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October 2009

## The Patriot Act and Early ALA Action: Habermas, Strauss, or Derrida?

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## The Patriot Act and Early ALA Action: Habermas, Strauss, or Derrida?

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### Introduction

In the wake of the September 11, 2001 terrorist 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 (ALA) passed resolutions reaffirming the basic principles of that organization. The following is an account of how two early ALA Council resolutions CD 19.1 (Midwinter 2002) and CD 20.1. (Midwinter 2003) were drafted and brought to Council. (For the wording of the resolutions see Appendices 1 and 2).

However, the following is more than an account of ALA Council deliberations. It is also a reflection upon the nature of political and social discourse and the fixing of meaning. It asks whether the deliberations of the ALA support Habermas's (1983, 1989) notions of an undistorted speech situation as that which should, or can, be an ideal for public deliberations, or Leo Strauss's (1952) views on the strategic use of silence, ambiguity and contradiction as necessary for important forms of dialogue and for political functioning or Derrida's (1976) assertion of infinitely delayed meaning.

### Methods

Transcripts of the ALA Council Midwinter discussions of CD19.1 (American Library Association 2002) and of CD20.1 (American Library Association 2003) were requested from the ALA and reviewed. Also reviewed were minutes of the 2002 and 2003 Midwinter meeting of the Committee on Legislation (ALA Committee on Legislation 2002, ALA Committee on Legislation 2003) and minutes of the 2003 meeting of the Intellectual Freedom Committee (ALA Intellectual Freedom Committee 2003). Individuals identified as speaking at these deliberations, or who were recorded by name as having played some role in the formation of the resolutions, and for whom there was contact information in the *ALA Handbook of Organization* for 2001/2002, were contacted from November 2003 to January 2004 and asked to respond to a questionnaire concerning the proceedings. Each individual was asked to supply the names of others who, in their view, played an important role in the process and such individuals were then contacted, sent a questionnaire, and asked to supply more names. A total of sixteen individuals were contacted in regard to CD 19.1, of which four responded. Twenty-two individuals were contacted in connection with CD 20.1, of which seven responded. Most responded by email or with written comments. A small number preferred telephone interviews, in which the questionnaire was strictly followed. The respondents, although small in number, provided a rich supply of information on which to base the following account.

## Framing and Passage of 2002 CD 19.1 and 2003 CD 20.1

One respondent emphasized the cooperation of the Intellectual Freedom Roundtable (IFRT) and the Intellectual Freedom Committee (IFC) in the drafting of CD 19.1. This person said that the issue originated in the IFRT where a draft resolution was produced and submitted to the Intellectual Freedom Committee which edited it and brought it, with IFRT co-sponsorship, to the Council floor. Another individual also mentioned the Committee on Legislation (COL) but said that roundtables played a significant role. One individual stated, "SRRT, IFRT, IFC, COL. The first two are roundtables and they had the most input." The same individual stated that the Social Responsibilities Roundtable's (SRRT) input was accepted by the IFRT in its formulations but then adds that IFRT ultimately decided to write its own resolution rather than modify SRRT suggestions. Another individual, without going into origins and pathways, stated that there were conflicts and that, in her view, the roundtable suggestions were "partisan" and "extreme". She went on to say that the IFC rewrote the proposal to "move it toward a professional statement". Another respondent faults the SRRT as taking positions that were unlikely to garner support. This individual states "Other resolutions on the response to 9/11 were circulating before the conference. Several were written by members of the SRRT. While many of us were sympathetic to the concerns expressed in those resolutions, they approached the issues in such a confrontational manner that it was pretty clear that there was no way they could win wide-spread support in the highly charged atmosphere following 9/11." This same individual stated, "The IFRT subcommittee went into the process with the intent of crafting a document most librarians could agree with, whatever their sense of patriotic fervor and desire to support the government and fight the attack on our country." A defender of the SRRT position, in describing both CD 19.1 and CD 20.1, maintained that SRRT wanted more "principled" resolutions which addressed a more general, or inclusive, set of civil liberty issues. I will, therefore, use the terms "moderate" and "principled" in this paper to describe the two positions since these terms describe how the two sides saw themselves.

It appears, therefore, that the IFRT and IFC were the major players in drafting the version of CD 19.1 that made it to the floor. Other versions, perhaps drafted by SRRT members, existed prior to the conference and perhaps were debated in various forums at the conference. The Committee on Legislation also appears to have played a role and convinced IFRT and IFC to change some wording in the resolution before it was brought to Council. SRRT also had some input but this may have been primarily via IFRT. The final resolution was brought before the Council by the IFC and IFRT and without formal SRRT support. This may have been due to timing. One respondent, a member of the SRRT, noted that the SRRT did not have an opportunity to endorse the version that was put forward in Council. He said, "Two reasons for this worth emphasizing are: one, the unfortunate timing of meetings (a chronic ALA conference problem) meant that SRRT's meetings were over by the time IFRT and IFC were looking for co-sponsors for their version; two, there was no formal liaison relationship instituted yet between IFRT or IFC and SRRT. Immediately pre-conference, formal liaisons between IFRT and SRRT were established, but it was not until the end of this particular conference that routines were put into place for ensuring communication and cooperation."

However, CD 19.1 passed Council with no debate, although, as noted, the questionnaires revealed some divisions. All respondents considered the process of drafting and approval to be a fair one. The advocates for the version which ultimately became the consensus one held that their version would be effective on Capital Hill. As one respondent put it, it was a resolution that "Affirmed the principles of freedom instead of opposing anyone." A reading of the resolution confirms that it was meant to "reaffirm" basic ALA principles and not to break new ground. It is a re-statement of general principles each grounded in a noted previously adopted policy or statement of the ALA. Respondents offered the ease with which CD 19.1 passed Council as evidence of the basic fairness of the procedures by which it was adopted. All respondents noted that the process was fair because it was open. It was pointed out that any interested member of the ALA could have participated at any time in the process, attending committee or Council meetings. One respondent noted that the openness of the ALA went beyond the formal ability to attend and speak at meetings. This individual pointed out that "hallway conversation" at ALA meetings was lively and contributed to the process. The individual also noted that that some in the ALA considered

such openness to be “dysfunctional” but that others held that it is the essence of participatory democracy. One respondent pointed out that ALA members carried on an active debate on the resolution on the various listservs supported by the association. Another individual acknowledged that procedures were complicated in the sense that no particular committee, roundtable or office was charged in advance with the presenting and drafting the resolution and that the process was somewhat “activist driven”. The open, discursive, participatory process was strongly praised as that which most guaranteed the fairness of the procedures.

CD 20.1 had a more contentious history. Questionnaire responses and transcripts of the 2003 Midwinter Council meeting both indicate this. These show that the debate persisted to the floor of the Council. Three amendments were placed on the floor, of which one passed.

The origin of CD 20.1 was also a matter of disagreement among the respondents. One position was that it originated in the SRRT. Another individual, from the COL, insisted that SRRT never had a resolution and that it originated in the Committee on Legislation. Yet another respondent said that she believed that the IFC, COL, SRRT and the Progressive Council Caucus all either wrote versions of the resolution or commented heavily upon it. This individual states, wisely, “I don’t recall who actually wrote the version that ended up being passed. It was amended so many times that the concept of ‘authorship’ is probably not a valid one in this instance!” She also notes that conflicts were serious, especially over whether to use the term “repeal” or the term “amend” and that on occasion the conflicts were even “hostile”. Other respondents mentioned SRRT and IFC, the Office of Intellectual Freedom, and the ALA Washington, D.C. office as playing roles in the process. It is impossible to determine the exact origin and path for the drafting of this resolution. However, it appears, regardless of where the concerns originated, that the Committee on Legislation became the major player at the end of the process. The version offered on the floor was that of the COL and endorsed by the IFRT. One respondent criticized the ALA Washington office for being overly involved. This individual stated that the role of the American Library Administration’s office was to make sure policy was implemented and not to set policy. Even this respondent was willing to state that he “guessed the process was fair”.

Transcripts from the 2003 debate on the floor of the Council, and some of the questionnaire responses, indicate that the substantive conflict regarding CD 20.1 was similar to the one which arose in formulating CD 19.1, namely, whether a “moderate” or “principled” resolution should be adopted. The conflict in the case of CD 20.1 was not as quickly and easily resolved as it had been with CD 19.1. The transcripts indicate that Councilor-at-Large Ann Sparanese moved to have the resolution changed to call for the possible elimination of sections of the USA Patriot Act. Bernadine Abbott-Hoduski, Chair of the Committee on Legislation, successfully fended off the amendment. That amendment, to call for the inclusion of the phrase “or eliminate”, failed 82 to 62. (ALA 2003)

Another proposed amendment, put forth by SRRT Councilor Alfred Kagan, to include the Homeland Security Act in the resolution, was easily defeated. The arguments given by those opposed to Kagan’s amendment were that the USA Patriot Act specifically mentioned libraries and bookstores whereas the Homeland Security Act did not, that the Committee on Legislation had extensively discussed the issue and rejected the inclusion, and that the phrase “other related measures” in the resolution allowed for the implicit inclusion of the Homeland Security Act.

The amendment proposed by Michael Gorman to include a statement that the American Library Association held that sections of the USA Patriot Act are a danger to constitutional rights and to privacy was adopted with apparent ease. The exact wording of the motion offered by Gorman is “I move that the seventh resolved of the resolution be amended to read: ‘resolved, that the American Library Association considers sections of the US Patriot Act are a present danger to the constitutional rights and privacy rights of library users and urges the United States Congress to’ and then the resolution goes on as it’s printed.” (Ibid) This was to be inserted before the request for Congressional action. The vote was by show of hands but the presiding officer states “The resolution — the amendment clearly passes.” (Ibid)

We might ask why two amendments failed and one passed easily. In part Gorman's success may have been due to his relatively high status since he was to go on to become ALA president from 2005 to 2006. But it may also be, as argued in Woolwine (2007b), that there are two explicit strains, and one implicit strain, of argumentation in the ALA in regard to privacy and confidentiality rights. One of the explicit traditions is utilitarianism which is more likely to be invoked in public discourse by ALA spokespersons and was not used here. The other major form of explicit argumentation, which is invoked here, is rights assertion or rights discourse. The third, an implicit strain of argumentation in the ALA, is one based on the value of dialogue. The amendment offered by Gorman clearly references the strong rhetorical tradition of rights discourse, whereas Kagan made no such argument. In fact, Kagan's comments are very brief. I will return to a fuller treatment of Gorman's amendment after discussing Sparanese's.

Sparanese makes rights assertions and references the United States Constitution. The arguments on the floor of the Council were about how to define dialogue and what types of dialogue to privilege. Dialogue can mean dialogue with outside entities (Congress, the American people, librarians in general) and dialogue within the Association (made possible by fair, democratic, and open procedures allowing for input and consensus). Sparanese argued that the word "eliminate" would be better understood by librarians as a whole and that language directed toward legislators alone should not trump language addressed to a broader audience. Mark Rosenzweig, who argued in favor of Sparanese's amendment, said, "I think we have a responsibility to go beyond addressing the legislature, beyond addressing Congress, beyond addressing the political establishment and addressing the American people as an association....I don't think we should tailor our language specifically to the needs of legislative action or solely to the needs of legislative action". (Ibid) Abbott-Hoduski argued, however, that addressing the legislature is paramount. (As chair of the Committee on Legislation this would be a natural response on her part). She invoked her many years of experience with Congress but also adds that the word "amend" can mean, for legislators, "eliminate" as well as "improve" or even make something worse. Her argument is that, in this case, a pragmatic dialogue with Congress, and language which supports that goal, should prevail. She also argued that in some sense the word "amend" is better for dialogue itself, since it does not take an absolutist position, leaving the issue of what exactly should be done open for further discussion. In short, Sparanese and Rosenzweig argued that dialogue requires a wide audience while Abbott-Hoduski argued that the terms employed should be both appropriate for the main audience and flexible enough to allow for continued negotiation. Both sides appeal to dialogue and both make claims that their understanding of dialogue is more extensive and inclusive. In both cases the argument is about the best way to have a dialogue with an external audience.

However, Sparanese's own comments indicate that she also knows that these issues had been thoroughly argued prior to the Council meeting. It was an appeal to the workings of this prior dialogue by the opponents of Sparanese's amendment that in part undermined it. The majority view seems to have been that procedural justice had already been achieved. The earlier dialogue within the ALA had been about the word "repeal" as Abbot-Hoduski indicates, not "eliminate" but, nonetheless, she states, "Also when we went to the other units and we worked with the legislative assembly which is the chairs of all of the units and many of the roundtable committees on legislation, they hinged their support of the resolution based on the fact that we would use amend or change and not use the term repeal." (Ibid) Opponent of the amendment, Peg Oettinger also noted "I think having been part of many discussions on this, I would recommend not adding any words to it at this point. Letting it stand as it is. It was very carefully thought out." (Ibid) Julie Cummings, Councilor-at-Large, added "We need to remember who the intended recipients of this resolution are, and that's Congress. Next we need to put our trust in the collective wisdom and very hard work of the committee that is bringing this language forward to us." (Ibid) So a combination of pragmatism, appeals to prior just procedures (prior sufficient dialogue) and acceptance of the COL definition of external dialogue (using words flexible enough to engage Congress) were the combined arguments used to defeat the amendment. Returning to Kagan's amendment, the transcripts indicate that here too the fact that the inclusion of the Homeland Security Act had been previously discussed and vetted was invoked as a reason to reject that amendment.



However Michael Gorman's amendment is a different case. Gorman first introduces his idea, of explicitly referencing the Bill of Rights and stating that the USA Patriot Act may violate certain constitutional protections, as part of his argument in support of the Sparanese amendment. He is told by the presiding officer, Mitch Freedman, to formulate this as an amendment. When he later offers it formally it accomplishes goals similar, but not identical, to what Sparanese had intended. Gorman argues that an explicit reference to rights violations would be language that could be read easily by an audience larger than that of lawmakers. He says, "It seems to me that we should defer to the experts' opinion of the Congressional process but that we should also add an unequivocal statement that we are against those sections of the US Patriot Act that infringe on constitutional rights and privacy rights. And if we put that in, then it's very clear, not just to Congress, but also to librarians and library workers everywhere, what we're against and why we're asking Congress to do these things." (Ibid) There were no comments for or against Gorman's motion and the amendment passed easily. There is also no indication in the record that Gorman's amendment had been discussed prior to the Council and it is not objected to on the grounds that it had been part of an internal dialogue and previously rejected. Finally, although not spelled out by Gorman, and although it is not clear that all Councilors grasped it, one implication of Gorman's amendment was that certain portions of the USA Patriot Act might only be dealt with, ultimately, by elimination. Any parts of the Act which could be shown to violate constitutional rights and protections must, in the United States system of justice, be struck down as unconstitutional in the long run. In the end, Gorman had successfully used rights discourse and an appeal to the same definition of dialogue that Sparanese and Rosenzweig had employed, and perhaps more importantly, silence about the various implications of his amendment, to achieve to a large extent the goals of the Sparanese amendment. I would say to achieve to a large extent, but not completely, those goals, or perhaps to achieve slightly different and better goals.

First, Gorman's amendment is very similar in tone to an earlier section of CD 20.1. In form it seems to belong at the beginning of that text not where he places it in the section listing the "Resolves". Early in CD 20.1 it is stated that "Certain provisions of the USA Patriot Act... expand the authority of the federal government to investigate citizens and non-citizens...and to threaten civil liberties guaranteed under the United States Constitution and Bill of Rights". This early section, however, could be read as saying only that certain sections might lead to threatening Constitutional rights in that such sections expanded government authority. Gorman's is slightly stronger in two senses. First, his amendment states that sections of the Act may not only lead to threats to liberties by the expansion of authority but that they are a **present danger** to constitutional rights. And secondly, Gorman, by where he inserts the amendment in the text of the resolution, and by the use of the phrase "and urges", indicates that it is this **present danger** that motivates the ALA to call for Congressional action. But equally importantly, Gorman does not say explicitly in the amendment that certain portions of the Act are unconstitutional. A present danger to civil liberties is not unquestionably unconstitutional. In his defense of the amendment on the floor he, nonetheless, uses the phrase "sections of the US Patriot Act that infringe on constitutional rights". I read Gorman's amendment as taking the ALA up to the very point of stating, in writing, that sections of the Act are unconstitutional but refraining from drawing that conclusion. If sections are, in the view of the ALA, clearly unconstitutional, then the only possible conclusion that the ALA can draw is that those portions, or the Act itself, must be eliminated, repealed or declared unconstitutional. His amendment produces a strong resolution of the issues before the Council because it is inherently ambiguous. This is precisely what is needed for on-going negotiation and dialogue. He points to the constitutional issues as strongly as he can, keeps them alive in the minds of the ALA Councilors, and perhaps other librarians and legislators but without drawing the explicit conclusion, in writing, that repeal of the Act or elimination of parts of it are necessary and does not state in writing and with absolute certainty that the Act is unconstitutional.

Supporters of the version of CD 20.1 which ultimately passed argued that it offered a way of opening a dialogue. Those who supported the un-amended version put forth by the Committee on Legislation saw this as primarily a dialogue with Congress. But it is hard to see that even they would have excluded the hope for a dialogue with a larger audience which might include all librarians and the general public. A respondent who supported the resolution stated, in hindsight, that "Even if the bills before Congress do not pass, we not only had a national debate and educational process but also have gotten

the Attorney General's attention in a manner that has made the wholesale approach to examining library records a low priority. We wanted, with our resolution, to get Congress to hold hearings, to exercise oversight. They have done this. The Committee on Legislation achieved its ends. State legislatures have taken this up. Demanding that Congress do a specific thing (that is, repeal the Act) would not have been as effective. Asking them to hold hearings gets you what you want further down the road. You cannot win by backing people into a corner.” Michael Gorman stated that he wanted the Council, by adopting his amendment, to frame a resolution that would speak directly to librarians and library workers. The notion of dialogue is an important one and it is interesting that it was offered as both a description and a defense of the resolution. Combined with the high praise which the open and dialogical process received, and which legitimized both resolutions among respondents, this offers additional support for the argument in Woolwine (2007b) that dialogue in itself should emerge explicitly as one of the main overriding ethical values of the American Library Association.

The process of formulating and bringing to Council both resolutions was a messy one. Committees and roundtables, even the offices of the ALA, competed for influence. The SRRT may have been less satisfied with CD20.1 than with CD19.1. It also seems to have been excluded from final formulations of the resolutions although it was not excluded from the process altogether. One respondent names Alfred Kagan of the SRRT as one of the individuals playing an influential role in the debate over CD 20.1. But SRRT did not draft the final version of either resolution, did not sponsor either resolution, and in the case of CD 20.1, even if he had influence, Kagan, nonetheless, offered only a failed amendment on the floor of the Council. Despite this no one complained that the process was unfair or not inclusive. This is a great accomplishment and says much about the democratic principles held by the members of the American Library Association. A second observation is that the resolutions are both moderate and consensus documents. Clearly the fact that many hands had a role in writing the resolutions prior to Council votes produced some consensus which in turn tends to produce moderation. Finally, the adoption of Gorman's amendment to CD 20.1 is the most interesting episode, at least in the public record. It made the resolution more principled and a better instrument for public dialogue in that it more explicitly references present dangers to constitutional rights but without binding the ALA to advocate for a specific action on the part of Congress. All of this leads to a curious philosophical reflection which will be taken up in the next section.

## **Philosophical Reflections**

### **Jürgen Habermas**

In many ways the actions and deliberations of the ALA are in line with those advocated by Jürgen Habermas (1983, 1989). Habermas has argued that, in principle, an ideal speech situation should guide public deliberations. The ideal speech situation allows for non-distorted deliberations. Premises are openly stated and all may speak, speech should not be shaped by ideology and misrecognition of the speaker's meaning and intent should not occur. Under certain circumstances it may even be necessary to subject basic presuppositions of argumentation to analysis.

The American Library Association conforms to many of these principles. The organization is part of civil society and it has chosen to play an active role in the public sphere for the good of society as a whole. It is governed by principles of rationality of which one of the most important is the inclusion of as many viewpoints as possible in the decision making process. The Association defines discursively its goals and procedures and has a democratically elected body (the Council) to make final decisions. It can be seen as, at least in principle and structure, approximating the ideals Habermas has set forth.

### **Leo Strauss**

Leo Strauss (1952) taught that the major canonical writers, especially philosophers, wrote in two fashions within the same text, exoterically and esoterically. As argued in Woolwine (2007a) the reasons

for this style of writing, in Strauss's view, were two-fold: because the philosopher writes “under oppression” and cannot fully express his/her views or because he/she believes that the open expression of particular opinions, or even certain questions, undermine the stability of the state and culture in which he/she lives. Contradictions and ambiguities purposely placed within the text, particularly at key points in the argument, point a close reader to an esoteric interpretation or to unsettled philosophical issues. This silence and ambiguity allows for questions to be raised, and positions developed, which cannot in all cases be openly pursued.

## **Jacques Derrida**

Without going into detail concerning deconstruction one can say that for Jacques Derrida (1976) the meaning of any text is constantly deferred. Since there is nothing outside the text, no transcendental signifier, the meanings of texts only arise within the interpretative act which entails connections to other texts. Dialogue itself can be viewed as a text, but more importantly, in this case, the meaning of a written resolution would only be fixed, and then only temporarily, within a larger dialogue with Congress, other librarians, “the general public” and in other writings which offer interpretations of the resolution, the Constitution, and all discourses on them. Some texts, such as Supreme Court decisions, would be more definitive than others. But all such interpretations would be temporary and would be revisited and revised in later interpretations. Both resolutions, but particularly CD 20.1, are characterized by this type of delayed meaning. The advocates for CD 20.1 repeatedly point out that its wording does not have a fully established meaning. They argue that the settling of that meaning will emerge in later dialogue, in their view primarily with Congress. Since these resolutions are part of a larger dialogue about civil liberty they and their interpretations will also play a role in attempts to fix, however temporarily, the meaning of the USA Patriot Act itself.

## **Habermas, Strauss, or Derrida?**

All three modes of operation were at work in the deliberations of the ALA Council, especially in 2003. However, I would argue that Habermasian ideals provide only a type of superstructure for ALA deliberations. Habermasian principles guide the ALA decision-making process and ALA Councilors and others invoke them as legitimating principles. The principles manifest themselves as values, i.e. the valuing of dialogue, and as structures for deliberation. This is important. However, both Leo Strauss's ideas and those of Jacques Derrida find stronger support as descriptions of the actual deliberations.

Michael Gorman, knowingly or unknowingly, makes a strong Straussian move at a key point in the one truly contentious argument in the two Councils under review. His written words in the amendment do not entirely agree with his defense of them on the floor of the Council. Furthermore, the written words themselves are ambiguous. It is hard to define a “present danger”. Is a present danger an actual constitutional violation or one almost ready to occur? Is there a difference between these meanings? This analysis of deliberations of the ALA Council on CD 20.1 exposes a situation in which contradiction, ambiguity, and silence, not clarity or transparency, allowed for a better resolution. The ambiguity of the wording, and the silence concerning the range of interpretations of Gorman's amendment, assisted in its easy acceptance. This allowed Gorman to point to likely constitutional abuses but also allowed for further negotiation or dialogue between representatives of the American Library Association and the United States Congress. The lack of a definitive written statement that an unconstitutional law may have been passed left open the possibility that representatives of the ALA could speak to legislators who had, themselves, a range of views on that matter. This is a Straussian approach to the deliberations (taken as a text) and to political action and discourse. It also points to Derridian notions.

Since this ambiguity allows for a more open-ended dialogue with Congress while signaling to librarians that provisions of the USA Patriot Act are unconstitutional or most likely unconstitutional it, in turn, necessitates deferred meaning. For instance, in 2006 the ALA passed a resolution (CD 20.2) calling for specific changes to be made in the USA Patriot Act upon its reauthorization (ALA 2006b). Whether that was, or has been, effective would require another paper to answer. However, Michael Gorman, by



that time president of the ALA, issued a statement in March 2006, after the reauthorization of the USA Patriot Act, indicating that he did not believe that the newer version restored privacy rights. "Although some have claimed that the compromise language includes new protections for library patrons, those alleged protections are illusory." (ALA 2006b). Others disagreed. I would argue that the present constitutional status of the revised, reauthorized Act remains undecided and the degree to which constitutional protections to privacy and access to information remains unsettled. The conclusion to be drawn is that there exists the possibility of repeated revision and revisiting of these issues in the ongoing struggle over the balance between security and liberty. The Derridian notions are correct and Strauss is also correct. Ambiguity and contradiction, inserted into the texts or into the larger discursive process, may be necessary to achieve political ends, especially that of ongoing action. Such contradictions and ambiguities are not in such cases distortive and, given real world constraints about the need to limit the time for debate and broker some satisfactory temporary consensus, may be "ideals" themselves. Furthermore, even in a situation which approximates much that Habermas desired (such as ALA Council deliberations) no one can stop an intelligent individual from making Straussian moves for the common good. In fact, the longer the process, the more complicated the issues, and the less consensus, the more likely it is that ambiguity and contradiction may be used to settle the issue for the time being, allowing for an openness where further dialogue (perhaps with other parties) can take place and meaning can be later conditionally and temporarily settled. The later settled meaning may itself be characterized by different types of contradictions, ambiguities and silences. If this is the nature of the dialogical process, even under ideal or approximate ideal contexts, then those of us who seek a reasonable balance between liberty and security should be aware of it and be willing to make use of it as well as accept less than completely settled, or perhaps even less than ideal, solutions.

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## 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 librarians 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 are 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.