



UNC
SCHOOL OF LAW

NORTH CAROLINA JOURNAL OF LAW & TECHNOLOGY

Volume 11
Issue 3 *Laura N. Gasaway Tribute*

Article 3

3-1-2010

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Kenneth D. Crews

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Recommended Citation

Kenneth D. Crews, *Tribute to Laura Gasaway*, 11 N.C. J.L. & TECH. 411 (2010).
Available at: <http://scholarship.law.unc.edu/ncjolt/vol11/iss3/3>

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TRIBUTE TO LAURA GASAWAY

Kenneth D. Crews *

Who was this incredible person paying attention to copyright and libraries, long before we knew the digital and Internet challenges that lay ahead? Professor Gasaway, from the distant and enticing place called Oklahoma—and soon heading to North Carolina—was nearly alone in taking the copyright message to libraries.¹ I was transitioning from law practice and working on a doctorate at UCLA, and my study of copyright kept taking me back to the work of Laura Gasaway.

Nearly alone, she was scrutinizing the meaning of § 108 of the U.S. Copyright Act. She was struggling with the demands of library preservation. She was grappling with the practical functioning of interlibrary loans. Professor Gasaway was writing steadily and searching for the meaning of copyright in the modern library of diverse works and transformative technologies. Look at this prophetic statement from 1983: “The electronic publishing of journals in lieu of publication in hard copy or microform is currently being considered as an alternative publication form by publishers of scholarly, scientific, and technical journals.”² Sure, we were fiddling with Lexis at that time, but few people in 1983 foresaw the disappearance of print journals.

Professor Gasaway’s writings instantly became an essential foundation for my work. Through the strength of her character and the goodness of her heart, she also became a mentor. I was a student of library science at UCLA, when I attended an annual meeting of the American Association of Law Libraries. I would

* Director of the Copyright Advisory office at Columbia University and faculty member of the Columbia Law School.

¹ For an example of Professor Gasaway’s early venture into the complications of copyright, see Laura N. Gasaway, *Nonprint Works and Copyright in Special Libraries*, 74 *SPECIAL LIBS.* 156–70 (1983).

² *Id.* at 167.

not let this chance to meet slide by. We corresponded in advance, and we relayed messages from hotel to hotel. (Glimpse from the past: We were communicating by telephone calls to hotel front desks.) We finally crossed paths at the Chicago conferences. My first surprise was to discover that a copyright scholar can multitask at conferences. She was attuned to the proceeding while also knitting aggressively. I have no idea who is wearing that scarf or hat or sweater today, but I knew that this was going to be a fun break from the conference routine.

I was still the copyright nerd, deeply immersed in thoughts of a doctoral dissertation, and eager to know Lolly Gasaway, the leader of the intellectual tribe. She immediately became a central figure in my work and career. We embarked on years of sharing ideas and comparing notes. She was an insightful and persuasive reference as I entered the academic job market. She has for years been a partner in the reckless adventure we know as copyright.

Throughout years of working together, I am left with only one moment of doubting her wisdom. In the early 1990s she dropped me a note (yes, academics once wrote messages with pen and paper) about a copyright listserv (a radical innovation at the time) that was emerging as an exchange of ideas among a community of copyright converts. She compelled me to sign up for this new concept called “email” with the preposterous observation that it was “fun.” Little did we know where that fun would go. Email was just the beginning of the digital transformation of information and libraries. It would also propel all of us into new and more complex copyright challenges. The “fun” was just beginning.

For Lolly and me, the digital revolution took us to Washington, D.C. to indulge in the hostage taking that is more politely called the Conference on Fair Use, better known as “CONFU.”³ For more than three years, we attended meetings almost monthly to debate and posture on questions of fair use for the education and library communities. Lolly took the lead on distance education issues. I held some sway over electronic reserves. We were

³ FINAL REPORT TO THE COMMISSIONER ON THE CONCLUSION OF THE CONFERENCE ON FAIR USE (Nov. 1998), see <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf> (last visited Feb. 19, 2010).

eventually to discover that the CONFU environment was inherently going to fail in its goal of devising realistic interpretations of fair use. Amidst the frustrations, however, we made many deep and lasting ties to copyright colleagues. We also had the joy of learning first hand that the digital demands on copyright in libraries were not prone to easy or single solutions. CONFU had the contrary effect of actually undercutting efforts to restructure fair use into simple or negotiated guidelines.⁴

Lolly carried those experiences forward in many ways. Perhaps most important for all of us, she co-chaired the § 108 Study Group.⁵ Appointed by the Library of Congress in 2005, the group had some of the same awkward challenges of CONFU. With Lolly's leadership, however, the mistakes of CONFU could be wisely avoided. The Study Group issued its report in early 2008, proposing possible revisions of the § 108. It was full circle for Professor Gasaway. She was among the first to take a critical look at the statute following its enactment in 1976. She had become part of the team to rethink the law.

The future of the recommendations for revision of § 108 is yet unknown, but like so many other copyright issues, the proposals have drawn strong support and outspoken criticism. Lolly knows that this is not the stuff of polite conversation. The advancement of copyright in the education and library communities can be exhausting, painful, and even vicious at times. She is the right person for that thankless job. Lolly Gasaway has made a career of making sense of the senseless, and finding meaning in the clumsiness of copyright law.

This is the world of copyright law that has emerged around us. Professor Gasaway understood at the beginning its significance and tensions. Most important, she helped all of us comprehend the transition from paper to electrons, and she was there to press diplomatically when we failed to realize an effective path between

⁴ For my own take on the lessons of CONFU, see Kenneth D. Crews, *The Law of Fair Use and the Illusion of Fair-Use Guidelines*, 62 OHIO ST.L.J. 599-702 (2001).

⁵ For the background and the final report of the Study Group, see Section 108 Study Group, <http://www.section108.gov/> (last visited Feb. 19, 2010).

the law and realistic needs of researcher, libraries, authors, and publishers alike. That has been the charm and the compelling force of Professor Laura Gasaway.