



American Association of Law Libraries
MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

The AALL Washington E-Bulletin

<http://www.aallnet.org/aallwash/>

Vol. 2010, Issue 3
March 31, 2010

IN THIS ISSUE

SPECIAL ANNOUNCEMENTS

- [Advocacy Training Agenda Now Available – Register Today!](#)

UPDATES FROM THE HILL AND THE GOVERNMENT RELATIONS OFFICE

- [Sunshine Week Spotlight on FOIA](#)
- [OpenTheGovernment.org and AALL Host Successful Sunshine Week Webcast](#)
- [House Passes Bill to Ensure Preservation of Electronic Communications](#)
- [Sen. Lieberman Sends Letter in Support of FY 2011 Financial Services and General Government Appropriations Bill](#)
- [U.S. Supreme Court Launches New Web Site](#)
- [Federal Communications Commission Releases National Broadband Plan](#)

OUTSIDE THE BELTWAY: CHAPTER NEWS

- [NOCALL Sacramento Hosts Local Sunshine Week Program](#)
- [Update on Connecticut Courthouse Library Closures](#)
- [LLAM Tracks Bills to End Print Distribution of County Codes](#)

FREE TIME WELL SPENT: Further Reading for the Information Policy Junkie

- [Federal Judicial Center's Report on National Security Case Studies](#)
- [Timely Law Review Articles on State Secrets Privilege](#)

- [CRS Report on Congressional Oversight](#)
- [New Title Added to LLSDC Source Book, “Sources for Finding Mandated Reports to Congress by U.S. Federal Agencies”](#)
- [C-SPAN Launches New Searchable Archive with 23 Years of Video Online](#)
- [Federal Computer Week’s Featured 100 Federal IT Winners](#)

SPECIAL ANNOUNCEMENTS

Advocacy Training Agenda Now Available – Register Today!

This year’s half-day Advocacy Training, “[Raising the Bar in Your State](#),” will be held on July 10 from 8:30 a.m.-12 p.m.. As you can see from our [Final Agenda](#), we’ll be hosting concurrent open brainstorming sessions on concrete ways to promote our **two top priorities at the state level—the value of state, court and county law libraries and the progress of our [AALL State Working Groups](#)**, including the development of a national inventory of primary legal information.

If you can join us in Denver, you’ll be able to choose between these two important breakout sessions:

- The first will feature an interactive panel discussion led by SCCLL-SIS Board Member Joan Bellistri, with several public law librarians who have successfully dealt with a funding crisis in their state. We want *you* to brainstorm about what new tools we can develop collaboratively and make available on AALLNET. These new tools will help us demonstrate the value of public law libraries and build allies to help promote their unique role in providing access to justice.
- The second, led by GRC member Catherine Dunn, will include a dialogue with the coordinators of several of our state working groups on the successes and challenges they’ve faced. Paul Lomio and Erika Wayne, who are working with NOCALL and AALL’s California Working Group to develop and test the prototype for the national inventory, will then summarize progress to date. They’ll also lead a group discussion for new ideas on how to populate the inventories down to the local level. If you have a laptop, please be sure to bring it along!

Thanks to the impressive response from many of *you*, we now have more than 170 volunteers for our [state working groups](#). Even though you may not be able to attend our training session this summer, please [contact Emily Feldman](#) if you’re interested in participating in your state’s working group but haven’t yet volunteered.

More than 40 AALL members already registered for the July 10 Advocacy Training, and we'd love to have you join us too! To register, please [send Emily an email](#) by June 1.

UPDATES FROM THE HILL AND THE GOVERNMENT RELATIONS OFFICE

Sunshine Week Spotlight on FOIA

On March 15, the National Security Archive released its eighth annual [audit](#) on agencies' responsiveness to the Freedom of Information Act (FOIA). This year's audit found that only 13 of the 73 agencies that responded to the Archive have made concrete changes in their FOIA practices. In addition, several agencies continue to have severe backlogs in processing requests, with some requests lingering for as many as 18 years.

During Sunshine Week, [Sen. Patrick Leahy](#) (D-VT) and [Sen. John Cornyn](#) (R-TX), long-time FOIA advocates and the authors of the *OPEN Government Act* (P.L. 110-175), introduced the *Faster FOIA Act* ([S. 3111](#)) to address this backlog problem. AALL has promoted passage of this legislation since Senators Leahy and Cornyn first introduced it more than five years ago. The bill would establish a temporary commission that would be charged with producing a report to Congress and the President within one year with steps that should be taken to reduce delays in the administration of FOIA. On March 17, AALL joined 33 other open government groups on a [letter](#) to Senators Leahy and Cornyn in support of the bill.

On March 18, 2010 the House Oversight and Government Reform Committee's [Subcommittee on Information Policy, Census, and National Archives](#) held a [hearing](#) to examine current FOIA trends. Melanie Pustay, Director of the Department of Justice's Office of Information Policy (OIP), and Miriam Nisbet, Director of the National Archives and Records Administration's (NARA) new Office of Government Information Services (OGIS), testified before the Subcommittee.

Ms. Pustay focused her testimony on the work OIP has been doing to educate departments about their responsibilities under the new guidelines. Miriam Nisbet, who will be speaking at this year's Annual Meeting during a Government Relations Committee-sponsored program titled "[The Future of FOIA](#)," discussed the progress OGIS has made since opening its doors in September 2009. OGIS has been working closely with DOJ, other Federal agencies and FOIA requesters and advocates to identify challenges and solutions to FOIA's administration. OGIS is also developing its role as a mediation provider for requesters.

The hearing also included testimony from Chief FOIA Officers at the Department of Homeland Security and Environmental Protection Agency, a representative from the Government Accountability Office (GAO), and a number of FOIA experts. GAO's [testimony](#) focused on the ways in which the increased reporting requirements, mandated by Attorney General Eric Holder's [guidelines](#) and the [Open Government Directive](#), will

allow GAO to better assess agencies' progress on FOIA implementation, particularly in addressing backlogs.

OpenTheGovernment.org and AALL Host Successful Sunshine Week Webcast

On Friday, March 19, OpenTheGovernment.org and AALL hosted the fifth annual Sunshine Week Webcast, "[Building Transparency](#)." The Webcast featured panel discussions on the Administration's efforts to change the culture of secrecy, agencies' progress on FOIA, and ways that developers and advocates are using government data to create new innovative tools.

During the first panel, Norm Eisen, Special Counsel to the President for Ethics and Government Reform, explained some of the [Administration's efforts](#) to make the government more transparent. Mr. Eisen specifically cited President Obama's [Memorandum on Transparency and Open Government](#) and the [Open Government Directive](#) as evidence of the shift toward a culture of openness. He acknowledged that attention is still needed to strengthen FOIA, but cited a new [memorandum](#) issued on March 16 by White House Chief of Staff Rahm Emanuel and White House Counsel Bob Bauer as evidence of the Administration's commitment to address longstanding problems with FOIA, such as the growing backlogs. The memorandum urges agencies to update all FOIA guidance and training materials to include the principles of transparency articulated in the President's [memorandum](#).

The second panel featured Miriam Nisbet of OGIS; Melanie Pustay of the DOJ OIP; Melanie Sloan, Executive Director of Citizens for Responsibility and Ethics in Washington; and Kevin Goldberg, counsel for the American Society of News Editors. While each panelist acknowledged the progress on FOIA during the past year, all agreed that there is still more work that needs to be done to improve agency responses to FOIA requests and ensure more government transparency.

Sean Moulton, Director of Federal Information Policy at OMB Watch, moderated the third panel, which featured Laura Beavers, National KIDS COUNT Coordinator for the Annie E. Casey Foundation, and Eric Gundersen, President and co-founder of Development Seed. The panelists discussed how they use government data, such as the new datasets on [Data.gov](#), to create new online tools that strengthen their policy positions at the local and international levels.

As in past years, local co-sponsors and sites around the country showed the Webcast and hosted events in their communities. We are very grateful to NOCALL and Lyon County Law Library in Emporia, Kansas for hosting Sunshine Week programs. A summary of NOCALL's event is [described below](#).

House Passes Bill to Ensure Preservation of Electronic Communications

On March 17, the House of Representatives passed the *Electronic Message Preservation Act* ([H.R. 1387](#)) by voice vote. The bill, which AALL supports, directs the Archivist of the United States to promulgate regulations on the capture, management, retrieval, and preservation of White House emails and other electronic communications.

The need for effective e-records management practices was highlighted at a Senate Judiciary Committee [hearing](#) on February 26 on the findings of an [investigation](#) by the Department of Justice's (DOJ) Office of Professional Responsibility (OPR) into the Office of Legal Counsel's memoranda on issues relating to the CIA's use of "enhanced interrogation techniques." The report revealed that the OPR investigation had been obstructed by the loss of emails belonging to former DOJ lawyers John Yoo and Patrick Philbin, in apparent violation of the [Federal Records Act](#) (FRA).

In response to these troubling findings, AALL joined 45 organizations committed to government transparency and accountability on a [letter](#) to the House and Senate Subcommittees that have jurisdiction over Federal government information policy. The letter requests hearings to determine how the emails could be missing and whether the FRA needs to be strengthened to prevent such violations in the future.

We are pleased that the House has taken a step toward ensuring the preservation of emails and electronic records. No similar bill has been introduced in the Senate.

Sen. Lieberman Sends Letter in Support of FY 2011 Financial Services and General Government Appropriations Bill

On March 25, Senate Homeland Security and Governmental Affairs Chairman [Joseph I. Lieberman](#) (ID-CT) sent his [annual letter](#) to the Senate Appropriations Subcommittee on Financial Services and General Government Chairman [Richard Durbin](#) and Ranking Member [Susan Collins](#), recommending funding levels which he believes necessary to ensure the implementation of key provisions of the *E-Government Act of 2002* (P.L. 107-347).

Among his chief concerns is ensuring adequate funding for the Privacy and Civil Liberties Oversight Board (PCLOB). AALL signed on to a [letter](#) this month to President Obama to express our concern over the lack of nominations to the PCLOB, which Congress first created in 2004 based on the recommendations of the 9/11 Commission. The independent PCLOB is intended to play a vital role in the oversight of privacy and civil liberties protections. However, it has remained dormant because there have been no nominations to the Board since it was reconstituted as an independent agency in 2007. Chairman Lieberman urged President Obama to make nominations to the PCLOB and recommended that the Appropriations Subcommittee fund it above the President's request of \$1.68 million so that it can get off to a strong start.

Chairman Lieberman also expressed his concerns about the lack of progress by the Administrative Office of the U.S. Courts (AOUSC) in making information accessible through PACER “freely available to the greatest extent possible.” Chairman Lieberman recommended that the AOUSC reevaluate the current PACER model. He also urged the Appropriations Subcommittee to review the annual *Judiciary Information Technology Fund Report* to ensure that PACER fees are only going to pay for the direct costs of disseminating documents through the system. We are grateful to Chairman Lieberman for his commitment to ensuring that the Federal courts have complied with the transparency and privacy requirements of the *E-Government Act*.

Finally, Chairman Lieberman urged Senators Durbin and Collins to fully fund NARA at the requested \$460 million. He highlighted NARA’s new responsibilities under the *OPEN Government Act*, which established NARA’s Office of Government Information Services, and President Obama’s [Executive Order 13526](#), which created a new National Declassification Center at NARA. He also expressed his support for increasing the appropriation for the National Historical Publications and Records Commission from \$10 million to \$13 million.

U.S. Supreme Court Launches New Web Site

The Supreme Court received funding in its FY 2010 appropriation to begin in-house management of its Web site. This month, the Court began hosting its own [Web site](#), having taken over maintenance responsibilities from the U.S. Government Printing Office. In addition to a complete redesign of the site, the Court has added several useful features for members of the public and legal researchers. We are pleased that the site now provides access to recent Court decisions from the homepage, docket files dating back to 2000, a new case citation finder and improved search capabilities. The Web site also includes a unique interactive calendar that lists the cases for argument each day. We commend the Court for these improvements and look forward to future enhancements.

Federal Communications Commission Releases National Broadband Plan

In 2009, Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan to ensure that every American has high-speed Internet access. After a public comment period that began with a Notice of Inquiry in April 2009 and included 31 public notices that drew 23,000 comments, the FCC released its highly-anticipated “[Connecting America: The National Broadband Plan](#)” on March 15. AALL is a member of the [Schools, Health and Libraries Broadband Coalition](#), which was established last year to support the provisions of the *American Recovery and Reinvestment Act that* (P.L. 111-5) that call for improved access to broadband by community anchor institutions, including libraries, schools, health care clinics and hospitals. We have long been supportive of the need for community broadband, and we are very pleased that the new broadband recommendations reflect President Obama’s commitment to closing the digital divide.

[Chapter 15](#) of the plan, on Civic Engagement, includes the following recommendation to broaden online access to government information:

Recommendation 15.1: The primary legal documents of the federal government should be free and accessible to the public on digital platforms.

- For the Executive Branch and independent agencies, this should apply to all executive orders and other public legal documents.
- For Congress, this should apply to all votes, as well as proposed and enacted legislation.
- For the Judicial Branch, this should apply to all judicial opinions.

The plan specifically cites the requirement in the *E-Government Act* to make PACER records freely available, which Chairman Lieberman [addressed](#) in his recent letter to Senators Durbin and Collins. The plan states that Congress should provide funding to publish federal judicial opinions, orders and decisions online in an easily accessible, machine-readable format.

OUTSIDE THE BELTWAY: CHAPTER NEWS

NOCALL Sacramento Hosts Local Sunshine Week Program

-Submitted by Holly Lakatos, Court of Appeal, Third Appellate District, NOCALL

NOCALL's GRC co-sponsored this year's Sunshine Week event in Sacramento along with the California Library Association (CLA), California Association of Library Trustees and Commissioners (CALTAC), and Special Library Association/Sierra-Nevada Region. The program began with a viewing of the national Webcast "Building Transparency," followed by a luncheon panel of local invited speakers who are open government advocates.



Judge Kenneth Peterson, Charity Kenyon and Marjie Lundstrom during the NOCALL Sunshine Week panel discussion.

Leading the local panel discussion was **Charity Kenyon**, a Sacramento-based attorney and President of the California Academy of Appellate Lawyers. Ms. Kenyon began the discussion with her experiences as an attorney representing newspapers, television stations and individuals seeking access to government records and hearings before state and federal courts. Ms. Kenyon pointed out that while media outlets have been on the forefront of litigation to get access to public records, tough budgetary constraints are forcing many newspapers to go out of business. To counter this, average citizens need to be more involved to ensure openness at all levels of government.

Kenneth Peterson, former Presiding Judge of the Juvenile Court in Sacramento County, discussed his work in opening juvenile proceedings and records in Sacramento. Judge Peterson discussed the unique nature of juvenile proceedings that demands the closure of some records, and surmised that perhaps some court staff members do not realize that

records can be open under some circumstances. Simply educating judges and staff on the legal requirements of open records can alleviate some needless extra work for the Court and eliminate the frustration that some family members, schools, and others may have when trying to help troubled youth. Judge Peterson also discussed the [Bench-Bar-Media Committee](#).

The final panelist was reporter **Marjie Lundstrom** of *The Sacramento Bee*. Ms. Lundstrom won the Pulitzer Prize in 1991 for her work on child welfare issues. She discussed how the public's interest is better served by open government, especially when holding public agencies that have failed accountable for their actions (such as when a child in foster care dies under suspicious circumstances). Ms. Lundstrom also discussed open records legislation in California and her personal experiences with obtaining records from other states.

Update on Connecticut Courthouse Library Closures

On March 3, the Connecticut Legislature's Judiciary Committee favorably reported a bill (HB 5148), which SNELLA and AALL strongly supported, that would help ensure adequate funding for the Judicial Branch and Connecticut's courthouse libraries. Specifically, the bill would revise current law to allow the Judicial Branch's budget to be presented first to the Legislature, rather than the Executive Branch, and exempt the Judicial Branch from having to reduce its "other expenses" (OE) account to the fiscal year 2007 level. The bill was referred to the Appropriations Committee. Thanks to the many Connecticut law librarians who responded to SNELLA's [action alert](#) asking them to contact their legislators on the Appropriations Committee to urge them to support the bill.

Unfortunately, the Appropriations Committee stripped out the language restoring the OE funding and favorably reported the bill, as amended, on March 25, making it unclear whether the three courthouse libraries slated for closure on April 1 will remain open. However, it is likely that even if the libraries are forced to close, their collections will remain intact for now. We strongly support the bill as reported favorably by the Judiciary Committee because it restores OE funding to the FY 2007 levels. We will keep you updated as we learn more.

LLAM Tracks Bills to End Print Distribution of County Codes

LLAM is monitoring bills in the Maryland Legislature (HB111 and SB174) that, as introduced, would allow counties to publish their codes online-only and no longer require that the codes be printed and distributed to the State Archives, the State Law Library and members of the legislative delegation of the county. LLAM and the AALL Maryland Working Group submitted written testimony stating that it is vital that the official version of the county codes continue to be printed until there is an authenticated online version that can be preserved and made available for permanent public access.

The bills passed the House and Senate with amendments earlier this month. LLAM issued an action alert in support of the House bill, which, as amended, includes a requirement that a printed copy be sent to the Archives and State Law Library and four printed copies sent to the State Department of Legislative Services. LLAM also submitted new written testimony in support the House bill. Thanks to the support of the Maryland Library Association (MLA), many librarians asked their legislators to support the House bill during MLA's annual Library Day.

LLAM will continue to monitor the bills and work with state officials to ensure permanent public access.

FREE TIME WELL SPENT: Further Reading for the Information Policy Junkie

Federal Judicial Center's Report on National Security Case Studies

The Federal Judicial Center has issued a new [report](#) that compiles a selection of national security cases to examine how federal judges have met the unique challenges that these cases present. The compilation represents cases in which the state secrets privilege has been invoked, where witnesses or the jury may require special security measures, and where other national security challenges arise. The report is based on a review of case files, news media accounts and interviews with the judges.

Timely Law Review Articles on State Secrets Privilege

In the first of a series of forthcoming articles in the University of Pennsylvania Law Review, Laura Donohue reports in "[The Shadow of State Secrets](#)" that between 2001 and 2009 the government asserted state secrets in more than 100 cases. This is a much higher number than had been previously reported, a discrepancy the author attributes in part to the prior omission of many unpublished, unreported, sealed cases, and suits voluntarily dismissed, as well as the recent growth in contractor cases. Another article, "[State Secrets & Executive Accountability](#)" by Christina E. Wells, examines the Obama Administration's use of the state secrets privilege and the need for reform.

CRS Report on Congressional Oversight

A new Congressional Research Service (CRS) [report](#) examines the growth of federal power, the role and purpose of Congressional oversight, and the mechanisms by which members of Congress can engage in oversight of the Executive Branch, such as through the *Government Performance and Results Act of 1993* and the *Congressional Review Act of 1996*.

New Title Added to LLDSC Source Book, “Sources for Finding Mandated Reports to Congress by U.S. Federal Agencies”

LLDSC has added a new title to its Legislative Source Book, “[Sources for Finding Mandated Reports to Congress by U.S. Federal Agencies](#).” The new title briefly describes and links to sources that list reports from Federal agencies mandated by Congressional statute. The author of the Source Book is 2009 Robert L. Oakley Advocacy Award winner Rick McKinney, assistant law librarian at the Federal Reserve Board Law Library in Washington, D.C.

C-SPAN Launches New Searchable Archive with 23 Years of Video Online

C-SPAN has launched a new [Video Archive](#) containing every C-SPAN program aired since 1987. You can watch interesting programs such as [America and the Courts](#), search for specific videos of expert speakers, or simply browse the more than 160,000 hour of video. An especially exciting feature is the [Congressional Chronicle](#), which now includes video recordings of the House and Senate floor proceedings with full-text and full-video search.

Federal Computer Week’s Featured 100 Federal IT Winners

Since 1989, *Federal Computer Week* has compiled a list of the leaders in the government information technology community. This year’s [winners](#) have varying specialties, including cybersecurity, open government, network centricity and health information technology. One of the distinguished winners is Dr. Beth Noveck, Deputy Chief Technology Officer for Open Government at the Office of Science and Technology. We were honored to host Dr. Noveck at our 2009 Annual Meeting program, “Evaluating Federal e-Life Cycle Management—A Town Meeting with OSTP, NARA and GPO,” during which she summarized some of the Obama Administration’s important transparency initiatives.

Emily Feldman
Advocacy Communications Assistant
AALL Government Relations Office
(202) 942-4233
efeldman@aall.org

Mary Alice Baish
Director
AALL Government Relations Office
(202) 942-4237
mabais@aall.org

