

# LLNE News

Newsletter of the Law Librarians of New England  
Volume 22, Number 2, 2002

## Supremes in the Schoolhouse

By Diane D'Angelo, Reference Librarian,  
Suffolk University Law Library

Professor Sarah Redfield delivered an engaging and informative discussion entitled "Supremes in the Schoolhouse." Specializing in education law, Professor Redfield is a tenured member of the Franklin Pierce Law Center faculty and founder of the Education Law Institute. She gave a general overview of the Supreme Court's historical relationship with the nation's schools and then delved deeper, discussing hot topics and illuminating them with specific noteworthy cases and opinions.

According to Professor Redfield, the Supreme Court's involvement in schools has been "a bit hypocritical." On the one hand, Supreme Court opinions have held that local school boards maintain the power to create and amend school policies and procedures, not the courts. Yet, beginning in 1954 with *Brown v. Board of Education*, the Court has maintained an active role in schools. She explained that the Court is essentially saying, "We're not going to get involved, but let us tell you how to do everything."

Like many education law experts, Professor Redfield believes that there is "too much law in schools." With PowerPoint slides projected in the front of the room, and informative handouts in front of each audience member, she discussed specific cases that exemplify the Supreme Court's involvement in schools. Education as a fundamental right, disci-

pline, search and seizure, harassment and free speech are the five main issues that have dominated education law throughout history.

According to state laws, every child must go to school. But, Redfield asked, does that mean they have a fundamental right to be educated? The Supreme Court stepped into this debate and determined that children are entitled to "minimal" education. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Court ruled that schools are only responsible for ensuring appropriate education, not the "most" appropriate, and that states are not required to maximize the potential of students with disabilities commensurate with opportunities provided to children without disabilities.

In theory, school boards are in charge of discipline. But in reality, they are not completely in charge; corporal punishment is determined by state law, and the Supreme Court steps in from time to time. In *Ingraham v. Wright*, 430 U.S. 651 (1977), the Supreme Court decided that "corporal punishment is not cruel and unusual" and that "the due process clause did not require notice and hearing prior to the imposition of corporal punishment in the public schools." In *Goss v. Lopez*, 419 U.S. 565 (1975), the Court held that a student cannot be suspended without notice and opportunity to comment. *Goss* is a good example of the Court telling schools how they have to handle school discipline, concluding that a suspension procedure is required. Professor Redfield noted that the procedures and how they impact the rights of students is somewhat nebulous.

The Court has also reviewed discipline as it specifically applies to higher education and professional schools. In *Horowitz*, 435 U.S. 78 (1978), a student who flunked out of law school wanted to be readmitted. The Court sided with the law school and held that the academic decision process does not require a hearing. Redfield noted that schools generally win cases where there is an academic slant like this. In *Boucher*, 134 F.3d 821 (1998), an underground school newspaper published an article written by "self-professed hackers with anarchistic views," entitled "how to be a hacker." Specifically, it gave hints on how to guess passwords and change grades. Students from the underground newspaper were expelled for publishing the article. Citing previous Supreme Court opinions, a lower court determined that because of the "substantial disruption" that could be caused by the contents of the article, the students remained expelled.

The Fourth Amendment ensures that "government shall not violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." But search and seizure has taken on new meaning after *Columbine*, September 11<sup>th</sup> and a surge of weapons, drugs and schools lies with local school districts. Yet, the Supreme Court has dictated policy in violence in schools. Power and discretion regarding search and seizure issues in this area as well. In *Veronia School Dist v. Acton*, 515 US 646 (1995), the Supreme Court addressed random urinalysis drug testing of student athletes and held that the "public school district's student

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For Membership News, forward items to the Editor or to the following:

**Connecticut**

**Hartford/Northern Connecticut**

Susan Severo  
University of Connecticut School of Law Library  
39 Elizabeth Street  
Hartford, CT 06105-2213  
(860) 570-5063; fax (860) 570-5104  
ssevero@law.uconn.edu  
Stephanie Shea  
Bingham Dana LLP - Library  
1 State Street  
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(860) 240-2924; fax (860) 240-2800  
smshea@bingham.com

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Yale Law Library  
127 Wall St.  
New Haven, CT 06520  
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michelle.sullivan@yale.edu

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Augusta, ME 04333  
(207) 287-1600; fax: (207) 287-2467;  
lynn.randall@state.me.us

**Massachusetts**

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Karin Thurman  
Commonwealth of Massachusetts  
Office of Attorney General Library  
John W. McCormack State Office Building  
20th Floor, One Ashburton Place  
Boston, MA 02108-1698  
(617) 727-2200 x209  
fax (617) 727-5768  
lthurm00@counsel.com

**Western**

Bonnie L. Koneski-White  
Western New England College  
School of Law Library  
1215 Wilbraham Road  
Springfield, MA 01119-2693  
(413) 782-1455; fax: (413) 782-1745  
bwwhite@law.wnec.edu

**Trial Court Law Libraries**

Carol Michaud  
c/o Plymouth Law Library  
County Commissioners' Building  
11 S. Russell Street  
Plymouth, MA 02360  
(508) 747-4796; fax: (508) 746-9788  
carolynmichaud@hotmail.com

**New Hampshire**

Kathy Fletcher  
Wiggin & Nourie  
20 Market Street; P.O. Box 808  
Manchester, NH 03105  
(603) 669-2211, FletcherK@wiggin-nourie.com

**Rhode Island**

Karen Quinn  
Rhode Island State Law Library  
Frank Licht Judicial Complex  
250 Benefit Street  
Providence, RI 02903  
(401) 277-3275; fax: (401) 277-3865

**Vermont**

Christine Ryan  
Vermont Law School  
Julien and Virginia Cornell Library  
9 Chelsea St., P.O. Box 60  
South Royalton, VT 05068  
(802) 763-8303 Ext. 2448  
fax (802) 763-7159  
cryan@vermontlaw.edu

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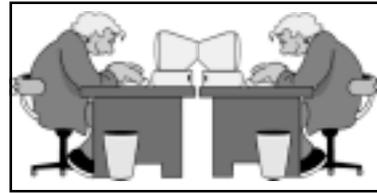
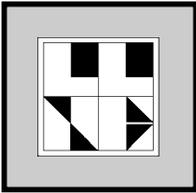
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**The Law Librarians of New England (LLNE)** is a chapter of the American Association of Law Libraries. *LLNE News*, the chapter newsletter, is published quarterly and is provided to active members as a part of their membership dues. LLNE does not assume any responsibility for the statements advanced by the contributors to *LLNE News* nor do the views expressed necessarily represent the views of LLNE or its members. Those not eligible for active membership in LLNE may subscribe to *LLNE News* by becoming an Associate Member. A check for \$10.00 (per year) should be sent to Cynthia Landau, Assistant Law Librarian and Professor of Law, Franklin Pierce Law Center, 2 White Street, Concord, NH 03301. The check should be payable to the Law Librarians of New England. Any other questions concerning *LLNE News* including requests for reprints should be directed to:

Susan M. Farago  
Business Manager, LLNE News  
Social Law Library  
Boston, MA 02108  
(617) 523-0018, Ext. 304 fax (617) 523-2458



## **EDITORIAL BOARD**

### **Editors in Chief**

Michelle Pearse  
Faculty Research/Legal Instruction Librarian  
Northeastern University Law Library  
400 Huntington Avenue  
Boston, MA 02115  
(617) 373-3883  
fax: (617) 373-8705  
m.pearse@neu.edu

John Pedini  
Director of Media Services  
Social Law Library  
1200 Court House  
Boston, MA 02108  
617-523-0018, Ext. 337  
Fax: 617-523-2458  
jpedini@sociallaw.com

### **Layout Editors**

Diane Murley  
Head of Reader Services  
Northeastern University School of Law Library  
400 Huntington Avenue  
Boston, MA 02115  
617-373-3589  
Fax: 617-373-8705  
d.murley@neu.edu

Sue Drisko  
Reference/Electronic Services Librarian  
Northeastern University School of Law Library  
400 Huntington Avenue  
Boston, MA 02115  
617-373-3331  
Fax: 617-373-8705  
s.drisko@neu.edu

### **Business Manager**

Susan M. Farago  
Business Manager, LLNE News  
Social Law Library  
Boston, MA 02108  
(617) 523-0018, Ext. 304  
fax (617) 523-2458  
sfarago@sociallaw.com

### **DEADLINES FOR VOLUME 22 LLNE NEWS**

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## **CO-EDITORS' NOTE**

Welcome to the first issue of LLNE News that has been distributed only electronically. (We hope you started getting used to this format with the digitization of our last issue!) You should have received postcards in the mail notifying you of the discontinuation of the print. Announcements of new issues will be made through the LLNE listserv. You may also sign up at <http://www.aallnet.org/chapter/llne/LLNEnews/index.htm> to be placed on an e-mail list just for announcements of new issues. If you have any questions or concerns, please contact one of us.

This is also the first issue with our new layout editors Sue Drisko and Diane Murley, both of Northeastern University School of Law, as well as former *LLNE News* editors. We wish to thank them for volunteering to take on the daunting task!

It was great to see many members at the recent Spring Meeting at Franklin Pierce Law Center. It was a fantastic meeting. If you were unable to attend, be sure to check out the various reports and photographs from the meeting.

Anyone interested in submitting items for future issues should contact John Pedini ([jpedini@sociallaw.com](mailto:jpedini@sociallaw.com)) or Michelle Pearse ([m.pearse@neu.edu](mailto:m.pearse@neu.edu)).

To those of you attending AALL in Orlando, we look forward to seeing you at the LLNE luncheon!

Co-Editors, LLNE News



## PRESIDENT'S MESSAGE

I believe this is my last message to you as President. It has been a busy and exciting year for the Law Librarians of New England. I just returned from the Spring Meeting at Franklin Pierce Law Center. The topic of the meeting was Education Law. I learned so much – the speakers were great, the food was great and the hospitality provided by Judy Gire, Cindy Landau and the rest of the staff at Franklin Pierce was fantastic. It even snowed to remind us that we are in New England!!

I thought I would take this part of my message to report on the ongoing work of the Board related to the strategic planning meeting that we held in January. During that meeting, we spent a significant amount of time looking at the structure of LLNE, specifically the committee structure. At our recent Executive Board meeting at the Spring Meeting of LLNE, we decided to act on some of the recommendations that came out of our strategic planning meeting. First, we decided to combine the Newsletter, Internet and Public Relations into a new committee – Communications. The reason for this is that these committees already work closely together and it makes sense to underscore those close connections. The present committee chairs will continue their excellent work as sub-committee chairs. Raquel Ortiz has agreed to be the overall chair and to coordinate the activities between the sub-committees. The second decision we made was to combine Membership, Placement and Recruitment into a new Committee entitled Membership Development, which will be chaired by Cathy Breen. Finally, we decided to reexamine the program planning structure. Susan Sullivan will assist me in this process. Also, Susan Sullivan and Michael Hughes will examine our By-Laws to see what changes, if any, will be necessary due to the committee restructuring.

Congratulations to the new members of the LLNE Executive Board who will take office in July at the AALL Annual Meeting in Orlando. Michael Hughes will

become your new President. Susan Sullivan has been elected Vice-President/President-Elect. Jeannine Uppgard is the new Secretary. Maureen Quinlan will join us as a new Education Director. Welcome!! I am also grateful to Jeff Flynn for agreeing to be Education Director for another year to fill the vacancy created by the election of Susan Sullivan to VP.

Thanks and my personal gratitude goes to the out-going members of the Board. Brian Harkins steps down from his great writing job as Secretary, and Susan Sullivan moves from her role of Education Director to that of Vice President. I am grateful that she is staying on the Board.

I look forward to seeing many of you in Orlando at the AALL Annual Meeting in July. We will once again have an opportunity to get together at the LLNE/SNELLA luncheon — please come to mingle and share stories of Disney World and EPCOT Center.

This coming year, there will again be two meetings - the Fall Meeting will be hosted by Northeastern. The Spring Meeting will be hosted by Suffolk.

Finally, my role on the Board will change to that of Past President. I just hope I am considered Past but not *Passé!* I have enjoyed my year and a half as President. But, I am ready to pass the gavel to Michael Hughes who I know will be a superb leader for our chapter in the coming year. Thanks to all the LLNE members that I have worked with this past year. We have a great chapter with many dedicated and hard-working members. I look forward to another great year!!

All my best,

Darcy

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## Calendar of LLNE Meetings

### Spring 2002

Education Law: Franklin Pierce Law Center Library  
Concord, NH  
April 26, 2002

### Fall 2002

Northeastern University School of Law,  
Boston, MA

### Spring 2003

Suffolk University Law School, Boston,  
MA

### Fall 2004

Social Law Library, Boston, MA

## Welcome to SLRS Online

By Carolyn Michaud, Massachusetts Trial Court Law Libraries

If you have not yet discovered it, there is a wonderful new online legal resource available for LLNE members to view. It is called SLRS Online, which stands for Statewide Legal Reference Service. Funded by the Members of the Massachusetts Board of Library Commissioners, it contains a wide array of helpful information for law library professionals, including legal reference, collection development and legal assistance referral information.

According to the site, "If it's about Massachusetts law, you'll find it here." That statement, while quite a mouthful, is literally true. Among the many helpful links you will find are an excellent bibliography for developing a legal collection and extensive topical list of "FARQ's" or "Frequently Asked Reference Questions," together with corresponding detailed answers provided by the staff of the Massachusetts Trial Court Law Libraries. There is also a feature labeled "Ask a Law Librarian!" where library professionals can e-mail individual reference questions with which they may want assistance. It is located at <http://www.slrsonline.org/>.

If you are a law library professional seeking new and improved ways to serve your organization and its users, it is worth the visit.



## Attention Simmons GSLIS Alumnae/i!

Come one, come all to the third annual Simmons GSLIS Alumnae/i Reception at AALL in Orlando, Sunday, July 21 at 5:30 PM. Watch the final conference program for the exact location.

If you have any questions, please feel free to contact Stephanie Burke ([sjburke@bu.edu](mailto:sjburke@bu.edu); 617-353-8853) or Raquel Ortiz ([rmortiz@bu.edu](mailto:rmortiz@bu.edu); 617-353-8854). We look forward to seeing you there!

## Internet Committee Update

By Raquel Ortiz, Internet Committee Chair

### Website

The LLNE website will be redesigned this summer to improve usability. Check us out on July 1st, when the new site will "go live."

In the meantime, you can still find us at <http://www.aallnet.org/chapter/llne>.

### Listserv

Beginning on July 15, the LLNE Listserv will be managed by Pat Newcombe and Nancy Johnson. They will serve as your contacts to help you with any issues relating to the listserv, from joining to resolving subscription issues. The Internet Committee thanks them for their willingness to accept this task.



## LLNE "Siteseeing"

New Website Review Column

Have you recently found a great website that you would like to share with your colleagues? *LLNE News* is starting a new column where you can submit short reviews of your favorite new (or new to you) website. Reviews dealing with any subject area are welcome. They could be for work or for fun! Simply discuss the basic elements of the website, how you have found it useful and why you are so impressed by it. Please e-mail all contributions to Michelle Pearse at [m.pearse@neu.edu](mailto:m.pearse@neu.edu).





## NELLCO News

By Tracy L. Thompson, Executive Director

In the last edition of the *LLNE News*, I provided some background information about a virtual reference pilot program that NELLCO has been developing. This month, the pilot has a name! The NELLCO collaborative reference service will be known as **Library LAWLINE** – Live Assistance With Legal Information in the NorthEast.

Following a NELLCO Directors' Meeting in April during which the plan was presented and discussed in detail, the pilot has gained a great deal of support from individual NELLCO member institutions and we are moving forward. As of today, 20 out of our 25 members have agreed to participate. Participation requires a commitment of money and staff resources. Each participating library will agree to staff the desk for 4 hours each week. In exchange, their patrons will have access to the virtual service during all of the service hours. We hope to provide virtual service 7 days a week, for a total of 54 hours weekly. We are in the process of developing a schedule that will meet everyone's needs.

I am now able to report that our software solution of choice for this pilot is [24/7](#). As you may know, 24/7 is a software product that was specifically developed for use by a large multi-type library consortium ([MCLS](#)) for the provision of virtual reference service. Because 24/7 was intended for reference use, as opposed to many options that were originally designed for commercial customer service, it focuses on the needs of librarians and library patrons. The NELLCO Virtual Reference Task Force felt that 24/7 offered the greatest functionality, a well-designed librarian interface and flexible customization at the most reasonable cost.

In early June, 24/7 will provide training to participating NELLCO librarians. One session will be held at BC Law and one at Quinnipiac University School of Law. After the training sessions, participating libraries will have the summer months to practice and become comfortable with this new tool. Then in September, we will roll out our virtual reference service for our patrons. We will evaluate the service as we go along and we expect that we will need to make changes as we discover how patrons use the service and how well we meet their needs. In May of 2003, we will evaluate the success of the pilot and decide whether to continue to offer this service to our patrons. We will keep you informed.

If you have any questions or would like to learn more about the NELLCO pilot feel free to contact me at [tracy.thompson@yale.edu](mailto:tracy.thompson@yale.edu), or any of these task force members: Kelly Browne (University of Connecticut), Jean Callihan (Cornell), Jeff Dowd (Connecticut Judicial Branch), Rebecca Engsborg (Quinnipiac), Diane Frake (Vermont Law), Meg Hayden (Massachusetts Trial Courts), Scott Matheson (Yale) and Joan Shear (Boston College).

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athlete drug policy did not violate student's federal or state constitutional searches." To further exemplify the Supreme Court's stance on school search and seizure policies, and examine what some might deem infringements on individual rights, Redfield discussed *New Jersey v. T.L.O.* 469 U.S. 325 (1985). This case involved two high school girls who were found smoking by a teacher, in a school lavatory. When the girls denied smoking, the vice principal demanded to search the student's purse. The Court decided that while the Fourth Amendment prohibits unreasonable searches and seizures applied to searches conducted by public school officials, the search of the student's purse was reasonable. Search and seizure is a hot topic, and we'll be seeing more of these cases before the Supreme Court in the future. Redfield predicts that search and seizure arguments sold as safety issues will be approved by the Supreme Court.

Harassment was highlighted in *Davis v Monroe County* 526 U.S. 629 (1999). In this case, the Supreme Court examined what constitutes sexual harassment between peers and decided that schools could be held liable for a student harassing another student(s) where harassment was "severe and pervasive" and the school was given notice and acted with indifference.

The Supreme Court has heard a number of landmark cases involving freedom of speech in schools. "Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Perhaps one of the most popular and readily used phrases that came out of *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969), this statement has become a catch phrase for school search and seizure issues. In *Tinker*, school policy forbade students from wearing armbands in protest of the Vietnam conflict. This policy was deemed unconstitutional because it denied students the right to freely express their opinions.

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In *Bethel School District v. Fraser*, 478 U.S. 675 (1986), the Court limited freedom of speech in school assemblies. In *Kincaid v. Gibson*, 236 F 3d 342 (2001), a yearbook student committee at Kentucky State University decided to use a purple foil cover on the yearbook. The University administration stopped distribution holding that the publication was “poor quality” and the color was “inappropriate.” A lower court cited earlier Supreme Court decisions, and determined that the color of the yearbook did not cause substantial disruption, and the students won. Lastly, and perhaps most interesting to librarians, Redfield discussed *Board of Education of Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982). In *Pico*, school board discretion was pitted against free speech when a school board banned books from high and junior high school libraries. More specifically, the Court addressed whether or not the First Amendment limits a school board’s discretion to remove books from a library. The Court decided that the school board’s discretion was not unlimited. In the end, the Court ruled that “local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion.”

Professor Redfield concluded with a discussion of hot topics that are sure to make their way to the Supreme Court in the near future, like school testing and federal education funding. Kudos to Professor Redfield for encapsulating a semester’s worth of information into a well organized and enlightening forty-five minute presentation.



## The Education Lawyer’s Perspective

By Stephanie Burke, Senior Reference and International Law Librarian  
Boston University School of Law Library

Where can a lawyer get the chance to deal with cutting edge issues in state and federal constitutional, labor, contract and tort law? Well, surprisingly, it is the field of education law, as Theodore Comstock, Legal Counsel for the New Hampshire School Boards Association, illustrated to attendees at the LLNE Spring Meeting on April 26, 2002, hosted by the Franklin Pierce Law Center.

Using the example of a story on National Public Radio that very morning which many heard while driving to the meeting, Mr. Comstock spoke about the issues he deals with as a practitioner of education or school law. The unique aspect of this area of the law, he pointed out, is not that it is a specialization, as much as it is representing a specialized client, a public sector municipal corporation. It is not always clear exactly whom a school attorney is representing, leading to potential conflicts of interest. For example, in New Hampshire, the voters elect the school board, and at town meetings, the school board attorney is often forced into the position of advising the school board against answering questions posed by those very voters who elected the board. The voters, as they are paying the board and have the power to re-elect the board members (or not), want the answers which lawyers such as Mr. Comstock are advising them not to give. Mr. Comstock said this can be an uncomfortable position in which to find oneself.

Even though he is the attorney representing the school board, Mr. Comstock rarely meets with the school board. Instead, he most often meets with school administrators such as the superintendent, which often results in the superintendent assuming Mr. Comstock is his or her attorney. As superintendents and school boards do not always agree, this can become an issue. Mr. Comstock must advise the superintendent or other administrators to hire their own attorneys in certain situations, like a dispute over tenure rights or the non-renewal of a teacher’s contract. If the superintendent

recommends to the school board the non-renewal of a teacher’s contract, the teacher has a right to a hearing in front of the school board. This hearing often involves many attorneys, i.e. an attorney for the school board, an attorney for the teacher, and an attorney for the superintendent. Mr. Comstock joked that it is the “full employment act for lawyers”.

The specialized client with which the education lawyer deals, Mr. Comstock went on to explain, is like a corporation, so his practice bears many similarities to corporate law; however, as the municipal corporation is a public sector entity, there are some differences as well. The education lawyer “dabbles in many areas of law,” many of which are “statute rich,” including federal and state constitutional law, employment law, real estate law, torts, insurance law, and labor law. A school lawyer such as Mr. Comstock also deals frequently with administrative agencies such as the Department of Education.

The client also, as a public entity, is usually fairly “thrifty, or some could say cheap,” Mr. Comstock pointed out, so they will often call ahead for advice on a matter rather than chance expensive litigation. Also, as the school board and superintendent are in political positions, they often request advice prior to taking action in an attempt to avoid any political repercussions.

On the topic of how he performs his legal research, many in the crowd of law librarians cringed when Mr. Comstock explained he is often forced to do what he termed, “arms length research,” meaning he used whatever he could reach from his desk. He said that this is often his only alternative because of the tight turnaround time required by the client. Plus, the client does not like large bills for research time. He said he often has to go out on a limb, giving immediate advice or answers. Additionally, he added, he often calls a law librarian for expert assistance so he can confidently fulfill those quick turnaround requests.

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The career path of a school lawyer is not usually a direct route after law school. Mr. Comstock, the child of a school board member, says he is unusual in that respect. Most school lawyers come into the practice after practicing as one of a few lawyers in a small town, primarily as a generalists, or alternatively, from practice at a smaller law firm. The recent trend has been for larger law firms entering the field of school law, Mr. Comstock pointed out, likely because the school board is sure to pay their bills, and on time.

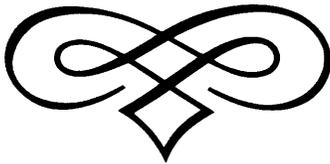
To wrap up his presentation, Mr. Comstock summed up what school attorneys look for from law librarians. He said that the school attorney will likely not know a lot about any particular area of the law, equating them to “liberal arts lawyers.” Additionally, he advised librarians not to assume school lawyers know everything about education law, and if they ask for a “little review” of an area, he said most likely that is code for the fact that they are “clueless.” And further, he added, do not assume that school lawyers are comfortable using computers and technology. He said librarians are important to school lawyers to help get them back on track or started out on the right track in their rich and varied area of law.



AALL Executive Board member Sally Holterhoff addresses the luncheon crowd

### **AALL Recognizes LLNE Effort**

Law Librarians of New England (LLNE) has been selected as the recipient of the 2002 AALL Comprehensive Chapter Professional Development Award for its Introduction to Legal Research course. The award will be presented in Orlando at a reception preceding the Association Luncheon on Monday, July 22. Joan Shear (Boston College Law Library) the creator and designer of the course, will be accepting the award on behalf of LLNE. Special thanks go to Joan and Chris Swan (New Hampshire State Law Library) for their efforts in making the course worthy of such a distinction!



## Executive Board Members and Committees For 2002/2003

Thanks to this year's Nominating Committee: Anne Acton (New England School of Law), chair, Nanette Balliot, (Roger Williams University School of Law) and Karen Moss (U.S. Court of Appeals, 1st Circuit) for their hard work.

### Officers:

President: Michael Hughes  
Vice-President/President Elect: Susan Sullivan  
Secretary: Jeannine Uppgard  
Treasurer: Cynthia Landau  
Education Directors: Jeff Flynn and Maureen Quinlan

In addition to new officer appointments, there will be some fundamental structural changes to the committee structure of LLNE. The bylaws will be amended to accommodate these changes.

### Committees:

Communications Committee (comprised of the subcommittees: Internet, Newsletter and Public Relations): Raquel Ortiz, Chair

Membership Development Committee (formerly the Membership, Recruitment and Placement Committees): Cathy Breen, Chair

Scholarships Committee: [vacant]

Service Committee: Stephanie Burke, Chair

Government Relations: Kelly Browne, Chair

## What Are You Reading?

By Diane Murley, Head of Reader Services  
Northeastern University Law Library



*What Are You Reading* will return in the next issue.

If you have read something that you recommend, send the author, title, and a few sentences about why you recommend it to [d.murley@neu.edu](mailto:d.murley@neu.edu). It can be a book, magazine, or article of any genre. When the editors send out the call for articles, I will compile the recommendations I have received into a column for everyone. Thanks for your help.



## Pictures from LLNE's 2002 Spring Meeting at Franklin Pierce Law Center



Members of the Franklin Pierce staff and faculty offer technical assistance



Professor Susan Richey on *Digital Education Comes of Age*



Brian Harkins was a lucky winner of a gift basket at the luncheon



Library Director Judith Gire welcomes the attendees



Luckily, nobody had to wear the dreaded dunce cap

## **Digital Education Comes of Age**

Presented by Professors Jon Garon and Susan Richey of the Franklin Pierce Law Center at the LLNE Spring Meeting, April, 2002

by John Pedini, Social Law Library

After a very enjoyable lunch and productive general business meeting in the Jury Box Café, the dining area of the Law Center, those remaining in attendance settled once again into Room 205 of the Dane Buck Building for the final session of the day, *Digital Education Comes of Age*, presented by two members of the Franklin Pierce faculty, John Garon and Susan Richey. First to speak on the aspects of content control of intellectual property in distance learning was Professor Garon.

Jon Garon comes from a background in theater and psychology, where he earned a Bachelor of Arts degree at the University of Minnesota, and teaches primarily in entertainment, copyright and first amendment law. He began his talk by stressing the importance of copyright of intellectual property in digital education. He, for instance, copyrights his own syllabus. The control of content is seen in his eyes as the most contentious issue. If one is either teaching in an institution or employed by a corporation, it is customary for the content of the individual's online presentation to be controlled by the institution or the corporation, not by the individual. Also, much of the work done in the realm of academia is by adjuncts who may not even work solely for the institution for which they educate. Their contributions are considered "specially commissioned works" and may still be subjected to content control by the institution. Traditionally, senior faculty members are more in control of their content, transferring their intellectual property to storage formats that can be more closely guarded, but as the range and scope of digital education technology increases and software becomes more sophisticated, it becomes more likely that all information will need to be shared. The solution to rights of content control in online intellectual property, he says, will most likely be found in collective bargaining and arbitration.

Professor Garon went on to speak about the technical nature of digital education today. Standing as he was in

one of the nice new classrooms in the Franklin Pierce facility, he made mention of the specially designed and installed interactive video cameras mounted on the wall. They were positioned on swivel mounts and programmed to respond to the voices of the students, which could be picked up by microphones placed on the tables. Such an automated system allows for immediate and accurate coverage of an interactive seminar or class, increasing the amount of information being exchanged and reducing the response time between destinations.

He also made mention of a trend developing in digital education. While more and more digital education or distance learning is being done in the adult college and remote community college realm, the most digital education done today is by corporations, most notably IBM. Certain other established universities, like the University of Phoenix, for instance, are offering extension classes as a byproduct of the tremendous advantage of recent developments in digital technology and the broad range of education possibilities.

Professor Susan Richey then took the podium and began by saying how exciting it was to talk to a room full of information professionals. Who could disagree? She discussed her background of private practice, which included business-related disputes involving trademark, copyright and trade secret matters as well as counseling corporate clients with regard to advertising law compliance. She also made mention of her passion for intellectual property and privacy concerns raised by e-commerce. With that, she launched into her talk, beginning with the subject of internet filters, mentioning by name specific brands, such as Cyber Patrol, Cyber Snoop, AOL Parental Control and a version by the Norton Company. Confessing that none of the systems would ever be entirely reliable, she then discussed just how reliable or unreliable they were. Citing AOL Parental Control as the best, she observed that some, if not all, of the others would let as much as 20% of unwanted content through. Granted, internet filters alone never offer enough security for most families or institutions, and the content is not always a black and white issue. For instance, young students researching

sensitive subjects such as sexuality may find their choice of content limited by filters, which block out this information as a matter of their function. She suggested the three-part form of overall security-software analysis of site content combined with human analysis of site content along with a voluntary rating system as the best method of guaranteeing maximum security while allowing the most amount of reasonable access.

Professor Richey then discussed a matter of recent news in the area of online security, that being the Supreme Court's partial invalidation of the Children's Internet Protection Act, which was attacked by numerous groups including the American Civil Liberties Union (ACLU) on First Amendment grounds. Among the causes for concern was the aspect of federal funding for public libraries where the libraries were in danger of losing government dollars if they could not prove compliance with the Act under a "bona fide research purposes" clause governing online use. The ACLU warned of the "chilling effect" on First Amendment infringement on minors as well as adults, and the odious burden of public research facilities once again coerced by bureaucracy into an enforcement role regarding access to information.

Finally, Professor Richey confronted the recent adoption of the United States of America Patriot Act. With its sweeping revision of existing statutory laws allowing greater government intervention in the interest of national security, Professor Richey naturally sees it as a threat to the privacy of all American citizens. Traditionally innocuous matters such as online search terms and list service postings now give cause for the federal government to request personal information from Internet Service Providers without the usual amount of judicial review checks, such as subpoenas and court orders. The bill also compels libraries and educational institutions to disclose records of patrons and students without the need of a court order or individual consent, presenting hazards to personal privacy unknown to the person being investigated.

Who knows, I could be the subject of an investigation just because of this article . . .



Anne Edwards and Andru Volinsky give their presentation: *Education Funding Litigation: NH and Across the Nation*

## Educational Funding

by Brian Flaherty, Suffolk University Law Library

The third program on Friday, entitled "Educational Funding Litigation; NH and Across the Nation," was one of the best, and most informative presentations that I've seen. It was broken down into two parts. First: a surface dissection of the *No Child Left Behind Act of 2001*, P.L. 107-110. Second: a detailed discussion of the educational funding litigation in New Hampshire presented by opposing counsel in the case, Andru Volinsky and Anne Edwards. The discussion of the No Child Left Behind Act followed a presentation by the New Hampshire Department of Education from March, 2002. It was a very good description of the major provisions of the act. The better part of the program, however, was the point/counterpoint discussion of the funding cases in New Hampshire, known as the Claremont cases. Those who attended are in debt to Mr. Volinsky and Ms. Edwards for an outstanding program.

### No Child Left Behind

On January 8, 2002, George Bush signed the biggest, certainly the longest piece of educational legislation in almost a decade, the *No Child Left Behind Act of 2001*, P.L. 107-110. This mammoth piece of legislation affects schools in what look, on paper, to be positive ways. The act increases education funding substantially, provides for some flexibility in funding, but then ties the greatest increases in funding to school accountability and testing.

First, the act tries to provide for more local control for school boards. For example,

federal funding is usually tied to specific programs. However, under the act, schools may transfer up to 50% of state and federal money between programs, except schools cannot transfer money from either Title I or Title III funds.

At the same time, however, the act imposes stricter standards for teachers, and even paraprofessionals. In the past, it has been enough that teachers were simply certified. Now they must be certified in a specific area, and be teaching in that area. All new paraprofessionals are required to have some degree of higher education, and current paraprofessionals are given four years to satisfy the requirement. All teacher training, as well as all teaching, must be based on existing research.

The act articulates a very clear focus on reading and literacy, by funding a number of literacy programs including "Reading is Fundamental," "Even Start Family Literacy," and "Early Reading First" grants. Again, the act is very specific in requiring school reading programs to be "based on scientifically-based research." The focus on math and science is a bit less specific: section 2201 provides funding for "mathematics and science partnerships" to encourage instruction and learning, develop curricula, and ultimately improve the academic performance of students in both math and science.

The most controversial provisions of the *No Child Left Behind Act* are those which create systems for state and federal accountability, and tie those systems of accountability to substantial increases in federal funding. According to the act, each state which accepts Title I funds, needs to come up with its own unified system of accountability. Each state must define "adequate yearly progress" for their own school system, and then institute annual standardized testing to see that each school is "measuring up." Furthermore, every two years a sample of fourth and eighth graders will take the National Assessment of Educational Progress exams (NAEP) to see that the state is "measuring up" nationally. The act provides a graduated series of consequences for school districts not making "adequate yearly progress" (AYP). After two consecutive years of not making AYP, the school must implement a two-year plan for improvement, but also give students the option to transfer to any other school in the district (and pay for transportation). If the school fails to make AYP the next year, it must offer "supplemental services," such as tutoring, for students in need. If the school fails again to make AYP, the school must choose from a variety of "corrective actions," including hiring an outside expert, extending the school year or day, or more radical restructuring. At this point, parents may also choose to send their child to a "higher performing" school outside of the school district. If the school fails to make AYP for five consecutive years, the state is required to implement restructuring, the dreaded "state takeover."

While the act sets out detailed guidelines for determining "adequate yearly progress," it does not speak to the difficulty of creating a statewide standard to incorporate the existing diversity in school systems. How does one create a single test to adequately measure both the well-funded, over-performing school districts, and the poorly-funded, under-performing school districts? While the act purports to strengthen local control, it seems also to remove some freedom by requiring standards, and tying those requirements to funding and school autonomy. In the past, schools required to perform well on standardized tests in order to maintain or increase funding have limited their curricula to those items that are to be tested, so-called "teaching to the test." This has tended to curtail school freedom, and cut into such frivolous programs as art, and physical education (which go generally untried by standardized testing). Finally, the act does increase funding substantially, but then requires schools to implement involved, costly standardized testing. Some states are asking themselves if all of the provisions for accountability: adequate yearly progress, standardized testing, graduated sanctions for not "measuring up," the looming spectre of "state takeover," are really worth the money. Mr. Volinsky noted that Vermont was actually thinking of declining the Title I money, not as a philosophical stand against standardized testing, but as a practical matter: it would cost more to implement the systems for accountability than the increases provide.

**Claremont and the Constitutional Right to an "Adequate" Education.**

Scratch the surface of most school law debate about the constitutional rights of students in schools, discipline, harassment, even vouchers, and you will find the same fundamental question: does there exist a constitutional right to an adequate education? More specifically: does the constitu-

tion impose a duty on the state to *fund* an adequate education?

New Hampshire has been fighting the battle over state funded “adequate education” since 1991. In 1990, Andru Volinsky, one of the presenters in the program, shared a gym locker next to Arpiar Saunders. One day the locker room talk turned to educational funding, and Mr. Saunders suggested to Mr. Volinsky that he might like to join forces in a suit filed against the state of New Hampshire to get the state to take responsibility for funding an “adequate education,” a duty Mr. Saunders believed was imposed on the state by Article 83 of the New Hampshire State Constitution. Together they filed suit in June 1991, believing that the litigation would last “maybe about 18 months at the outside.”

In 1993, the Supreme Court of New Hampshire, reversing a lower court decision, held that the legislature was constitutionally responsible for providing an adequate education (*Claremont v. Governor*, 138 NH 183, 635 A.2d 1375 (1993)). The case was remanded for trial, where the court held that the education provided at the plaintiff school districts *was* constitutionally adequate, and that the system for financing public education was not unconstitutional. The case was again appealed to the Supreme Court of New Hampshire, which didn’t speak to the adequacy of the education in the plaintiff schools, but held that the system for funding public education in New Hampshire was unconstitutional. The concluding sentence of the majority opinion of this case, known as *Clermont(II)*, reads: “We are confident that the legislature and the Governor will act expeditiously to fulfill the State’s duty to provide for a constitutionally adequate public education and to guarantee adequate funding in a manner that does not violate the State Constitution.” (*Claremont v. Governor*, 142 N.H. 462, 476, 703 A.2d 1353, 1360 (1997)) That was on December 17, 1997. The legislature has still not been able to come up with a system acceptable to the Supreme Court for financing public education. (In fact, on April 11, 2002, two weeks before the program at Franklin Pierce, the New Hampshire Supreme Court issued yet another *Claremont* opinion, stated that the legislature’s most recent attempt, the “New Hampshire Education Improvement and Assessment Program (NHEIAP)[.] did not meet State’s obligation to develop system to ensure delivery of constitutionally adequate education.”).

The second half of the program on educational funding was an excellent overview of these *Claremont* cases, presented by Andru Volinsky, counsel for the plaintiffs, and Anne Edwards, the associate Attorney General, who currently represents the state. Mr. Volinsky presented first, and discussed the various maneuvering that went on following the 1997 decision and directive by the court that the legislature come up with an equitable system for funding public education. In 1998 the legislature proposed a statewide property tax at a uniform rate, to be phased in over five years. The Supreme Court of New Hampshire declared this “phase in” unconstitutional. The statewide tax was passed in 1999, without the phase-in provision. The act, 1999 Ch. 17, establishes a “uniform property tax” specifically intended to “fund[] an adequate public education.” In addition to creating this tax, it also restructures the way education is funded: before the *Claremont* litigation, only 8% of the money used for public education was derived from state aid; this was the lowest percentage in the country. Now, following the 1999 legislation, 24% of the money comes from the state. While this is better, it still leaves New Hampshire in the lower tier in terms of state aid for public education.

Anne Edwards took over as counsel for the state in 1998. Since that time, she says, most of the work done on *Claremont* has been legislative. She discussed the 1999 act in greater detail, disagreeing with Mr. Volinsky on the amount of state aid given for public education. She counts the “uniform property tax” as state money used to fund education. She points out that it is money collected by, and then redistributed by the state. And so while Mr. Volinsky shows state aid used to fund public education increasing from 8 to 24%, Ms. Edwards sees a much higher jump, to 46%. Mr. Volinsky counters that this is local funding, and points out that save Vermont, all other states count the statewide property tax that is raised and kept locally as local money.

No matter the figures, the progress has been slow. Both she and Mr. Volinsky pointed out the difficulties of getting things done at a state level in “Live Free or Die” New Hampshire. True to their motto, folks from New Hampshire tend to value local control, and distrust any kind of state intervention (certainly when it’s called *tax*, but even when it’s called *aid*). Also, New Hampshire governors serve for two years at a time. They

are forever in “campaigning mode,” and no candidate in his or her right mind is going to run on a platform of “New Taxes” and expect to get elected.

It was refreshing to see opposing counsel so downright friendly towards one another. While they clearly disagreed on a number of points, they seemed at times more like co-presenters rather than attorneys on opposite sides of a case. While the majority of the information included in the presentation was specific to New Hampshire, Mr. Volinsky pointed out where we might find more information about education funding litigation in other states. The question of equity in education funding is so controversial as to have been the source of litigation in 43 states thus far, all well indexed and detailed at <http://www.accessednetwork.org>. There is, it seems, a model: in 1989, the Kentucky Supreme Court declared “Kentucky’s entire system of common schools [] unconstitutional.” *Rose v. Council for Better Education*, 790 S.W.2d 186, 215 (1989) The Kentucky legislature responded in triumphant fashion with the *Kentucky Education Reform Act of 1990* (Ky. St. 1990 ch. 476). Throughout the presentation, both Mr. Volinsky & Ms. Edwards pointed to “KERA” as a model that seems to be working. With equitable funding for education such a clear problem, the existence of such a model is a welcome step towards a solution.



# WHAT'S HAPPENING IN MEMBERS' LIBRARIES

## Connecticut State Law Library Completes Move

The Connecticut State Library recently completed a move of library and archival collections to a newly renovated offsite storage facility. The William B. Meyer Company cleaned and moved more than 31,000 archival items, 33,000 books and periodicals, 3500 volumes of original Connecticut newspapers, and 3500 linear feet of state and federal Supreme Court records and briefs to the new site. The transfer has temporarily alleviated a severe space shortage at the main library on Capitol Avenue in Hartford, and consolidated archival collections housed at several other locations. Additional in-house shifting will be accomplished over the summer to take advantage of the space regained by the move. The new location also includes conference and computer training facilities. According to Denise Jernigan, the Library will provide daily retrieval of offsite items requested by patrons.

The University of Connecticut School of Law Library has had a few staffing changes and additions. Christine Aschenbrenner joined the staff in the role of network manager in March. Barry Hannah, formerly of the Trinity College library staff, joined University of Connecticut Law School Library's Access Services team in January. Celeste Feather took on additional responsibilities as the new Associate Law Librarian for Library Services, combining what were formerly the Public Services Department and the Bibliographic Services Department into a unified department under her management. Celeste Feather and Peter Murray became the proud parents of Erin Murray this past November, becoming the first new parents on the University of Connecticut Law Library staff in more than 10 years.

## Vermont Law School Receives Award

Christine Ryan and Chuck Papirmeister report they "are absolutely thrilled" that the Vermont Law School Library has been chosen as the recipient of the 2002 AALL/Findlaw Excellence in Marketing Award for Best Use of Technology.

Chris and Chuck produced and edited "The Legal Research Project," a digital video parody of The Blair Witch Project. The purpose of the project was to make an engaging video that promoted the value of legal research and law libraries.

Creating the video was a collaborative affair. Chris and Chuck engaged a student director (who now serves as the Editor and Chief of Vermont Law Review) and involved Vermont Law School deans, students, and librarians.

The premiere of the video - starring students, faculty and the Dean of the law school - occurred during the first VLS faculty meeting last fall and won rave reviews. Later, legal research instructors showed the video in their first-year legal research classes; then, on Halloween, the video played for the entire VLS community.

The video was publicized by a student-designed movie poster, the VLS Film Society, an article in the library newsletter, and a posting on the VLS Intranet. The IT department burned the video onto CD-ROMs which were inserted into custom-made jewel cases. The video is available online at <http://www.vermontlaw.edu/Life/VirtualTour/LRPStream.mov>  
See the ending to discover the Kelly Browne connection!

## Law Librarians of New England Spring Meeting 2002, Franklin Pierce Law Center Business Meeting

President Darcy Kirk opened the meeting by thanking the staff of Franklin Pierce for the excellent arrangements. She also commended the 1st graders whose artwork decorated the dining room.

Darcy announced some changes in LLNE's committee structure, the details of which appear in the newsletter. She announced Maria Sekula's retirement from the newsletter layout and thanked Maria for making the newsletter an attractive publication. Treasurer Cynthia Landau gave her report, saying that LLNE's finances are sound.

Darcy then delivered the report of the Nominating Committee. New Executive Board members would be Susan Sullivan, Boston College, Vice President/President-Elect and Jeannine Uppgard, University of Connecticut, Secretary. The Membership then approved the nominations. Maureen Quinlan, University of Maine will chair the Education Committee. John Pedini, Social Law Library and Michelle Pearse, Northeastern University School of Law Library, will edit the newsletter.

Sally Holterhoff, Valparaiso University and American Association of Law Libraries Board member making the annual Chapter visit gave a brief speech. She focused on the importance of maintaining professionalism at a time of great flux in the delivery of information. She cited an April 2002 Illinois Bar Journal article in which an attorney claimed that all of the information an attorney would ever use is readily available for free on the Internet. Librarians, she said, must counter such misinformation at every opportunity and in every medium.

The meeting then adjourned for the afternoon sessions.

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# Membership News

## Eastern Massachusetts

In April, Boston College Law Library Legal Information Librarian Irene Good gave a presentation entitled "Teaching Techniques for Immigration Research" to the Southeastern Association of American Law Libraries in Fort Lauderdale, Florida.

Raquel Ortiz has been promoted to Head of Reference Services at Boston University's Pappas Law Library. Her former position was Senior Reference Electronic Services Librarian. Prior to Boston University, Raquel was Information Access Librarian at Harvard Law School Library.

## Massachusetts Trial Court Law Libraries

Lois Kane, who recently retired from the Fall River Law Library as Head Law Librarian, was inducted into the Massachusetts Library Association Hall of Fame on May 3, 2002. The award was presented at a luncheon held during MLA's Annual Conference at the Seacrest Resort and Conference Center in Falmouth. Lois, who was one of four inductees, was honored with a recognition gift, a medal, and a certificate. MLA Hall of Fame inductees must be practicing, retiring, or retired librarians who have made a substantial contribution to the advancing the cause of Massachusetts libraries and/or librarianship over a career of at least ten years. We congratulate Lois on receiving this distinct honor.

## LLNE Law Librarians Walk for Hunger

On May 5, 2002, the LLNE Service Committee held its inaugural event as it participated in the 34th Annual Walk for Hunger. Sue Drisko and Michelle Pearse, both of the Northeastern University School of Law Library, along with Margaret Cianfarini of the Harvard Law School Library, completed the twenty-mile walk in what could not have been more perfect weather. In total, they raised \$625 for Project Bread. The Service Committee hopes to see more LLNE members at next year's Walk for Hunger. Learn more about the event at <http://www.projectbread.org/Walk/walk.html>.

If you have some ideas for future projects or want to learn more about the Service Committee, please contact Stephanie Burke, Committee Chair at [sjburke@bu.edu](mailto:sjburke@bu.edu) or (617) 353-8853.

## New England Innovative Law Users Group Meeting Announced

The annual New England Innovative Law Users Group (NEILUG) meeting is scheduled to be held on Friday, October 4, 2002. It will be sponsored by the Suffolk University Law School Library and will be held at the Law School in downtown Boston. Registration and more detailed program information will be mailed out over the summer. Please share this information with all interested staff members at your institution. For further information or for program suggestions, please email David Turkalo at Suffolk at: [dturkalo@suffolk.edu](mailto:dturkalo@suffolk.edu)



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# DIRECTORY OF OFFICERS AND CHAIRS 2001/2002

## OFFICERS

### President

Darcy Kirk  
Law Librarian  
University of Connecticut  
School of Law Library  
39 Elizabeth Street  
Hartford, CT 06105-2213  
(860) 570-5109  
fax (860) 570-5104  
dkirk@law.uconn.edu

### Vice President/President Elect

Michael Hughes  
Associate Director  
Quinnipiac University School of Law  
Library  
275 Mount Carmel Ave  
Hamden CT 06518-1940  
(203) 582-3318  
fax : (203)  
michael.hughes@quinnipiac.edu

### Treasurer

Cynthia Landau  
Assistant Law Librarian and Professor of  
Law  
Franklin Pierce Law Center  
2 White Street  
Concord, NH 03301  
(603) 228-1541 ext. 1132  
fax (603) 228-0388  
clandau@fplc.edu

### Secretary

Brian J. Harkins  
Assistant Librarian/Head of Public  
Services  
Social Law Library  
1200 Court House  
Boston, MA 02108  
(617) 523-0018 x332  
fax (617) 523-2458  
bharkins@sociallaw.com

### Past President

(vacant)

### Educational Directors

Susan Sullivan  
Public Services Librarian  
Boston College Law Library  
885 Centre Street  
Newton, MA 02459  
(617) 552-4407  
fax (617) 552-2889  
sullivsu@bc.edu

Jeff Flynn  
Suffolk University Law Library  
120 Tremont Street  
Boston, MA 02108-4977  
(617) 305-1614  
fax (617) 723-3164  
jflynn@suffolk.edu

## COMMITTEE CHAIRS

### Government Relations

Kelly Browne  
Head of Reference  
University of Connecticut School of Law  
Library  
39 Elizabeth St.  
Hartford, CT 06105-2213  
(860) 570-5071  
fax (860) 570-5104  
kbrowne@law.uconn.edu

### Internet

Raquel Ortiz  
Reference & Electronic Services  
Librarian  
Boston University Pappas Law  
Library  
765 Commonwealth Avenue  
Boston, MA 02215  
(617) 353-8854  
fax (617) 353-5995  
rmortiz@bu.edu

### Introduction to Legal Research Course

Christine Swan  
State Law Librarian  
New Hampshire State Law Library  
Supreme Court Bldg. W  
One Noble Drive  
Concord, NH 03301  
(603) 271-3777  
fax (603) 271-2168  
CHSwan@compuserve.com

### Membership

Christine Ryan  
Reference Librarian  
Vermont Law School  
Julien and Virginia Cornell Library  
9 Chelsea St.  
P.O. Box 60  
South Royalton, VT 05068  
(802) 763-8303 Ext. 2448  
fax (802) 763-7159  
cryan@vermontlaw.edu

### Newsletter Co-Chairs

Michelle Pearse  
Faculty Research/Legal Instruction  
Librarian  
Northeastern University Law Library  
400 Huntington Avenue  
Boston, MA 02115  
(617) 373-3883  
fax: (617) 373-8705  
m.pearse@neu.edu

John Pedini  
Director of Media Services  
Social Law Library  
1200 Court House  
Boston, MA 02108  
617-523-0018 Ext. 337  
fax: 617-523-2458  
jpedini@sociallaw.com

## Placement

Susan Zeigfinger  
Associate Librarian/Technical  
Services  
Vermont Law School  
Julien and Virginia Cornell Library  
9 Chelsea St.  
P.O. Box 60  
South Royalton, VT 05068  
(802) 763-8303 Ext. 2446  
fax (802) 763-7159  
szeigfin@vermontlaw.edu

## Public Relations

David Turkalo  
Assistant Director for Technical Services  
Suffolk University Law Library  
120 Tremont Street  
Boston, MA 02108-4977  
(617) 573-8079  
fax (617) 723-3164  
dturkalo@suffolk.edu

## Recruitment

Cathy Breen  
Law Librarian  
United States Attorney's Office  
United States Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3321  
cbreen@justice.usdoj.gov

## Scholarships

Susan Sullivan  
Boston College Law Library  
885 Centre Street  
Newton Centre, MA 02159-1161  
(617) 552-4407  
fax (617) 552-2889  
sullivansu@bc.edu

## Service

Stephanie Burke  
Senior Reference Librarian and International  
Law Librarian  
Boston University, Pappas Law Library  
756 Commonwealth Avenue  
Boston, MA 02215  
(617) 353-8853  
fax (617) 353-5995  
sjburke@neu.edu