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The CRIV Sheet

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The CRIV Sheet

Editor's Corner

In this issue of *The CRIV Sheet*, we start with a note from our chair, Tracy Thompson. Ms. Thompson addresses the complicated issue of the relationship among vendors, AALL, and the CRIV. Her piece is thoughtful, proactive, and a must read for all members of the Association.

Our first article is a reprint by Judge Herbert B. Dixon, of the Superior Court of the District of Columbia. Judge Dixon is also co-chair of the Judicial Division's Court Technology Committee and is a member of the planning board for the American Bar Association TechShow. Judge Dixon reviews the trustworthiness of online legal information and the current standards in place to ensure that court and government information online are authentic and reliable. AALL President Ann Fessenden originally mentioned this article in an e-newsletter, and I thought it important enough to reprint in *The CRIV Sheet*.

Our second article is by Professor Ian Gallacher, from Syracuse University College of Law. Professor Gallacher argues that law schools are in a unique position to develop a Web site of American law, providing free access to legal information. As libraries move from books to online resources, free access to legal information is less available to the

general public. Professor Gallacher proposes that law schools work together to locate, develop, and publish access to legal information online.

Rebekah Maxwell, associate director for library operations at the Coleman Karesh Law Library, writes about using blogs as a research tool. Blog authors are often the first to report on breaking news and can provide access for documents that are difficult to obtain. These resources are becoming fundamental parts of the legal research process.

Our last article is a humorous but informational look at negotiating contracts by Sarah Nichols, director of research and information resources at Orrick, Herrington & Sutcliffe. Originally published in *The Recorder*, Ms. Nichols identifies six rules to follow for a stress-free (or at least reduced-stress) contract negotiation process. She also helps identify the common personality types you will find in your negotiation partner.

The CRIV Sheet is nothing without content, and we would love to hear from you. If you would like to write an article, respond to a previous article, or share your thoughts on how we can better work with our vendors, please let us know. You may contact either of us at AEaton@perkinscoie.com or smarshall@law.txwes.edu.

Tracy L. Thompson New England Law Library Consortium, Inc., Keene, New Hampshire

From the Chair

The relationship between AALL and our information vendors has been a topic of increased interest among the membership during the last year. Most of the concerns of which I have been directly aware relate ultimately to vendor support for AALL and the impact of that support on our effectiveness and ability to serve as our own best advocates as consumers of legal information. Vendor support for library activities should never lead us to compromise our professional responsibilities, and I don't believe our vendors expect that kind of quid pro quo. In fact, vendor supporters of AALL recognize the highest return on their investment in our profession when we, as librarians, openly and freely share our expertise and knowledge in honest exchanges.

I think these are important and legitimate concerns that deserve nothing less than our most careful attention. As these issues began to surface, I was surprised that the CRIV was not brought into the discussion in an official capacity. However, as I grappled with this in my capacity as the CRIV chair,

I came to the conclusion that oversight of the relationships between AALL and information vendors is not within the purview of the CRIV's current or revised charges, nor is it a role the CRIV has traditionally fulfilled.

The CRIV's mandate is to serve as a liaison between information vendors and libraries and librarians. There is no existing body within AALL currently charged with managing the Association-vendor relationship. The good news is that as a result of the renewed focus on vendor relations, AALL is now well positioned to give this the careful attention it deserves.

The AALL Executive Board has taken steps to respond to the concerns of the membership. In November, President Ann Fessenden distributed a message on vendor relations in which she shared the outcomes of the Executive Board's discussions at its November meeting. In her message Ms. Fessenden stated that AALL "do[es] NOT make decisions on the basis of concern for loss of revenue provided by vendors or out of fear of any other adverse reactions from them."

With the Association making such a clear and public statement on this front, it now falls to the membership to foster a culture that reflects that position. In all of our Association work, whether as board, committee, special interest section, chapter leaders, or members, we need to hold one another accountable to that principle in order for it to become doctrine.

I would urge everyone to read Ms. Fessenden's informative e-mail in its entirety. It was sent to members on November 21, 2007, with the subject line "AALL and Vendors." In it she addressed candidly the need for increased communication and transparency between the Association and the membership about vendor relations issues. Ms. Fessenden also noted the creation of a new Web site for exactly this purpose (www.aallnet.org/vendorrelations).

As I write this column it is just the end of November, so I'm not yet sure of the impact of the board's focus on these issues, but I applaud its efforts as a step

in the right direction. As a member of AALL, I look forward to continuing the conversation.

Another outcome of the November Executive Board meeting is the adoption of a set of guidelines for vendor site visits by the CRIV. I am grateful to JoAnn Hounshell for her work developing these, and I think they will be of great value to vendors as well as to future CRIV members.

The guidelines set forth the goals and expectations for a CRIV site visit, address budgetary implications, and create a framework to put future site visit teams and vendors on more equal footing. The guidelines are posted at www.aallnet.org/committee/criv/news/sitevisit/index.htm.

As always, I welcome any contact from members and hope you will e-mail me at tracy.thompson@yale.edu with any comments, concerns, or suggestions you may have for the CRIV.

Hon. Herbert B. Dixon, Jr. Superior Court of the District of Columbia

The Lack of Effort to Ensure Integrity and Trustworthiness of Online Legal Information and Documents

As an unabashed promoter of technology in all facets of the business of courts, I was hesitant to write this article concerning a recent study that I had an opportunity to review. However, I am convinced that the time is ripe to make an assessment of how far we have come in the use of technology and the importance of the work left to be done. Therefore, even at the risk of giving aid and comfort to the enemies of technology advancement in the courts, I have chosen to sound the alarm. First, a little background may be helpful to the reader.

As more and more state and federal courts and administrative bodies have permanently moved toward institutional use of electronic filing and maintenance of documents and records, certain unaddressed and lurking issues have advanced to the forefront. The first of the lurking issues concerns whether the document or record received by electronic means is the same as the document or record transmitted. That is, has the submission been corrupted during the process of its uploading to the Web site or during its transmission? It is possible for one to ask the same question in many different ways. Is the document that the court or agency received the same as the document that the filing party transmitted? Can we ensure that the order filed electronically by the judges is the same order received by the parties? Or is the version of the statute uploaded to the Web site the same as that

enacted by the legislature? Until now, this concern has not commanded a significant part of our technical resources because there were relatively few instances, if any, wherein a legal document was intercepted during its transmission and substituted with an altered version of the original document.

The parallel issue of this concern is the long-term integrity of those same electronic documents. To what extent can we guarantee that a document in the official record has not been modified after it was posted online or entered into the database of the respective court or agency? What guarantee do we have that the document has not been altered since the date it was originally filed or posted? Until now, we have not been excessively concerned with fraudulent paper records, even though most of us in the legal profession can point to the occurrence of fraud concerning our trusted paper. Note the fiasco a few years ago about forged or fraudulent papers concerning President Bush's National Guard Service. And, although we have yet to achieve perfection concerning authentication and integrity issues involving paper documents, there is an accepted belief that we should pay more attention to fraudulent alteration of electronic records than we ever demonstrated about our precious paper.

Courts and administrative agencies are not alone in their move to electronic storage of documents and

records. This movement to electronic record keeping has occurred in nearly every segment of society, including government, private industry, and personal records. The concern about the integrity of electronic documents and records is not limited to courts and administrative agencies; however, the concern takes on special significance with these institutions because they are a primary repository for the storage of legal documents and information.

The American Association of Law Libraries (AALL) recently took up this concern in the form of a very comprehensive study entitled *State-by-State Report on Authentication of Online Legal Resources*.¹ According to the AALL, the study and report are intended to address the question, how trustworthy are state-level primary legal resources on the Web? The study finds that state online resources are not authenticated and do not afford ready authentication by standard methods. Additionally, the AALL reports that only three of the state survey respondents expressed special concerns about authentication.² According to the study's conclusion, state online primary legal resources are not sufficiently trustworthy, and the public may reasonably doubt their authority and should approach such resources critically. Whatever the reader's reaction to these startling conclusions, this writer is satisfied that the study is not a veiled effort to ensure job security of law librarians. The AALL study is a timely wake-up call for work that needs to be done to ensure the integrity and trustworthiness of electronically transmitted and maintained legal documents and information.

Obviously, the trustworthiness of electronically stored documents is fundamental to the trustworthiness of all legal documents, whether the documents are court records, court decisions, statutes, or administrative decisions or regulations. Indeed, the trustworthiness and integrity of resulting research are inherently a matter of great concern to anyone seeking legal information online. As the study describes its own function, it "examines the results of an online state survey that investigated which government-hosted legal resources on the Web are *official* and capable of being considered *authentic*."

The AALL study states a concern with the trustworthiness and reliability of legal information that is obtained from online sources because there is general acknowledgment that, as technology has improved, professional researchers and the public have evolved from reliance on print sources to online sources to access legal documents and information. According to the study, this evolution is a positive development, provided that the online sources are

actually trustworthy. Trustworthiness necessarily implicates the twofold determination referenced earlier: first, that the information as uploaded online or as received by the court or administrative agency is an accurate and trustworthy rendition of what was actually submitted and, second, that the legal information electronically maintained online or in the databanks of the court or administrative agency is the same as initially submitted.

The AALL study points out that the trustworthiness of electronically-stored information can be affected by lapses in management and control, corruption, and tampering and argues that, to be considered equivalent to print official legal resources, online legal resources must be authentic; that is, accurate replications of the original legislative acts, municipal regulations, and court or administrative decisions. The study adopts the premise that since print official legal resources have generally served as a touchstone for authoritative and reliable statements of the law, then the designation of an official online resource and assurance of the authenticity of that resource would lead to a general acceptance of the accuracy and integrity of the online information on par with official print sources. The study notes that there are likely circumstances where a government entity might be concerned about the reliability and integrity of unofficial versions; however, the study itself adopts the definition that the term "authentic legal resource" generally pertains to official sources. For purposes of this article, this writer does not distinguish between official and unofficial and is focused strictly on issues related to authenticity, trustworthiness, and integrity of legal documents and information that are accessible online.

The AALL study started with a survey of the 50 states and the District of Columbia. The working definition of the term "official legal resource," drawn from the latest editions of *Black's Law Dictionary* and *Fundamentals of Legal Research* and adopted as a guide to survey participants, was as follows:

An official version of regulatory materials, statutes, session laws, or court opinions is one that has been governmentally mandated or approved by statute or rule. It might be produced by the government, but does not have to be.

After evaluation of the survey responses, the survey borrowed from the definition of terms contained in the *Authentication* white paper prepared by the U.S. Government Printing Office to outline that agency's designs for a federal digital system to replace print government documents. That definition of an *authentic* legal resource reads:

An *authentic* text is one whose content has been verified by a government entity to be complete and unaltered when compared to the version approved or published by the content originator. Typically, an *authentic* text will bear a certificate or mark that conveys information as to its certification, the process associated with ensuring that the text is complete and unaltered when compared with that of the content originator. An *authentic* text is able to be *authenticated*, which means that the particular text in question can be validated, ensuring that it is what it claims to be.

The study concludes that this concept of an authentic legal resource is especially suited to the digital world.

Some survey results were not especially surprising. For example, one of the findings in this category is that states have begun to discontinue print official resources and substitute online official legal sources. Indeed, according to the study, 10 states³ and the District of Columbia have deemed as official one or more of their online primary legal resources, and five of those states⁴ have declared the online versions of legal resources a substitute for a print official source. The concern expressed by the study is that not one of the substitute online legal sources is capable of being considered authentic. In one state, New Mexico, the first official administrative code is its online publication, although an unofficial version is commercially published in traditional print form. In another state, Utah, the sole official version of the state's statutes is on the Web.

Another concern expressed by the study is that the states, in their move to promote unofficial online legal resources, have not recognized the public need for accurate legal information by their extensive use of disclaimers concerning their accuracy and reliability. Indeed, according to the study, some online official legal resources also make such disclaimers and that this prevalent use of disclaimers is contrasted with the very limited use of similar disclaimers for official and unofficial print titles.

Although both government and commercial entities have long recognized that digital materials are vulnerable to lapses in management and control, corruption, and tampering, the study notes that publishers simply have not taken the extra steps needed to put online legal resources on the same footing as print. This is so even for publishers of online official legal resources. According to the study, this failure represents a serious neglect of the needs of citizens and law researchers seeking government information, who obviously seek accurate and reliable information and documents.

The AALL study supports the proposition that the time has arrived to use available technological capabilities to ensure the reliability, integrity, and trustworthiness of information and documents that are electronically transmitted and maintained. This writer agrees. While a few well-known instances of chicanery and fraud can fuel a healthy debate about whether the greater reliability of a paper document compared to an electronic document is more perception than reality, that does not change the fact that society is generally satisfied with the trustworthiness of print sources for legal documents and information as compared to the electronic counterpart.

With the advent of electronic filing and maintenance of legal documents and information,⁵ a requirement to use only the most secure forms of electronic transmission and storage of legal documents and information would have stymied the growth and development of the electronic process as an alternative to the old processes for transmitting and storing paper that society deemed reliable. Now, however, society's infrastructure, the way the public does business on a daily basis, is more accepting of the need to use more secure features for electronic transmission and storage of legal documents and information. According to the AALL study, it is time to change the prevalent approach of "that's good enough" as related to the transmission and storage of online legal information.

Although the study does not offer specific solutions to the online document integrity issues, the good news is that most concerns about the integrity of electronic documents and information can be addressed effectively and within a reasonable budget. For example, courts and government agencies can maintain the integrity of electronically transmitted and stored documents by complying with Federal Information Processing Standard Publication (FIPS PUBS) 200 or its successor.⁶ Federal Information Processing Standards are issued by the National Institute of Standards and Technology (NIST) after approval by the secretary of commerce pursuant to the *Federal Information Security Management Act (FISMA)* of 2002. FIPS PUBS 200 sets forth the minimum security requirements for federal information and information systems. Federal agencies must meet the minimum security requirements as defined in FIPS PUBS 200 through the use of the security controls in accordance with NIST Special Publication 800-53, *Recommended Security Controls for Federal Information Systems*, as amended.

In February 2004, the ABA House of Delegates approved Standard 1.65, *Court Use of Electronic Filing*. The standard included both practical and aspirational provisions. However, with technological advances, as

demonstrated by the AALL study, even the aspirational provisions of that 2004 standard should now be considered as necessary best practices. The standard addresses the issue of integrity and trustworthiness of electronically transmitted and stored information in a way that we should heed today. Electronic transmission and storage systems

...should include robust security features to ensure the integrity, accuracy, and availability of the information contained in them. They should include, at a minimum, document redundancy; virus protection software; firewalls, intrusion detection systems, authentication and authorization features; plans for system archival, contingency, and disaster recovery; and other generally accepted security features to detect and prevent attempts by unauthorized persons to gain access to or modify court records; system audit logs; secured system transmissions; privilege levels restricting the ability of users to create, modify, delete, print, or read documents and data; means to verify that a document purporting to be a court record is in fact identical to the official court record; and reliable and secure archival storage of electronic records in inactive or closed cases.⁷

The AALL study is convincing that the time is now to implement these steps to ensure the integrity and trustworthiness of online legal information.

Endnotes

1. The American Association of Law Libraries (AALL) was founded in 1906 to promote and enhance the value of law libraries to the legal and public communities. Its Web site is located at www.aallnet.org. The referenced AALL study is available to the public at www.aallnet.org/aallwash/authenreport.html.
2. Minnesota, Vermont, and Virginia.
3. Alaska, Indiana, Maryland, Michigan, Minnesota, New Mexico, New York, Tennessee, Utah, and Virginia.
4. Alaska, Indiana, New Mexico, Tennessee, and Utah.
5. The State of Delaware implemented the first court electronic filing project on December 9, 1991, using a proprietary system called the Complex Litigation Automated Docket (CLAD).
6. Federal Information Processing Standard (FIPS) 200. Minimum Security Requirements for Federal Information and Information Systems, may be found at <http://csrc.nist.gov/publications/fips/fips200/FIPS-200-final-march.pdf>.
7. ABA Standard 1.65(a)(xiv).

"The Lack of Effort to Ensure Integrity and Trustworthiness of Online Legal Information and Documents," by Hon. Herbert B. Dixon, Jr., published in *Judges' Journal*, Summer 2007. Copyright ©2007 by the American Bar Association. Reprinted with permission.

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Free and Open Access to the Law: Time for Law Schools to Get Involved

The Internet revolution is upon us. As lawyers, it has transformed the way we communicate, the way we prepare documents, and perhaps even the way we think. Most importantly, for those of us interested in such things, it has changed the way we store and retrieve legal information. And while the Internet hasn't done away with law books yet, all present indications suggest they don't have much of a long-term future.

There are many important consequences of this legal information revolution, but one of the most troubling is what will happen to public access to the law once the books are no longer available. At present, anyone with access to a public library with a collection of reporters and the digests necessary to maneuver through them can conduct legal research or read the most recent opinions from their state and federal

courts. We might not be able to say with a completely straight face that any citizen has access to the law that governs conduct in this country, but the claim isn't a risible one by any means.

But what will happen when libraries can no longer afford to maintain their book-based legal collections? Law books are becoming more expensive to buy, more expensive to house, and less used by law students and lawyers. It's a bad trend. Sooner than we might imagine, the books that are now so much a part of a life in the law will likely become, at best, the three-dimensional wallpaper in front of which lawyers who want to look like lawyers will be photographed.

When that day comes, lawyers with well-heeled clients will still have access to the law through Westlaw or Lexis, but what of lawyers who represent low-income clients? What of pro se litigants? And

what of average citizens who have paid taxes that go, in part, to support the judiciary? How will we explain to them that the courts are open and they're therefore free to go and sit in a courtroom and listen to a judge announce an opinion, but that if they want to read some of the cases referred to in that opinion, then they might have to pay a high price to a private corporation to gain access to them?

This isn't an acceptable future for a nation of laws, a country where ignorance of the law is no excuse for failure to follow its dictates. There has to be a solution that will allow lawyers to avail themselves of the added benefits offered by Westlaw and Lexis and still allow the rest of the population to have free and open access to the law. I believe such a solution exists in the form of an Internet-based Web site on which all American law is made freely available to anyone who wants to read it. And I believe that America's law schools are perfectly placed to develop and manage such a Web site.

Open and Free Access to the Law Is a Revolutionary Idea

The idea that citizens should have access to the law that regulates their lives is a radical one that has not found much favor until recently. Sir Edward Coke, who famously wrote that "the Lawes of England are the birth-right and the most auntient and best inheritance that the subjects of this realm have" also wrote that statutes should not be translated from legal French into English, "lest the unlearned by bare reading without right understanding might sucke out errors, and trusting to their owne conceit might endamage themselves, and sometimes fall into destruction." And it's not a stretch to imagine a contemporary judge making the same point, albeit in slightly more contemporary language.

In fact the language we use as lawyers has always been a device to limit access to our exclusive guild; the non-lawyer's frustration with legalese isn't limited to our own time, and writers from Shakespeare to Swift to Jefferson to Bentham have recognized that we speak and write as we do in order to keep outsiders from understanding what we do. Language, after all, is power, and a large part of our power in society is wrapped up in our ability to negotiate the thickets of legalese in order to reach our client's desired destination, something few non-lawyers could do.

But despite our best efforts, the most democratizing device ever invented—the book—has meant that many citizens in this country have at least had the opportunity in recent times to put their hands on the law. They might not have been able to access the majority of recent federal decisions, nearly 80 percent of which went unpublished in 2000, and those

decisions they could find might have been written in strangely opaque language, but those opinions that are available are there in the books to be found and pondered over. It might not be a perfect system, but given the law's past, it's a revolutionary one.

The Internet has not yet Improved the Public's Free and Open Access to the Law

Now that the book's impressive tenure as the law's most important information source appears to be coming to an end, though, it's important to consider how the Internet will perform in its place. And if things go on as they are at present, the unfortunate answer is not very well.

Westlaw and LexisNexis are superb achievements—benchmarks for how large, complex databases should operate. But their technological and editorial sophistication comes at a high price, one only the wealthy can afford to pay. Low-cost alternatives abound, but they have incomplete coverage, and, besides, low-cost is still not no-cost; only when the law is completely free can everyone truly be said to have access to it.

There are free legal sites as well, but they also are imperfect. Findlaw, for example, has limited coverage and is, in any case, owned by Thomson, which is unlikely to allow it to become a serious contender to Westlaw. Court Web sites, which are a valuable source of recent opinions, have insufficient historical coverage to make them useful for meaningful legal research. And even if a complete set of each court's opinions from inception until the present was located on that court's Web site, a researcher would have to conduct separate research on each Web site in order to gain a true understanding of the state of legal doctrine on a particular issue.

Far from being a step forward, this Balkanized approach to legal research is more like a step back to the time before John West started publishing his regional and national reporters. Put simply, when the books go, they're going to leave a big hole where open access to the law used to be.

Law Schools Should Fill the Impending Void and Make the Law Freely Available

Of all the candidates to fill that void, law schools might not be everyone's most obvious choice. But I believe that a law school consortium, with its members banding together to acquire, analyze, and publish the law on the Internet, is not only the most likely to succeed but also the most appropriate group to make the law freely and openly available.

Certainly the courts are not viable contenders for the role of public access provider. They have already failed to provide meaningful access to the full body of their own opinions, and this is perhaps

understandable. Courts have an essentially utilitarian relationship with the law, using precedent as a tool to help them resolve the disputes pending before them. Although they are, or should be, sensitive to the broader significance of their rulings, they are fundamentally consumers of the law, not its curators. And in any case, opening up the law to everyone might lead to an increase in the number of pro se filings, something no court wants to contemplate.

The various state and federal legislatures, taken together, are the other entities that might be expected to act as public legal information providers, yet it seems unlikely that they will assume this responsibility. The political process affects every decision they make and, not to put too fine a point on it, there is very little political advantage to be gained by spending money to make the law publicly available in any meaningful sense. They do, of course, maintain their own Web sites where some fraction of their case and statutory law can be found. It's possibly unfair, and certainly naive, to expect them to do more.

By contrast, law schools are well-situated to provide free and open access to the law. Of all the institutions that revolve around the law, law schools are the only ones to care about the law for its own sake. Legal academics don't view the law as a means to an end or as a chip in a political power game. Rather, they study the law as law and have no other agenda to pursue. This can open them up to criticism from practitioners who feel that legal academia has nothing to do with the real world, but one of the advantages of the ivory tower can be the clearer view from its ramparts; the rarified air up there can allow legal scholars to see the problems inherent in a democracy where legal information is only available to those who can pay for it and can also allow them to look around and see ways to solve the problem.

Conclusion

A project of this magnitude will undoubtedly be complicated and difficult to complete. A vast amount of material needs to be scanned, processed to remove all copyrighted information, organized into searchable

databases, and published. Cases should have neutral citation information added to them, making them identifiable and findable using a citation method that is not reliant on vendor-specific information. And the Web site on which all this information is contained should have both indexed and non-indexed search capability. The Web site should be complete, flexible, reliable, and permanent. And perhaps it should permit some form of mediated community involvement in the way its collection is indexed, analyzed, and retrieved.

None of this will be simple, cheap, or unopposed. We will likely face opposition from Thomson and Reed-Elsevier, even though an open access legal information Web site would not compete against Westlaw or LexisNexis in terms of sophistication or editorial enhancement. But we have taken on areas controlled by hegemonies before; both the Association of Legal Writing Directors (ALWD) and AALL have attacked the problem of citation, ALWD by producing its own manual to challenge the *Bluebook* and AALL by developing a neutral citation format that would come into its own if used to organize cases in an open access database. We can and should win this fight.

We have other advantages in addition to our experience. We have colleagues in other departments who are experts in database development, organization, and design, and a consortium of America's law schools would carry a lot of weight when it goes looking for funds to support a project so demonstrably calculated to liberate the law and benefit everyone. And we have a reservoir of talented, intelligent, and, I believe, willing law students who would exchange their time and efforts for a chance to work on a project of this magnitude and social significance. For those more motivated by self-interest than philanthropy, there would be no better way to learn how to use a powerful research tool like this than to work on its creation and upkeep.

So it's time for America's law schools to become directly involved in free and open access to the law. It's the right thing to do, and no one will do it better. But there's a lot of work to be done. Let's get started.

Flash and Substance: Blogs as Alternative Sources of Legal Information

I can't remember being aware of the existence of blogs until the media began covering Wonkette's coverage of the Washingtonienne blog. It would not have occurred to me to look for legal content in someone's online diary.

In a relatively short span of years, blogs have become such a part of our informational consciousness that one rarely has to explain that "blog" means "Web log," and the blogosphere has become a virtual destination for most of the online community at one time or another. Once viewed as diarists, gossip columnists, and newsletter writers, bloggers are increasingly considered pundits, experts, and, some would argue, journalists.¹

This evolving focus on "serious" content brings benefits to the seekers of legal information. Not only are more blogs addressing topics of national or worldwide interest, but often they are repositories of PDF scans of useful tidbits of legal information that either are not offered through the conventional legal publishing channels or are offered by the blog at no charge.

Legally-oriented blogs are often called "blawgs." David Lehmann, my colleague here at the University of South Carolina, has written that the term "blawg" was coined in 1991 by Los Angeles attorney Denise Howell.² Blawgs are set up as portals to legal information. The law librarians at Southern Illinois University have created the Law Dawg Blawg, which offers tips and collects search engines for finding blawgs (<http://lawdawglib.blogspot.com/2004/10/finding-good-blawgs.html>). Other clearinghouse sites include Paul Caron and Joe Hodnicki's Law Professor Blogs (www.lawprofessorblogs.com) and corporate site ChessLaw (www.chesslaw.com/lawblogs.htm).

As is the case with information found on the Internet in general, some of the most stable and helpful blogs come from government entities. SCOTUS Blog, the blog of the U.S. Supreme Court (www.scotusblog.com/wp/), offers transcripts of arguments, PDF scans, and original Word documents for orders, opinions, petitions, and other trial records, in addition to analysis and commentary on matters before the court.

Government officials are blogging as well, especially in federal agencies. A clearinghouse site for U.S. government blogs can be found at www.usa.gov/Topics/Reference_Shelf/News/blog.shtml. Health and Human Services (HHS) Secretary Mike Leavitt blogs about matters on the HHS radar at <http://secretarysblog.hhs.gov>. While I haven't found any original

documents on this site, the content is a good source for HHS statistics and insight from the secretary.

Officials of the Department of Homeland Security (DHS) contribute to the Leadership Journal, the blog of the DHS. This site offers such items as transcripts from public meetings and hearings, reports from commissions and agencies, press releases, and agency statements.

The Environmental Protection Agency (EPA) blog, Flow of the River (www.epa.gov/flowoftheriver), is conversational and evocative compared to some of the other government blogs, as Deputy Administrator Marcus Peacock muses about issues before the EPA. Various agency documents are offered, including quarterly management reports and EPA analysis of environmental bills proposed in Congress. A value-added component on this site comes from its insight into why things at the EPA happen as they do. The "You Asked" feature is particularly helpful.

One of my favorite legal sites is the Native American Rights Fund's National Indian Law Library (www.narf.org/nill). It has portals to tribal law and an amazing array of resources. While the site offers publications for sale, the news blog also offers free PDFs for selected items, like the *Practical Guide to the Indian Child Welfare Act*.

As blogs have incorporated more useful and verifiable content, they have gained increased acceptance as research resources. "Blogs have acquired a certain status, being cited by court decisions, also by law reviews," said Claire Germain.³

In his dissent in *U.S. v. Booker*,⁴ Justice John Paul Stevens cited to Professor Douglas A. Berman's Sentencing Law and Policy blog (www.sentencing.typepad.com). This site is an awesome resource, by the way, even for those of us who aren't making law and history. It contains hearing information, transcripts of testimony, trial documents, news stories, Department of Justice correspondence, and links to state and federal resources—just to name a few of the treasures.

The U.S. Supreme Court is not the only court citing blogs; Law X.O, a member of the Law Professor Blogs Network, keeps a list of judicial opinions that have cited legal blogs (http://3lepiphany.typepad.com/31_epiphany/2006/08/cases_citing_le.html). Included in the list are opinions from federal district courts, federal circuit courts, and several state courts. According to a separate list on Law X.O (http://3lepiphany.typepad.com/31_epiphany/2006/08/law_

review_arti.html), since April 19, 2006, at least 489 citations to legal blogs have appeared in law review articles.

It's true that some of the goodies offered on blogs are offered through conventional subscription services, both online and in print—but free is good! Additionally, many blogs contain interesting and useful items that have no niche in the traditional legal publishing environment. I became a believer in the value of blogs a couple of years ago when one of our faculty members asked me to find the original trial court documents from the Terri Schiavo case. I found them on a blog, by way of a Google search.

I started using SCOTUS Blog in much the same way. Now I routinely suggest to all types of library patrons that they might try the same tactic if they have struck out in searching traditional legal publishing sources. As noted by Professor Stephen Vladeck of the University of Miami School of Law, “contemporaneous current events coverage is often undertaken by the leading experts in the field.”⁵

Bloggers are the people most interested in the subject matters that they cover; they have the passion, the commitment, and are most likely to have the inside

tracks necessary to get originals of the kind of information that researchers covet. With a little luck, optimism, and Internet intuition, anyone can go treasure hunting on blawgs and blogs. Best of all, anyone with an Internet connection can do it. Blogs deserve more than just a passing glance in the search for legal materials.

Endnotes

1. *Apple Computer v. Doe*, No. 1-04-CV-032178, 2005 WL 578641, 74 U.S.P.Q.2d 1191 (Cal. Super. Ct. 2005).
2. David Lehmann, “Blogs: The Next Generation,” Database Report, *Legal Information Alert*, Vol. 26, No. 2, February 2007, at 6.
3. Claire M. Germain, “Legal Information Management in a Global and Digital Age: Revolution and Tradition,” 35 *Int'l J. Legal Info.* 134, 142 (2007).
4. *U.S. v. Booker*, 543 U.S. 220, 278 (2005).
5. Stephen I. Vladeck, “That’s So Six Months Ago: Challenges to Student Scholarship in the Age of Blogging,” 116 *Yale L. J. Pocket Part* 31 (Sept 6, 2006).

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You Want What? How to Have Fun while Negotiating Contracts

Nobody who knows me would describe me as a cock-eyed optimist, so when I've repeatedly stated that I think the contract negotiation process can be fun, reactions have ranged from smirking disbelief to suggestions regarding the nearest hospital emergency room.

In my role as the director of research for a global law firm, I have responsibility for content expenditures amounting to several million dollars annually, mostly invested in online research platforms and digital delivery. Hardly a month goes by without me being in the thick of contract negotiations, and yes, I actually do have a lot of fun.

What I'd like to share are a few things I've learned along the way about how to take out the stress, enjoy the process, and, by the way, get what you want. Here are some “rules” I've created from my own experience.

Rule #1: Assume that the process will not be adversarial, and don't allow it to be. You and your negotiating partner(s) are at the table to find a mutually satisfactory arrangement, and it can be done. Beginning one potentially very difficult

negotiation, I responded to the initial “How are you?” by replying “Relentlessly optimistic,” which got a laugh and broke the ice, and I believe it set the tone for a positive meeting.

Rule #2: Be transparent about your overall objectives, and share any must-haves right up front. It's only fair. If your chief operating officer has established a cost reduction target and you can't renew a contract at more than a 3.5 percent increase, say so at the outset. Then the conversation becomes focused on how to get there, with all the give and take.

Rule #3: Get to know (and try to understand) your negotiating partner. It's likely they've been trained to assess your type, and it will definitely pay off if you make an effort to do the same. In my experience, sales representatives generally have one of six major styles, as briefly described below. Later, I'll expand a bit on how I've worked with each of these styles, because recognizing them and adapting your own approach is absolutely critical to a satisfactory result.

Relationship manager—“How can we make this work for both of us?”

Best friend forever—“My company pays me, but I really work for *you*.”

Hardball player—“We’re the only game in town; if you won’t come to terms, it’s your loss.”

End runner—“I didn’t hear back from you, so I contacted Mr. Smith and Ms. Jones in your executive offices.”

Novice—“I’m new at this, what do you think the terms should be?”

Rainmaker—“I ink so many contracts that I can pretty much give you whatever you want.”

Rule #4: You probably have something that’s valuable to the content provider besides dollars. For example, we’ve helped refine the initial digital offerings of entities that have historically been in the print space. We’ve given them concrete suggestions on such important things as Web site look and feel, site navigation and functionality, and how to work out IP authentication for intranet-delivered content for the enterprise.

Our attorneys have written testimonials for services they feel are essential to their practice areas. We’ve brainstormed with providers of business and financial information on ways to maneuver into the law firm market. I can say with confidence that we’ve been able to benefit from having given assistance and usually get favorable contract terms in exchange. Along with the occasional bouquet of flowers.

Rule #5: Ask for a few things you’re pretty sure you can’t get, and be persistent. If I can get a negotiating partner to say “You want *what?!?*” and then get on board with the challenge of trying to make it happen, I’m having fun. Also, some seemingly elusive things that have huge positive impacts for you and your organization may actually be easy for the provider to deliver—a lagniappe, if you will. You won’t find out if you don’t ask.

Rule #6: A deadline is never a deadline. Many years ago when I was vacillating about a decision, someone said to me, “When you don’t know what to do, don’t do anything at all.” Very simple, incredibly useful. When negotiating a contract, especially if it’s high dollar, don’t be pressured by an artificial deadline.

If you are working on a renewal, and the content provider is satisfied that you are negotiating in good faith, it will extend your contract by a month or two under the same terms while you work out the details of the renewal. If it’s a new relationship, it might well extend you some trial passwords; you can continue to build a user base for the provider while hammering out the terms. Allow yourself the time you need to feel confident about all the details. Make sure you know what you are doing.

Harking back to Rule #3, following are a few remarks about my experiences with the different sales styles.

Relationship Manager

This person takes a long-term view of the business partnership. He or she is generally invested in understanding your goals and gets great satisfaction from problem solving and possibly cross selling, if working for an entity that has a large product portfolio. Since this person tends to understand the goals and problems of others in your industry or professional services sector, you can generally learn a lot. A successful partnership with a relationship-oriented salesperson depends on give and take, information sharing and integrity, and is mutually consultative in nature.

Best Friend Forever

I actually feel a lot of sympathy for this person, because generally he or she works at a highly bureaucratic organization that does not empower sales representatives. Best friends are therefore expected to play by the rules and have to say no a lot. This results in many references to their employers as “they,” as in “*they* won’t do that,” rather than “we don’t provide that,” etc., because they feel hamstrung and are frustrated. Their companies become the enemies, they confess that they are really in *your* camp, and it’s clear you are meant to bond with them in a united front and just get the deal over with, playing by the rules, as they do. However, I still want the best deal for my firm, so that can be sticky. I figure that this person is used to a certain rigidity, so what I do is present my firm’s requirements as being equally rigid, and I don’t give in, no matter how sympathetic I feel. For a mutually satisfactory conclusion, bonding with a best friend over shared pressures often works best, even though the chances of getting absolutely everything you want are slim.

Hardball Player

It’s hard to imagine that anyone can be the only game in town in terms of content anymore, so this tactic doesn’t usually have a lot of teeth. As the purchaser, I will go where I can to get the best price or where I have the most fruitful and enjoyable existing relationship. What people are interested in once the content is available is extra *functionality*—bells and whistles that amplify ease of use, allow for slick downloading and easy copyright-friendly internal redistribution of information or provide alerts on only the topics they care about. There’s more potential for being the only game in town here. I can only invest in bells and whistles a couple of times a year, though, and I’m more likely to take the plunge if

I'm negotiating with someone who is nice to me. If he or she can help me raise my department's visibility, or if he or she can help my team members build some skills, while giving *our* clients what they want, that's being nice. If he or she can't or won't, saying "no thanks" can be a really satisfying experience.

End Runner

Ouch. Definitely *not* fun. These people are really a type of "hardball players," but they can make things complicated so they deserve their own category. The good news here is that Mr. Smith and Ms. Jones probably rely on you and me for content purchasing decisions and are at least 90 percent likely to ignore the end runners. You can then have the satisfaction of saying, "Don't call us, we'll call you." Or more sensibly, you can explain that you have responsibility for a large portfolio of content and services and that you can't always get back to people the same day. I have found it useful to explain my role and confirm that in talking to me, they have arrived at a spot where decisions are made. Once their comfort level is up, you can happily proceed, relying on Rule #1, having negated the false start. I have been introduced to some terrific resources by end runners, I will admit.

Novice

Hmmm. These people are either refreshingly ingenuous, or, well, not. If you are a mentoring sort, negotiating with them can be extremely satisfying, regardless of their motivation, because you will feel as if you have educated them in some way. Be careful not to get carried away by your own imagined brilliance and say too much, though, because that can come back and bite you. If they are genuinely new to the game and are enthusiastic, they will often aid you with Rule #5, taking back your requests for the impossible to their management, because they share your optimism. Help them out by not embarrassing them in front of their colleagues on this last point however. You were a novice too once, right?

Rainmaker

Negotiations with this person are really fun, because you can both be shamelessly ego involved. A rainmaker is bound to be competitive, and he or she has told you up front that he or she has clout within his or her organization—it's all down to volume, signing you up, and dispensing a bit of largesse. When you tell him or her that you are known for driving a hard bargain, getting the best possible deal, and that you want to look good to your boss as per usual, you'll be understood and approved of, which is generally a good thing. You can probably get most of your expectations met, including some really good pricing, or a 15-month contract for the price of 12, for example. A rainmaker has earned some latitude within his or her company, and you can reap the benefit if you give him or her something off which to bounce.

Each time I enter into contract negotiations, I have three objectives: to get the best content and pricing that I can get on behalf of my firm, to learn something that makes me better at my job, and to cement a positive relationship with the salesperson so that he or she will feel good about working with me again. I'm grateful to many of the account managers I've met in my current role and at previous firms, because they've taught me a lot. Recently, I was able to provide a reference for a gentleman who sold me a contract for some key business content and who was making a career move. He's now working for a competitor to his previous firm and wants to meet with us for a pitch—I think that's going to be fun.

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