



AALL Reaches the Tipping Point in National Leadership on Digital Authentication

President Sally Holterhoff warmly welcomed 50 delegates to AALL's National Summit on Authentic Legal Information in the Digital Age, held outside of Chicago at the beautiful Renaissance Schaumburg Hotel and Convention Center April 20-21. The goal of the summit was to bring in national leaders to explore legal and technological solutions to ensure that state online legal information is authenticated and preserved.

We were honored to have very distinguished outside delegates, including representatives from the American Bar Association, the National Conference of State Legislators, and the National Conference of Commissioners on Uniform State Laws, as well as officials from state courts, state legislatures, state archives, and the federal government.

In her welcoming comments, Holterhoff reminded us that we all began using legal materials in the print world but that times have changed, as has our concept of what is *official* and *authentic* legal information. She provided a brief background on AALL's new groundbreaking *State-by-State Report on Authentication of Online Legal Resources* (www.aallnet.org/aallwash/authen_rprt/AuthenFinalReport.pdf), which answers the question, "How trustworthy are state-level primary legal resources on the Web?"

Opening Session: Print v. Digital—Assumptions and Differences

AALL's own Bob Berring was the opening speaker. During his opening remarks, Berring traced the history of judicial reports from the early print versions to today's print and electronic versions provided by the commercial sector.

He noted that most of us assume "official" status based on appearance. As he pointed out, citation rules require that legal researchers cite to official reports, if possible, but that doesn't mean that the researchers use them. They prefer unofficial sources that are more timely and user-friendly.

The former print-only world was more straightforward because a researcher didn't have to make decisions about what print resources to use or question their reliability

or integrity. Law librarians played a key role in ordering, cataloging, and shelving print resources. Today's law students want to do all their research online and don't view books as knowledge or cultural embodiments—they rely on Google and PDFs.

Berring reminded the delegates that official jurisdictions, federal and state, have never been consistent providers of legal information. Nor has there been an outcry for the "steady provision of legitimate, verifiable legal information," he said. This seems to be a more attainable goal in the digital age, although, as he warned, authentication will be expensive, complicated, and time-consuming.

Berring emphasized that the lack of digital authentication is a real crisis and that it has to be solved at the national and state levels. He believes that the AALL authentication report is our action document, and he called upon all delegates to join AALL in this effort because of the concerns we share about digital authentication.

Session One: AALL's State-By-State Report on Authentication of Online Legal Resources

During the first of three sessions, Richard J. Matthews, 2005-2006 chair of AALL's Access to Electronic Legal Information Committee (AELIC) and editor-in-chief of the authentication report, described the methodology used for the survey and report. The report examines the results of a state survey conducted in 2006 by AELIC members and others at the direction of then-AALL President Claire Germain.

The survey investigated whether state government-hosted legal resources on the Web are *official* and capable of being considered *authentic*. The survey targeted six sources of law: state administrative codes and registers, state statutes and session laws, and state high and intermediate appellate court opinions. Survey results showed that a significant number of state online resources are *official* but none are authenticated or afford ready authentication by standard methods. State online primary legal resources are, therefore, not sufficiently trustworthy.

Judy Meadows, state author for Montana, summarized the report's six key findings and some of the challenges that states face, which include the fact that each branch of state government operates

differently and independently. Meadows proudly announced that Montana has just enacted H.B. 132 requiring state agencies to provide permanent public access to their electronic information. She noted that the 2003 publication of the AALL *State-by-State Report on Permanent Public Access to Electronic Government Information* (www.aallnet.org/aallwash/PPAreport.html) has informed state officials about their responsibilities for permanent public access and preservation. AALL should take great pride in the fact that nine states now require permanent public access to their online resources.

The third speaker was Michele L. Timmons, Minnesota revisor of statutes and commissioner of the National Conference of Commissioners on Uniform State Laws (NCCUSL). She described efforts that she is spearheading in partnership with the Minnesota Historical Society and the San Diego Supercomputing Center to use grid technology to preserve electronic resources. She noted that it may be a long-term, rather than short-term, solution. She also enumerated some of the key barriers the states face, such as the fact that technology is so fast changing and dynamic, the high costs, and the balance of usability versus speed versus accuracy and authenticity.

Half-hour Q&A sessions followed each panel and were preceded by the thoughtful comments of two reactors. Adam Jansen and Judge Herbert Dixon were the reactors for Session One. Jansen, deputy state archivist for the State of Washington, said he wants everything electronic and noted that online access is more equitable and much easier for searching. He pointed out that there are three pillars to e-records—authenticity, chain of custody, and the pure volume of materials. Yes, he admitted, it's expensive and difficult, but citizens have a right to know.

Dixon, of the Superior Court of the District of Columbia, stressed that law librarians and the courts face similar problems regarding the integrity of court records. Dixon is a supporter of e-filing and noted that the technology exists to authenticate. He's confident that our common concerns will lead us to solutions.

Among the important issues raised during the Q&A were: the preference by students to do research online; the need for partnering with state archives and libraries; and the many layers of authenticity—

employee creation, chain of custody, and the security of networked systems. Everyone agreed that, as Meadows pointed out, “the train has left the station,” and it is up to us to do something about it.

There was also agreement that ensuring authenticity and permanent public access are enormous technological challenges that must be resolved now as state courts, legislatures, and agencies move to a more digital environment and, in some cases, eliminate print altogether.

Session Two: The Technological Solutions for Best Practices

As moderator of the second panel, I expressed AALL’s commitment to equal justice for all and public access to government information. We believe it is the government’s responsibility to ensure the full life cycle of electronic information—from creation to the development of adequate finding tools, authentication, permanent public access, and preservation. I noted that a handful of governments are ahead of us on digital authentication and briefly described France’s successful efforts, initiated in 2004, to authenticate its online *Les Journaux Officiels*.

Michael Wash, chief technical officer at the U.S. Government Printing Office (GPO), described the challenges of its mission to preserve digital content “into perpetuity.” GPO is shifting from print control to content management as it develops its Future Digital System (FDsys). Wash distinguished between security, where you minimize threats on data, and authentication, which includes chain of custody information, digital signatures, and Public Key Infrastructure (PKI).

FDsys will ensure that electronic information will be permanently available, authenticated and versioned, and accessible through the Internet for easy searching, viewing, downloading, and printing. Its first public release will be in December.

Thomas Wrosch, senior policy advisor at the Oregon Secretary of State Corporation Division, gave AALL a real pat on the back by saying how happy he was to attend the summit, especially since a year ago he didn’t know AALL existed. And now, he doesn’t know how he lived without us! Wrosch brought the need for risk assessment into the discussion, noting that as the risk goes up, so do the costs. He educated us about some new cutting-edge technologies that may lead to solutions, including:

- **E-Apostilles**—which have the certification status of a notary public, using PDF formats, digital signature, and verification of where it came from.
- **Certificates of good standing**—which use verification numbers that trace back to a Web site.
- **Electronic postmarks**—such as those available from the U.S. Post Office that provide a hash of the document, are time stamped, and are kept for seven years in a repository.
- **PKI**—which uses public and private cryptographic key pairs obtained and shared through trusted third-party authorities. It allows users to be authenticated to each other and ensures valid use of the keys. Kansas is investigating using PKI for authentication.
- **A two-tier system**—which would provide a lesser level of security for data stored on a Web site than for the original document.

Reactors to the second session were Justice Ming Chin and Lucy Thomson. Chin, associate justice of the Supreme Court of California, said that the problem is immense. We need to be concerned not only with the final information product, but also the processes used to ensure accuracy throughout the entire process. Everything from transcripts and exhibits leading to the final court opinion must be preserved and accurate.

Thomson, an attorney with Computer Sciences Corporation who has worked extensively on network security and electronic discovery issues, reminded us that authentication is just one aspect of information security. She informed us of two documents developed by the National Institute of Standards: *Guidelines on Securing Public Web Servers* and *Recommended Security Controls for Federal Information Systems*.

Among the issues raised during the Q&A were: concerns about privacy in electronic court records, version control, and the sheer number of documents that need authentication.

Session Three: The Legal Solutions

AELIC Chair Timothy Coggins moderated the third session. Panelist John Martinez, director of the Administrative Law Division at the New Mexico Commission of Public Records-State Records Center and Archives, provided a history of the publishing of its administrative code and register. Both are published on the Web so they are freely available, and both are considered official. PKI is not allowed in New Mexico, but the Web sites are secured so that nothing can be added or changed, and the online version is compared periodically to the print.

The second panelist, Michele Timmons, had spoken previously in Session One. She became an NCCUSL commissioner in 1998

when she assumed her position as the Minnesota revisor of statutes. Timmons raised the possibility of asking NCCUSL to create a study committee to determine if there are legal standards for official status and authentication that could be written into either a uniform law or a model act. Although it would not be possible to specify technical standards, certainly best practices could be developed.

Moderator Coggins then led a discussion about whether current state laws could be amended to include authentication. He used as an example Washington State legislation, H.B. 1859, which requires that, if the Washington State Register is published exclusively by electronic means, electronic copy is the official copy. A proposed legal solution would be to add, “and shall be authenticated by a certificate or mark that conveys information as to its certification, and shall be preserved for permanent public access.”

The two reactors for the third session were Ralph Preston and Ben Wilson. Preston is reporter of decisions for the State of Ohio and co-chair of the Association of Reporters of Judicial Decisions (ARJD) Electronic Publishing Committee. He made a strong argument that authentication, permanent public access, and preservation



Timothy Coggins, associate dean for library and information services and professor of law at the University of Richmond School of Law Library, and Ralph Preston, reporter of decisions for the State of Ohio.

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are the real issues. He noted that in fall 2004, digital signatures were added to the opinions posted on the Ohio Supreme Court Web site, although they are not considered official.

He also commented on the ARJD's timely new *Statement of Principles: "Official" On-line Documents* that is in sync with the findings of the AALL Authentication Report. The ARJD statement cautions "that the on-line publication of unauthenticated and impermanent 'official' documents in an attempt to save publication costs may unwittingly result in the adulteration or loss of valuable and irreplaceable primary government source materials" (http://arjd.washlaw.edu/ARJD_E-Pub_Committee_Authentication_Pos_Paper_FINAL_2-12-07.pdf).

Wilson, an attorney from Utah, co-chair of the American Bar Association's Information Security Committee, and vice chair of the Utah State Bar's Cyberspace Law Committee, was the second reactor. He noted that we need to develop best practices because standards are hard to codify. Any uniform or model law would have to be technology neutral.

Ensuring integrity and provenance are key concerns; technology should store evidence of authenticity when information is created. He advised that state CIOs need to make digital authentication a higher priority.

Breakout Sessions and Where Do We Go From Here?

The second afternoon of the summit consisted of a 60-minute breakout session, during which delegates could choose to take part in a discussion on one of four issues: technical challenges, legislative challenges, building alliances, or practical issues for states (based on recommendations listed in Key Finding Number Four of the report).

Needless to say, the discussions were very focused and lively. A 60-minute report-back session, giving everyone an opportunity to participate, was followed by the closing session about next steps.

Judge Leslie Miller, chair of the ABA Judicial Division from the Pima County Superior Court in Arizona, graciously thanked AALL for convening the summit. She views it as the first significant step forward on digital authentication. She cautioned that we need to define the problem adequately but that there are many opportunities to bring this to the attention of the ABA and other stakeholders. She also suggested some groups not represented at the summit who would be good allies, such as the National Conference of Bar Presidents, the Conference of Chief Justices, and the Conference of State Court Administrators.

AALL Washington Affairs Representative Bob Oakley, summarizing some of the suggestions reported from the breakout sessions, led the closing discussion based on five categories of follow-up actions.

Education—AALL agreed to post information about the summit on AALLNET (www.aallnet.org/summit), to distribute the authentication report broadly, and to share information about it with foreign and international law library associations. Outside delegates promised to help spread the word and write articles for their own organizations.

Technological—A key issue is how to develop standards. Is there a role for GPO, the National Archives and Records Administration, or the National Center for State Courts? It was suggested that a best practices manual could be drafted. Delegates from Connecticut, Delaware, Minnesota, New Mexico, and Washington were enthusiastic about continuing the discussion in their own states.

Legal—Model legislation and changes in the rules of evidence could be considered. Michele Timmons reiterated her offer, for which we are very grateful, to investigate the possibility of asking NCCUSL to form a study committee. In the meantime, it would be possible for state courts to adopt new rules.

Advocacy—AALL is already planning to include this issue as part of its advocacy training during our Annual Conference in July. It was suggested that a video could be produced for decision makers that would include "stories." Ideas for public relations and marketing were also discussed.

Communications—Delegates agreed that the summit was the beginning of a new alliance. The online discussion forum set up for the delegates before the summit will stay active to allow additional sharing of information and progress. It was suggested that there be a follow-up conference that could be expanded to include representatives from other stakeholder groups.

It seems clear that the summit was a great success. Although there is still much to be done, AALL President Holterhoff says that, "The summit met and exceeded our expectations. I believe that the time is right for finding solutions to the authentication issue, and our event was just what was needed to spread the word. It is very important for law librarians to take a leadership role in the legal community. AALL has moved things along in a very positive direction, and I believe we are making a real contribution to the future of legal information." ■

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