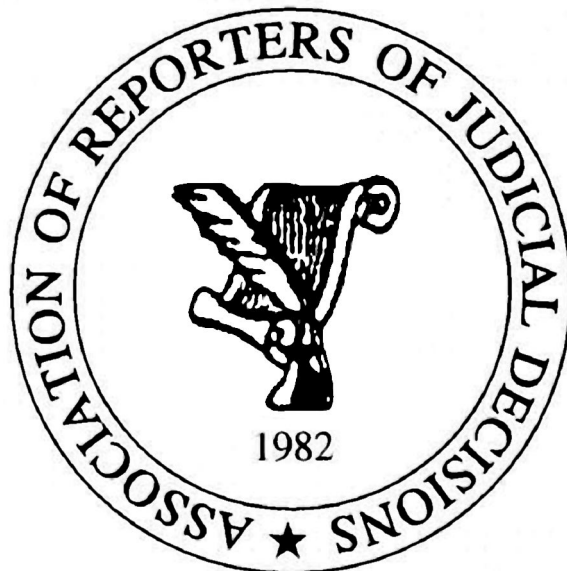


**Proceedings**  
of the  
Second International Symposium on Official  
Law Reporting

July 30, 2004



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## **FOREWORD**

The Second International Symposium on Official Law Reporting was conducted on July 30, 2004 at the Roosevelt Hotel in New York City in conjunction with the 23rd Annual Meeting of the Association of Reporters of Judicial Decisions (ARJD).

This symposium supplemented—and added a North American perspective to the issues discussed at—the conference on Law Reporting, Legal Information and Electronic Media in the New Millennium, held at Cambridge University in England on March 17, 2000, under the auspices of the Cambridge University Law Faculty and the Incorporated Council of Law Reporting for England and Wales.

The symposium program was organized by the New York State Law Reporting Bureau as part of a series of events commemorating the bicentennial of official law reporting in New York State.

These proceedings have been published as a public service by West, a Thomson Business. An electronic version will be posted on the ARJD Web site at <<http://www.arjd.washlaw.edu>>.



## PROGRAM

### *Call to Order*

*Bilee K. Cauley, Reporter of Decisions  
Alabama Appellate Courts*

**Ms. Cauley:** Good morning. My name is Bilee Cauley and I am the reporter of decisions for the Alabama appellate courts. This past year I have had the honor of serving as the president of the Association of Reporters of Judicial Decisions—the ARJD.

The ARJD came into existence in 1982. Its primary purpose is to improve the accuracy and efficiency of the reporting of judicial decisions. It also serves as a forum for communication and cooperation among official reporters and others in the legal publishing profession.

The ARJD sponsors a Web site and publishes a newsletter, the *Catchline*, three times a year. Its members are vitally interested in all issues relating to legal publishing and are deeply committed to the dissemination of information about law reporting and about the impressive history of law reporting—concerning which you will learn much more during today’s program.

ARJD members include current and former reporters of decisions and comparable officials—and their assistants—who serve courts that officially publish their opinions. Current members represent courts in the United States, Canada, England, Ireland, Guam, the Northern Mariana Islands, Puerto Rico, and Mexico.

On behalf of the ARJD I would like to welcome you to our 23rd annual meeting and to this special educational program—the Second International Symposium on Official Law Reporting. We are thrilled to be in New York for our first annual meeting in the Empire State and to join in the commemoration of the 200th anniversary of official law reporting in the State of New York. We are honored by the presence of so many distinguished members of the New York bench and bar.

Today’s program has been organized by the New York State Law Reporting Bureau, the office that prepares the New York Official Reports for publication. To begin the program, I am pleased to introduce the Deputy State Reporter for New York—and a former president of the ARJD—Charles A. Ashe.

*Introductions*

*Charles A. Ashe, Deputy State Reporter  
New York State Law Reporting Bureau*

**Mr. Ashe:** Thank you, Bilee. Before proceeding further, I must advise you of the availability of fire exits at the rear of the room.

Honorable Chief Judge Judith S. Kaye and Associate Judges Ciparick, Graffeo and Read of the Court of Appeals; Honorable Justices of the Appellate Division of the Supreme Court, and distinguished Judges of other courts; Honorable Bettina B. Plevan, President of the Bar of the City of New York; Honorable Robert C. Williams, Editor (The Law Reports), Incorporated Council of Law Reporting for England and Wales; Honorable Edward Jessen, California Reporter of Decisions; Honorable Frank Wagner, United States Supreme Court Reporter of Decisions; Honorable Anne Roland, Registrar, Supreme Court of Canada; Honorable Gary D. Spivey, New York State Reporter; distinguished representatives of West, a Thomson business, LexisNexis and colleges and universities; honored members of the Association of Reporters of Judicial Decisions, Appellate Division Decision Departments and Clerks' staff, the New York State Reporter's staff and other members of the New York Bar:

Good morning. My name is Charles A. Ashe, Deputy State Reporter in the office of the New York State Reporter. I add my welcome and greetings to those of President Cauley. It is indeed an honor and privilege to be participating in this Symposium. The New York State Reporter's Office is especially proud to participate, as 2004 marks the 200th anniversary of Official Law Reporting in New York. For today's program I will be performing the function of introducing speakers and announcing the various stages of the Symposium. Please refer to your printed program for the order of speakers and their biographies. You will note that there is a break scheduled at 10:30, a luncheon at 12:15, a further break at 3:15 and a reception at 5:00. There will be an opportunity for questions to be answered during the afternoon panel discussion. Please write down your questions as the program progresses and hand them in to Bill Hooks or one of our assistants during one of the breaks or at lunch. We will endeavor to stick closely to the schedule, so your cooperation in returning promptly from breaks and lunch will be greatly appreciated. At the conclusion of State Reporter Spivey's remarks, a special gift pack will be presented to all persons in attendance. Also please note that CLE credit is available for members of the



New York Bar. All necessary paperwork is available at the registration table. You must attend the entire session for CLE credit. There is no partial credit. For attendees from other jurisdictions we will gladly provide you with paperwork certifying your attendance and we trust that this would be acceptable to your home jurisdictions. Please turn in your signed CLE forms at the first break.

It now gives me great pleasure to introduce New York City Bar President Bettina B. Plevan with further words of welcome on behalf of the great City of New York.

*Welcome from the Bar of the City of New York  
Bettina B. Plevan, President  
Association of the Bar of the City of New York*

**Ms. Plevan:** Good morning. On behalf of the Association of the City Bar of New York, I'd like to extend a warm welcome to everyone here to attend the Second International Symposium on Official Law Reporting, especially those of you who have traveled great distances to be here today.

Much of the work done by the City Bar and its committees simply would not be possible without the efforts of the New York State Law Reporting Bureau. Every day, New York attorneys rely on the continued accuracy of judicial opinions, both in substance and form. Attorneys affiliated with the City Bar are among those who depend on the law reporters' labors to complete their work.

The City Bar has over 22,000 members. We have over 150 committees that, among other things, issue reports and recommendations, engage in advocacy, propose legislation, and submit amicus curiae briefs. These groups have tackled issues both international and local in character, ranging from the submission of amicus briefs in cases regarding same-sex marriage and the detention of "enemy combatants" to proposing structures for Saddam Hussein's trial in Iraq, to the Task Force on Downtown Redevelopment's evaluation of an issue specific to New York City—issuing liberty bonds to finance a power plant in Queens.

The Association's "City Bar Fund" (soon to be renamed "City Bar Justice Center") manages a variety of programs through which attorneys offer volunteer legal services to people in need, including: (1) services for the homeless and individuals threatened with homelessness, such as challenging pending evictions and denials of public

housing and housing subsidies; (2) asylum for battered women; (3) bankruptcy; and (4) matrimonial; it also operates a hotline.

The City Bar also maintains a list of pro bono opportunities for attorneys who wish to donate their services to the vast group of persons in need of representation, offers a law library, career center and small law firm center to assist member attorneys, and hosts a regular calendar of continuing legal education programs and special event programs.

As I stated earlier, much of the work that is performed through the Association, and in fact, by any attorney in New York, simply could not be accomplished without the work product of law reporters everywhere. Therefore, in addition to welcoming you to the Symposium, I would like to thank you for your important contribution to our work and the work of members of our Association.

**Mr. Ashe:** Thank you President Plevan. I would now like to introduce the Honorable Judith S. Kaye, Chief Judge of the State of New York, delivering the keynote address.

*Keynote Address*  
*Judith S. Kaye*  
*Chief Judge, State of New York*

**Chief Judge Kaye:** Good morning. I begin with a hearty welcome to New York City, whether you are here from Albany, or California, or Canada, or the United Kingdom, or anywhere else. We are delighted that you have chosen New York City for this important conference, most especially this year, when we celebrate the 200th anniversary of official law reporting in New York State. For myself, I could not think of a more fitting “welcome back.” This is my very first day home after vacationing with my husband in Europe, and then going immediately on to a meeting of the Conference of Chief Justices in Salt Lake City, Utah.

For at least two reasons, I am particularly pleased to mark my return to real life with you—even if I am not yet fully synchronized. First, this gives me an opportunity to boast about, and pay tribute—publicly, nationally and internationally—to our own phenomenal law reporters, starting with the incomparable Gary Spivey, Andy Ashe and Bill Hooks (who are on today’s program) and the entire staff of the New York State Law Reporting Bureau. My Court colleagues and I are immensely grateful to them, both personally and professionally, for their superb

services in presenting our own work product to the public and for so skillfully enabling the development of the common law. And it is now my special privilege to introduce my Court of Appeals colleagues who are in the audience today. Judges Carmen Ciparick, Victoria Graffeo and Susan Read. Judge Graffeo additionally serves as liaison to the Law Reporting Bureau—an excellent connection between the high court and our official law reporter, by the way. I would hope that you all have similar arrangements in your jurisdictions.

My second reason for being especially pleased to be here today is that, having myself just returned from a gathering of this nation’s state court Chief Justices, I know the value and importance of meetings like this, filled to the brim with learning, commiserating and networking.

However large the distances, however great the differences that separate us, geographically and culturally, the bonds of our work and objectives are far, far stronger. It is so comforting, and so helpful, to plan and agonize *constructively* about the many problems we share. I am energized and excited by the time I spent in Salt Lake City comparing experiences and exchanging ideas with my fellow Chief Justices, as I know you are by your time together too.

Given the nature of my own training and experience as a lawyer and judge in a common law system, when I began to prepare for a Keynote Address today, I naturally looked to precedent: I consulted the official transcript of proceedings of the *first* International Symposium on Official Law Reporting, in Cambridge, England. I know that you will shortly be hearing more of this from your next speakers, so I will try not to poach on their territory.

In fact, I was particularly struck by the sentiments of the Lord Chief Justice of England, who opened the first international conference, and—with due and proper citation to that distinguished authority—I totally adopt them as the guiding principles for my own remarks, beginning with the observation that it is downright intimidating ever to presume to give a Keynote Address. That inevitably proves to be a “false trade description.”

What must be the touchstone and bedrock of today’s discussion, as Lord Chief Justice Bingham observed, is the essential tie between skilled law reporting and our prized common-law system. While a system of judicial law making of course requires public access to all court decisions, it requires as well the value added by our official reporters, beginning with reliable, responsible means for effectively

identifying the principles for which that case authority stands—all the more so in a day when torrents of irrelevant information are instantly available with the press of a button or click of a mouse. I am not at all certain that I wholeheartedly subscribe to the Lord Chief Justice’s reference to the “blubber which may surround the judgment”—his words—but I surely do endorse his bottom line: that high quality law reporting is the building block on which our common-law system depends.

How best to secure the highly professional system of law reporting established over the centuries, in a day of dizzying new challenges and opportunities, is what makes our lives so fascinating, and our time together today so important.

I would first like to address what the Lord Chief Justice so captivantly described as the “blubber” surrounding judicial decisions. For myself, I prefer to think of a judicial opinion as a garden of timeless prose, seeded, cultivated and pruned with consummate care and discernment for the nuances of the factual record, the applicable law and the English language. O.K., maybe a bit of blubber too.

Here, I am not at all certain that the public at large—or even the lawyer public—is sufficiently aware of the invaluable role of the law reporters not only in headnoting but also in assuring the accuracy and uniformity of our work product, both essential to a credible, comprehensible, readily usable system of law. At that first conference, Robert Williams observed that “contrary to the belief of some judges, [the law reporter’s work on an opinion] is not done capriciously, or in order to torment them.” Their belief, I am happy to note, is shared on both sides of the Atlantic. I here openly acknowledge that, as I review the comments of the Law Reporting Bureau on my own gardens of timeless prose, the possible motivation of pure torment has at times crossed my mind.

Having spent a significant part of my own pre-law life as a copy editor, I am willing to go to the mat over things like serial commas and superfluous words unnecessarily repeated, especially foreign words like *supra* and *inter alia*. And we have gone to the mat over some of these, Gary, haven’t we? After all, we are, I suspect, the people who are keeping Eats, Shoots and Leaves soaring on the best seller list, life members of organizations like Sticklers Anonymous and the Apostrophe Protection Society.

But I acknowledge as well, with profuse gratitude—all of the members of my Court do—the singular, irreplaceable role of our Law Reporting Bureau in their careful headnoting and assuring the authenticity of our writings, as well as the uniformity of presentation—without question qualities that are fundamental to the progress of the common law. I agree fully with Lynne Truss in *Eats, Shoots and Leaves* that, “The reason to stand up for punctuation is that without it there is no reliable way of communicating meaning.” And by the same token, the reason to stand up for official law reporting is that without it there is no reliable way of communicating the common law.

Those qualities are at least as important—maybe even more so—today as 200 years ago when official reporting began in New York State, which brings me to my second subject. And it’s impossible to speak about the origins of official reporting in New York without paying respect to James Kent—so I’d next like to say a few words about him.

In 1798, Kent joined the New York State Supreme Court of Judicature—a predecessor of today’s highest court, the Court of Appeals over which I preside. Indeed, Kent’s portrait is right over my shoulder as I sit on the bench in our magnificent courtroom in Albany.

Kent is probably best known not for any judicial opinion he wrote while on that court, but as the author of his *Commentaries on American Law*, first published in 1826 after he retired from the bench, and he is usually referred to as Chancellor Kent, the position he held after leaving the State Supreme Court for the Court of Chancery.

But of even greater importance to us today is an early achievement of Kent’s when he became a judge of the Supreme Court. At the time, most American jurisdictions, despite the nearly quarter century that passed since the American Revolution, were still relying on English law reports—amazingly, their opinions were delivered orally from the Bench. It was Kent who introduced to New York the custom of writing opinions on significant matters and collecting them in official, state-sponsored reports.

The legal historian John Langbein has speculated about some of Kent’s other reasons for putting his decisions in writing. Kent knew that it would be a significant tool for persuading the four other judges on the court to adopt his views. And before long, they too began writing opinions, so as not to seem ignorant, unprepared—or, even worse, lazy.

In addition, since New York was the premier American commercial jurisdiction, Kent saw a golden opportunity to formulate a body of learned precedent.

However many or varied were Kent's motives for insisting on the written opinion, six years after he ascended the Bench the New York Legislature established the position of official reporter in 1804—the same year that Kent became Chief Justice.

Despite his commitment to official reporting, Kent did not think much of our very first State Reporter, George Caines. Kent described his work as full of mistakes, even called him the “profligate Caines.” Kent may also have had multiple motives here: Kent was a Federalist, Caines a Jeffersonian.

But appointments of successors to the profligate Caines were much more agreeable. Indeed, Kent replaced Caines in 1806 with his friend, William Johnson, who remained on as State Reporter for 18 years. They were a dynamic duo.

Fast forward to today. I can tell you from my own personal experience that, whatever their politics, the most recent Law Reporters have been New York State's very best.

We have seen an evolution from those early years of unrecorded common law to shelves crammed with books, to CD-ROMs, on-line research services and instantaneous Web availability as well as state-of-the-art technology for proofreading, formatting decisions and for communicating with judges' chambers. From a time when we couldn't know the law because it was unwritten, today we can know everything in an instant.

Without question the Internet presents its own challenges. As the New York court system was contemplating increasing public access to the justice system by placing case files on the Internet, we formed a blue-ribbon Commission on Public Access to Court Records in 2002, and asked for help in shaping our policies regarding the privacy of certain information. And I again express my thanks to Judge Victoria A. Graffeo for her part in that initiative. We asked the Commission to examine any potential pitfalls, weighing the demands of both open access and individual confidentiality, and to make recommendations as to the manner in which we should proceed. When the Commission released its final report this April, it recommended Internet access to public court case files—while spelling out a variety of privacy protec-

tions. But the Commission also suggested that the court system make its first priority placing court opinions and orders on line in *all* cases at all court levels—trial and appellate—so that they can be accessible to the public without charge. We are now working to implement the Commission’s recommendations.

Making all judicial decisions available on the Web will fuel the continuing debates and speculation about books and paper versus electronic media; about the security of information; about publishing unorganized unofficial opinions versus officially reported versions; about uniformity of style and content; about simplifying citation methods as sources become more complex; and much, much more we can’t even contemplate. Lots of fodder for future conferences.

While we don’t know what lies ahead in the coming decades—what innovations, what new advances and the inevitable new problems they bring with them—we can be sure that there will be many challenges and opportunities ahead for the courts and for reporters of judicial decisions. And I also know that our official State Reporters—combining the very best of long-standing traditions and disciplines with the very latest cutting-edge technology—are our best assurance of maintaining two timeless values: which are, together, high quality and authenticity of judicial decisions and ready accessibility, the building block on which our common-law system rests.

**Mr. Ashe:** Thank you Chief Judge Kaye. We now turn to the Honorable Robert C. Williams, representing the Incorporated Council of Law Reporting for England and Wales, who will be speaking on the First Symposium on Official Law Reporting held in England in March 2000.

*The First Symposium*  
*Robert C. Williams, Editor*  
*The Law Reports and Weekly Law Reports*  
*Incorporated Council of Law Reporting for England and Wales*

**Mr. Williams:** Good morning. First of all may I say what a great honour it is to be asked to come to New York to address this august body and your distinguished guests. I am very grateful for the invitation, if a little daunted, and very pleased to have such a good excuse to visit this wonderful city at someone else’s expense! (The Incorporated Council of Law Reporting have kindly agreed to pay.) I hope you will bear with me for being mostly fairly factual and uncontroversial in what I say. As I understand it I am to report on the First Symposium on Law Reporting,

Legal Information and Electronic Media in the New Millennium, held in Cambridge in March 2000. I hope you will forgive me if during the course of this brief talk I go into a little detail about law reporting as practised by the ICLR in England. I understand that it may be slightly different from what you are used to, so I am, I hope, less at risk of being accused of teaching my grandmother to suck eggs.

The idea of holding the First Symposium came from a realisation that ignorance of law reporting and of the function of law reports in our own common-law jurisdiction in England and Wales was more widespread than we would have liked to believe, and that the increase in the availability of information, particularly in electronic format, appeared to be leading to an information overload that threatened to engulf us. It is all too easy, I think, as a publisher of law reports, to carry on providing the same sort of information in the same sort of format without taking account of the fact that times have moved on—there are perhaps new ways of making reports available, new ways of treating the judgments that are reported, new ways of indexing and annotating, that we cannot afford simply to reject on the ground that “We have always done it like this and it works. There is no need to change.”

So, then, our Symposium took place in Cambridge in March 2000. Professor Tony Smith was kind enough to agree to host the event, and we were addressed on various aspects of the subject by the then Lord Chief Justice of England, Lord Bingham of Cornhill, by Lord Justice Buxton, a judge in the Court of Appeal, by Professor Richard Susskind, academic and adviser to the Lord Chief Justice on IT, by James Behrens, a practising barrister, and by two academics and teachers of law, Stephen Hedley and Roderick Munday. I provided a brief factual background to the subject, in much the same way as I am doing today.

Lord Bingham, who at the time was the Lord Chief Justice of England (now he is a Lord of Appeal sitting in the House of Lords), was the first speaker. He pointed out that in a common-law system, where the decisions of judges are a source of law and there is a doctrine of precedent, the public must have access to the products of judicial law-making, and the end product of the process should be in the public domain, even if not entirely free. The role of law reports was to identify cases which involved some novel development or application of legal principle and to find the means of defining the principle for which each case reported was authority. As he pointed out, that is a task which requires not only legal knowledge, but also a gift for succinct and accurate expression. The best British law report was, therefore, a work



of scholarship—it contained catchwords for indexing purposes, a headnote, or summary of what the case decided, indicated what authorities had been judicially considered in reaching the decision, listed the cases referred to in the judgment and cited in argument, and set out a summary of the argument. Perhaps I may be permitted to remark that it is gratifying for reporters to have their efforts recognised, in this case particularly so, since the law reports of which Lord Bingham was speaking are those published by the Incorporated Council of Law Reporting. Lord Bingham concluded by saying that in the light of the growing practice of photocopying large bundles of authorities, most of which would never be referred to, and some of which would be referred to only because they made reference to the same legislative provision or subject matter as that with which the court was concerned, it was important that advocates should be able to identify the reason they were referring the court to a particular case. Although the advent of new and easily accessible sources of material was to be welcomed, it was a blessing which had to be handled with discretion if it was not also to be a source of mischief.

Lord Justice Buxton, a judge in the Court of Appeal and also a member of the Executive Committee of the Incorporated Council of Law Reporting, spoke next. He emphasised the fact that law reporting was part of the judicial process. Judges actually spent very little time making new law; most cases were concerned with the application of existing law to the facts. In discerning what elements in the facts attracted a particular rule of law and applying it the judges looked very much to counsel, with the result that the English system was very economical on judge-power. To adopt a different system, where there was less responsibility on counsel would mean that many more judges would be needed. An era in which every case would be available even in transcript form, would cast extra burdens on everyone. First, there would have to be greater responsibility on advocates to cite only what mattered. Second, there would be increased difficulty for advocates in using the material. A headnote was an invaluable guide to a case. A note of argument was often illuminating, but its importance was often overlooked. If argument was not reported, judges might be tempted to think that they had to set out in the judgment everything counsel told them. That would make judgments very long, and tend to deaden their communicative power. For a proper understanding of the issue in a case it was necessary to have a report of the argument, and that was the part of law reporting most under threat, because it was regarded as irrelevant and fuddy-duddy. Third, there would be much increased difficulty in identifying relevant issues. It was not possible effectively to search

legal material by a word-search, because lawyers tend to talk in concepts. *Taylor v Caldwell* (1863) 3 B & S 826 had been described as the watershed decision in the doctrine of frustration in the law of contract, yet nowhere in the report of the case was the word “frustration” or any cognate of it mentioned. *Sinclair v Brougham* [1914] AC 398 was recognised as lying at the heart of the modern law of restitution, but the word “restitution” was not used anywhere in the report. Fourth, one had to resist the seductive attraction of the new. A case that was available only in transcript form might seem to be in some way more recent and more real, more authoritative, than a case in a law report. The antidote to that was an understanding of what the transcribed case decided. A lot of work had to go into that. In a case in a law report the reporter had already done the work. The law report had added value. Fifth, at least in the criminal field, if judicial material was instantly available there might be a temptation to think that a system that depended heavily on such material was all right, and there was a danger that it would distract people from the more important task of straightening out the law on a legislative basis.

My task was really a strictly factual one: to give the background to the formation of the Incorporated Council of Law Reporting, to explain how cases are selected for reporting and to outline what is involved in preparing a report. I propose to go through the gist of that once again now, because it is relevant to what Lord Bingham and Lord Justice Buxton said, and also to what was said by later speakers, particularly Professor Richard Susskind. At this point, it is perhaps worth emphasising that in England there is no official series of law reports, subject to two very limited exceptions. There is no requirement that any particular case must be reported, and it is entirely up to the discretion of the reporter (or editor) concerned what is reported and what is ignored. The two exceptions are Tax Cases and Reports of Patent Cases, both of which are required by statute to be published.

Accessibility of reports and the selection of cases are not new issues. They have been thrown into sharp focus by advances in technology, and the speed of modern communications encourages people to think that a comprehensive system of information recording and retrieval is both more imperative and more attainable.

In 1849 a report of the Law Amendment Society complained that the decisions of the courts and tribunals were “the formal constituents of the common law,” but in no respect were they officially promulgated. The report also drew attention to the fact that “It has long been

considered a practicable scheme for any barrister and bookseller who unite together with a view to notoriety or profit, to add to the existing list of law reports.”

By 1863 it was apparent that there was widespread dissatisfaction with the then current system of law reporting. So it came about that in 1865 the Council of Law Reporting was set up, and the first Law Reports were produced in November 1865.

In a paper on legal reports by Nathaniel Lindley, who later became Master of the Rolls, a senior judge in the Court of Appeal, the following remarks appeared with regard to reporting of cases:

“With respect to subjects reported, care should be taken to exclude—

“1. Those cases which pass without discussion or consideration, and which are valueless as precedents.

“2. Those cases which are substantially repetitions of what is reported already.

“On the other hand, care should be taken to include—

“1. All cases which introduce, or appear to introduce, a new principle or a new rule.

“2. All cases which materially modify an existing principle or rule.

“3. All cases which settle, or materially tend to settle, a question upon which the law is doubtful.

“4. All cases which for any reason are peculiarly instructive.”

The criteria for reporting of cases in the Weekly Law Reports have not changed since Nathaniel Lindley wrote his paper. To the objection that that is not a very helpful definition of reportable cases, I can only say that while it may be difficult to arrive at a satisfactory definition in the abstract, in practice there is, in most cases, not much doubt—cases are either clearly reportable or clearly unreportable. Perhaps, too, it is worth remembering that Lindley was as definite on the subject of cases that should not be reported as those that should. By excluding what is clearly valueless as a precedent it is possible to reduce considerably the number of cases where a decision whether to report or not is a hard one

to take. It may be worth noting that, in my experience, the universal view among judges is that too much, rather than too little, is reported.

We publish a general series of law reports and therefore a certain amount of selecting out of specialist cases is inevitable.

We report somewhere in the region of 350 cases per year in the Weekly Law Reports, of which roughly a third are subsequently published in the Law Reports. Although the initial decision as to reportability is that of the reporter, all transcripts and handouts in cases where the reporter decides a report is not called for are sent to the editor for confirmation of the decision. We have on our database about 1,500 cases each year. That includes all the cases that we report in our own publications and various other journals for which our reporters submit reports. In addition that number includes all the cases we have decided not to report anywhere, for most of which we will have received a copy of the reserved judgment, and any cases sent in by judges or practitioners for consideration for reporting. It does not include extempore judgments which our reporters have rejected as unreportable, cases from outside London which we have not been notified about specifically, or cases heard in the Employment Appeal Tribunal which are not reported in the Industrial Cases Reports. Altogether the number of potentially reportable cases, i.e., those delivered by courts whose decisions are capable of being binding precedents, might be in the region of 5,000 to 8,000 a year.

The actual process of producing a report is time-consuming, which inevitably involves some delay between judgment and report. Instant availability in transcript form poses no problems, and the time taken by the reporting process is thus highlighted. Once a judgment which will be reported has been delivered the reporter must take time to read it carefully in order to identify the point at issue. The preparation of summary reports for The Times and other journals will assist in this process. For a Weekly Law Report the reporter will have to write a headnote, summarising the facts and the holding in the case, and compile lists of the cases cited in the judgment or referred to in argument. It is also necessary to draft the catchwords and to prepare a short summary of the facts and procedural progress of the case. The report is sent to the judge before publication to allow a final opportunity for him or her to make minor adjustments and corrections to the judgment. Cases which appear in volume 1 of the WLR are likely to be nearer the borderline of reportability, cases illuminating, rather than developing, principle, and points of practice. The more important cases

are published in volumes 2 and 3 of the WLR, and subsequently appear in the Law Reports with the addition, in most cases, of a note of the legal argument. The report of legal argument is valuable because sometimes points are raised which the judge does not deal with, and it may be important on a future occasion to know whether a particular point was raised. It can also help in giving an idea of the emphasis of a case.

It is clear, I think, that law reports fulfil a function very different from a database consisting solely of transcripts of judgments. A case may contain no point of new law, and be of no value as a legal precedent, but it is not difficult to imagine research projects in legal or nonlegal contexts where it might be relevant to know at least of its existence and the result. The extent and category of the need to know defines the use that can be made of data, but uncontrollable access to unlimited data is unhelpful to most people because they have not got the ability or the expertise to manage it or to interpret what they can obtain. A law report has had considerable time and energy expended on it in checking and annotating it and in producing a summary of what it decides. Above all, the selection of cases as being suitable for report is a valuable process, provided that the criteria applied in the selection are clear and consistently applied. This process of selection is, in itself, an important part of the process of making practitioners, and through them, the courts, aware of new developments in the law. The process of adding value to the basic raw material of judgments by selection, checking and styling, and the addition of headnotes and catchwords, has, I believe, a vital place in the development of the law.

The Law Amendment Society said in its Report in 1849, "But even if all the reports which are published were correct and given by competent persons, they are now so numerous that they cannot be known to one tithe of the practitioners in the law. They are beyond the reach not only of the public, but of the great body of the profession." With the increasing numbers of specialist series of reports now available and the addition of unselective databases of raw judgments, it might be tempting to say something similar today. However, it is to be hoped that the developments in electronic manipulation of data that are making available the flood which we fear may drown us will also give us the means of controlling it and making it manageable, so that, by setting proper limits, judges and courts will be able to prevent time-wasting reference to useless material, while those who, for whatever reason, want access to unsifted raw material will be able to have it.

Professor Richard Susskind, an IT specialist, was keen to stress the importance of looking backward from one's objectives. Thus, in law reporting the question we ought to be asking ourselves was what function law reporting performed. The most fundamental distinction in IT was between automation and innovation. Automation was what sprang to mind when most people thought about IT. They thought about some process and then thought how it could be streamlined or improved by computerisation. That had to be distinguished from innovation, the use of technology to create something fundamentally different and new. He gave as an example cash-dispensing technology. The idea of being able to go to a machine in the middle of the night and obtain cash did not replace an existing service; it was a fundamentally new way of delivering the domestic banking service that revolutionised the whole market. So in legal practice, law reporting, judging and across the arena we should be focusing not merely on automating and improving the present processes, but on ways in which technology could create fundamentally new processes and services.

Professor Susskind foreshadowed massive improvements in the information-carrying capacity of the Internet. He then spoke about voice recognition as a means for capturing raw data. He said that eventually it would be possible for technology to perform the function of a stenographer. That led on to the idea that disintermediation (Professor Susskind's word) would become commonplace. So many things were in an information chain. At the end was the consumer, the person who wanted the information, but because he was not expert he had to go through an intermediary. He gave the example of travel agents. One response to a request for information about holidays was the personal service approach, matching available holidays to the client's criteria, much more than a simple match. The more common approach was simply to hand over a sheaf of brochures. That was not adding value in the information chain. Far better than the second option was to go on the Internet and type in a list of requirements and then see a view from the room, a video of the hotel, etc. The lesson in that for all of us in the information business was that unless you are adding value in the chain that cannot be replicated by the Internet and the computer you will be disintermediated, that is, removed from the chain.

Probably the most important thing to talk about was the technology lag. The data processing technology we are familiar with, photocopying, word processing, electronic mail, faxes, had created an information explosion of a frightening kind. There was a great lag between that technology and knowledge processing, which would help us to sort,

analyse and bring to our attention information that was relevant. Until our knowledge based technologies were as powerful as our data processing technology we would not be in the information society.

There was a range of solutions, but for Professor Susskind the solution was manual analysis, classification, linking to “push” technologies. The answer was to be found in the ability to analyse, classify, categorise and summarise.

The task of law reporting in the way that had been discussed was more important than ever, because until we had learnt to conquer the gap between data processing and knowledge processing we were in deep trouble. So metadata, the information, the classification, the categorisation, the summaries of the raw sources would be the vital materials across which our technologies would search. That would be the interim answer. In the value chain, that was the function of law reporting at the moment. The value added was the metadata that could guide users through the huge mass of available data.

There was a lot more work to do, and law reporting was by no means dead, but in 20 or 30 years all the assumptions one had been making would be challenged.

James Behrens, a practising barrister, said that his skill as a barrister was more concerned with the preparation for a case and advising clients on its realities, rather than knowing the law.

There were two issues on the difficulty of knowing the law. One was the time delay before cases were reported and the second was the choice of cases that got reported. With delays sometimes of many months it was no wonder that practitioners needed to look for their material outside the conventional law reports.

As for cases, there was a huge range of independent series of legal reports as well as Internet suppliers. It was not a question of knowing the law, it was management of the law. It cost practitioners a huge amount to keep up to date. The Australian database of transcripts of judgments, AustLII, set up by the Australian Legal Information Institute, was free. (A similar pilot scheme BAILII (British and Irish Legal Information Institute) was set up by Professor Susskind and others in England.) AustLII was not perfect. It did not contain headnotes because of copyright problems. So one had the crunch point of copyright. He saw that as one of the major issues of the conference.

He also mentioned the problem of citation of unreported authority, although he had never experienced any demur from the courts when trying to cite such cases. He also drew attention to the differences between law reports, for example more recent reports published by the ICLR had marginal letters for ease of reference, and earlier ones did not. Differences in layout between printouts of electronic versions of reports and the original were also likely to cause difficulties.

Stephen Hedley, a Cambridge law lecturer responsible for the faculty Web site, said it had already been stated that it was not possible for one person to know all the law. That had been true throughout the 20th century. So that was not specifically a computer problem. It was rather that computing had made things worse.

There was a huge increase in the availability of legal materials. One could see it as a great opportunity to get a better grasp of the legal system with more cases, but one could equally well see oneself as a hamster caught on a treadmill with somebody oiling the wheels.

In terms of the increase of case law, it was a matter of supply and demand. If a judge had gone to the trouble of producing an opinion in a particular case, it did not take much to persuade that judge that the world ought to know about it. Advocates wanted their cases reported. More and more judgments were word processed and put into digital form. There was always pressure to keep up with new developments and the fear of professional negligence. So far no one had been held to be negligent for not looking at electronic on-line services, but nobody wanted to be the first person to whom it happened. Professional standards would be raised as it became easier to refer to the latest material, which possibly would never have seen the light of day in earlier circumstances.

We had not yet reached the information age but were in an awkward transitional period. BAILII was already here. The range of case law on it would grow. Perhaps in the future producing a headnote or summary would be done mechanically but at the moment it had to be done by human beings and therefore it was safe to predict that publishers would still remain in the market. It was just a question of on what terms. Certainly there would be more legal information. In the short term it might well be that the effect of accessibility was bad. It might well be that people would have access to less of the law because of the legal cost of looking it all up. Professor Susskind was suggesting that software engineering would develop to the stage where one would be able to



master the bulk of the case law. Computers would save one from computers, if that was the way one wanted to look at it.

But the history of artificial intelligence did not suggest that we were close to a time when computers would understand the material and start to do the thinking. The volume of legal materials had massively increased but there were no greatly improved means of processing them.

As for legal education, traditionally one had the wise lecturer expounding the law to his eager pupils. In mediaeval law that made sense, with relatively few books and a comparatively small legal system. Surprisingly that system had been maintained right up to the present day. Modern lecturers tended to pack more and more into the lecture. The lecturer started off by preparing notes on his PC. He then delivered them to the students—from his mouth to their ears. Then it went from there into the student's PC. The major problem was that of signal degradation. If the object was to have the lecturer's notes onto the student's PC lecturing was a very inefficient way of doing it.

Lecturing was an art form but in the modern context was it the way to teach law? The traditional ways were changing. He received about half the essays he asked for by e-mail. Computers were increasingly being used by lecturers and in law schools. One was forced to ask what were lectures actually for? If the students could have got the information from a law book why did the lecturers not tell them to do that? If they had difficulty extracting the information, maybe one should be teaching them how to extract it.

Finally, what were exams for? A traditional exam assumed that students would learn large amounts of information and reproduce it for the exam. If one wanted to teach students the way around legal materials and was not concerned to test their memories, then current arrangements needed to be questioned. Should one be teaching research skills rather than the law itself?

One needed to rethink the question of which items of legal knowledge were basic. Not all subjects taught in a law degree were basic, but equally there had to be some that were. Also one had to rethink what constituted good legal authority. It was not written in stone that one would continue to have the same rules on precedent. There would be situations where judges should be able to say that certain types of cases should not be cited and there might well come a point where citation of authority had to be discouraged far more than at present.

Dr. Roderick Munday, the author of numerous books and articles, said that with the welter of raw material from which one now had to choose the comparatively small number of cases which would make it into the pages of the printed reports, the most difficult question was: was the case reportable? For all its quantity the overwhelming majority of unprocessed material was not of the obviously reportable variety.

Whatever form reporting took in the future, moving online rather than being in printed form, two things seemed clear. The role of the reporter in selecting and preparing the raw transcripts and sifting through for what was of utility to the profession could only grow in importance. The academic's task of reflection upon the sprawling mass of data could again only grow in significance.

During the ensuing panel discussion Professor Susskind drew attention to high powered secondary sources that automatically produced documents or provided check lists. The two best known were subscription based services from City Solicitors which allowed international organisations to assess their compliance with various regulations. One related to data products, the other to financial regulations, and they were multinational. A bank could go online and assess its compliance with data protection and financial services across 30 countries without directly instructing lawyers within the firms. It cost between £50,000 and £100,000 a year but that was several hundreds of thousands of pounds cheaper than instructing lawyers in the traditional way.

Robin Williamson, then managing director of Context (the ICLR's partner in the production of electronic reports), said that as a nonlawyer, he brought in a different dimension: an appreciation of what information technology could actually do. The legal profession had to tell the technicians what was needed. A lot could be done by simply applying today's IT to improve the presentation of electronic sources but there was nothing that suppliers could do about the bandwidth until technology caught up with demand.

The common theme in all that was said in Cambridge seems to me to be that everyone was concerned about an increase in the amount of data available, and worried that it would become so unwieldy and burdensome that it would be impossible to keep up with current developments in the law. Law reports as we currently know them in England seemed to be relatively secure. They provide a good means of filtering out completely unwanted material and of making that which is reported more digestible and easier to deal with. Indexes, word searches and better technology mean that, even if there is more material to scan

through, the process of selecting what one wants to look at is quicker and easier than ever before. Nobody was clamouring for an end to law reports. They did want them more quickly, and they did want them cheaply. However, free databases such as AustLII and BAILII have to be funded somehow, and if they want to be able to make available that which is currently produced by publishers like the ICLR a way has to be found that will ensure that we have the funding to enable us to continue to produce the reports. Reporting, despite the advances in technology, still depends very much on people—Professor Susskind’s answer to the problem of improving the knowledge technology was dependent on manual analysis and classification. It is never going to be a cheap process. Another problem that was raised, and that has still not been completely dealt with, is the discrepancies between printed law reports and electronic versions of the same reports. Whether they are completely identical in layout or not depends on the type of database that is used—whether it is a facsimile view or a fully searchable version, and often on the display capabilities of the computer of the individual end-user. It is possible, at least for the archive of reports, that discrepancies will be the result of incorrect scanning or transcription of the original, although these can be rectified if they are brought to the publisher’s notice. But it is also possible that a later correction can be incorporated into the electronic version than is included in the printed version—a correction published in the volume of printed law reports for 2004 which relates to a report in 2003 is not likely to be spotted by the reader of the 2003 volume. However, I think that these problems can largely be overcome by appropriate explanation and increased familiarity on the part of the user with the way electronic law reports work.

An increase in the material available has also led to an increase in specialisation among practitioners. The increase in specialist reports testifies to that. That also has implications for the teaching of law, as the academic speakers in Cambridge told us. The sheer impossibility of knowing all the law, the need to become more familiar with other systems of law in order to deal with multinational business, and the necessity to take account of European Union law, mean that it is ever more vital to know how to approach a problem in a lawyer-like way. Even with the benefit of advanced technology, it seems even more important that legal education fits students to think in appropriate ways, so that they can recognise a problem, and have an idea of the correct approach to solving it, even if they do not have the specific knowledge in that field of law to deal with it immediately.

I suppose that, looking back at the Cambridge symposium after four years, what comes across is the unanimity of views on the nature of the problems and the way to deal with them.

What is of increasing concern to publishers of law reports is the method of distribution. At the moment we still produce printed copies as the basic product. Of course, our reports are available on various electronic databases through different information providers, either on their own or in conjunction with other publishers' products, and there are ever more sophisticated search and research tools available. But as currency and speed of reporting become ever more important to subscribers, we need to ask ourselves whether this is the way forward. New printing technologies are available which mean that it is becoming cheaper and more feasible for people to order a particular volume, or even a weekly part, of law reports on a one-off basis. Subscribers might one day be able to make their own selection from our printed material and have only those cases printed that are in their area of expertise—they would still have access to the whole archive electronically. That raises issues of pagination, frequency of paper publication and possibly other questions we have not yet got answers to.

I must confess to finding it difficult to come to terms with the prospect of what we may have to face in 20 or 30 years time. I am sure we shall have to rethink all our assumptions about law reporting and ask difficult questions about what we are selling, how we are selling it, and to whom we are selling it. But it is slightly comforting to think that no one is seriously criticising what we do at the moment. Law reports have survived for 900-odd years in one form or another; another 50 should be no problem!

Can I finish with a brief look forward to your 2005 meeting, which is to be held in London. I am sure you will receive a warm welcome. We shall be delighted to see as many of you as possible, and I hope that you will have a splendid meeting, and enjoy the opportunity to see what we get up to on the other side of the pond.

**Mr. Ashe:** Thank you, Robert. Our next speaker is Charles Dewey Cole, Jr., of Newman Fitch Altheim Myers, P.C., with reflections on the First Symposium.

*Reflections on the First Symposium*  
*Charles Dewey Cole, Jr.*  
*Newman Fitch Altheim Myers, P.C.*

**Mr. Cole:** As much as I appreciate Gary Spivey's kind invitation to comment on Robert Williams's presentation, I confess that I was somewhat surprised by Mr. Spivey's asking me to do so. I am not a law reporter, though I admire the work that law reporters do and, I should add, the very fine work that Mr. Spivey and the Law Reporting Bureau do in producing the official reports in New York. Nor am I a judge who produces the opinions that fill the law reports. Instead, I am a practicing lawyer, albeit one with a background in law librarianship, an interest in law reporting, and an understanding of the English legal system. I recall the Incorporated Council's announcing its March 2000 symposium on law reporting and my reading the transcript of the proceedings when it was available on the Internet.

Law reporting is very important to any legal system predicated on the notion that like cases should be decided in the same way and that a rule of decision once applied in one case should be applied thereafter in similar cases. If we did not have a system of law reporting, a legal system based on these precepts could not exist. It is for this reason—the necessity of an effective system of law reporting to the continued functioning of a common-law legal system—that I have so much respect for the work of law reporters and their making available the tools necessary for the legal system.

Nonetheless, I think it fair to say that our system of law reporting is facing a challenge greater than any that it has faced in the last 150 to 200 years. That challenge has been, in large measure, brought about by the computer. Stephen Hedley's point at the Cambridge symposium that computing had made things worse, if a bit overstated, was on the mark. If we were to turn back the clock some 30 years or so, the immediate concern facing law firms, courts, and law schools was the tremendous cost of storing in print the decisions of the courts. Many of the limited-publication rules adopted by the United States courts of appeals stemmed in part from these courts' concerns that extensive publishing of opinions would do more harm than good, especially when decisions in the majority of intermediate appellate-court appeals added little or nothing to the growth of the law. Fortunately, the ability to store large quantities of information as digital files solved this problem.

The other benefit that came with the computer was the ability to search the reported decisions using Boolean logic and, later, natural-language searches based on Boolean logic. I do not mean to suggest, though, that this searching replaces traditional digesting and indexing. It does not. It supplements it—albeit crudely—and, in this respect, Professor Richard Susskind’s comment at Cambridge that the law reporter was still necessary to analyze, summarize, and classify the reported decisions was on point.

But the computer’s ability to store inexpensively such large amounts of data has, in turn, encouraged publishers and other suppliers of legal information to store digitally larger and larger libraries of decisions. It may seem counterintuitive to criticize the proposition that if some reported decisions are good, more reported decisions are better. But whether more is, in fact, better is something that all who work within the legal system (and especially those attending this symposium) should think about.

An underlying concern of almost all speakers at the Cambridge symposium was the increase in the amount of data available and the worry that the amount of data would become so unwieldy and burdensome that the system itself would break. Still most agreed that law reporting as currently practiced in England and Wales seemed to be on a sure footing, if only because the law reports “provide[d] a good means of filtering out completely unwanted material and of making that which is reported more digestible and easier to deal with.” That may be true in England and Wales. But it may not be so on this side of the Atlantic.

What struck me about Mr. Williams’s presentation today was his comment that the Incorporated Council reports about 350 cases each year in the Weekly Law Reports. The ICLR’s model is selective reporting of judgments. Obviously, it reports almost all English decisions from the appellate committee of the House of Lords—between 50 and 70 each year<sup>1</sup>— and a fair number of the decisions of the judicial committee of the Privy Council (though it is not always easy to see which decisions apply generally in England and Wales). Immediately below those courts within the judicial hierarchy sits the Court of Appeal, a court that disposes of, based on the latest available figures, 2,600 full appeals each

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<sup>1</sup> See House of Lords, Judicial Business Statistics for 2003, at 3, *available at* [www.parliament.uk/documents/upload/JudicialStats2003.pdf](http://www.parliament.uk/documents/upload/JudicialStats2003.pdf) (as of July 29, 2004).

year in criminal cases<sup>2</sup> and about one half that number in civil cases.<sup>3</sup> I should add that the numbers do not indicate the volume of business handled by the court because appeals in England and Wales usually are taken by leave,<sup>4</sup> leave is granted only in about one third of the applications, and hearing applications for leave to appeal take up a large portion of the court's work. So the Court of Appeal's power to grant or deny leave is itself a filter on what it decides and, in turn, what is eligible to be published in the law reports. Below the Court of Appeal sit the various trial courts, including the High Court and the Crown Court. These courts, especially the Administrative Court, which is part of the Queen's Bench Division of the High Court and operates as something of an appellate court in judicial-review cases,<sup>5</sup> are a fertile source of decisions for a reporter. So, as you can see, the reporter's task of selecting 350 cases from a wealth of decisions provides a filter so that unnecessary material does not end up in the law reports.

It is useful to contrast the model followed by the ICLR with the reporting of decisions of the courts of the United States and the practice of New York's Law Reporting Bureau. Turning to the United States courts first, it is sobering to look at the continued growth of the Federal Reporter, Third Series, of which 37 volumes were published in 2003 and another 19 volumes have been published so far in 2004. Each volume contains approximately 150 reported cases. In addition, each volume of the Federal Appendix includes another 400 to 600 cases, though not as many of those volumes are published each year. That means we add over 5,000 reported decisions of the United States courts of appeals and far more so-called unpublished decisions to the law reports each year. This is a very different model from that followed in England and Wales. New York's situation is not much better. By statute, the State Reporter is charged with reporting "every cause determined in the court of appeals and every cause determined in the appellate division of the supreme court, unless otherwise directed."<sup>6</sup> In addition the State Reporter has discretion to report decisions of trial courts.<sup>7</sup> Mr. Spivey would have to give you the number of reported cases to set up a comparison with the model followed in England and Wales. But a quick glance at the most

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<sup>2</sup> See The Court Service Annual Report and Accounts 2003-2004, at 90, available at [www.courtservice.gov.uk/docs/about\\_us/our\\_performance/annexes\\_0304.pdf](http://www.courtservice.gov.uk/docs/about_us/our_performance/annexes_0304.pdf) (as of July 29, 2004).

<sup>3</sup> See *id.* at 95.

<sup>4</sup> See C.P.R. 52.3 (Eng.).

<sup>5</sup> See C.P.R. Part 54 (Eng.).

<sup>6</sup> N.Y. Jud. L. § 431 (McKinney's 1983).

<sup>7</sup> See *id.*

recent volume of the Appellate Division Reports, Third Series, shows pages and pages of memorandum decisions from the Appellate Divisions. And a quick glance through those decisions shows that very few add anything of substance to the law of the State of New York. We are reporting far more decisions than are reported by the ICLR, even though the population of England and Wales—52 million<sup>8</sup>— is more than 2½ times the size of the State of New York.<sup>9</sup>

The size of the English legal system is roughly comparable to New York's; and this is particularly so when comparing the intermediate appellate courts (an exact comparison at the appellate level is difficult to make in light of the differences in appellate procedure; but the number of lords justices of appeal is about the same as the number of justices appointed to the Appellate Divisions).

It is a fair question to ask whether a system that comprehensively reports the decisions of appellate courts, such as the model followed in New York and, depending on how one classifies the Federal Appendix, the model followed in the inferior appellate courts of the United States, is the way forward. Reporting decisions and adding to the body of reported decisions make it increasingly difficult for lawyers, judges, and academics to find the decisions that they are looking for, to say nothing about their attempts to keep up to date on the truly important decisions. After all, the larger the haystack, the harder finding the needle.

On a personal level, I am gratified whenever I find memorandum decisions of the Appellate Divisions that are on all fours with a case that I am handling. But I am not so sure that the number of times that I have found such a case is exceeded by the number of times that I have read memorandum decisions that are understandable only after turning to the record from the trial court. In short, there is much to be said for the model followed by the ICLR, and reporters surely realize that part of their job consists of serving as a filter.

Let me close with a few additional reflections. Those of you who are familiar with the history of the ICLR will know that its work began on November 2, 1865 when Council-appointed reporters “took their seats in the several Courts at Westminster Hall, in Lincoln’s Inn and at the

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<sup>8</sup> In the 2001 census, the population of England and Wales was 52,041,916. See 2001 Census available at [www.statistics.gov.uk/census2001/profiles/727.asp](http://www.statistics.gov.uk/census2001/profiles/727.asp) (as of July 29, 2004).

<sup>9</sup> In the 2000 census, New York’s population was 19,190,115. See 2000 Census available at [www.quickfacts.census.gov/qfd/states/36000.html](http://www.quickfacts.census.gov/qfd/states/36000.html) (as of July 29, 2004).



Rolls in Chancery Lane.”<sup>10</sup> The driving force behind setting up the ICLR was very much the same as the impetus behind appointing a State Reporter in New York: much of the law reporting of the day was not accurate, and lawyers and judges could not get in one place a set of authoritative decisions. The ICLR has served as a model for law reporting in very much the same way as New York’s State Reporters have done so throughout the 19th and 20th centuries. Though, as we have seen, different models of reporting were adopted.

I think, though, that the widespread availability of judicial decisions in transcript form, which is common throughout England and Wales on BAILII and Lawtel, coupled with the proliferation of single-subject or specialist law reports is a threat to the model of selective law reporting. Similarly, the availability of decisions of the courts of the United States in electronic form through PACER and on court Web sites and the availability of decisions of trial courts through the Unified Court System’s Web site and online through New York’s Law Reporting Bureau suggests a fresh look at what is being reported and the form of those reports. The widespread availability of judgments in transcript form in England and Wales and the similar ability to obtain decisions of both trial and appellate courts in the United States and in New York through the Internet may, though, enhance the law reporter’s role. If decisions are widely available to lawyers, judges, and the public from an official or semi-official source, then the law reporter can concentrate on reporting, by which I mean analyzing, summarizing, and digesting only those decisions that add to the body of the law. Other judicial decisions still would be available (and would be available through either a search engine or an indexing scheme) should anyone wish to retrieve them.

In this way, I believe that the future of law reporting as we now know it is secure: publishing and analyzing and summarizing and digesting only those decisions that add to the body of the law and, perhaps, assisting with access to other decisions, albeit digitally stored in transcript or other form. The challenge presented by the inexpensive storage of judicial decisions in a digital format is as great as that faced in New York in the early 1800s and in England and Wales later on by the proliferation of law reports of questionable quality. The success of the Law Reporting Bureau in New York through the last two centuries and the similar success of the ICLR in England and Wales for nearly 150 years should make it plain that the challenge of today, though different from that faced 150 or more years ago, will be met and the role of the

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<sup>10</sup> W.T.S. Daniel, *The History and Origin of the Law Reports* 283 (1884).

law reporter—as the guardian of the judicial decisions so critical to the maintenance of a common-law system—secured.

**Mr. Ashe:** Thank you, Mr. Cole. That brings us to the first scheduled break. Please note that this is your first opportunity to draft written questions for the panel discussion and hand them in at the break. This is a 15-minute break and it will be held in the Palm Room, immediately behind us.

[Break]

Our next speaker is the Honorable Edward W. Jessen, California Reporter of Decisions, speaking on Official Law Reporting in the United States.

*Official Law Reporting in the United States*  
*Edward W. Jessen, Reporter of Decisions*  
*California Supreme Court and Courts of Appeal*

**Mr. Jessen:** Good morning. “Official law reporting in the United States”—We begin this morning by acknowledging that official law reporting in this country cannot be analyzed without also providing considerable attention to its alter ego—commercial, private sector reporting. These two forms of law reporting have so influenced each other for at least 150 years that no understanding of one is possible without considering the other. And I suspect we have already recognized that connection in today’s program by including significant participation by the two major alter egos to official law reporting—LexisNexis and West.

While our topic this morning—official law reporting in the United States—could be read as excluding discussion of law reporting in Colonial America, a narrow reading like that would similarly cloud the analysis of law reporting because many of the trends and developments that we should consider actually originated in Colonial America.

In preparing for this topic, the first issue was defining the focus within official law reporting. Should the focus be on historical development—a rich and complex tapestry of names, dates, states, events, and publications? Should it be an overarching and general critical analysis of law reporting issues through the years? Or should we just discuss the current state of official law reporting? And whatever the focus, not much can be said about law reporting in the nation’s high

court, or the 200 years of law reporting here in New York. Those aspects will be ably covered by Frank Wagner and Gary Spivey later this morning and this afternoon.

What emerged is an approach that is more historical than I initially expected to take, although what follows will be mercifully short on names and dates. As research for this topic progressed, the revelation was that many—perhaps most—of the law reporting issues we today regard as recent and current have actually been with us, in one way or another, since the early post-Independence years, and even before that for some issues. As we will see in more detail, small subscriber bases, unpublished opinions, what to do about the increasing volume of reported opinions, timeliness of publication, adaptability in general, and the practice of selective publication of opinions are issues that can be traced back for a long time—well over a century for a couple of these issues, and the legendary Lord Coke expressed concern over the number of opinions to contend with in his time in the 17th century.

I will confess at the outset that there are no radical or controversial conclusions this morning. Rather, we will trace the influences that have shaped official law reporting over the years, with some emphasis on those influences still having force today. In a sense, my mission this morning is to provide some context and background for this afternoon's panel discussion.

Before going back in time, I want to acknowledge reliance on the work of Erwin C. Surrency, particularly his 1990 book: *A History of American Law Publishing*, which was published by Oceana Publications, Inc. Beyond the exhaustive documentation and analysis he provides, it was a bibliographic resource that only a dedicated librarian could produce, and Mr. Surrency was Director of the Law Library and Professor of Law at the University of Georgia School of Law at the time the book was published.

While we are not going to go beyond Colonial America this morning, it might be necessary—or at least helpful—to simply note that without Johan Gutenberg in the middle of the 15th century, there would be no law reporting as we know it today, for law reporting is a small part of the revolution in disseminating knowledge that was started by Gutenberg.

Taking note of Johan Gutenberg is significant because, in Colonial America, the limited availability of printing presses significantly shaped the development of law reporting. Although the Crown did little to encourage legal publishing in the colonies, colonial governments needed

their statutes, legislative journals, and other documents—such as manuals for justices of the peace—disseminated by printing, and to accomplish this, colonial governments had to “encourage” the spread of printing presses by providing subsidies and salaries for printers, and by guaranteed sales of the publications.

But the “encouragement” provided to these early colonial presses did not encompass reports of decisions from local colonial courts because, according to some historians, the colonial judges were not legally trained and their decisions were not models of judicial reasoning. For example, Thomas Jefferson remarked that colonial judges were “chosen without any regard to their legal knowledge; and their opinions could never be quoted either as adding to or detracting from the weight of those of the English courts on the same point.”

Nonetheless, there were early efforts to preserve the reasoning of colonial courts, but these efforts were typically characterized as “hasty, indigested things,” and the “bane and scandal of the law when considered as a science founded on principle.” Before judging too harshly, however, keep in mind that these early reporters were not copying cases with the objective of constructing a scientific legal superstructure. They were merely making notes for their own use, or for the use of a circle of colleagues in a small cohesive bar.

But official law reporters are nothing if not practical, and here is a practical analysis for why official law reporting did not prosper in Colonial America. Printing, which required government “encouragement” in the first place, was centered in New York, Boston, and Philadelphia; printing presses were few and far between in other cities. And historians uniformly characterize the size of the colonial bar as small; English texts on the common law were preferred over native American law books because the English courts, rather than the local courts, were viewed as the source of common law for Colonial America, and the English reports were readily available to lawyers in the colonies. In addition, before the Revolution a colonial lawyer in Virginia would not have felt a need to read what a colonial court in Pennsylvania had to say.

Then as now, there had to be a market for the printing of law books to be successful, and what has just been described—limited printing facilities and a small bar—equates to “no market there.” And size of the market throughout time in every jurisdiction has been a major concern of official law reporting.

After Independence, however, the growth of law reporting was amazingly quick as the obvious need for reports of the new American courts became apparent and was fulfilled. Because we are in New York today, it is worth noting that the first seller and publisher of law books reportedly was Stephen Gould, who in 1791 opened a book shop, “At the sign of Lord Coke, opposite the City-Hall,” in New York City.

Although Independence did not automatically end the American bar’s dependence upon, or desire for, English reports, which enjoyed great popularity throughout the 19th century, by 1800, 11 titles for decisions of the new, post-Independence American courts had been published. This early reporting followed the English practice of reporting by individual reporters, which often resulted in an overlap of the same decisions being included in several different reports. Reports were cited by the name of the reporter rather than the state. Three reporters in the early decades of the 19th century reported decisions of other jurisdictions as well as their own. Dallas, for example, included decisions from Delaware, and his reports are also claimed by Pennsylvania and the federal realm. Because early reports were cited by the name of the reporter, a feeling persisted that the reporter was far more important than the judges who rendered the decisions. Names such as Wheaton, Dallas, and Howard are all better known than some of the 19th century justices of the Supreme Court.

Thus, early official efforts at law reporting were made by individuals without much “official encouragement,” and the reporters depended upon the sale of volumes as compensation for their efforts. This commercial basis for official law reporting contrasted sharply with the obligation felt by state governments—similar to predecessor colonial governments—to publish their laws, which were widely distributed to state and county officials through printing contracts, salaried printers, and guaranteed sales. While there are hints that this method of compensation was often inadequate, the office of reporter was seldom vacant, and several states limited the amount reporters could charge for volumes. This type of commercial endeavor for law reporting took a serious blow when the United States Supreme Court ruled that reporters could not claim copyrights to opinion text, and by the end of the 19th century all reporters were on salary, and all reports were printed at the expense of the states.

But truth be known, the editorial burdens for these early reporters were not at all similar to the duties presently attached to official law reporting. The early reporters’ responsibility was, in reality, to tran-

scribe the oral rendering of a judgment, then significantly participate in writing, within what we today regard as the court's "opinion," a summary of the facts and the arguments of counsel—in addition to providing the headnotes and a useful index for the volumes. Good reporters even then also checked the accuracy of the citations and the development of the reasoning, which often improved the opinions. Prefaces to early reports lead to the conclusion that reporters considered preparation of the summaries and arguments of counsel to be their most arduous task. There are frequent apologies for the failure to express adequately the statements of counsel, and the first reporter for Alabama asked, in volume 2, that the lawyers furnish him their positions in writing.

Within several decades after Independence, states had widely accepted the obligation to make available the decisions of their supreme courts on the same basis as statutes. Recognition of that obligation resulted in the appointment of reporters whose duty it was to attend the courts and publish their opinions.

A factor of great influence in establishing official law reporting was, dating from the late 18th century, a trend requiring that judges write their opinions rather than merely state them orally, and leave it to reporters to transcribe and enhance the oral opinions. One early example of a state undertaking the expense of publishing judicial opinions was Georgia. An act of 1841 required judges to write out their decisions and place them in the minutes; another provision was a requirement defining the situations in which written opinions were mandatory.

The demands of law practice in Colonial America or the new United States did not force a lawyer to feel that the reports of any courts were needed within a very short time of filing. The majority of English reports contained opinions decided many years before publication of the volume. Publication of single volumes of reports every now and again was satisfactory to meet the needs, regardless of their timeliness. But the need for more timely publication became increasingly more compelling, and satisfying the need for timeliness is cited by historians as a major reason for appointing reporters and providing for the official reporting of opinions.

So as we moved toward the middle of the 19th century, official law reporting was a generally accepted responsibility and the office of

reporter was common to the judiciaries of most states, and decisions were being published on an increasingly more timely basis than in the early post-Independence years.

So what went wrong? Lack of timeliness much later became a significant reason in jurisdiction after jurisdiction for “disestablishing” official law reporting and relying, in whole or part, on the alter ego private sector publishers. If ensuring timely publication was a reason for undertaking the obligation of official law reporting, how did lack of timeliness eventually come to be cited as a significant reason for many states abandoning the obligation to officially report the law?

Not only is timeliness—like the small size of the market in any single jurisdiction—one of those perpetual issues that is both current and historic, it also points to the broader issue of adapting official law reporting to changing circumstances—and the harm that can result by not adapting. The dilemma this poses for those directly involved in law reporting is assessing what should change and when. The most detrimental phrase one hears around any court is “we’ve always done it that way,” yet there are core values relating to stability, consistency, and uniformity that should be safeguarded.

Before moving past the Civil War to the latter half of the 19th century, it is worth noting that the early years of law reporting also saw the first emergence of unpublished opinions and questions about what to do with them. Legal literature of the early decades of the 19th century contained frequent references to unreported decisions. Wharton’s Digest, published in 1822 in Philadelphia, referred to unreported decisions, as did Nathan Dane in his Abridgement, published in Boston during the 1820’s. And a writer in 1822 reported that no Alabama decisions had been printed, yet Alabama judges were required to file written opinions, so the opinions must have existed. And in 1898 it was reported that the judges in New Jersey had omitted 667 decisions by designating them as “Conclusions,” but they were nonetheless published in the first 33 volumes of the Atlantic Reporter.

In the decades following the Civil War, much of the basic structure for law reporting, including ancillary products like digests, that were in use, or still viable in some way, at the close of the 20th century were introduced. And those are the decades in which the interplay of official and private sector law reporting became significant, with each greatly affecting the other. Those decades were arguably the most innovative in the history of law reporting, official and unofficial.

During this time, publishing reports became a profitable venture for many law book publishers; contracts for printing state law reports were eagerly sought and commercial publishers undertook a more active sale of the sets. Competition became so keen that lawsuits were instituted to prevent courts from delivering opinions other than to the publishers of the official reports, although the suits were apparently all unsuccessful. Commercial publishers were also finding opportunity and profit in reprinting old state reports. Practically all state reports published in the first half of the 19th century were reprinted as commercial products in the closing decades of that century.

For example, John B. West & Co. announced in 1876 the publication of the first 11 volumes of the Minnesota Reports, edited by James Gilfillan, Chief Justice of the Minnesota Supreme Court. The notice claimed that these volumes “have long been out-of-print and so much called for that we have decided to reprint them.” In 1877, New Jersey required its reporter to reprint and renumber all volumes of reports as two series.

The last two decades of the 19th century was an era when publishers became concerned with the growing number of opinions and reports—another of the perpetual concerns we sometimes think of as modern that actually has very long and deep roots. But saying publishers were “concerned” is perhaps not the right word. Official law reporting was, in a sense, enslaved by the increasing volume, and that increasing volume was not matched by correlative increases in support for law reporting, so many states began to fall farther and farther behind in publishing opinions. The private sector saw commercial opportunity in the increasingly untimely publication of official reporters, and also in parsing the growing number of opinions in various ways.

And this is the era—from the end of the Civil War to the turn of the century, in which the single most significant event in the history of law reporting transpired: the inauguration of the National Reporter System by John B. West. The system began with publication of a weekly “Syllabi” in 1876 that, at first, contained only excerpts from opinions with a few items of current interest, but within a few weeks thereafter included the full text, “uniformly indexed, a service previously unavailable.” After Minnesota, West included Wisconsin in the Syllabi and, in the face of some competition, established the “North-Western Reporter,” containing the full text of each decision from the Minnesota and Wisconsin Supreme Courts. In 1879, Michigan, Iowa, Nebraska, and the Dakotas were added—and the Northwestern Reporter, more or less as



we now know it, was on the market. In a significant reference to what was said a few minutes ago about timeliness, the official reporters for each of the states assembled into the Northwestern Reporter were several years tardy in publishing opinions; thus the Northwestern Reporter was reportedly very welcome and very successful in the marketplace.

Other publishers were also noting the success West was having and also launched various regional reporters in the 1880's, but all either failed or were purchased by West.

For example, the Eastern Reporter began in 1885 and was published by William Gould, Jr. & Company in Albany, New York, but in 1887 West purchased the Eastern Reporter and the last Gould volume contained a prophetic editorial note for official law reporting stating that the comprehensive reporting and digesting system proposed by West would “prevail over any local and fragmentary enterprise of the same character.”

Meanwhile, out west, the West Coast Reporter was started by the A.L. Bancroft Company in 1884. This reporter included nearly all the states now associated with the Pacific Reporter, and the publication was purchased by West in 1886.

In 1885, West tentatively announced the Atlantic, Southwestern, Southeastern, and Southern reporters—and it first used the designation “National Reporter System” to describe these publications.

By 1902, West was urging the bar to demand that all citations in texts include reference to the National Reporter System. One feature of most book reviews of the period was a statement whether the author referred to the local reports as well as to the regional reporter. In doing so, one reviewer in Wisconsin—offering an anecdote as to how official reporters were becoming handicapped in the marketplace by the inherent power of the National Reporter System—criticized an author for not including cites to the National Reporter System because only four sets of the Nebraska Reports, which were cited in the work under review, were available in Wisconsin.

One feature of West's regional reporters was the fact that West's volumes were issued in parts (i.e., what became advance sheets) that were later reprinted as bound volumes. The advantage of this method of publication was making decisions available at an earlier date than when opinions were issued exclusively as bound volumes. Prior to this

innovation, selected decisions were published in newspapers and some periodicals, and other publications included digests of important decisions, but no means existed for the systematic early publication of decisions in a regular form except for a few series. This is how “advance sheets” made their appearance and became a standard of law reporting, both official and unofficial—and certainly a standard for any official reports hoping to survive on its own, but again an example of how official and unofficial law reporting are so juxtaposed in so many ways.

Gradually—the time is not clear—West also took an increased responsibility for cite checking and editing opinions. In sum, the National Reporter System merits much consideration in a discussion focused on official law reporting because it has been the dominant force in law reporting—official and unofficial—for the latter part of the 19th century, all of the 20th century, and is still a force in the early years of the 21st century.

During the same time period in which the National Reporter System was establishing itself, roughly in the latter quarter of the 19th century, other publishers were attempting to commercially address the proliferation of volumes that was making it difficult for any individual lawyer to have all of the volumes in the office or otherwise available.

Some law publishers experimented with selecting and republishing decisions by subjects. Most of these experiments were unsuccessful because of uneven quality and untimeliness in selecting the opinions for inclusion—most of the attempts were not done by a professional, paid editorial staff—and because lawyers were still “generalists” in that era; thus there was not so much interest in subject-matter collections of opinions.

Another approach to “selective republication” was commenced in 1871 with the American Reports, published by the J.D. Parsons Company of Albany, New York. This series selected decisions from state courts based on editorial criteria, but not limited to a particular subject. The objective of the American Reports was to separate “that which is important from that which is local.” The opinions were carefully selected for inclusion of those that presented novel points of law and general practice questions. Some portions of opinions were omitted with appropriate signals and the editor made some cite checking-type corrections.

In 1878 Bancroft-Whitney Company commenced publication of American Decisions, which also involved selective republication of

opinions to criteria similar to those applied by the American Reports, except that American Decisions limited its scope to opinions published prior to the scope of coverage in American Reports, and in 1880 Bancroft-Whitney purchased American Reports, then launched, in 1888, the American State Reports, designed to “extend into the future without limit.”

At roughly the same time, similar endeavors were undertaken by New York’s Lawyers Co-operative Publishing Company and the Edward Thompson Company with a series entitled American and English Annotated Cases. Finally, after obtaining an interest in Bancroft-Whitney, Lawyers Co-operative and Edward Thompson jointly published the first volume of the American Law Reports in 1919 under the imprint of Edward Thompson and Lawyers Co-operative Publishing.

Why is this brief history of commercial law reporting important to a discussion of official law reporting? Because it reflects a clash of philosophies in law reporting that continues to this day: one is devoted to publishing all decisions and the other is based upon reporting selected decisions. The debate continues today without resolution, with the added dimension now of whether “all decisions” really means all decisions that are filed or only those that are filed with the intent to be published.

Also, this history appears to be the conceptual birth of “selective publication,” which is now used in virtually all jurisdictions. As editors—then and now—evaluate opinions against the criteria for inclusion in American Law Reports, so do appellate court justices assess their opinions against remarkably similar criteria that determine if the opinions will be published.

Remarkably, in the 20th century, the Great Depression had little discernible impact on official law reporting in the country, but the decades after World War II saw many changes in official law reporting and legal publishing in general. One trend relevant today was the discontinuance of the official reports and the substitution of the National Reporter System in some jurisdictions. Reportedly, the first state to discontinue its series of official reports of its supreme court was Florida, which did so in 1948. The usual argument advanced for such action was the slow rate at which the official reports were published, and the illusory saving of some state funds. Illusory because what of the public? If there is no official reporter in a state, there is generally no competition for printed versions of enhanced opinions, and that still appears to be a consequential segment of the legal information market.

And what of consumer choice as to the way in which opinions are enhanced, and the judiciary's control over what is published and how it is published?

If there are concluding points to draw from this morning's overview, one point is that official law reporting remains a fundamental and compelling responsibility of state governments, and in particular a responsibility of the appellate judiciary anywhere that *stare decisis* has force and effect.

A second point is that responsibilities encompassed within official law reporting are now largely taken for granted. As far back as 1912, one writer noted the reporter no longer sat in court, listening to oral argument, and making his own notes. Rather he received the opinion of the court and the briefs and merely used "scissors and paste" to make volumes of the reports, as contrasted to the arduous work required of the nominative reporters years earlier.

Thus today the common perception is that the judges write the opinions for which they receive attribution, and the process of printing and publishing opinions—either in traditional paper-based reporters or in computer-based forms—seems automatic to the bench, bar, and public. Overlooked in a process that seems so automatic is the largely anonymous work of reporters making suggestions to ensure the accuracy of opinions before they are filed, then ensuring that those opinions are accurately reported within a body of decisional law that is accurate, functional, and accessible for the bench and bar in each of our particular jurisdictions.

In some ways a volume of Rawle or Wheaton required much more labor by the reporter than does a corresponding current volume of judicial opinions, but if Sir Edward Coke found the number of published volumes of reports burdensome in his time, what would he think of the number of volumes published today, with no decrease in sight. In the last century, one volume contained the decisions of a court for several years, but now some jurisdictions average more than a volume per month.

That raises a third concluding point this morning relating to the increasing volume of opinions and the profession's quest for access. As noted, that has been a longtime issue in law reporting, and it is a significant one today, expressing itself now as an attack on selective publication, which is a practice most of us here today likely consider essential to the functional utility of *stare decisis* and access to our

respective bodies of decisional law. Yet there are significant voices wanting more access to more opinions, and they have seized upon the almost infinite—it seems—capacity of LexisNexis and Westlaw to absorb thousands of opinions per month to argue that it is now rational that all opinions be citable and that the judiciary cease exercising control over what, within each jurisdiction, should be regarded as published. Is there any explanation for this thirst to read and cite everything?

It has been suggested that the use of decisional law has perhaps changed over the years, and that change fuels the drive that all opinions be regarded as published. Increases in the number of decisions starting roughly after 1960 is commonly attributed to increases in the number of judges and the volume of litigation, but maybe there was a change in attitude toward decisional law by the legal profession—a gradual shift of ever-increasing reliance on decisional law. Colonial and early 19th century lawyers relied more on general principles of law, but during the 19th century the appellate function became more precisely delineated and the doctrine of *stare decisis* assumed greater significance.

That being so, the assumption was that the principles of law could be found in appellate court decisions, and if one could extract those principles, a scientific basis for the law would emerge. If law is “science,” then as many “specimens” as possible are needed for extraction of those principles. Is it possible that viewing law as somehow akin to science may be part of the drive for access to more and more opinions, and for eliminating citation prohibitions on opinions not regarded as precedential and published?

Finally, the last juxtaposition to draw between “then” and “now” is with respect to this afternoon’s discussion of the future of law reporting and ask—in the same way Gutenberg’s invention caused an intellectual revolution in the dissemination of information—if computers will, 500 years from now, be viewed akin to the invention of the printing press?

For now, we can conclude by noting that in law reporting, everything old becomes new again, or what goes around comes around. Thank you so much—I hope what has been said this morning will spawn useful dialogue and thought, and I hope it provides some context for discussing the future of official law reporting this afternoon.

**Mr. Ashe:** Thank you, Ed. We now turn to the topic of Official Law Reporting at the United States Supreme Court, and our speaker is the Honorable Frank D. Wagner, Reporter of Decisions.

*Official Law Reporting at the Supreme Court  
of the United States\**

*Frank D. Wagner, Reporter of Decisions  
Supreme Court of the United States*

**Mr. Wagner:** Good morning. In the spring of 1993, I had an epiphany. I had been the Reporter of Decisions at the United States Supreme Court for six years, but it was not until that moment that I began to fully understand the real significance of what I do; indeed, of what many people in this room do. It was during a visit by Valery Zorkin, Chairman of the Russian Constitutional Court. Chairman Zorkin was in Washington, D.C., talking to various officials of the Supreme Court, the Administrative Office of the United States Courts, and the Federal Judicial Center about the nuts and bolts of running a court of last resort. Near the end of our visit, after we had talked over the details of preparing and publishing opinions, Chairman Zorkin asked me one final question, and it just about knocked my socks off. He said: “How do you keep the press and your enemies”—which, to him, seemed to be coextensive groups—“from lying about what you’ve decided in important cases?” As I understood the inquiry, Chairman Zorkin was not simply asking me whether and how the Supreme Court tries to stop its critics from putting unwarranted spin on its rulings. Rather, he seemed to be asking the much more basic question of how we defend ourselves against bald-faced liars bent on destroying the Court’s credibility, and therefore its effectiveness as a functioning arm of government. The question was so astonishing to someone raised in the western democratic tradition that it took me several moments to arrive at the obvious answer. Finally, a light dawned. I told Chairman Zorkin that what we do is prepare official reports of our decisions and disseminate them as quickly and as widely as possible through a variety of print and electronic media. That way, those wishing to know what the Court has ruled on a particular question can quickly and easily find out for themselves.

I suppose it’s fair to ask why I wanted to be the Supreme Court Reporter in the first place if I didn’t understand the importance of the position when I applied for it. To answer that question, I’ll tell you a bit about how I came to Washington. In 1972, I was practicing law in eastern Pennsylvania and hating every minute of it. I had been an English major at Cornell, so I looked around for a way to combine the

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two halves of my education in a job that would pay a living wage for writing about the law. What I found was the Lawyers Co-operative Publishing Company in Rochester, New York. As most of you know, that company no longer exists per se; it is now part of the vast Thomson-West legal publishing empire. However, in 1972, Lawyers Co-op was the second largest legal publisher in the country, employing over 100 lawyer-editors to write and edit a large number of well-known commercial legal publications, including American Jurisprudence, the American Law Reports, and the Supreme Court Reports, Lawyers' Edition. More importantly, for my purposes here, Lawyers Co-op in the 1970's was the "prep school" for many members of today's American law-reporting profession.

When I arrived in Rochester, the Managing Editor of Lawyers Co-op's Federal Department was a very distinguished gentleman named Henry C. Lind. Henry soon left the company to become the Assistant Reporter of Decisions at the U. S. Supreme Court. In 1979, he was elevated to the Reporter's position, and thus was my immediate predecessor in this job. While the Reporter, Henry founded the Association of Reporters of Judicial Decisions, the cosponsor of today's symposium.

Also at Lawyers Co-op at that time was a hotshot young editor named Gary Spivey, our host today and the present New York State Reporter. Gary and I were soon joined in Rochester by Tim Fuller, who is now the Reporter of Decisions for the State of Washington, and by Cliff Allen, the Reporter for Massachusetts. And in Lawyers Co-op's Marketing Department at that time, there was a young executive by the name of Brian Hall, who is now the President and CEO of Thomson Legal and Regulatory Publications. Also in the 1970's, Lawyers Co-op's California subsidiary, the Bancroft-Whitney Company, employed a young editor named Ed Jessen, who just finished speaking to you. Ed, of course, is the Reporter of Decisions of California and the President-Elect of the Reporters Association. Last but not least, Ed's staff attorney, Sheila D'Ambrosio, and my Deputy Reporter of Decisions, Christine Fallon, also got their starts as editors in the Lawyers Co-op family of companies.

I mention all of this to demonstrate what a seminal influence Lawyers Co-op was for participants in this symposium. And, for me personally, employment there was a pivotal point in my life. It was Henry Lind's departure from that company that first clued me in to the fact that the position originally held by Alexander Dallas and William Cranch still existed. That realization signaled the way for much of my publishing career. While at Lawyers Co-op, I became Managing Editor

for a time of Supreme Court Reports, Lawyers' Edition. And, when Henry retired from the Supreme Court, I was Managing Editor of the Washington Office of the Research Institute of America, another of Lawyers Co-op's subsidiaries. Thus, when the Reporter's job became available, I was six or seven blocks away, apparently qualified, and eager to take on this historic job. What a ride it has been! If you're going to be a legal editor, I doubt that there's a better job in all the world.

The Reporter of Decisions is one of five statutory officers at the Supreme Court. The others are the Administrative Assistant to the Chief Justice, the Clerk of the Court, the Marshal of the Court, and the Librarian.<sup>1</sup> We're called "statutory" officers because our jobs are created by law: Our job descriptions are included in the United States Code. You can find the Reporter's job described at 28 U. S. C. § 673. There have been relatively few Reporters in the Court's history. I'm only the 15th Reporter since 1789. During the same period, there have been 16 Chief Justices.<sup>2</sup>

As the Reporter of Decisions, my primary job is to prepare the Court's opinions for publication in the official United States Reports. That makes me an editor of sorts, but not the all-powerful type of editor sometimes found in commercial publishing. For example, I could never tell a Justice to "lose that Part III—it's a real turkey." Rather, the Reporter and his staff have been described by the 13th Reporter, Henry Putzel, jr., as "double revolving peripatetic nitpicker[s]."<sup>3</sup> We carefully examine each draft of each opinion to assure the accuracy of its quotations and citations, and, to the extent we can, its facts. We also check for any typographical errors, misspellings, grammatical mistakes, and deviations from the Supreme Court's complicated style rules.<sup>4</sup>

We perform these editorial functions for each case before it's released. That is, the same attorney and the same paralegal editor in the Reporter's Office generally read each and every word of every draft of every opinion in every case. I say "generally" because there are

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<sup>1</sup> See McGurn, *The Court's Officers*, 1979 S. Ct. Hist. Soc. Yearbook 87.

<sup>2</sup> The 16 Chief Justices include John Rutledge, who was nominated by President George Washington and served as Chief Justice by recess appointment in 1795, but whose nomination was rejected by the Senate. See Marcus, *Washington's Appointments to the Supreme Court*, 1999 S. Ct. Hist. Soc. J. 243, 251-252.

<sup>3</sup> See Baier & Putzel, *A Report on the Reporter*, 1980 S. Ct. Hist. Soc. Yearbook 10, 12 (hereinafter Baier & Putzel). This article consists largely of the text of a television interview Professor Paul R. Baier, of Louisiana State University Law Center, conducted with Mr. Putzel.

<sup>4</sup> See *Retirements and Appointments*, 479 U. S. XXI (1987).



exceptions that prove the rule. For example, in the “Florida Election Cases,” the Court was asked to decide whether the Florida Supreme Court had properly ordered recounts in certain counties of ballots cast during the 2000 Presidential election. In a very contentious, hotly debated decision, my Court held on equal protection grounds that the Florida court had erred in ordering recounts, thereby enabling George W. Bush to assume the office of President. Because of time constraints imposed by federal law, the Court was presented with a very compressed briefing, argument, and decision schedule. Specifically, we granted certiorari in *Bush v. Gore* on Saturday, December 9, 2000, the case was argued on Monday, December 11, and the Court’s opinions deciding the case were issued on Tuesday, December 12.<sup>5</sup>

I say “opinions” because the case consisted of a per curiam opinion, a concurrence, and four dissents, all of which totaled some 59 pages. Over the course of the day of decision, each of those six opinions was sent to the Reporter’s Office at least once for editorial work, and most of them were sent to us multiple times. As I said before, we try to have the same lawyer and the same paralegal read every draft of every opinion in order to assure familiarity with the case’s subject matter and to achieve consistency in the editorial work. However, throughout the day of December 12, 2000, we split up each of the *Bush v. Gore* opinions three ways among the office lawyers and five ways among the paralegals just to assure that the work was completed before the next draft of the opinion arrived. Although we were able to fully read and edit all of the draft opinions on that fateful day, our practice of using the same people to do all the work had to yield to expediency. I believe we found most of the errors and typos before the case was released, but full editorial consistency between the various component opinions had to await their publication in the U. S. Reports preliminary print.

Our experience with *Bush v. Gore* helped prepare the Reporter’s Office for this past Term’s foray into the fascinating world of federal campaign finance reform. In *McConnell v. Federal Election Commission*, the Court largely affirmed the constitutionality of the Bipartisan Campaign Act of 2002. The case involved 11 consolidated challenges brought by Senators, Congressmen, and special interest groups unhappy with that landmark legislation. This time, the briefing and argument schedules were not compressed, as they had been in *Bush v. Gore*. However, the Court did cut short its 2003 summer recess, scheduling special, extended arguments for September 8. Usually, an

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<sup>5</sup> *Bush v. Gore*, 531 U. S. 98 (2000).

argument before the Court lasts only an hour, no matter how important the case. However, due to the large number and complexity of the contested issues, the *McConnell* arguments lasted four hours. Some of the best appellate attorneys in the country participated, including former Solicitors General Ted Olson, Ken Starr, and Seth Waxman. The Court issued its decision on December 10, 2003,<sup>6</sup> and what a decision it was! There were three separate opinions for the Court discussing the various titles and provisions of the statute. The first of those was a joint opinion, authored by Justices Stevens and O'Connor. In addition to the other two opinions for the Court by the Chief Justice and Justice Breyer, there were five separate side opinions concurring in part and dissenting in part in various respects. All told, the case totaled 297 pages. *McConnell* was the second longest decision ever issued by the Supreme Court, according to our excellent research librarians. Minus its initial heading and its syllabus, the case has 89,694 words. You have to go back to 1857's *Dred Scott* case<sup>7</sup> to find a longer decision. Without its heading and arguments and starting with Chief Justice Taney's opinion, *Dred Scott* totaled 109,163 words.

Even though *McConnell* is only the Court's second longest case, it presented mind-boggling logistical problems for a staff as small as my 11-person group (three attorneys, including myself, five paralegals, two clerical persons, and a publications officer). We dealt with the decision by coediting the joint opinion by Justices Stevens and O'Connor, which itself totaled 112 pages. Deputy Reporter Chris Fallon and I shared the "lawyer's reading" of the case, while four paralegals shared the cite checking and other duties that make up what we call "prechecking"—i.e., the prerelease editing that we do to get a case ready for its debut. For the first time ever, Chris Fallon and I also shared the writing of the *McConnell* syllabus, the summary that precedes the opinions in the case. Owing to the large amount of material to be covered, the *McConnell* syllabus was much more cursory than are most of the syllabuses we prepare. Nevertheless, it still totaled 19 single-spaced, 9-point pages. It is by far the longest headnote prepared during my 18 Terms at the Court, perhaps the longest ever.

As I indicated before, the Reporter's Office generally concentrates on the technical details of opinions, not on the big picture. When my predecessor, Henry Lind, retired, Chief Justice Rehnquist praised him highly for having secured the approval of a majority of the Court to spell

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<sup>6</sup> *McConnell v. Federal Election Comm'n*, 540 U. S. 93.

<sup>7</sup> *Dred Scott v. Sandford*, 19 How. 393 (1857).

“marijuana” with a “j” rather than an “h.”<sup>8</sup> Another example of what we do can be found framed on the Reporter’s Office wall. In the slip version of the opinion for the Court in a case called *Wear v. Kansas*,<sup>9</sup> Justice Oliver Wendell Holmes used the phrase “. . . the principle river of the State is navigable at the capitol of the State . . . .” In doing so, Holmes used the wrong versions of two key words, “p-r-i-n-c-i-p-l-e” when he meant “p-r-i-n-c-i-p-a-l,” and “c-a-p-i-t-o-l” when he meant “c-a-p-i-t-a-l.” Reporter Ernest Knaebel caught the mistakes and brought them to Justice Holmes’ attention. Framed on my wall is the Justice’s response. He said: “‘Principle’ of course was a printer’s error that I blush to have overlooked. ‘Capitol’ was deliberate ignorance. . . . I do a double blush. This is one of the few occasions on which I defer to the dictionaries.” As Chief Justice Rehnquist has declared: “The Reporter’s tasks . . . include the editing of opinions in the sense of attempting to establish consistency as to such matters as the forms of citations, preferred spelling of words, punctuation, and grammar—not an enviable task when dealing with nine separate chambers.”<sup>10</sup>

Thus, whenever I’m asked whether the Reporter’s Office “corrects” substantive errors in opinions, the answer is “no,” for the vastly most part. In instances in which substantive corrections have been made to opinions during my 18 Terms, the impetus to do so has usually come from Chambers or from the public.

While we’re in frequently-asked-questions mode, there’s one such question that I’ll happily duck. It often happens, usually at cocktail parties, that someone sidles up to me and asks conspiratorially: “Just between you and me, which Justice is the best writer?” I’ll tell you now what I always tell them: There’s very little to choose. All of the Justices are exceptionally experienced and talented legal writers, and each of them is equally wonderful in his or her own unique and fabulous way! What else can I say?

One last word about the editing of opinions. In this modern computer age, editing can sometimes be prospective in effect, not just retroactive. I’m referring to what we in the Reporter’s Office call our “Cites Retrieval Macro.” Actually, as it has evolved, this device is no longer a computer macro at all. Rather, it is now a programming sequence within the Court’s opinion-preparation software.

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<sup>8</sup> See *Retirements and Appointments*, *supra*, at XXI.

<sup>9</sup> *Wear v. Kansas ex rel. Brewster*, 245 U. S. 154, 158 (1917).

<sup>10</sup> *Retirements and Appointments*, *supra*, at XXI.

For many years, Chambers personnel engaged in writing opinions, and Reporter's Office employees engaged in checking opinions, spent a great deal of time typing, proofreading, editing, and correcting citations to the Court's earlier cases. Obviously, this was done in an attempt to eliminate errors, achieve consistency, and comply with the intricate case-naming rules set forth in the Supreme Court Style Manual. However, although we tried diligently, consistency in citations was a goal that was not always achieved. Associate Justice Harry Blackmun was one of the Justices who hired me, and I believe he felt that that entitled him to gently bedevil me on occasion about inconsistencies in the way particular cases were cited over the years in the U. S. Reports. These inconsistencies rarely involved major discrepancies, but more typically entailed minor differences from volume to volume in the abbreviation or nonabbreviation of particular words, or the inclusion or exclusion of particular minor words or phrases, in citations to a particular case.

In 1995, a team of employees, led by Deputy Reporter Chris Fallon, completed a project aimed at correcting such minor inconsistencies. The project had been underway since the 1970's regime of Reporter Henry Putzel. Specifically, the employees finished our "Cites Directory," which contains volume-by-volume lists of recommended citation forms for each and every case decided by signed or per curiam opinion and reported in the U. S. Reports. We estimate that there are more than 16,000 citations included in our directory. The question then became how best to make that information available to Chambers and our cite checkers. We found the solution in 1996, when a Reporter's Office intern, Derrick Lindsay, who was also a law student at the time and an amateur computer whiz, came up with our "Cites Retrieval Macro." Since that time, the Court's Office of Data Systems has upgraded and improved the macro, incorporating it into our other opinion-preparation programming. The macro allows an opinion writer automatically to import a recommended citation form directly from the Cites Directory lists into an opinion-in-process with a few simple keystrokes, without retyping the case name, and without the possibility of committing a typographical or other error (unless, of course, we input it wrong in the first place). Obviously, this has greatly simplified the process of using, and proofreading, citations to the Court's prior opinions.

In addition to doing the editorial work necessary to prepare opinions for publication, the Deputy Reporter, Assistant Reporter, and I write the syllabuses that appear at the beginning of cases. I say "write" advisedly here, because, in this modern computer age, syllabus preparation

largely involves taking an electronic copy of the principal opinion and boiling it down and down and down until we're left with the case's essence, its bare bones.

To answer another frequently asked question: Yes, each syllabus is carefully checked and approved by the Chambers whose writings it reflects. Technically, the syllabus is the work of the Reporter, not the Court,<sup>11</sup> which led Reporter Henry Putzel to refer to Chambers' syllabus input as "'suggestions.'" <sup>12</sup> I would suggest to you, however, that a Reporter unwilling to accept Chambers' "suggestions" would not be a Reporter very much longer. Actually, the syllabus-approval process yields a certain amount of security and comfort for me and my assistants. Twice since I've been the Reporter, I've gotten letters from law professors claiming that a syllabus had misinterpreted the case it summarized. In both instances, I was able to answer that I stood by my syllabus, since it had already been approved by Chambers, but offered to run it by the Justice again, just in case. On each occasion, the syllabus came back from Chambers reapproved without change.

Accuracy, of course, is a must for syllabuses, but comprehensiveness is not. A syllabus cannot reflect every point in the case it covers, else it would be almost as long as the case itself. Reporter Henry Putzel put it this way:

"[W]e try to make [syllabuses] as brief as we can and the question is always one of judgment: What point is at the nub of the case, and you would have to assume certain things that are not—they may be quite important—but they are not what the case is primarily about. For example, a Justice might start off an opinion by referring to the fact that on a motion to dismiss the complaint the facts are taken as stated. Well, if that is just incidentally mentioned, it would not be headnoted, although it could become part of the headnote if it were the central or focal part of the case."<sup>13</sup>

Perhaps the primary factor in the length and comprehensiveness of a particular syllabus is the preference of the Justice who wrote the majority opinion. On the present Court, most Justices prefer syllabuses to be as brief as possible. In particular, Justices Stevens and Scalia are acutely attuned to the length of syllabuses and will often "suggest"

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<sup>11</sup> *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337 (1906).

<sup>12</sup> Baier & Putzel 12.

<sup>13</sup> *Id.*, at 11-12.

shortening. Justice Ginsburg, on the other hand, has often preferred fuller summaries of her cases. She believes that the syllabus is frequently the only information on a case that busy lawyers and judges might read.<sup>14</sup>

We publish the Court's opinions, first, as bench and slip opinion pamphlets and, later, in the preliminary prints and bound volumes of the U. S. Reports. For each Court Term, we issue between three and five 1,200-page volumes, depending on the number of opinions released during the year. In the past few years, the Court has heard between 75 and 100 arguments per Term and has issued a comparable number of opinions. At that rate, we have been publishing only three volumes for each of the last few Terms. That's a far cry from my first Term at the Court, 1986, when we issued five volumes covering 161 opinions.<sup>15</sup> Right now, shortly after the end of October Term 2003, we are working on opinions that will be published in volumes 540 through 542 U. S. The latter will be the 542nd volume issued since 1789. It will also be my 64th volume. Nominatively speaking, that's good old 64 Wagner!

In addition to editing, headnoting, and publishing the Court's opinions, I had the good fortune to supervise the creation of the Court's Web site, under the direction of the Chief Justice, Justice Thomas, and the Court's Automation Policy Committee. Pretty exciting stuff for someone who was a mere 55-year-old at the time! The Web site debuted on the Internet in April 2000. It now includes, among other things, the Court's most recent slip opinions and orders, the full text of bound volumes 502 through 537 U. S., the Court's Automated Docket, a link to an American Bar Association site that contains the parties' briefs on the merits for cases argued during October Term 2003, oral argument transcripts for cases argued during the past four Terms, and some really dynamite photographs from the Court's collection. Thus far, the Web site has been very well received by the bench, the bar, and the public. Indeed, we typically experience between two and three million "hits" during months when the Court is in session. You can find our Web site at [www.supremecourtus.gov](http://www.supremecourtus.gov).

Actually, since the completion of the Web site, I have sort of retired from the Internet business. However, I still get to help out occasionally, since Publications Officer Lloyd Hysan, one of the employees in my office, has been named the Court's "Webmaster," and my friend Wilma

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<sup>14</sup> Ginsburg, *Communicating and Commenting on the Court's Work*, 83 *Geo. L. J.* 2119, 2120 (1995); Ginsburg, *Informing the Public about the U. S. Supreme Court's Work*, 29 *Loyola U. Chi. L. J.* 275, 276 (1998).

<sup>15</sup> See bound volumes 479-483 U. S.

Grant, the manager of the Court's Publications Unit, is involved on a daily basis with the Government Printing Office updating and supplementing the Web site. Incidentally, both Lloyd and Wilma are also members of the Reporters Association and are here today. Indeed, Lloyd was the ARJD's President in 1993-1994, and Wilma has just been elected Secretary for the coming year.

Well, that's about all I can think to tell you about the Reporter's job as it currently exists at the Supreme Court of the United States. All in all, it is an important job in its way,<sup>16</sup> and it has provided me with wonderful opportunities to meet and to interact with some of the best and the brightest people of our time. However, it is an obscure job to all but the people in this room and a few misguided academics who have written about the position. I do not kid myself that it has brought me even 15 minutes of fame in the wider world. Several years ago, I was introduced to Sam Donaldson as the Reporter at the Supreme Court. Mr. Donaldson looked at me skeptically, and I could tell what he was thinking. He knew every reporter in Washington, and I wasn't one of them. In order to allay his suspicions, I looked him in the eye and explained: "I'm a different kind of Reporter." Today, all of the denizens of that different breed, all of the birds of that peculiar feather, have gathered together in this one place. I am pleased and honored to be among you. I'd like to thank Gary Spivey, the New York State Law Reporting Bureau, Bilee Cauley, and the Association of Reporters of Judicial Decisions for the opportunity to do so.

**Mr. Ashe:** Thank you, Frank. In New York we have also wrestled with the problem of spelling marijuana with a "j" or an "h." I might also add that I think most Reporters wear the "nitpicker" label as a badge of honor. I think we should all also pat ourselves on the back as we are nearly on schedule. Our last scheduled speaker before lunch is the Honorable Anne Roland, Registrar of the Supreme Court of Canada, speaking on Official Law Reporting in Canada.

*Official Law Reporting in Canada*  
*Anne Roland, Registrar*  
*Supreme Court of Canada*

**Ms. Roland:** Good morning.

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<sup>16</sup> When Henry Putzel, Jr., retired, Chief Justice Burger said: "The work of the Reporter of Decisions is not known to the public but is of great importance to the courts, the legal profession, and to the public." Retirement of Reporter of Decisions, 440 U. S. V (1979).

## 1. Introduction

Thank you for inviting me to speak at the Second International Symposium on Official Law Reporting. I am honoured to be able to take part in the 200th Anniversary of Law Reporting in New York State. It gives me also the opportunity to attend the ARJD's Annual Conference. You all know I have a soft spot for the Association.

It is wonderful to be in what many call “the greatest city in the world”—New York City!

Today, we are here to discuss a topic near and dear to us: official law reporting. I will be focusing on official law reporting in Canada.

I cannot overstate the importance of good reporting of the law. One judge described it this way: No one—layperson or lawyer—can have reasonably full knowledge of how the law affects what they or their neighbours do without recourse to reports of judicial decisions and statutes.

I would like to provide a brief outline of the issues I will address today. First, a summary of why I think official law reporting is vital to a robust legal system, followed by an outline of the Canadian legal system, official law reporting at the Supreme Court of Canada and at the Federal Court, and the challenge of issuing judgments in two languages in a bijural environment.

Any information about law reporting would have to include the role that the Internet and electronic publishing have played in the changing world of law reporting, so I will talk about this, and touch on the issues of standards in publishing, privacy and then copyright.

Although there may be differences in the ways in which our systems function, there are many similarities as well. So it will be interesting to compare and contrast.

Let us begin.

## 2. Why Law Reporting is Important

The reporting of the law is one of the underpinnings of a democratic society. It is of fundamental importance to a country's system of justice that the law of the land is widely known; and that citizens have unimpeded access to judgments.



As you all know, the essential function of law reporting is to record the decisions of courts and other tribunals. Thus, the quality and efficiency of law reporting must be objects of public policy concern. Judges, lawyers and other public officers are responsible for the administration of justice. As such, they cannot simply be passive observers of the process of reporting judgments.

Open justice is essential to civil liberty and the development of the common law.

Open access to the courts and court records may at times conflict with individual privacy interests. However, generally, the sensibilities of the individuals involved are an insufficient basis upon which to exclude the public. In court decisions, the presumption is that identifying information is public, subject to certain common-law and statutory exceptions. In Canada, for example, the *Criminal Code* offers protection of the privacy of victims of sexual assaults by prohibiting the publication of their names or any information that would tend to identify them.<sup>1</sup> Similarly, young offenders (under the age of 18) are not publicly identified.<sup>2</sup>

Access to the law is a fundamental aspect of judicial independence. It constitutes one of the accountability mechanisms of our court system.

### 3. Courts in Canada

I would like to give you a brief history of the Supreme Court of Canada and the organization of Canadian courts.

In 1867, the *British North America Act*<sup>3</sup> defined the basic elements of Canada's judicial system. The Constitution divided authority between the federal (or national) government and the provincial governments, with courts' jurisdictions also divided.

The courts in Canada are set up as a four-tiered pyramid, with the Supreme Court at the top. The Supreme Court of Canada is a general court of appeal. It hears appeals from both the federal court system and the provincial court systems.

The next tier down from the Supreme Court consists of the Federal Court of Appeal and the various provincial courts of appeal.

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<sup>1</sup> *Criminal Code*, R.S.C. 1985, c. C-46, s. 486(3).

<sup>2</sup> *Young Offenders Act*, R.S.C. 1985, c. Y-1, s. 17.

<sup>3</sup> Now *Constitution Act, 1867*, reproduced in R.S.C. 1985, App. II, No. 5.

The third tier consists of the Federal Court (Trial Division), the Tax Court and provincial superior courts of general jurisdiction.

The final tier is composed of provincial courts. It is generally divided into sections defined by the subject matter of their jurisdictions, such as criminal, family, traffic and small claims.

The federal government has full authority over the constitution, organization and maintenance of the Supreme Court, the Federal Court and the Tax Court. Its authority includes the appointment of judges to those courts and the provincial courts of appeal and superior courts, while the maintenance of the latter courts is a provincial responsibility.

#### 4. Law Reporting in Canada

Contrasting with the situation in the United States, there are only two official reports in Canada: the Supreme Court Reports and the Federal Court Reports.

The 1875 legislation that established the Supreme Court of Canada and the Exchequer Court<sup>4</sup> (now the Federal Court) included what was, for that time, the rather innovative requirement that both courts publish their decisions.<sup>5</sup> The decisions were to be published by the Registrar, subject to the directions of the judges. At first, a *précis* writer was appointed under the Act to report decisions of the Supreme Court and of the Exchequer Court. By 1906, both courts had been separated and s. 18 of the *Supreme Court Act*<sup>6</sup> provided for the first time that the Registrar, without direction from the judges of the Supreme Court, was to publish the reports of the decisions of the Court. In 1956, the responsibility for publishing was given to the Registrar or the Deputy Registrar.<sup>7</sup>

We report all judgments rendered by the Supreme Court. This was not always the case. Prior to 1977, when there were appeals as of right in civil matters, the Deputy Registrar would select which cases to report. Cases with no precedential value and oral judgments were generally not reported. In 1976, there were significant changes to the *Supreme Court Act*. There were no longer appeals as of right in civil matters that met a monetary threshold and litigants had to obtain leave

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<sup>4</sup> *The Supreme and Exchequer Court Act*, S.C. 1875, c. 11, s. 73.

<sup>5</sup> Martha L. Foote, *Law Reporting and Legal Publishing in Canada: A History* (1997), at 129.

<sup>6</sup> R.S.C. 1906, c. 139.

<sup>7</sup> S.C. 1956, c. 48, s. 1.

to appeal,<sup>8</sup> which is only granted by the Court when a proposed appeal raises an issue of public importance.<sup>9</sup> Accordingly, with appeals meeting the public importance test, it is appropriate to report all decisions of the Court. The Court released and published in a bilingual format an average of 80 decisions a year. Since the decisions are headnoted, edited and translated prior to judgment, they are published in the official reports generally in less than four months.

Until 1970, the decisions of the Exchequer Court were published under the authority of the Registrar of that Court, even though the requirement to publish its decisions had not been continued in the 1906 *Exchequer Court Act*.<sup>10</sup> It is only in 1971, when the Federal Court replaced the Exchequer Court, that a new legislative requirement provided for the appointment of an editor for the official reports and the publication of the decisions.<sup>11</sup> In the Federal Court, the official reports are published, not by the court itself, but by the Federal Court Reports Section of the Office of the Commissioner for Federal Judicial Affairs. Under s. 58(2) of the *Federal Court Act*, the editor shall include in the official reports only “the decisions or the parts of them that, in the editor’s opinion, are of sufficient significance or importance, to warrant publication.”<sup>12</sup>

For the fiscal year 2003/2004, the Reports Section received over 2,000 judgments and published in a bilingual format over 100. At the end of each report, the Report Section also digests numerous decisions which do not meet the stringent standards of selection for full text reporting but are considered of sufficient value to merit coverage in an abbreviated format. The judgments of the Federal Court are edited, headnoted and translated only after release. They are usually published in the official reports within five or six months. It may take longer if there are unusual delays in the translation of the reasons for judgment.<sup>13</sup>

Private publishers also play a significant role in law reporting in Canada and publish most of the other reports. Legislation<sup>14</sup> pertaining

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<sup>8</sup> R.S.C. 1970, c. S-19, s. 36, rep. S.C. 1974-75-76, c. 18, s. 3.

<sup>9</sup> R.S.C. 1970, c. 19, s. 41(1), rep. & sub. S.C. 1974-75-76, c. 18, s. 5 (now R.S.C. 1985, c. S-26, s. 40(1)).

<sup>10</sup> R.S.C. 1906, c. 140.

<sup>11</sup> S.C. 1970-71-72, c. 1, s. 58.

<sup>12</sup> R.S.C. 1985, c. F-7, s. 58(2), rep. & sub. S.C. 2002, c. 8, s. 56.

<sup>13</sup> William J. Rankin, “Address Given at Federal Court,” Sept. 8, 2000, at 2.

<sup>14</sup> *Judicature Act*, R.S.N.B. 1973, c. J-2, ss. 63 and 65; *Law Society Act*, R.S.O. 1990, c. L8, s. 62; *An Act Respecting the Barreau du Québec*, R.S.Q. 1977, c. B-1, s. 15; *Law Society*

to the provincial and territorial bar associations, except in one province, authorizes the bar associations to provide for the reporting of court decisions. Several have done so. For instance, LexisNexis Canada Inc. publishes the Ontario Reports and Maritime Law Books publishes the reports for Newfoundland and Labrador, Prince Edward Island, Nova Scotia and New Brunswick, under the auspices of their respective bar associations.

In Québec, la Société québécoise d'information juridique (SOQUIJ)<sup>15</sup> was created by statute in the mid-1970s to improve law reporting in the province and to make it more accessible to the general public.<sup>16</sup> Its role is similar to that of the Incorporated Council of Law Reporting in England and Wales. SOQUIJ is in a special position, as it is a provincial body with a statutory mandate to publish, in cooperation with the Québec official publisher, judgments rendered by the courts and administrative tribunals sitting in Québec. In addition to law reports, SOQUIJ also publishes advance summaries or digests of numerous decisions, in such collections as *Jurisprudence Express* or *Droit du travail Express*. SOQUIJ also has its own database, Azimut. Lastly, in collaboration with the Québec Department of Justice, SOQUIJ now posts on the Internet court and administrative tribunal decisions.<sup>17</sup>

I would highlight that there does not seem to have been a debate on the question of official reports in Canada. However, there is one advantage that official reports have over the semi-official and private reports—headnotes prepared by law editors employed by the courts. The Supreme Court Report makes no mention of whether the headnotes, which are “approved” by the judges writing the reasons, are official. The legal community generally assumes that the headnote is based on the law editor’s understanding of the judgment. It is not authoritative and it is not officially part of the decision. I would think, however, in those rare cases where the length of a judgment drives a lawyer or researcher to use a headnote, that a headnote that has received the judicial “stamp of approval” is preferable.

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*Act*, S.N. 1999, c. L-9.1, s. 18; *Barristers and Solicitors Act*, R.S.N.S. 1989, c. 30, s. 59; *Legal Profession Act*, C.C.S.M., c. L107, s. 43; *Legal Profession Act*, SBC 1998, c. 9, s. 28; *Legal Profession Act*, R.S.A. 2000, c. L-8, s. 6; *Legal Profession Act*, R.S.P.E.I. 1988, c. L-6-1, s. 50; *Legal Profession Act*, R.S.Y. 2002, c. 134, s. 5; *Legal Profession Act*, R.S.N.W.T. 1988, c. L-2, s. 7; *Consolidation of Legal Profession Act (Nunavut)*, R.S.N.W.T. 1988, c. L-2, s. 7.

<sup>15</sup> [www.soquij.qc.ca](http://www.soquij.qc.ca).

<sup>16</sup> *An Act to constitute the “Société québécoise d’information juridique,”* S.Q. 1975, c. 12 (now R.S.Q., c. S-20), s. 19.

<sup>17</sup> [www.jugements.qc.ca](http://www.jugements.qc.ca).

In this regard, the Supreme Court is assisted by a great team of hard working and dedicated law editors, led by Mr. Claude Marquis, Chief Law Editor, and Ms. Barbara Kincaid, General Counsel, responsible for the Law Branch. Their work is much appreciated by both the bench and the bar.

In any event, with the arrival of electronic publishing and the posting of judgments on the Internet by courts themselves, the importance of the distinction between “official” and other reports has been lessened. Even at the Court we no longer require citation to the Supreme Court Reports. Rule 44(3) of the *Supreme Court Rules* now indicates that the Books of Authorities “shall contain only the relevant excerpts from the *Canada Supreme Court Reports* or from an electronic database if the reasons were delivered after 1994 and the paragraphs numbering is consistent with the numbering of the *Canada Supreme Court Reports*.”<sup>18</sup> Furthermore, the Canadian Judicial Council has also endorsed a neutral citation standard for Canadian case law which is a citation system that includes reference only to the court, the year of the decision and a number assigned by the court.<sup>19</sup> There is no mention of a specific report.

Finally, it is probably fair to say that the legal profession seems more concerned with the quality and usefulness of a law report than by its official, semi-official or private character.<sup>20</sup>

##### 5. The Challenge of Law Reporting in Two Languages under Two Legal Systems

I would like to say a few words about the unique issues in official law reporting in Canada. It is true that each jurisdiction has its own special needs and problems where official law reporting is concerned. However, at the Supreme Court of Canada, our reporters must cope with two different legal systems—the common law and the civil law—as well as two official languages, English and French. This is an intriguing aspect to the Canadian legal system. Not only is it bilingual, it is bijural.

Canada is a bilingual country and there are constitutional guarantees of the right to use either official language, English or French, in the Supreme Court.<sup>21</sup> The Court delivers its judgments in both languages.

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<sup>18</sup> *Rules of the Supreme Court of Canada*, SOR/2002-156, Rule 44(3).

<sup>19</sup> Canadian Citation Committee, “A Neutral Citation Standard for Case Law,” [www.lexum.umontreal.ca/ccr/neutraljur\\_en.html](http://www.lexum.umontreal.ca/ccr/neutraljur_en.html).

<sup>20</sup> Adrian Popovici, “Notes sur l’état inadéquat des recueils de jurisprudence du Québec” (1972), 32 *R. du B.* 82, at 97.

<sup>21</sup> *Constitution Act, 1867*, s. 133 (reproduced in R.S.C. 1985, App. II, No. 5).

We have to go back to 1763 for the historical roots of our legal system. A Royal Proclamation established a legal system described as “as near as may be agreeable to the Laws of England”<sup>22</sup> on what was then the Colony of Québec. In 1774, the *Québec Act* provided for the civil law system and English criminal law in the Colony of Québec.<sup>23</sup>

An English common-law system existed in the other colonies or was provided for in the provinces as they were created. This system remains in place today. The Province of Québec retains the civil law system derived from its historical roots in France, while the other provinces, territories and the federal system follow the common-law system inherited from the British.

As any or all of the judges can hear cases in all areas of the law, the appointment system ensures that the Supreme Court always has judges that have an expertise in the civil law.<sup>24</sup> In fact, few cases involve issues of pure common law or pure civil law. Most of the cases heard by the Court involve public law issues—in the constitutional, criminal, or administrative law domains—which apply uniformly across the country.

Before 1969, decisions of the Supreme Court were reported only in the language of the individual judge drafting the judgment. With a few early exceptions, no translations (from English to French, or vice versa) were provided. This lack of translation meant that unilingual decisions would be out of the reach of some readers. After the release of the first volume in 1877, a commentator mentioned on the issuance of judgments in French only: “The learned reporter forgets that the major part of his readers do not know French, and are not likely to learn it simply for the pleasure of reading an occasional judgment in that language.”<sup>25</sup>

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<sup>22</sup> See R.S.C. 1985, App. II, No. 1.

<sup>23</sup> See R.S.C. 1985, App. II, No. 2, arts. VIII and XI.

<sup>24</sup> For the Supreme Court of Canada the law requires that three of the judges be appointed from the ranks of Québec judges or lawyers (*Supreme Court Act*, R.S.C. 1985, c. S-26, s. 6.). The other judges are appointed from the other provinces—traditionally, three are from Ontario, two from the West, and one from the Atlantic provinces. On the appointment process, it should be noted as an aside, that there are political moves afoot to make changes in the way judges are named to the Supreme Court. While the law allows the Prime Minister to make the appointments, statements made during our recent election campaign show that there is an appetite for a more transparent process. With respect, there is also a wish to avoid American style confirmation hearings. It will be interesting to see what happens at the conclusion of this debate. Resolution needs to be achieved soon, as two of the Supreme Court’s nine judges have retired. We hope to have new judges in place for the 2004-2005 Court year, which begins in October.

<sup>25</sup> “Supreme Court Reports” (1877), 13 *Can. L.J.* 341, at 342.

This was a long time ago and bilingualism now characterizes law reporting at the federal level. With the proclamation of the *Official Languages Act* in 1969,<sup>26</sup> the first completely bilingual law reports were published. A year later, decisions of the Supreme Court and of the Federal Court were published in side-by-side French and English versions.

In 1983, the system had matured enough at the Supreme Court to allow for the release of reasons for judgment and headnotes simultaneously in both official languages.

In 1988, the *Official Languages Act*<sup>27</sup> addressed the use of language in the administration of justice. Under the Act, it was declared that English and French were the official languages of the federal courts of Canada. At the Court, we use the services of the federal Translation Bureau to do the initial translation of reasons for judgment. The Supreme Court employs several expert legal translators (who we call jurilinguists) to review each translation in-depth, comparing it with the original text. A continuing challenge we face is the lack of qualified legal translators.

The task of translating judgments written in English into accurate and intelligible French, and vice versa, is not an easy one. A former Chief Justice of the Supreme Court, Chief Justice Brian Dickson, recounted an anecdote taken from a Québec law report. The judgment in English mentioned that the plaintiff had had a “change of heart.” The French law reporter indicated, in the caption, that the plaintiff had had “*une transplantation de coeur*”—a heart transplant!<sup>28</sup>

The challenges of proper translation are compounded by the dual legal system. There are concepts in civil law and in common law that do not exist in the other system. Accordingly, these do not translate easily. With official bilingualism, however, there has been increasing attention to the creation of useful lexicons and electronic databases to assist legal translators, who, I am sure, are not about to be replaced by “automatic” translation. The challenges of statutory interpretation also are compounded in a bilingual system. The Court reads both the English and French versions of bilingual statutes as an aid to interpretation. The Supreme Court Rules take this into account by stating that where the provision of any relied-upon statute or regulation is required, by law, to

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<sup>26</sup> S.C. 1968-1969, c. 54.

<sup>27</sup> S.C. 1988, c. 38 (now R.S.C. 1985, c. 31 (4th Supp.)), ss. 14 to 20.

<sup>28</sup> *Tamarack Construction Inc. v. United Services Club Ltd.*, [1972] C.A. 334.

be published in both official languages, the English and French versions are to be reproduced in the factum on appeal.<sup>29</sup> This reinforces to counsel, who sometimes do not read both versions of the legislation, that the Court will have recourse to both in interpreting the statute.

Even though the translation process is extremely challenging, I am pleased to report that the task of bilingual reporting is well within the capacity of our jurilinguists and law reporters at the Supreme Court.

#### 6. Publishing in the Electronic Age

No discussion of law reporting would be complete without at least a brief look at how computers and the Internet have changed the nature and the uses of legal publishing. A major shift in Canadian legal publishing has been the diversification into electronic publishing. Electronic sources—such as on-line databases, CD-ROMs and the Internet—whether provided by legal publishers or the courts themselves are separate publications in their own right. Such sources bring Canadian case law to a far wider audience than the earlier reporters and publishers of law reports could ever have imagined.

In terms of progress, the advent of new sources of material, easily accessible, is warmly welcomed. But such a blessing must be handled with care and discretion. Above all, the highly professional and scholarly system of law reporting, established over the centuries, must be safeguarded. When it comes to standards in publishing, concerns about quality have been present from the earliest days of modern law reporting. Applying the term “quality” to the distribution of judgments—whether in hard copy or electronic form—means accuracy, selection, standardized references, currency and timeliness. Excellence is achieved by the strict adherence to standards and procedures that have withstood the tests of time.

What makes the Internet particularly attractive to users is that most offerings are available rapidly and at no cost. This is why legal researchers are increasingly drawn to the Internet for material.

Canadian courts have found the Internet to be effective and helpful, which is reflected in the climbing rate of Internet citations. In Canada, the Internet was first officially cited in 1996 by a member of the Federal Court of Appeal. At the Supreme Court of Canada we avoid using Internet references wherever possible. We are worried about verifica-

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<sup>29</sup> SOR/2002-156, Rule 42(2)(g). See also Rules 25(1)(e)(vii) and 44(2)(b).



tion of references that have vanished into cyberspace, and therefore prefer citation to paper versions where possible. We are not alone.<sup>30</sup>

In the paperless world of computers, concerns have been expressed by the legal community regarding the dependability of electronic information and the ability to archive electronic legal records. While it is still too early to predict all the ways in which the legal community will use the Internet or what new resources and services the Internet will inspire, it is clear that over time, a paperless litigation system will become the norm.

The Canadian pioneer in electronic legal databases was Quicklaw Systems (or QL). On-line publishing and distribution of Supreme Court judgments began when QL approached the Supreme Court of Canada in 1984 to consider the possibility of distributing its judgments electronically. QL had started in the early 1970s as a federally funded project to collect and annotate statutes and other data. QL is available for a fee. Today, QL Systems, since acquired by LexisNexis in 2003, is the largest and most utilized legal on-line search system in Canada. Other publishers, such as Maritime Law Book and Carswell, have also developed their own databases.

Another valuable, and free, resource in electronic publishing in Canada is LexUM<sup>31</sup>—the Information Technology and Law team—at the University of Montréal’s Public Law Research Centre. Under the leadership of Professor Daniel Poulin, LexUM established one of Canada’s first Web sites devoted to the publication of the Supreme Court’s judgments.<sup>32</sup>

CanLII is an initiative of the Federation of Law Societies of Canada and its Web site is housed at the University of Montréal. CanLII was set up to provide easy access to the law, and the CanLII Web site includes Canadian case law and legislative materials.<sup>33</sup>

As I mentioned, despite the abundance of materials available on line, most courts have shown caution when using the Internet for research. This reluctance is based on the fact that there is a lack of confidence in the reliability and accuracy of some Internet documents.

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<sup>30</sup> See, e.g., Coleen M. Barger, “On the Internet, Nobody Knows you’re a Judge: Appellate Courts’ Use of Internet Materials” (2002), 4 *J. App. Prac. & Proc.* 417.

<sup>31</sup> [www.lexum.umontreal.ca](http://www.lexum.umontreal.ca).

<sup>32</sup> [www.lexum.umontreal.ca/csc-scc/en/index.html](http://www.lexum.umontreal.ca/csc-scc/en/index.html).

<sup>33</sup> [www.canlii.org/index\\_en.html](http://www.canlii.org/index_en.html).

There appears to be a need for a permanent repository of Internet Web pages. No author can be completely assured that the site found on the World Wide Web today will be there, or be the same, tomorrow. In regard to migrating content, a proposed solution would be for the Web site administrator to provide an automatic redirecting link.

One solution to alleviate concerns about the authenticity of free Web sites is for courts to accept responsibility for the accuracy of their own judgments. Although the Supreme Court of Canada does not post judgments on its own Web site, it does ensure that it sends the latest electronic version of judgments and reasons to LexUM any time there are updated versions.

The primary benefit of the distribution of judgments on line is speed. Care must be taken to ensure that the enduring values and highest standards are not sacrificed to achieve it. With digital versions of current court decisions accessible to the public, there is a need for standards regarding their production and authentication. There are a number of financial, legal and policy issues at stake with digital legal information. These include who decides what to preserve, who pays for the preservation, and how copyright concerns are to be addressed. I would add that we are also concerned with how to find decisions.

Standards have been developed by the LexUM Group in collaboration with the Canadian Judicial Council for the preparation, distribution and citation of Canadian judgments in electronic form.<sup>34</sup> According to these standards, courts are required to assign paragraph numbers in their decisions, to make it easier to read the text and to add precision to the quoting of passages within the judgment.

Courts in Canada have adopted paragraph numbering, ensuring that, when commercial publishers retain the official numbering, all versions of a decision have the same paragraph numbers. The Supreme Court started using paragraph numbering in its reports in 1995, the Federal Court in 1996.

In 2000 and 2001, respectively, the Supreme Court and the Federal Court adopted the practice of assigning neutral citations for ease in searching electronic databases of decisions. The majority of the publishers of printed reports indicate the vendor-neutral citation of a judgment under the style of cause. But they are not yet inclined to use that

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<sup>34</sup> [www.lexum.umontreal.ca/ccc-ccr/guide.prep\\_en.html](http://www.lexum.umontreal.ca/ccc-ccr/guide.prep_en.html).

citation when the case is subsequently cited. It is interesting to note that England, Australia and New Zealand have also adopted a neutral citation system.

Standards are also in place to ensure that privacy rights are respected. There are legal restrictions on the publication of names and other information that could identify certain persons, such as children, young offenders, and some witnesses in court proceedings. In Canada, there are now guidelines in preparation for the “de-identification” of information pertaining to these persons. Case law reporters are required to remove information from certain decisions in order to publish them. In the end, it is more timely and efficient for case law reporters to err on the side of caution by removing certain information that is unlikely to have any legal relevance.

In Canada, technology has had to be adapted to meet the special requirements imposed by bilingualism. We need to be able to search federal cases and Québec cases, and also the growing volume of common law decisions in French. Ultimately, the buck stops with the courts in determining that the work of judges is ready for public consumption. Court Web sites generally advise visitors that the official copy of a decision is the paper version in the registry file. However, care must be taken to ensure that authenticity of court records are established prior to giving official status to the electronic version.

## 7. Copyright

Lastly, we come to the issue of copyright.

In Canada Crown copyright exists in judgments. The Federal Reproduction of Law Order<sup>35</sup> gives anyone a licence to reproduce statutes of the Government of Canada, and decisions and reasons for decisions of federally constituted courts and administrative tribunals.

This order applies to decisions of the Supreme Court of Canada and the Federal Court. Since 1997, permission has not been needed from the Supreme Court to reproduce the reasons for judgments of the Court.

The only caveat is that “due diligence” be exercised in ensuring that the materials are accurately reproduced, and that reproduced versions are not represented as the “official” versions.

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<sup>35</sup> SI/97-5, Jan. 8, 1997.

But the reproduction of other features of each judgment is not so clear. Reproducing, in whole or in part, any other features, such as the headnotes and other “value-added” features of the judgment for commercial purposes must be authorized by the Supreme Court of Canada.

As a matter of policy, the reproduction for noncommercial purposes of the value-added feature is authorized by the Court, provided that the reproduction complies with the order in exercising “due diligence.”

The recent Supreme Court of Canada case<sup>36</sup> —between legal publisher CCH Canadian Ltd. and the Ontario Law Society—provides a legal context for the issue of copyright infringement.

Factually, the Law Society reference library offers one of the largest collections of legal materials in Canada. It provides a request-based photocopy service for Law Society members, the judiciary and authorized researchers.

CCH sought a permanent injunction prohibiting the Law Society from reproducing any of its published works. At issue was the publisher’s contention that the activities of the Law Society amounted to copyright infringement.

The Law Society denied liability, arguing that there is no copyright infringement when a single copy of a reported decision, case or statute is reproduced for the purposes of research.

The Supreme Court concluded that the Law Society had not infringed copyright when a single copy of a reported decision, case summary, statute or regulation was made by its library in accordance with its “access to the law” policy. Neither did the Supreme Court find that the Law Society authorized copyright infringement by maintaining a photocopier in its library.

The issue of copyright remains controversial. When judgments are reproduced for commercial purposes, the legal profession has an interest in quality control.

From the law reporters’ perspective, we were happy with the Court’s ruling that copyright exists in headnotes, which the Court described as follows:

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<sup>36</sup> *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339, 2004 SCC 13.

“Although headnotes are inspired in large part by the judgment which they summarize and refer to, they are clearly not an identical copy of the reasons. The authors must select specific elements of the decision and can arrange them in numerous different ways. Making these decisions requires the exercise of skill and judgment. The authors must use their knowledge about the law and developed ability to determine legal *ratios* to produce the headnotes. They must also use their capacity for discernment to decide which parts of the judgment warrant inclusion in the headnotes. This process is more than just a mechanical exercise. Thus the headnotes constitute ‘original’ works in which copyright subsists.”<sup>37</sup>

## 8. Conclusion

This brings me to my closing remarks.

As I mentioned at the beginning of my address, judges, lawyers and other public officers are responsible for the administration of justice. So they must necessarily play an active role in its functioning. This involvement will ensure that the highest standards are achieved within the challenging domain of official law reporting.

Quick, accurate and reliable reports of judicial decisions are vital to our legal system.

We must not lose sight of the important role we all play in our respective countries’ official law reporting. It is our responsibility to ensure that the production and dissemination of law reports are held to the highest standards.

Proudly, we are all a part of the World Wide Web of law and courts and judgments and, now, electronic transmissions via the Internet.

As for the future of traditional law reporting, it is necessarily speculative, given the amounts of computerized legal information being generated. Law librarians and others are concerned about the long-term preservation and integrity of primary sources of law. They are skeptical as to whether this can be guaranteed by the high-tech industry.

We will have to wait and see. Having an optimistic outlook in the face of a changing landscape will surely contribute to our success.

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<sup>37</sup> *CCH, supra*, at para. 30.

Considering the myriad of changes, evolutions and transitions in law reporting over a relatively short period of time, our pride in ourselves and our work is justified!

It is time to celebrate our accomplishments, and this is the perfect venue in which to do it.

Thank you for your attention, and I wish you all continued success in the interesting and ever challenging domain of official law reporting.

**Mr. Ashe:** Thank you, Anne. We have now arrived at the halfway point of the program. Another reminder to please turn in your CLE paperwork at the registration desk. Also another opportunity to turn in written questions for the panel discussion. Now, please join us for lunch in the Palm Room. We resume at 2:00.

[Luncheon]

I would now like to introduce our next speaker, the Honorable Gary D. Spivey, speaking on 200 Years of Official Law Reporting in New York.

*200 Years of Official Law Reporting in New York*  
*Gary D. Spivey, State Reporter*  
*New York State Law Reporting Bureau*

**Mr. Spivey:** Good afternoon.

We at the New York State Law Reporting Bureau are thrilled that the Association of Reporters of Judicial Decisions has decided to hold its annual meeting in New York City and to join in our commemoration of the bicentennial of official law reporting in New York State.

And we are doubly delighted that so many of our friends and associates from the New York court system and legal community have joined us for today's program.

Welcome, everyone.

Two hundred years ago this April, the New York State Legislature enacted a statute authorizing the Supreme Court of Judicature—predecessor to today's Court of Appeals, our High Court—to appoint a reporter of its decisions.

As significant as it was, I doubt that this legislation was the major topic of interest in the Albany of April 1804.

Rather, attention probably was focused on a letter in the Albany Gazette in which Alexander Hamilton was said to have defamed Aaron Burr—setting in motion the fateful duel just three months later, across the Hudson River from here in Weehawken, New Jersey.

And court watchers of April 1804 probably were engrossed in a proceeding before the Supreme Court of Judicature concerning a printer accused of libeling President Thomas Jefferson. That proceeding saw the printer being defended by the same Hamilton and the brunt of the People's argument being borne by a young New York City lawyer named George Caines.

Within days, the same Caines would be named the first official reporter of judicial decisions on this continent, and New York's—and America's—200-year history of official law reporting would begin.

As Chief Judge Kaye related this morning, official law reporting in New York came into full bloom with the ascendancy of James Kent to the position of Chief Justice and the appointment of William Johnson as the second official reporter.

The personal and professional collaboration of Kent and Johnson established the foundation of official law reporting in New York and made the New York Official Reports a model for the nation. In admiration of their work, United States Supreme Court Justice Joseph Story was moved to remark: “No lawyer can ever express a better wish for his country's jurisprudence than that it may possess such a Chancellor and such a reporter.”

Kent wrote on the occasion of Johnson's retirement that “you retire with my gratitude, love, and admiration. If my name is to live in judicial annals, it will be in association with yours.” In addition, he later dedicated his Commentaries on American Law to Johnson.

I wish that I better understood what Johnson did for Kent that was deserving of such high praise. I fantasize that, if I understood what Johnson did, I could do the same for Chief Judge Kaye and her colleagues. But, on sober reflection, I know that today's judges do not need—and in any event this reporter does not have the ability to give—the kind of assistance that Johnson provided to Kent.

Johnson was unique. Even after two centuries, we continue to follow his example in many ways, most especially in our tradition of full—rather than selective—publication. In an era when reporters had

great discretion as to what to publish, he opted to publish perhaps not everything, but definitely more, rather than less, in sharp contrast to the English model of selective reporting. Indeed, he was criticized for publishing too much, but his philosophy prevailed and today is reflected in the statutory requirement that essentially every appellate decision be published in the Official Reports, as Mr. Cole noted this morning. Since New York—unlike some other jurisdictions—does not restrict the publication of appellate opinions, we have avoided entanglement in the growing national debate about the use of unpublished appellate opinions as precedent—a subject of consuming interest to this Association of Reporters, as you’ve already heard in this morning’s program.

Beginning in the mid-19th century, New York’s system of official law reporting expanded as our court structure developed into its present form.

The New York Constitution of 1846 and implementing legislation initiated drastic reform of the court system and established the groundwork for a unified system of official reporting on a statewide basis. Among other reforms, a new court of last resort—the Court of Appeals—was created. The First Series of the New York Reports, covering cases decided by the Court of Appeals, commenced publication in 1847 under a reporter formally denominated the “State Reporter” and appointed by the executive branch.

You may wonder why the executive branch was involved in the appointment of the State Reporter. The answer is that, as startling as it may seem today, official law reporting originally was viewed not only as a service to the courts, but also as a way of controlling the courts. It was thought that publication of opinions was a safeguard against arbitrary and inconsistent decision-making. There may also have been some feeling that, in order to freely exercise editorial discretion, reporters should not be beholden to any court or judge. In any event, it would take another eight decades before the tug-of-war between the executive and judicial branches over the power to appoint reporters finally would be resolved in favor of the judiciary.

The Judiciary Article of 1869 continued the reorganization initiated by the 1846 Constitution. Four General Terms of the Supreme Court, the predecessors to today’s Appellate Division, were authorized. The Article also provided for official publication of the decisions of the Supreme Court by a separate Supreme Court Reporter.



At that time, there was as yet no statewide system for the publication of the decisions of the lower courts. Concern over the multiplicity of unofficial reports led to a broad condemnation of the “evils” of law reporting and to a bar association proposal to place law reporting under control of a council modeled after the English Council of Law Reporting, which, as you’ve heard from Mr. Williams, had come into existence during that period—with the official reports under the general management and control of a council composed of one member appointed by the Court of Appeals, four by the General Terms of the Supreme Court, and six by the bar association.

That proposal was not implemented, and the concerns that gave rise to it were assuaged, in 1892, by legislation creating the office of Miscellaneous Reporter. This new office was charged with reporting the opinions of all courts of record, other than the Court of Appeals and the General Terms of the Supreme Court, as were deemed to be in the public interest to be published. The Miscellaneous Reports soon commenced publication.

Then, as now, we in New York—more so than most other states—recognized the unique importance to our jurisprudence of the systematic reporting of the opinions of courts of first instance. The Miscellaneous Reports are at the cutting edge of the judicial decision-making process, where the law concerning new issues entering the court system for the first time is developed, exceptions to the broad rules established by the appellate courts are devised, and practice issues unique to the trial courts are decided.

We publish 600 opinions per year in the Miscellaneous Reports. In addition, under a new program commenced in 2001, we publish an additional 1,800 per year in abstracted form in the Miscellaneous Reports and in full text in the on-line Official Reports. And we are working to increase these numbers substantially, bringing organization and a uniform method of citation to an ever-increasing body of decisional law.

With the creation of the Appellate Division of Supreme Court under the Constitution of 1894, the Appellate Division Reports supplanted the Supreme Court Reports and were published by the Supreme Court Reporter.

Presaging the eventual consolidation of law reporting, advance sheets combining the reports of the three reporters’ offices were authorized by 1894 legislation.

Thus, as the 19th century came to a close, the tripartite system of official statewide reporting of the decisions of New York's courts—New York Reports, Appellate Division Reports and Miscellaneous Reports—was in place.

During the first half of the 20th century, official reporting was consolidated and centralized.

A 1917 law set up a Board of Reporters chaired by the State Reporter and authorized the board to enter into a single contract for the printing and publication of its three publications and the combined advance sheets.

In 1938, pursuant to the Constitution, all official reporting was consolidated under the State Reporter in a state Law Reporting Bureau, where the responsibility for official reporting remains to this day.

Most of the staff of the Law Reporting Bureau is, I'm sure, hard at work on this Friday afternoon back in our offices in Albany. But a few are here assisting with this program. May I present to you these representatives of the New York State Law Reporting Bureau.

The success of official law reporting in New York was achieved through the efforts of these men and women and their predecessors.

Those predecessors include the 24 State Reporters who preceded me in office. They were an amazing group who built not only the nation's most extensive law reporting system, but also achieved distinction as judges, practicing attorneys, bar leaders, elected officials, legal educators, law writers, and more. For example:

- Five served on our High Court—including two as Chief Judge—and one on the federal bench.
- One was a United States Senator; another a Lieutenant Governor.
- Two were presidents of our state bar association.
- One was dean of Albany Law School.
- One edited Blackstone's Commentaries; another, Kent's Commentaries.
- One defended Susan B. Anthony; another, Boss Tweed.

- One was a founder of Western Union; another coined the term “telegram.”
- And two served as president of this Association of Reporters of Judicial Decisions—Frederick Muller and Charles Ashe.

My mention of my distinguished predecessors is something of a two-edged sword. On the one hand, I want you to share my pride in their achievements. On the other hand, I realize that a recitation of *their* achievements may make you wonder how the present incumbent ever got the job.

New York’s pantheon of remarkable reporters is not limited to the reporters of our court of last resort. In fact, one of our greatest reporters—perhaps second only to William Johnson—was a reporter of our intermediate appellate court.

Marcus T. Hun published 92 volumes of the decisions of the General Terms of the Supreme Court and 108 volumes of the Appellate Division Reports over a distinguished 32-year career.

As I’ve explained, we no longer have a separate reporter for our intermediate appellate courts, but each department of the Appellate Division has a decision department or other staff that meticulously prepares every opinion for release and thereby greatly facilitates the work of the Reporter’s office. A number of the members of those staffs are with us here today, and I would like to ask you to join me in thanking them with applause for the great work that they do.

The second half of the 20th century was a period of innovation for our Official Reports.

The introduction of a Second Series in 1956 provided an opportunity to give a uniform appearance and format to what had previously been three loosely-coordinated publications. A Style Manual established a uniform style for all three publications. (Each of you will receive a copy of the latest edition of our Style Manual at the conclusion of my remarks.) With the introduction of the Second Series, the New York Reports, Appellate Division Reports and Miscellaneous Reports were now components of a consolidated product line, produced by a single staff in accordance with common editorial standards.

In 1965, a novel approach to legal research—electronic retrieval of decisions from a computer database—piqued the interest of State

Reporter James Flavin. A contract was entered into between the State Reporter and IBM Corporation “to test a pilot case retrieval system for New York State Court of Appeals cases.” This initiative gained some momentum in the following year with the New York State Senate’s approval of a \$7,500 appropriation to pursue the concept. Under a 1967 contract, an IBM workstation was provided to the Law Reporting Bureau for transmitting the text of New York Reports, 2d Series volumes to the remote IBM Datatext System.

The pilot case retrieval system did not immediately prove to be practicable. Perhaps in a moment of despair, Flavin wrote: “Our concern with computers is at a very low level, I do not believe that any satisfactory system has been developed for retrieval of law from court decisions.” Nevertheless, Flavin would continue to pursue the concept of a case retrieval system. As chair of the New York State Bar Association’s committee on electronic legal research, he led the development of on-line legal services in the state, working with Data Corporation (later Mead Data Central) and utilizing the electronic text of the Official Reports to create what would become the initial LEXIS New York case law database. These early experiments with computerized case retrieval foreshadowed the next chapter in official reporting—the electronic publication of the Official Reports themselves.

Authorization for electronic publication came in a 1988 statutory amendment providing for publication of the Official Reports “in any medium or format” in addition to print, including “microfiche, ultrafiche, on-line computer retrieval data base, and CD-ROM.”

Although it would be eclipsed by the Internet within a decade, CD-ROM was the “next great thing” at that time. As a representative of the Lawyers Co-operative Publishing Company, a somewhat younger version of the reporter standing here before you attended this Association’s 1989 annual meeting in Whitefish, Montana, and 1990 meeting in New Orleans to promote the benefits of this exciting new medium.

New York was an early adopter of CD-ROM technology with the 1992 publication of the Second Series on the LawDesk CD-ROM platform. An Internet-based update service was developed in 1997 as an adjunct to the CD-ROM and print products to provide subscribers the most recent court decisions not yet available in the advance sheets or on CD-ROM. These developments were followed in 1999 with the on-line publication of the Second Series on Westlaw, followed by the First Series in 2001.

With the rapid expansion of the Internet at the dawn of the 21st century came an increasing public interest in obtaining current court opinions through this new medium. In response, the Law Reporting Bureau Web site was launched in 2000, providing free public access to a Slip Opinion Service database of recent decisions, including many trial court opinions that are not published in print. Our commitment to this medium—and to our policy of comprehensive publication—has been revalidated by recent New York court system initiatives (mentioned by Chief Judge Kaye this morning) to improve public access via the Internet to a broad range of court records, including judicial opinions. As the Chief Judge has said: “In a society where paper is becoming obsolete, and electronic transmittal of information is often the norm, more and more people each day expect to gather information and conduct their daily business on the Internet. The courts must adapt to this modern reality . . . .”

At the dawn of the third century of official law reporting in New York State, a Third Series of the Official Reports was introduced in January of this year. In the Third Series, the Official Reports were redesigned in all media to take advantage of the attributes of each medium in a manner consistent with valued traditional attributes. Content was expanded to include previously unpublished materials, the format and arrangement of materials were enhanced for greater clarity and improved utility, and the physical appearance of the bound volumes and advance sheets was modernized. Print and electronic materials were integrated, and research references to on-line materials were added.

The full history of official law reporting in New York State is told in a commemorative booklet that each of you will receive at the conclusion of my remarks.

The booklet is entitled, “But How Are Their Decisions to be Known?” It takes its title from the preface to the official reports of William Johnson. At the dawn of official law reporting in New York, Johnson noted that it is essential to the effectiveness of a legal system founded on the common law that the courts have the means to make their decisions known, and that, in his words, “they should be made known in some authentic manner to the community.”

From the earliest days, the New York Official Reports have served the purpose described by Johnson: availability and authenticity—to make the decisions of the courts *available* to the community and to make them available in an *authentic* manner.

The definition of “available” has changed, of course, since Johnson’s time as new publishing technologies have developed. And from the earliest days, New York reporters have recognized that, in order to make the opinions of the courts available—to make them truly accessible—we have to do more than merely publish the text of the opinions. Therefore, our first reporter created a digest or index of the opinions, an arrangement of the headnotes classified by topic. The Digest-Index continues to this day as a feature of the Official Reports, 3d Series. In 1815, William Johnson published a cumulative digest, initiating a cumulation process that continues today in the electronic digest covering more than 1,400 volumes.

It is not enough, of course, that the opinions be available. They must also be available in, to use Johnson’s expression, an “authentic manner.” Our processes assure the authenticity of the opinions. We have procedures to make sure that the opinions that we publish appear in the precise manner and form decreed by the courts—not an insignificant issue in a day when uncorrected or even withdrawn versions of opinions continue to lurk in cyberspace as a trap for the unwary. As court-approved corrections are applied to the text of previously-released opinions, we post the corrected versions to our Web site and on-line database, replacing the uncorrected versions. The correction cycle continues throughout the publishing process until the final and best version of the opinion is published in the bound volumes and the electronic versions of bound volumes. Thus, we remain true to Johnson’s principle of authenticity.

I hope that you have enjoyed this journey through 200 years of official law reporting in New York and that you get as much pleasure from reading our historical booklet as we did preparing it.

We are happy that you could share our 200th anniversary with us. Enjoy the rest of the program and, if you are a visitor to our state, have a great time in New York.

Thank you.

**Mr. Ashe:** Thank you, Gary. At this point I’d like to recognize Chief Legal Editor Mike Moran, sitting next to me, for his technical assistance during this meeting. Mike is the designer and creator of the State Reporter’s Web site , as well of those of the ARJD and the Historical Society of the Courts of the State of New York. Our next speaker is Michael E. Wilens, President and CEO of West, a Thomson business, speaking on the Public-Private Partnership.

*The Public-Private Partnership*  
*Michael E. Wilens, President & CEO*  
*West, a Thomson Business*

**Mr. Wilens:** Good Afternoon.

Introduction

It is an honor to be with all of you today and to join in your celebration of 200 years of New York State Official Law Reporting.

Today I'll be talking about:

1. Our long tradition of partnership and why that is important;
2. Case law is alive and well—and thriving and expanding; and
3. Why the human element remains so important to what we create.

The screen shots are used to illustrate these remarks and not intended as a marketing pitch.

Our Common Tradition

West and the Reporters of Decisions have a lot in common:

- We share a strong and proud tradition in law publishing; and
- We both serve the bench and bar of our country.

Just as the State of New York recognized a need to authorize the New York Official Reports two centuries ago, West's founder, John West, recognized that the attorneys in his region of Minnesota in the late 1800's were lacking consistent, accurate and timely reporting of court decisions.

John West's goal—to provide timely and accurate judicial reports, with editorial enhancements such as West's Key Number System®—is consistent with the Reporters' of Decisions' goal. Our mutual goal is to strive to produce the best case law products possible. The rest is your history and our history.

This picture [*screen shot of 1880-era photo of piles of paper on a desk next to bespectacled editor*] depicts our tradition, and the enormous amount of work involved in collecting, managing and enhancing our

country's judicial opinions. The technology has changed how we do our work, but the underlying commitment to unsurpassed editorial quality remains constant. The work still requires judges writing opinions followed by careful editorial analysis to summarize and index the opinions so attorneys can efficiently find them.

Many of the Reporters of Decisions have worked with one or both of these two gentlemen [*screen shot* of Then and Now photos of Tom Trenkner and Erv Barbre], both of whom still work at West.

I know some of you, Gary Spivey (NY), Frank Wagner (US), Cliff Allen (MA), Ed Jessen (CA), and Tim Fuller (WA), go back over 30 years with Tom and Erv. Just think how much better Tom and Erv may have looked now had they gone the reporter's route.

Our shared tradition is one of partnership with many of you in printing your Official Reports.

#### The Changing Face of Case Law Collections

Print is still going strong, and is near and dear to many of us. From serving our customers in the print medium, we've gone to other media, such as CD-ROM, proprietary on-line software, and now of course the Web.

As more and more information became digitized in the past decades, West was able to expand its collections into other areas such as unpublished opinions. We continue to collect unpublished opinions as they become available from the courts to meet the needs of our customers.

This is a screen shot of the New York Official Reports on Westlaw. The on-line platform allows us to provide KeyCite integration with the official headnotes, which serve as the on-line official digest. The case law and headnotes serve as the source to link to other cases and statutes.

We've worked together for many years on our case law collections. Today there are exciting new content extensions to the case law world. Case law can now serve as a starting point to these other collections, but these other collections can serve as a starting point to case law as well. Having all these new extensions is like having case law on steroids.

#### Beyond Case Law

This screen shot [*screen shot* of arrows to-and-from "Verdict," "People Cite," "Appellate Case," "Docket," and "Brief"] depicts how



case law, while still an end in itself for legal research, has become a jumping off point for other content that is critical to attorneys, such as briefs and dockets.

As an unintended consequence of the Web, the way people approach legal research has fundamentally changed. Our customers used to primarily do discrete searches for a particular case or topic. But customers are now putting in more general information for a Westlaw search as they would on the Web, and then simply browsing or jumping from place to place until they find what they are interested in.

So, we've linked our content to the hilt to accommodate our customers! [*Screen shots* of a brief linking to an opinion and an opinion linking to the brief.] As we move into new content areas, such as briefs, we need to balance the greater accessibility of these documents with sensitivity to privacy concerns. Before their digitization and availability on the Web, many public documents weren't easy to obtain. The "practical obscurity" of these public documents protected their privacy. It takes a deep commitment from all of us to ensure we're serving the public good, and that we balance the public access concerns with concerns about an individual's privacy. In addition to other strategies regarding privacy of documents, West has a pilot program under way to determine how to redact information, such as Social Security numbers, financial information, or minors' names, in briefs.

Tom Leighton in our Information Acquisition Department is partnering with many state courts to collect briefs. He is working with some courts to secure the hard copy of their older briefs, but then providing the judges with an electronic copy of such briefs for their ease-of-use in preparing for oral arguments.

Dockets are another new content set that is generating a lot of customer interest at West. With dockets, researchers can track the progress of a matter, glean motion strategies used in particular types of cases, and find out which law firms have been hired to represent certain parties. The researcher may link from the case to the docket or briefs and vice versa. For historical dockets, there is usually a case to link to from the docket, but for prospective dockets, there will not yet be a case filed, so the docket becomes the starting point rather than the case law.

Users also have the ability to link to many types of trial documents, such as motions and pleadings, contained within the docket.

### Integrating Editorial Content and Technology

In 2003, West introduced “ResultsPlus®” which provides customers with additional research tools when they do a search in a case law or statute database. Customers can choose from an array of relevant analytical products as well as West’s Key Numbers that they may not have even known were available.

ResultsPlus is predicated on algorithms developed internally by our research scientists to produce search results that are statistically relevant from outside of the requested products. We’ve harnessed this advanced technology that leverages our powerful editorial infrastructure, headnotes, West’s Key Numbers, indices, and tables of content. The infrastructure allows us to integrate all of this content for the customer.

[*Screenshot: Requested Natural Language search of “child custody parent relocate (move)” within Florida State Cases.*] This researcher is looking for cases discussing legal issues when one parent relocates after a divorce. [*Screenshot: ResultsPlus retrieved relevant documents from ALR and West’s Key Numbers in addition to the results for Florida cases.*] The results include ALR and West’s Key Numbers of use to the customer, in addition to the requested case law results. We’ve added many publications to ResultsPlus, such as jurisdictional products, practice guides, and law reviews. It works in statutes research also.

### The Human Element

Finally, I want to emphasize how important the human element is. No matter how advanced the technology, we still need the intellectual effort of people to make the products valuable to our customers.

As case law extends into new frontiers, such as briefs and dockets, there are important policy decisions that are involved that demand the human mind and spirit.

Technology is key to future innovations but the human insight and our partnerships with the Reporters of Decisions and courts remains critical in creating the best products.

Thank you for listening. We look forward to partnering with you on many exciting projects going forward.

**Mr. Ashe:** Thank you, Mr. Wilens. Our next speaker, also speaking on the Public-Private Partnership, is Ann Fullenkamp, Senior Vice President, U.S. Small Law, State and Local Government Markets of LexisNexis.

*The Public-Private Partnership*  
*Ann C. Fullenkamp, Senior Vice President*  
*U.S. Small Law, State and Local Government Markets*  
*LexisNexis*

**Ms. Fullenkamp:** Good afternoon.

I appreciate the opportunity to be with you today, especially as we celebrate the 200th anniversary of the New York Reporter's Office. Gary, congratulations to you and your staff.

There are other anniversaries of note—this is the 37th anniversary of the pilot project that tested electronic retrieval of Court of Appeals cases.

And 16 years ago, the statutory amendment that provided for publication of cases in any medium or format, including on-line databases, was adopted.

Which is where LexisNexis comes in. With the on-line publication of official laws, like you, we too aspire to achieve what Shakespeare expressed so eloquently in act V of Hamlet: "Report me and my cause aright."

I have been asked to address today the topic of "Public-Private Partnership." That is, the partnership between those of you in public service and those of us in the private sector. We value these partnerships greatly and work hard to make them successful. And as with most partnerships, it is important that they are built on common ground.

I'd like to begin by highlighting three concerns that I believe you have that we also share.

First: You worry about the future of print and whether a viable place exists for print-based reports in today's increasingly electronic world.

Second: You are concerned about maintaining authenticity and accuracy of opinions, and you wonder if that is possible in an electronic environment where things appear to be easily changed.

Third: You worry about your continued role at a time when so many governmental agencies are strapped for funds and more and more attorneys turn to computer-based electronic legal research.

Let me address each of these concerns.

It may surprise you that a company like LexisNexis, with its roots in electronic publishing, shares your concern about the future of print.

A substantial amount of our revenue is print based and we continually strive to further the viability of this medium.

The number of printed pages processed by our manufacturing facilities increases every year but that is not to say that all print products have increased subscribers.

We do find that many attorneys prefer to use a certain type of content in print. As an example, many attorneys continue to show a print preference when they use statutory codes and analytical materials. In fact, we continue to develop new print products for codes and analytical material.

It is true that the subscriptions for case print reports exhibit a greater percentage of attrition, but we believe they are still viable products, as shown by our recent partnerships with California and Georgia.

Print products like Shepard's have shown a substantial migration to the electronic format but there are still attorneys who want to use print. Clearly, age is a factor. In our last piece of research on the topic, over 40% of the attorneys who purchased Shepard's in print had been in practice more than 20 years.

Spending by law libraries for electronic resources has increased, but not as dramatically as you might think. In 1994/1995, the average percentage spent on electronic research was 5.5%. By 2001, that percentage had increased to only 13.5%.

All of that said, the shift to electronic information access from print is occurring in dramatic fashion. The Internet has revolutionized the way we communicate and do business.

The number of Internet users in the U.S. is almost 143 million, and the number of Internet users across the globe climbed by 1.5 million in April 2004 alone.

On-line information access is changing the nature of libraries. Most law school graduates today prefer electronic research to doing research in print.

There are many benefits to electronic formats. The speed at which we can deliver information is astounding. Most of us can remember a time when reports were delivered into the hands of subscribers weeks and sometimes months after a decision was handed down. Today, in most states, decisions are available on line in hours.

Information is also much more accessible electronically. In most states, free access is provided to the public to the most current decisions. Anyone with access to the Internet enjoys instant access to the decisions decided by the highest courts in the nation.

There is no greater example of the impact of electronic information than in the area of unpublished opinions. While many jurisdictions still limit the use of and citation to unpublished opinions, the trend is toward making these available.

As you know, the First Circuit changed its no-citation rules in late 2002. With that change, 9 of 13 circuits now allow citation to unpublished opinions. Most of those circuits provide access to these opinions on court Web sites. Although a majority of states still prohibit citation to unpublished decisions, they are experiencing a shift toward making these opinions available.

Whether you agree or disagree that this is a good thing, the impact on legal research is enormous. Technology makes it possible for us to make this information incredibly accessible and useful to attorneys in ways not possible with print.

So while I believe that the availability of case reports in print will continue throughout our lifetime, there is rapid adoption of using information electronically. That brings me to my second point: maintaining accuracy of the data in an on-line environment.

This is a chief concern of ours as well. Our reputation and our business depend on accuracy. We expend a considerable amount of resources each year to help maintain the dependability of our electronic databases, particularly in regard to our official content.

Most content provided to us as an official publisher is furnished in an electronic source that aids in preventing “introduced” errors.

However, we do not rely solely on what is provided to us electronically. Information that we receive is checked multiple times to ensure the content that appears in our databases is not compromised by internally “introduced” errors.

The lifeblood of LexisNexis is information so you can imagine how seriously we take information security.

We have invested heavily in the physical protection of our data warehouses. In fact, the week after next we are opening a second data center which will be populated with duplicate copies of our key systems and content, reducing recovery time in case of a major disaster to a nearly instantaneous response.

We also have a dedicated team of information security professionals that holds industry recognized accreditations such as CISSP, TICSA and GIAC. Their job is to ensure the confidentiality, integrity and availability of information. We have never had an instance where material in the LexisNexis databases has been changed by an outside source.

As for the third concern—the changing role of Reporters—I believe there is an opportunity to elevate your role in the electronic world. It becomes even more critical that material be presented accurately and you are uniquely positioned to ensure that is the case.

I imagine there have been times when you must feel like you are the last bastions of precision. There is a wonderful book by an English-woman, Lynne Truss, that has become a best seller in the U.K.

The title of the book is “Eats (comma), Shoots and Leaves, The Zero Tolerance Approach to Punctuation.” I emphasize the comma, because it is a mistake. The title of the book is describing what a panda bear does: A panda bear eats shoots—bamboo and leaves of bamboo stalks. The errant comma changes the entire meaning of the phrase.

While this is a somewhat whimsical example of the importance of accuracy, the impact of seemingly minor mistakes in case reports could be profound.

You are tasked with maintaining the true and accurate record of the court now and into the future.

As observed by U.S. Supreme Court Reporter of Decisions, Henry Wheaton, in an interesting note following the case of *Ramsay v. Allegre*,

25 US 611, at 640, “It is the duty which [the Reporter] owes to the Court, to the profession, and to his own reputation, to maintain the fidelity of the Reports, which are received as authentic evidence of the proceedings and adjudications of this high tribunal. If they are not to be relied on in this respect, they are worthless.”

This sentiment is no less true today.

This leads me to the subject of our public-private partnership. I have talked about the future of print and the shift to electronic information sources, the concern for maintaining accuracy in that environment, and your critical role in that environment.

The shift to electronic sources of information is happening at a rapid rate. How do we keep the official reports relevant in the new, electronic environment?

I believe that through partnering with you, it is possible.

As a publisher, we can bring a number of things to the table.

We can provide the systems, the access, and the electronic tools to make creation and delivery of these reports easier and more cost effective.

We conduct extensive market research to keep a finger on the pulse of the changing needs of the profession and can utilize that information to help navigate the changes ahead.

We can use cutting-edge technology to meet your needs and those of the bar and the public.

We can provide publishing skill and supplement your editorial resources when required. We can also provide marketing and sales support. We can help explain the value of official reports and distribute that information to the public.

You are critical to the success of this public-private partnership. You have the deep knowledge of the content, the editorial expertise, and you set the guidelines and maintain the standards to which we are accountable. You have the close connections with the judiciary, and can provide that feedback along with the means for consistent, effective communication.

What does the publisher gain from this arrangement?

We obviously look for a commercial and market advantage as this is a business partnership. We do feel that we need to ultimately gain more in commercial advantage than it costs in overhead to fulfill our role as Official Reports publisher. We also get the honor and the prestige of working with you and being the official publisher which is no small thing.

What does the state get in this partnership?

In our partnerships with California, Washington, Vermont, New Hampshire and, most recently, Georgia, we strive to provide the highest quality publications to the state and the public at a lower cost. We can leverage our systems, tools and economies of scale to be more cost efficient and pass those savings to you. We, in turn, benefit from our private sales.

We can also be creative. In California, there was a desire to provide greater public access and as part of our contract, we are hosting and updating a public access Web site to make information more readily available to the public.

We also have the means to distribute this information in any form requested by the market—whether that is print, on line, CD, or all of them. Future technology development also certainly will influence all of our futures.

Within a partnership, we can work together to address the issues these changes trigger.

I believe there is much common ground for the public-private partnership. We both want to provide accurate, relevant information to the public at a competitive cost, and working together, we can achieve more than we ever could achieve separately.

While challenges emerge in any partnership, we are committed to be there with you to work through and resolve the issues. You see we agree that Shakespeare got it right in Hamlet when he wrote: “Report me and my cause aright.”

Thank you for allowing me to speak with you today. I understand that you have wonderful things planned for the next few days and I wish you a successful conference.



**Mr. Ashe:** Thank you, Ms. Fullenkamp. I now turn to Thomas R. Bruce, Director of the Legal Information Institute at Cornell University, who will be speaking on Additional Partnership Models.

*Additional Partnership Models*  
*Thomas R. Bruce, Director*  
*Legal Information Institute*  
*Cornell University*

**Mr. Bruce:** Good afternoon.

### Introduction

Many of you, perhaps most of you, already know a little bit about the Legal Information Institute at the Cornell Law School. As the first of the “law-not-coms,” we have a long track record in offering legal information freely to the public, and a history of developing tools and techniques useful to many who, like yourselves, are legal self-publishers. We were the first to put law on a Web site; the first to offer the US Code via the Web; and the first to develop many of the conventions for Web delivery of legal information that are in use today.

I have two separate, but related, cases to plead to you today. The first is the case for improving as well as expanding public access to legal information. The second is the case for new kinds of institutional partnerships that can deal effectively with problems raised by the newly-expanded notions of public access to law that have come along with the Internet.

### The Case for Improving Public Access

It is significant that now, in 2004, we can talk about “improving” public access. This represents a great step beyond simply “offering” or “establishing” public access. We have come a long way since 1992, when the Legal Information Institute mounted the first publicly-accessible collections of Supreme Court opinions and federal legislation on the Internet. Every state now makes the opinions of its highest court available via the Web. And while the historical depth of collections varies, it is fairly safe to say that opinions of the highest state courts handed down since 1998 are available across the board, with many states offering both broader and deeper resources.

So we are talking about *improving* something that is already well underway, rather than simply offering access for the first time. And

when I talk about improvement I'm not merely proposing that we build bigger warehouses of opinions that contain wider collections of material to which little value has been added. We need desperately to talk about improvements in *intellectual* access to the law, something that goes well beyond a simple increase in the *exposure* of legal information to the public. To understand why this is so important, we need to understand a little bit about who is looking for what in the legal infosphere and why they are doing so.

### The Internet Brings New Callers to the Reporter's Door

#### Initial Disclaimer

I should begin by saying that I don't know as much as I should about the Internet audience, and what I do know is neither comprehensive nor systematic. Knowledge in this area tends to be anecdotal, and it will take significant work to make it otherwise. Web logs don't tell us a thing about what motivates our users or what level of knowledge or skill they bring to the problem of finding and understanding legal information. What I'll report to you today is based almost entirely on casual, random probes of the LII audience. Often we make these as a followup to a donation; after all, if someone is inspired to give us money, it seems worthwhile to find out what they value about what we do.

In fact—to foreshadow a later point a little bit—one interesting partnership that one might propose between an academic institution and a reporter of decisions might be a partnership that would investigate exactly these questions: Who's using publicly-accessible legal information? Why? Or perhaps—who isn't? Why not? For today, however, we'll have to content ourselves with experience and anecdote.

#### Important Subgroups

The biggest part of the nonlawyer audience for legal information is not, as some would expect, a motley collection of traumatized victims of the legal system. Much of the audience consists of laypeople who are looking at law because they want to manage risk and anticipate consequences, usually because of some need related to their business or profession. The Internet audience does contain some of the people you'd expect—laypeople who are suffering some kind of episodic or traumatic need for legal information, usually in more personal areas like matrimonial or criminal or bankruptcy law, those whose kid has been busted for drugs, or who have a problem with an employer, or the government, or a spouse. But they are not in the majority.

Our audience consists in large part of people you could describe as “risk managers.” They want to know what the consequences of some contemplated course of action might be, and that action is much more likely to be something to do with the operation of a business than it is some criminal act. Often their interest in judicial opinions is driven by a much greater interest in statutes and regulations—they are seeking interpretations of a rule, or seeking to understand it by seeing it interpreted. Opinions fill an explanatory role as they try to understand rules that affect them.

Another large part of the audience are those who want to read for themselves what it is that the courts do and say, directly and without media filtration. As you might guess, there is a larger audience of this kind for some cases than there is for others. For example, when the Supreme Court handed down their decision in the Florida election case four years ago, we received 5,000 hits each and every minute for 14 hours, and over time we have learned that the final week of the Supreme Court term provides a stringent test of our server capacity. We also know that this is an audience that cares more about what the court said than how it said it. Roughly seven times as many people read the syllabus of a given Supreme Court opinion on our site as read the majority opinion.

Another important constituency is made up of lawyers, here and abroad, who for one reason or another do not have access to the excellent but expensive services offered by Westlaw, LEXIS, and other private-sector legal-information companies. It would be tempting, and to a degree accurate, to imagine that I’m talking about people who do legal services for the indigent or work in other low-paid, low-profile situations. But in fact I’m talking about attorneys in all forms of government service. An e-mail I received from an attorney who works in the Office of the Comptroller of the Currency is fairly typical:

“I am a lowly federal gov’t atty who has been receiving your US Sup Ct on-line bulletin for a number of years. I have my email set up so that when it comes in it is automatically distributed to the other attys in my office. We use it to keep up with current Sup Ct cases, many of which have some application in our work (banking, financial issues, admin law issues, money laundering, etc.). Those cases which do not specifically apply to our field are nevertheless worth reading if only to get a feel for the Ct’s thinking.”

We've received similar communications from people at the National Institutes of Health, and from a number of Federal offices scattered around the country. Like laypeople, they tend to be a bit more interested in the US Code than in judicial opinions. And for some reason they always introduce themselves as "lowly government attorneys."

Finally, there are all cases and conditions of attorneys abroad. Though this is changing rapidly, lawyers outside the U.S. have historically been unable to access commercial on-line services that offer American law. They now make up a large part of our audience, largely for statutes, but also for judicial opinions. One very interesting subset of this group are those who are using American law and jurisprudence as a species of exemplar or imported product. While they are not large in number, we think they are very significant, as they tend to be fairly highly-placed judges and government officials.

The main point to be underlined here is that these are not audiences with which reporters of decisions, or for that matter any part of the legal-publishing infrastructure, have been terribly concerned. Probably they have always existed, and received some sort of legal-information service from specialty publishers, trade associations, public libraries, and other apparatus that is either taken for granted or otherwise invisible to legal-information professionals. For example, I recently saw a 16th century printed book on the law of beer—unsurprisingly, it was German—which stated on its title page that it was intended for both lawyers and brewers. Such things have been around for a long time. But as with so many other things the Internet has provided a rallying point for these nontraditional audiences, raising their visibility and underlining their importance. This, I think, presents at least three important challenges for official reporters of decisions (and, for that matter, for other legal-information purveyors). No doubt there are many more, but the ones I'd like to address here are:

- Providing Intellectual Access
- Developing or enabling third-party services that span jurisdictions.
- Dealing with the tradeoff between transparency and privacy.

#### Providing Intellectual Access

There was a time when one of the US Circuit Courts of Appeal thought it reasonable to make the decisions offered on their Web site

searchable only by docket number—a design decision that speaks volumes about who they imagined their audience to be. Fortunately, they now offer other means of searching, but the point is clear: In many cases, public legal-information providers still believe that they serve only lawyers.

By contrast, offering better intellectual access implies servicing a much more diverse set of expectations from people who may be more or less knowledgeable about the law. How one presents, organizes, and explains material depends, ultimately, on an understanding of who's asking and how their information-seeking behavior works. And unfortunately (or perhaps not) the legal-information-seeking behavior of laypeople differs greatly from that of lawyers. Lawyers are interested in researching comprehensively with two aims: finding material that bolsters an argument, and making certain that there is no material undercutting that argument that they have not taken into account. Laypeople, on the other hand, are (much of the time, anyway) seeking simple access to the text of rules or other material that will allow them to assess the safety of a particular course of action. Lawyers think in legal concepts. Laypeople look for fact patterns. One could go on and on about this, but the underlying point is the same: there is a great need to develop novel ways of presenting and organizing information that better meet the needs of those who are not trained in—and who have no need for—formal lawyer-like legal research, but who nonetheless have real need for access to law.

#### Developing Integrated Services that Span Jurisdictions

The foundation of the World Wide Web is linkage—the idea that pools of information should be interconnected. Because this has been so well done in *some* parts of the Web, there's an expectation that it will be done well in *all* parts of the Web. And because the majority of users are not especially clear about what part of the interconnected Web belongs to who, there is a certain expectation of standardization across collections of information offered by very different and unrelated institutional actors. Users expect the same functionality from court to court—similar behavior by search engines, similar presentation of results, similar acquisition and expiration policies, and so on.

In this respect, comprehensive search engines like Google make comparativists and integrators out of everyone in the Internet audience. The hit lists generated by a search against a broad-based Web database provide juxtaposed, near-instantaneous access to many information resources. Because users then experience these resources as being

“close” to one another as they click through the list, their similarities and differences become all the more obvious. And difference is frequently seen as dysfunctional; the user rightly asks why all this stuff can’t work the same way.

The need for a kind of standards-based integration becomes all the clearer when one considers that no single publisher can possibly serve the number of narrowcast, niche legal-information audiences that the Web can create. There are just too many different kinds of people who find different collections of information to be important and desirable, and who need to obtain it from a bewildering variety of sources. It is no longer practical, if it ever was, to assume that one or two commercial behemoths can service the whole market. Better, then, to have a marketplace in which competition can center on quality of content without the distractions created by differences in interface and other technological artifacts. Establishing the standards and practices by which this can be done is no small task.

#### Privacy Concerns

With vastly bigger and more diverse audiences having access to vastly bigger and more diverse collections, it’s not surprising that the meaning of the word “public” in the phrase “public information” has exploded. Offering access to public records via the Internet, including the work product of courts, is very different from offering it via dusty file cabinets in the basement of a public building. More people see and use the information, because they can. And this in turn raises questions about what appropriate levels of privacy should be, and whether or not there is technical apparatus to counter the exposure that technical apparatus has created.

I believe that new technology—and perhaps more importantly, new understanding of what happens when it is deployed—can answer these challenges. But it’s not my purpose here to detail those. Instead, I’d like to talk about setting up a general apparatus that I think would help promote solutions to these and other problems.

#### The Case for Research Partnerships in Legal Informatics

Legal informatics is the Rodney Dangerfield of information science: it don’t get no respect. This is surprising, but incontestable: one need only do the shallowest Googling to realize that (say) research articles on medical information by information scientists far outnumber those related to law. There is no single reason for this; one might look to the

concentration of research in private hands, to the reclusiveness and narrow intellectual focus of law schools situated in larger universities, to the reluctance of academics to concentrate on problems they perceive as pertaining only to the wealthy and powerful, or to their aversion to treating hard, theoretically-inconvenient problems in an area where accuracy is paramount. All of these are probably implicated in some way.

Obviously, this is something that operations like the LII are trying to change, largely by leading-by-example. One way in which we might advance that agenda, while solving some of the problems I've just outlined, is to enter into partnerships of various kinds with reporters of decisions and other government-based legal-information purveyors. A gathering like today's celebrates the virtues that reporters of decisions bring to the table, and there's little need for me to say more about them, beyond the fact that they nicely complement some of the qualities of my own operation. Academic operations tend to be good at experiment and prototype and bad at the long-term. Reporters have long experience in wrestling ornery information streams into orderly, reliable, accessible publications, and doing so consistently over a period of years.

Operations like mine, academic legal-informatics centers with a strong practical bent, bring different virtues to the table. We enjoy the luxury of asking the kind of speculative questions that lead to new approaches to new audiences. We have a certain comfort level with failure, which is to say that we expect to experiment, and make mistakes, and learn from them. A decade or more into the Internet revolution, we have significant experience in offering legal information to the public using low-cost, freely-available tools and techniques. Though we often must find ways to fund ourselves, we are reasonably free of commercial interests. And we are strongly connected to those who do cutting-edge information science, even as we try to stay far enough behind the "bleeding edge" to offer services that are reliable and stable. After all, one can only learn so much from prototypes; building something that real people use and rely on is much more challenging. And often we find that techniques and technologies developed in other parts of the University for other purposes are just what is needed to solve problems in the legal-information arena. We're well positioned to bring a lot of unconventional expertise to bear on legal-information problems.

#### Areas for Cooperation

With our many respective virtues in mind, I'd like to suggest a few areas in which we might think about cooperating.

The first, hinted at earlier in this presentation, is simply trying to understand the new Internet audience better. We might see, together, what we can find out about these new groups, what they want, and why they exist. We might first try to find out which techniques are most useful in answering those questions. What can we learn through lightweight surveys? What might we discover by analyzing patterns of links to, from, and among legal-information Web sites? Finally, would knowing any of these things make any practical difference to how we collect, present, organize, and explain legal information? All of these would be good questions to answer, and none have been systematically approached before, except perhaps by the marketing departments of legal publishers.

A second area where we might experiment together is in the development of technology that helps deal with privacy concerns. Computer scientists in the natural-language processing and machine-learning subdisciplines have gotten quite good at recognizing what they call “named entities” found in big blobs of text—that is, recognizing “who, what, when, and where” in a stream of textual information. As you might imagine, much of this work has been done with national-security applications in mind. But it might also be quite useful for removing or obscuring information in judicial opinions that we might wish to keep private, such as the names of minor children, birth dates, and so on. While some of these techniques are considered a “done deal” by researchers, most would benefit greatly from the rigors of practical application in a demanding field—something that experience with an actual court or office of judicial administration would certainly provide.

Third, and finally, we might try applying ourselves to the problem of legal-information discovery, and to lowering the threshold for the creation of third-party services that integrate the work product of many courts. These might include current-awareness services that span multiple courts, cross jurisdictional search engines, and so on.

Many comparable problems of collection federation and information interoperability are being solved in the digital library community, particularly in the sciences. They suffer from at least two of the same problems we do: the need to federate disparate collections of digital documents controlled by a wide variety of institutional actors, and the need to foster development of third-party services (like current-awareness services and cross site searching) that it is beyond the ability of individual repositories to offer themselves. There is a lot that we can learn from them. They have found solutions that enable third-party services from either for-profit or nonprofit actors while imposing only



very minimal burdens on individual repositories or publishers. We could work together to do the same sort of integration work with multiple collections of judicial opinions.

### Conclusion

One of my colleagues refers to this as my “third way” speech. I guess that’s because sophisticated self-publication by those who create legal information is one of many “third alternatives” to the two giants who have led the field for so long. But I would actually call this my “Home Depot” speech; the theme is “you can do it—we can help.” In fact you are doing it, and I look forward to working with those of you who would find us helpful. There are many possible ways in which we might cooperate, and many problems to solve.

**Mr. Ashe:** Thank you, Mr. Bruce. We’ve now reached the afternoon break, which means your last chance for caffeine.

[Break]

I would now like to turn the program over to William J. Hooks, Assistant State Reporter in the New York State Law Reporting Bureau, who will conduct the panel discussion on the Future of Law Reporting.

*Panel on Future of Law Reporting*  
*Moderated by William J. Hooks, Assistant State Reporter*  
*New York State Law Reporting Bureau*

**Mr. Hooks:** Welcome back from the break, folks. I see that the ranks have thinned a little bit. Andy, I told you not to give away the tote bags so early, but that’s a separate issue. As I stand here surveying this wonderful old ballroom, I feel the urge to tell somebody to strike up the band and let the dancing begin. Unfortunately, I am constrained to strike up the panel and let the questioning begin. We’ve got a lot of questions. I thank everybody from the audience who submitted questions. I have a prepared list of questions. We are running a little bit behind, and I would like to get through as much as we possibly can.

I will introduce the panel and then we will launch right into the questioning. On the panel we have Robert C. Williams of the Incorporated Council of Law Reporting for England and Wales; Edward Jessen, the California Reporter of Decisions; Frank Wagner, Reporter of Decisions for the United States Supreme Court; Anne Roland, Registrar, Supreme Court of Canada; and our own Gary Spivey, New York State Reporter.

Self-evidently the overriding question that this panel will address is: does official law reporting have a future? And with an eye towards answering that question, ultimately, we will address a series of questions to you folks. I will address questions generally to the panel, unless I otherwise indicate by singling you out, pointing to you, or some other way indicating that I want a particular individual to start the discussion.

The first question: does the availability of court opinions on court Internet sites eliminate the need for official reports?

**Mr. Wagner:** It does not, because Web sites can be compromised and corrupted. The temptation to rewrite *Roe v Wade*, for example, would probably be irresistible if there were only one official report, on line, and you could hack into it and change history.

**Mr. Hooks:** Then the centrality of the official reporter's office, within a given jurisdiction, plays a key role, even though many individual courts will post opinions to their sites on the Internet? There is a need for that central depository of case law?

**Mr. Wagner:** There is a need for some permanent official version of the opinions, but I think we are talking about two things here. I think of us as "reporters" in a broad sense, not just as publishers or printers. What we do for the courts is editorial work, not just print their books. We write the syllabuses and we edit the opinions, checking their facts and citations. I don't think that has anything to do with whether there are official books or not. The value we add is there even before the opinions go to the printer or are posted on the Web site.

**Mr. Hooks:** Your response actually leads us to the next series of questions I have. Why not just leave reporting to commercial publishers or to Web publishers such as Cornell's Legal Information Institute?

**Mr. Spivey:** I think we have to think in terms of an information continuum, and court Web sites and other types of Web sites generally are at an early stage in that continuum where essentially raw opinions are made available to the public. And that serves a very useful purpose. But official reporting begins to add enhancements to that original version through corrections, through editorial enhancements. And as we move along that continuum, we get a fully corrected, fully enhanced product. So I don't think that one version is displacing the other—they all have a role to play along that continuum of enhancement and correction.

**Ms. Roland:** In our own jurisdiction—and I am going back to the bilingual and bilingual aspect—decisions of the Supreme Court of Canada have been published by commercial publishers, but usually in one language or the other, not bilingual. But we have in our own environment and statutes constraints that require the publishing of a bilingual report. The Court also wants to keep control—and going back to what Frank was saying—just publishing on the Internet right now is pretty volatile. It may mature in the future. At the current stage, paper—and I believe all the speakers said this—is here to stay. In a way, having the official reports makes it more secure for our users.

**Mr. Jessen:** I think that it is a tremendous public service to put the as-filed version of the opinions on court Web sites. But, truth be known, those are not very useful for high-powered legal research. There are no links. If our state court opinions cite to a U.S. Supreme Court opinion, we cannot put a link in there that will get to an authoritative version of that opinion, nor, if we cite statutes in our opinions, can we have links to the statutes. That's where the public-private partnership we heard about earlier today makes those opinions useful to the bench, bar and public—i.e., when those links are added and the opinions become integrated into a powerful legal research system. For the as-filed opinions, I think there is not a lot of commercial value there.

**Mr. Hooks:** Moving along to our next question. Is print dying? And if so, does that diminish the role of the official reporter?

**Mr. Williams:** I think there is perhaps slightly less demand for print than there used to be. We've certainly found that in the U.K. Our print subscriptions are declining marginally. But as they decline, the electronic subscriptions increase. I don't think print is ever going to go out of fashion completely. We may have to approach what we do slightly differently. But certainly for people of my generation—although the electronic format is a very useful research tool and you can find what you are looking for much more easily using computers—once you've actually found two, three reports that you want to look at in detail, it's actually much easier to get a book out and have them open to three or four pages that you want to compare and look between the three books you've got than it is to try to have a split screen or flip from one screen to another. I think for a long time to come that will remain true. So I don't think print is ever going to go completely out of fashion. But we do have to bear in mind that we might not be selling so many print subscriptions in the future as we have in the past. As I said earlier on, there are perhaps new ways that we could exploit the electronic

approach by allowing people to order specific selections of cases and print those on demand with the new technology in printing that is much more possible and much cheaper than it ever would have been in the past.

**Mr. Spivey:** The Association of Reporters had a session yesterday addressing this same question. It's clear that the role of print is diminishing. That is true in New York, where our print subscriptions are half of what they were 25 years ago. We heard from other jurisdictions exactly the same pattern. We heard from the commercial publishers that the same is true. We don't mourn the diminished role of print, because that usage is more than made up for in the usage of the electronic product. Our product is being used today more than it has ever been used. We are reaching more people with our product today than we ever did because of the enormous interest in and the enormous usage of the electronic legal products. So, far from having a diminished role for official reporting because of the diminished role of print, I think quite the contrary is true. We have responsibilities and concerns today in the electronic world that we didn't have in print. For example, we feel a great compulsion to make information available on a timely basis. That wasn't as much a concern in the print world as it is in the electronic world where there is a great expectation of currentness of the electronic product. So we have to make the product available on a more timely basis. We have this issue that Justice McHugh of the Massachusetts Appellate Court referred to yesterday of version control, because we don't wait until an opinion is fully edited and fully corrected before we make it available. As I mentioned a moment ago, we make it available along an information continuum from the raw opinion to the fully developed opinion. We have all of these issues attendant to letting the reader know at what stage of correction that opinion is. So it's an increased responsibility for the reporter as we move into the electronic environment.

**Mr. Jessen:** I think that the role of the reporter is actually far more important in the "right-now" world of the Internet. I imagine every court that posts opinions may at one time or another have put the wrong version on the Web site. Any court that doesn't have a reporter probably wishes they had one when that happens. Reporters are invaluable to sorting out and mitigating these types of faults because once you put an opinion on the Web for a nanosecond there are people who will have it; you will never get it back and you can never completely "undo" it. You make a mistake with the Web, there are no "do-overs," it's out there, and reporters are occupationally the most qualified to deal

with those messes. In California we put over 15,000 opinions on the Internet every year and not a week goes by, not a day goes by, that we don't get an opinion that smacks of being the wrong version, an opinion that was mistakenly sent before filing and then filing was delayed, or an opinion that has what we call a protective nondisclosure lapse where a sex-crime victim is named or a juvenile entitled to anonymity is identified, often indirectly, and so that's what you need a reporter for.

**Ms. Roland:** I would certainly agree with that statement, and in our court we have a great team and things like version control are a great concern. We've put the system in place and the like of Barb Kincaid, our General Counsel, or Claude Marquis, Chief Law Editor, have these questions constantly in mind. I think their role is crucial to make sure that the version that is put out is accurate and certainly the final one, avoiding the kind of incidents you mentioned. Besides, as far as I can see, right now there is no safe, long-term preservation of the law reports or decisions other than in print. And I would venture to say that will be the case for a long time. Migration of databases is certainly an iffy business—and probably the representatives of Lexis or West would not agree with me—but I am not confident that 10 years from now, other people will be able to use what we have currently in our computers. So I think print is there because of the need to preserve the law in the long run as it has been done for instance for the past 200 years in New York. We'll need to continue to do that. So print is here to stay.

**Mr. Hooks:** Would any of the other panel members care to comment on the utility of print as the best medium for preserving case law?

**Mr. Spivey:** It is certainly true that in New York we certify or notarize copies of an opinion from the printed version. We regard the electronic version of the opinion as equally authentic, but we are not quite there yet in terms of having the same confidence in the immutability of the electronic product that we have in the immutability of the print. This is an issue that may change as technology changes. There may be ways of giving us that same confidence in the electronic version of the product as being authentic that we have in the print product. But we are not quite there yet. We do have an additional issue, though, and that is, as you heard in my presentation earlier, some opinions we publish only electronically. So what do we do about that? What is the authentic archival copy of the electronic-only document? I don't have the answer for that yet, but I know that this is an issue in the broader world. The Government Printing Office is looking at the same issue through its Collection of Last Resort Project, and there are many others

in the law library community who are interested in the preservation of digital information and the archiving of digital information, and hopefully we can learn something from them.

**Mr. Hooks:** Gary, in a related question, what is your experience with devising a technique to advise users that electronically published cases have been edited after the date they're posted?

**Mr. Spivey:** In New York, as I mentioned, we publish along what I call a publishing continuum from the original raw material, the initial as-filed document that we post on the Web site, until the opinion is fully edited. At each stage of correction we take down the earlier document and we put up a new document, and it carries a legend that states that this document is corrected through such-and-such a date. So that's our mechanism that we are using right now to indicate that you are dealing with a corrected document and the date as of which the document has last been corrected.

**Mr. Wagner:** At the U.S. Supreme Court, we are just poor government lawyers, like those Tom Bruce mentioned earlier. There are only three attorneys in my office (plus five paralegals, two clerical people, and a publications officer), and Wilma Grant's Publications Unit has a staff of but nine composition specialists, including Wilma. That doesn't give us many horses to pull such a large wagon. What we do is to create four successive versions of opinions, each one replacing its predecessor, just as it does in print. The first is the bench opinion, which is zapped out to LexisNexis, West, Tom Bruce, and 13 other Project Hermes subscribers just as soon as the authoring justice announces the case from the bench. Then later that day Wilma posts the slip opinion, which concatenates the syllabus and the various component opinions and also adds any corrections made during that day. You know how, when you first look at something in print, you say, "Ah, how could I have missed that?" Well, that happens occasionally, and we make those corrections in the slip opinion. We put the slip version up on the Web site and leave it up until we can post the bound volume, which is the fourth and final stage. The third versions of the opinions are issued in an interim advance pamphlet, our "preliminary print," but we don't have the manpower to post the preliminary prints on the Web site. So all we put up is the slip opinion, the second stage, because it's slightly more advanced than the bench opinion, the first stage, and it stays there until the bound volume, the final version, comes out, and then we take it down. The bound volume will remain on line forever. It's an economical way to do what Gary is able to do all the way along the line.

**Mr. Hooks:** To the panel at large: does the availability of full text-searching on the Internet eliminate the need for editorially supplied finding aids or value added features, such as headnotes, digests and statutory tables?

**Mr. Jessen:** Certainly doesn't in California for any number of reasons. Probably the simplest anecdote that I was told once is that you may be looking electronically for an opinion involving a car hitting a curb, and you could think of all the synonyms in the world for "vehicle," "car," "automobile," or "truck." But what if the judge who wrote the opinion right on point was a little folksy in his style and just talked about the "1947 DeSoto"? And that's where the enhancements come into play. The enhancements extrapolate out from that writing, so you would be likely to find it. And the same with the other finding aids. The way we cite statutes in opinions is very difficult. If you are writing for a secondary source you can be very disciplined, impose a heavy discipline on how the statutes are cited, but we defer a lot to author prerogative, so you have a lot of *id.*'s at section-something-or-other, or they will short cite away the code designation so that anything without a code designation is our Code of Civil Procedure, and those will be impossible to then find by boolean searching unless you have an overlaid enhancement.

**Mr. Wagner:** Our answer, I guess, is yes and no, although elimination of finding aids over the years has not really been prompted by electronic innovation. My predecessor, Henry Lind, got rid of the Table of Statutes Cited sometime in the 1970s or early 1980s, and then, as soon as Justice Blackman left the court, I asked the justices to eliminate the Table of Cases Cited. We still publish a Table of Cases Reported and an Index for each volume or preliminary print. And we think that people still want and use the syllabuses. There's lots of evidence for this. LexisNexis would not be adding headnotes to all its cases if there weren't some need for them. Furthermore, Tom Bruce said a while ago that more people are reading the syllabuses on line than are reading the opinions themselves. I think that's unfortunate, but that seems to be the situation. And, as I said in my speech, Justice Ginsburg seems usually to want a more elaborate syllabus than other justices because she thinks that that's the only thing that some people will read. So it's not electronics—we've shucked some finding aids that we thought were no longer useful, but I don't think the syllabus is one of them.

**Mr. Williams:** I think there are two disadvantages to word searches. The first is that a word search is not a concept search. You may well miss

the idea, the case that you are looking for, simply because the word you searched for is not used in the relevant case. The second is the word search gives you a list of references where you can go to find that word, but then once you've got it, you've got to read the whole context of every single occurrence of that word in order to find out whether it's something you want to look at or not. Then having got your series of results, go and look at a summary of cases. You can then find out whether that is indeed the sort of case where you want to look at the precise context of the word or whether it is one you can ignore. And I think that that is probably an important reason for wanting to retain some sort of headnote or summary.

**Mr. Hooks:** This next question could probably consume an entire symposium. So I am going to ask the panel to restrain itself somewhat. Should more or fewer opinions be officially published?

**Ms. Roland:** It's easy for us. We publish everything in the Supreme Court of Canada, and I'm not going to pass any judgment on other courts.

**Mr. Wagner:** And that's also true for the Supreme Court of the United States, so we don't have to pick and choose. We've got 75 to 100 written opinions a year. We just publish everything.

**Ms. Roland:** All decisions are published because the criterion to select cases to be heard by the Supreme Court of Canada is their national public importance.

**Mr. Hooks:** Certainly, courts with certiorari jurisdiction serve to distill what they're going to put out for publication anyway. But with intermediate appellate courts where there is a statutory prescription that everything be published, that, obviously, broadens the scope of opinions that are going to be out there as opposed to situations where there is discretionary publication of opinions, doesn't it?

**Mr. Jessen:** I think I'm probably the only representative up here of a jurisdiction that selectively publishes, although, I guess Wales does. The short answer is that the decision about what gets published is a judicial decision, and reporters don't make judicial decisions. At least that's the way it works in California. There are standards for publication, and how those standards are met is considered the decision of the judges, not the reporter.



**Mr. Spivey:** We have much the same answer in New York. For us it's a question of what the statute provides, and the statute in New York provides that all appellate decisions are published. We deal with this issue of selective case reporting at a different level than most jurisdictions because we publish trial court opinions. And there we do have discretion to publish any opinion according to certain statutory criteria, essentially that the opinion be useful as a precedent or that it be important as a matter of public interest. So we do exercise discretion with respect to the publication of trial court opinions. And in that respect we continue to seek to publish more rather than fewer opinions of that nature because—as has been said in England—utility to the profession is the only standard, and there is a constant and increasing demand that we publish more opinions from courts of that level because the profession finds it useful in its work. We hear some of the concerns about data overload, about excessive publication of opinions. In our own experience, which isn't everyone's experience, we think that perhaps those concerns are exaggerated, at least in our environment. I was impressed by a quotation that I recently read that said, "The whole world is now insufficient to contain all of the law reports which are published." And that comment was made by Lord Campbell, Lord Chancellor, 1779-1861. And I am sure that the same kind of comments will be made when the existing body of case law doubles and doubles again. I believe that we are going to continue to see a growth in the body of case law and we are going to continue to be able to manage it through editorial techniques and the technologies that we are able to apply to the making of opinions, even in a larger mass, accessible to users.

**Mr. Williams:** If official publication means selection of cases and the addition of value by the selection and also by the incorporation of catchwords, indexing and that sort of thing, then, certainly I don't think there's a case for saying that more ought to be published—provided that what isn't published in that way, what isn't selected, is still going to remain available for people who, for whatever purpose, be it legal or other research purposes, can actually get at it. I think that that also is the case that they can now have access to those things. For other purposes one doesn't need the legal additions, for example, that we put on in the U.K.

**Mr. Hooks:** In a related vein, to those jurisdictions that do select cases for publication, are there any outside forces brought to bear that might interfere with or be perceived as weighing on your exercise of that discretion?

**Mr. Williams:** Well, occasionally judges are understandably keen to get their cases reported, and sometimes one's at a loss to find anything reportable in the case, but that doesn't happen very often. Usually, if they say they think it is worth doing, one has another look at it and it probably is. On the whole, as I said before, I think judges incline toward the view that too much is reported. Counsel, on the other hand, is more inclined to say too little is reported because they're always keen to find their illusive precedent on all fours with the case in front of them. I think, really, the same applies: if people do really want to find that, they will search for it, they will find it, eventually, if it exists. And it is very difficult for the courts to stop citation of unreported authority on the grounds that it's unreported, because you then, I think, are in danger of actually spending as much time arguing about whether the case ought to be cited or not as you would spend if you would just accept it was going to be cited and listen to it in the first place.

**Mr. Hooks:** Gary, what is your experience with that issue?

**Mr. Spivey:** We have the same issue. Again our selectivity is applied with respect to lower court opinions, and certainly the judges who submit opinions to us are very interested in being published and can be very persuasive with us in their arguments in favor of publication. I would say that, in my experience, at least, there have never been inappropriate attempts to influence the publication process. However, it's been done through reasoning, through explaining to us why the opinion merits publication. If we decide that it does not merit publication, quite often a judge will ask us to reconsider that and spell out reasons why that we overlooked in our initial determination. We are willing to do that, and sometimes do change our minds. We are not the final authority on that issue, because any judge who disagrees with our decision to withhold an opinion from publication does have an appeal process. We have something called the Committee on Opinions that is a panel of appellate court judges who will review the matter and make a determination either to uphold our decision or not to uphold it.

**Mr. Hooks:** How many times has your decision not been upheld, Gary?

**Mr. Spivey:** Our decisions have always been upheld.

**Mr. Hooks:** That wasn't a planted question! I see we are running a little bit late. I have one further question to address to the panel. This is to the panel at large. Just your general comments on the size of the

judicial opinions today. Are they longer? Are there more footnotes? Are there more separate writings? Are there more divided courts? Do you see any general trends? Frank, I think we will start with you on that.

**Mr. Wagner:** I don't really think our opinions are longer. After Justice Brennan retired, I think opinions actually got shorter. On various occasions, he would laugh and tell me: "Well, I've just written a 35-page dissent to an 8-page majority." Officially, I haven't kept track; maybe Tom Bruce knows. Apart from the exceptionally complicated, blockbuster case, I don't think opinions are any longer than they were when I first came to the Court.

**Mr. Jessen:** There is a cliché that probably most of you have heard where the judge will tell you that he or she didn't have time to write a short opinion, so a long one was written instead. I think the workload of judges all over is such that judges now tend to leave good material in the opinion that doesn't necessarily have to be there and would require a lot of additional editing to take out. So I think that that may be an aspect of it. The California Supreme Court has been criticized by court watchers for the length of its opinions, but they've actually been getting significantly shorter in the last couple of years, so I guess they do pay attention to constructively intended criticism.

**Ms. Roland:** I think that more or less the same can be said of the Supreme Court of Canada. Our judges try very hard to come to consensus or eliminate concurring reasons if they possibly can. Whether the decisions are longer or not—the academics have looked at that and it's for everyone to make their own opinion on their analysis. I think there are complex decisions that are long and one wishes that maybe that they were shorter. But overall, it's pretty stable and really depends on the topic or the difficulty of the legal question put to the courts. So I think it's sort of nonissue in a way.

**Mr. Spivey:** We haven't done a scientific comparison, but certainly, with respect to our trial court opinions that we publish in Miscellaneous Reports, they are substantially longer today than they were in the past. We looked at it going back over several decades. We would see that the average size of a trial court opinion was approximately one printed page, and today it's five or six printed pages. I wouldn't be surprised if that is a general phenomenon with respect to the size of our opinions. The culprit in my view—it's both a help and a culprit—is word processing and the ability to cut and paste. You can generate documents of greater length with greater ease today than in the old days, when you had to do all that typing and correcting of carbon copies and all of that. It's just

that the technology lends itself to writing at greater length than in the past. We have attempted to deal with that in New York to some extent in trial court opinions, where we will sometimes require that, as condition of publication, the opinion be condensed, that portions of the opinion be omitted for purposes of publication. To us, it's a clear phenomenon of longer opinions and we try to deal with it the best we can.

**Mr. Williams:** I agree with Gary; that is certainly something that we noticed in the U.K., and I think for similar reasons. There is perhaps one other thing that I mention that may contribute to the length of judgments, certainly judgments that are subject to appeal. The judges understandably are keen to make sure that the judgment is appeal proof. Perhaps a better way of putting it is to say that they want to make sure that all of the possible arguments and findings are there so that if an appellate court does disagree, it doesn't have to send the case back for further findings but can then make an appropriate decision on the facts that have already been found. So perhaps that is another factor that tends to increase the length of judgments. And one other consideration, I suppose, is that now everybody is much more conscious of human rights sort of aspect of things. There is the desire to demonstrate to the litigant that all the relevant points have actually been considered, which means the sort of points that wouldn't have been even mentioned in a judgment before because they plainly do not have any chance of success, now are all enumerated and elaborated and set out simply to demonstrate that everything has been considered.

**Mr. Hooks:** Thank you. That concludes our panel discussion. I want to again thank the members of the audience who submitted questions and I want to thank this august panel for their participation.

**Mr. Ashe:** Thank you, Bill and members of the panel. Our final speaker is Charles Dewey Cole, Jr., who will offer a summary and synthesis.

*Summary and Synthesis*  
*Charles Dewey Cole, Jr.*  
*Newman Fitch Altheim Myers, P.C.*

**Mr. Cole:** I feel like I did a few years ago when I was trying a case in the Eastern District of New York. I had asked the trial judge to allow me time to make a closing argument in rebuttal. The trial involved many parties. I thought that the order of the closing arguments was such that

it was not right that I did not get to reply. My application was denied. I took my hour and said all that I could, anticipating what was likely to be said. Of course, the district judge, in the middle of listening to my adversary's argument, decided that it was not right that I had no chance to reply. Once my adversary sat down, the court granted me 15 minutes. But I had nothing left to say.

So in the tradition of the bar—and not letting 15 minutes go by without having something to say—let us take a moment and, as it were, review today's evidence. If we do so, it should be clear to us what the issues are and how we, as a jury, ought to decide them.

We heard today from Chief Judge Judith Kaye. She made several points about the importance of the law reporter and how reported decisions are, in fact, the bedrock of a common-law system—the system that applies throughout the United States and throughout the common-law world.

We also heard from Robert Williams. In his very fine summary of the Cambridge symposium, he highlighted many of the issues that were at the forefront then and, I suggest, still not answered today: the effect of computerization; the continuing relevance of the law reporter; the demand for widespread access and, indeed, greater access by the public; and how we may respond to these challenges in a legal system that, to be fair, has not changed all that much in the way in which it works, over the last 100 years.

We also heard from Edward Jessen, whose very fine review of official reporting reinforced how the role of the law reporter in the United States always has been different from that role in England and Wales. He pointed out how John West's work in the 1870s publishing decisions, which led first to the Northwestern Reporter and then to the National Reporter System, followed a model of comprehensive reporting—at the very least, a system of comprehensive reporting for final courts of appeals in each state. Mr. Jessen also pointed out the other kinds of law reports that were started. We know from his presentation that, at the end of the day, the comprehensive model of law reporting as started by John West and as continued by the West Publishing Company carried the day because there is, in fact, a preference in the legal profession to have more reported rather than less.

Frank Wagner's enlightening talk about the work of a law reporter in the Supreme Court emphasized the importance of the reporter's role preparing the syllabus. When I turn to the Supreme Court's Web site

because I have received news that a decision has been released, I always download the syllabus first. Why? Because it is very good and, two, because I have only so much time. So if I must read one thing, I read that and then get to the opinion—or I hope I get to the opinion—later.

Anne Roland emphasized the role of the reporter and the unique challenges faced by the reporter in Canada, a bilingual country in which there are issues of authenticity with two different languages, English and French. Both Mr. Wagner's presentation and Ms. Roland's presentation emphasized the continuing relevance of the law reporter—not just for proofreading and cite checking—but also for adding value to the law reports.

Mr. Spivey's presentation confirmed Mr. Jessen's conclusion. New York had tried a model of selective reporting, but it was not welcome. Instead, New York adopted comprehensive reporting. He referred to the statute that requires that almost all appellate decisions be reported. His history of law reporting in New York demonstrated how New York in so many things—including law reporting—was truly first in the nation. If you look in the new Third Series of the Official Law Reports, you will see the first-in-the-nation approach applied to print. They are just marvelous in terms of typeface changes and the other editorial changes that have been made. The new Style Manual is a "must have" for those of you who collect them.

We also heard from Mr. Wilens, who laid out a challenge for the future of legal research. The idea that all legal information is somehow related and the notion that you can link the information together by computer suggest that there will be some very significant changes in the way legal research is done. Some changes already have happened. Others are sure to follow.

Ann Fullenkamp's presentation was very good because it made us think about the future of paper. Someone once said that if the Egyptians had invented the cathode-ray tube, we who read would think that someone in Silicon Valley who invented paper had just invented the most useful thing in the world. There are different means of displaying the same information. The different formats have different uses. They are not the same. But there is overlap between them. Her presentation made clear that for certain things—treatises, to be sure, and also statutes—books, because of the way they are now formatted with the content being a coherent whole, often are superior to electronic publishing. Browsing through paper does in many ways beat searching with a computer. It is easier to find a statute if you can open a book and turn

the pages and then turn to a pocket part. That cannot be said if you are looking for a judicial decision. You would rarely look for a case by taking a volume off the shelf and turning through the pages. That is so because decisions—as reported—have only a limited relationship to the other decisions in the same volume and rarely any relation—other than a common date—to the preceding or following decision in the volume.

Mr. Bruce's presentation on the wonderful things that are being done at the Legal Information Institute brought to mind the things that have been done at BAILII and CanLII, free information services through which the statutes and the decisions are available. The public demands free access to this information. If there is a demand for this information and the information can be readily provided, there is no reason that it should not be there.

With that review of the evidence, let us turn then for a moment to the issues before you, the jury. The first question—suggested by Mr. Williams's remarks—is what should be available. Mr. Jessen's presentation makes plain that in this country the public and the profession always have demanded comprehensive law reporting. Because the legal profession just does not change—or at least cannot be expected to change any significant way—we must accept that the comprehensive model of law reporting will be with us for the foreseeable future. The real question is in what form.

We should agree—and this is shown by the publication policies followed in most states—that all decisions are not equal. There is no better argument for the proposition that all decisions are not equal than the efforts by the Thomson Group on Westlaw to link relevant documents to the reported decisions and thus add value to them and to make them more useful. If the decision of the court is all the law that anyone needs, there is no need for headnotes or syllabuses. Nor would there be a reason to look at the lawyers' briefs. The point is: the judicial decision is not all there is. Ann Fullenkamp made the point that, in light of the work that LexisNexis is doing to provide headnotes and the work West does with its key number system, there is a demand and a need for the added value supplied by reporters.

The difficult question is which decisions need the added value of headnotes and syllabuses, exactly what should be added, and how should other decisions be reported? When we are linking the lawyers' briefs to the decisions, it is difficult to argue that more is not better. But there are serious questions whether this is the way forward. The more

that is available means more work for the lawyers and judges who must sort (and maybe read) through everything. It also means an added cost to the delivery of legal services.

The second question is whether law reporters still are necessary. There should be no question that—even though this jury is likely very biased—the answer is a resounding “yes.” That is easy to see when we look at the decisions of the Supreme Court of the United States and the highest courts in states. In these decisions, the ones most likely to be looked at by the public, the use of a syllabus makes the decision that much more user friendly. Moreover, when we talk about the decisions of intermediate appellate courts, three-or-four-paragraph orders affirming an order based on no abuse of discretion or substantial evidence are not easily understood without some value—such as a procedural history—added to them. What will happen in the future remains to be seen. But, given the way in which computer-based legal research works today, there is a value-added function that must be performed by law reporters. We know that because it is being done in the commercial sector and it is also being done in the public sector by official reporters.

That leads to another question. And it is a fair question: what is the effect of the technology on legal research? Mr. Wilens’s presentation demonstrated that there has, in fact, been a sea change in the way that lawyers research the law. We Google things. Younger lawyers have an expectation—and, indeed, it is an unjustified one—that if you are working at the interface of any computer-based legal-research system—be it LexisNexis or Westlaw—you simply put in a few commands and the correct answer readily appears. This unjustified expectation of accuracy must be faced in the law schools, in the law firms (in the training of new lawyers), and in the courts to highlight that things do not always work that way.

What is the effect, then, of the technological revolution on the legal system? Law is not an academic exercise. The reason that we have law reporters is that the decisions of the courts in litigated cases are vitally important to making the legal system work. That legal system exists and works because people have disputes that must be resolved. Those disputes, in the context of a civilized society, should be resolved in an orderly fashion, preferably by a court provided by the state or by a tribunal sponsored by a private entity working as an adjunct to the state. The parties must have a reasonable idea of what is expected of them and what the outcome of any dispute will be. The law reports fulfill that need.



Now, that being said, we must ask ourselves whether a system that has so much reporting of decisions and thus requires lawyers and judges to do so much work to prepare briefs and opinions (and in, the rare case, conduct a trial) provides a good solution to the problem. I mention this added cost of legal research because within our legal system—and this is particularly true in New York—many people in the legal system have unmet legal needs due to the cost of legal services. So, in many instances, we ought to ask ourselves whether we are doing ourselves a service by providing a million dollar legal-research system when oftentimes the needs of litigants can be met with far less. This is a challenge to all of us, and we must keep it in mind when we decide how things will move forward.

It was my great honor to have been asked to comment. I am not a law reporter. But I admire greatly the work that law reporters do and the work of the judges who produce the decisions that end up in the law reports. I see the issues discussed today from the perspective of the consumer, a user of law reports. I think about the issues that have been discussed today because it is very important to our legal system that we have a system of law reporting that makes a common-law legal system work and provide, in a very fair way, justice for all.

**Mr. Ashe:** Thank you, Mr. Cole. Dewey’s task was a lot like headnoting a 200-page opinion. He did an excellent job.

*Adjournment*

*Charles A. Ashe, Deputy State Reporter  
New York State Law Reporting Bureau*

**Mr. Ashe:** A complete report of these proceedings will be published and distributed to all those who attended. Please remember to complete your CLE paperwork at the registration desk—you need to sign out.

I would like to salute the Association of Reporters of Judicial Decisions for supporting and sponsoring this Symposium. I’d like to thank the wonderful speakers, representing all of the public and private sectors involved in official law reporting. I’d also like to thank everyone else who participated by their attendance, their interest and their questions. From a personal standpoint, I want to thank members of the Law Reporting Bureau staff not previously mentioned by name—Amy Schneider, Kathy LaBoda, Cindy McCormick, Josette Altobelli and

Sharon Hanson. On a concluding note, I'd like to express the wish that we all get together for a future symposium on these same or related topics.

Please join us for a reception in the Palm Room. We stand adjourned.

## SPEAKER PROFILES

**Charles A. Ashe** has served on the staff of the New York State Law Reporting Bureau since 1972. He was appointed Deputy State Reporter in 1990 and served as interim State Reporter from December 1998 to March 1999. He is a graduate of Cornell University and Syracuse University Law School. Mr. Ashe is a past president of the Association of Reporters of Judicial Decisions, an international association of reporters of officially published court decisions, and has served on several committees of that organization. Mr. Ashe is married to the former Margaret Draper, and they have four children.

**Thomas R. Bruce** is the director of the Legal Information Institute (LII) at the Cornell Law School, a pioneering effort in public access to law via the Internet. Prior to cofounding the LII (with Peter Martin) in 1992, Mr. Bruce served for several years as director of Educational Technologies at the Cornell Law School. He is the author of Cello, the first Web browser for Microsoft Windows, and a variety of other software tools used by the LII and others. Mr. Bruce has consulted on Internet matters for LexisNexis, West, IBM, Folio Corporation, Crestec International, the Hein Company, and others; he also frequently consults on technology-management issues in law schools. He is currently a member of the board of directors of the national computer-assisted legal education consortium (CALI) and has been a fellow of the University of Massachusetts Center for Information Technology and Dispute Resolution and senior international fellow of the University of Melbourne Law School, where he serves on the advisory board for the LL.M. program in e-business law. He has constructed any number of legal information resources on the Internet, ranging from an on-line edition of an early English law text (Bracton) to an electronic first-year law course authored by seven members of the Harvard Law School faculty. He has taught and written extensively about the economics and public policy surrounding legal information resources. Over the years he has been deeply concerned with the management and development of computer technology in law schools and has been a principal organizer of both virtual and physical communities of law school technologists via the TEKNOIDS mailing list and the CALI-sponsored conference for technical professionals. Prior to his arrival at Cornell Law School, Mr. Bruce worked as an opera stage manager and director for Houston Opera, Greater Miami Opera, Lyric Opera of Chicago, and the American Repertory Theater, among others.

**Bilee K. Cauley**, Reporter of Decisions, Alabama Appellate Courts, was born in West Homestead, Pennsylvania, near Pittsburgh. Ms. Cauley was graduated from Eckerd College in St. Petersburg, Florida, in 1972 with a Bachelor of Arts degree in English literature. She received her Juris Doctor degree in 1987 from the Jones School of Law, where she was awarded the James J. Carter Award for Scholarship, an award given to the student in each graduating class who has the highest grade point average. Ms. Cauley was admitted to the Alabama State Bar in 1988. Before and during law school, Ms. Cauley was employed by the Montgomery law firm of Johnson & Thorington as a paralegal. Upon her graduation from law school, she worked at the firm as an associate. She was appointed Assistant Reporter of Decisions for the Alabama appellate courts in July 1989, the first person to occupy that position. She was appointed Reporter of Decisions of the Alabama appellate courts effective October 1, 2001, and is the first woman to hold that position. Ms. Cauley is married to Wendell Cauley, a partner in the Montgomery office of Bradley Arant Rose & White, LLP. She was president (2003-2004) of the Association of Reporters of Judicial Decisions, an international professional association.

**Charles Dewey Cole, Jr.** practices with the New York City firm of Newman Fitch Altheim Myers, P.C. He received his A.B. from Columbia College, his J.D. from St. John's University School of Law, his M.L.I.S. from the University of Texas at Austin, an LL.M. from New York University School of Law, an LL.M. in Environmental Law from Pace University School of Law, an LL.M. in Trial Advocacy from the James E. Beasley School of Law of Temple University, and an LL.M. in Advanced Litigation from Nottingham Law School, the Nottingham Trent University. He is admitted to practice in New York, New Jersey, Texas, District of Columbia, and England and Wales (Solicitor). He has been awarded the Higher Courts (Civil Proceedings) Qualification by the Law Society. Mr. Cole's practice focuses on the trial and appeal of civil actions with an emphasis on personal injury, wrongful death, and commercial litigation. During law school, Mr. Cole served as a member and as research editor of the St. John's Law Review. After being graduated, he served as a law clerk to Chief Judge Joe J. Fisher of the United States District Court for the Eastern District of Texas and later served as a law clerk to Judge Thomas M. Reavley of the United States Court of Appeals for the Fifth Circuit. He has published several articles and numerous book reviews. Mr. Cole has lectured at the New York County Lawyers' Association on federal practice and federal appellate practice and for the New York State Bar Association on federal appellate practice. He has taught in trial advocacy programs offered by the National Institute for

Trial Advocacy and in the Trial Techniques Program at Hofstra University School of Law. He currently teaches in the Intensive Trial Advocacy Program at Widener University School of Law in Wilmington. Mr. Cole is a member of various state, local, and specialized bar associations, law library organizations, legal writing groups, and legal history societies. He currently serves on the executive committee of the Commercial and Federal Litigation Section of the New York State Bar Association and on the board of directors of Scribes—The American Society of Writers on Legal Subjects.

**Ann C. Fullenkamp** is senior vice president, U.S. Small Law, State and Local Government Markets, for LexisNexis. Previously, she was chief operating officer for CourtLink, where she was responsible for leading the CourtLink organization to develop and execute strategies to aggressively grow the on-line court dockets and electronic court filing markets. Prior to that position, Ms. Fullenkamp was senior vice president, Emerging Markets, for LexisNexis North American Legal Markets. In that position, she was responsible for developing and executing strategies to expand LexisNexis offerings beyond its core research products. To advance the business in that area, Ms. Fullenkamp developed the LexisNexis strategy for integrated practice management, resulting in the strategic alliance with Time Matters practice management software. Earlier, Ms. Fullenkamp, a 25-year LexisNexis veteran, served in a variety of marketing and sales leadership roles. Ms. Fullenkamp attended Wright State University in Ohio. She also attended Reed Elsevier executive development programs at schools that include the Wharton School of Business at the University of Pennsylvania and Oxford University. Her home is in Versailles, Ohio, with her husband, David, and two children.

**William J. Hooks** has served as the Assistant State Reporter of the New York State Law Reporting Bureau since 1990, and in several editorial capacities with the Bureau from 1981 until that time. As Assistant State Reporter he is responsible for the management of various business and editorial operations. He is a graduate of Albany Law School (J.D.) and LeMoyne College (B.A.). Mr. Hooks and his wife, the former Nancy Crola, have three children.

**Edward W. Jessen** is the Reporter of Decisions, California Supreme Court and Court of Appeal. He was born, raised and educated, including law school, in the San Francisco area. Admitted to the California State Bar in 1972, he moved through the editorial ranks of the former Bancroft-Whitney Company, then a subsidiary of the Lawyers Co-

operative Publishing Company, between 1973 and 1989, leaving as a managing editor of specialty practice publications. Mr. Jessen was appointed California's Reporter of Decisions in July 1989 and has now been the Reporter for over 180 volumes of California's official reports. He recently completed work as a member of an editorial task force for the California Judiciary Council that rewrote the California's Rules of Court pertaining to the appellate process. Mr. Jessen is current vice president for the Association of Reporters of Judicial Decisions.

**Judith S. Kaye**, Chief Judge of the State of New York, was appointed by Governor Mario M. Cuomo in February 1993 and took office a month later. The first woman to occupy the state judiciary's highest office, she previously was the first woman to serve on New York State's highest court when Governor Cuomo appointed her to be an Associate Judge of the Court of Appeals in September 1983. She received a B.A. degree from Barnard College in 1958 and an LL.B. degree from New York University School of Law (cum laude) in 1962. Admitted to the New York State Bar in 1963, she engaged in private practice in New York City until her appointment to the Court of Appeals. Her current posts also include: chair of the Permanent Judicial Commission on Justice for Children; founding member and honorary chair, Judges and Lawyers Breast Cancer Alert; member of the Board of Editors, New York State Bar Journal; and trustee, the William Nelson Cromwell Foundation. During 2002-2003, she served as president of the Conference of Chief Justices and Chair of the Board of Directors, National Center for State Courts. She is the author of numerous publications—particularly articles dealing with legal process, state constitutional law, women in law, professional ethics and problem-solving courts—as well as the recipient of many awards and several honorary degrees. The Chief Judge is married to Stephen Rackow Kaye, who practices law in New York City. They have three children.

**Bettina B. Plevan** was graduated from Wellesley College and is a magna cum laude graduate of Boston University Law School, where she was an editor of the Law Review. She joined Proskauer Rose LLP in 1974 and has built her practice handling all types of labor and employment litigation, as well as counseling clients in employment matters. Named by New York magazine as one of the "100 Best Lawyers in New York," Ms. Plevan also was recently named by the National Law Journal as one of the best labor and employment lawyers in the country. Her trial work has been recognized by her induction as a fellow of the American College of Trial Lawyers. She also has been elected a member of the American Academy of Appellate Lawyers. Ms. Plevan is president

of the Association of the Bar of the City of New York and has been one of its two delegates to the American Bar Association House of Delegates. She recently completed a two-year term as president of the Federal Bar Council. She is a member of the American Law Institute; a director of the Committee for Modern Courts, Volunteers of Legal Services and New York Lawyers for The Public Interest; and is a former vice chair of the Legal Aid Society. Ms. Plevan also serves as chair of the Second Circuit Judicial Conference.

**Anne Roland** is the Registrar of the Supreme Court of Canada. She received a law degree from the Faculty of Law at the University of Paris (1969) and a diploma from the Institut supérieur d'interprétariat et de traduction de l'Institut catholique de Paris (1969). She was graduated with a law degree from the University of Ottawa in 1979 and has been a member of the Quebec Bar since 1980. She began her career with the Federal Public Service at the Translation Bureau (Secretary of State). In 1976, she was appointed Special Assistant to the Chief Justice of Canada. She became Chief Law Editor at the Supreme Court of Canada in 1981 and Deputy Registrar of the Court in 1988, and has occupied the position of Registrar since 1990. Over the years, she has acquired a vast knowledge and experience of management in the court context, enhanced by her participation in the Programme for Advanced Management at the Canadian Centre for Management in 1993. She is a member of various associations, including the Association of Canadian Court Administrators (president 1998-1999), the Canadian Bar Association and the National Association of Court Managers (U.S.A.). She was president of the Group of Heads of federal agencies from 1994 to 1999 and continues to be an active member of the Group. She is also an honorary member of the Association of Reporters of Judicial Decisions (U.S.A.) over which she presided in 1989.

**Gary D. Spivey** has served as New York State Reporter since March 1999. He is a graduate of Indiana University (Bloomington) and its School of Law, where he served as managing editor of the *Indiana Law Journal*. Mr. Spivey began his legal publishing career as a legal editor with the Lawyers Co-operative Publishing Company in Rochester. He rose through the ranks to become editor-in-chief of that organization and the first president of its electronic publishing subsidiary. In 1999, he joined the Shepard's Citations company, serving as vice president, Electronic Publishing and Development. He is a past president of Scribes—the American Society of Writers on Legal Subjects. Mr. Spivey and his wife, the former Miriam Lang, are the parents of three adult sons.

**Frank Douglas Wagner** is Reporter of Decisions, Supreme Court of the United States. Born in Lansdowne, Pennsylvania, he was educated at Frackville (Pennsylvania) High School; Cornell University (A.B. in English); and Dickinson School of Law (J.D.). Mr. Wagner began his legal career as an attorney with Reynier & Crocker in Pottstown, Pennsylvania, and later served as a legal editor with the Lawyers Co-operative Publishing Company in Rochester, New York, and the Research Institute of America in Washington, D.C., before becoming Reporter of Decisions in 1987. He is a member of the bar of the Supreme Court of Pennsylvania and the U.S. Supreme Court. His recent publications include Alexander Dallas, Yale Biographical Dictionary of American Law (forthcoming 2005) and The Role of the Supreme Court Reporter in History (26 J Sup Ct Hist 1 [2001]). Mr. Wagner is a member of the Association of Reporters of Judicial Decisions (president 2002-2003); Scribes—the American Society of Writers on Legal Subjects; the Supreme Court Historical Society; and the Pennsylvania Sports Hall of Fame, Northern Anthracite Chapter (inducted 2003). He is married to Carol R. Oakes and is the father of one son.

**Michael E. Wilens** is president and CEO of West, Thomson's North American legal information business. During his tenure, West expanded into software, marketing services, and legal education. Prior to this appointment, Mr. Wilens was chief technical officer for Thomson and West, and was responsible for the development of Thomson's global technology platform. Prior to Thomson, Wilens held senior management positions with Groupe Lagardère, Lawyers Cooperative Publishing and Healthcare Knowledge Resources. He holds an M.B.A. and an M.S. in computer science from the University of Michigan and an S.B. and S.M. in electrical engineering from the Massachusetts Institute of Technology.

**Robert Charles Williams** was born in Sutton Coldfield, Warwickshire, and educated at Bromsgrove School and Worcester College, Oxford (M.A., Jurisprudence). Called to the bar in 1973 (Inner Temple), he practiced in the Temple and in Grays Inn until 1976. Mr. Williams joined the Incorporated Council of Law Reporting for England and Wales in 1976 as a supernumerary reporter, and on contract from 1977. He was appointed Reporter in the Court of Appeal in 1980; assistant editor of the Weekly Law Reports in 1982; and managing editor of the Weekly Law Reports in 1991; and has served as editor of the Law Reports and the Weekly Law Reports from 1997. He and his wife Caroline have three sons, two of whom have now finished university (graduating in History at St. Andrews and Fine Art at Dundee); the



third has just completed his penultimate year at New College, Oxford, reading Greats (Classics). He sings in various amateur choirs and in the choir at All Saints Church, Blackheath, London, where he also is a churchwarden.