

Oregon County Law Library Consultant Grant

LSTA Peer Evaluation

Grant Project Number: 10-1-CLL

February 2011

Evaluator: LaJean Humphries, Schwabe Williamson & Wyatt Library

Summary of Evaluation

This LSTA project has accomplished some of its initial goals. The initial focus was “to hire a consultant to study the county law libraries and make recommendations to lessen disparities, foster better communication, and create collection development plans which could include cooperative purchasing, and help market our services to the legal community and general public through conventional and electronic means.”

The single most relevant goal and high-level outcome from the *Five-Year State Plan 2008-2012* addressed by the grant project was Goal #1 – Providing Access to Information –

“All Oregonians have access to high-quality library and information resources, anytime, anywhere, that help them achieve success in school, in the workplace, and in their daily lives. High level outcome: Library services are enhanced for those who are currently underserved.”

According to the grant proposal:

“this grant will provide some information on current needs and programs and to help prioritize the goals of this plan to best provide for improved access to legal information for all citizens. . . . This grant will provide independent data for the county law libraries to use to enhance the access and the value of their legal collections to all Oregonians.

Goal: To improve the overall quality of Oregon county law library resources and services, so Oregonians shall have full and equal access to legal materials and appropriate assistance in their use.”

These are broad and lofty goals. The Oregon Council of County Law Libraries (OCCLL) clearly wrote the grant proposal in language necessary for LSTA. This created some issues which will be explored further in “Suggestions for Improvements.”

The OCCLL published a Request for Proposals early in 2010. Seven proposals were received, reviewed, and a consultant selected and hired. The consultant, Ruth Metz Associates (RMA), did provide some information on current needs and made recommendations.

It should be noted that OCCLL is not a formal, legal entity. It has no corporate structure, no bylaws, no officers and directors although it does have standing committees, a newsletter, etc. It is an informal network of Oregon county law libraries. It has no real authority or power. The consultant apparently did not fully grasp this and her final report seems to imply the OCCLL has more authority and power than it actually possesses. This lack of structure will be discussed below.

Project Objectives

This project had three objectives:

- Assess the current and future needs of the county law libraries within five months of the start of the grant.

- Develop and refine a plan to achieve cost savings and improved services for county law library users within 12 months.
- Increase to 70% the number of county law libraries who are active in the OCCLL, attend meetings, and agree to the action plan.

The consultant's project scope of work included OCCLL's first stated objective and "facilitate planning with the Project Planning Committee; and develop with the Project Planning Committee an action plan for improving and extending county law library services in Oregon."

Project Method

The project had a general timeline which was fairly closely followed.

- February – May 2010: The project method involved the nine law librarians on the Project Steering-Planning Committee developing a plan of work, advertising for and selecting a consultant. The first Planning Committee Meeting was held in May.
- June – October 2010: RMA's consultant team made on-site visits, conducted person-in-charge interviews, conducted an attorney and judge online survey, and analyzed data.
- August – October 2010: Second, third, and fourth Planning Committee meetings reviewed preliminary interview findings and draft recommendations.
- October 2010: OCCLL Fall Meeting.
- November 2010: Consultant met with Planning Committee; Action Plan presented to committee.
- December 2010: Final report presented to Planning Committee.

Ruth Metz Associates (RMA) was selected and retained in May 2010. RMA basically replicated the survey that OCCLL periodically administers. RMA hired six regional consultants to help collect data and interview persons in charge of county libraries. The six consultants were Aletha Bonebrake, Connie Christopher, Maggie Meredith, Pam North, Wyma Rogers, and Timothy Smith.

According to the grant proposal the consultant would "study the county law libraries and make recommendations to lessen disparities, foster better communication, and create collection development plans which could include cooperative purchasing, and help market our services to the legal community and general public through conventional and electronic means."

Project Results

In this evaluator's opinion, the Planning Committee lacked a clear sense of how to implement their goals and objectives. The primary goal was to hire a consultant; however, the "Consultant Agreement" prepared by RMA was accepted without much input from the Planning Committee. The final report submitted by the consultant contained a recommendation that was not discussed with the Planning Committee. There was clearly dissention between the OCCLL and the consultant with a number of members reporting that the consultant was defensive, ignored their suggestions, and berated them.

Members of the Planning Committee indicated to this evaluator that they expected to receive from the consultant a needs assessment which went beyond the survey that OCCLL conducts. They expected to receive an in-depth analysis of the data, a more thorough assessment

of needs within the counties, and a discussion of barriers to access with some recommendations on how to overcome those barriers.

It is not within the scope of this evaluation to do a law library needs analysis. However, a quick look at legal activity within the state might be helpful. Generally a party interacts with the legal system in either a criminal or civil filing. Criminal cases range from willful murder to behavioral crimes such as prostitution and curfew violations. Civil cases might include small claims, domestic relations, juvenile, probate, mental health, and other issues. Name changes, buying and selling property, landlord-tenant disputes are common legal issues. The level of legal activity varies widely county to county. Wheeler County had a total of 41 cases filed in 2009.¹ According to the Wheeler County District Attorney web site, “In the fall and early winter, most cases involve hunting offenses.”² At the other end of the spectrum is Multnomah County with a total of 189,224 cases filed in 2009, including over 5,000 felony cases.³ It does not seem unreasonable to assume that the need for law library services is greater in Multnomah County than it is in Wheeler County. The RMA Final Report reports interviews with persons in charge of law libraries as well as some attorneys and judges but does not report any interviews with litigants or the general public regarding law library needs.

Several times the RMA Final Report expresses concern that “Many of the law library collections contain out-of-date materials of limited utility.” This may be true – or it may not. A law library differs from an academic or public library in that the collection often includes “old” or “out-of-date” materials. Granted, it is important that a law library have the current statutes and administrative regulations. An attorney or litigant needs to operate under current law. But, if litigation involves an issue arising in 1993 or 1969 or even earlier, it is mandatory to know the law at that time. As a practicing law librarian this evaluator is regularly and routinely required to research law from the 19th and early 20th centuries. Occasionally, even older information is required. It may be old but it’s still necessary to have access to out-of-date legal materials, especially statutes, codes, and regulations. Many older legal materials are not available in electronic format. Even an attorney or judge may lack the breadth of experience to decide which legal materials should be retained. Obviously there are older materials that need to be discarded but discarding legal materials is a task best completed by a professional, practicing law librarian.

The RMA Final Report recommends cooperative database licensing, legal databases and selected digitized content and devotes a section to online services. Much of the general public as well as some of the persons interviewed by RMA perceives little need for law libraries when so much material is available on the Internet. The Internet is a double-edged sword: it contains valuable information and it contains false, misleading, and other spurious information. Statutory information is particularly problematic. Attorneys and legal researchers generally prefer to use print materials for statutes. A statute needs to be read in context to be fully understood.

Below are two versions of the same federal statute. One comes from the official United States Code regarding special agricultural grants and the other from the Internet. (The statute has changed since this example was found.) Even though the *text* of both versions is identical, there is a multimillion dollar difference in the meaning of the two versions because of the spacing!

¹ Office of the State Court Administrator. *Statistical Report Relating to the Circuit Courts of the State of Oregon, First Half 2010, January 1 Through June 30, 2010.*

² <http://www.wheelercounty-oregon.com/districtattorney.html>. Viewed February 1, 2011.

³ Office of the State Court Administrator. *Statistical Report Relating to the Circuit Courts of the State of Oregon, First Half 2010, January 1 Through June 30, 2010.*

Margins matter. Look carefully at the last line in the two versions below. This example is courtesy of Elliot Chabot, staffer in the U.S. House of Representatives (1997), from an American Association of Law Libraries Internet Research workshop.

Version #1:

“(c) Special grants

The Secretary of Agriculture is authorized to make grants, for periods not to exceed five years in duration –

(1) to land-grant colleges and universities, to carry out research to facilitate or expand promising breakthroughs in areas of food and agricultural sciences of importance to the Nation; and

(2) to State agricultural experiment stations, to facilitate or expand ongoing State-Federal food and agricultural research programs that promote excellence in research.

These grants shall be made without regard to matching funds.”

Version #2:

“(c) Special grants

The Secretary of Agriculture is authorized to make grants, for periods not to exceed five years in duration –

(1) to land-grant colleges and universities, to carry out research to facilitate or expand promising breakthroughs in areas of food and agricultural sciences of importance to the Nation; and

(2) to State agricultural experiment stations, to facilitate or expand ongoing State-Federal food and agricultural research programs that promote excellence in research.

These grants shall be made without regard to matching funds.”

If you missed it in the initial reading, the last sentence in one version affects all special grants; in the other version the last sentence only affects State agricultural experiment stations. This has a huge financial impact.

Aside from such differences as those demonstrated above, statutes and regulations that one finds on the Internet may not be official or authentic. An authentic text is one whose content has been verified by a government entity to be complete and unaltered when compared to the version approved or published by the content originator. Typically, an authentic text will bear a certificate or mark that conveys information as to its certification, the process associated with ensuring that the text is complete and unaltered when compared with that of the content originator. An authentic text is able to be authenticated, which means that the particular text in question can be validated, ensuring that it is what it claims to be. Many states including Oregon publish their statutes and regulations on the Internet with the disclaimer that the text in the database is not the official text and that substantive errors or differences may remain between the official text and the Internet version. Frequently, only the current version of the law is available

online and researchers must access a law library to obtain legal information more than a few years old.

The larger law libraries (category C libraries in the report) provide a variety of legal research databases which may include CCH Online (now known as CCH Intelliconnect), RIA, and other services in addition to LexisNexis and Westlaw. Such specialized and sophisticated services are a tremendous resource but access involves more than a username and password. Brilliant attorneys and competent researchers find training and practice to be necessary to use the services effectively. Without proper guidance the uninitiated user will be lost.

Many materials are not available online. Just a short list would include Oregon legislative history (older statutes, OARs, minutes, exhibits, etc.), the majority of current and older secondary resources (texts, monographs, treatises, hornbooks), superseded court rules, supplementary local rules, appellate rules and procedures, continuing legal education (MCLE) program course books, authoritative (citable) legal dictionaries and thesauri, authoritative (citable) medical dictionaries, older municipal codes and ordinances. This is not a comprehensive list by any means yet all of these materials are frequently needed.

A collection of law books and/or online databases does not make a law library. A computer is not a law library. Committed, professional librarians serving their constituents make a library (even with limited resources). Even the virtual library requires acquisitions, organization, training and instruction on using resources. Virtual law librarians negotiate contracts, develop virtual knowledge resources, and perform in-person services for clients. There are numerous sources of free, low-cost, and expensive legal materials on the Internet ranging from Cornell's Legal Information Institute to Fastcase to Lexis and Westlaw. The law librarian can determine which sources are best for the law library.

Access to justice requires the ability to find the law. Law librarians identify, select, and acquire the best information sources as economically as possible, organize and make legal information easily accessible, guide, educate, and train litigants, attorneys, judges, and others with search strategies and information sources, saving time and money. Without ready access to research the law, lawyers and judges cannot apply the law and justice cannot be dispensed. Public law libraries make the law directly accessible to members of the public.

The consultant did a good job describing the "governance, administration, and location" of county law libraries. County government in Oregon is mixed. Originally, counties functioned almost exclusively as agents of state government. In 1958 a constitutional amendment authorized counties to adopt "home rule" charters and in 1973 state law broadened that authority. Nine counties have adopted "home rule." Twenty-four counties, including the nine with home rule, are governed by a board of commissioners. The remaining twelve less populated counties are governed by a "county court" consisting of a county judge and two commissioners. (A "county court" is not the same as a circuit court. See the Oregon Judicial Department web site, <http://courts.oregon.gov/OJD/courts/index.page?>, for more description.) Today, a county in Oregon is defined as a corporate or quasi-corporate body established for the purpose of local self-government; an agent of the state; and a territorial and political division of the state.⁴ This helps explain the wide variance in the governance of county law libraries.

The consultant met with the Planning Committee several times during the course of the project. All Planning Committee members that this evaluator spoke with indicated that they felt the consultant did not listen to them and that the consultant had her own agenda. Appendix A –

⁴ *Oregon Blue Book*. 2009-2010.

Project Work Plan of the Consultant Agreement states “Parties discuss final recommendations.” However, Planning Committee members indicate that they were “blindsided” and unaware of the #5 recommendation to vest authority for county law libraries under the State Law Library until they saw the written RMA Final Report.

The grant proposal goals of “foster better communication . . . and help market our services to the legal community and general public” were not met. OCCLL had a listserv in place and were developing marketing plans and materials before the consultant was hired. There is no evidence that the consultant offered improvement in these areas. If anything, dissension seems to have increased.

The consultant did help “create collection development plans which could include cooperative purchasing” primarily by recommending that responsibility be delegated to the State Law Library Electronic Services Librarian. This recommendation and the recommendation regarding an intergovernmental agreement somewhat address the project objective to “Develop and refine a plan to achieve cost savings and improved services for county law library users within 12 months.” (See comments below.)

The third project objective was to “Increase to 70% the number of county law libraries who are active in the OCCLL, attend meetings, and agree to the action plan.” There is no evidence that this objective was addressed. All of the professional law librarians are at least somewhat active in OCCLL. Most of the law libraries without librarians are not active.

It was disappointing to this evaluator that the RMA Final Report offered little guidance regarding the creation of an online union catalog although this was included in the second recommendation. From the grant proposal it was clear that OCCLL was looking for guidance in this area. Rather than recreating the wheel, it might be appropriate for OCCLL to consider joining SUMMIT (a regional union catalog consortium) or OCLC (a worldwide union catalog consortium). Perhaps a future LSTA grant could be obtained to aid in cataloging and classifying county law library holdings, especially in the rural counties, and adding them to SUMMIT or OCLC.

Project Impact

There is much discussion of a recommended intergovernmental agreement in the RMA Final Report which glosses over the difficulties of formalizing and funding such an agreement. The benefits to the rural counties are apparent. The question arises, however, why the metropolitan counties should spend scarce resources for the citizens of the less populous counties. County law libraries are not recognized as separate entities in most counties; they are under the administration of other agencies within the county. Each county is structured differently. A law library in one county may be under the authority of the District Attorney while in another county the law library it is under a different department head. There may well be legal issues with attempting to use the law libraries’ dedicated reserves for funding such an agreement. The logistics of forming an intergovernmental agreement will likely be difficult. Without OCCLL becoming a legal entity, it is hard to see how this would work.

The recommendation to bring the county law libraries under the umbrella of the State Law Library is problematic. Would the state add the county law library employees as state employees? What would happen to retirement and other employee benefits? None of these issues are addressed in the RMA Final Report nor were they discussed with the Planning Committee. This could have a large fiscal impact.

The Oregon State Law Library traces its history to the Territorial Act of 1848, which provided for a library “to be kept at the seat of government for the use of the governor, legislative assembly, judges of the Supreme Court, secretary, marshal, and attorneys of said territory, and such other persons . . . as shall be prescribed by law.” Today the State Law Library is considered to be the primary legal information resource for state government. Becoming the primary resource for county government would be a huge shift in responsibility financially and otherwise.

Process vs. Project

It is important to distinguish between evaluation of the process versus evaluation of the project. The goals expressed in the *Five-Year State Plan 2008-2012* are admirable goals and strive to move towards an ideal state. They are ambitious and that is not a bad thing. When OCCLL tried to mesh their goals with the state plan goals, however, it appears they may have somewhat overreached. The project objectives appear reasonable and had the project focused more on the specific objectives and less on the overarching goals, all parties might have felt better about the outcome.

It is unlikely that anyone would deny that Oregonians deserve to “have access to high-quality library and information resources, anytime, anywhere, that help them achieve success in school, in the workplace, and in their daily lives.” By the same token Oregonians deserve to have access to high quality health care anytime and anywhere. That does not imply that citizens in Fossil can expect to obtain a heart transplant or even a root canal in their local community. Choosing close and easy access to hunting, fishing, fossil hunting, and rafting in a low population area also means choosing not to have all of the amenities of the urban city. At this point in time it does not make economic sense to put a large state-of-the-art heart transplant or cancer center in Fossil any more than it would to place a large state-of-the-art law library there. Citizens who choose to live in rural, isolated areas of the state cannot reasonably expect to have all the benefits of the metropolitan areas. That doesn’t mean that rural citizens should be deprived of services but realistically services may take longer and require more effort and even more expense.

Suggestions for Improvement

The RMA Final Report repeatedly charges that the county law libraries should be “more efficient” without ever describing what inefficiencies exist. Undoubtedly there are some since few entities are 100% efficient. Future projects might specify something more detailed.

It is unclear to this evaluator if the OCCLL Action Plan in the RMA Final Report was developed and accepted by the OCCLL or if it was forced upon them by the consultant (or perhaps a bit of both). This type of Action Plan needs acceptance by all parties to be successful.

In this evaluator’s opinion OCCLL is a somewhat fractured organization lacking cohesion. No one is really in charge and too many people want to be. There is disagreement about incorporation. This evaluator offers no opinion about incorporation but it would seem that some more formal structure might improve communication and procedures.

There seems to have been confusion between OCCLL and the consultant about the goals and objectives. It appears to this evaluator that OCCLL thought the purpose of the grant was defined in the project abstract and the project objectives while the consultant thought the purpose

was Goal #1 from the *Five-Year State Plan 2008-2012*. In the future, the purpose of the grant, the goals and objectives should be clearly understood between all parties. When a consultant agreement is part of an LSTA grant project, both/all parties should fully understand the meaning of the agreement. This may be easier said than done. Consider the following.

Words are a lawyer's stock-in-trade. Pinker's first chapter in *Stuff of Thought*⁵ provides an excellent example. To summarize briefly, how many events took place on 9/11? One or two? Does it really matter? If insurance company lawyers' position that it was one *event* (one plot conceived by one man with one agenda, one building complex) prevailed, Larry Silverstein, leaseholder of the World Trade Center site, would receive three and one-half billion dollars. If Silverstein's lawyers' position that it was two *events* (two buildings, two planes) prevailed, Silverstein would receive seven billion dollars. "There is nothing 'mere' about semantics."⁶

Lawyers may spend hundreds of hours and thousands of dollars on legislative history research to determine the *intent* of the meaning of a single word or phrase. Contracts and agreements should be carefully considered before signing. Changes in governance and administration require equally thoughtful consideration.

The State Library or LSTA Advisory Council should offer more guidance when needed on how to hire a consultant. OCCLL lacked experience in this area and would have benefited from guidance.

It may be that the State Law Library has the resources to act as an agent for the 36 county law libraries in purchasing database programs; however, vesting authority in any one specific person is a questionable approach. The weakness is that it depends on individual expertise and individual discretion to an extraordinary degree. Reliance on individual judgment makes the decision making process difficult to review. Individuals may choose other employment, retire, or become ill, leaving the continuity of planning at the mercy of external events. It would seem more appropriate to develop and implement standardized, written processes and procedures for contracting and purchasing rather than granting that authority to a specific person.

If the State Law Library has the resources to act as an agent for the 36 counties, perhaps it could instead act as a broker obtaining resources directly. Counties could then purchase electronic database services from the State Law Library as needed.

The option of a working agreement with the other public and private academic law libraries was never mentioned. Perhaps this should be explored. It should be noted that there are three law schools in this state and at least one, Lewis & Clark, through the Paul L. Boley Law School Library offers inexpensive document delivery.

Oregon is not the only state that has conflicts between less populous and more populous counties. Looking to see how others have dealt with a similar issue might be helpful. California and Minnesota, among others, have faced a similar issue with county law libraries. See *Report of the Statewide Law Library/Self-Help Center Project Advisory Workgroup, January 17, 2007* [Minnesota]. It might be helpful to see what has happened in the four years since this report was written.

⁵ Pinker, Steven. *The Stuff of Thought: Language as a Window into Human Nature*. 2007.

⁶ Ibid.