

State Government Efforts to Preserve Electronic Legal Information*

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¶1 My goal is to present an overview of the status of efforts to preserve electronic legal information by the governments of the fifty states. Naively I started out several months ago thinking that I could find out what I wanted to know by surveying colleagues who manage state, court, and county law libraries. Fortunately my fellow state law librarian Judy Meadows of Montana called my attention to a far more professional and comprehensive survey conducted by the Government Relations Committee of the American Association of Law Libraries with funding from a grant by the Aspen Legal Publishers.¹ I am grateful to the authors whose reports enabled me to draw some conclusions and relate examples of successful efforts underway.

Generalizations about State Efforts to Preserve Government Information

¶2 Let me begin with some broad generalizations. Without exception there is now a realization in all of the states that citizens are entitled to access to the information generated by state governments in the course of performing their functions. Consequently, the statutes of virtually every state pay at least lip service to the concept of open government. That records must be kept and made available for public inspection and that documents must be published in some format are accepted principles. However, the degree to which these principles have been acted upon varies widely among the states. I found no indication of coordinated efforts among multiple states to cooperate or share expertise in order to implement their laws more fully.

¶3 Our profession can be proud that in most states the oldest, most successful, and best-organized efforts to bring about access to and preservation of government

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1. GOV'T RELATIONS COMM. & WASH. AFFAIRS OFFICE, AM. ASS'N OF LAW LIBRARIES, STATE-BY-STATE REPORT ON PERMANENT PUBLIC ACCESS TO ELECTRONIC GOVERNMENT INFORMATION (2003), at http://www.ll.georgetown.edu/aallwash/State_report.pdf.

documents have been through the depository programs operated almost always by state libraries. In states where there are public records commissions, librarians and archivists have usually been the leaders in applying political pressure and carrying on the real work of collecting, preserving, and providing access to government information.

¶4 During the 1990s many states created the position of chief information officer as well as some sort of information technology coordinating body to devise policies and promulgate regulations relating to the publication and, sometimes, the preservation of government information. Dazzled and often intimidated by new technology, and anxious to appear on the cutting edge, officials in all three branches have tended to appoint to such positions people whose interest lies more with technology than with information policy. The creation of Web sites became a high priority. Legislatures, executive agencies, and courts all wanted to be viewed as responsive to citizens' needs. So the sites have concentrated not only on presenting up-to-date information, but also on providing easy ways for citizens to renew drivers' licenses, file income taxes, and carry on other transactions. A number of states have emphasized the importance of their Web sites as economic development and tourism tools.

¶5 As various departments raced to put up Web sites, they seldom thought about coordinating with sister state entities. Consequently, their technology staffs followed different protocols in creating their sites without regard to the fact that citizen users would have to adjust to many different styles of finding and making use of the content. The managers of these agency-specific sites are disinclined to cooperate in statewide efforts that would affect their autonomy, require them to conform to different technical criteria, and might even threaten their jobs.

¶6 But the IT people do not constitute the most serious impediments to successful statewide programs. Far and away the greatest number of state Web sites are managed by executive departments. Politically ambitious administrators are sometimes inclined to be more competitive than cooperative with other agencies—especially in seeking funding. Some have a proprietary attitude about their information and technological know-how. But fortunately these executive agencies usually have a statutory mandate to make their records and published documents accessible to the public. The problem is that most state libraries that operate the depository programs and state archives with responsibility for preserving records lack rule-making and enforcement powers to require compliance.

¶7 Perhaps most alarming is the fact that many states' public records statutes exempt the legislature. Attorneys have for years walked into our state law library hoping to find something on the state level akin to the *Congressional Record* or published transcripts of hearings. Only in very recent years has the Internet offered Louisianians a partial view of these proceedings. Other state legislatures have been similarly backward. The reason is evident in the daily embarrassing quotations from the house and senate floor reported in our daily newspaper during the session.

¶8 State judicial branches have generally been in the forefront of government Web publishing.² Since the publication of decisions and rules has always been an essential component of the American legal system, it is only natural that courts would want their products to be more widely and rapidly disseminated. The area where there are very likely many fugitive judicial documents is that of special reports, studies, statistical surveys, and such. This is because judicial materials often fall outside the depository systems.

Specific State Efforts to Preserve Government Information

¶9 Clearly there is a tremendous amount of Web-based publishing taking place in the states. Access to state government information is increasing significantly. But preservation of that information is another matter. Few states have addressed permanent access in their statutes. In this regard, the country is a crazy quilt of half-hearted attempts, very promising initiatives, and some downright embarrassments. California's Department of Technology went out of business in 2002. With it went its Web site. Only because the California State Library saw this coming was its staff able to retrieve most of the information. A 2000 Florida initiative backfired when the legislature pronounced that county recorders should post on the Internet finding aids to documents in the county records. Early in 2002, it was revealed that a quarter of the counties had placed documents containing confidential information on the Web. So now the legislature is focusing on creating exemptions to access in order to protect privacy rights. Idaho has a detailed plan for preservation and access, but it grants exemptions for constitutional state officers, the legislature, and the judiciary. The *Idaho Records Management Guide* points out that the transfer or destruction of documents at the end of a retention period is advantageous because it "lessens the agency's exposure to public demands, saves storage costs, and removes clutter from office and records storage."³

¶10 Alabama provides a typical example of noble intentions and a good plan that have received insufficient support. The Government Records Division of the Department of Archives and History works with each state entity to develop a plan for the disposition of its records. These plans must be approved by a records commission. Whether paper, film, or digital—including Web sites—information cannot be disposed of without this authorization. A common provision requires an agency to agree to back up its computer data and to migrate permanent records to

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2. For example, see the North Dakota Supreme Court site (<http://www.court.state.nd.us>), created by Justice Dale Sandstrom, which received "best judicial site" recognition from the American Association of Law Libraries' Access to Electronic Legal Information Committee. ACCESS TO ELEC. LEGAL INFO. COMM., AM. ASS'N OF LAW LIBRARIES, GOOD OVERALL JUDICIAL SITE, at <http://www.aallnet.org/committee/aelic/bestjud.html> (last visited July 28, 2004).
 3. DIV. OF PURCHASING, IDAHO DEP'T OF ADMIN., RECORDS MANAGEMENT GUIDE, at A-3-3 app. 3 (2003) ("Public Access Rights to Government Records"), available at <http://www2.state.id.us/adm/purchasing/recordretentionbook.pdf>.

upgraded systems. But only about half of Alabama's agencies have a disposition plan in place.

¶11 Even though all of the states fall short of the ideal of "permanent public access" to government information, a majority have made significant progress. Several—not always ones that you might have guessed—have made major strides. Their accomplishments serve as interesting models, not only for other states to consider, but for those of us interested in digital preservation.

¶12 In Arizona, the State Library, Archives, and Public Records Department has developed standards defining public records and electronic record-keeping guidelines.⁴ Current procedures call for transferring electronic data to computer output microforms so that data can be reissued in any format, including CD-ROM.

¶13 Especially active in overseeing the microfilming of documents, the Connecticut State Library has completed nearly twenty years' worth of supreme and appellate court records and briefs. It contracts with a commercial filmer to produce bills, acts, legislative committee hearings, and house and senate proceedings. Much of this legislative material dates back to the late nineteenth century on film, and fifteen years' worth can be accessed on the Web. The state library is participating in OCLC's Digital Archive project, harvesting documents issued only online for preservation—primarily reports on public policy topics written for the legislature.

¶14 Georgia's *Guide to Managing Public Records*⁵ admonishes agencies to be attentive to reformatting needs when planning for new systems to ensure that records in older formats will remain accessible. The University of Georgia plays a unique role in digital preservation as administrator of the depository program. Through Galileo, the statewide virtual library, the depository has made electronic documents accessible since 1994 and digitized versions of those published originally in other formats. Backup CDs are recopied every five to ten years.

¶15 The Illinois State Library found that it was difficult to get agencies to follow Web site standards set up by the state technology office because many had already set up their sites. Seeking an alternative way to improve the permanency of records, the library won a federal Institute of Museum and Library Services grant. The funds enabled it to develop software for monitoring and evaluating changes in documents on state Web sites so that it could capture all versions of documents.

¶16 An Iowa statute mandates that the state library must provide electronic access to documents maintained there.⁶ Thus several years ago the Iowa Electronic

4. RECORDS MGMT. DIV., ARIZ. STATE LIBRARY, ARCHIVES & PUB. RECORDS, STANDARDS FOR PERMANENT RECORDS MEDIA AND STORAGE, at <http://www.dlapr.lib.az.us/records/1-store.cfm> (last visited Aug. 16, 2004).

5. GA. SEC'Y OF STATE, GUIDE TO MANAGING PUBLIC RECORDS IN GEORGIA, at <http://www.sos.state.ga.us/archives/rms/manuals/gmprg.htm> (last visited July 28, 2004).

6. IOWA CODE ANN. § 256.56 (West 2003).

Documents Repository was born to archive electronic state documents. It has since been replaced by a new site, Iowa Publications Online, “an electronic depository for documents intended for the general public produced by Iowa state agencies . . . [that] allows Iowans and others to have electronic state documents at their fingertips.”⁷ Since the library must maintain two copies of every document, including digital ones, it preserves paper copies but notifies other depositories of each document’s URL.

¶17 I am particularly impressed by the progressiveness of Kansas’s efforts to achieve permanent public access. State agencies actually worked together to develop and publish *Guidelines for Managing Records on Kansas Government Agency Web Sites*.⁸ It is “intended to assist Kansas state and local government agencies [to] develop internal policies and procedures for creating, capturing, managing, and retaining web-based records for as long as those records have value.”⁹ The State Archives and other agencies have established a template to guide agencies in developing individual plans. The legislature has passed not only statutes dealing with retention and disposition, but also a Government Records Preservation Act¹⁰ defining the responsibilities of the State Archives to work with the Records Board. The Records Board has proclaimed that agencies need to know how to comply with the law. Their Electronic Recordkeeping template provides sufficient technical information to tell an agency if it has adequate plans in place. Agencies have the right to publish their reports digitally *if* they archive them. Now the archives has a pilot project to test open source digital repository and content management software called D Space, developed by the MIT Libraries and Hewlett-Packard.

¶18 Mississippi presents both bad news and good news. On the negative side, the state legislature exempts its information from the Public Records Act¹¹ and no legislative history is published. Even executive agencies are not required to publish all administrative rules. On the other hand, the Mississippi Department of Archives and History, realizing that many agencies saw no reason to retain records after their need for daily use had passed, took action. It promulgated rules about imaging technology¹² and prepared guidelines for the management and retention of electronic records¹³ which cover desktop files, databases, e-mail, Web pages,

7. STATE LIBRARY OF IOWA, IOWA PUBLICATIONS ONLINE, at <http://publications.iowa.gov> (last visited July 29, 2004).

8. ELECTRONIC RECORDS COMMITTEE & INTERNET TASK FORCE, KAN. INFO. TECH. ADVISORY BD., GUIDELINES FOR MANAGING RECORDS ON KANSAS GOVERNMENT AGENCY WEB SITES (2004), available at http://da.state.ks.us/itab/documents/ERC_Prop_Web_Guidelines.pdf.

9. *Id.* at 1.

10. KAN. STAT. ANN. §§ 45-401–45-413 (2000).

11. MISS. CODE ANN. §§ 25-61-1–25-61-17 (2003).

12. MISS. DEP’T OF ARCHIVES & HISTORY, DESTRUCTION OF ORIGINAL RECORDS AFTER IMAGING (1998), available at <http://www.mdah.state.ms.us/arlib/imaging.html>.

13. MISS. DEP’T OF ARCHIVES & HISTORY, ELECTRONIC RECORDS DRAFT GUIDELINES (2000), available at <http://www.mdah.state.ms.us/arlib/erglnav.html>.

and metadata. The department assists agencies in complying, requiring them to back up their Web sites monthly and when modified, and to transfer their files quarterly on CD-ROM to the archives.

¶19 Montana likewise has little support from the legislature for preserving information. Yet the state's Information Technology Division performs a full backup of agency Web sites weekly, storing two sets of tapes. The Records Management Bureau requires agencies to have retention and refreshment schedules and digital migration plans. The State Law Library, publisher of the supreme court opinions and appellate briefs, backs up its entire Web site every night onto tape and once a week stores a new backup in an off-site safety deposit box. The court requires that briefs be filed on disk as well as paper to facilitate adding them to the database.

¶20 New Jersey's Division of Archives and Records Management possesses authority to regulate the retention of both the print and electronic records of not only state agencies but also those of county and municipal governments. An opinion of the state superior court recognizes the need for centralized control of records.¹⁴ A preservation plan that includes a central repository is under development.

¶21 New York can certainly be counted among the most forward-looking states in preserving government information. The state archives is responsible for storing and giving access to the records of significant value generated by all three branches of government. A particularly impressive feature of the system is that agency records managers must maintain an inventory of records including hardware and software specifications for ones in digital format. The inventories are inspected by the state comptroller and the attorney general. The agencies must submit electronic copies of all publications, regardless of original format, to the state library. Since 1995 the library has been scanning documents on the official checklist in TIFF and GIF formats, and the scanned images reside on the library's server.

¶22 The Oklahoma State Courts Network (www.oscn.net) has exhibited extraordinary leadership in posting its complete archive of opinions since attainment of statehood on the Web. That database enables judges and court staff to conduct Oklahoma research without relying upon commercial research products.

¶23 Both access¹⁵ and preservation¹⁶ are mandated by Rhode Island's Public Records statute, which specifically includes electronic information.¹⁷ The archivist, state librarian, and state law librarian are charged with protecting, preserving, and providing access to all agency and legislative records of value. Depositories are required by regulation to retain all publications in any format permanently. In 2001, the legislature enacted a law requiring each state agency to

14. *N.J. Land Title Ass'n v. State Records Comm.*, 716 A.2d 541 (N.J. Super. 1998).

15. R.I. GEN. LAWS § 38-2-1 (Supp. 2003).

16. R.I. GEN. LAWS § 42-8.1-8 (1993).

17. R.I. GEN. LAWS § 38-2-2(4)(i) (Supp. 2003).

refile a certified copy of all its lawfully adopted rules by the beginning of 2002¹⁸ and empowered the secretary of state to authorize the filing of rules in electronic form.¹⁹

¶24 The Tennessee State Library and Archives has acquired a digital archive writer and software that enables the staff to collect all agency documents formerly published in print but now published electronically to make them permanently accessible. The data will be converted to computer out-put microfilm that can be redigitized and delivered on request.

¶25 I've departed slightly from my alphabetical roll call in order to save the best for last. Who'd a thunk it, but South Dakota knocked my socks off. The legislative and judicial branches have been aggressive in putting their information on the Web. The state library has partnered with the Department of Education and Cultural Affairs to collect electronic information in *one centralized database* called SoDakLive (www.sodaklive.com). It features specialized indexing, shared subject terminology, and search engines. Material is gathered from all three branches and six public universities. The database contains 150,000 searchable Web sites and publications. Phase two of the project will involve encouraging government agencies to add metatags to documents so they can be harvested by SoDakLive. In phase three, archived paper documents will be converted to PDF files, local documents will be added, and funding will be secured to move documents from platform to platform as technology advances. And a truly enlightened public official, Attorney General Larry Long, has recognized the need for new and revised laws to codify permanent public access. He formed a Government Openness Task Force with thirty-five members representing education, government, law enforcement, the media, business, and, of course, librarians. They identified a number of issues and possible solutions²⁰ and drafted and proposed four bills for the 2004 South Dakota legislative session, the progress of which can be followed on the attorney general's Web site.²¹

Conclusion

¶26 What can we as law librarians do to encourage the progressive states to continue to expand their electronic preservation efforts, and what can we do to influence the others to catch up? Knowing that politicians and government officers care a great deal about their reputations, we can write about, publicize, congratulate, and offer support to those leading the way. And we can provide those who lag

18. R.I. GEN. LAWS § 42-35-4.1 (Supp. 2003).

19. R.I. GEN. LAWS § 42-35-3.1 (Supp. 2003).

20. Gov't Openness Task Force, S.D. Attorney Gen., List of Issues and Possible Solutions (Mar. 7, 2003), available at <http://www.state.sd.us/attorney/office/openness/pdf/issues.pdf>.

21. Gov't Openness Task Force, S.D. Attorney Gen., at <http://www.state.sd.us/attorney/office/openness/default.asp> (last visited July 29, 2004).

behind with information and assistance in the form of models, guidelines, and technical specifications. One of the most important things we can do is connect them with each other by introducing them to knowledgeable colleagues in other states. Generous leaders like North Dakota Supreme Court Justice Dale Sandstrom stand ready to offer their expertise and software to other courts. South Dakota Attorney General Larry Long is the kind of person we as librarians should get to know, and we should make our officials at home aware of what he is accomplishing. We need to make sure that the administrations of the National Center for State Courts, the National Conference of State Legislatures, the National Governors' Conference, and other multistate organizations know what's happening on the leading edge so that they will want to keep up with the Joneses and fulfill their obligation to make permanent public access to the information that belongs to the people a reality.