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Charley's Corner:

Food for Thought

by Charles R. Dyer, Director of Libraries, San Diego County Public Law Library
Nothing in this column represents the view of my Library or its Board of Trustees. These are just my personal opinions.

Warning: This column, written at the end of 2002, is a hodge-podge of facts and thoughts which do not seem to have a unifying theme. I am actually referring back to the claim I have made in several previous columns that we, as a society, are becoming more graphically-oriented, with instant facts and visuals becoming more of our knowledge base, to the loss of much of our deductive, hierarchical and linear thought processes. If I were to elaborate on that theme throughout the wanderings below, the column would triple in size. So we'll just look at this column as food-for-thought.

Part One:

Arriving to my desk at very nearly the same time were the most recent issue of the *Law Library Journal* and the special publication from AALL, *Beyond the Boundaries: Report of the Special Committee on the Future of Law Libraries in the Digital Age*. First, let me say that it is very pleasing to see both these fine publications, and the *Spectrum* and the announcement of the Seattle meeting that arrived with the special publication as well. Our dues are used well.

Of particular interest to me was the *LLJ* article by anthropologist F. Allan Hanson, "From Key Numbers to Keywords: How Automation Has Transformed the Law." While a bit lengthy for us non-academic types, I highly recommend it to you. Mr. Hanson discusses how the use of computer-assisted legal research has turned the practice of law from one built on hierarchical concepts to a much flatter fact-oriented one. The result, he suggests, is that attorneys now find cases with similar facts that use diverse legal reasoning, and they pick the cases that work best for their clients. Judges in response are simply telling their clerks what results they want and telling them to find the cases that support their result. In a sense, this modern style puts the proof to the theories of legal realism and critical legal studies that judges really do what they want, and precedent is simply their method of justifying themselves.

Mr. Hanson observes that, in addition to the lessening of the use of the old legal concepts, new concepts and reasoning are being brought in from non-law disciplines, and the "edges of law" are growing fuzzy. Automated research opens up such vistas of new data from other disciplines that lawyers (and our concept-givers, i.e., law professors) are now being required to venture beyond the strict confines of legal literature.

While I haven't had time to absorb all of *Beyond the Boundaries*, it is apparent that the several authors therein are also aware of the changes in legal research, if not as mindful of the

jurisprudential implications. One thing I did note is that, while the strategic plan style of discussion in that book may be useful in trying to map out the various difficulties that the different types of law libraries will face, the items listed are perforce meant to be representative of the norm, rather than true in all respects for every library. And I wonder that some issues were not looked at closely simply because the norm among those of us in public law libraries was not to look at them.

Frankly, the prognosis for public law libraries in *Beyond the Boundaries* was not that good. Many of our libraries will lose space, some will close, and the numbers of users will decrease, according to the findings of the committee. There is a notion that, in some locales, rather small county law libraries will be replaced with public access terminals. Some credence was given to the notion that chat room style reference, such as the 24-7 program, may also help fill the void.

Although the numbers of users (by gate count) may well be diminishing at most public law libraries, for many there has also been a change in the type of clientele. The percentage of users who are self-help litigants has increased, sometimes dramatically, sometimes so much that there has actually been a gain in the number of self-help litigants. I have heard a few anecdotal observations that, since self-help litigants usually stay at the library three to five times longer that users who are regular members of the legal community, their hourly head counts have increased.

Most self-help litigants use very little case law. They ordinarily seek court forms or transactional materials and some information on how to use them. Few get into the intricacies of litigating actual points of law. In fact, most self-help litigants presume that the law is fixed and already determined for their case. At best, even when doing case law research, they just want to find out what the "black letter law" is.

Those determined few who research their case completely, even the paranoid obsessives, believe that the law in their case is settled already. Unfortunately, many of the "determined few" also believe that the law will come down on their side because, after all, the law is just and their position is the just one. (Most would be classed as natural law theorists who believe that law is produced by a higher being. Judges who rule against them must be personally biased or corrupt.)

Hanson suggests that people doing automated research will tend towards legal realist approaches. That reminds me of the old joke when Johnny asked his father how much is two plus two. (I've told the joke before and won't repeat it here.). The punch line is that the father's lawyer responds, "Just tell me how much you want, and I'll see that you get it." My thought here is that Hanson's observation may well be correct for regular law researchers, members of the legal community, but not for self-help litigants. I am more inclined to believe that they will simply believe the first few cases that come up from their automated search, using simple facts or misconceived search terms. They would leave themselves open to arguments from opposing counsel who simply know better how to deploy the legal concepts involved. (Indeed, such opposing counsel may well have done enough research to uncover a good line of cases for the self-help litigant, but it never appears before the court because the self-help litigant never researched that far.)

At the San Diego County Public Law Library, our reference librarians have begun teaching self-help litigants. We teach classes in legal research, civil procedure before trial, appellate procedure, and Internet resources. Much of what we teach is the need to do deeper research than self-help litigants first believe they need to do. Most people have developed short attention spans, now that MTV style media have become so pervasive. Sending an unprepared self-help litigant to a public access terminal may be dooming him to failure. But the worst of it is that he doesn't even know he is doomed. He thinks that first thing to pop up must be the answer. He is clueless as to the difference between legal research and a Google search. As my head of public services described it recently, "They park in the three-minute zone out front and come in and say they need to file a lawsuit."

Here at San Diego CPLL, we were fortunate enough to get an LSTA grant to take our courses "on the road," so to speak. We are now doing them at various public libraries throughout our county. (San Diego is nearly the size and population of the State of Connecticut, so we have a lot of outreach to do.) While we were applying for our extension grant for next fiscal, our LSTA coordinator at the California State Library suggested that we take our dog and pony show out to other county law libraries, so we are now working on that. In response to my email, one well-seasoned librarian at a much smaller county law library remarked that she could not teach our courses because she does not have a law degree. I know for certain that she could research the pants off most lawyers, and she undoubtedly teaches self-help litigants daily in one-on-one sessions much of what we discuss in our courses. So why the hesitancy?

It is a matter of staffing, and the perceptions we have of ourselves. This librarian does not see herself as a "teacher." She has all those other things she does all day, technical chores, simple reference, working with her board of trustees. She probably thinks, "I get maybe one or two questions a week on procedure before our local courts. That's not much, and I don't know much." But the truth is that, even as a new librarian after just three months, she would have accumulated a lot of information just from that work alone. After several years, and with repetition reinforcing the important questions, let's admit it, she is a font of knowledge. I bet there are several attorneys who ask her for advice regularly.

But what happens when a resource like her retires? The board just looks for someone else who seems to have the with-its to get the bills paid on time, do the technical chores, and be nice to customers. The accumulated knowledge is lost, and the new librarian must learn it all again. This is standard, and it is unfortunate for a while for the new librarian's customers. What is more unfortunate is that the old librarian was never given credit for that accumulated knowledge, and the new librarian will not either. So everybody discounts this person.

That is what I think was missed by *Beyond the Boundaries*. We assume the norm is that county law libraries simply do not have truly knowledgeable staff who make a significant difference for self-help litigants. Those "lucky ones" that have a long-term decent librarian are not the norm. By observing the norm, the committee missed observing a central feature of many public law libraries, the ability to teach self-help litigants how to get their work done. And there was little howl from us about this, because most of us who do this teaching are too reticent to admit that we are as good at it as we are.

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Four small tangential observations to part one of this column:

The program announcement for the 2003 AALL Meeting in Seattle includes the program, "Law Made Public: Teaching Basic Legal Research to Pro Pers, Paralegals, New Associates, and All Others in Between." That program (submitted by LISP SIS and endorsed by the SCCLL SIS) will be taught by Amy Hale-Janeke and Judith Lihosit, two of San Diego CPLL's reference librarians who participate in our teaching program here. I encourage you to hear their presentation.

"Pro per" is the California term for a *pro se* or self-help litigant. They ran their proposal by me, and I missed that little parochialism. Sorry about that. Jean Willis on our staff used the term "self-represented litigant" for our LSTA grant applications, so now the public librarians in our county refer to them as "SRL's." (That in turn reminds me of "SRO's," the term often used for single-room occupancy hotels.) I chose to use the term "self-help litigant" mostly so that I would not have to wage war on word choice in the middle of my column. I like "self-help" as a term, not only because of its allusion to self-help books, but also because I have this image of them sitting at the dining table, helping themselves. Go ahead, have some potatoes.

In the sentence that starts "And there was little howl from us...," I originally wrote "who do do this teaching...." I used the double "do" because I wanted to be emphatic, but my spell checker naturally "howled" at me for that. I reread the sentence and decided that I did not lose too much by removing the second "do." Is this a part of the modern age, that we take commands from our spell checkers as if they were real editors? Well, one certainly does not want to get into deep do-do with one's spell checker, does he. ("Do-do" with a hyphen passed muster, by the way.)

When I commented earlier that "Sending an unprepared self-help litigant to a public access terminal may be dooming him to failure," I realized that I am negating the very real growth for small county law libraries without staff that now have terminals. Certainly, such programs as those in Oklahoma are advances. Yet, I would always hope the users would have some access to reference help, whether via telephone or chat room reference. These concerns led me to part two of this issue's column, below. (This is not adequate transition, but it will have to do.)

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Second part of the column:

New Year's Resolutions:

1. While looking at all the newfangled devices, I resolve to listen to the people who actually

use them. Chat room reference is harder and more time-consuming than email reference or face-to-face reference. The customer does not have his question well prepared, and the process is slow. It consumes resources. Is this the way to go?

2. While looking at all the newfangled devices, I resolve to take into account the problem of competition for our customers. Librarians worry about those online services that respond to customers' questions as if they were librarians. Librarians should also worry that our customers will expect such services as chat room reference, regardless of who provides it. Can we afford to fall behind?

3. While looking at all the newfangled devices, I resolve to think long-term. Chat room reference may be momentarily messy and consumptive of resources, but someday, probably very soon, nearly everyone will have audio-video chat online or video telephones, and the reference transactions will be faster and nearly as accurate as face-to-face reference. So we need to get ready for that kind of service. Do I want to see customers in their bathrobes? Are we going to have to pass procedures to avoid obscene video chatterers?

Like many a library director, I have given a lot of thought lately to looking at the library as *place.* In other words, with modern technology and easy distance communications, do we lose something when our customers do not actually come to a physical library? Isn't there something that heightens the senses for a researcher when he actually walks into a library—the smell of books, the smile on the reference librarian, just the general layout of the entryway and the first floor of the building. Don't we all, as library customers, appreciate that we are entering a place wherein we can use our minds and find answers?

I have this vision. I am at home, sitting a few feet away from a 50 inch flat screen in 9 by 16 format (i.e., wide screen). It is my computer monitor, or at least the one to which the video chat and telephone projections go. I am seeing and talking with a librarian who is sitting at the reference counter at my local public law library. But I also see several degrees of arc on either side of her and a lot behind her, as she occupies less than a fifth of the screen width. Seeing the books on shelves, her desk with appropriate items, the tone of lighting, the woodwork, I get something of that sense of place. It's calming. It provides me a feeling of proportion. Yes, my reference question is important to me, and here are all these resources devoted to helping me out. Surely, I can expect that her answer is a good one, for I have come to the right place.

Would people who have never been to a library experience the same kind of excitement, mixed with reverence, that I would with video reference? My only analogy is that I have never been to many places I have seen on the Travel Channel, such as the Taj Mahal, yet I get some of that feeling. It's still not the same as actually going there. I've been to the Notre Dame Cathedral in Paris, not to mention countless monuments and geological sites in the U.S. It isn't the same; they are better when visited in person. But perhaps seeing them first on the Travel Channel makers many more want to visit these sites. So, too, maybe video reference will make people want to go to the library, to visit it in person. What a grand thought.