



ALSP Update

News of Interest to Litigation Support Professionals

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President's Message: Certification and a Flat World

Professional Certification

This month's newsletter has an especially important topic: professional certification. As is obvious in the article, professional certification is not an easy nor a quick process. It will take the active participation of many "domain experts" — folks like you — to create a thorough and balanced job analysis, write the test specifications, develop examination items and participate in the cut-score process. One of the reasons that ALSP retained SmithBucklin to help in the day-to-day management of ALSP is because that they are experienced in developing and administering professional certification programs. They will guide us in selecting the appropriate testing vendor and psychometrician.

One question that has come up frequently is whether ALSP will offer a course that leads to certification. Though we have offered and will continue to offer educational activities and content, we will not offer a certification course that includes certification as part of passing the course. There are already numerous sources from where professionals can learn certification skills, and we hope to see continued development of new sources.

We will need your expertise and your involvement, so please visit the [ALSP Web site](#) and [sign up as a member](#) so that we can keep you posted about the many exciting things we have in development.

A Flat World

In his book, *The World is Flat*, Thomas Friedman makes the point that because of a convergence of forces such as the Internet, expanding bandwidth and global outsourcing, the competitive playing field is now relatively level for competitors around the world. Recent issues of *ALSP Update* show that litigation support is becoming increasingly global. Last month's issue focused on e-Discovery in the EU and the UK, this month's issue describes the Canadian legal system and the emerging standards for e-Discovery, and next month's issue will feature an article on Australian law and discovery.

This is indeed an increasingly flat world and the winners will be professionals who keep expanding their knowledge base and who, when they don't know something, know how to reach out to those who do. It's our mission to help you with both of those matters. If you have some topic you'd like *ALSP Update* to cover, or would like to get involved is ALSP, [contact association headquarters](#).



Windy Brown
ALSP President



Windy Brown

Canadian Legal System and e-Discovery

Martin Felsky is a Canadian lawyer and chief executive officer of Commonwealth Legal. He has been among the leaders in Canada in promoting the use of technology in the law and litigation, and has been actively involved in the Sedona Conference and bar committees developing practice directives for the handling of electronic discovery. Felsky has been a member of the Judges Technology Advisory Committee of the Canadian Judicial Council since its establishment in 1987 and is vice-chair of its subcommittee on Evidence Standards. He is also a charter member of the Sedona Conference Working Group 7, which is developing a Canadian national standard for electronic discovery. He participated in the Electronic Discovery Committee of the Task Force on the Discovery Process in Ontario, which drafted the Ontario Guidelines on Electronic Discovery (October 1995). *ALSP Update* contacted him at his offices in Toronto for this interview.



Martin Felsky's LOLS

Life Outside
Litigation Support:

Hobby/Passion/Pastime:
One of my hobbies is photography, and I have a few [posted online](#).

Music/Band: I love blues, jazz and classical but have to admit I am also a Led Zeppelin fan.

Best Web site: One of my favorites is [Arts & Letters Daily](#)

Recent books: *Rich Dad Poor Dad*, Robert T Kiyosaki; *Always Fresh*, Ron Joyce. And because I have a doctorate in English, I do love reading the classics.

Movie/Play: Generally prefer European movies to Hollywood

ALSP: How did you get involved in litigation support and e-Discovery?

Felsky: In law school at the University of Toronto in the '80s I was struck by the lack of access to law online. Doing statute or case law research always meant books and printed pages. In Canada, graduating law students work, or "article," for practicing lawyers for one year before sitting for the bar exam, and after I articulated at a large firm I was hired by the Canadian Law Information Council as Director of Computers and Law. My mission was to teach lawyers and judges how to use technology in the practice of law. This afforded me the opportunity to meet lawyers and jurists from all over Canada as well as U.S., Europe and around the world.

In 1988 I joined Canada's largest law firm, McCarthy Tétrault LLP, where I did legal research and was responsible for legal technology. In 1992 I became legal technology counsel and was tasked to manage and implement various applications that lawyers could use in the practice of law, for example document assembly, litigation support and case management.

In 1995 I left McCarthy to create a technology consulting company for law firms. There was a great need for such consulting and I had 60 clients before I even had my business cards printed. After three or four years I started to build a staff to do objective coding of discovery records. When I was asked to help on a large case it became apparent that document scanning would be appropriate. I approached some large scanning companies but they did commercial scan-and-shred type scanning and were not familiar with the concept of document unitization. Consequently, I was fearful of directing clients to them for discovery scanning.

At about that time I was approached by Karen Brookman who had just started Commonwealth Imaging. She was experienced in document scanning and it became obvious that we had complementary skills and knowledge. We formed Commonwealth Legal in 2000 and since then, we have evolved to where we have offices across Canada.

ALSP: Tell us about the Canadian legal system.

Felsky: Canada has ten provinces and three territories. Its legal system is described as "bijuridical" because it is based on common law except for Quebec, which is based on civil law. Canada is also officially bilingual - with English and French being official languages.

The provincial or territorial courts hear most criminal offenses, family matters, traffic violations and claims up to a set amount. The provincial superior courts hear appeals from the provincial and territorial courts as well as disputes involving amounts above the provincial and territorial court limit. The superior courts have inherent jurisdiction to hear matters of provincial and federal law unless those areas have been specifically reserved to another court. Most commercial civil litigation takes place in the provincial superior courts where the procedure and practice is a matter of provincial or territorial law. Appeal from superior courts is to the provincial or territorial courts of appeal.

Although these courts are provincially administered, their judges are appointed for life by the federal government, which pays their salaries and provides for their retirement. Judges may be removed only by an act of the Canadian Parliament.

The Canadian federal courts have jurisdiction only in those matters specified by Parliament; for example, disputes between the provinces, copyright, trademark and Competition Act cases. Appeal from federal courts is to the Federal Court of Appeal.

The Canadian Supreme Court hears appeals from the provincial and territorial courts of appeal and the federal court of appeal.

ALSP: What are some of the biggest differences between U.S. and Canadian court systems?

Felsky: Canada has a “loser pays” approach to costs, which includes court costs and costs of counsel. The winner submits a bill of costs, which the court will review before awarding costs. During the litigation some courts will award costs to the parties who prevail on motions where the court deems the other party acted unreasonably — regardless of who prevails on the overall litigation. This has the effect of resulting in lawyers not being so trigger happy in filing motions.

Trial by jury is available for some civil litigation but is rarely used.

There are contingent fee cases in Canada, although not to the extent as in the U.S.

ALSP: How does discovery work in civil litigation?

Felsky: In the common law jurisdictions (other than Quebec) each party is positively obligated to preserve and produce all relevant documents to the other party, though the time frames may vary from province to province. For example, 10 days after close of pleadings or 90 days. Records are produced by affidavit in which someone describes what was looked at and attaches three different lists:

- 1) Documents that are under the “care and control” of the party that are relevant and are being produced
- 2) Documents that the party used to have in its possession that it no longer has
- 3) Privileged records that it is not producing

For paper records, the party usually prepares a list of author, title, date, recipients and document type. For emails the comparable metadata is sometimes used for the list. However, for Excel or Word documents the metadata is typically not sufficient. One emerging question is whether a party is obligated to produce a list when it is actually producing the records themselves in paper, TIFF or native electronic form.

In Quebec, parties do not have an obligation to produce all relevant evidence — only the documents they intend to rely on at trial. Also, in Quebec parties do not have an obligation to preserve evidence. However, Quebec companies may be subject to suit in another jurisdiction that does impose those obligations.

In the common law jurisdictions, there is an “implied undertaking” rule under which parties receiving documents in discovery impliedly undertake that they won’t be used outside the litigation. No one outside the litigation is supposed to see the documents other than perhaps experts working on the case. Parties do not routinely ask for protective orders. In some cases, parties may ask for protective orders for trade secret documents that would limit access to them for eyes of counsel only. Parties may also provide undertakings not to disclose privileged material.

Discovery includes "oral discoveries" in which a party can examine a witness and later have the transcript read into the record at trial.

ALSP: How are Canadian courts dealing with e-Discovery?

Felsky: There is a small but growing body of Canadian case law on e-Discovery. Outside the courtroom, judges and lawyers have been working collaboratively to establish standards.

For example, I was involved with the e-Discovery committee of the [Task Force on the Discovery Process in Ontario](#). That Committee drafted Guidelines for e-Discovery that have been cited in case law and are now forming the foundation for a Canadianized version of the Sedona Conference principles. The first public draft of Sedona Canada is now being revised and should be made public in early 2008.

A working group of lawyers in Ontario has drafted various e-Discovery precedents, for example a litigation hold letter and an agenda for a meet and confer. [Several sample documents are available online](#).

The Task Force Guidelines, though they were intended as a guide for Ontario lawyers, have been adopted by reference in two other provinces: British Columbia and Alberta. Courts in these provinces have issued practice directions on the use of technology in litigation, and include detailed protocols relating to the format of evidence exchange in the discovery process and the presentation of evidence at trial. In September, a national model practice direction was approved by the Canadian Judicial Council and will be released shortly in English and French.

In addition to principles, guidelines and practice directions, some courts are taking a serious look at the rules of practice. For example, I have been working with the Supreme Court of Nova Scotia to incorporate e-Discovery and electronic production into their amended rules.

ALSP: Do you see any differences in attitudes toward e-Discovery between the U.S. and Canada?

Felsky: In Canada the issue of how much e-Discovery must be conducted is decided using a proportionality test that weighs the need for the electronic data compared to the costs and burdens of producing it in the context of the amounts in controversy and the issues in the case. Counsel tend to reduce the volume to be examined whereas in the US the attitude is more along the lines of we have to find and process virtually everything that might be relevant.

ALSP: What is the law in Canada on the waiver of privilege?

Felsky: In the Canadian common law jurisdictions, the solicitor-client privilege can in some circumstances be waived by inadvertent production. Trying to avoid inadvertent production of privileged records can result in expensive legal reviews before electronic records are produced. In one case, a party wanted to identify privileged records from a 75,000-record population by searching for them using a list of key terms and then produce the remainder without manually reviewing them. It sought a protective order that would preserve privilege if they inadvertently produced privileged records after conducting the searches but without manually reviewing all of them. The court refused, reasoning that the technology was not that good and that the cost of manual review was not unreasonable in the context of the case, which involved claims for CAD\$200 million. See [Air Canada v. Westjet Airlines Ltd., 2006 CanLII 14966 \(ON S.C.\)](#)

Claw-back agreements — agreements under which inadvertently produced privileged records are to be returned to the producing party without there being a waiver of privilege — may not be effective as to non-parties.

ALSP: Does Canada comply with the EU Directive on Personal Privacy?

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Felsky: Canadian privacy laws are deemed to be comparable to the EU Privacy directive for purposes of complying with that directive. Accordingly, companies may send electronic data gathered in Europe to Canada for review without running afoul of the directive. Data that is hosted in the U.S. must be hosted by a company that has complied with the Safe Harbor Provisions established by the U.S. Commerce Department.

Canadian privacy laws vary somewhat from province to province but generally impose special restrictions on people who gather or process data that is deemed to contain personal information. Those restrictions include those pertaining to education, physical security, personnel security and IT security.

ALSP: What are the differences between "law clerks" and "paralegals"?

Felsky: In Ontario the term "law clerk" is used to describe a person who works under the direction of a lawyer to perform duties of an administrative or managerial nature or of a specifically-delegated substantive legal nature. They may be people who are law clerks as a long-term occupation or lawyers who have not yet been admitted to the bar. In litigation, law clerks may prepare affidavits of documents and organize, manage and review discovery documents.

The term "paralegal" may be used in some provinces to refer to people who function like law clerks in Ontario. An independent paralegal may provide limited services without being under the direct supervision of an attorney.

Resources:

- [Canadian Association of Litigation Support Professionals](#)
- [Commonwealth Legal Resources](#) — Includes British Columbia Practice Direction, a court-approved frameworks and protocols for managing hard copy and electronic documents in a technology environment, and *Guidelines for the Discovery of Electronic Documents in Ontario*
- [Sedona Working Group 7](#), Sedona Canada, French and English versions of The Sedona Canada Principles, Public Comment Version
- [eDiscoveryCanda.com](#) — Martin Felsky's blog
- [Canadian Attorney General Report](#)
- [Canadian Court System Overview](#)

The Professional Certification Process

Claire Darmanin is certification manager at SmithBucklin, the professional association management company that provides management services for ALSP. She is also a member of the National Organization for Competency Assurance and specializes in guiding associations through the process of creating and managing professional certification programs, from issuing the RFP for a qualified testing company through test development and administration. As is obvious from reading the interview, a certification program will require the involvement of a good many litigation support professionals from a variety of backgrounds.



Claire Darmanin

ALSP: Who benefits from professional certification programs?

Darmanin: The individual who is certified achieves recognition for achieving a high level of competency, and that recognition often translates into achieving higher levels of responsibility, compensation and employability. Employers benefit by being able to hire and promote professionals who have an assured, independently-measured level of competence.

ALSP: What are the general goals of a certification program?

Darmanin: To provide a statistically sound and legally defensible certification program. This involves the work of a lot of professionals and generally requires about a year to come to the point of being able to administer the first exam.

ALSP: What is involved in creating a professional certification exam?

Darmanin: There are four major steps: job analysis, test specifications, test development and cut-score study. Each step is described below.

Job Analysis: After the testing company is retained, the certification process begins with a panel of subject matter experts from a broad cross-section of the industry. They describe specifically what they do at their jobs, what they need to know to do their jobs, how often they do it, and how important it is to their jobs.

The results of the initial job analysis written by the subject matter experts is converted to a survey that is taken by members of the candidate population who are asked whether they agree or disagree — and how strongly — with the task descriptions of the subject matter experts.

Test Specifications: The results of the job analysis survey are tabulated and analyzed by the psychometrician, and subject matter experts to create a final report, which forms the basis for the test specification or the exam content outline that describes what content should be on the exam.

Test Development: Working from the exam content outline, a panel of subject matter experts prepares items or questions and answers for the topics on the outline. The panel meets for a two-day face-to-face meeting that starts with several hours of training conducted by the testing company's psychometrician. Then the panel may break into smaller groups by subject matter expertise, or individuals may work alone to create test items using an online item-writing system provided by the testing vendor.

For an exam that will have 100–150 items, there will usually be 200–250 items prepared for the item pool, and there will typically be at least one and possibly two forms of the exam to begin with. After the initial items are prepared the test development panel meets as a group to assess the various items to check for ambiguity and correctness of answers so that one optional answer doesn't tip off the correct response, make it easy to eliminate an incorrect answer, etc.

Cut-Score Study: After the exam is administered the first time, another panel determines the cut-score; i.e., the score that will be used to determine who passed or failed the certification. They go through the exam one question at a time and state how many applicants should get the correct

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answer assuming a given level of experience and competence. Their answers together with statistics from the actual results are used to determine the cut-score.

ALSP: Are the same people involved on the job analysis, test specification, test development and cut-score panels?

Darmanin: Typically there will be some carryover or continuity from one panel to the next, but most of the panel members will change for each phase.

ALSP: How long will applicants have to wait to learn their results?

Darmanin: After the first test is administered, it will typically take six to eight weeks to allow for processing and determination of the cut-score. Depending on statistics relating to the size of the first test groups, it may be possible to provide immediate feedback after the exam has been administered several times.

ALSP: Is testing the only component of a professional certification program?

Darmanin: Not necessarily. The organization that provides the certification can specify other requirements such as experience, education or continuing education.

ALSP: Is there an organization that accredits professional certification programs?

Darmanin: Yes, the National Commission for Certifying Agencies accredits certifying programs. Certification helps ensure that proper standards were observed in the creation and administration of a certification program. Certification programs are usually not accredited until they have administered several exams. Many of SmithBucklin's client associations have received accreditation for their certification programs.

ALSP: Should ALSP offer a course that results in ALSP certification?

Darmanin: No, the National Organization of Competency Assurance requires that education be separate from certification. The ALSP certification program will be based on eligibility requirements that may or may not include some coursework component, but the exam should most definitely be administered apart from any kind of education. The people who are directly involved in developing the certification program should not be involved in developing an ALSP education program to help candidates pass the exam.

Duane Lites: Owner and Moderator of the LitSupport Listserve

Few people have made a larger contribution to education and networking among litigation support professionals than **Duane Lites**, owner and moderator of the Yahoo Groups LitSupport listserv and director of litigation support at Jackson Waker LPP in Dallas. For nearly 10 years, Lites has given selflessly of his time to keeping the LitSupport listserv functioning. *ALSP Update* recently had the opportunity to interview Lites about the LitSupport listserv.



ALSP: How did you get started in litigation support?

Lites: In 1985 I got a job with American Legal Systems as a programmer through a friend of mine. I worked on some of the asbestos cases, which for the time were relatively large projects with 300,000–400,000 documents and millions of pages. We used a mainframe computer with Inquire full text software. In the late '80s and early '90s we put together an imaging system using IPRO integrated with the mainframe. I left ALS when it was bought by CACI and worked as a consultant for a year and a half.

In 1995 I went to work with the firm that is now known as Lock Liddell & Sapp. It was quite a challenge building litigation support into a department. Windows95 was coming out and legal applications were slow to adopt. We didn't want to stick with DOS. We used IPRO as an imaging component interfaced with Inmagic/DBTextworks and LiveNote for transcript management. In 2000 I joined Thompson & Knight. It was a similar situation as Locke and they were in need of rebuilding a litigation support department. It was a different challenge, because of the fact that TK was a JFS Litigator's Notebook shop. Thankfully, JFS dropped their imaging application and adopted IPRO as their primary viewer in 2001 and soon after we installed LiveNote as well.

ALSP: How did you come to start the LitSupport listserv?

Lites: In about 1996 I helped form the Dallas Association of Litigation Support Managers, which was the first in Dallas. I believe there had been earlier groups on the East Coast, Chicago and Minneapolis. Through my efforts there I met Boyd Savage who was a litigation support professional at Fredrikson & Byron in Minneapolis. We had a discussion about ways to have litigation support people be able to get feedback if we had a question, topic or concern. We tried a message board on a Web site but it wasn't getting very much traffic — it was difficult to be sitting online watching the board all the time.

Then we came up with idea to try the listserv on OneList, which was later acquired by Yahoo!. We both served as moderators and sent the notice out to our contacts. At the time our vision was that 300–400 people might join. I sent the first message out on 7 December, 1998, at 5:11 pm. We had about a hundred members the first week and within a month had the 300–400 members we envisioned.

It has proven to be a good place for people new to litigation support to be able to ask questions or check out a particular company or product and get feedback from people with a lot of experience. Sometimes the feedback is given on the list, other times people contact each other offline. For the most part the advice is useful. When people are putting their names on the advice, they're going to try to be right.

ALSP: How many subscribers do you have now?

Lites: We're currently up over 7,000 subscribers, and during the almost 10 years since it started 35,000 messages have been posted.

ALSP: What kind of changes have you seen?

Lites: In the beginning the list was unmoderated for both messages and members, meaning that anyone could sign up and could post any kind of message. After six months it was apparent that we were getting spammed so we started moderating the messages so that we could screen out that sort

Duane Lites' LOLS Life Outside Litigation Support:

Favorite quote: "Never put off till tomorrow what you can do today", Thomas Jefferson

Movie/Play: "A Few Good Men," "Hoosiers," "Die Hard"

Recent book(s): "The Last Templar" by Raymond Khoury

Sports team: Dallas Cowboys & Texas Longhorns

Music (Bands): Rock - Aerosmith, Bon Jovi & Queen

Most influential person in career: Jim King, President - IPRO Tech. Jim played a big role in my early years of implementing images at ALS and several of my law firm positions. He's always available to do whatever necessary from a product, hardware or staffing need to get the job done.

Advice to people wanting to enter the litigation support profession: If you are a technical person, learn the legal side and vice versa. Understanding both will help you succeed. Make yourself visible - attorneys are busy people and if they can't find you they won't use you. Join one or more of the litigation support organizations - the LitSupport listserv is a must!

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of thing. After several years Boyd stepped down as co-moderator when he went full-time IT. Since then I've had help from time to time from other co-moderators. Patrick Mathews from Gardere & Wynne has been a co-moderator for the last several years.

We now also moderate members as a further way to reduce the level of spam coming to the list.

At one point around 2002 messages from people posting job listings or making other self-promotional postings were getting burdensome so we created the LitSupport-Announce list where such postings are permitted. There are now a little over 2,000 members of that list.

ALSP: Any suggestions for people who'd like to make a posting?

Lites: Remember that when you do a "reply" to the postings, the reply goes to the entire list. We try to catch instances where someone replying to a job posting accidentally does so publicly, but every now and then something slips through.

We try to screen out messages that are blatantly self-promotional and not on point to what an initial posting was about. However, this can be somewhat subjective and if we think the posting was made in a genuine effort to be responsive and helpful we'll usually allow it.

Also, because antitrust concerns we don't allow pricing questions or postings.

Finally, we'd ask that people keep personal attacks out of their postings. There have been times when we've had to stop the postings on a particular topic because things were getting out of hand on a personal level. Someone making a posting has to accept the good and the bad in the replies.

ALSP: How much time do you spend on the listserv?

Lites: I check the postings several times a day and if I added up all the time it might come to half an hour a day up to an hour on an extremely busy day. I view it as a sort of hobby, a way to do a little pro bono effort. Having had a stake in starting it, I have a sense of ownership and like to see it continue.

ALSP: Have there been any especially notable contributors?

Lites: I hate to name names because there have been a lot of people who've made great contributions. Having said that, Michael Arkfeld, George Socha, Bill Kellerman, Chuck Kellner, and Neil Aresty, have made many good postings as have Cheryl Evans and Bob Sweat. And of course Boyd Savage was an early contributor and helped me get the listserv off the ground.

ALSP: Are there any trends you're seeing in current membership applications?

Lites: Initially the list was essentially U.S.-based litigation support people, but I'm seeing many more applications from outside the U.S., particularly the UK and India. I'm also seeing many more lawyers, judges and consultants signing up.

The Founding of Women in e-Discovery

Women in e-Discovery, or WiE, is an educational and networking organization for women who are interested in the use of technology in the law. Since its informal beginnings in a Washington, D.C., Starbucks over six months ago, it has grown to have more than 700 members with 10 chapters and 16 additional chapters slated for 2008. *ALSP Update* interviewed the three WiE founders: Shawna Childress, Margaret Havinga and Lana Schell.

ALSP: How did Women in e-Discovery get started?

Childress: We would periodically meet for coffee at Starbucks, and one Friday we were talking about technology and the law and women's issues and we talked about a way to have other women join us. We came up with the idea to build a Web site, and send its link to other women and invite them to get together to learn, grow and network.

So I built the first Web site and we sent out the link to our personal friends who sent it to their friends and within literally a few weeks we had requests to start chapters, and they started popping up in other cities. We currently have 10 chapters including one in London, and expect at least that many new chapters in 2008. So far we've had inquiries not just from the U.S. and London but from Canada, Brazil and Singapore as well.

ALSP: What kind of functions does WiE provide?

Havinga: The D.C. Chapter holds monthly meetings over lunch where we invite speakers. Generally a law firm or a vendor will provide the meeting place and meal so we are able to offer membership at no cost to the members. Other locations have quarterly meetings. We have been very committed to having the meetings end on time so that our members can budget their time effectively.

We've been fortunate to have the support of a lot of firms and companies that have provided space and many nonmembers — including George Socha, Tom Ball and Dan Regard — have been very generous with their time and have spoken at our meetings.

ALSP: How would you compare yourself with other groups in the e-Discovery or litigation field?

Schell: We open up our membership to all women, not just managers. We have attorneys, vendors, government employees, all facets of the e-Discovery market. The WiE membership comprises general counsels, secretaries, chief operating officers and women from all walks of technology.

ALSP: What advice would you offer to male managers?

Childress: Don't look at women like they can't contribute on the same level as a man. Women may wear more hats, but even though they're often very busy they give 150 percent at work. I even dream about work — I sleep with a notebook so I can write down my ideas. Women make great members of a team. They're more apt to listen to all the discussions and not give their judgment until all due diligence is performed.

Schell: Men and women approach things differently, sort of the Mars and Venus idea. Women are often not as aggressive or as reactive as some men are; they listen more, think about the issue before coming to a conclusion. They have a different outlook and a different approach in how they analyze things. Men and women balance each other out; each adds a different dimension.

One big thing is to treat everyone alike. For example, in one organization the male employees would be taken out for drinks or dinner to celebrate birthdays, but the women



Shawna Childress' LOLS
Life Outside Litigation Support:

Favorite Quote: "Around here, however, we don't look backwards for very long. We keep moving forward, opening up new doors and doing new things...and curiosity keeps leading us down new paths," Walt Disney

Movie/Play: "Meet the Robinsons"

Recent Books: The Left Behind series

Hobby/Passion/Pastime: Playing with my children

Most influential person in career: My husband, who has always supported me in anything I wanted to accomplish

Advice to people wanting to enter the litigation support profession: It is a wonderful profession and one I have enjoyed over the past decade. If you are the type of person who loves a challenge, then this is for you. There are no schools that can prepare you for everything that you will encounter in our profession other than The School of Hard Knocks. Just remember, with every problem, mistake or error, you must take the time to learn from them. Don't let them bring you down, just keep moving forward.

Best Web site: For sentimental reasons, the Women in e-Discovery Web site because it is the first one I created.



Margaret Havinga's LOLS
Life Outside Litigation Support:

Favorite Quote: "No one made a greater mistake than he who did nothing because he could only do a little," Edmund Burke

Recent Book(s): I just finished one of the Harry

were never invited. That is a big de-motivator. Fortunately this type of thing is happening less and less.

ALSP: Do you see any differences in work settings?

Havinga: I work at a law firm that has women in top positions and is very supportive of women.

Childress: Law firms do seem to be more sensitive to minorities. At some vendors, women are not appreciated or put in higher positions. We would like to see that change in our market place.

ALSP: Any advice to a woman interviewing for a new position?

Look for opportunities to grow and learn — to grow to a different level. Ask about educational or certification opportunities.

ALSP: Where do you see Women in e-Discovery in three or five years?

Schell: It's hard to predict six months much less three or five years. We just want to continue growing, to help more women grow in their careers. We are incorporating as a nonprofit corporation after the first of the year. As we grow, we expect to have more educational content through our WiE committee, Women Learning Technology Together.

ALSP: How did each of you get into the e-Discovery industry?

Childress: My family owned a court reporting agency in Florida, and I had expected to take it over from my father. However, in the late '80s there were a lot of changes including new technologies and that didn't appear to be a good idea. I knew I wanted to stay in a field that was legal-related so I became a paralegal at LexisNexis where I grew and held a variety of positions including legal research specialist and various sales and marketing roles throughout my 10 years with them. I volunteered for every technology committee I could, which kept me involved with the new technology LexisNexis was creating or bringing inhouse. In 2000, I learned about a new practice area called e-Discovery which fascinated me. I moved to Fios Inc. as one of their first legal consultants for electronic discovery. After Fios, I moved to WestLaw for a short stint as the manager of premium accounts, but I missed e-Discovery. Therefore, I co-founded a computer forensics and electronic discovery company in Orlando. After selling our company, I became a consultant with Stratify and am currently director of national accounts at Encore Legal Solutions.

Havinga: During college I came to work at Williams & Connolly in a part-time capacity. After graduation I decided to take a year while contemplating law school and applied to work in the litigation support department where I worked with InMagic, Basis and FolioViews databases. That was 15 years ago and at that time everything was paper-based. We had databases to index or summarize the documents. Then we introduced document imaging to decrease the amount of paper we had to handle. In 1995 or '96 I became more specialized on trial presentation and graphics. In 1999–2000 when I became the head of the department we had three people; we've now built up to 15 people. We like to keep things inhouse but work with a number of vendors for collection, hosting and consulting.

Schell: When I was in law school I worked for the Office of General Counsel for the Pennsylvania State Police. I became interested in technology and built a database to track defendants — what citations did they have issued to them in which offices. I moved from Harrisburg to Philadelphia and worked at Drinker Biddle and at Duane Morris in litigation support. From there I went on to a position as project manager and later senior consultant for Merrill and then went on to LECG as a consultant. I'm currently a channel manager for Syngence Corp.

Potter books and started "The Pillars of the Earth," by Ken Follett

Hobby/Passion/Pastime: Photography, cooking and traveling for fun not work

Sports Team: Detroit Red Wings

Most influential person in career: My dad - he always said to work hard and give it your best

Advice to people who want to enter the litigation support profession: All your hard work may not always be acknowledged but always remember you are an important part of the case team

Favorite Charity: Susan G. Komen for the Cure



Lana Schell's LOLS

Life Outside Litigation Support:

Favorite Quote: "Life is too short to wake up with regrets. So love the people who treat you right. Forget the one's who don't. Believe everything happens for a reason. If you get a chance, take it. If it changes your life, let it."

Movie/Play: "Life is Beautiful" (with subtitles please)

Recent Book(s): "Eat, Pray, Love" and "Basic Black" - recommend the first; not so much the latter

Sports Team: I stay true to my Philly roots so: Flyers, Sixers, Eagles, Phillies, Phantoms, Wings. I am also a Penn State football fan (who doesn't love Joe Paterno?)

Most influential person in career: I have been very lucky to work with several fantastic people who have influenced me in positive ways. I could not possibly single one of them out.

Advice to people who want to enter litigation support profession: Read a lot, don't be afraid to ask questions, be passionate and don't let anyone take that away from you and, of course — network, network, network. People do business with who they know, who they like and who they trust.

Websites: www.womeninediscovery.com,
www.commonscoldtypepads.com,
www.edupdate.com,
www.sochaconsulting.com

ALSP Member Spotlight: Espe Rebollar

Each month, the ALSP newsletter shares a glimpse of one member's background and perspectives as a reminder of the diversity, depth of knowledge and expertise that abounds in the ALSP community. This month, meet [Espe Rebollar](#), litigation support coordinator for Winston & Strawn LLP in San Francisco. Rebollar has been involved with ALSP since its earliest days; she participated in the initial steering committee and now serves as vice president and a member of the ALSP board of directors.



**Espe Rebollar's
LOLS**
Life Outside
Litigation Support:

Getting started in litigation support: I had just graduated law school in Washington, D.C., and needed a job while I studied for the bar exam. A friend of mine told me about a coding position available at Informatics, one of the first litigation support companies. In short time, I got the job and started coding documents for the MGM Grand fire litigation. During my tenure at Informatics, I worked on projects ranging from those that involved hundreds of boxes to those that required only a one- or two-person coding team.

Best thing about litigation support: There is always something new to learn.

Places I've worked: I was with Informatics four or five years, then move into law firms' litigation support departments, including Hogan & Hartson, Debevoise & Plimpton, Chadbourne & Park, Paul Hastings, Townsend & Townsend, Heller Ehrman and Morgan Lewis. On the vendor side of things, I worked for Uniscribe for a while and had my own consulting firm for a time.

Interesting cases: I worked on the McDonnell Douglas Northrup litigation and was onsite in St. Louis for a year and a half on that project. At that point it was all paper, and to prepare for depositions, we would identify documents that pertained to the upcoming witness and have people who would pull the paper records, then copy and refile the pages. At one point I also worked on the tobacco litigation. My favorite case are intellectual property matters, with a fast pace and a variety of complex ESI issues.

Irony: I chose litigation support over practicing law because I did not want to work the long hours required!

Different systems I've used: My abbreviated list includes IPRO imaging and e-Scanit, Concordance, Summation, BASIS, CaseMap, Access, CMS, JFS and Lotus Notes.

Major changes: Windows, document scanning, OCR retrieval, electronic discovery, Web-based review.

Best advice: Don't be afraid to ask questions. It takes time to learn that nobody knows everything in this field. Join user groups for the applications you use and get on the list serves. There are an incredible number of people who are willing to help others in this industry and share their knowledge.

Groups I participate in: I am active in ILTA, which has very good litigation support information, and the Bay Area Litigation Support Managers Association. Most recently, I joined Women in e-Discovery.

Special hobby or passion: I am fascinated with bears. I have attended all the classes on bears at Yellowstone National Park and visit there every other year. I have also traveled to Churchill in Manitoba on the western shore of Hudson Bay to see polar bears. I would love to go to Alaska and see brown bears in the wilds of Denali National Park.

Favorite Quote: "No man ever steps in the same river twice, for it's not the same river and he's not the same man," Heraclitus of Ephesus

Recent Book(s): *The Fourth Bear*, by Jasper Fforde

Hobby/Passion/Pastime: Studying and watching bears in their natural habitat, especially grizzly/brown bears

Most influential person in career: Robert Ferguson, a programmer who taught me that asking questions is the most important step in learning what you do not know.

Next gadget: A new laptop because mine just crashed.

Charter Sponsor Profile: LexisNexis Discovery Services



About LexisNexis® Litigation Services

LexisNexis® Litigation Services helps law firms manage the entire litigation process with essential tools built around the way the firm works. In addition to the award-winning litigation products that can be used independently, LexisNexis also offers a unique portal for litigators. Total Litigator is a Web-based, single point of access to help lawyers better use their LexisNexis technology investments at each phase of litigation:

- Early case assessment
- Drafting, file and serve
- Discovery
- Research
- Gather intelligence
- Trial prep
- Alert and tracks
- Search by source

Total Litigator was described by Laurence Rose, president and chief executive officer of the National Institute for Trial Advocacy, as the “best option for litigators because its simplified, one-stop approach provides attorneys greater control of case management at each step in the litigation process.” Total Litigator was also named “the preferred online litigation tool for litigators” by the Defense Research Institute.

The LexisNexis offerings include CaseMap® case analysis software; CourtLink® for docket access, research and tracking; Concordance® for electronic discovery and litigation document management; Concordance® FYI for Web-based e-Discovery and litigation document management; Hosted FYI™ in which LexisNexis can host your data online; and its newest addition, LAW PreDiscovery™, for electronic and paper discovery processing.

Post-Acquisition Concordance

Thousands of litigation support professionals had their first exposure to litigation support by using Dataflight's Concordance®, the widely adopted litigation support/document management software that became part of the LexisNexis litigation offerings in June 2006. Many Concordance users have years of experience with the software and have formed personal relations with the key people who supported, trained and marketed Concordance. Here are the stories of three key members of the early Concordance team — how they got into the industry, what they did in the early years of Concordance and what they are doing now in the post-acquisition world. If you don't recognize the names, take a look at the pictures; you've probably seen them at some industry event through the years.

Joe Utsler, From Software Evangelist to Product Manager

As software evangelist, Joe Utsler was an indefatigable road warrior, crisscrossing the U.S. to promote and train users about the many uses of Concordance. He got started in litigation support at Sidley & Austin to have a day job to support him while he managed a theater in Los Angeles.

At Sidley, he performed a variety of tasks starting with manually reviewing hundreds of boxes of documents to place sticky notes on the responsive records, coding documents by entering data about them on a computer terminal, supervising coding, administering databases, and managing litigation support. Being with a law firm in the same city as Dataflight, Utsler had occasion to work with the key



Joe Utsler's LOLS Life Outside Litigation Support

Passion: Family - I have a wonderful wife and amazing daughter. I don't think it's much of a stretch for me to say that they are the two most amazing people on earth, and if I could choose to do one thing, it would be to spend time with them. My daughter is almost five, and at that time of her life where everything changes so fast, I don't want to miss any of it.

Passion: Food - I'm also a great lover of food, and have probably bonded with many folks in the litigation support world over a delicious meal. One of the best parts of traveling (and BOY do I travel!) is having the opportunity to try new restaurants and eat meals with new friends.

Passion: Photography (Joe is a passionate guy) - In previous incarnations of my life, I have been an actor and a web designer. These days, I channel most of my art through my camera. If you see me outside a conference or in between meetings, the odds are very good that I'll have my Nikon dSLR in my hands. I might even try to take a picture of you.

people there. He heard through Carl Chivers, the trainer, that Dataflight was looking for a software evangelist, and began a discussion with Jeff Lipsman. Utsler decided to accept the position, but the day he was to resign from Sidley was Sept. 11, 2001, and he had to pause to consider if that was the time to be making such a major change. In the end, he did resign and took the job as software evangelist for Concordance.

As software evangelist Utsler's role was to act as an interface between Concordance users and the people who were developing the software. He talked with users, found out how they were using Concordance, what the best practices were, what they might be doing with Concordance that was new or unexpected, and then shared what he learned with other users and with the development staff.

Utsler's proudest accomplishment was participating in the development and launch of FYI, the Internet-based version of Concordance. This enabled litigation teams to work on litigation support databases across internal networks and wide area networks.

His current role is product manager for Concordance. "I've gone from being a design influencer to being the guy who says what the strategy is supposed to be. I'm spending much more of my time listening than I used to spend as a software evangelist. I try to learn what people want in the next generation of the software."

In his spare time Utsler is taking a master's course in business communications from Northwestern University. It is a crossover between a technical degree and an MBA, at the intersection of technology and business.

Paul Mitsui, From Developer to Managing Development

Paul was a lead developer of Concordance for Dataflight. He got started in the industry in 1995 when, as a computer science and engineering student at the University of California, Los Angeles, he checked the UCLA job sites and saw a job posting from Dataflight. He interviewed with Jeff Lipsman and an hour later Lipsman phoned to make him a job offer. His initial responsibilities were to work on the image viewer program. At that time, Windows 95 was coming out and the software needed to be upgraded from a 16-bit to 32-bit.

The next big challenge was the development of Concordance FYI to provide Internet-based litigation support and document management capabilities. Paul's responsibilities were for the image viewer and the front-end or user interface for the Concordance products while Jeff focused on the backend or database part. Even though they had a great tech support team, during his time at Dataflight Mitsui spent a fair amount of time providing direct customer support, which he said could be quite challenging. An example is the call he got from a user who couldn't understand why the software seemed to be acting strangely and, as it turns out, had a book sitting on the function keys on the keyboard. He would also be tasked to create custom Concordance Programming Language, or CPLs, for users.

Since the acquisition, Mitsui has become the manager for development for Concordance directing the efforts of the development that has quadrupled in size since the acquisition. With the increased level of direct support by LexisNexis, Mitsui is spending far less time fielding client calls and is able to concentrate on development. This together with the increased development staff means that more features can be produced in a shorter time to improve the software. What's coming next in Concordance? Stay tuned.

Jennifer Stevenson, Director of Marketing to Director of Marketing

In 2000, Jennifer Stevenson was working for a company that was going down in the dot-com bust



Paul Mitsui's LOLS Life Outside Litigation Support

Favorite Quote: "Wherever you go, there you are."

Movie/Play: "Serenity," Lord of the Ring series

Recent Book:
Understanding Exposure
(photography)

Hobby/Passion/Pastime:
Motorcycles, photography,
my two-year-old

Restaurant: Daichan in
Studio City, quoted as being
"Japanese soul food"

*Most influential person in
career:* Jeff Lipsman

Next gadget: iPod Touch

News of Interest to Litigation Support Professionals

when she was contacted by a headhunter looking for a marketing executive for a software company. She looked at the company Web site and was, frankly, a little frightened by what she called "akin to shag carpeting on the Web." Nevertheless, she was eager to get back to her software roots and intrigued by the space, so she went ahead and interviewed with the owner, Jeff Lipsman. She was swayed by the fact that she would be able to build marketing strategy and positioning from the ground up.

She oversaw the complete revision of Concordance's brand, marketing and advertising programs, and traveled extensively to promote Concordance and arrange Concordance participation in conferences and trade shows. She also hosted the annual Concordance Partners Conference, which became a major event in the industry. She particularly enjoyed the passion of the Concordance team and their dedication to being responsive to clients' needs.

She is currently the marketing director for LexisNexis Discovery Services, where she is responsible for the marketing of all the Discovery Services including the recently acquired LAW software for electronic discovery and paper processing that is used by many service bureaus and law firms.



Jennifer Stevenson's LOLS
Life Outside
Litigation Support

Favorite Quote: "Do or do not...there is no try," Yoda

Restaurant: In Los Angeles it is Lucques, but I have favorites across the country.

Most influential person in career: Jennifer Saffo

ALSP Webcast — Managing Foreign Language Documents in Litigation

This complimentary 60-minute educational program offers practical advice about dealing with foreign documents in litigation and regulatory compliance matters. Topics include collecting and cataloging data from abroad and dealing with international privacy regulations as well as Unicode, tokenization of CJK languages and strategies for reviewing and managing foreign-language documents. The session is ideal for attorneys and litigation support professionals who want to build expertise in foreign language reviews.

**Managing Foreign Language Documents in Litigation:
A Primer on Foreign Collections and Litigation Support Issues**
Wednesday, 13 February 2008
4 – 5 p.m. EST; 3 – 4 p.m. CST; 1 – 2 p.m. PST

Presented by: John Tredennick, chief executive officer, Catalyst Repository Systems Inc.

[Register today](#)

About the presenter

John Tredennick is responsible for Catalyst's overall vision, management and direction. He began his career with Holland & Hart, the largest law firm in the Rocky Mountains, where he was a litigation partner. In 1995, he became the first law firm chief information officer while continuing his full-time, complex litigation practice. Under his direction, the law firm created one of the first data-driven intranets and began developing client extranets soon after, inspiring the concept for Catalyst. Tredennick is a frequent speaker to national and international audiences on the topics of legal and technology issues. He has published four best selling books about law and technology issues and has written for or been featured in countless articles in every national legal publication. For six years, he edited *Law Practice Management* magazine, a monthly publication of the American Bar Association focusing on legal technology and management issues. He founded and now edits *Law Practice Today*, a widely read ABA Webzine, continuing his focus on legal technology and management issues.

[Read more](#), and [sign up](#) for this complimentary Webcast.

Hone Your Meet-and-Confer Expertise at ALSP Session

Join ALSP at a special forum and educational program held in conjunction with LegalTech New York. This free event — open to all conference attendees as well as all litigation support practitioners interested in learning more about the ALSP community — takes place:

Thursday, 7 February

12:30 p.m. – 3 p.m.

**Hilton New York Hotel, Nassau Suite B
New York, N.Y.**

Hear from ALSP board members about the association's rapid growth and newly launched member services, then participate in a mock Rule 26(f) "Meet and Confer" planning meeting, co-chaired by board members Michelle Nichols and Espe Rebollar. Don't miss this opportunity to hone your skills and share insights and knowledge with fellow litigation support practitioners. Read on for session details, and watch your e-mail and the ALSP Web site for updates. Visit the [LegalTech New York Web site](#) for details about the full event.

Preparing for the Meet and Confer: The Role of the Litigation Support Professional

This practical, interactive session allows participants to follow the role of litigation support professionals as they consult with the client and law firm attorney team.

The purpose of the Meet and Confer — FRCP Rule 26(f) — is to ensure cases focus on the merits rather than on just the electronic discovery process. This FRCP rule requires counsel to understand the client's information infrastructure and negotiate what material will be disclosed, how it will be produced (form of production) and in what timeframe. Before that meeting, counsel must prepare for the discussion. This session shows appropriate activity related to a planning session for a Meet and Confer, stressing the litigation support professional's key roles in that procedure.

The session begins with a brief evaluation of FRCP Rule 26(f) and an introduction of the "players." Then, individuals will role-play a specific scenario.

The case: A number of employees left software developer called Slick Software Inc. to start their own company, Awesome Applications Inc. — a competing company to Slick Software. Slick Software is suing Awesome Applications' founders for taking customer records and other IP information with them when they left. Additionally, the plaintiff claims that the debarking employees sent documents to themselves at their home e-mail addresses once they decided to leave.

Your law firm, Bradshaw, Greene & Blier is counsel to defendants, Awesome Applications Inc. and you are helping to prepare an attorney for his first Meet and Confer on this case. Players are:

- Adam — An attorney at the law firm of Bradshaw, Greene & Blier who will be attending his first Meet and Confer and wants to be sure he is prepared
- Linda — A litigation support professional who works with Adam at the law firm and has reached out to him to provide assistance in advance of his Meet and Confer
- Chris — The supervisory counsel for the client; he needs to provide Adam information about the company's IT infrastructure so Adam can represent the client's interests during the Meet and Confer
- Eric — The IT supervisor in charge of the client's e-mail systems
- Ingrid — An external IT consultant who will advise the client and counsel

Act 1: In Anticipation of Litigation — Understanding the Client's IT Infrastructure

1. How to engage your client in a discussion about their IT infrastructure
2. Develop a questionnaire for interviewing IT resources
3. Understand your client's document retention policies
4. Understand what is "reasonably accessible" as it relates to your client's data set
5. Determine who a good 30(b)6 witness would be

Act 2: Preparing for the Meet and Confer

1. Determine and document the universe of data that is potentially responsive:
 1. Where it is?
 2. Who has it?
 3. Who are the main custodians?
 4. What format is it in?
2. Discuss Preservation Plan
 1. Determine Collection Plan
 2. Should client do their own collection?
 3. Should the law firm do the collection?
 4. How do you maintain chain of custody?
 5. Do you keyword filter upon collection?
3. Discuss Processing
 1. Should the law firm do the processing?
 2. Should it be sent out to a vendor?
 3. How do you maintain chain of custody?
4. Discuss Form of Production options (which can you give, which do you want to receive?)
 1. Native
 2. Near native
 3. Paper
 4. Near Paper
 5. Metadata
5. Other Considerations
 1. Clawback
 2. Privilege
 3. Costs

ALSP Rolls Out Two Online Resources

As membership builds and ALSP's participation in the global litigation support industry increases, the association will continue to develop and launch member-focused resources through its Web site, educational events and networking functions. Two new Web-based tools became available within the past month.

Keep the Conversation Flowing — Participate in ALSP Discussion Forums

ALSP provides discussion forums where the ALSP community can instantly share information about numerous pertinent topics. After educational events, in particular, ALSP encourages continued discussion through the online forum. [Join the ALSP Discussion Forum](#) to ask questions, share best practices and expand your professional network.

Participants do not need to hold membership in ALSP to participate — just have an interest in the topic at hand.

Webcast Archives

Members can access archives of any ALSP Webcast within two weeks of each session's premiere. The November Webcast, "**Key Considerations in Building a Litigation Support Center**," is now available. An archive of December's Webcast, "**The Challenges of European Data Collections From a European Perspective**," will be uploaded to the ALSP Web site by the end of the December. Don't miss this opportunity to hear from industry experts on-demand; visit the [Webcast archives page](#) anytime you choose.

ALSP Webcasts are receiving rave reviews. Comments about November's presentation include:

- *"Very informative. I was able to see where we fit in the scheme of structures."*
- *"Good topic and the discussion reinforced that I have been making the right decisions."*

One-Minute Reader Survey: Issues Facing Litigation Support

Each month, ALSP will ask the litigation support community a single question that will help guide the direction of the association's benefits, services and goals. This month's question asks about critical issues within litigation support organizations.

What is the biggest issue facing your organization? Is it e-Discovery processing or litigation databases? Maybe it's billing and collections, vendor management, technology or staffing. Take one minute to go to the [ALSP homepage](#) and share your input.