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The National Conference on Legal Information Issues: Selected Essays

Timothy L. Coggins

University of Richmond, tcoggins@richmond.edu

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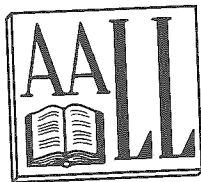
National Conference on Legal Information
Issues (1995 : Pittsburgh, Pa.)

**THE NATIONAL CONFERENCE ON
LEGAL INFORMATION ISSUES:
SELECTED ESSAYS**

Edited by

TIMOTHY L. COGGINS

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Contents

Foreword	xi
<i>James S. Heller & Carol D. Billings</i>	
Contributors	xiii
Introduction	xix
<i>Timothy L. Coggins</i>	
Opening	
The American Association of Law Libraries: The People, the Profession and Their Association	3
<i>Laura N. Gasaway</i>	
Plenary Session: The Shifting Universe of Legal Information	21
<i>Robert C. Berring</i>	
Copyright/Intellectual Property	
Fair Use and the National Information Infrastructure	35
<i>Bruce A. Lehman</i>	
Fair Use in the NII: What Libraries and Educational Institutions Seek	41
<i>Laura N. Gasaway</i>	
Copyright in the Electronic Environment: Will It Be Just?	47
<i>Carol A. Risher</i>	

Technology and Cyberspace	57
Keynote Address: Finding Justice in Cyberspace <i>Paul R. Friedman</i>	
Law and Waldo: Some Cyberspatial Lessons from Children's Literature <i>M. Ethan Katsh</i>	69
The Law in Cyberspace: A Futuristic View <i>Hugh Yarrington</i>	75
The Virtual Library: Explorations in Information Sciences <i>Michael B. Spring</i>	79
The Future of Microforms in a Digital Era <i>Jerry Dupont</i>	151
Equitable Access to Information	161
The Redlining of Information: How to Prevent It <i>Gary Bass & Patrice McDermott</i>	
Redlining Information in the NII: The Internet Makes It Less Likely <i>Henry H. Perritt Jr.</i>	167
Information Apartheid or Information Justice: Which Will It Be? <i>Marvin R. Anderson</i>	173
Information Redlining: A List of Selected Readings <i>Timothy L. Coggins & Rhonda Oziel</i>	181
Legal Education/Law Firms/The Judiciary	187
Judges' Lives: Judicial Biography in America, 1607-1995 <i>Warren M. Billings</i>	
Writing Hugo Black's Biography <i>Roger K. Newman</i>	201

CONTENTS	ix
Judicial Information Policy: Whose Responsibility Is It, Anyway? <i>Thomas F. Field</i>	215
Retooling Criminal Justice: Forging Workable Governance from Dispersed Powers <i>George W. Nicholson & Jeffery A. Hogge</i>	223
Legal Education in the Future <i>Judith Welch Wegner</i>	249
The Transformation of a Law Firm's Library into the Firm's Information Center <i>Robert MacCrate</i>	259
Connecting for the Future <i>Holley M. Moyer</i>	265
Closing Closing Thoughts: Institutional Passages: A Search for Meaning in the National Conference <i>M. Kathleen Price</i>	277
Index <i>Timothy L. Coggins</i>	285

FOREWORD

During the past decade, information technology developments have revolutionized the dissemination and use of legal and legal-related information. In July 1995, the American Association of Law Libraries, a non-profit organization with more than 5,000 members, convened the first "National Conference on Legal Information Issues" in conjunction with its eighty-eighth annual meeting.

The National Conference provided a forum for members of the legal and information communities to discuss the challenging problems and issues arising from the dynamic technological changes that have impacted the creation, dissemination and use of legal information. The National Conference assembled more than 2,500 librarians, law faculty and deans, judges and court administrators, practicing attorneys and firm administrators, government officials, legal information producers, and leaders of information associations to help chart the course of the information revolution.

It appeared fitting that law librarians provided this forum to address the ethical, economic and legal questions raised by the new electronic environment. Law librarians understand well the issues surrounding access to legal information. They will help design solutions that ensure fair access to law and law-related information. They serve a diverse group of individuals, including law school and university professors and students; judges, legislators and other public officials; corporations and small businesses; attorneys; and, of course, the general public. Law librarians work closely with both government and commercial information providers. They negotiate with publishers and other information providers on the fair use of copyrighted works, testify often before members of the United States Congress and the Executive Branch on a variety of information policy issues and periodically submit briefs to appellate courts on issues that concern the profession and those served by law librarians.

The two-day National Conference featured thirty-eight programs, a plenary session, a keynote address and a closing session. This compilation includes informative and thought-provoking papers by many National Conference speakers. The papers represent the opinions and views of the

essay authors and not the opinions of the Association or the institutions and firms with which the writers are affiliated.

We hope that you enjoy these essays.

James S. Heller
1995 Program Committee Chair
College of William and Mary
Marshall-Wythe Law Library

Carol D. Billings
1994-95 AALL President
Law Library of Louisiana

INTRODUCTION

TIMOTHY L. COGGINS

*Director of the Law Library & Associate Professor of Law
University of Alabama School of Law*

The "National Conference on Legal Information Issues" was the brainstorm of Carol D. Billings, Director of the Law Library of Louisiana and the 1994-95 President of the American Association of Law Libraries. When Carol was elected Vice President/President-Elect, she presented the idea of a conference attended by the many constituencies associated with legal information issues. Her intention was to bring together representatives of the legal and information communities to address issues of common concern. Carol believed that "law librarians have the closest contact with, and knowledge of, both government and commercial information providers, and are the professionals within the legal community who understand best the issues surrounding access to information."¹ President Billings felt that "the conference [would] be an important catalyst in the creation of meaningful and lasting partnerships" and that the conference would be an opportunity for law librarians to meet with other users of legal information to discuss such issues as copyright in the electronic environment, integrating access to online and traditional legal resources, judicial information policy, the current and future research needs of lawyers and equal access to information, among others.²

President Billings selected the theme of "Connected for Justice" for both the National Conference and the Annual Meeting of AALL to convey a three-fold meaning. First, technology has revolutionized the way that legal information is disseminated to and used by everyone connected electronically to improve access to justice. Her second premise was that law librarians cooperating and supporting each other through AALL and its chapters are *the* leaders in the field of legal information and, therefore, should sponsor this important gathering. Her third underlying idea was that law librarians should form alliances and cooperative efforts with other members of the legal and information communities to foster fair and beneficial use of information in the service of justice for all.³

The "National Conference on Legal Information Issues" was a success.⁴ All the essays in this collection were prepared by speakers for the July 1995 National Conference. The essays show the continuing interest in the issues addressed at the National Conference and the continuing value of the National Conference to law librarians and everyone associated with legal information. The essays are varied and offer the views and opinions of many authors, including law librarians, judges, publishers, vendors, professors and government officials. This collection provides readers with the opportunity to explore further and to contemplate the ideas addressed at the National Conference.

The first essay by Professor Lolly Gasaway provides an entertaining look at the American Association of Law Libraries, its members and its history, as well as information about the current activities of AALL. Professor Gasaway's essay, "The American Association of Law Libraries: The People, the Profession and Their Association," traces the Association from its formation in 1906 and presents leaders whose names law librarians will recognize and whom Association members respect and admire. Her essay was presented as an introduction to AALL for the delegates from other professions who attended the National Conference.

Paired with Professor Gasaway's essay is Professor Robert Berring's plenary session presentation. In "The Shifting Universe of Legal Information," Professor Berring explores developments in legal information, beginning with three landmarks of traditional legal information (the National Reporter System the American Digest System and Shepard's), followed by the changes brought about by the introduction of WESTLAW and LEXIS/NEXIS, and concluding with an interesting exploration of the "third wave of change" in legal information. Professor Berring discusses what is happening in legal publishing today and the effects of telecommunications changes on information access and marketing on legal information. He concludes with a discussion of the "realm of the wild things." The other essays in the collection, except the closing thoughts by Professor M. Kathleen Price, are arranged under broad subject divisions: Copyright/Intellectual Property; Technology and Cyberspace; Equitable Access to Information; and Legal Education/Law Firms/The Judiciary.

Authors Bruce Lehman, Lolly Gasaway and Carol Risher explore the copyright and intellectual property issues. Commissioner of Patents and Trademarks Bruce A. Lehman writes in "Fair Use and the National Information Infrastructure" that the Working Group on Intellectual Property Rights recognizes in its reports the importance of the fair use doctrine, but it also believes that the information age has raised the need for the reconsideration of various portions of the copyright law. He reasons that

copyright owners today are concerned that new technology permits a level of piracy in the quantity and quality of unauthorized reproductions that was not possible earlier.

Carol A. Risher of the Association of American Publishers affirms this view. She writes in "Copyright in the Electronic Environment: Will It Be Just?" that the times have, indeed, changed and that electronic dissemination offers ease of distribution of copies that was not possible with photocopiers. According to Ms. Risher, it is much easier today to violate the rights of the copyright holder. She concludes that everyone, including publishers, librarians and users, must be more knowledgeable of and more attentive to copyright laws.

Professor Lolly Gasaway explains in "Fair Use in the NII: What Libraries and Educational Institutions Seek" that fair use in the electronic age must continue to be equivalent to that in the print environment for purposes such as scholarship, research and teaching. She believes that the four fair-use factors should not disappear and be supplanted by licensing arrangements.

The essays in the technology and cyberspace section of the collection explore issues ranging from privacy and security in cyberspace to the question of whether there is a place in the digital age for formats such as microforms. Deputy Associate Attorney General Paul Friedman delivered the keynote address for the National Conference. His essay, "Finding Justice in Cyberspace," focuses on current legal issues associated with cyberspace, including First Amendment and privacy issues and combating crime in cyberspace. Mr. Friedman compares cyberspace with the wild West, "rife with creativity, freedom and adventure . . . [but] . . . also filled with snake oil salesmen, red light districts and bad guys."

Professor M. Ethan Katsh creatively addresses questions about obsolescence, how technology will transform the law, what legal information will look like in cyberspace and what the role of information providers will be in "Law and Waldo: Some Cyberspatial Lessons from Children's Literature." Professor Katsh uses Waldo, a character in a series of popular children's books, to illustrate the migration from the print world to the electronic world. He uses Waldo as a metaphor, not simply for the law itself, but for the many individuals, including law librarians, whose lives and experiences occurred mostly in the context of print.

Commerce Clearing House Senior Vice-President Hugh Yarrington continues the discussion of cyberspace in his essay "The Law in Cyberspace: A Futuristic View." Mr. Yarrington believes that technology's utility must be demonstrated rather than assumed and that legal and related professions must attempt to ensure that technology and technological advances are

managed in ways that preserve or enhance law's essential purpose. He presents his ideas about several important questions, including what legal information will look like in cyberspace and how technology will transform the law.

Jerry Dupont, Executive Director of Law Library Microform Consortium, and Michael B. Spring, Professor at the School of Information Sciences of the University of Pittsburgh, offer their perspectives on other issues relating to cyberspace. Mr. Dupont concludes in "The Future of Microforms in a Digital Era" that microforms will continue to be used even in the electronic environment because they are a cheap and efficient method to capture and preserve legal information. His essay offers some forecasts for the future and survival of law libraries, the adequacy of funds necessary to maintain excellent collections and the patron base for law libraries.

Professor Spring addresses the impact of the rapidly evolving technologies of the information age on the library in "The Virtual Library: Explorations in Information Spaces." He uses five examples of technologies (net browsers and the WWW, VIBE, workstations, CASCADE and InfoSpace) that support the potential of the virtual library. He believes that the real impact of technology will be on developing the aspects of technology that augment and magnify the human intellect.

The chapters in the section dealing with equitable access to information address the problems associated with information redlining and the possibility of a society with information haves and information have-nots. OMB Watch Executive Director Gary Bass and OMB Watch Information Policy Analyst Patrice McDermott present some disturbing facts about access to information and discuss the possibility that someone who needs or wants information may not be able to get access simply because he or she is poor or a minority. Their essay, "The Redlining of Information: How to Prevent It," provides examples of ways to address the redlining concerns and encourages the development of policy language to ensure that there is *not* redlining. They also address concerns about the availability of "public spaces" on the information superhighway, the need for a comprehensive program for capacity building and the desire that there be increased opportunities for minority ownership in the information age.

In "Redlining Information in the NII: The Internet Makes It Less Likely," Professor Henry H. Perritt Jr. presents several different ways to mitigate information redlining: the use of open information technology systems like the Internet rather than proprietary systems and the evolution of the public library into a point of access to the global information infrastructure. Professor Perritt believes that the Internet architecture's potential as an open market for information reduces the danger of

information redlining because it enables a more competitive market and lowers the price for information access.

Marvin Anderson, the State Law Librarian for the State of Minnesota, explores the relationship between the information superhighway and black America in "Information Apartheid or Information Justice: Which Will It Be?" Mr. Anderson presents the views of two speakers at a National Conference program, both of whom believe that black America must aggressively pursue alliances with progressive groups to ensure that the information superhighway is accessible to everyone who needs or wants access to it. Both speakers believe that equal access is important to avoid a new society of information haves and have-nots from emerging, which would result in deeper social divisions in American society.

For anyone interested in further reading in this area, Timothy Coggins and Rhonda Oziel, Senior Reference Librarian at the BNA Law Library, provide a brief list of further readings.

The final section of essays dealing with legal education, law firms and the judiciary also are quite varied and offer the insight of individuals from the academic and private sectors. First, Professor Warren M. Billings and Research Scholar Roger K. Newman offer different perspectives of the judicial biography issue. Professor Billings explores the appeal of judicial biography in America from colonial times to the present in "Judges' Lives: Judicial Biography in America, 1607-1995." He addresses the similarities and differences in judicial biography in England and colonial America with the biographical scholarship that is being completed in the twentieth century. Professor Billings concludes that judicial biographers may approach their subjects differently, but judicial biographies typically "allow the curious reader to appreciate how and why a judicial biographer does his work."

Author Roger K. Newman's essay illustrates clearly Professor Billings' conclusion. He provides the reader with a discussion of the intellectual issues and the research process associated with his book *Hugo Black: A Biography*. Mr. Newman explores his relationship with Justice Black and Black's family and friends during his research of Justice Hugo Black's life. Mr. Newman offers considerable insight into the mind of the judicial biographer. He believes that biography is a brand of literature, not a mere recital of facts with some commentary, and his essay reveals a judicial biographer's attachment to his subject.

Two essays deal with judges and their roles in the information technology issues. Thomas F. Field, Executive Director of Tax Analysts, offers a challenge to judges and others in the legal information field in his essay "Judicial Information Policy: Whose Responsibility Is It, Anyway?" He asserts that the courts are responsible for both deciding cases and

disseminating opinions that explain their decisions. He believes that the courts have failed in this second responsibility and that it is time for the courts to make effective use of the new technologies to disseminate their opinions electronically and widely.

Justice George W. Nicholson and Attorney Jeffery A. Hogge offer, in "Retooling Criminal Justice: Forging Workable Governance from Dispersed Powers," exactly what President Carol Billings hoped to accomplish with the National Conference. Their essay focuses on the importance of all participants in the criminal justice system working together to enhance their work. They believe that criminal justice must enter the information age and must incorporate new technology as a tool to make the system function more smoothly and effectively. The model proposed by Justice Nicholson and Mr. Hogge is an excellent example of the partnering of related professions that was encouraged by this National Conference.

Law School Dean Judith Wegner continues the partnership theme in her essay about legal education, "Legal Education in the Future." She explores the impact of information and technology on law professors, law school administration, law libraries, students and others. She believes professionals must make hard choices in order to help students and professionals navigate what are interesting, but perilous, times. Dean Wegner examines carefully the role of law librarians and recommends that they undertake a fundamental reexamination of their way of doing business and their commitments to their diverse clientele. She encourages a sharing of the insights of individuals in related professions through future conferences and symposia so that everyone will be able to navigate this new virtual universe.

This section of the collection concludes with two chapters about the law firm environment and the importance of information access, libraries and technology to the success of the law firm. Attorney Robert MacCrate presents the development of the library at Sullivan and Cromwell in "The Transformation of a Law Firm's Library into the Firm's Information Center." He portrays the firm's library as a "quiet repository solely for printed materials" when he first arrived at Sullivan and Cromwell in 1948, and then follows its development into an information center. Mr. MacCrate concludes that librarians and information professionals are here to stay; their roles will only increase because they are the guides who must help users deal with the "boundless sea of available information."

Holley M. Moyer, Director of Strategic Customer Alliance with LEXIS/NEXIS, synthesizes the views of four speakers at a National Conference program dealing with law practice and law librarians. In her essay "Connecting for the Future," Ms. Moyer explores the connections and interactions that are essential for successful working relationships among the

various professionals in the law firm environment. Her essay presents the views of a law firm librarian, a chief information officer, an attorney and a chief operating officer. She concludes that the future offers exciting opportunities, rather than daunting challenges, for law librarians in the private sector. Librarians must embrace the changes, use the changes to grow professionally and actively participate in the evolution of information resources and information technology.

Professor Kathie Price offers an excellent conclusion to the collection in "Institutional Passages: A Search for Meaning in the National Conference." She reflects on the changes affecting law librarians in three different areas: (1) the way we do business; (2) our relationships with suppliers, customers and partners; and (3) the structure we had come to expect. Professor Price summarizes the many issues from the National Conference, including the future for law librarians, the commercialization of information and law practice, intellectual property and the problems associated with electronic libraries, as well as many others. She concludes that the issues of the National Conference boil down to respect, resources and relationships. The resolution of these issues can only be improved by librarians, publishers and legal information professionals working together.

It has been a pleasure to serve as the editor of this collection and to work closely with the authors of the essays. I thank each of them for their important contribution. I also would like to thank the University of Alabama School of Law and Dean Kenneth Randall for supporting my work with this collection, Peggy D. McIntosh, Law Library Staff Assistant, for her expertise and patience, and L. Ruth Weeks, Head of Technical Services, for her assistance. Finally, considerable thanks must go to Sheila M. Jarrett, Manager of the Editorial/Production Department at Fred B. Rothman & Co., for her advice and support.

I hope that you enjoy these essays. I also hope that the essays inspire all of us to further President Billings' vision by continuing to develop and explore these important partnerships with other legal information professions.

Endnotes

1. *Connected for Justice: The National Conference on Legal Information Issues*, in *Connected for Justice: American Association of Law Libraries 88th Annual Meeting [Preliminary Program]* 6 [1995].
2. *Connected for Justice: Pittsburgh Is the Site for Law Librarians Convention*, Penn. L. Wkly., July 17, 1995, at 13.

3. *Connected for Justice Selected as AALL's 1994/95 Theme*, 10 Am. Ass'n L. Libr. Newsl. 461 (1994).

4. See the September/October 1995 and the November/December 1995 issues of *Law Library Lights*, the newsletter of the Law Librarians' Society of Washington, D.C., for a variety of perspectives on the AALL meeting and the National Conference. The two issues include contributions from a delegate to the National Conference, a firm librarian, a former vendor/firm librarian and a library paraprofessional.