Law, Policy, and the Convergence of Telecommunications and Computing Technologies

March 7-9, 2001

Welcome   **March 7, 2001**

DEAN JEFFREY S. LEHMAN: Good afternoon. My name is Jeffrey Lehman, and as the Dean of University of Michigan Law School, it is my privilege to welcome you to the Park Foundation Conference on Law, Policy, and the Convergence of Telecommunications and Computing Technologies. I am delighted to welcome you here this afternoon and to welcome those of you who are watching on the Web Cast.

This conference has brought to our campus a truly extraordinary assemblage of talent and experience. I would like to pause and say a few words on how we actually reached this day. When we chronicle the evolving nature of human society, we often concentrate on the relationship between people and their technology. We frequently divide human prehistory and human history into ages according to the prevailing technology. Thus, human prehistory is described by reference to the dominant material used in fabricated tools--the Bronze Age and the Iron Age. We describe the late 19th century and most of the 20th century by reference to developments in the way people move themselves from place to place--the automotive Age, the Jet Age, and ultimately the Space Age. At the end of the 20th century, our focus shifted away from the displacement of the human body from place to place. Instead, we concentrated on changes in the relationship between human beings and information, and what a remarkable development that was. Think, if you will, about the span of human history before the information age. There had been relatively trivial changes in the way that people analyzed information since the abacus, in the way that people stored information since Gutenberg, in two-way communication since Samuel Morse and Alexander Graham Bell, and then came the past quarter century. Technological developments fundamentally altered the ways in which we remember, the ways in which we think, and the ways in which we remember/share ideas.

Our first impulse was to categorize these breathtaking developments in basic science and engineering from the perspective of the end user. We call them developments in computing technology on the one hand, and telecommunications technology on the other. But now even that categorization no longer makes sense. Everywhere we look we see inanimate objects that are able to do everything--they store information, they process information, they share information with other inanimate objects in distant locations. For individual human beings the implications are overwhelming. Think about how we spend our waking hours. Think about the activities that we undertake each day to generate income and wealth. Think about the ways we choose to stimulate our minds and to nurture our spirits today. Think about how many minutes each day that we now spend analyzing lost clusters and deciding whether to delete lost chains. Those implications are equally overwhelming when we think about our collective lives. The world is becoming democratized and internationalized. Nation states and multi-national organizations are now confronting separately and together a host of fundamental questions of collective action--questions that we sometimes describe as questions of law and policy.

In considering those questions of law and policy, I would submit that our society looks to universities to play a distinctive supporting role. That role derives in part from our weakness. Unlike the institutions of government, we have no power to make our policy ideas binding. That is a good thing. It does not make us neutral, but it makes us safer and less threatening. Moreover, unlike the institutions of the private sector, we have no need to take action tomorrow or the next day. We do not need to justify the time we spend pursuing an idea. These distinctive qualities of universities have their costs, to be sure, but they also have their benefits. We can take a longer view, we can ask questions for their own sake, we can ruminate, we can reflect, and we can undertake the slow and painstaking work of ongoing research that might have very little likelihood of leading to a profitable result. Hence, this conference.

The premise of this conference is that leaders in the world of action-- leaders in government and leaders in the business world--are closest to the most important legal and policy questions raised by technological convergence. And those leaders are uniquely positioned to frame those questions. The premise is that thoughtful leaders in the world of action sometimes wake up in the middle of the night wondering where this is all leading, and that when they go back to work in the daytime, they have neither the time nor the resources to pursue the question very deeply. And here is where the special role of the university can help. We have invited those leaders to come to Ann Arbor these three days, we have challenged them to reflect upon the issues of law and policy that they believe are the most challenging and significant, today, five years from now, ten years from now. Each panel will consider a different domain. Each will be led by someone who's exceptionally well-placed to reflect in that way. Then we have surrounded those leaders with discussants. Some of the discussants are also, in their own right, leaders in the world of action. Most of the discussants are academics--accustomed to using the tools of one or more academic disciplines to probe, to test, and to understand. And then we are surrounding the panelists with you, our audience--a heterogeneous audience of interested and engaged participants.

Each panel discussion will include time for questions and answers and comments, which we encourage you to submit on cards as the panels are proceeding. There will be people in the aisles waiting to take your questions. Also if you look in the yellow packets that you received when you were registering, you will find seven yellow sheets. There is a sheet for each panel discussion. Each sheet includes five questions, they're the same five questions for each panel. We will be reserving five minutes at the end of each panel for you to complete those sheets. Please take the time to do so. We will be tabulating the responses to those questions and we will be posting the outcomes on the conference Web site. And we will be using the responses to help frame the research agenda that we hope will be one of the ultimate products of this conference. In the yellow folders there are also blue evaluation forms for the conference as a whole. We encourage you to fill those out as well. And if you are seeking continuing legal education credit for your attendance here, there's a place to sign up out in the hall.

This conference has been a huge undertaking and I want to thank the many people who had a hand in its production. I want to start by thanking the Park Foundation, and in particular, Jerry Libin of the Park Foundation board. This conference would not have happened were it not for the Foundation's commitment to support research and study of these issues expressed through an extraordinarily generous grant to the Law School. I also want to thank the individual leaders of the other parts of the University who are jointly sponsoring this event. I am speaking here of

the President's Information Revolution Commission, the Business School, the College of Engineering, the Communications Department of the College of Literature, Science, and the Arts, the Gerald R. Ford School of Public Policy, and the School of Information. The breadth and depth of talent and knowledge and experience that is found in those commissions, departments, schools and colleges is unsurpassed anywhere in the world, and the spirit of collaboration that this university sustains--a spirit that actively supports efforts to draw people to work together on projects such as this is one of several reasons why the whole of the University of Michigan is so much greater than the sum of its parts. I also want to thank the student editors of the Michigan Telecommunications and Technology Law Review, and especially SallyJean Tews, for their hard work and commitment in helping to support the logistics of this event--from speaker ideas to postering [sic], to speaker management and to the publication of these proceedings. If any members of the audience have any questions as the conference unfolds, I encourage you to seek out one of the editors of the journal. They have nametags with blue ribbons that say "host" on them. Finally I want to thank the other members of the planning committee at the Law School--Edith Baise, Trey Boynton, Lisa Mitchell-Yellin, Nancy Marshall, David Siegel, and Amy Smith. Their hours and hours of hard work and planning have produced a conference that we can all be extremely proud of.

So now it's time to begin, and we begin with the William W. Cook lecture on American institutions, to be delivered by Joel Klein. When William W. Cook died, he bequeathed funds to the University of Michigan to inaugurate a distinguished lecture series on American institutions. Cook believed that institutions matter more than the forms of wealth that are tradable in the marketplace. And he cherished those American institutions that he conceived to be distinctly legal. His list included the written constitution, popular sovereignty, universal suffrage, federalism, judicial review, separation of church and state, and equality of opportunity.

Between Cook's death and today, 39 different sets of Cook lectures have taken place. Their subjects are listed on the back of your program. Each series has explored one or more American institutions, usually in the context of a larger problem. If Cook were alive today, I'm confident that he would be impressed to see how broadly the lecture series has ranged across the many different institutions that contribute to American social, political, and intellectual life. With each round of Cook lectures we are tempted to ask ourselves a question--what makes this topic so especially American? The lectures are supposed to be, after all, about American institutions. And each year we must ask ourselves what justifies the implicit claim that a topic of potential universal interest is also a particularly American interest. Some years this question is not so difficult. Consider, for example, 1961/62, which was about the Supreme Court palladium of freedom. Some years the question is a bit more challenging, such as 1971/72, where the topic was simply frontiers of ignorance.

This year, to begin the Park Conference, Joel Klein will consider the role of government in the emerging high-tech global economy. Mr. Klein is perhaps uniquely well qualified to reflect upon the interaction between government and the high-tech private sector. A graduate of Columbia College and the Harvard Law School, Mr. Klein clerked first for Chief Judge David Bazelon on the DC Circuit, and then for Justice Lewis Powell at the Supreme Court. He worked at a public interest law firm, the Mental Health Law Project, and then spent 17 years in private

practice in Washington, DC. In 1993 he joined the Clinton Administration--first in the White House Council's office and then in the Justice Department's AntiTrust Division. His four-year tenure as the head of the division was one of the longest in our nation's history. Needless to say, his prominent leadership in the Microsoft case made him a household name. But as important as the Microsoft case was, it was only one element of a portfolio that placed Mr. Klein at the center of every major policy discussion about how our regulatory system should adapt to a changing technological reality. A month ago he agreed to become the Chairman and Chief Executive Officer of Bertelsmann, Inc., overseeing the American corporate functions of the world's third largest media conglomerate. Please join me in giving a warm welcome to our 40th William W. Cook lecturer on American Institutions, Joel Klein.