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Confidentially Speaking: American Libraries and the USA PATRIOT Act

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“As nightfall does not come at once, neither does oppression. In both instances, there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be most aware of change in the air, however slight, lest we become unwitting victims of the darkness.” — Supreme Court Justice William O. Douglas

The U.S.A. Patriot Act (the “United Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act”) was passed in 2001 within weeks of 9/11. Americans’ negative reactions to particular aspects of the restrictions established by this legislation was swift and widespread. This reaction was, perhaps, nowhere better exemplified than among librarians across the country (Laura Bush, the librarian-wife of the President, notwithstanding), who were now bound by law to “provide appropriate tools required to intercept and obstruct terrorism.”

Library responses came at the local level: “Some Librarians Use Shredder to Show Opposition to New F.B.I. Powers,” declared a *New York Times* article describing how librarians in the Santa Cruz, California public library had begun to routinely shred documents related to patrons’ reference questions and requests for books. At the state level, librarians sought to determine whether state laws, like New Jersey’s Library Records Confidentiality Statute, could be used to override the new federal law (it is believed that they can, though this has not yet, to my knowledge, been put to the test.)

The reaction of librarians nationwide was powerfully reflected in a Resolution adopted by the American Library Association (ALA, one of the largest organizations of professional librarians in the world) at its midwinter meeting in 2003. In response to legislation that has been described as “one of the more dramatic and far-reaching pieces of legislation ever passed by the U.S. Congress,” the ALA Resolution declared that the Association “opposes any use of governmental power to suppress the free and open exchange of knowledge and information or to intimidate individuals exercising free inquiry...” (1)

It is important to point out, however, that the Patriot Act is in no way the first (nor, undoubtedly, will it be the last) threat to American libraries and intellectual freedom. At the height of what has become known as “the McCarthy Era” in America, for example, legislative efforts, intended to protect America from Communist infiltration, attempted to restrict what

individual Americans could read. In 1953, the Westchester (New York) Conference of ALA, along with the American Book Publishers Council, issued a response to these attempts to control the availability of books. "The Freedom to Read," document, as it was named, noted that "[m]ost such attempts [to restrict access to particular books] rest on a denial of the fundamental premise of democracy: that the ordinary citizen, by exercising his critical judgment, will accept the good and reject the bad." (2)

It is also worth remembering that libraries' championship of intellectual freedom is in no way limited to threatened government intervention. As long as there have been libraries, there have been private individuals and groups who object to certain books that may be in library collections. The top three reasons, by the way, for challenging access to certain publications (including, today, non-print media) are that the material is a) sexually explicit, b) that it contains offensive language, and c) that it is unsuited to a particular age group. These efforts to keep certain materials from making their way to library shelves occur at every level, most notably, perhaps, at the local one, where parents and church groups may find certain material (often remarkably tame, by most standards) objectionable. One response to these attempts to control library selections was the creation by ALA of "Banned Books Week" in 1982. This annual event is observed during the last week of September each year. It "celebrates the freedom to choose or the freedom to express one's opinion even if that opinion might be considered unorthodox or unpopular *and* stresses the importance of ensuring the availability of those unorthodox or unpopular viewpoints to all who wish to read them." (3)

Another government-related episode that threatened intellectual freedom in American libraries occurred in 1986, when the FBI's "Library Awareness Program" (LAP) tried to identify potential subversives by using library patrons' borrowing records. Robert Park, an opinionated (and, happily for us, quite witty) scientist and observer of the American scene described this earlier episode:

Unfortunately, the goal of the program was not to improve the literacy of agents. WHAT'S NEW [Park's newsletter] stumbled on the story first in 1986 after a trench-coated FBI agent asked a student working at the University of Maryland Physics Library for the record of all books checked out to a visiting foreign scientist. The agent resembled Inspector Clouseau more than Elliot Ness. The student called the science librarian. Maryland is one of 38 states in which library records are protected by law, and in the absence of a court order, the librarian refused. After *The New York Times* picked up the story a year later, the FBI ran checks on 266 people who had been publicly critical to see if they were part of a Soviet plot to discredit the program. (4)

A marvelous cartoon that appeared in the *Fort Lauderdale News & Sun Sentinel* during this time depicts a hapless little girl with copies of *Little Red Riding Hood*, *The Red Pony*, *The Red Badge of Courage* (you get the idea), being set upon in a library by an agent peering through the stacks, ordering "FREEZE! FBI!" The caption: "The Feds snare yet another subversive in their library awareness program dragnet."

Although it has been suggested that libraries usually reflect, rather than create intellectual trends, in the case of the USA Patriot Act, librarians have been remarkably proactive in their

responses to its library-related stipulations. As noted, ALA and its myriad offices, sections, and committees have been kept extremely busy. Among the many recently generated ALA documents is something called *Confidentiality and Coping with Law Enforcement Inquiries: Guidelines for the Library and its Staff*. These guidelines were developed to assist libraries and library staff in dealing with law enforcement inquiries by FBI agents and officers of state, county, and municipal police departments. They tap into a number of already-existing ALA documents including the following titles (all of which are available online through the ALA website):

- Privacy: An Interpretation of the Library Bill of Rights
(<http://www.ala.org/Template.cfm?Section=interpretations&Template=/ContentManagement/ContentDisplay.cfm&ContentID=34182>)
- Questions and Answers on Privacy and Confidentiality
(<http://www.ala.org/Template.cfm?Section=interpretations&Template=/ContentManagement/ContentDisplay.cfm&ContentID=34114>)
- Policy on Confidentiality of Library Records
(<http://www.ala.org/Template.cfm?Section=otherpolicies&Template=/ContentManagement/ContentDisplay.cfm&ContentID=13084>)
 - Suggested Procedures for Implementing Policy on Confidentiality of Library Records
(<http://www.ala.org/Template.cfm?Section=otherpolicies&Template=/ContentManagement/ContentDisplay.cfm&ContentID=20013>)
 - Policy Concerning Confidentiality of Personally Identifiable Information about Library Users
(<http://www.ala.org/Template.cfm?Section=otherpolicies&Template=/ContentManagement/ContentDisplay.cfm&ContentID=13087>)
 - Code of Ethics
(<http://www.ala.org/ala/oif/statementspols/codeofethics/codeethics.htm>)

Libraries – and any individual, for that matter – are also referred to sites on Privacy and Confidentiality (<http://www.ala.org/Template.cfm?Section=ifissues&Template=/ContentManagement/ContentDisplay.cfm&ContentID=49156>); Intellectual Freedom Issues (<http://www.ala.org/ala/oif/ifissues/Default883.htm>); and to something called a Privacy Tool Kit (<http://www.ala.org/ala/oif/iftoolkits/toolkitsprivacy/Default4517.htm>).

Most recently, in January of 2005, ALA announced the initiation of a set of surveys to assess the impact of the USA PATRIOT act on America’s libraries and library patrons. Working with several teams of academic researchers, ALA is seeking to quantify and examine contacts by federal law enforcement agencies in public and academic libraries. A press release observes, “[a]s homeland security tops the 109th Congress’s list of priorities and parts of the PATRIOT Act are scheduled to sunset in December, 2005, ALA seeks to ensure that library patron privacy is preserved.”

It is extremely important to remember, though, that even if the Act is “sunsetting” in December, **90%** of it will remain in place. Beyond that, “sunsetting,” such as it is, is extremely unlikely to happen by the December deadline: President Bush recently called on Congress to extend sweeping law enforcement powers under the USA Patriot Act. Not surprisingly, the newly-appointed U.S. Attorney General Alberto Gonzales, in his first policy speech, called upon Congress to renew the Patriot Act and expressed his willingness to support additional restrictions that might be added to the government’s effort to “keep America safe.” A *Washington Post* article noted that the “thrust of Gonzales’ remarks made it clear that countering terrorism will be his top priority, as it was for [his predecessor, John] Ashcroft. Gonzales’ first trip was to a South Carolina meeting of prosecutors from around the country who were discussing their terrorism cases.” (5)

It is to be hoped that the results of the ALA -sponsored surveys will provide at least some information that will help inform the debate about law enforcement’s role in libraries, as well as the effect that law enforcement activity is having on library users. Preliminary results will reportedly be made available to members of Congress as they debate the status of the sunset provisions. ALA’s press release announcing the surveys notes that the questionnaires being used have been carefully reviewed by the counsel to the American Library Association, to ensure that respondents do not violate the gag order imposed by the USA PATRIOT Act, and, that the U.S. Department of Justice has acknowledged its interest in the results of the project. This expression of interest is a good sign – if it is really acted upon. In his recent book *Gag Rule: On the Suppression of Dissent and the Stifling of Democracy*, the writer/ editor Lewis Lapham aptly quotes Judge Learned Hand as saying, “The spirit of liberty is the spirit which is not too sure that it is right.”

The team of researchers working in tandem with ALA on this project have, it is reported, selected a diverse sample of United States public and academic libraries reflecting geographic, population, and size differences to include in their research. The results of the studies is to be presented as a report at the American Library Association’s 2005 Annual meeting in Chicago this summer. (6)

It may be worth noting that the planning phase of this project was made possible by a grant from the Carnegie Corporation of New York, and that The Knight Foundation is helping to finance these studies “with additional support anticipated from other foundations.” Foundation support can be a double-edged sword, however. This was, perhaps, nowhere better demonstrated than when the American Civil Liberties Union recently returned some \$1.15 million from the Ford and Rockefeller Foundations, on the grounds that these particular grant-givers sought to “ensure that none of their money inadvertently underwrites terrorism or other unacceptable activities....” (7) Since libraries of all kinds – public, private, academic, etc. – often rely on monies from corporate or philanthropic to help stretch their increasingly shrinking budgets, these stipulations are a worrisome development.

Another red flag in library/federal government relations that went up recently was the announcement by Superintendent of Documents Judith C. Russell of a plan to dramatically cut back on the number of government documents traditionally sent to Federal Depository Libraries. While this information will supposedly be made available, eventually, in digital form, librarians

fear that for the present time its absence will make it difficult or impossible for some people to obtain basic government information. The removal of some already-digitized government documents and a sharply curtailed budget for the purchase of print materials by depository libraries has added to the perception – and anxiety - that less and less government information is being made available to the public. (8)

Beyond their function as repositories and disseminators of information, American libraries have always served important social functions, from providing “story hours” for youngsters, to serving as havens for the elderly. They also may be used as forums for political discussion and debate: last fall, for example, the New York Public Library, one of the largest and most eminent libraries in the country (it is both a public and a research library), hosted a program called “Doublethink & Doubletalk: The Art and Politics of Language,” in which a panel of artists and critics examined the ways in which words and images are used to shape opinions and sway emotions. It is good to be able to report that, so far, it appears that such programming has not been subjected Patriot Act-type scrutiny.

Today’s library conference programs certainly reflect current concerns with privacy restrictions in American libraries and beyond. At the annual meeting of the Association of College and Research Libraries in Minneapolis, Minnesota just a few weeks away (April 7-10), participants will consider “The Globalization of Intellectual Freedom in Academic Libraries.” The description of this program notes—and this certainly has bearing on our Round Table this week—that “[g]lobalization of information means that each nation’s laws affect scholarly communication in all academic libraries. The program will include interviews with IFLA/FAIFE (the International Librarians’ Association section on Freedom of Access to Information and Freedom of Expression) members, in an effort to reveal how the diverse cultures of “intellectual freedom” can affect academic libraries worldwide. Participants will discuss the principles of intellectual freedom in a global context, and hear examples of how other countries approach these principles and implement policies. Further, they will consider how a complex international legal environment regarding the Internet affects librarians in their daily professional lives.

At the annual ALA conference this June, a half-day program, also intended for international librarians, is called “How we advocate in the U.S.” Presenters will include public, school, and academic librarians, who promise to provide an understanding of how they try to insure that a climate of intellectual freedom is maintained in their respective facilities. These and similar programs seem to me to be powerful evidence that “libraries and librarianship have a life of their own, diverse and complex, at the same as they are creatures of the intellectual and social structures and environments in which they function...” (9)

I have always been an admirer of Thomas Jefferson. It was Jefferson’s profound love of books, after all, that led him to amass one of the most extensive, carefully-selected libraries in the colonies. Later, when the Library of Congress was destroyed by fire, it was Jefferson’s fine collection—generously donated by him—that became the new foundation of our national library. Jefferson said, “I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by

education.” It is worth noting, I believe, that it was also Jefferson who said, “We in America do not have government by the majority. We have government by the majority who participate.”

Notes

(1) American Library Association. *Resolution on the USA Patriot Act and Related Measures That Infringe on the Rights of Library Users.*

<http://www.ala.org/Template.cfm?Section=ifresolutions&Template=/ContentManagement/ContentDisplay.cfm&ContentID=11891>

Although the Act stipulates that libraries cannot reveal if or when they have been approached by information-seeking agents, Nancy Chang (in Brown – see below) reports that “[w]hile the DOJ has adamantly refused to provide the public with information on its use of Section 215, a survey conducted by the University of Illinois’s Library research Center of 906 public libraries reveals that, in the year since the September 11 attacks, federal and local law enforcement agencies visited at least 545 libraries to request information on patrons.” (p. 45)

(2) Sheila Sues Kennedy, ed. *Free Expression in America*. Westport, CT : Greenwood Press, 1999, p. 139.

(3) Banned Book Week website:

<http://www.ala.org/ala/oif/bannedbookweek/bannedbookweek.htm>

(4) Robert L. Park. *What’s New*, April 11, 2003.

(5) R. Jeffrey Smith, *The Washington Post*, March 1, 2005.

(6) American Library Association press release, January 5, 2005.

(7) Stephanie Strom, “A.C.L.U. Rejects Foundation Grants Over Terror Language.” *The New York Times*, Oct. 19, 2004.

(8) Dan Malone. *Metropolis. fwweekly.com*. Feb. 23, 2005.

(9) Phyllis Dain, quoted in “Libraries and Scholarly Communication in the United States, The Historical Dimension: A Summary,” by Nancy E. Gwinn. *Libraries & Culture*, 23:4, 1988, p. 500. Selected Bibliography

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