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The CRIV Sheet

Editor's Corner

If we had to name a theme for this issue of *The CRIV Sheet*, it would be "We Can Make This Work." From the chair's call to improve communication, analysis of the Federal Trade Commission's negative option plan, and suggestions for saving money and keeping up quality with a cooperative cataloging venture to avoiding negotiation pitfalls and insights from AALL's vendor relations liaison, we are offering some

practical advice as well as a bird's eye view of the vendor relations landscape. Times remain tough both for library budgets and vendor sales, so it is more important than ever that we approach our vendor relations with a sharp eye, but also with understanding and cooperation. As always, the *CRIV Sheet* welcomes your comments and encourages your contributions.

Amy Eaton Perkins Coie LLP

From the Chair

As I write this column, we are approaching the end of a very difficult year for most of us. I cut my print and electronic resources budget by a substantial amount and am planning a flat budget for 2010. When you account for increasing costs, this means I will have to actually reduce my collection by 10 to 15 percent if I want to stay within my budget, let alone add any new titles. I am reviewing a list of print titles and comparing it to our electronic resources. What is duplicated? What is best in print? What is being used? Is it necessary to have a print title on different floors, as well as electronically? For the first time, I find that the attorneys are responsive to our requests to review the collection for duplication and are supportive of our efforts to cancel little-used resources.

Communication is the essential tool that will get us through the next few years. We need to communicate the true collection costs to our attorneys and make sure our collections support the business of law. We need to communicate our budget constraints to the vendors and ask them to work with us as we struggle to selectively purchase and maintain our subscriptions. We need to continue to communicate with our association leaders and let them know what is important to us.

The law-lib online discussion list is a communication tool used by many of our members. When a title increases in price dramatically or significant errors

are found in publications, law-lib is a great tool for disseminating information. Often, members will forward law-lib complaints to me, noting that CRIV should be involved and press for immediate action. We should remember, however, that large organizations move slowly. I have found that if we wait a few days, the vendors often respond to our concerns on their own. It is this spirit of cooperation and civil discourse that will help us navigate these fiscally trying times.

In 2007, CRIV's charge was updated to more accurately reflect our support of the AALL Strategic Directions on education and advocacy. Although we continue to provide ombudsman support to members, our main purpose is to "foster positive, constructive, and open communication" between information vendors and AALL members. As one aspect of this, CRIV had the pleasure of working with Mary Alice Baish, director of AALL's Government Relations Office, and Marian Parker, AALL vendor relations liaison, in writing comments regarding Prenotification Negative Option Plans and their impact on law libraries. These comments were submitted to the Federal Trade Commission (FTC File No. P064202), and the final version is now posted on AALLNET at www.aallnet.org/aallwash/letters.asp.

If you have any comments you would like to share, please do not hesitate to contact me at aeaton@perkinscoie.com.

An Interview with Marian Parker

In April of 2009, AALL appointed its first vendor relations liaison, Marian Parker, associate dean for information services, director of the professional center library, and professor of law at Wake Forest University School of Law in Winston-Salem, North Carolina. Parker agreed to answer some questions about her role and the state of vendor relations in the legal publishing world. – Joe Thomas, Editor

CRIV Sheet: What is the role of AALL's vendor liaison?

Marian Parker: The role of this position is to foster knowledge and information sharing between the law library community and legal information vendors. The liaison will also work to develop programs or initiatives for sharing expertise and creating a dialogue about library-vendor issues and to communicate about legal information policy issues from the law librarian perspective.

CS: Why did AALL feel there was a need for such a position?

MP: AALL has long had the Committee on Relations with Information Vendors (CRIV), which has primarily been responsible for enhancing the relationship between individual members and vendors. The AALL Executive Board sees this as a critical role that CRIV has been very successful in fulfilling. The board also saw a need for improved relationships between the Association and vendors. That is why it created the Vendor Liaison position

CS: How does the work you do as vendor liaison intersect with the work of CRIV?

MP: This position and CRIV work hand-in-glove—we both have the interests of the membership and the Association at heart as we go about the business of interacting with the legal publishing community. One of the key tasks during this initial stage of having both CRIV and the vendor liaison is to identify our working relationships, consolidating and evaluating our responsibilities, and collaborating on getting all the work done that comes our collective way.

CS: What do you see as the biggest issues in the vendor/law librarian world these days?

MP: No surprise, the single biggest issue that is faced by all of us is the economy—the libraries have less money, and the publishers need more revenues. All types of law libraries and all publishers are reeling from the impact of this past year and the current conditions. That means the publishers' world of expecting to get more business from each and every

library has to be tempered. It means that libraries are facing a new way of developing collections—or deconstructing them, as the case may be. It means that we have to educate the recalcitrant publishers about what our economic life truly is and obtain their help in weathering this storm of cutbacks. We have to educate ourselves about how to get the best out of our working relationships with the publishers. We have the opportunity to reinvent ourselves and our working relationships with the legal publishing industry. We can no longer afford to react to the world around us—we must plan and be proactive in crafting the best working relationships with the legal publishing industry, both as an association and as individuals in our places of work.

CS: Are law libraries too tied to just a few vendors?

MP: We have little to say about how many vendors are out there, so we are compelled to work with the publishers who have the materials we need to support our places of work. Are there too few? The free market would tell us that companies have maximized their utility by combining many smaller publishers into the major ones that we now see. Competition is still alive and well, as we see new entrants into the market on a regular basis, including the smaller digital publishers and even the providers of free legal information. The large publishers have succeeded because they have provided products that our users have found essential—the value they have added to the primary sources of law have been worth the price we have had to pay for them. We can reward the successful publishers with our spending and we can support those entities that enable us to provide legal information to our users for a reasonable cost. We can vote with our dollars—and that is how we have our say about the number of publishers.

CS: What can law librarians do on their side to improve relations with vendors?

MP: Just as vendors need to learn how law libraries actually work and the pressures that they are now facing, librarians can become more familiar with the pressures that the companies are facing—and that the salespeople with whom we work have to deal. We can learn more sophisticated negotiation techniques so that we can be stronger as we work to get the best deals for our places of work and do so in a thoroughly professional manner. We can assess our users' needs to ascertain what is truly needed, not just wanted. We can provide input to CRIV and this position so that we, as an Association, know what our members need us to work on—and can have the appropriate conversations with our vendors.

Librarians can realize that both publishers and librarians are in the business of getting the best information to our users.

CS: What can vendors do to improve relations with law librarians?

MP: Vendors need to listen to what librarians are telling them when they come to talk to them. They can believe what the librarians say about the economic hardships that they are facing. They can respect how each individual place of work wants to manage their working relationship. They can try to find the best deals their companies have to offer when they go in to work with their clients on their

collections. They can be honest with us about what pressures they are facing. Publishers can realize that both librarians and publishers are in the business of getting the best information to our users.

CS: If you could offer one piece of advice that would stick, what would it be?

MP: Be proactive, not reactive: Please learn to be flexible when you are dealing with the publishers—be firm and fair, and negotiate from a position of strength, not just react to what comes by. The more you understand the needs of your users, as well as the business of legal publishing, the better you will be able to get to the answer that is right for your place of work.

Tracy L. Thompson-Przylucki New England Law Library Consortium (NELLCO)

Librarians Effecting Real Change for Libraries and Consumers; or What the Heck Is a Prenotification Negative Option Plan Anyway?:

A Report on Annual Meeting Program I-1

In July, attendees at the Annual Meeting were treated to a real-life fairy tale in which everyone lived happily ever after. Program I-1, “Unfair Publishing Practice? Who’s to Stop Them? Superlaw librarian! (and the Attorney General),” took the audience on a compelling journey from the first inklings of an annoying marketing ploy to the resolution ultimately achieved with the able assistance of one state’s attorney general. This program, coordinated and moderated by Lucy Rieger of Library Update, and sponsored by CRIV, demonstrated how a single patient and persistent librarian, like a Who down in Whoville, can harness the resources to change practices that impact millions of people. The story goes like this.

Once upon a time, Lucy Rieger served as a library consultant to law firms in New Jersey. During one particular stint, Rieger noticed a glut of disorganized and unfiled Thompson (with a “p”) publications. She had seen this pattern before with this publisher, but never to this extent. There were multiple subscriptions to titles with multiple account numbers and renewal dates that spanned the calendar. Rieger went to great lengths with the publisher to try to straighten out the morass. She was able to obtain some relief for her client, including some refunds and cancellations of duplicate subscriptions. Rieger completed her contract with the firm to their great satisfaction, but the difficulties with Thompson stuck in her craw.

In 2008, Rieger learned that there had been a settlement with Thompson over its business practices. The resolution came through the actions of “Super Law Librarian” Betsy Stupski, librarian for the Florida Attorney General’s Office. In 2006, Stupski ordered a loose-leaf publication from Thompson for one of her practicing attorneys. As a result of the purchase, the library was unknowingly signed up for an auto-renewal plan that included unordered merchandise. The library subsequently received a title that it had not ordered. Although Stupski was able to work with the publisher’s customer service department to resolve her particular incident, she felt compelled to try to solve the bigger problem that this represented for libraries and consumers everywhere. To that end, Stupski sought out Tina Furlow, senior assistant attorney general in the Economic Crimes Division for the State of Florida. Furlow met with Stupski and recognized the methods she described as unfair business practices.

Furlow shared two stories about individual complaints by consumers that ultimately led to changes in business practices. In one, a consumer had received a publisher’s cookbooks (*Southern Living* and *Martha Stewart*) she had not ordered, but could return “without cost.” Of course, time is money, and the time required by many consumers to return these unwanted shipments added up. The attorney general’s office investigated and, on the strength of that single complaint, was able to reach an agreement that provided refunds and required the

publisher to change its practices regarding unordered merchandise going forward.

In the second story, Furlow learned of problems consumers were experiencing with respect to recurring charges for ring tones and horoscopes on cell phone bills. As a result of the attorney general's investigation of this emerging marketing practice, an agreement was reached with several cell phone companies that required changes in favor of more transparent marketing practices.

In each of these examples, an unfair marketing practice was resolved that would provide relief to a huge segment of the consumer population. With these recent instances in mind, Furlow turned to Stupski's story of unordered merchandise. The attorney general's office begins by evaluating a given complaint to determine whether the practice being described is likely to stem from a pattern of behavior, and, if so, whether that behavior rises to the level of a deceptive or unfair practice.

A deceptive practice is a "material representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances." An unfair practice is defined by the Federal Trade Commission (FTC) as one that "causes substantial injury, is not outweighed by the benefit to the consumers, and the consumers could not have reasonably avoided."

Furlow felt that the practice Stupski was presenting fell into the category of negative option plans (NOP). A negative option plan is any type of sales term or condition that imposes on consumers the obligation of rejecting goods or services. The consumer's failure to reject equates to an acceptance of a sales offer. Early examples of NOPs include book and record clubs. The early 70s saw many abuses in these plans that resulted in the promulgation by the FTC of a negative option rule to regulate the plans and minimize abuses. In libraries, negative option plans include library standing orders, subscription services, and supplementations plans. In order for such plans to pass muster, the FTC requires that the vendor *clearly and conspicuously* disclose all terms, including that failure to reject is interpreted as acceptance, and further that the *consumer agrees* to these terms.

The attorney general's office applies the "4p test" to determine whether the terms of an offer are clear and conspicuous. They are: placement, proximity (are terms close to claims they modify?), presentation (wording and format, free from distractions), and prominence (no magnifying glass required). So, applying this test, Furlow felt that Stupski's complaint warranted an

investigation. The attorney general's office was ultimately able to reach a satisfactory voluntary agreement with Thompson without ever determining whether Thompson's practices were unlawful.

Ironically, immediately following the signing of the Thompson agreement, another attorney in the Florida Attorney General's Office received an invoice from Lexis-Nexis/Matthew Bender (LNMB), along with a Florida Bar publication the attorney claimed not to have ordered. With the Thompson agreement fresh in its minds, the attorney general's office issued a subpoena to Matthew Bender. The publisher responded positively to the inquiry and, like Thompson, wished to make changes that would better serve its customers.

Both the Thompson and LNMB agreements included the following requirements: negative option plans must clearly and conspicuously state the terms and conditions of the plan, including that other publications will be sent without further consent, whether shipping and handling will be included, and a description of the books or other products in the series. Both companies would also make sure that the consumers agreed to all terms and conditions. The agreements also include compliance and record-keeping requirements. The agreements resulted in refund offers from both publishers, as well as the implementation of new disclosure practices. Furlow shared several examples of advertising materials developed by both publishers following the settlement agreement that demonstrated the concrete changes that were implemented to serve consumers.

Furlow recommended that any consumer with a claim of unfair or deceptive publishing practice begin by speaking with the company. In the experience of the Florida Attorney General's Office, the publishers are anxious to improve customer relationships. The next step would be to file a complaint with the FTC online or speak with your state's attorney general's office. In most cases, you can simply call for an appointment.

As a result of Rieger's diligence as an advocate for information consumers, AALL was made aware of the FTC's call for comments as it reviews the prenotification negative option rule. Rieger worked with CRIV under Chair Amy Eaton's leadership and with the guidance of AALL's Director of Government Relations Office Mary Alice Baish to craft a comment that was ultimately submitted under the auspices of AALL. You can see the Association's comment at www.aall.org/aallwash/FTCComments100809.pdf.

The end...or is it?

The Federal Trade Commission and Negative Option Plans

Lucy Rieger, the coordinator and moderator of the program reported on above, offered the following reflection on the negative option and the FTC. – Joe Thomas, Editor

16 CFR Part 425 is the “Rule Concerning the Use of Prenotification Negative Option Plans.” Why is it important to law librarians? The rule, along with 39 USCS § 3009, guides the publishing industry and keeps legal vendors from sending us material we did not order for our libraries.

An example of the kinds of activities the rule addresses is Thompson Publishing’s practice of sending “related” and unordered publications to law libraries in 2006 and 2007 and invoicing them unlawfully. Thompson’s mailings led to a settlement agreement with the Florida Attorney General in 2008 ([http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7ELQ6F/\\$file/ThompsonAVC.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7ELQ6F/$file/ThompsonAVC.pdf)) and refund offers for all libraries affected by the practice. Thompson Publishing had violated the Federal Trade Commission (FTC) Negative Option Rule and other Florida statutes controlling unordered merchandise.

Another example is LexisNexis’ practice of sending unordered books to the members of the Florida State Bar. As with Thompson, Florida’s Attorney General reached a settlement agreement in April 2009 ([http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7R5JAQ/\\$file/MatthewBenderAVC.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7R5JAQ/$file/MatthewBenderAVC.pdf)), leading LexisNexis to change nationwide the way it sends out some “automatic renewal” books under the FTC Negative Option Rule.

As part of a routine 10-year review, the Federal Trade Commission called for comments on revision of the

Negative Option Rule to be delivered before July 27, 2009. AALL recognized the rule to be important to libraries, so CRIV began drafting comments. The short deadline coincided with our Annual Meeting in July. AALL and the National Association of Attorneys General (NAAG) requested an extension of the FTC comment period. The request was granted on August 7 for an extension until October 13, 2009 (see www2.ftc.gov/opa/2009/08/nor.shtm).

CRIV also drafted comments and sought member input. Since specific examples are very persuasive in influencing change by the FTC, AALL member input was considered crucial to the effort.

The Negative Option Rule covers various plans routinely used by publishers, including Prenotification Plans, Continuity Plans, Automatic Renewals, and Free-to-Pay Conversions/Trial Offers. The Federal Trade Commission last reviewed the rule in 1998. At the time, the FTC also had Guides for the Law Book Industry in place. With these two FTC issuances, law libraries were well protected. In 2000, the FTC rescinded the Guides for the Law Book Industry and urged AALL to adopt its own guidelines for the legal publishing industry. In November 2002 the *AALL Guide to Fair Business Practices for Legal Publishers* was published (www.aallnet.org/products/pub_fair_practices.asp).

Some legal publishers have violated fair practices even with 39 USCS § 3009, the FTC Negative Option Rule, and the *AALL Guide to Fair Business Practices* all in place. The FTC rule covers only mailed merchandise, leaving new technologies and electronic products vulnerable.

Collaborative Experience: Cataloging Projects with Cassidy Cataloguing

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Charleston School of Law

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Joni L. Cassidy, Cassidy Cataloguing Services, Inc.

When the Charleston School of Law opened in August of 2004, we signed an agreement with Cassidy Cataloguing to obtain the bibliographic records for its “CassidyCat’s Digital Law Library.” This was nothing different from what other libraries have been doing: obtaining bibliographic records with a link for free legal material on the Internet. However, our collection development plan emphasizing electronic resources and the preference for electronic books (monographs) demanded creative ways to provide access through our online library catalog. With limited staff resources and a large number of titles to add, we decided to contact Cassidy Cataloguing for a project.

Several small projects were contracted first, followed by the idea of asking Cassidy Cataloguing to create records for the monographs, or treatises, in Westlaw and Lexis. The idea had been also proposed to Cassidy by Rutgers University Law Library on the same day. Charleston School of Law’s request was for records with a deep link in the 856 field that would take patrons directly into the publication without the need for a second search once logged into Westlaw or Lexis. But the project was going to be a costly one for only one or two libraries.

Announcements sent through law director networking on the director’s online discussion list and technical services librarian networking on the Technical Services Special Interest Section online discussion list helped to raise the group of participating institutions to 17, and a cooperative project began after January 1, 2006. By mid-February, the number of participating libraries increased to the target of 22. With deep link information provided by the Charleston School of Law, the project was launched, and, after loading several batches of test records, the format and contents of the bibliographic records were ready to be distributed.

Collaboration from member libraries has been crucial as we identify problems with some of the records, publications no longer available for academic institutions, and new sets to be included and distributed. Technical services librarians also work

with Cassidy Cataloguing to keep the records up-to-date with cataloguing standards. As an example, two catalogers working at two different subscribing institutions routinely catch a handful of name authority updates that are missed when the new records are run against Library of Congress authority files. They forward their suggestions back to Cassidy, where records are checked, upgraded, and re-issued if necessary to all subscribers.

Keeping the lines of communication open in both directions has played a major role in the success of these cooperative efforts. Dialogue regarding the implementation of the new provider-neutral guidelines for e-monographs and the aggregator-neutral guidelines for e-journals was instrumental in the decision to create a second provider-neutral record set for the HeinOnline “World Trials Library” so that subscribers could choose the format they wanted.

Collaboration from the catalog record provider includes the willingness to customize records per the request of individual libraries and negotiation with content providers (publishers), if needed, for the rights to create the records. The request for customization could be very labor-intensive because it includes working with several batches of records, adding local notes or copy-specific statistical information for each institution requesting the customization. But the products were delivered on time and up to the standards of our requests.

The project has grown beyond just the records for the Westlaw and Lexis databases. Agreements have been signed to create MARC record sets with W.S. Hein for the HeinOnline Collections, WoltersKluwer for CCH and LoisLaw collections, and the Rocky Mountain Mineral Law Foundation.

A chronology of events and a brief description of the different projects and stages, provided by Cassidy Cataloguing, are as follow:

- **December 2005:** Cassidy Cataloguing is approached by two law school libraries, Charleston and Rutgers, to create MARC catalog records for the treatise titles in Lexis and Westlaw.
- **Mid-February 2006:** The number of participants rises to the target number of 22 libraries.
- **January – September 2006:** Cassidy created 1,926 original catalog records (1,601 Westlaw; 325 Lexis), and each school contributed \$2,000 to the project. Labor costs totaled \$65,500, which equals \$34.01 per catalog record. We received \$44,000 from the

initial 22 law schools, which only equals \$22.85 per catalog record. The remainder of the money to cover the initial cost of the project would have to come from the hope of future sales.

- **December 2006:** Thomson West introduces its MARC catalog records, created by another catalog record provider, to a few academic law libraries. Lack of interest leads to the records being withdrawn from the market for re-evaluation.
- **January 2007:** Monthly update service starts for subscribers to the Cassidy Cataloguing West-Lex E-Treatise Collection. Each month, records for new and updated titles are distributed.
- **February to May 2007:** Negotiation between Thomson West and Cassidy Cataloguing to discuss possibilities for upgrading Thomson West's MARC records results in an agreement whereby Cassidy would create MARC21 records for the Westlaw databases.
- **June 2007 – November 2009:** The number of law libraries subscribing to some portion of the West-Lex Project grows to 66. The project includes Westlaw primary sources, administrative reports, legislative histories, uniform laws, restatements, periodicals, newsletters, practice guides, CLE materials, and the Nutshell series. Cassidy has also created MARC21 records for the remainder of the

Lexis e-treatise collection, primary sources, periodicals, and newsletters.

- **March 2008:** Agreement is reached with W.S. Hein for HeinOnline "World Trials Library." Many other sections of the HeinOnline databases have been added to the agreement.
- **June 2008:** Agreement with WoltersKluwer for CCH libraries is signed.
- **July 2009:** Agreement with Rocky Mountain Mineral Law Foundation is signed.

What started as an idea for a customized set of records for two libraries with different requests turned into a project for 22 libraries. Today, there are close to 70 participating libraries in a much expanded project.

The original idea from individual libraries has developed into a larger one that has demonstrated how effective collaboration between catalog record providers and catalog record subscribers can be if each party is equally interested in service and the quality of a product. The project has also proved that outsourced cataloguing services work can deliver an excellent product, again through an effective collaboration between catalog record providers and subscribers.

Elaine B. Dockens Tressler LLP

Vendor Pitfalls in Negotiating Large Multi-Year Contracts; or, How to Lose a Million Dollar Contract

This article was first published in a slightly different form on LLRX.com on June 21, 2009 at www.llrx.com/features/vendornegotiating.htm. Reprinted with permission.

Introduction

This article is dedicated to the many professional vendor representatives (VRs) that I've worked with over the years. These are the reps who showed up prepared to do business each time they visited. During contract negotiations they honored themselves, the companies they represented, and me by "bringing their A game" and being totally prepared to fully negotiate.

Many of the products they represent are sold by multi-year contracts and are negotiated at annual intervals. During negotiations, my goal is to control expenses and look for discounts (and still keep a quality product). The goals of the VRs include

obtaining or retaining our business and making a reasonable profit. When we—both firm and vendor—come to the table prepared to get the very best deal for our sides, everybody wins. However, if one of the parties arrives at the table ill-prepared, we both lose. The vendor will probably lose the business it could have obtained or retained, and the firm loses the chance to seriously consider the vendor in comparison to other vendors.

Below are comments on selected VR behaviors that I've witnessed over the years that substantially decreased the success of the VRs to obtain or retain our business. Hopefully these comments will serve as a guide to reaching a satisfactory conclusion to multi-year contract negotiations.

Ideas to Improve Contract Negotiations

Come prepared: Know your product. Know what you have to offer and then be able to describe what

you have to offer to a specific firm in a credible, winning conversational discourse. Many years ago when I worked for Century 21, we were required to practice scripts that we used for “cold calling” potential customers. We didn’t like this much, but I must admit that practicing the scripts very soon gave us a confidence and a speech pattern that was amazingly successful. Perhaps there is a program at your company that would allow you as a VR to practice your delivery to law firm librarians before actually going into the field. Perhaps local librarians could be brought in to practice a dialog with VRs, observe the individual delivery of the VRs, and offer opinions. I’m not suggesting that you, as a VR, memorize a script, but I am suggesting that you practice enough (preferably through a company-sponsored program). This way you will know your “speech” well enough to give meaningful information to the librarian in a relatively short amount of time.

Get to know your contact at the firm. Give yourself time to know the librarian and learn about the firm from the librarian’s point of view (in addition to reading the firm’s website). Meet and talk with the librarian, first on a “get to know you basis” and then periodically, say every quarter, stop by to offer some information about your vendor or product that would be of interest or that would be helpful to the librarian. When out-of-town managers come to town, make a 15 minute appointment with the librarian to introduce the out-of-town manager. These efforts will usually eliminate the possibility of any VR meeting the librarian for the first time at the negotiating table. During negotiations, most companies usually send at least two VRs for negotiations. For best results, the librarian and the VRs should already know each other. I remember one situation when an unknown VR showed up for the negotiations, was introduced for the first time, and became the lead negotiator for the vendor. The librarian had been working for a year and a half with another VR and had no idea that there was a second VR assigned to the account. In all this time, the second VR never stopped by for an introduction, to offer to answer questions, or to explain new features of their products. The ensuing negotiation meetings were stilted and unproductive, due in part to the fact that the librarian and VR were not acquainted.

Know exactly what is being negotiated. If the librarian has prepared to negotiate a multi-year contract for a specific product, it is confusing and nonproductive to introduce an additional product for the first time at the negotiations. If during the preparatory contacts, all discussion has centered around one product to be negotiated, it is unwise to add a second product without notice, even if the products are bundled in an attractive package. In one

specific negotiation, the librarian had prepared to negotiate a multi-year contract for a large database. During all the negotiation meetings, at least half the time was spent discussing an ancillary product at the insistence of the VRs. Near the end of the negotiations, they tied the renewal of the database (worth many tens of thousands of dollars per month) to the purchase of the ancillary product (worth only a couple of thousands of dollars per month). One can only speculate as to the reasoning behind this strategy—which turned out to be a losing strategy. The negotiations fell apart, and the VRs did not receive a signed contract for either the large database or the ancillary product.

Avoid customer politics. Needless to say, under no circumstances should VRs get involved in customer politics. As the outsider, the VR must be respectful and responsive to all managers at the firm that use the product and are in a position to have occasional contact with the VR. As an outsider, the VR is in the losing position if his or her actions can be interpreted as favoring one manager over another. One way to avoid the political situation is to document all contacts in e-mails and cc the involved parties. For example, if the production manager and the librarian both are interested in your services, be sure to cc both on every contact you have with the firm until they tell you differently. During negotiations, one sure way to avoid getting involved in customer politics is to leave blank any places on the contract requesting contact information with the firm. I know of a negotiation where the VR did in fact fill in the name of a manager as the product contact while in negotiations with another manager of the company who fully expected to be the product contact. Specifically, the VR should not fill in any customer information. Let the customer determine who will be his or her contact with the vendor.

Another way VRs can avoid the political trap is to be willing to negotiate with the firm’s designated representative. A tactic sometimes tried by aggressive VRs is to make a deliberate attempt to go around the librarian and call the secretary of an influential partner and try to meet with that partner or ask to work with someone other than the librarian. There is no way a VR can adopt the “go around” tactic and not be found out. In a different scenario, the VR’s headquarters told him to only negotiate with the managing partner. However, if the firm has designated the librarian as the negotiating manager, it is ill advised to state your preference for the managing partner or, worse yet, ask for a chance to meet with the managing partner after being told the firm’s choice. During one negotiation, the VRs lost at least a week of valuable time waiting for the chance to meet with the managing partner, which was

ultimately denied. In this case, after the denial, the VRs seemed to lose interest in seriously negotiating. In both cases, it was awkward on both sides for the negotiations to begin again after the VRs had made clear their preference to negotiate with someone else. The outcome was to lose that particular multi-year contract. Without exception, the choice of who the VR will negotiate with belongs to the firm, not to the VR. For the VR to try to influence the firm's decision in this regard can only lead to a negative result.

Perhaps it comes down to respecting the person across the negotiating table. Obviously, the firm has placed its trust and confidence in the librarian. As a VR, you may indeed want to negotiate with another manager or with the managing partner, but the most effective tactic is to accept and show respect for the librarian who has been chosen by the firm to handle the negotiations. In addition, it would be wise to follow the librarian's advice regarding aspects of the negotiation, for example, not to bundle two disparate products. The librarian as the negotiator will know what the firm will accept and approve. In the interest of getting the firm's signature on that multi-year contract, VRs should refrain from ignoring the advice of the designated firm negotiator.

Playing hardball – Don't. Statements such as “we will not do X” accompanied by a non-blinking demeanor and the refusal to consider new ideas can quickly sour negotiations. Sara Nichols in her excellent article describes the Hardball player with the quote, “We're the only game in town; if you won't come to terms, it's your loss.” She further states that, “It's hard to imagine that anyone can be the only game in town in terms of content anymore, so this tactic doesn't usually have a lot of teeth.” (*1) As a VR, don't be so rigid in your thinking that you can't consider a new idea. For example, be receptive if the librarian suggests a trial period for your product. Trial periods help to sell the products. If you are trying to obtain the firm's business for the first time, entertain a “getting to know you period,” and allow the attorneys to use the database say three, four, or six months, at a substantial discount. Offer concentrated training opportunities. It's also very important to “live” at the firm during the trial period. Offer individual attorneys special tips and advice and even offer to visit their offices to help them set up their desk computers (or other devices) to access specific content easily. Spending one-on-one time with new, unfamiliar users of your product is worth its weight in gold. These interactions will pay off handsomely when it comes time for the firm to accept one vendor instead of another.

Another aspect of playing hardball is to be unwilling to go to your headquarters with a proposal that you as a VR do not have the authority to authorize.

During negotiations, often an idea will be suggested by the librarian that requires a discussion with the managers back at headquarters. This circumstance is not really that unusual, and an outstanding VR will have prepared for this event. Planning includes acquainting yourself with the decision makers at your headquarters, with the accountants or the pricing managers. Maybe give them a “heads up” that you are about to go into negotiations with a specific firm, and give them any information about the firm that you have learned through your meetings with the librarian that might affect pricing. Also, ask headquarters to factor in any local crisis in the legal market such as layoffs, freezing of salaries, and reduced hiring goals. The vendor should be willing to consider reducing pricing for this specific customer. If this law firm is downsizing its expectations regarding the billing of clients, perhaps your headquarters can also downsize invoice expectations for this customer.

I have come across instances where the VRs were unwilling to consider going to their people with a new idea or a request for special consideration. Doesn't it seem logical that VRs would at least act or pretend that they were going to try to make a case with their headquarters based upon their knowledge of what one of their customers really wanted? Tom Siebel says, “We go to extraordinary lengths to listen to the customer and do what the customer needs. ... If we have to choose between dealing with a customer satisfaction issue or developing a product, we deal with the customer first. If we have to choose between pursuing a new sales opportunity or dealing with customer satisfaction, we deal with the customer first. At every fork in the road, it's 'customer first.' And it always pays off.” (*2) In my opinion, for a VR to refuse to take a request to headquarters is to engage in a losing strategy.

Wasting valuable time – Don't. Use your time wisely from the first day you begin to plan your negotiation strategy. One VR recently showed an unusual disregard for time. This VR was informed that the vendor's competitor appeared on the scene five months prior. The librarian expected that the VR would make preliminary inquiries about the firm's plans with the competitor and then start to show a strong interest in keeping the firm's business. Each successive month, the VR was told that the competitor was still at the firm, and each month the VR said, “thanks for letting me know,” with no other action. In the sixth month, the competitor made a formal bid seeking to win the multi-year contract and gave the firm 30 days to respond. Out of loyalty to the existing VR, the librarian called the VR and said we need to begin serious negotiations now—we have a 30-day window to see if we can continue to do business together. Instead of setting the meeting during the

next few days, the VR set the meeting 11 days into the future. The librarian pointed out that 1/3 of the month would pass before talks could begin, but the VR insisted that this was the earliest meeting possible. At this point, the librarian shared surprise and frustration that when given a “heads up” that competition was knocking at the door, the VR did not spring immediately into combat mode. The VR wasted five months of lead time and finally, only 2 ½ weeks before the 30-day deadline, the VR tried to roll out a negotiation strategy. Unfortunately, the VR’s preparation was poor, resulting in the loss of the multi-year contract.

Resist being mesmerized by your product. Many VRs have a tendency to fall in love with their product. Perhaps this is necessary to be able to convincingly sell the product. However, VRs should resist becoming enthralled with the features of their product to the extent that they lose the ability to see the product objectively—to see the product from the customer’s point of view. VRs cannot afford to overvalue the product or place a value on it higher than the value placed by the customer. Tom Siebel states that “too many companies ... have an arrogant self-image.” (*2) For example, I can imagine a librarian telling a VR that it’s great that you have all the laws of China online since the Ming dynasty, but we have a transactional practice in Illinois, and it makes no sense for us to pay for the added content regarding China no matter how valuable and expensive it was for you to add it. Failing to learn the value of your product to the customer jeopardizes your relationship with the customer and hampers the ability to see a relevant point at which to begin your negotiations for a higher price. Instead, learn the law firm’s practice areas and you will begin to understand the value of your product to that particular customer. You will then be able to stress the content that would be most useful and valuable to them. Fitting your content to the needs of the firm increases the value to the firm and thereby increases the willingness of the firm to pay a good dollar for the valuable content they “need to have” rather than for content that is available and perhaps would be “nice to have.”

VR misstatements – Protect your credibility. One way for a VR to lose credibility in a negotiation is to make misstatements. For example, in the middle of negotiations, when trying to distinguish your product from the competitor’s, do not state that the competitor does not have x when you are not 100 percent sure that this is true. It is so easy to check the competitor’s website. In a recent negotiation, a VR made a statement that the competitor did not have x in its legal database. Within 15 minutes after the end of that meeting, the librarian in question went to the competitor’s website

and found that the statement made in the meeting by the VR was wrong. The content the VR claimed that the competitor did not have was clearly available in the competitor’s main database.

Another way to lose credibility is to make statements about market share or market limitations that are untrue. Experienced law librarians have learned a great deal about the market sectors of various vendors, and it is to the VRs’ discredit if they assume that the librarians they are dealing with are not aware. An example of this has to do with limitations on discounts that can be given to customers, which may be limited by pre-existing contracts with government agencies. It is imprudent to imply that as a VR you can’t give a discount on a certain category of products (say online database titles) when, in fact, the limitations may be placed on another category of product (print titles). It may be true that you can’t discount x when dealing with the law school sector, but it may also be true that you *can* give the discount to the law firm sector of the market. It would seem to be clearly worth the effort to avoid misstatements or misleading remarks when they can cost you and the vendor a multi-year contract.

If You Lose The Contract

One of the things that surprises me most when a vendor loses the contract is little or no follow up from that company to find out why it lost. Frederick F. Reichheld accurately describes the situation:

... most ... (CEOs) have little insight into the causes of the customer exodus, let alone the cures, because they do not measure customer defections, make little effort to prevent them, and fail to use defections as a guide to improvements. Yet customer defection is one of the most illuminating measures in business. (*5)

The best action for the vendor to take at this point is to contact the librarian and set up a meeting to learn specifically what happened. A VR in one of the losing scenarios described above did phone to ask *by how much they lost*, but there was no effort or energy exerted toward sitting down and trying to find out *why they lost* that multi-year contract. David Green states, “I came to realize that my job is not simply to win orders. It’s also to learn everything possible from losing orders.” (*3.) If more VRs and the companies that employ them adopted this attitude, there would probably be far fewer multi-year contracts lost due to unnecessary mistakes.

In Conclusion

It would, of course, be a total disaster if any VRs

exhibited all the negative behaviors previously discussed! To support their VRs, it is the responsibility of the vendor to first find out the causes behind each lost multi-year contract. “Defecting customers have most of that information. They are always the first to know when a company’s value proposition is floundering in the face of competition.” (*5) Once the causes are ascertained, the vendor should look at the preparation and support given to their VRs and institute programs and procedures that will increase the likelihood of successful negotiations.

Vendors could employ modern management tools, for example, Six Sigma (*4) or the 5 Whys (*4,*5) to ascertain the root causes of poor contract negotiations by experienced VRs. Or, depending on the culture of the company, more traditional methods may be appropriate, such as a relevant training program, which might include role play scenarios and focus groups. Preparing their representatives for the process of successful, face-to-face contract negotiations is essential if a vendor is to maintain and hopefully increase market share. By employing the requisite knowledge and support, vendors will enable their VRs to negotiate multi-year contracts with results that benefit both the vendor and its customers.

[*1] Sarah L. Nichols. “You Want What? How to Have Fun While Negotiating Contracts,” *The CRIV Sheet*, vol. 30, No. 2, February 2008, pg.11.

[*2] Bronwyn Fryer. “High-Tech the Old-Fashioned Way: An Interview with Tom Siebel of Siebel Systems,” *Harvard Business Review*, March 2001.

[*3] David Green. “Learning From Losing a Customer,” *Harvard Business Review*, May 1989.

[*4] Wikipedia The Free Encyclopedia. www.wikipedia.com.

[*5] Frederick F. Reichheld. “Learning from Customer Defections,” *Harvard Business Review*, March 1996.