interest on borrowed money. Kleinbard believes we left $4.6 trillion on the table in potential additional tax revenue because we did not raise tax rates back to Clinton era rates. Had we done so, the only consequence would have been that we would all be just a little bit sadder. Kleinbard finished his introduction by noting that we are now dealing with a tax structure, relative to our spending, that is not sustainable.

The Short Term, the Medium Term, and the Long Term

When approaching the problem of our economic woes it is best to break down our thinking to three different pockets, the short term, the medium term, and the long term. In the short term you **strive to not screw up the economy too badly**. In the long term, there has to be **a better match between tax revenues and entitlement programs**. In the medium term, you have to **start moving from where you are to where you need to be in the long term**. The medium term is what Kleinbard is most interested in. He believes this term ranges between 2 and 10 years.

Spending is not the Problem?

According to Kleinbard, spending is not necessarily the problem or at least, not a problem that can be fixed by cuts in spending. Non-defense discretionary spending, which accounts for less than 5% of GDP, has already been cut down to the lowest it can be cut given the size and relative wealth of our country. Discretionary defense spending is also somewhere between 4 to 5% of GDP. He notes that over 40% of the world's military spending comes from the United States. When talking about numbers it is more important to talk about numbers as a percentage of GDP than about numbers alone.

When making his point about military spending, however, Kleinbard ignored military spending as a percentage of GDP, instead pointing out that the U.S. spends more per capita than Israel, which has more pressing military concerns than the U.S. As a percentage, Israel spends 7% of GDP in defense spending compared to the 5% of GDP for the U.S. There is certainly a point to be made about discretionary defense spending but I agree with Kleinbard in not being sure that defense spending, which still hovers around its historic rate of 4 to 5% of GDP, is the lone culprit.

Kleinbard readily admits that health care spending is a huge and growing problem in our budget. He believes that Obamacare was necessary. However, he views Obamacare as a medium range transition step to something more functional in the long term. During the Q & A Kleinbard said he thinks the solution is a single payer system like that of Norway and other European countries. We spend $8000 more per person on health care than Norway. If we could **duplicate a single payer system and bring our per person cost in line with that of Norway, then the U.S. would save $880 billion dollars a year**. Of course, the U.S. has 310 million more people than Norway and 51 distinct government systems with various interests. It is difficult to compare the U.S. to other countries.

The basic thrust of Kleinbard's argument is there is really is **no more room for spending cuts as things stand.** Unless, of course, we want to show tough love and disproportionately throw Grandma from the train, a charge that is often leveled against Republicans. Austerity measures taken by European governments prove that spending cuts do not create economic growth. Austerity measures create less tax revenue and more government dependence, because cutting government spending means laying off government workers. On the other hand, if we raise taxes we also slow economic growth. In any case, Kleinbard believes taxes must rise to cover the costs of entitlement programs. He also believes the only way to stabilize health care costs, which is one of the main drivers of our debt, is to create a single payer system where government can more aptly control costs. So where do we go from here?

Why Tax Revenues Must Rise *... continued*

Conclusion and Analysis, Gold Dust Never Hits the Fan

Kleinbard painted a bleak picture of our sorry fiscal affairs. Government spends too much money and collects too little tax revenue. His solution, which he believes is the only viable one, is to raise taxes. He notes that the U.S. taxes at some of the lowest rates in the world. In addition, tax subsidies baked into the tax code make our rates much lower than they appear to be. Some people have proposed that we eliminate many of the tax breaks in the code and lower the rates overall, creating a simpler and cleaner tax code. Kleinbard suggests that we eliminate the mortgage interest deduction, since it only benefits people who itemize their deductions.

Keynote speaker Edward Kleinbard introduced by SCALL Institute Committee Chair Paul Moorman

If taxes must rise, how high should they go? President Obama's original Chair of Economic Advisors, Christina Romer, released a report in the American Economic Review demonstrating that raising taxes beyond 33% ultimately decreases the amount of revenue collected by the government. In 1944 the U.S. had a 94% marginal tax rate which brought in tax revenues that equaled 20% of GDP. In 2000, with a marginal tax rate of 39%, the government collected the same amount of revenues as a percentage of GDP as it did in 1944. Comparing historical tax rates to historical tax revenues, whether during times of high tax rates or low tax rates, the government revenues average about 18% of GDP. This would suggest that simply raising taxes does not automatically raise government revenue.

In 1933 the Hawley-Smoot Tariff bill raised the tariff rate to 19.8 % from 13.5%. Before the tariff rate was raised the government was collecting $602 million in tax revenues. The collection was only $251 million after the rate increase. The raised tariff rate may have led to a decrease in trade, with a resulting decrease in tax revenue. Tax cuts in the 1960's and in the 1980's increased the amount of revenue collected by the government. Perhaps raising taxes is not the only way to raise revenue.

Stanford economist Thomas Sowell has commented, "In economics, there are no solutions, just tradeoffs." We want big government and low tax rates and no sacrifice for any of it. We need more revenue or less spending or some combination of the two. Spending cuts threaten to hurt the economy; increasing taxes will inevitably slow down the economy. Some have suggested that a more robust economy solves everything but how do we get there? The famous Adam Smith has a suggestion, "If you have economic freedom, you will have economic growth." At the 2013 SCALL Institute the debate between Keynes and Hayek marches on.

George P. Carter *is Head of Reference at the Law Library for San Bernardino County in San Bernardino*
Tanya Cao *is Catalog Librarian at Chapman Law School in Orange*

The 41st Annual SCALL Institute was held at the Music Room of the historic Mission Inn in Riverside

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Online Store Bills 2007-Current. Selected bills are covered in this part of the collection; and multiple files are available for each bill.

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Currently, many folks go to Westlaw or the Legislature's free website for quick legislative histories and only receive limited records.

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How does the Online Store compare with LRI's regular research services? Law librarians want to know if the online research materials are guaranteed to match what is available from LRI's regular Custom and economy Core legislative history research services.

Carolina Rose, LRI President and longtime SCALL member, answers: "Sometimes it will. But only if the bill of interest is covered in LRI's extensive collection of precompiled digital research reports, and if no new sources of research were subsequently made available.

"What we have learned, however, is that when attorneys need legislative histories in a hurry, they are more than willing to accept the limitations."

For more information visit www.lrihitory.com, call (800) 530-7613, or email your questions to intent@lrihistory.com.

The Business of Medicine: Overview of the American Health Care System and Factors that Influence Its Management ... reported by Bill Ketchum

Alyssa K. Schabloski, JD, MPH, practices employment and personal injury law on the plaintiff side as an associate at McNicholas & McNicholas, LLP in Westwood. She spoke on the American health care system at the 41st SCALL Institute in Riverside. The following is a summary of her remarks, or as she termed it, *Insurance 101*.

In contrast to most major European nations, the United States has not developed a national health care system, in part because the country is so spread out. Also, the idea of a universal health care system is opposed by anti-socialists and the American Medical Association.

Health insurance at the private level took off after World War II as a way for employers to compete for good employees. Companies used this as a tax deduction.

Insurance is a pooling of risks, so it works only if low-risk people are included and a large population offers economies of scale. Co-payments, according to a RAND study, dissuade people from using the service early and therefore end up costing the insurance companies more. Insurance companies pay providers (doctors and hospitals) by fee-for-service or by capitation, which is a set amount per patient for all the care that patient may need. Capitation is a disincentive to the providers.

The US health care system includes both public benefits and private insurance, the latter either individually purchased or employer-based. The most common health insurance before the 1980s was traditional indemnity insurance.

Health Maintenance Organizations (HMOs) were created as a response to an enormous increase in health care costs. An HMO, such as Kaiser, has low costs, focuses on primary and preventive care, and usually has standardized care and little patient freedom to choose when to see a specialist or which one to see.

The late 1990s saw the beginning of a backlash against HMOs. Preferred Provider Organizations (PPOs) were developed as a hybrid between traditional indemnity insurance and HMOs. PPOs cost more to the individual but allow self-referral to specialists within the network. Providers contract with PPOs to provide service to members at a discounted rate.

Other arrangements such as High-Deductible Health Plans (HDHPs) and Health Savings Accounts (HSAs) take some of the low-risk individuals out of the risk pool.

Medicare is the federal program that provides health care for Americans who are over 65 and have worked 40 quarters or are spouses or surviving spouses of such persons, and for the disabled and those with ESRD (end-stage renal disease).

Franklin D. Roosevelt believed that Social Security would be jeopardized by the inclusion of compulsory health insurance, but Lyndon Johnson signed Medicare into law in 1965 to address the needs of the retired population. 50 million Americans now receive Medicare benefits. Medicare was the country's first major form of universal health care, although its "universe" was restricted by age. To get federal money, a hospital must accept Medicare patients and federal standards.

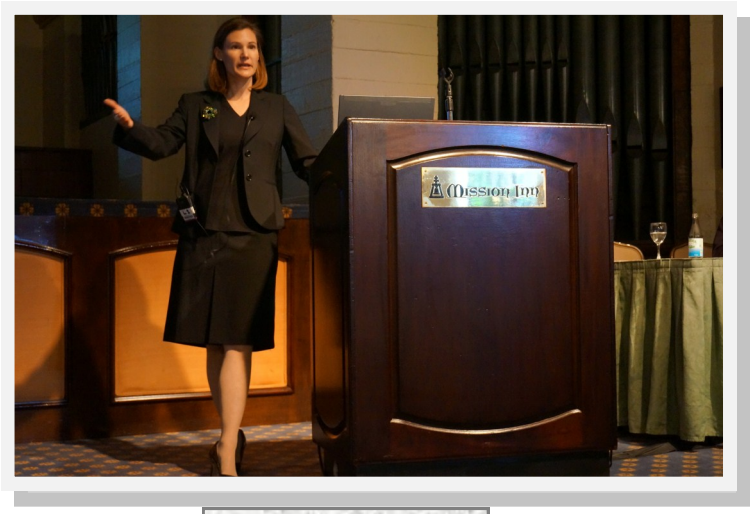
Medicare Part A provides 90 days' hospitalization per benefit period and hospice care. For most participants, the monthly premium is deducted from Social Security. Part B provides outpatient care. Part C gives participants the option of receiving care through a private insurance company, instead of using benefits under Parts A and B. Plans under Part C are referred to as Medicare Advantage.

Part D is the voluntary prescription drug plan which became effective in 2006. The well-known "doughnut hole" is the coverage gap between the initial coverage limit and the catastrophic coverage threshold in Part D. An individual with Medicare might find that he or she has an expense of around $5,000 that falls in this gap and is thus an out-of-pocket expense to that individual.

continued on page 25

Healthcare Fraud: False Claims Act Enforcement ... reported by Cindy Guyer

Regulating healthcare involves a complex web of laws, including licensure, insurance, tort and malpractice, tax, business, financial, and civil and criminal penalties. **Linda A. Kontos**, Assistant U.S. Attorney, Civil Fraud Section, U.S. Department of Justice provided an insightful presentation on the enforcement of laws to combat healthcare fraud. Working as a Healthcare Fraud Coordinator for the U.S. Department of Justice, she discussed four primary federal laws used to prevent and punish fraud. These laws are the **False Claims Act** (31 U.S.C. §3729), **Fraud Enforcement & Recovery Act of 2009** (P.L. 111-21. 123 Stat. 1617), **Patient Protection & Affordable Care Act** (Pub. L. 111-148, 124 Stat. 119, aka **Obamacare**) and **Medicare and Medicaid Patient Protection Act of 1987** (42 U.S.C. § 1320a-7b, AKA the **Anti-Kickback Statute**).



Linda A. Kontos

There are four elements to prove a case under the **False Claims Act** (FSA). They are a claim for a payment to the government, falsity of the claim, materiality, and the required state of mind or scienter. Situations where a claim would be considered false include submitting a claim where services have not been rendered, upcoding for services, providing services that were not medically necessary, and submitting claims tainted by kickbacks. The FSA's required state of mind defines "knowledge" as actual knowledge, deliberate ignorance, or reckless disregard of the truth or falsity of the claim.

Ms. Kontos then discussed the three phases of the investigation: collecting the evidence, piecing the evidence together like a puzzle, and then finally the outcome (declination, settlement, or intervention). Civil and criminal investigations often work in tandem and have parallel cases. About 80% of the qui tam (false claims) cases result in declination. Although the qui tam relators have the opportunity to proceed with the case on their own, the majority do not. This is not surprising considering the time, efforts, and costs of litigation.

The remainder of Ms. Kontos' presentation was explaining the more recent statutory laws used to combat health care fraud. For instance, the **Fraud Enforcement & Recovery Act** amended the FCA to expand "reverse" false claims liability by eliminating the need for a false statement. This amendment was to ensure the broad application of the FCA. Furthermore, **Obamacare** overrode case law by not requiring a specific intent to defraud the government. Section 6402 states "a person need not have actual knowledge of [the **Anti-Kickback Statute**] or specific intent to commit a violation of this section." During the question and answer period, Ms. Kontos confirmed that several states, including California, are also adopting their own healthcare fraud statutes.

Ms. Kontos recommended two specific publications essential to practicing healthcare fraud law. The first one is *Civil False Claims and Qui tam Actions*, 4th edition by John T. Boese (Aspen, 2012). The second one is *False Claims Act: Fraud Against the Government*, 2nd edition" by Claire M. Silvia (West 2010 and Supp. 2012). For further resources, consult the *Further Reading* bibliography on the institute's website.

***Cindy Guyer** is Law Librarian – Research Services at USC Gould School of Law in Los Angeles.*

Evidence-based Medicine and PubMed ... reported by Anna Russell

Shanalee Tamares

It was not difficult to rave about this presentation. I've attempted to teach medical research resources to law students and have always felt the underlying medical database processes eluding me. **Shanalee Tamares**, Reference Librarian, Loma Linda University made the underlying database processes much clearer by first describing the **evidence-based** material that medical researchers look for in places like **PubMed**.

Medical research incorporates, from basic to most-advanced: **case reports** (fact-specific), **case control studies** (backward-looking studies requiring patient recall), **cohort studies** (forward looking studies creating less potential bias), **randomized controlled trials** (greater bias control)**, systematic reviews** (study of studies), and **meta-analysis** (most in-depth research) articles. Researchers are often looking for data that helps remove biases or establish new criteria for understanding a medical or scientific issue. PubMed stores large numbers of these evidence-based materials.

Along with PubMed is another subscription database known as the **Cochrane library** which houses a large number of systematic reviews. **PubMed**, though, provides **free access to some information in Medline and full-text PubMed Central materials.**

Medline has the comprehensive indexing system we know as the **MeSH terms** (medical subject headings). Many academic libraries have a subscription to Medline. More full text articles are thus available through PubMed if researching online through the library system. Indexers work diligently on adding new MeSH terms but removing older terms can take some time.

The MeSH terms do a good job of connecting similar topics together, not unlike West's topic and key-number system. Again, MeSH only provides connections to evidence-based materials found in Medline. Not all Medline material is freely available.

Use of only MeSH and Medline will miss material that has not yet been indexed; material that may reside only in PubMed Central.

By explaining how the evidence-based research system works, Shanalee nicely articulated how medical databases store and provide access to scientifically-geared research material, which I had previously found to be highly complicated.

Anna Russell *is Electronic Resources Law Librarian at the Pardee Legal Research Center, University of San Diego in San Diego.*

Abracadabra -- The Affordable Care Act: What's Coming in 2014 ... reported by Susan Brodsky

Lynn McClelland bravely plunged into the deep water of the **Affordable Care Act (ACA)** to highlight some of the changes we can expect in health insurance coverage. She has a degree in Biology and worked in the pharmaceutical industry before attending law school. Lynn graduated from UCLA in 2007 with a joint JD and Masters in Public Health. She practiced health care law. Lynn spoke to the SCALL Institute from her new position as a reference librarian at UCLA's Hugh & Hazel Darling Law Library.

Lynn McClelland

The major changes arriving in 2014 include an individual penalty if a person fails to maintain coverage for themselves or their dependents. This is for **"minimum essential coverage" to be maintained** for more than 3 months in a calendar year or face a penalty based on income level. "Minimum essential coverage" can be offered by federal government plans, state sponsored risk pool plans, employer plans, and plans available in the market exchanges. Not everyone will be required to have coverage. There are exceptions; including religious exemptions.

If you earn 133% - 400% of the Federal Poverty Limit (FPL) then the act gives tax credits because it assumes that insurance coverage may be unaffordable. The tax credits for coverage are based on expected income. This credit is paid directly to the insurer by the IRS on behalf of the taxpayer. It is reconciled at the end of the year. It may require a repayment with possible interest and penalties. The money is repaid to the IRS directly. The IRS looks only at individual coverage when paying and calculating the credits.

Insurers cannot deny applications based on pre-existing conditions. Insurance plans must charge the same rate for all individuals or families within the same geographic rating area, with some exceptions such as age, tobacco use, and geographic area. There is no statutory or regulatory limit on how much variance can be based on geographic rating area. California has 19 areas. The rates could vary as much as 25% between regions. There is guaranteed renewability of individual insurance with some exceptions, such as a failure to pay premiums or relocation outside the coverage area.

The **Medicaid** expansion is set to cover low income persons. This should cover 1 in 5 Californians, or about 8 million individuals. Of that group, an estimated 1.6 to 1.8 million Californians will be added to **Medi-Cal** (California's version of Medicaid). Eligibility will be for all individuals and families with incomes up to 133% of FPL and not already eligible for Medicaid, or $15,856 for an individual and $32,499 for a family of 4. The Feds will pick up 100% of the costs of those added under the ACA for 2014 - 2016 and then pay on a sliding scale based on eligibility as defined above, up to 133 % of FPL.

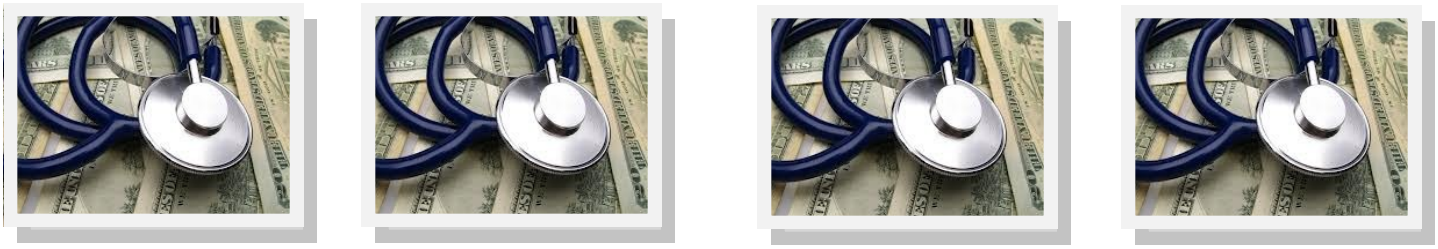
Health benefit exchanges are also made available at various plan levels for individuals who do not have existing employer-offered insurance. Exchanges are designed to cover those whose income is above the thresholds of the tax credits or the Medicaid expansion. The states decide which products are **Qualified Health Plans (QHPs).** California has opted for a state based exchange. Currently the only QHP available is from Kaiser. The **Small Business Health options Program (SHOP**) is for businesses with up to 100 employees. Employers select plans from the Exchange for employees. The **Employee Shared Responsibility** is for employers with at least 50 employees who work at least 30 hours per week.

Abracadabra -- The Affordable Care Act: What's Coming in 2014 *... continued*

For the exchanges, health care has to be offered to, and affordable for, 95% of full time employees and their dependents. Full time is considered 30 or more hours a week. If even one employee receives a premium tax credit to help pay for coverage on an Exchange the employer pays a penalty. Bills have been introduced to repeal the employee shared responsibility and also the ACA overall.

At this point in time there is no indication of how the coverage will be tracked or reported. There are penalties for not having coverage but no apparent enforcement. Even as a magician explains his illusion and then proceeds to misdirect the elements of the trick, one wonders how all these components will merge together and function as they are meant to and provide coverage for individuals and their families. It is a grand plan and we can be hopeful for a grand result.

Susan Brodsky *is Librarian at Carothers DiSante & Freudenberger in Irvine.*



Introduction to the Stark Law … reported by Ralph Stahlberg

SCALL's 41ST Annual Institute on Healthcare Law was informative and interesting. **Eric Gordon**'s presentation on the Stark Law was no exception. Mr. Gordon is a partner in the Los Angeles office of McDermott, Will and Emery, heading up their health industry practice. He has an M.D. from Brown University and a J.D. from U.C.L.A.

Eric Gordon

Gordon started his Saturday morning presentation by asking the group if anyone was familiar with the Stark law. Few hands were raised, making me feel better. I too had come to the program not familiar with the law.

Like many federal laws, the Stark Law is named for its sponsor, in this instance **Congressman Pete Stark** from northern California. The law only applies to Medicare. It **prohibits physicians from referring their Medicare patients to obtain certain designated health services from entities in which the physician or a member of the physician's family has a financial interest.**

The intent of Stark is to prevent conflicts of interest and help prevent overutilization of services. The law is codified at 42 U.S. Code section 1395nn. Regulations promulgated by the Centers for Medicare and Medicaid Services (CMS) are at 42 CFR sec. 411.350 et seq. The law has been amended. Stark 1 was enacted in 1989 and covered lab services. Stark 2 from 1995 added inpatient and hospital services.

Gordon indicated that **Congressman Stark later regretted authoring the law, even calling it a debacle.** Congress once repealed the law as part of a larger Budget Bill, but that was vetoed by President Clinton.

Stark is enforced through the federal **False Claims Act**. It is a strict liability statute, meaning that it doesn't matter if a physician referral is intentional or willful. Gordon said that it can be easy to inadvertently violate the law; self-disclosure is common.

In discussing compliance, Gordon indicated that there are many exceptions to the law, describing it as a "Swiss cheese law." One exception is for in-office ancillary services. There are also managed care exceptions.

Gordon reviewed several Stark Law settlements, from both for-profit and non-profit medical centers. Settlement and judgment amounts are substantial.

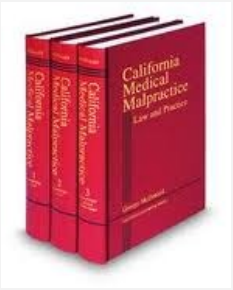
The question and answer section from the program yielded more valuable information. An attendee asked about laws relating to **non-Medicare** patients. Gordon mentioned state "Stark" laws. **California** has one, codified in the Business and Professions Code at section 650.01 that **prohibits all referrals when there is a financial interest.**

Gordon recommended the CMS website at www.cms.gov for additional information on Stark. Ruth Levor, University of San Diego School of Law, prepared an excellent bibliography on the law that is available on the SCALL Institute website. By the end of the session, attendees were able to say they now had a good understanding of the basic elements of the Stark Law.

Ralph Stahlberg *is Director, Reference & Research at LA Law Library in Los Angeles.*

California Medical Malpractice ... reported by Amber Madole

Alyssa Schabloski, an attorney with McNicholas & McNicholas LLP, presented at the 2013 SCALL Institute on the subject of "Myths of Medical Malpractice in California." To explore this concept, Schabloski examined several popularly held ideas about the perceived negative effects of medical malpractice litigation, and presented evidence to rebut these claims. Schabloski used a policy-based approach to medical malpractice issues that built upon her background in public health and law. (Schabloski graduated with a joint JD/MPH degree from UCLA in 2008).



A comprehensive discussion of medical malpractice in California would first require an analysis of California's **Medical Injury Compensation Reform Act (MICRA).** Schabloski began her talk by discussing enactment of this act in 1975. MICRA was created to deal with a perceived crisis in liability insurance. The act created special rules for medical negligence lawsuits, including a $250,000 cap on noneconomic damages. In analyzing MICRA, Schabloski set forth evidence arguing that MICRA had not engendered its desired policy outcomes, since liability premiums continued to rise after MICRA was enacted.

Following the MICRA analysis, Schabloski explored specific popular ideas about the dangers of medical malpractice and presented evidence against these concepts. The first **"medical malpractice myth"** she examined was the idea that medical malpractice gives rise to **too many frivolous claims.** To rebut this argument, Schabloski presented policy studies showing that the number of medical malpractice claims filed was relatively small when compared with the number of medical injuries incurred. For instance, one study found that for every 10 medically-induced injuries, only one lawsuit was filed.

Schabloski next addressed the concept that medical malpractice claims were responsible for **high malpractice premiums that negatively impacted physicians**. Schabloski acknowledged that the steep rise in premiums predominantly impacted physicians, but argued that the problem was systematic, since physicians disproportionately bore the costs of premiums in relation to health care revenue as a whole. She also argued that insurance companies stood to gain the most from the rise in premiums, since insurance companies earned the majority of their profits in this area.

Ms. Schabloski also examined the concept that medical malpractice claims caused **healthcare spending to increase due to an increased use of defensive medicine**. According to this argument, health care costs rose because doctors feel compelled to order tests to guard against potential malpractice claims rather than individually assessing whether a test was medically necessary. To counter this claim, Ms. Schabloski argued that additional screening could have positive medical effects, and that cited a CBO study indicating that even if all defensive medicine could be eliminated, the savings resulting from such a change would be very small (perhaps 1-2%).

Schabloski also explored the idea that medical malpractice claims contributed to a **shortage of doctors.** She rebutted this argument by providing evidence that the shortage of doctors was often due to other factors, such as rapid population growth or a lack of health insurance in certain populations. Schabloski pointed out that there was some evidence showing that medical malpractice insurance costs affected physicians at the margins of their careers (e.g., those starting out or nearing retirement), but ultimately had little effect on physician supply.

Alyssa Schabloski

California Medical Malpractice *... continuted*

The fifth concept Schabloski addressed was the idea that medical malpractice **jury awards were too generous.** Ms. Schabloski provided evidence showing that increasing jury awards were due to increasing cost of health care and wages rather than an increase in medical malpractice claims.

In closing, Ms. Schabloski explored the idea of **medical malpractice claims as an element of social justice.** She argued that without the existence of reparative claims, many individuals would be closed out of the justice system due to prohibitively high litigation costs. For instance, expert witnesses such as doctors are prohibitively expensive. Furthermore, some states, such as Illinois and Georgia, have struck down tort reform statutes based on state constitutional grounds.

As a final point, Ms. Schabloski argued that the majority of malpractice complaints come from patients treated by a small percentage of doctors. Despite the fact that many doctors are named in malpractice complaints at the outset of litigation, 82% of physicians have never made a malpractice payment. According to Schabloski, the best way to remedy medical malpractice issues would be to improve the quality health care. If there were fewer adverse medical events, there would be fewer medical malpractice claims.

A bibliography of the sources Ms. Schabloski used in her talk, including articles, reports, current awareness sources, and practice guides in the area, is on the wordpress link that appears in this issue under *SCALL Institute Readings 2013.*

***Amber Madole** is Reference Librarian at Loyola Law School in Los Angeles.*

Health Insurance Exchanges under the Obamacare Law ... by Beth Cobarrubias

[A related topic, but not an Institute summary – editor]

The **Patient Protection and Affordable Care Act (ACA)** [Obamacare] requires **health insurance exchanges (HIX)** to be established in every state by January 1, 2014. An HIX is an online marketplace where Americans can buy health insurance from private healthcare providers. The law's intent is that exchanges are mainly for people outside of the employer sponsored insurance market. In December 2012, states had to make a decision whether to create and manage their own exchanges or to default to Federal exchange.

Following are a few websites that carry information about the ACA, with indications of search paths or specific titles. Each website leads to many dozens or hundreds of subsidiary links on aspects of health care exchanges and health care reform overall.

- Aetna
  Search box: enter **health exchange**
  Numerous links to articles, reports, news.
  Exchange Terms Definitions
  Health Insurance Exchanges is a one-page explanation
  http://www.aetna.com

continued on page 19

30 Healthcare Law Sites in 30 Minutes ... reported by Tiffani C. Willis

Looking at the program schedule for the 41st Annual SCALL Institute I saw that the final program had the title *30 Healthcare Law Sites in 30 Minutes*. I have to admit I was skeptical. It seemed like an awful lot of material in a little bit of time. I need not have worried. LexisNexis Librarian Relations Group representative **Michael Saint-Onge** more than delivered, with thirty educational, informative, and in some case, hilarious sites for the librarian, the scholar, and the just plain curious.

With the passage of the **Patient Protection and Affordable Care Act** in 2010, often referred to as the **Affordable Care Act**, issues concerning healthcare and insurance have been at the forefront of many people's mind over the last few years. Not surprisingly, several websites have been dedicated to explaining and debating the Affordable Care Act. Some that Mr. Saint-Onge suggested were Healthcare.gov, Health Law Guide for Business, and the U.S. Chamber of Commerce. At Healthcare.gov (www.healthcare.gov) users will find the text of the law, a glossary of insurance related terms, and information about insurance options available in the user's location. California business owners can look to the Health Law Guide for Business (www.healthlawguideforbusiness.org) for information about employers' responsibilities under the health law, a timeline showing when provisions take effect, and a tax credit calculator. The U.S. Chamber of Commerce (http://www.uschamber.com/health-reform) website features a chart to help employers determine if they must offer full-time employers coverage or pay a penalty and in the case of the latter, a penalty calculator to calculate just how much (or how little) the penalty might be. Another resource for information about the tax provisions of the Affordable Care Act is the IRS (http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions).

Of course the Affordable Care Act is not the only healthcare related law and the law is constantly changing. To keep abreast of the constantly changing law Mr. Saint-Onge suggested Govtrack (www.govtrack.us) where constituents can track new legislation as it makes its way through Congress and keep tabs on their representatives. He also reminded his audience not to forget about Lexis.com (www.lexis.com), Lexis Advance (www.advance.lexi.com), and library research guides like the one provided by Georgetown Law School's law library (www.law.georgetown.edu/library/research/guides/health.cfm).

In addition to government and law libraries Mr. Saint-Onge's audience of (primarily) law librarians were exposed to resources from unexpected places, such as the accounting firm Deloitte's Center for Health Solutions (http://www.deloitte.com/view/en_US/us/Insights/centers/center-for-health-solutions/) whose research focuses on health care policy and reform, innovations in the healthcare industry, and how end users of healthcare think and behave. Other organizations exploring the intersection between healthcare and law include the American Health Lawyers Association (www.healthlawyers.org/), the American College of Legal Medicine (www.aclm.org/), and the California Society for Healthcare Attorneys (www.csha.info/). These sites offer health law case summaries, updates on health and legal news, guidance as to the ethical conduct of expert witnesses, amicus briefs in health law related cases, and more.

30 Healthcare Law Sites in 30 Minutes *... continued*

Now there is more to healthcare than insurance and tax credits (or penalties). For those who striving to live a healthier lifestyle there is Take Action (www.takeaction.cdph.ca.gov) where employers and employees can find tools to help them start wellness programs in their workplaces. Health Finder (www.healthfinder.gov/) is a treasure trove of information about health conditions from aneurysms to staying safe at work, and is a resource of recent health related news articles. As Mr. Saint-Onge pointed out, visitors to this government run website will also find funny (perhaps unintentionally so) wellness e-cards that can be sent to friends and family to encourage them to quit smoking, maintain a healthy weight, and wear sunscreen. The not-for profit Helpguide.org (www.helpguide.org), which accepts no ads or corporate sponsorship, specializes in mental health topics but also provides information on topics related to living a healthy lifestyle.

If the above websites are not enough of a motivation to stay healthy, perhaps the death clock (www.deathclock.com) will be. Enter a few personal details and the "internet's friendly reminder that life is slipping away…second by second," will calculate how much longer you will have to keep exercising and eating vegetables. Find a grave (www.findagrave.com/) helps find where loved ones and celebrities are buried.

If all of this – health care reform, health insurance, health laws and regulations, lifestyle changes, and death clocks – is overwhelming and you want to opt out of it all, well Mr. Saint-Onge found a site to help with that too: Off grid (www.off-grid.net/) which offers advice on how to disconnect from all society has to offer, including electricity, sewer systems, and pre-sumable healthcare.

Tiffani C. Willis *is Research Law Librarian at Pepperdine Law School in Malibu.*

SCALL Institute Readings 2013

Bibliographies on healthcare law are available on the SCALL Institute website.

https://scallinstitute.wordpress.com/further-reading/

General Health Care Law Sources

Health Care and the Budget

Overview of the American Health Care System

Health Care Fraud

The Affordable Care Act

The Stark Law – Medical Referrals

California Medical Malpractice

Open a link and explore.

Health Insurance Exchanges under the Obamacare Law ... *continued from page XX*

- California Health Benefit Exchange
  This is an independent public entity within the state government, with many relevant links.
  Tabs for Board Meetings; Stakeholders; Grants; Regulations; Jobs; Solicitations; Federal Guidance
  http://www.healthexchange.ca.gov

- Center on Budget and Policy Priorities
  Search box: enter **health insurance exchange**
  Reports of status, state coordination, study and many other related topics
  http://www.cbpp.org

- California Medical Association
  News & Events tab: Publications goes to several titles. Most are by subscription, either free or paid.
  CMA Reform Essentials. A regular publication that covers the latest developments on implementation of federal health care reform. Latest issue may be viewed for free.
  http://www.cmanet.org

- Health Connector. National Association of Insurance Commissioners
  An independent state agency that helps Massachusetts residents find health insurance coverage and avoid tax penalties.
  Health Care Reform tab goes to: Leading the Way; Continuing Our Progress under National Reform; Sharing Lessons Learned; Ensuring Students Get Coverage; Helping You Find Health Insurance

  https://www.mahealthconnector.org

- National Association of Insurance Commissioners and the Center for Insurance Policy and Research
  Search box: enter **health exchange**
  Links to hundreds of articles, reports, news
  Establishment of Exchanges and Qualified Health Plans: Final Rule Summary Chart is a 50 page summary chart organized by statutory sections, e.g. §155.20. Definitions.
  http://www.naic.org/documents/committees_b_exchanges_establishment_exchanges_qualified_health_plans_summary_chart.pdf
  http://www.naic.org

- State Health Facts.org. A Kaiser Family Foundation website.
  Statistical data on key health topics such as: Demographics and the Economy; Health Status; Health Coverage and Uninsured; Medicaid & CHIP; Medicare; Health Costs & Budget; Health Insurance & Managed Care; Providers & Service Use; Minority Health; Women's Health; HIV/AIDS; Health Reform
  Access by topic, by tabs for 50 State Comparisons or Individual State Profiles
  http://www.statehealthfacts.org

Beth Cobarrubias *is Senior Research Analyst, Library/Research Services at Dentons US LLP in Los Angeles.*

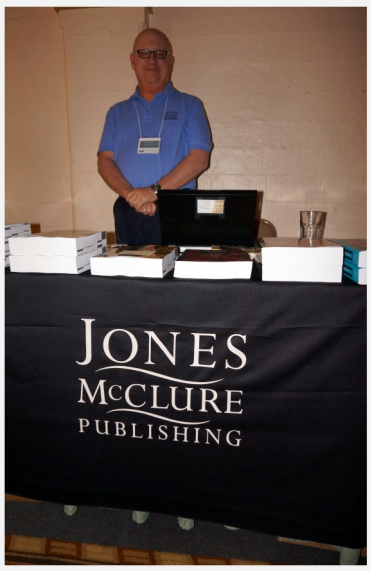


The 41st Annual SCALL Institute … photos by Tanya Cao

SCALL Institute Registration table

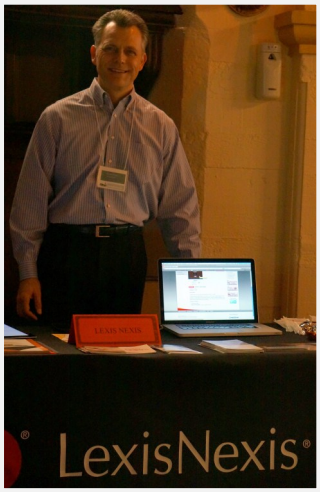
Paul Moorman, Leonette Williams, & David Burch

Welcome back to SCALL, Vicky!



The 41st Annual SCALL Institute *... continued*

Conference exhibitors



Our major conference sponsors

Closing luncheon at the Spanish Art Gallery

Drawing at the closing luncheon

Institute Committee Chair Paul Moorman

AALL update by Lucy Curci-Gonnzalez

The Mission Inn: A Jewel for the Institute ... by Alyssa Thurston

The 41st Annual SCALL Institute was held at the **Mission Inn Hotel & Spa** in downtown Riverside, CA. Replete with a treasure trove of history, unique architectural features, and a varied art collection from around the world, the Inn was an attraction all its own for Institute attendees.

The Mission Inn was the brainchild of **Frank Augustus Miller**, a Wisconsin native who moved to Riverside as a teen in 1874 and quickly enmeshed himself in the local community. The Miller family originally opened up their home as a two-story guest house to supplement the family income. Frank Miller later purchased the inn from his family, envisioning a destination hotel that would serve as a major tourist attraction for Riverside. He partnered with architect **Arthur Benton** to expand the hotel over the next several decades. Greatly influenced by the Catholic tradition and the Spanish and mission revival styles, they added gardens and several wings built to resemble California missions.

Given the detailed architectural stylings, first-time Mission Inn visitors cannot be faulted for assuming that the hotel was originally a real mission. In fact, Miller enjoyed having guests believe this. He sometimes went so far as to dress up as a monk and board trains that were passing through town, telling passengers to visit "the mission" in Riverside but directing them straight to the Mission Inn.

It is important to mention Miller, as his personality and influence are embedded in every corner of the Mission Inn. His love of travel and of different cultures, particularly Asian, led him to collect an extraordinary amount of foreign art and artifacts. Miller put many of these objects on display in the Inn, hoping that they would add to the hotel's attraction for visitors coming from around the world. From Chinese vases in the lobby to a pair of "pacifist cannons" in the front courtyard and an 8-foot-tall Buddha statue in a conference room, there are items from the world over literally around every corner. The **Mission Inn Museum**, located on hotel grounds, features even more of Miller's collection.

Many of the meeting spaces in the Inn have names reflecting the unique character of their contents. The **Music Room**, in which the main portion of the SCALL Institute was held, features a working cathedral organ and choir benches modeled on those found in Westminster Abbey in England. The **Spanish Art Gallery**, site of the Institute's closing luncheon, displays over 100 European paintings. And the **St. Francis of Assisi chapel**, of which I was fortunate to get a glimpse on an Inn tour following the Institute's conclusion (it is normally closed off for weddings), holds several beautiful Tiffany stained glass windows and a massive gold leaf altarpiece from Mexico.

A common symbol in and around the hotel grounds is the **"raincross"**, consisting of a double cross on top of a bell. **The raincross is the original logo of the Mission Inn; it is now also the Riverside city logo.** The bell was one of Miller's favorite symbols. He collected over 800 of them throughout the course of his travels; over 400 of these are presently located throughout the Inn. (The origin of his interest in bells is unclear, but may have been associated with the name of his first wife: **Isabella**.)

The Mission Inn is famous not only for its building and grounds, but also for its many notable guests. Over the years, the Mission Inn has played host to an array of presidents and celebrities. Bette Davis and Richard & Patricia Nixon were all married there, and Ronald & Nancy Reagan spent their wedding night at the hotel. When President Taft visited in 1909, Frank Miller had a special chair built to accommodate Taft's famous physical heft; the chair sits in the hotel lobby today.

The Mission Inn became a National Historic Landmark in 1961 and Riverside City Landmark No. 1 in 1969. A non-profit organization, the **Mission Inn Foundation,** is dedicated to the hotel's ongoing preservation. With its eclectic blend of museum-worthy sights and architecture alongside luxury hotel features, the Mission Inn was a unique and entertaining site for this year's SCALL Institute.

Alyssa Thurston *is Research Services Librarian at Pepperdine University Law Library in Malibu.*

Spanish Art Gallery

St. Francis of Assisi chapel

The Historic Mission Inn, Riverside California ... Photos by Tanya Cao

The Mission Inn is a state and national historic landmark

St. Francis of Assisi chapel

The Spanish Patio

The famous Rotunda

The Historic Mission Inn, Riverside California ... *continued*

Mission Inn resident macaws Napoleon and Josephine always delight passing-by guests

The Business of Medicine: Overview of the American Health Care System and Factors that Influence Its Management ... *continued from page 9*

Medicaid is run by the states and is needs-based. Children, seniors, pregnant women, low-income people, parents of eligible children, and disabled persons may be covered. The various states set their own standards of eligibility based on the federal poverty level (FPL), which is $9,800 in annual income for an individual [$11,490, as of 2013*]. In California, Medicaid is called Medi-Cal. To be eligible for Medi-Cal, you must earn less than 200% of the FPL. By contrast, in Alabama's system, you must earn less than 133% of FPL.** Medicaid can supplement Medicare.

The Centers for Medicare and Medicaid Services is the newly named federal agency that administers Medicare, Medicaid, and other health care programs.

Government spending on health care in the United States includes not only the costs of Medicare and Medicaid, but also the Veterans Health Administration (VHA), the Indian Health Service (IHS), the ICE Health Service Corps (ICE = U.S. Immigration and Customs Enforcement), prisoner health based on the 8th Amendment's prohibition against cruel and unusual punishment, and health care for the uninsured in the general population through county health systems.

Some of the causes of the high cost of health care are the fragmentation of the system, purchasing power restrictions, high administrative costs, and lack of standardization. Although Germany and the Netherlands have recently switched to more decentralized systems, it is Ms. Schabloski's view that universal health care, with capitation and the purchasing power to get fair market prices, would be a solution.

*Medicare website, viewed on 4/12/2013.

** [The Affordable Care Act of 2010 creates a new national Medicaid minimum eligibility level that covers most Americans with household income up to 133 percent of the federal poverty level.]

Bill Ketchum *is Reference Librarian at University of La Verne College of Law in Ontario.*

Riverside County Law Library Welcomes New Director

[Press release, shortened and slightly modified]

Riverside, California, April 1, 2013

Victoria Williamson has been selected as the new Director for the Riverside County Law Library. Victoria began her career in **Riverside** with **Best, Best & Krieger** LLP where she ultimately became Director of Library Services. She went on to acquire positions as a Reference Librarian at the **University of La Verne College of Law** and Assistant Director of Public Services, and later Assistant Director of Strategic Directions & Development at the **San Diego Law Library**. With over 22 years of experience, she has returned to Riverside ready to lead the Law Library in living up to its mission of providing free and open access to the law for all in the County.

Victoria studied law at the University of Santo Tomas in the Philippines; she later took those fundamental concepts of law and utilized it in her work in the US. She also has a Certificate of Legal Assistantship from the University of California, Riverside and a Master of Library and Information Science from San Jose State University. An active member of several professional associations including the American Association of Law Libraries (AALL) and Council of California County Law Librarians (CCCLL), Victoria served as President of the Asian American Law Librarians Caucus (AALLC) and was awarded the prestigious **"Rohan Chapter Service Award"** by **SCALL**.

A fan of travel, music, dance, and an avid reader of leadership and personal development literature, Victoria holds a hidden desire to be the first law librarian to be on the popular television show "Survivor."

Note: A photo essay on the Riverside County Law Library appeared in the May/June 2012 *SCALL Newsletter.*

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