Notes from the Director

By Anne Acton

The fall 2009 semester has been whizzing by. I hope you have had time to notice a couple of improvements in the library.

The first is the basement renovation. Over the summer half of the basement was renovated with new furniture and improved lighting added. As a result of removing some shelving, we added 25 more study seats and created a more open feeling space. The results seem to be appreciated since the space is now well-used.

The second change in the library is the addition of an Academic Excellence Collection area. Placed right near the entrance to the library to draw your attention, the new collection is the result of collaboration between the library and the Academic Excellence faculty. Louis Schulze and Elizabeth Bloom worked over the summer to get law publishers to donate materials for the collection. The library filled in where necessary and also made sure that we had a copy of each title also available in the Reserve collection. The AEC collection is a browsing collection waiting perusal by students.

(Continued on page 7)

Electronic Resources News

By Tim Devin

To make it easier for patrons to access our electronic resources, we’ve contracted with a number of vendors to receive catalog records for electronic materials. These new electronic resource records link to such things as journals and treatises in Lexis and Westlaw, free government documents on the open Web, and Hein Legal Classic e-books.

While many of these titles had already been available through our A to Z list, and through different databases, students could only find them if they already knew about them. There was no easy way for students to find this type of material if they didn’t already know it by title. By adding these records to our catalog, students can now conduct a single search in the Online Public Access Catalog that will retrieve books, print journals, and online material.

(Continued on page 6)
Massachusetts Superior Court:
150 years of the rule of law, 1859-2009
Symposium, Boston Public Library, September 22, 2009
By Helen Litwack

The Massachusetts Superior Court, one of the oldest common law trial courts of general jurisdiction in the country and now 150 years old, had its origins in political furor over judicial enforcement of the Fugitive Slave Act of 1850 by a Suffolk County probate judge named Loring that resulted in the rendition of Anthony Burns, an escaped Virginia slave who had made his way here - rendition meaning Burns was returned to enslavement in Virginia.

Recently at the Boston Public Library, to a rapt audience of about 300 judges, lawyers, laymen (and me, your intrepid New England Law reference librarian), Massachusetts Superior Court Chief Justice Barbara J. Rouse narrated the tale of the “firestorm of protest” that led to several procedural attempts to remove Judge Loring which failed when the Governor refused to put his necessary seal of approval on such an action, and the legislative solution devised by the pressured pols to consolidate the probate and insolvency courts, thereby cleverly requiring the removal of all judges in these two departments, including the unpopular Judge Loring. This device to quell the people’s antislavery wrath had the added benefit of addressing a situation that had become quite intolerable to many: overlapping and arbitrary jurisdiction of courts, long delays and excessive litigation costs.

With that introduction, a panel moderated by University of Pennsylvania Law School Professor Stephen Burbank spent the next 90 minutes talking about landmark cases in the Superior Court, from criminal trials (Saco and Vanzetti (1921), the Big Dan’s rape cases (1984), the Commonwealth v. Salvi (1996) abortion clinic bombing case) to civil rights cases (Perchemlides v. Frizzle (1978), the home schooling case, Hancock v. Commissioner of Education (2004), a constitutional case regarding rich and poor school districts, Irish-American Gay, Lesbian and Bisexual Group of Boston v. Boston (1993), the St. Patrick’s Day parade case) and institutional remedial cases (Perez v. Boston Housing Authority (1975), the Boston Harbor cleanup receivership case (1982)), among others.

The panel consisted of the Attorney Mary Bonauto, who argued for the plaintiffs in the Irish parade case, Honorable Barbara Dortch-Okara, Chief Justice for Administration and Management of the state trial court, Honorable John Greaney, recently retired from the Supreme Judicial Court who had presided in Perchemlides, former Massachusetts Attorney General Scott Harsharger, Professor Lewis Harry Spence, who had been the court-appointed receiver in the Boston Harbor cleanup case, and U.S. District Court Judge William G. Young, who had presided over the two Big Dan cases.

In the context of Saco and Vanzetti and the Big Dan cases, the panelists spoke of judicial bias and popular passions. Dortch-Okara commented that Judge Thayer probably was not even aware of his own bias in the Saco and Vanzetti case and she thought that, over time, society has become more sensitized to bias, that diversity in court personnel and jury pools has helped, and the diversity theme to protect against bias was also Ogletree’s focus and theme. Judge Young confessed he made two mistakes in the Big Dan case: he didn’t think to prevent the rape victim’s name from coming out in the televised trial, so used was he to print media voluntarily suppressing rape victims’ names; and, secondly, he shouldn’t have scheduled one case for morning session and the other case for afternoon. He only got through it by instructing his clerks that if he looked at them during the trial, he wanted to know if he’d “heard all this before.” Dortch-Okara explained why she had refused to televise the Salvi case, which turned on the specific defendant’s media-seeking behavior and the potential to arouse people to violence.

(Continued on page 5)
Database Upgrade / New E-books

By Helen Litwack

BNA Core is upgraded to Core Plus:

The new e-titles now available in the package are:

• Bankruptcy Law Reporter
• Electronic Commerce & Law Report
• Environment Reporter - Current Reports
• Heath Law Reporter
• Intellectual Property Library

USPQ Second Series

• USPQ First Series Cases (1946-1986)
  - Laws and Regulations
  - Patents and the Federal Circuit
  - Harmon on Patents: Black-Letter Law and Commentary
  - Patent Quarterly E-mail Summaries
  - Patent, Trademark & Copyright Journal

• International Trade Reporter - Current Reports
• White Collar Crime Report

We have discontinued our print subscriptions to ABA/BNA Lawyers’ Manual on Professional Conduct-current reports, Labor Relations Reporter, and United States Law Week, which are part of our original BNA Core database subscription. This decision was based on considerations of usage, both of print and electronic versions, and, of course, cost.

Oxford Encyclopedia of Human Rights

Acquired in electronic format only, this title is accessible both through Portia and via the New England Law database list at link “Electronic Resources” from the school home page. This 5-volume work is not only new to our collection; it is newly published in 2009.

(continued on page 4)

Staff News

By Kristin McCarthy

Two of our staff members have recently published scholarly works. James Gage, our Acquisitions and Serials Specialist, has written a book entitled Root Cellars in America: Their History, Design and Construction 1609 - 1920. Our Copy Cataloger/Special Collections and Projects Specialist, Heather Pena, has published her first paper entitled “Higher Education: The Success and Challenges in Open Education Resources (OER).” This paper was highlighted in Open Education News. Congratulations to Jim and Heather!

Anne Acton, our Director, was elected President of the New England Law Library Consortium (NELLCO), a consortium of 25 northeastern academic law libraries and 65 nationwide affiliates. Brian Flaherty, one of our reference librarians, was elected co-chair of the Nellco special interest reference group. Brian also gave a presentation at the Boston Bar Association on “Accessing Legal Resources on a Budget.” □
Sharpen Your Skills:

Librarians Help You Prepare for Research in the “Real World”

By Brian Flaherty

One of the problems with learning legal research is that very often, students learn the skills long before they need to put them into practice. So their newly acquired skills, untested, are dulled over time. We the library staff recognize this, and so beginning in mid September, we began to offer weekly “Sharpen your Skills” classes, each focusing on an aspect of legal research that we suspect might do well with some exercise. The classes were designed to be about ½ hour each, and were run more informally than traditional classes: students were encouraged to ask questions about research issues they’d faced in their own work. Often there were snacks.

The goal was to get motivated students to come and brush-up on aspects of research they may have let slide, and perhaps learn new techniques. We began by covering types of electronic searching. The first week was devoted to Terms and Connectors searching; next we covered advanced Natural Language searching. We also covered updating and researching using Shepard’s & KeyCite, using the Annotated Code, and a class on Forms and Practice Materials. All of the students who attended – and we had several regulars – learned a great deal, and asked specific questions about research issues they had encountered.

Everyone came away from the classes better prepared to do the “real” legal research they are going to encounter as newly minted attorneys.

We stopped doing the sessions when folks started studying for finals. However, we intend to pick them up again in the spring. The classes will continue to be run relatively informally, with participants encouraged to ask questions, and even do some of the research in class. They will continue to be about ½ hour, and really: one of the regulars brought snacks to our meetings.

So often while at the reference desk, I hear students say: “I really need to get better at researching…” With the “Sharpen your Skills” series, we are offering the opportunity to do just this. Watch for announcements of the spring series by Email, on our Facebook page, and on various boards around the school.

Database Upgrade

(continues from page 3)


This title (also known as Parry and Grant Encyclopaedic Dictionary of International Law), which New England Law has both in print and online, is comprised of over 2,500 entries in international law, including diplomatic law, international criminal law, human rights, and international organizations law. As the name suggests, this work aims to combine the useful brevity of a dictionary with the essential context of an encyclopedia. Acronyms, which can be the bane of a researcher unfamiliar with an area of law, are included as entries (for example: ACOPS: Advisory Committee on Protection of the Sea). Cross-references are also included. Although earlier editions of Parry & Grant has been cited only once in Westlaw’s ALL-CASES database, they have been cited 67 times in Journals and Law Reviews.

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In the civil rights case discussion, Greaney contrasted the clear statutory right in the home-schooling case with the more "elastic" and "debatable" right in the parity between school districts case. Bonauto asserted she'd "moved on" after having lost the St. Patrick parade case, then proceeded to reargue the case to an amused audience. The discussion moved into consideration of choice of forum (the moderator interjecting that “forum shopping” was not a dirty word, but part of professional responsibility), with Bonauto asserting the state court would be most familiar with state statutes and Young commenting that the expenses in federal courts far exceeds those in state courts. Bonauto called state courts "laboratories of democracy", paraphrasing Supreme Court Justice Louis D. Brandeis. Greaney recalled Justice Brennan once saying to lawyers "For God’s sake, read your own [state] constitution" alluding to another reason to choose a state court forum.

In the institutional remedial cases, discussion was sparked by James Madison’s statement that the judiciary was the “least dangerous branch” because it "lacks both the power of the purse and the sword" and the moderator asking was that still true. From Scott Harshbarger’s nostalgic trip to the heyday of 1960s public interest law, the conversation touched on merit selection of judges versus elections, e.g., judicial independence, then wandered back to Spence’s comments about “institutional overwhelm” of administrative agencies trying to enforce complex new statutes or implement controlling common law decisions and thought there might have to be a “didactic period” where courts (or their delegated agents, Special Masters) might have to show the agency how to do enforce and implement the law. His experience of “flexibility” as Special Master is described in the book, Mastering Boston Harbor: courts, dolphins, and imperiled waters (2005), which New England Law has in its collection. Having read the book, it was interesting to hear him go beyond the theme of the book that receivership was all good, and say that there is a "huge tension" between management principles and legal principles.

The second panel was titled “The Future: Challenges for the Next 150 Years” and focused in more depth on judicial independence, plus it considered the impacts of technology and general predictions. Moderated by former NPR reporter Tom Ashbrook, the panel consisted of: the Hon. Judith Fabricant; Ropes & Gray attorney and newly elected president of the American College of Trial Lawyers (the first woman president) Joan Lucky; Appeals Court Judge James McHugh; and Harvard Law Professor Charles Ogletree.

Ogletree was concerned that technology might amplify class stratification among jurors, that jurors who think they know more will feel like they have more than one vote in the jury room. McHugh thought technology had “enormous potential to equalize people.” McHugh said the “real [technological] explosion is about to begin,” as the first from-birth net generation is now in college. He contrasted the way in which the Web alters the way people think – in a much more rapid-fire, shallow way now, and much more based on self-education and collaborative learning – and wondered if future jurors will have the patience for the “educational/ hierarchical” classical model of a jury trial in which the experts educate the jurors in an old-fashioned classroom sort of way and then the jurors analyze what they’ve heard and make a decision. Will courts be able to police jurors Twittering and researching on the Web? This brought back Ogletree’s theme that Web-savy jurors might not be able to believe that they don’t need to know every thing about the case to arrive at a just outcome, e.g., the concept of excluding evidence might not be acceptable to them, and they might use technology to undermine justice.

Fabricant spoke of courtrooms where lawyers cannot even plug in or wirelessly use their laptops and how will the Massachusetts Superior Court keep up with technological changes. Luckey spoke of the bright side of technology and a case in Canada in which a life-size holographic recreation of a crime determined the outcome of the trial. Lawyers used holographic technology to demonstrate that the witness could not have seen what he said he saw from the angle he said he saw it, and they concluded he was lying.

(continued on page 6)
Massachusetts Superior Court

Lastly, the panel considered two issues: the future and importance of the jury trial in civil cases, and the importance of judicial independence. Luckey took as a starting point the 2006 Report of the Task Force on the Vanishing Jury Trial of the Boston Bar Association, available at: http://www.bostonbar.org/pub/bw/06071102306/jurytrials.pdf. The report found that where costs can be shifted, such as in contingency fee arrangements, it is less likely that jury trials will be avoided, but where there is no fee shifting, the litigants are less willing to go to trial because of costs.

So in medical malpractice cases, jury trials are on the increase; in other areas, they are declining. At the federal level, the decline in jury trials has been “astronomical” over the past 15 years. The report concluded the key to controlling costs and saving the jury system is to rein in discovery and, Luckey added, this is especially so in the e-discovery environment. Ogletree advanced that cost savings and efficiency were not the only goals, that justice was paramount and quoted Thomas Jefferson that juries “hold the government to its constitution…leaving as little as possible to judges.”

Massachusetts is one of the few states where no judges are elected; most other states elect judges at least at the trial court level. But all panelists agreed Massachusetts Superior Court judges feel societal pressures nonetheless and that the public needed to be better educated in basic civics, specifically about the important of judicial independence. When a couple of the panelists began to criticize the public for hostility to judges based on the outcome of cases, Ogletree told an anecdote about having loudly and very publicly opposing the nomination of Justice Souter, but not having thought ahead to the fact that he would argue a death penalty case before him later on. He said that several of the other justices seemed quite solicitous in their questioning during oral arguments, but Souter just glared at him. However, the outcome was in his client’s favor; the point being, let the people voice their opinions about judges, but judges should remain independent of mind whatever the pressures.

The symposium wrapped up with a few minutes of questions and answers, in which the most notable bit of new information was that Ogletree mentioned that Justice Thurgood Marshall, and later Justice Stephen Breyer had both thought peremptory challenges of jurors should be eliminated.

This librarian thanks you for the opportunity to attend this symposium and report back on it to you. New England Law | Boston is well situated for us to take advantage of many such continuing legal education opportunities. The library has instituted an informal alert service for such events – check the library news and events page.

Electronic resource news

The vendors maintain the links for most of these electronic records, which means that once they are in our system, we don’t have to do much to them. Having access to this material has also allowed us to weed parts of our print collection, freeing space for more study area.

We got our first major batch of these records last December, and since then we’ve been receiving new records in each month from 6 to 7 vendors. We currently have more than 42,000 of these e-resource records in our catalog, and receive about 200 more each month.
Congratulations on finishing the semester and have a safe and Happy New Year!

Free books!
Located on the first floor in the rear of the library.

Notes from the Director
(cont from front page)

Items in the Academic Excellence Collection are arranged in four types of learning styles which have been assigned a color.

All the items in the AEC collection can be used in the library but are not available to check out, so that they remain always available for all students.

Learning Styles
- Resources Explaining the Law: Blue
- Multiple Choice: Red
- Audio: Yellow
- Essay Practice: Green
Library Hours

Regular Hours

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New England Law Library Staff

Administration
Anne M. Acton, Director of the Law Library
Kristin McCarthy, Associate Director of the Law Library
Meagan Petersen, Administrative Assistant

Acquisitions
Karen Green, Acquisitions, Preservation and Special Collections Librarian
Sharon Wade, Acquisitions and Periodicals Assistant
James Gage, Acquisitions and Serials Specialist

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Heather Pena, Copy Cataloger/Special Collections and Projects Specialist

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Anita Chase, Circulation and Interlibrary Loan Specialist
Liza Harrington, Evening Circulation/Interlibrary Loan Assistant

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Barry Stearns, Senior Reference Librarian
Sandra J. Lamar, Computer Services Reference Librarian
Helen Litwack, Collection Development and Reference Librarian
Brian Flaherty, Reference Librarian

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