



## From the President

By Stefanie Frame

Congratulations to Vice President Ramon Barajas and his team on the very successful 45th Annual SCALL Institute! The program, ConLaw Conundrum: Constitutional Law & Challenges in Today's Environment, was held at the



beautiful Horton Grand Hotel in San Diego. It was timely, topical, and the speakers were thoroughly engaging. Each

speaker's passion and scholarship gave definition to the Constitutional issues at play in today's society – we were educated, informed, and inspired. The high quality program, atmosphere, and venue came together seamlessly – evidence of the entire Institute Committee's hard work! Next, thank you so much to all our sponsors and exhibitors at the Institute – we really could not do it without all your generous support and contributions. It truly takes a village, and we appreciate all of you as part of our village. A heartfelt thanks to our VIP guests: AALL President Ron Wheeler, SANDALL President Michele Villagran, and NOCALL Vice President Ramona Martinez. It was delightful

spending time and talking with each of them. Last, and certainly not least, thank you to all our attendees. It was wonderful seeing so many librarians at the Institute, a key component of educational programming to further our members' professional development.

As information professionals, we have an innate curiosity which leads to lifelong learning. Professional development takes many different forms – from attending programs, to reading or writing articles, to speaking at a conference or webinar, to getting involved with planning these activities. Each strengthens our knowledge and understanding, and we discover within ourselves the necessary means to elevate ourselves, our colleagues, our patrons, and our institutions. It is discovery by learning and doing. Galileo is credited with saying, “[w]e cannot teach people anything; we can only help them discover it within themselves.” This resonates with me as I think about the value of SCALL and our members – each moment of the Institute, I discovered something I did not know, and therefore learned. Each interaction and each session built upon and added to my lifelong learning. That is the value of being part of SCALL and the greater professional community. I encourage all of you to be involved – we have so many professional development opportunities,

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but best of all is to interact with one another.

I hope to see you at our next opportunity – our Spring Meeting on April 13th, featuring Jean O'Grady who will speak on “It Takes More than a Dumpster to Build a Digital Law Library.”

## Keynote: Erwin Chemerinsky—An Amazing Time in the Supreme Court

By Karen Sánchez

I was excited about attending my first SCALL Institute. The drive from Los Angeles to San Diego that beautiful Friday morning was filled with anticipation: I was excited about the speakers and the new people I'd meet, all while wondering when I could squeeze in time for a school assignment. The work of a master's student never ends! I was especially interested in the 45th Annual SCALL Institute because the lineup of

programming was impressive. Friday began with two great speakers, but when I arrived, the Horton Grand's ballroom was buzzing with excitement about the Institute's keynote speaker—Erwin Chemerinsky, dean of the UCI Law School and prolific author, who would speak later in the day.

With no notes and an uncanny ability to recall dates and cases, Chemerinsky

stood before the attendees and lectured about five major themes happening in the Supreme Court today—the options for the court this term with only eight justices, the “Kennedy Court”, the importance of race in this year's docket, an introduction to Neil Gorsuch, and the long-term future of the Supreme Court. He began the lecture by explaining that

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continued from page 1  
(Keynote)

in many instances, this year's Court, with its eight members, may have three choices when addressing issues that could result in a tie vote—affirm the lower court, look for a compromise, or push a matter to the next term. He cited two famous cases that had been argued one term and resolved the next—*Brown v. Board of Education* and *Roe v. Wade*. Because the justices know there will soon be a 9th justice, Chemerinsky argued pushing close cases to the next term could be the likely outcome.

Next, Chemerinsky made one of the address's most powerful points by arguing that today's court is not the Roberts Court, but the Anthony Kennedy Court; Kennedy has voted with the majority 98% of the time. Chemerinsky illustrated this by discussing two key cases from last year's term—an abortion case and an affirmative action case. The first case, *Whole Woman's Health v. Hellerstedt*, concerned a Texas law that restricted abortion providers by requiring them to have hospital admitting privileges. The second case, *Fisher v. University of Texas*, challenged the University of Texas's use of race in the admissions process. In both cases, Anthony Kennedy was the swing vote to the left, even though he had previously voted both to uphold abortion restrictions and to strike down affirmative action. Because Kennedy was the deciding vote (5-3) in both cases and in others, Chemerinsky concluded that Anthony Kennedy has "powerfully shown that this is the Kennedy Court."

Chemerinsky then addressed the importance of race in this year's docket and discussed cases concerning criminal matters, the First Amendment, and voting rights. Some cases he described actually made the crowd of attendees gasp. In *Buck v. Davis*, for example, an African American man claimed ineffective

assistance of counsel for relying on an expert witness who claimed Blacks were more likely to commit crime. I spotted similar disappointed looks of disapproval and audible dissent when Chemerinsky described *Peña-Rodriguez v. Colorado*, a sexual misconduct case in which a juror who was a former law enforcement officer stated, "I think he did it because he's Mexican and Mexican men take whatever they want." At the time of the lecture, *Peña-Rodriguez* had not yet been decided and Chemerinsky seemed cautiously optimistic about the outcome. The following week, the Supreme Court ruled 5-3 in favor of *Peña-Rodriguez*, with Kennedy again on the majority side.

Turning toward the future, Chemerinsky gave an introduction to Neil Gorsuch. Like Scalia, Gorsuch has originalist views, which hold that the Constitution should be interpreted as the framers originally wrote and intended it. Chemerinsky described how a similar nominee in the 80's—Robert Bork, also an originalist—was overwhelmingly denied by the Senate. Chemerinsky correctly predicted that Gorsuch would become the next Supreme Court justice. Although Democrats in the Senate attempted to filibuster Gorsuch's nomination, Republicans changed the rules and confirmed Gorsuch with a simple majority vote on April 7.

Chemerinsky concluded his lecture by looking at the Court's long-term future. He noted that since 1960, 78 has been the average age at which a Justice leaves the

bench. Now, however, Justice Ginsburg is 84, Justice Kennedy is 81 and Justice Breyer is 79. He observed that replacing any of those three with a Trump appointee would swing the Court's ideological balance to the right to a point not seen since the 1930's. Such a court would be truly transformative; it would have enough votes to overrule *Roe v. Wade*, dismantle all forms of affirmative action, and remove the exclusionary rule in criminal cases.

I'm pleased I was able to experience my first-ever SCALL institute. Not only was the programming fantastic, but I met wonderful librarians and exhibitors. I think I did more networking at one institute than I had in my entire previous career! I enjoyed meeting fellow private librarians, but I also connected with some academic librarians—especially the crew from USC Law; I actually started my law library career as a student worker at USC over 15 years ago. The USC librarians even took my picture to show my former student worker supervisor, who is still at USC Law School! Overall, the institute was a fantastic experience, and I am very grateful to SCALL for giving me the opportunity to attend. I hope to see you all at next year's institute. If you've never been, go—you're going to love it!

*Karen Sánchez is a research assistant at Kirkland & Ellis LLP and a first-year MLIS student at the University of Washington.*



Dean Erwin Chemerinsky addressing SCALL Institute attendees. Photo courtesy of Ramon Barajas.





# First Amendment Protection to Civil Rights Protests and how Labor Protest Lost: A Speech by Catherine Fisk, Chancellor's Professor of Law, University of California Irvine School of Law

By Susan Streiker

Across the country, anti-union groups have filed litigation asserting that payment of union dues, and even collective bargaining itself, violates the First Amendment rights of union-represented employees who oppose their unions. These issues are likely to come to the United States Supreme Court in 2017, after the confirmation of the Ninth Supreme Court Justice.

To provide some context to the current situation and help the audience better understand labor law in the contemporary workplace, Ms. Fisk discussed the history of organized labor in America, and the labor origins of the constitutional protections for free speech. It turns out that modern free speech jurisprudence owes much to labor organizing and labor protest.

It was interesting to learn that downtown San Diego, the site of the 2017 SCALL Institute, was a major front in the battle for free speech rights in the early 1900s. The International Workers of the World (IWW or "Wobblies") was one of the first labor unions to organize low-wage immigrant workers, people of color, women, and white men, in the One Big Union. The Wobblies advocacy of workers' rights led to a series of "Free Speech Fights," and eventually the founding of the American Civil Liberties Union (ACLU). Across the country people took to the street to speak their minds and were subsequently arrested, imprisoned, and beaten, by the police. First Amendment issues arose from the protests on the soapboxes and street corners.

During the time of the New Deal, labor unrest was of a scale previously not



From left: Ramon Barajas, Leonette Williams, Catherine Fisk, Erwin Chemerinsky, Kimberly West-Faulcon, and Pauline Aranas. Photo courtesy of Ramon Barajas.

witnessed in a half century and brought the rejection of a cramped notion of free speech that had prompted the Supreme Court in the past to uphold criminal convictions for advocating socialism and the rights of labor. In the 1930s, large general strikes in San Francisco and Minneapolis brought both cities to a standstill. The UAW strike against General Motors (GM) (12/1936-2/1937) caused GM to finally recognize and bargain with the union. Later that year, the Supreme Court upheld the National Labor Relations Act and a Wisconsin statute protecting labor speech.

Despite this progress, the following two decades saw several cases scaling back protection for labor-related speech and association rights. In a series of cases from 1941-1957, the Supreme Court gave five reasons for restricting constitutional protection for labor protest:

1. Labor speech can be coercive and sometimes incites violence;
2. Labor protest causes harm to others not involved in the fight;
3. Labor issues are part of economic activities;
4. Picketing and boycotts are conduct, not speech; and
5. Labor issues are complex and government regulation should be upheld for a careful balancing of competing policy concerns.

In the 1960s and 1970s, picketing and boycotting were used in attempts to advance civil rights. Ms. Fisk discussed *Hughes v. Superior Court*, *Edwards v. South Carolina*, and other interesting cases. After cutting back on First Amendment protection for labor speech, the Supreme Court began the steady expansion of First Amendment

*continued on page 4*



*continued from page 3 (First Amendment)*

protection of three other kinds of work-equality and social types of speech claims: civil rights, anti-war student protests, and union dues objectors.

In the following three decades, the Supreme Court steadily expanded rights of workers who opposed unions. Its most recent decision on that score was 2014's *Harris v. Quinn*, which held that home

care workers employed by the state have a First Amendment right to refuse to pay anything to the union that represents them. It's not just, as the Court held in *Abood v. Detroit Board of Education*,

*After cutting back on First Amendment protection for labor speech, the Supreme Court began the steady expansion of First Amendment protection of three other kinds of work-equality and social types of speech claims: civil rights, anti-war student protests, and union dues objectors.*

that they have the right to refuse to subsidize ideological activities with which they disagree. Rather it's the right to pay nothing at all even though the

union has a statutory duty to represent them fairly in contract negotiation and in grievance handling. In January 2016, the Supreme Court heard oral arguments in a highly-watched case brought by a teacher arguing all public-sector employees

should have the right that the Court gave home care workers. This case, and others, were profoundly affected by Justice Scalia's death in February 2016, and the Court was left deadlocked 4 to 4

on *Friedrichs v. California Teachers Association*.

With an Anti-Union, Free Speech case likely to soon go before the US Supreme Court again and recent strikes like "A Day Without Immigrants", International Women's Day (aka "A Day Without a Woman"), and "An Hour without a NY Taxi", it will be interesting to see the next developments in our society and free speech jurisprudence. Will *Friedrichs v. California Teachers Association* have another day in Court? Could other pending cases set new protected speech precedents? Will the way we handle first amendment free speech rights again ascend from the streets?

*Susan Streiker is a Library Consultant in Los Angeles, CA.*



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## SCALL Institute Recap: Affirmative Action Jurisprudence: Reversing Equal Protection

By Kelly Leong

The 2017 SCALL Institute was one of the best programs I have attended in my seven years as a librarian. As librarians, we are so busy providing the sources to answer questions that often we do not have the time to deeply engage with the content of the sources we provide or contemplate the questions being asked. The SCALL Institute's focus on learning constitutional law, as opposed to learning sources for answering constitutional law questions, was a welcome change from the usual library conference programming. As Christina Tsou from UCI Law Library noted, "It was like being in Con Law class again (which is a good thing)!" It gave all attendees the opportunity to "think like a lawyer" and engage with issues that may appear as library requests in the coming months and years.

The Institute's speakers were excellent. Kimberly West-Faulcon

was no exception. Her session on the current state of the Equal Protection Clause of the Fourteenth Amendment was both engaging and educational. It focused on efforts to "undo" equal protection through the lens of the affirmative action admission policy challenged in *Fisher v. University of Texas* (570 U.S. \_\_\_\_ (2013) & 579 U.S. \_\_\_\_ (2015)).

West-Faulcon's presentation discussed how theories ("the set of ideas regarding meaning of a provision of the U.S. Constitution") and doctrine ("the rules that guide decisions in particular legal cases") work together when analyzing constitutional law issues. West-Faulcon identifies two common theories advanced in the discussion of equal protection: (1) that the EP clause "confers entitlement to race-blind laws," or (2) that the clause "protects from racial hierarchy, racial

*continued on page 6*



Kimberly West-Faulcon speaking at the SCALL Institute. Photo courtesy of Ramon Barajas.

## Career Opportunities

By Don Buffaloe

Date Posted	Job Description	Location
April 5	Part-Time Reference Librarian; University of San Diego Legal Research Center	San Diego
April 4	Reference Librarian; UC Davis School of Law Library	Davis
April 3	Research Specialist; Akin Gump Strauss Hauer & Feld LLP	Los Angeles or San Francisco
March 24	Research Services Librarian; LibSource	San Francisco
March 8	Research Specialist; Shearman & Sterling	San Francisco & Menlo Park
January 26	Research Analyst; Sidley Austin	Los Angeles or Other Cities
January 19	Research Manager; Sidley Austin	Los Angeles
January 18	Prospect Researcher; The Public Interest Network	Los Angeles
December 16	Cataloging Librarian; LA Law Library	Los Angeles
December 16	Managing Librarian; Serials & Acquisitions; LA Law Library	Los Angeles

Don Buffaloe

Chair, SCALL Placement Committee

donald.buffaloe@pepperdine.edu



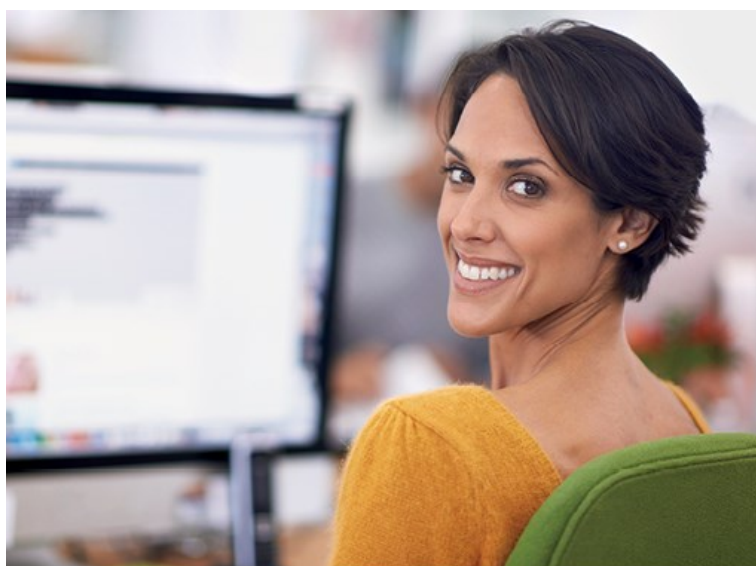
*continued from page 5 (Affirmative Action)*

subordination, and denial of rights based on race.” The doctrine applied under each theory differs. If the courts were to ascribe to the race-blind theory, they would apply a strict scrutiny test. If the courts were to ascribe to the protection theory, they would apply intermediate scrutiny test.

In *Fisher v. University of Texas*, Abigail Fisher challenged her denial of admission to UT on the basis that UT’s admission policy considered race. At its very basic level, Abigail Fisher argues that admission policies should be race-blind (containing no mention of race). In both cases, UT’s admissions policy was held to not violate the Equal Protection Clause of the Fourteenth Amendment. In the most recent decision, the majority held that UT passed the strict scrutiny test while the minority argued that race should not be considered in any admissions policy.

It was my favorite program at the Institute. I was not the only attendee to appreciate her presentation. Here are a few quotes from other SCALL members:

“I thought her presentation was PHENOMENAL. It was effective



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to walk through the different theories about what the Equal Protection clause is meant to do, and then show what doctrine is demanded by each of those theories. She was so engaging and funny, which only added to joy of learning more about an important topic. I have always loved school (one good reason to be an academic librarian!) – her presentation took me back to some of the very best classroom experiences I had in law school. I have been talking about it nonstop with all my non-law friends and family.” – Elyse Meyers, UCLA Law Library

“I liked Professor West-Faulcon’s visual analogies of the equal protection standards of review. With the aid of slides, she likened each standard to physically jumping and clearing a specific height: clearing the high jump, impossible for most of us, is the strict scrutiny standard; clearing a track hurdle, still hard for a lot of us, is the intermediate scrutiny standard; and casually stepping over a toddler hurdle, easy for the vast majority of us, is the rational basis standard. This transitioned nicely to her discussion of *Fisher v. University of Texas at Austin* where the Court ruled that the University’s racial affirmative action policy met the strict scrutiny standard. As she talked, I kept thinking of a long line of attorneys attempting to hurl themselves over a high jump and failing, and UT’s attorneys fortunately and miraculously clearing the bar.

Also compelling was Professor West-Faulcon’s discussion of Abigail Fisher’s back story and the machinations of getting her case before the Court. Plaintiff selection was a theme touched on by other presenters, and by chance shortly before the conference I listened to Radiolab’s More Perfect podcast on this very issue. If this topic interests you, I highly recommend listening: The Imperfect Plaintiffs: <http://www.radiolab.org/story/more-perfect-plaintiffs/>.” – Amy Atchison, UCI Law Library

“What struck me most about Kimberly West-Faulcon is the conversation I had with her afterwards... [T]hen we got into a more personal discussion of what it’s like to be that minority student in school. I shared with her that in my [MLIS] program, I am one of only a few minorities. There isn’t one African American in the cohort. And even though so few students get admitted to school based on race, as a minority I feel the weight of that misconception on my shoulders. I feel that others are looking at me and thinking that I got into the program because of my ethnicity... She said that it’s normal for minority students to feel that way in higher education and told me some stories from some of her students and what they had been subjected to....” – Anonymous

*Kelly Leong is a Reference Librarian at the UCLA Law Library in Los Angeles, CA.*



## Membership News

*By Judy K. Davis and Karen Skinner*

**Welcome new member!**

**Heather Phillips** is Assistant Branch Librarian with the **9th Circuit Court of Appeals Library, San Diego Branch**.

**Welcome back, returning member!**

**Sarah Sullivan** is Global Law Librarian at the **Los Angeles Law Library**.

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

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## SCALL Grant Recipients

Congratulations to the following members who received grants to attend the 2017 SCALL Institute:

**Kelly Leong**—UCLA Law Library  
**Karen Sánchez**—Kirkland & Ellis LLP, University of Washington MLIS student

## SCALL SPRING 2017 MEETING

*Jean O'Grady*

**“It takes more than a dumpster to build a digital law library”**

Jean P. O'Grady is currently Sr. Director of Information, Research & Knowledge at DLA Piper US, LLP. Jean also serves as Co-Chair of the ABA's Law Practice Management Knowledge Strategy Committee and is the AALL Executive Board Member Elect, July 2017-2020. She has over 30 years of experience developing strategic information initiatives for large law firms. She is a frequent author and speaker on the transformation of libraries and information centers, digital contract licensing, knowledge management, and the legal publishing industry. In 2011 she launched the "Dewey B Strategic" blog, which focuses on promoting awareness of the strategic importance of librarians, libraries and knowledge managers to the organizations they support.



**Date:** Thursday, April 13, 2017

**Time:** Social Networking: 6:00 p.m.  
Dinner: 6:30 p.m. (sandwiches, salads, and desserts from Clementine)  
Speaker: 7:00 p.m.

**Location:** McDermott Will & Emery (check in at security desk in lobby)  
2049 Century Park East, Los Angeles, CA 90067-3218  
*Pay to park at the firm or find cheaper parking at Westfield Century City (\$1/hour, up to 3 hours).*

**Cost:** \$25.00 / Students \$12.00

**RSVP:** Email or mail [form](#) to Elyse Meyers, meyers@law.ucla.edu, UCLA Law Library, 385 Charles E. Young Drive East, Los Angeles, CA 90095-1458. Mail your check or bring it to the meeting.

More information: <http://scallnet.org/2017/02/20/save-date-2017-scall-spring-meeting/>





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## 45th Annual SCALL Institute in Photos



David Cruz, Professor of Law at University of Southern California, Gould School of Law, presenting "LGBT Rights & Constitutional Law." *Photo courtesy of Leonette Williams.*



SCALL Board Dinner, including VIP guests AALL President Ron Wheeler, NOCALL Vice President Ramona Martinez, and SANDALL President Michele Villagran. *Photo courtesy of Christina Tsou.*



Lunch before AALL President Ron Wheeler's closing remarks. *Photo courtesy of Ramon Barajas.*



Brian Hoffstadt, Associate Justice, California, 2nd District Court of Appeal, presenting "From Petition to Briefs; Taking a Case to the Supreme Court." *Photo courtesy of Leonette Williams.*



## Treasurer's Report

By Joy Shoemaker

### SCALL Balances

Bank Balance as of March 30, 2017	\$55,653.50
PayPal Balance as of March 30, 2017	\$1,682.50
Total Balance as of March 30, 2017	\$57,336.00

Committee	Budget	Income	Expenses	Budget Balance
Archives	\$100.00	\$0.00	\$0.00	\$100.00
Awards	\$400.00	\$0.00	\$249.58	\$150.42
Board/Pres/VP	\$4,000.00	\$0.00	\$0.00	\$4,000.00
Government Relations	\$400.00	\$0.00	\$0.00	\$400.00
Grants	\$6,000.00	\$0.00	\$965.00	\$5,035.00
IT	\$1,000.00	\$0.00	\$0.00	\$1,000.00
Institute	\$12,000.00	\$15,591.68	\$10,876.71	\$16,714.97
Inner City Youth	\$5,000.00	\$0.00	\$0.00	\$5,000.00
Library School Liaison	\$5,000.00	\$0.00	\$0.00	\$5,000.00
Membership	\$2,600.00	\$5,579.72	\$1,990.00	\$6,189.72
Newsletter	\$300.00	\$185.00	\$0.00	\$485.00
Professional Development	\$1,000.00	\$0.00	\$0.00	\$1,000.00
Programs	\$3,000.00	\$4,059.00	\$3,301.79	\$3,757.21
PALI	\$150.00	\$0.00	\$0.00	\$150.00
Public Relations	\$300.00	\$0.00	\$0.00	\$300.00
Secretary	\$1,000.00	\$0.00	\$280.00	\$720.00
Treasurer	\$500.00	\$0.00	\$80.00	\$420.00
<b>Totals</b>	<b>\$42,750.00</b>	<b>\$25,415.40</b>	<b>\$17,743.08</b>	<b>\$50,422.32</b>

## Submission Deadlines

The SCALL Newsletter team welcomes submission of any articles of interest to the law library community. Contact Christina Tsou, SCALL Newsletter Editor: [ctsou@law.uci.edu](mailto:ctsou@law.uci.edu)

All submissions should be received by:

May/June 2017	May 8, 2017
Sept/Oct 2017	September 11, 2017
Nov/Dec 2017	November 13, 2017
Jan/Feb 2018	January 16, 2018
Mar/Apr 2018	March 19, 2018

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2016-2017

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