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## Libraries and the Balance of Liberty and Security

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# **Libraries and the Balance of Liberty and Security**

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## **Introduction**

The USA Patriot Act has presented librarians in the United States with a dilemma. There is a need to balance national security against values embedded in a long-standing American understanding of civil liberty and human rights. How exactly to maintain the correct balance, or even to think it through, what questions to raise, and what roles librarians and ethicists have in such deliberations in a democracy in which citizens elect leaders to make decisions for them, is still to be worked out. The recent reauthorization of the USA Patriot Act has not put to rest this dilemma. A discussion of the problems created for libraries by the USA Patriot Act and the Foreign Intelligence Surveillance Act has been presented in detail by librarians and information specialists (Jaeger, Bertot, & McClure, 2003 and Jaeger, McClure, Bertot, & Snead, 2004, Martorella, 2006). It initially appeared that the effect on libraries had been reduced in the reauthorized Act and that much called for by the American Library Association (ALA) had been adopted (American Library Association, 2006b, 2006c). However the exact application of the reauthorized Act, and of other security legislation, to libraries remains unclear at this time and continues to be a matter of concern for the ALA (American Library Association, 2006a). Ultimately, the challenges, both to national security and to civil liberties and human rights, will not go away with the passage, or reauthorization, of any one act and the need to maintain the balance of liberty and security, and how to argue for such balance, remain a permanent features of our times.

Failing an overall philosophical and ethical solution to the problem of balancing liberty and security ethicists can begin to address this issue by examining limited and specific responses to the need for balance and then

subjecting these responses to an ethical critique. Such responses may come from many sources. They may be memos issued by government officials in support of torture or Supreme Court decisions limiting the power of the federal executive branch to hold citizens and others indefinitely without hearings or access to legal counsel. They may also be the official pronouncements of non-governmental institutions and organizations made in response to government actions. The latter form of response is especially important because the United States has a long tradition of an active civil society. These are the strong institutions that stand between the government and citizens and through which citizens may act. By offering a buffer and by allowing political culture to develop they are a defense of freedom in modern states. This is a position argued for by a range of writers as diverse as Tocqueville (1945), Arendt (1951) and Oakeshott (1962). As the nation finds the correct balance or, more likely, continues to struggle to find it, such institutions must play their role. It will be by their influence, in their responses, that societal restraint and the preservation of the best of American values will occur.

Therefore, one reasonable area of ethical analysis should be the deliberations of non-governmental organizations. This would not be to criticize such organizations but, precisely because their choices are so important, to strengthen their forms of argumentation and to assist their members in becoming more reflective about, and broad-based in, their selection of arguments. The American Library Association is one such important institution of civil society. As a profession it has a long history of self-governance. As an institution dealing with the organization, preservation, and transmission of information and knowledge much of its history has been one of grappling with the questions of what constitutes freedom of access to information, freedom of thought and expression, and the role of such freedoms in the United States. The number of books written on the ALA's struggles with these issues is a respectable one. Geller (1984), Wiegand (1986), and Robbins (1996) are among the more prominent. It is appropriate, as an ethical exercise, that its forms of argumentation be analyzed in response to the present attempts to restrict such freedoms in the defense of democracy.

In the wake of the September 11, 2001 terrorists attacks the United States Congress passed special security and anti-terrorism legislation which included the USA Patriot Act. This legislation was renewed in 2006. In response to the passage of the Act in 2001, two Councils of the American Library Association passed resolutions CD19.1 and CD 20.1 (reproduced in Appendices I and II) reaffirming the basic principles of the ALA. The following is a study in professional ethics related to the reasoning of the ALA as contained in those documents and of the American Library Association's reasoning as it is generally understood by commentators.

### **Forms of Ethical Argumentation Used by the ALA**

Thinking through is a philosophic endeavor, albeit one which may not be easily available to those in the heat of debate and who have before them the concrete project of formulating a specific policy or resolution. However in the area of professional ethics, and probably especially there, a place must be carved out for the process of thinking through the many ethical issues which must be addressed in making professional decisions. In this case the issues are specific to the library profession (freedom of access to information and confidentiality/privacy of records) but the issues have larger ramifications for society. By thinking through these issues ethicists, professional librarians, and ultimately society as a whole, can be brought to new arguments for, and understandings of, freedom of access to information and for confidentiality/privacy rights.

A review of two early resolutions of the ALA adopted in immediate response to the USA Patriot Act as well as a review of major commentators on library ethics reveals that the dominant forms of argumentation employed by the ALA are either types of utilitarianism or forms of rights discourse that are asserted rather than argued for. The majority of the earlier commentators on library ethics have focused on the ALA's Library Bill of Rights. For instance, Frické, Mathiesen, and Fallis (2000) in an attempt to introduce Rawlsian principles into the field, hold that utilitarianism is the form of argumentation used by members of the ALA in defending the Library Bill of Rights. Doyle (2002) agrees that utilitarianism is the primary form of justification used in the library field but challenges any attempt to ground freedom of access anew in a Rawlsian version of the social contract. Instead, Doyle argues in favor of retaining the utilitarian basis for the Association's arguments. Samek (2001) critiques both the Canadian and American Library Associations' statements of rights and builds on criticisms offered by earlier writers on the American version. Samek cites Baldwin's (1996) criticisms of the rights discourse of the ALA as going beyond what is mentioned in the First Amendment. Furthermore, both Baldwin and Samek point out that the ALA has opposed access limitations based on age whereas the US Bill of Rights is silent on such matters. Baldwin also points out that the Library Bill of Rights does not offer protection to any librarian who would defy legitimate government authority in upholding the principles of the American version of the Library Bill of Rights. Samek points out that Wiegand (1996) has called the Library Bill of Rights an example of "rhetoric unsupported by the legal principles that usually undergird rights."

The utilitarian argument used by the ALA for largely unlimited, and unmonitored, access to library materials, and for confidentiality/privacy, is that such rights or protections produce and encourage the development of divergent opinions and that a diversity of views is necessary for the functioning of a democracy. Frické and others point out the grounding of this argument in Mill's famous 1859 treatise *On Liberty*. Utilitarianism argues that moral decision-making requires a type of calculus, one which attempts to determine "the greatest good for the greatest number." In order to determine the greatest good for a large and complex society many informed

voices must be heard with a variety of goods and choices put forward for consideration. An informed society, the members of which are allowed full access to necessary information, is required for this decision-making process to be successful.

As also noted, such utilitarian notions are often combined in the ethical reasoning of the ALA with a rights discourse. As the commentators point out this discourse is not itself argued for except by referencing the US Bill of Rights or, on rare occasions, the UN Declaration of Rights. Baldwin, Samek, Wiegand (1996), and Wiegand (1986) have mounted respectable criticisms of this grounding.

Both utilitarian arguments and rights discourse are present in CD 19.1 where it states, "The American Library Association believes that freedom of expression is an inalienable human right, necessary to self-government, vital to the resistance of oppression, and crucial to the cause of justice..." and that the ALA "promotes dissemination of true and timely information necessary to the people in the exercise of their rights." CD 20.1 employs similar arguments. There we read that libraries are a "critical force for promoting the free flow of unimpeded distribution of knowledge and information for individuals." It also states that the USA Patriot Act, and related laws, "threaten the rights and liberties guaranteed under the United States Constitution and Bill of Rights" and that "sections of the USA Patriot Act are a present danger to the constitutional rights and privacy rights of library users."

### **Need for Alternative Forms of Ethical Argumentation**

Utilitarianism and rights discourse are woven together in the arguments put forth by the ALA in resisting the USA Patriot Act. Rights discourse tends to reference privacy and freedom of speech while utilitarianism leans more strongly toward supporting access to information. But they are related. Without sufficient expectations of privacy or the confidentiality of library records individuals would fear accessing certain types of information. Access to information makes little sense, at least politically and socially, unless one can use it to speak openly and to advocate for the type of political and social system one believes best. And in general both an individual's thoughts (expressed in personally held notes or in controlled circulation) and one's intimate discourses with important others may be necessary in order to allow for the full development of one's views. Is utilitarianism and the present use of rights discourse the only, or strongest, forms of argumentation that can be made by the ALA, and its members, for freedom of access to information and confidentiality/privacy of records?

First, it must be admitted that in regard to rights discourse the fact that most state governments have recognized some rights to confidentiality/privacy for library records strengthens the ALA's rights discourse-based arguments. A series of US Supreme Court rulings in areas

other than librarianship where privacy rights are central (e.g. *Griswold v Connecticut*, *Roe v Wade*, *Lawrence v Texas*) has strengthened the notion that the right to privacy is implied in the US Constitution in areas beyond reasonable search and seizure protections. On the other hand, conservative jurists, legal theorists and politicians have resisted allowing *Roe v Wade* to rest unchallenged — arguing instead that it was wrongly decided precisely because it was based on what they assert to be a fictitious right to privacy in the Constitution. However, against such arguments it can be noted that prohibitions on federal government access to library records would seem to fall more clearly under Constitutional restrictions on unreasonable search and seizure than most other assertions of privacy rights.

It is generally agreed in legal theory that no right is absolute. There is usually some balancing between various rights as well as between rights and what is taken to be other societal goods or necessities which limit the exercise of rights. For instance the CIPA (Child Internet Protection Act) decision of the Supreme Court has set limits on access by requiring some libraries to install filtering devices. It did so without a majority of justices joining in a decision, thereby leaving the reasons for the decision unclear. The Supreme Court has blocked the enforcement of COPA (Child Online Protection Act) but also failed to declare it unconstitutional. What all the court decisions and conflicting legal theories indicate is that the legal understanding of the limits and full extent of the right to privacy in general, and the right to access information and to the privacy of library records in particular, is not entirely settled. This is especially the case in regard to access rights. The problem in regard to the USA Patriot Act is that it, and related national security legislation, are the newest claims in an unsettled area of law. Such claims are furthermore being made in an environment altered by the terrorist attacks of September 11, 2001. The controversies and differing views around CIPA, COPA, and the Patriot Act should, therefore, be seen as examples of the standard working out of a legal, and a public, consensus concerning the limits and extent of new types of rights claims and of government claims. Given this, an argument against the USA Patriot Act based on the assertion that access and confidentiality/privacy rights are grounded in the US Constitution and Bill of Rights is not a strong argument inasmuch as it invokes precisely that which is under contention.

Utilitarian arguments for the need for free access to information may also be insufficient. They appear to be a particularly “thin” form of argumentation. By this is meant that they are ones that might easily be used to support intrusive government security measures if the threat is seen as strong enough – i.e., when the calculus of goods includes preventing a perceived serious threat to the survival of the nation. Stuart Hampshire (1979) makes a similar point in his critique of utilitarianism. His strongest argument is that utilitarianism is inordinately optimistic in its belief that the adoption of a moral calculus will lead to “progress.” He argues that this optimism is based, in part, on the historical origins of utilitarian thought and the use to which it was initially put. It was, at its inception, associated with

positions that did, in fact, reduce human suffering in the early industrializing nations. Hampshire points out, however, that by the time of Hiroshima and the Vietnam War “abstract computational morality” similar to that of classical utilitarianism could be used to justify the bombing of civilian targets. Such applications of the utilitarian calculus should at least give one pause. One must, therefore, ask if other arguments, drawn from other traditions, can be put forward.

The remainder of the paper will take up alternative forms of ethical argumentation for access and confidentiality/privacy rights. None of the arguments put forth here are completely worked out in regard to the USA Patriot Act and other security legislation. They are offered as an exercise in thinking through the various issues associated with privacy/confidentiality and access facing American librarians today.

### **Philosophical Reflections on Privacy: Modern Claims**

This article will take up privacy as the primary issue. Confidentiality of records can be attached to privacy concerns relatively easily. Access rights will be taken up at the end. Strong phenomenological arguments for privacy have been set forth in a book edited by Ferdinand D. Schoeman (1984). Most of the arguments there present privacy as a prerequisite for autonomy and most take closely related forms. There it is argued that privacy is psychologically and sociologically functional – allowing most of all for the development of the type of self that is a necessary component of healthy communities (Murphy, 1984). A person subjected to too much public scrutiny would lose uniqueness, autonomy, and a sense of herself as an individual. She would be forced to conform too much to others expectations and would become part of an undifferentiated mass (Bloustein, 1984). A sense of oneself as a moral being could not develop unless one were accorded the respect for the individual which privacy conveys (Reiman, 1984, 2004). Privacy relates to the development of a specific type of personality, one that is superior to other forms because it is able to form intimate relationships of trust, love and friendship (Fried, 1984). More recently, Tunick (2001) has held that communitarian notions can be used to bolster privacy rights. Citing the earlier work in the Schoeman volume he argues that community requires mutual trust and that an individual cannot know that she is trusted until she is left alone. Tunick also argues that privacy is necessary for the development of an autonomous individual who is willing to freely obey the law that she gives herself in the community.

All of these arguments are modern, one could say humanistic, ones. They are grounded variously in modern notions of the self, using in part anthropology, in part psychology, and in part phenomenological philosophy to argue that privacy and the becoming of a particular type of self are intimately related. They are most clearly modern in that they tend to universalize this self. At least they make implicit claims that autonomous selves are an ideal. Can such arguments as these, or some versions of them,

be used to buttress arguments for privacy/confidentiality in a world in which universalistic claims are suspect? Can they be used to support rights claims at least within societies such as our own? Before addressing these questions directly it is necessary to look at a postmodern argument.

### **Philosophical Reflections on Privacy: Postmodern Rights Claims**

Richard Rorty (1989) will serve here as the representative of the postmodern view. He is the most useful representative for this paper since he writes from the tradition of liberal democracy. Rorty's main point, one now accepted by most postmodern writers, is that rights are not innate, intrinsic, universal, grounded in nature or given by God. They are historically contingent and created by societies. Postmodern societies, Rorty writes, are characterized by a self-reflectivity that grows out of the knowledge (at least on the part of an educated elite) that the liberal values of such societies are the product of a particular history. A major set of such values are those embedded in claims about human rights. These claims are largely reduced to the belief that one has an obligation to avoid inflicting needless pain and suffering on others (and working to ensure that one's society avoids this as well) and the right not to suffer needless pain oneself. Rorty also holds that postmodern societies, at least in the West, also value self-expression, self-exploration, self-creation and re-creation. Once a culture has recognized that its values are the products of historical contingency its members are then forced, in order to preserve those values, to freely choose them with full knowledge of their contingency. This is effectively a Nietzschean position. Is there some way to incorporate this view into an argument for privacy/confidentiality and access rights? Would such an incorporation strengthen the ALA 's position?

### **Synthesis of Modern and Postmodern Positions**

How does one connect the modern, and largely phenomenological, works discussed above with Rorty's postmodernist views? The first step in doing this is to say that a liberal (broadly defined as one committed to democracy and exhibiting a good deal of tolerance and freedom) and self-reflective (one aware of its own historical contingency and the possible relativity of its own values and types of selves) society might choose not only its values but also choose to preserve certain types of selves or ways of being human. The leading individuals in such a society know that such selves may not be universal ones or even entirely defensible as the best possible selves. Many individuals in this society may even suspect that it will be impossible, or at least very difficult, to define the universally best type of self and would acknowledge that types of selves change slowly over time. Yet such a society might still choose to value and develop individuals who are somewhat autonomous (or experience themselves as such), moral, trusting, loving, self-expressive, and capable of freedom. This is largely Rorty's postmodern liberal democrat combined with the older phenomenological version of a healthy and moral self. If one accepted, as it seems reasonable

to do, that the phenomenological arguments are good ones for the necessity of privacy for such a self to develop and flourish then one would also argue that privacy is to be valued and protected in such a society to the extent that such protection is consistent with national security. This is a simple combination of the two positions. It can, however, be further refined.

First, one does not have to accept a full Rortyan-Nietzschean view of self-creation and value-creation to make this case. There is an argument which would be more acceptable to the general public, more accurate in its description of the historical development of autonomous selves, and which would answer the anticipated objections of some conservative critics. One view of personal identity (an identity that in the West includes the belief in the autonomy of the self) is that it depends on narrative. Personal narratives are caught up in the narratives told about the larger groups to which individuals belong. This is basically a Meadian point (Mead, 1934, Gergen, 1991). However, its most recent philosophical advocate has been K. Anthony Appiah (2005). Appiah has argued that having a specific identity would, in part, be a personal achievement but also determined by those larger narratives. This fitting together of personal and larger narratives to form an identity provides constraint but also makes possible the very existence of a self. One is never fully autonomous and yet one can still choose, within constraints, what type of self one wants to live out in one's life. The freedom to do this may, in fact, be greater in Western societies. At the very least, both liberalism (largely a Western phenomenon) and cosmopolitanism support greater freedom to construct one's narrative and self (Appiah, 2006).

Americans, in their national narrative, as in their personal ones, are constrained by their pasts. But in this case that constraint works to the benefit of those who value privacy rights. There have been competing narratives about the meaning of the United States but it safe to say the dominant American narrative is one that values freedom in the popular sense. An argument made by the ALA for privacy/confidentiality rights based on the treasured American belief in becoming the type of self one wishes to be may be more rhetorically appealing, therefore, than an argument from abstract utilitarianism.

Secondly, there is a deeper Western narrative at stake, and at work – the longer narrative about autonomy than the one Rorty references. Here the final stage of the synthesis can be presented. It is here also that the synthesis can address the anticipated criticisms of conservative critics of liberalism. These critics have detailed a particular conservative critique of liberal societies (Devigne, 1994, McAllister, 1995). Such conservatives are of concern to this study because they are unlikely to give appropriate weight to the preservation of freedom in the balancing of liberty and security. This critique of liberal society sees those elements that Rorty and Appiah admire as causes of a crisis of values. They believe that awareness on the part of too many individuals in a society that its values are not grounded in the transcendent but rather are the product of history and/or choice presents the

greatest problem for a governing elite. Such an awareness creates a problem for culture and for the psychological stability of the members of such societies. In the view of these conservative critics a cause of the crisis of values in such societies is the widely accepted belief in an autonomous self as the source of values. This, in their account, is a belief that becomes dominant and popularized in the Enlightenment but takes its most radical form in Nietzsche.

However, the experience of autonomous self, and the high value placed upon it, has roots deeper than the Enlightenment. An argument can be made that in some form such a self goes back in the West at least as far as early Christianity (Schoeman, 1991, Taylor, 1989). Furthermore, in one such version of this narrative autonomy need not mean creating values but rather means the right and obligation to assent in one's conscience, in one's interiority, to objective moral truths. In this second version of the narrative the individual as an autonomous moral creature is all the more valued for her ability and obligation to give interior assent. This more conservative version can be seen in the catechism of the Roman Catholic Church (United States Catholic Conference, 1997). Rorty does not give sufficient attention to this version of the story, or this version of the autonomous self, in his account but neither do the conservative critics of modernity and postmodernity. More strongly, one could argue that when Rorty speaks of self-creation, and of historical contingency, that he does not give enough weight to the power of the very deep narratives, conditions, and practices that have produced the various, albeit related, versions of an autonomous self in the West. These selves are ones which may differ from other types of selves in significant ways (Yao-Huai, 2005, Nakada and Tamura, 2005, and Capurro, 2005). Contingent we, in the liberal West, may be – but an ancient set of contingencies has produced us. Once we have been so produced there are narrative and other constraints on how easily we can give up our autonomous selves. The rights believed and felt to be attached to such selves could even be said to be innate in that they are now part of a second nature. Even from the conservative perspective outlined above it is hard to see how giving up such a belief in, and experience of, an autonomous self would be done easily or, perhaps, even safely. Finally, given that there are both “Nietzschean” and “Catholic” versions (to give ideal types) of autonomous selves today in Western societies it becomes easier to defend both the autonomous self and the conditions of freedom, including privacy rights, that support and give rise to such selves, since those individuals receptive to such arguments are both many and can be found on both the right and the left.

In regard to access rights, a synthesis of the modern and postmodern views first argues that autonomous selves require access to information and culture in order to be autonomous – in order to choose what types of lives they hope to live out or in order to give true internal assent to what they take to be truth. Secondly, however, the synthesis relies heavily upon the notion of dialogue. The members of modern societies should, inasmuch as they are in fact choosing, or assenting to, their values be sufficiently

sophisticated to know what they are choosing, or assenting to, and why. Here there is a need for a public dialogue and for an informed and cultured public. The need for dialogue is grounded, however, in something other than, but similar to, utilitarianism. It is in the public dialogue that one connects up, in critical ways, with larger narratives and where one works to change or refine both oneself and such narratives. Freedom of access to information and to cultural products are required for this dialogue, consistent with national security needs. This is not an absolutist position on either side. A balancing of rights and national security claims is needed although there can no longer be the rhetoric of a moral calculus. The balancing, a far more tentative one with less claims to certainty than even that of the utilitarians, itself must come out of a public dialogue, which in turn requires access to information and culture. A related consideration is that too many restrictions on access may set in motion a downward spiral in which a society is less and less able to make educated and informed decisions or, worse, correct itself especially as selves undergo changes into less informed and less autonomous ones. The critical and thoughtful individual who might inform and correct public policy may not have the conditions in which to arise, speak, or pass on her views. National narratives, critical and redefining ones, ones which allow a culture not just to live but to thrive, may then be stunted in such a downward process. A second argument here is not the utilitarian one that such a dialogue will likely lead to the greatest good for the greatest number or even lead to truth. Nor is it that dialogue is pragmatic (although it is pragmatic). This second argument is that ultimately such dialogue is constitutive. It is that such a dialogue (dependent upon rights of access to information and to cultural products), just like privacy itself, is constitutive of, and a necessary precondition for, self-reflective societies made up of self-reflective, creative, individuals and for the creation of sophisticated narratives, both personal and national. Privacy, access to information and culture, and public dialogue all cannot be taken out of such societies, nor severely curtailed, without simply making such societies into something other than what they are and, in the process, both gravely endangering the survival of such societies and doing grave psychological violence to their members. This may not be a grounding argument for such rights but it is one that asks that individuals who are doing the balancing to weigh carefully the need for privacy/confidentiality and access rights against national security needs and to hesitate and think long before making their decisions. Destruction of the very types of selves and institutions capable of autonomy and dialogue may, in the long run, be as destructive as terrorist attacks.

### **Return to the American Library Association**

To return, finally, to the ALA 's forms of reasoning. The ALA Councilors, and committee members who participated in the process by which the two resolutions were adopted are themselves highly dialogical beings. They are constituted by particular types of dialogues. Their selves and the process of decision making in a professional organization like the ALA (committee meetings, hearings, debate, and ultimately votes taken in public)

mirror each other. This dialogue is similar to the type of participatory and parliamentary dialogue that takes place in the larger political sphere of liberal democracies. This dialogue, a form of Weber's third source of authority (bureaucratic/parliamentary legitimacy) "feels" legitimate to educated professionals, such as librarians, and is legitimating, because it meshes with who and what they are in their experience of themselves. It is also, although perhaps slightly less so, legitimating to Americans in general. Most of us have been constituted by such dialogues and continue to be so by participating in community, professional, educational and democratic processes. This article argues that the ALA should follow its deepest instincts here. Arguments addressed to the public invoking this understanding of the self and of autonomy, and of the need for dialogue, both popular arguments and more philosophical ones, may be of greater use than the utilitarian ones that are presently employed. (Rights discourse has a stronger rhetorical appeal to Americans – but rights discourse is second nature to the types of autonomous selves we have become.) The one similarity shared by the histories written by Geller, Wiegand, and Robbins is the view that professions are not born virginally from Zeus's brow but grow out of the give and take of internal debate and external threat. It is clear from their accounts that debate in the ALA, prior to the 1970s was vigorous, nuanced, and widespread. Some have questioned whether this is still the case (Rosenzweig, 2004). It remains to be seen if the ALA can engage in a vigorous, nuanced, and internal dialogue about the types of arguments it wishes to present to itself and to the public about core ethical issues. If the ALA fails to meet the test to develop stronger and more sincerely held arguments then it will fail not only itself but the nation which depends upon it as one of the intermediate non-governmental institutions charged with acting within civil society to preserve the balance between individual liberty and national security.

## **Appendix One**

Resolution Reaffirming the Principle of Intellectual Freedom in the Aftermath of the Terrorist Attacks (CD 19.1)

WHEREAS: Benjamin Franklin counseled this nation: "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety"; and

WHEREAS: "The American Library Association believes that freedom of expression is an inalienable human right, necessary to self-government, vital to the resistance of oppression, and crucial to the cause of justice, and further, that the principles of freedom and expression should be applied by libraries and libraries throughout the world" (Policy 53,1.12, "Universal Right to Free Expression"); now, THEREFORE BE IT

RESOLVED: that the American Library Association reaffirms the following principles, and:

Actively promotes dissemination of true and timely information necessary to the people in the exercise of their rights (Policy 53.8, "Libraries: An American Value")

Opposes government censorship of news media and suppression of access to unclassified government information (Policy 53.3, "Freedom to Read;" Policy 53.3 "Shield Laws");

Upholds a professional ethic of facilitating access to information, not monitoring access (Policy 53.1, "Library Bill of Rights;" Policy 53.1.17 "Intellectual Freedom Principles for Academic Libraries");

Encourages libraries and their staff to protect privacy and confidentiality of the people's lawful use of library, its equipment, and its resources (Policy 52.4, "Policy on Confidentiality of Library Records");

Affirms that tolerance of dissent is the hallmark of a free and democratic society (Policy 53.1.12, "Universal Right to Free Expression");

Opposes the misuse of government power to intimidate, suppress, coerce, or compel speech (Policy 53.4, "Policy on Governmental Intimidation;" Policy 53.6, "Loyalty Oaths"); AND, BE IT FURTHER

RESOLVED: that this resolution be forwarded to the President of the United States, to the Attorney General of the United States, and to both Houses of Congress.

Adopted by the ALA Council, January 23, 2002

## **Appendix Two**

Resolution on the USA Patriot Act and Related Measures that Infringe on the Rights of Library Users (CD20.1)

WHEREAS: The American Library Association affirms the responsibility of the leaders of the United States to protect and preserve the freedoms that are the foundations of our democracy; and

WHEREAS: Libraries are a critical force for promoting the free flow and unimpeded distribution of knowledge for individuals, institutions, and communities; and

WHEREAS: The American Library Association holds that suppression of ideas undermines democratic society; and

WHEREAS: Certain provisions of the USA Patriot Act, the revised Attorney General Guidelines to the Federal Bureau of Investigation, and other related measures expand the authority of the federal government to investigate

citizens and non-citizens, to engage in surveillance, and to threaten civil liberties guaranteed under the United States Constitution and Bill of Rights; and

WHEREAS: The USA Patriot Act and other recently enacted laws, regulations, and guidelines increase the likelihood that the activities of library users, including their use of computers to browse the Web or access e-mail, may come under government surveillance without their knowledge or consent; now, therefore, be it

RESOLVED: That the American Library Association opposes any use of government power to suppress the free and open exchange of knowledge and information or to intimidate individuals exercising free inquiry; and, be it further,

RESOLVED: That the American Library Association encourages all libraries, library administrators, library governing bodies, and library advocates to educate their users, staff, and communities about the process for compliance with the USA Patriot Act and other related measures and about the dangers to individual privacy and the confidentiality of library records resulting from those measures; and, be it further

RESOLVED: That the American Library Association urges librarians everywhere to defend and support user privacy and free and open access to knowledge and information; and, be it further

RESOLVED: That the American Library Association will work with other organizations, as appropriate, to protect the rights of inquiry and free expression; and, be it, further

RESOLVED: That the American Library Association will take actions appropriate to obtain and publicize information about the surveillance of libraries and library users by law enforcement agencies and to assess the impact on library users and their communities; and, be it further

RESOLVED: That the American Library Association urges all libraries to adopt and implement patron privacy and record retention policies that affirm that "the collection of personally identifiable information should be a matter of routine or policy when necessary for the fulfillment of the mission of the library." ( *ALA Privacy: An Interpretation of the Library Bill of Rights* ); and, be it further

RESOLVED: That the American Library Association considers sections of the USA Patriot Act area a present danger to the constitutional rights and privacy rights of library users and urges the United States Congress to:

- provide active oversight of the implementation of the USA Patriot Act and other related measures, and the revised Attorney General Guidelines to the Federal Bureau of Investigation;
- hold hearings to determine the extent of the surveillance on library users and their communities; and
- amend or change the sections of these laws and the guidelines that threaten or abridge the rights of inquiry and free expression; and, be it further

RESOLVED: That this resolution be forwarded to the President of the United States, to the Attorney General of the United States, to Members of both Houses of Congress, to the library community, and to others as appropriate.

Adopted by the ALA Council, January 29, 2003.

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