

I Want My Court Re

By Stephanie K. Marshall

How courts are working to provide public access to electronic court records

Program H-6: “Electronic Court Records: Strategies for Balancing Personal Privacy and the Public’s Right to Know”

Presenters: **Jonathan C. Stock**, coordinator and moderator, Connecticut Judicial Branch; **Alan C. Carlson**, Orange County Superior Court; **Judith Meadows**, State Law Library of Montana; and **Martha Wade Steketee**, Independent Consultant.

Wouldn't it be nice? I want to live in a world where *all* court records are as easily accessible electronically as U. S. Supreme Court opinions. Searching for documents filed in active court cases can be either frustrating or very expensive. Why is it so difficult to access this information?

This question led me to attend the Annual Meeting program, “Electronic Court Records: Strategies for Balancing Personal Privacy and the Public’s Right to Know,” at which three speakers shared their trials and tribulations in dealing with electronic public access to court records. I found the program highly informative and now have a much better understanding of the complexity involved.

They Are All Public Documents

Jonathan Stock, moderator and coordinator from the Connecticut Judicial Branch, opened the program with a brief explanation of the task at hand. The challenge in the court’s ability to deal with advancing technology is the issue that inspired this program.

In 2001, the National Center for State Courts (NCSC), the Justice Management Institute (JMI) for the Conference of Chief Justices (CCJ), and the Conference of State Court Administrators (COSCA) began a national effort funded by the State Justice Institute (SJI) to create a policy, or set of guidelines, for providing public access to electronic court records. The first two speakers discussed the creation and progress of this national effort, and the third and final speaker discussed the current use of the guidelines.

How the Guidelines Were Built

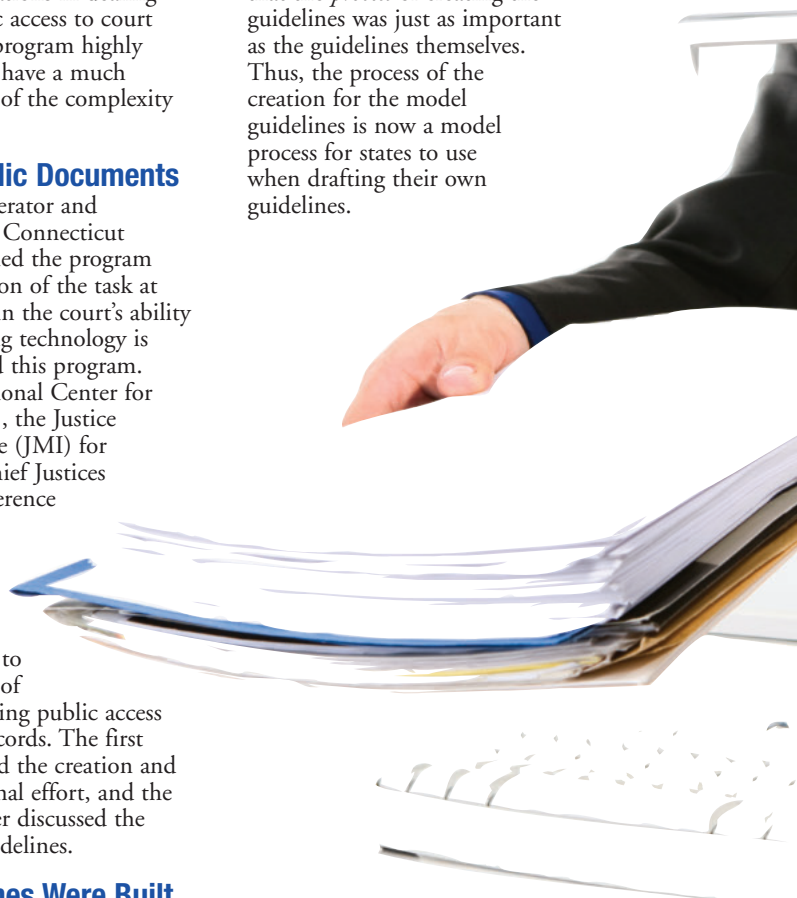
Presenter Martha Steketee, an independent consultant who has been a research associate for the Washington Office of the National Center for State Courts’ Research Division, reported on the history of the model policy. The project was staffed by nine members and had a very diverse advisory committee of members, including representatives from the judiciary, law enforcement, media, publishing industry, and privacy advocates. All meetings were open to the public with comments allowed. The initial model draft was released and a public hearing was held with invited

representatives. Finally, guidelines were submitted for approval in 2002 and, ultimately, both associations approved and promulgated them.

The committee came to realize that the *process* of creating the guidelines was just as important as the guidelines themselves. Thus, the process of the creation for the model guidelines is now a model process for states to use when drafting their own guidelines.

What They Do and What They Don’t

The guidelines are not a lot of policy; rather, they provide a framework for a policy. They don’t provide requirements, any particular levels of access, or mandates for the transition to electronic from paper records, specific language, or internal court policies. The guidelines assume some initial premises: court records are open and available to the public, access should not change



depending on the form (paper or electronic), and policies should be applied consistently and not arbitrarily.



Status of Adoption

Presenter Alan Carlson, chief executive officer for the Orange County Superior Court, was the president of the Justice Management Institute and also an original drafter of the guidelines. Carlson spoke remotely by telephone about how the guidelines are currently incorporated into state policies. Courts have many motivators for providing greater access to

public information, especially now with the current financial situation and the need to minimize staffing. The guidelines offer a way to organize the discussion and creation of policies for individual states. The committee surveyed states in 2002 to see how and if they were using the guidelines. The results from the survey widely varied but many things were consistent, such as the issues that were addressed.

Hot Topics

Confidential information, such as liabilities in a divorce case, is required by the courts but not necessarily beneficial to the public. Even in a final divorce decree, financial data such as account numbers are listed, thus providing the potential for identity theft.

Another hot topic: Who is responsible for the redaction of information before the documents become publicly available? Redacting such information requires a great expense of both money and time. Is the party responsible, or the clerk? What happens when a party is *pro se* and does not understand the consequence of omitting personal identifiable information? Also, what about identity of jurors? Deciding what juror information to make public in a specific case could compromise his or her personal safety.

Where the Rubber Meets the Road

Speaker Judith Meadows, director of the State Law Library of Montana, chaired the Montana Supreme Court's Privacy Taskforce, which developed its Rules of Privacy and Public Access to all Montana courts. Montana created an Interdisciplinary Taskforce with a diverse membership that met monthly and went through the guidelines just as they were written.

Montana's guidelines were approved on February 13, 2007. Meadows stated that the guidelines became effective one year ago and that there have been many complaints since. The taskforce was not instructed to figure out *how* attorneys would comply with the rules—and the *how* has caused many problems. One area of controversy involves defining what is a “court record”? Judges did not want their notes, recorded while on the bench, to be included as a court record. The taskforce also determined there would be no virtual obscurity; they felt that making a document available only at the courthouse rewards those with resources and leaves those without at a disadvantage.

Additional areas of concern for the taskforce include the identity of victims; Montana created sensitive data sheets that can be sealed separately from the case documents to eliminate having to redact the data.

Now What?

Librarians could and should be involved with the creation of privacy guidelines for their states. Thanks to this enlightening panel, we can all step up and get involved. I highly recommend that anyone who missed this program purchase the audio recording and find out more about this important issue. ■

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For More Information:

Download **free copies of the program handouts** and purchase an **audio recording** of this session online at AALL2go: www.softconference.com/aall/default.asp.