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Librarians in the Crisis: 9/11 One Year Later

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Editorial

"History" is not "events from another place or time." The tragedy of September 11, 2001, brought home to all of us the reality that history is a continuous process, one in which we are more active participants than we might have imagined.

At any moment in time, we are living in someone's future and in someone else's past. We are the culmination of the past's dreams, and the beginning of the future's history. That is why this issue of the *Oregon Library Association Quarterly* offers a look back and a look forward. Guest editor Anna Grzeszkiewicz has assembled an important collection of timely and reflective articles that constitute essential reading for Oregon librarians.

Whenever I look at a movie or read a book, I find myself checking to see if the work was created before or after September 11, 2001. Plots, ideas, even individual words have different meanings depending on their place in time. Some of our fundamental professional concepts as librarians—freedom of information, access, and privacy—likewise have pre- and post-September 11 contexts. And yet, history again shows us that we are not in wholly uncharted waters. Ted Smith's subtitle to the opening article, *Security versus Freedom of Information,* reminds us that this is indeed an enduring conflict in federal information policy.

Immense though the tragedy of September 11 was, there was still a majesty in the universality of our response—as Americans, as librarians, and as human beings. I wanted my article on examples of Oregon libraries' responses to the tragedy to give readers a sense of the scope of activities. Large or small, public or academic, all libraries had staff that rose to the occasion and demonstrated their professionalism. The article does not list all activities of Oregon libraries by any means; it is intended more as an example of the breadth of our work.

Many of us talk about working "on the front line," but Patricia Wand's article gives genuine meaning to that phrase. *Library Life in the Shadow of the Pentagon* is a personal and professional testimony about the experience of September 11.

Patrick Hagen's article, *Impacts of 9/11 on Counterintelligence,* is an important perspective on the new world we all live in. He offers the perspective of an experienced insider, giving us an inside look at both counterintelligence and at the issues we must each answer.

Which inevitably leads us to the "big one," in the words of the late Redd Foxx. Suddenly, e-mail "In" boxes are stuffed with information about the USA PATRIOT Act (and please remember, it's an acronym: no political party has exclusive use of the word "patriot" or "patriotism," regardless of what you're told). Robert Truman leads us into our new "now" with his article, *Life with the USA PATRIOT Act.* His article offers perspective and an understanding of how the rules have changed on critical professional issues concerning client privacy. Knowing when the PATRIOT Act does not apply is as important (maybe more so) than knowing when it does apply.

Read this issue of *OLAQ* for historical information, and for assistance in future decision-making. We are in a new era, but our principles remain firm.

Be sure to read the online version of the *Quarterly,* coming in March 2003, for additional information on this important subject.

—Fred Reenstjerna
OLA Publications Committee

—Anna Grzeszkiewicz
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Guest Editor

Security versus Freedom of Information:

An Enduring Conflict in Federal Information Policy

by Ted D. Smith
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  Libraries

I n the aftermath of the September 11 terrorist attacks many things have changed, not least of which is the way the government balances its roles as a disseminator of public information and as the protector of national security. Concerns about the potential misuse of government information by terrorists or other "evildoers" has led to attempts to withhold information, or the withdrawal of previously published information in a variety of formats. This article will survey some of the major events in this arena since September 11, 2001, and review the legal background and the philosophical debate that has occurred.

The Federal Depository Library Program exists to facilitate citizen access to information produced by the federal government. However, the amount and character of the information disseminated through the program has always been subject to limitation. The general limitations are specified by law: "Government publications, except those determined by their issuing components to be required for official use only or for strictly administrative or operational purposes which have no public interest or educational value and publications classified for reasons of national security, shall be made available to depository libraries" (44 U.S. Code 1902). This provides for a great deal of discretion on the part of the government publisher, allowing for the withholding of publications designated as "for official use only" or used for "strictly administrative or operational purposes." As there is no official definition for either of these categories of exclusion in the statutes, agencies have a great deal of freedom in determining what information to withhold.

This built-in potential for withholding information extends to previously distributed material. As the U.S. Government Printing Office's (GPO) publication *Instructions to Depository Libraries* specifies "All Government publications supplied to depository libraries under the FDLP remain

the property of the United States Government … " (GPO, p.19). Implicit in this statement is that the owner of the publications (the federal government) retains the right to recall the publication at need. Indeed, the *Instructions* go on to state that while only the Public Printer, the Superintendent of Documents, or their agents can legitimately order a library to withdraw a document, those officials may do so for "reasons of national security, incorrect or misleading information in a publication, or *for any other cause deemed to be in the public's interest"* (GPO, p.20). (Emphasis added.)

Given this wide discretion in determining what is appropriate for public dissemination, it is not surprising that this capability had been exercised a number of times over the years. For example, in 1996 the Superintendent of Documents issued a memorandum to depository libraries requesting the removal of the Internal Revenue Service publication, *75 Years of IRS Criminal Investigation History: 1919–1994.* The reason given was that the IRS had advised that the publication is "For Official Use Only." Thus it is clear that while efforts to suppress information in the post 9/11 war against

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terror have justifiably received a great deal of scrutiny, they do not constitute a change in basic policy but rather a heightened awareness of the potential uses (and misuses) of government data by terrorists and other perceived threats. However, certain characteristics of the post-9/11 response by government officials and others merit further discussion.

There has been only one recent (post-9/11) request by the GPO to withdraw a previously distributed publication from depository collections. On October 12, 2001, the Superintendent of Documents, at the request of the U.S. Geological Survey's Associate Director for Water, issued a notice requesting that depository libraries withdraw and destroy USGS Open File Report 99-248, *Source-Area Characteristics of Large Public Surface-Water Supplies in the Conterminous United States: An Information Resource, Source-Water Assessment.* The GPO had distributed this publication as a CD-ROM. The letter making the request gave no reason, merely stating, "Please withdraw this material immediately and destroy it by any means to prevent disclosure of its contents." The request to withdraw in itself was unremarkable. The Superintendent of Documents has issued at least 15 such requests since 1995. In the post 9/11 environment, however, the request received a great deal of attention, from both the library community and the media.

In addition to the official GPO request to withdraw the USGS publication, two other events served to remind depository librarians of the complexity of balancing freedom of information with security concerns. In a move apparently unrelated to terrorism concerns, an official of the U.S. Army Corps of Engineers on September 21, 2001, sent a letter to depository libraries requesting that libraries remove several 1960s-era Corps of Engineers publications from library collections and return them to the agency. These publications gave information as to the location of archeological sites near various Corps of Engineers projects in the Missouri River Basin. The concern of the official was that vandals and looters had damaged some of the archeological sites, and that the information contained in the publications might aid such miscreants in doing more damage to the sites. The GPO had not authorized the letter and, unlike the situation with the USGS CD-ROM, libraries had no legal obligation to comply.

In February 2002, a librarian in Oswego, NY sent an e-mail message urging depository librarians to control access to the microfiche collection of Nuclear Regulatory Commission documents relating to nuclear power plants, out of concern that the safety of the plants might be compromised if the information in the documents fell into the hands of terrorists (*Nuclear plant,* 2002). The GPO issued a critical response, saying, "Only the Superintendent of

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Documents has the authority to request that depository libraries withdraw or secure publications in their depository collections. No such official request has been made. Furthermore, the NRC has not requested GPO to direct depository libraries to take any actions regarding the NRC microfiche… We do not condone this unofficial request to restrict public access" (*Nuclear plant,* 2002, p.16).

Perhaps of greater concern and even more significance than these incidents are the widespread reports of government agencies removing information from agency Web sites in the aftermath of the 9/11 terrorist attack. In the immediate aftermath of the attacks, a number of agencies completely disabled access to their sites. The sites were eventually brought back up, but with selected information deleted or no longer accessible. Many others removed some specific content and pages while leaving the bulk of the site operational. The watchdog group OMB Watch has attempted to chronicle the removal of access to online government information (OMB Watch, 2002), but given the vast amount of information contained on government sites and the inherently fluid nature of the Web it will never be possible to establish the full extent of the data removed. This phenomenon validates a long-standing concern of government documents librarians: in the absence of a distributed system of providing access to government publications (such as the Federal Depository Library Program), it becomes all too easy for agencies to withdraw access to information, even after it has been published.

In addition to these specific instances of restricted access to government information, actions by the Bush Administration have raised concerns that the overall tenor of government information policy in the post-9/11 environment has become too strongly biased toward restricting access, rather than informing the public. During the past year, administration officials have issued two significant memoranda that potentially have the effect of limiting access to government information. On October 12, 2001, Attorney General John Ashcroft issued a memorandum to the heads of all agencies and departments concerning the Freedom of Information Act (FOIA) (Ashcroft, 2001). This memo used language that is widely considered to encourage a more expansive view of what might be withheld under the FOIA than had previous Department of Justice interpretations. In the second incident, the Office of Management and Budget (OMB), the executive agency responsible for establishing government information policy, issued a memorandum on May 3, 2002, advising executive agencies that they would no longer be required to use the Government Printing Office for printing and duplicating services (United States Office of Management and Budget, 2002). While the intent of the revised policy is to save money, many in the library community worried that it would have the effect of restricting access to government information by making it more difficult for the Superintendent of Documents to acquire executive agency publications for distribution to depository libraries. According to the critics, this would enhance the longstanding problem of "fugitive documents" and add to the difficulty libraries are already facing in providing access to government information.

From this discussion, it is clear that the post-9/11 environment presents a significant challenge to libraries, whose very purpose is to provide open access to information. On the one hand, citizen access to government information remains a fundamental need, yet we also have an obligation to respond to legitimate public safety and national security concerns. As I pointed out earlier, this tension between freedom of information and government concern over security is nothing new. In these days of heightened awareness on the part of both librarians and the general public, however, the level of concern has risen. Part of the problem has

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always been a basic dichotomy in the professional responsibilities of the various parties involved in government information. Librarians have as a core professional value a belief in the importance of providing access to information, whether we agree with the content or not. Many government officials, on the other hand, are responsible for protecting the public safety. Obviously, this job is made more difficult when certain information is freely available.

The same technology that we rely on to enhance our access to information has increased the difficulties in balancing these conflicting values. The advent of the Internet and its increasing use by government agencies and others to disseminate information has greatly expanded our ability to access information that was previously very difficult, if not impossible, to obtain. Yet, if there is no distribution of a tangible product containing the information, it is much easier for the information providers (government agencies in this case) to subsequently decide they no longer want to make the information available. Thus, the great concern about the deletion of data from agency Web sites when no library has a physical book, periodical or pamphlet to document the previous existence of the information.

In a sense, the situation parallels that of children's access to adult materials, another matter in which technology has caused more concern in recent years. There have always been attempts to limit or ban access to certain materials in libraries, even works that are widely respected such as Twain's *The Adventures of Huckleberry Finn* or Salinger's *Catcher in the Rye.* Librarians have rightly resisted such attempts at censorship. With the advent of public access to the Internet in libraries, it is possible that patrons will access (by design or by accident) much more objectionable materials such as child pornography or hate literature. This has predictably led to widespread calls to restrict access, including passage of the *Child Online Protection Act* by Congress. It has also created more pressure on librarians, who continue to resist attempts to limit access to information but who are now viewed as defending material that almost no one would have advocated as additions to the library collection.

Similarly, modern information technology has created a situation with government information in which a long-standing area of concern (the potential for government agencies to restrict access to information) now shows increasing possibilities for abuse. Librarians need to respond by taking steps to ensure that the principle of permanent public access be a fundamental consideration whenever policy makers make decisions regarding government information and data, and by embracing and enhancing our role as preservers and archivists of the historical record. The recent flap over the Department of Education's plan to reorganize its Web site (Davis, 2002) is instructive. The Department of Education has begun an overhaul of the agency's Web site, in which it plans to remove old and outdated content. Part of the directive indicated that one of the criteria for removal is whether the information is in harmony with current administration policy. While department officials

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insist that they will retain content that has current value, this approach has been criticized as potentially damaging to researchers who need to know about past initiatives. It is important to note here that the Bush Administration approach in this matter is no different from that taken by previous administrations. It is standard for incoming administrations to stop distributing materials and publications that reflect the policies of their predecessors. What is different this time is that in years past, the previous publications would have been stored away, and depository libraries would have copies of many of them. The technology now allows for us to easily provide access to the older materials, but the transition to a more electronic depository library program means that not as much of the information has been physically distributed to libraries. Thus, what a government official views as "business as usual" is perceived by librarians as a threat to freedom of information.

This case and many others remind us of our roles as advocates for open information policies and as preservers of the historical record. Our government has been quick to embrace digital technology as a cost-effective means of information dissemination, but has not usually fully considered the ramifications of its decisions in regard to preserving the record for research and policy-making purposes. By advocating for policies and processes that take into consideration long-term access, and by developing programs to capture and preserve the historic record, libraries and librarians have an important role to play in keeping government information available.

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Some Examples of Oregon Libraries' Responses to September 11

by Fred R. Reenstjerna, Ed.D.
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Library System
and
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Librarianship is a profession, not a place. Just as there are physicians who do not work in hospitals, and attorneys who never set foot in a courtroom, so too are librarians more than people who work in libraries. It's important that we keep the definition of our profession in mind when we think about the ways that Oregon librarians responded to the crisis of September 11.

The tragedy of September 11 offered all of us an opportunity to go to the forefront of our communities, demonstrating our special knowledge of locating and making accessible critical information needed by a clientele in crisis.

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Any librarian whose professional work was not affected by September 11 must seriously examine their commitment to the profession. If they cannot point to something they did, or to some basic professional tenet they re-examined, or some way their work was changed in response to September 11, then they are just slouching toward retirement. We will (hopefully) not face a crisis as great again in our lives, but we can assess the ways that we as professionals responded to the crisis.

James Russell Lowell wrote, "Once to every man and nation comes the moment to decide … " Amplifying that idea, Albert Camus wrote, "Not to decide is to decide." We have all made our decisions about September 11; here are some examples of service decisions made by Oregon librarians. Notice the breadth of actions—by type of library, by medium of response, and by community served. This will serve as an incomplete but still impressive testimonial to the responsiveness of Oregon librarians to their communities' needs.

THE MULTNOMAH COUNTY LIBRARY (http://www.multcolib.org) created Web pages that were an early and comprehensive source for information. Staff designed pages of links to sources for news, contributions to charities, and background information about Afghanistan and related topics. Over a year later, in October 2002, Multnomah County Library staff maintain a site, Beyond September 11, that includes links to Library holdings as well as URLs to other information sites (http://www.multcolib.org/ref/headlines.html). Multnomah's ongoing work demonstrates that an information need can be ongoing in a community, and librarians' responses must remain up-to-date in dealing with those needs.

The Beaverton City Library (http://www.ci.beaverton.or.us/departments/library/default.asp) recognized potential local economic effects of September 11. Jill Adams, Business Reference Librarian, reported that her library began coordinating a series of business information programs to provide an expert and detailed look at the Oregon economy. This resulted in a 7-part series of programs throughout the Fall and into the Winter of 2001, bringing in experts such as Joseph Cortright, John Mitchell, and Gerry Mildner. The speakers highlighted the economic effects on Washington County in several sessions.

The Tigard Public Library (http://www.ci.tigard.or.us/library/default.asp) assembled a display of books on terrorism (a book on Osama bin-Laden was already in the collection), according to Tony Greiner and Adult Services Librarian Kate Miller. The

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Library also displayed books on Islam, civil liberties issues, patriotism and related issues, and the Children's Department prepared a display on talking to children about grief and loss. Shortly after September 11, David Stabler, music critic for the *Oregonian*, published a list of classic recordings that were particularly soothing. The Tigard Public Library copied that list, noted the call numbers of items that were in its holdings, and posted a copy near their music section. Kate Miller wrote, "As the anniversary rolled around, I started thinking about the fact that since the book group meeting day had changed from Tuesday to Wednesday, our September meeting would, once again, fall on the eleventh. I decided to choose a book that would commemorate those events." Therefore, for its September 11, 2002 meeting, the Library-sponsored book club read *Writing in the Dust: After September 11*, by Rowan Williams, the Archbishop of Canterbury. The evening program included a discussion of the book and a viewing of the first half of the documentary that aired on Frontline called *Faith and Doubt at Ground Zero.*

September 11 focused public attention on public safety workers, highlighting the heroic sacrifices of police and firefighters. In Salem, the **Oregon Occupational and Health Administration (OR-OSHA) Resource Center & Video Library** (http://www.cbs.state.or.us/external/osha/standards/avlibad.htm) naturally received an increased demand for safety and health information. Don Harris, AV Librarian, reported that the Center acquired five additional training videos: 1) *Anthrax Awareness;* 2) *Emergency Action Plan: Crisis Under Control;* 3) *Rapid Intervention Teams;* 4) *Facility Security;* and 5) *Biological and Chemical Threats: Closing the Door.* As Don points out, "These videos, like our other holdings, are available for loan to any

> Eugene citizens were outraged when the local Islamic Cultural Center's building was vandalized with hate messages shortly after September 11.

employer or worker in the state of Oregon. Return shipping is the only charge involved. Use of the five titles listed above has been fairly consistent throughout the last year.

Arlene Cohen, Northwest LINK Reference Librarian at **Oregon State University** (http://osulibrary.orst.edu/linkweb/), reported that she added URLs to the Northwest LINK Reference Referral Center's home page, directing patrons to needed information sources providing crisis support information (http://osulibrary.orst.edu/linkweb/patron.htm). Many of these linked resources were prepared by staff of the Multnomah County Library.

At the Ashland Branch of the **Jackson County Library System** (http://jcls.org/ashland.html), Amy Kinard reported two actions by library staff. First, Web sites were posted on the Reference Area White Board to assist reference librarians answering questions. These Web sites included such information as rosters of victims, blood donation needs, ways to talk with children, and current news sites. Second, the library created displays of circulating books on two topics: grief and feelings, and world religions (including Islam).

Bonnie Hirsh, Adult Services Librarian, summarized activities at the **Eugene Public Library** (http://www.ci.eugene.or.us/library/):

> First we turned on the TV in the lecture room, so public and staff could follow the news (during that first week). We added links to relevant Web sites to our Web page, we added a September 11 subject heading to the catalog, and put together a bibliography and display. Finally, we updated the book collection (new Islamic art books, for instance).

Eugene citizens were outraged when the local Islamic Cultural Center's building was vandalized with hate messages shortly after September 11. Eugeneans responded with vigils, symposia, demonstrations, and requests for more information. At the Eugene Library a bibliography and display

of materials about Islam and the Middle East were quickly created. The materials were not limited to political and religious information, but also included arts and cultures. The Library presented a panel discussion late in October entitled *Keep the Dialog Going: Perspectives on Islamic Culture and History.* The speakers included the head of Eugene's Islamic Cultural Center, his wife, an American who converted to Islam, a Muslim couple who are graduate students from China, another student couple from Indonesia, and a university professor who had lived and studied in Iran.

The common perception of repressed womanhood was refuted by the thoughtful presentations of the women on the panel. One woman was a fluent translator for her husband who had limited English skills. Replying to a question from the audience, she pointed out that she was here, not as a refugee or immigrant, but as a university graduate student. Another woman said, "It would endanger my life to wear (the head scarf) at home. I am glad to have the freedom to wear it in this country." The American woman explained how a "white bread mid-westerner" converted to Islam.

While precautions had been taken to deal with any disruptive elements, the audience remained respectful, thoughtful, and eager to learn more in order to live in peace with their neighbors.

The Douglas County Library System (http://www.co.douglas.or.us/library) responded to September 11 by increasing access to materials already in its catalog. When the System converted its automation system to DRA in the early 1990s, some older works in the collection did not get full cataloging records. Fred Reenstjerna, Cataloging Librarian, identified materials such as James Michener's *Caravans* that were related to Afghanistan but lacked full subject access. Since the Library System lacked an extensive collection of books on specific countries in the region, he also added geographical tracings for volumes of *Countries of the World* and related series

that contained significant information about Tajikistan, Uzbekistan, and Kyrgyzstan, as well as Afghanistan.

As the previous issue of *OLAQ* pointed out, children are people, too—and September 11's effects were as critical to this part of our service community as to the adult sector. Cheryl Weems, Children's Librarian at the **Bend Public Library** (http://dpls.lib.or.us/), reported on special efforts to get information to children and to their parents:

1. On the (Bend Public Library's) children's Web page we had links to a bunch of sites from ALA to the American Academy of Pediatrics which were targeted towards helping children through the crisis;

2. We went through our collection on subjects ranging from grief to Islam to tolerance and used many bibliographies that came out on PubYac, ALA, etc., to beef up the collection;

3. We participated in the Brooklyn Public Library-sponsored "children writing to children" by providing paper and writing materials, and then mailing the letters once they were all collected;

4. At the time, we were working on a small donation through the local hospice to complement our collection on books dealing with grief; we created a bibliography of these titles.

By working to meet the information needs of one segment of their community, the Bend Public Library was already equipped to meet an unexpected information need.

Oregon libraries continued to meet the needs of their communities as the anniversary of September 11 approached. In Klamath Falls, the **Oregon Institute of Technology (OIT)** (http://www.oit.edu/

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Library Life in the Shadow of the Pentagon;
Reflections on What We Experienced and What We Learned

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Privacy, confidentiality of user records, collection policies, exhibit content, and building use by diverse groups are examples of library values that may be compromised in the rush to prevent another terrorist attack in the U.S.

Our lives have changed irrevocably since September 11, 2001. The airlines, post office, federal and local governments, medical professionals, newspapers and magazines, all are sources of information preparing us for another elusive, unpredictable terrorist incident. For the first time in its 227-year history, the United States, like so many other countries, is vulnerable to terrorism aimed to change its infrastructure.

Here in Washington, D.C., formerly open streets and vital thoroughfares are now cordoned off and motorists search for alternative routes. We see impediments to building entrances where they never existed before: the U.S. Capitol, Library of Congress, virtually every federal government building. It's hard to remember when one is confronted by cement barricades, armed officers and high tech security systems that these buildings are, after all, public facilities and that we as citizens have a right to enter them.

In this climate of fear, our library lives have changed as well. "Service" has been the library mantra for decades and the policies that form the underpinnings to some of our most treasured values are now being questioned. Privacy, confidentiality of user records, collection policies, exhibit content, and building use by diverse groups are examples of library values that may be compromised in the rush to prevent another terrorist attack in the U.S.

Experiences in one campus library in the nation's capital

American University Library, located in the District of Columbia and within six miles of the Pentagon, was drawn into the crisis immediately on September 11, 2001.

All emergency personnel in the region were focused on the Pentagon. Federal employees were sent home and virtually all offices in the city were closed. After passenger airline flights were cancelled, the sounds of fighter jets overhead were reminders that we were in an all-out alert. Middle Eastern students were fearful to be seen on the streets. It was a strange and eerie environment.

Torn between closing to ensure the safety of our employees as they fled the city and keeping the library doors open to offer a normal environment for our 3,500 students in campus residence halls, we made the decision to stay open with greatly reduced staffing. As I walked around the library that day I felt an indescribable hush and saw fewer readers than I had ever before seen in the building.

Immediately after the second plane hit the World Trade Center towers, we moved a large-screen television into the library lobby and kept it on newscasts for the rest of the day. The television created a gathering place for patrons and staff alike where we supported one another and followed the latest developments of that unforgettable day. Many University employees had family and friends whose lives touched either the Pentagon or World Trade Center and we all shared the anxiety of not knowing. Although there were several narrow escapes, including a friend of mine who walked down from the 73rd floor of the first tower hit, no one in the library lost a family member or close friend.

Another trauma, too close for comfort

Two days later, while we were still coping with the shock of 9/11, American University was victim to a copycat prank. A bomb threat was received about 9:30 a.m. on September 13, warning that the entire campus would blow at 12 noon. Whereas bomb threats to specific buildings were not unusual, especially during exam periods, no bomb threat to the whole campus had ever been received. As campus administrators were conferring behind closed doors about the appropriate response to the threat, a second call was received in a

residence hall, repeating the same warning. The news of a second bomb threat, identical to the first and received by a different campus office, led to the decision to evacuate the campus by 10:30 a.m.

Classes were interrupted, student residents were forced out of bed, children were carried from the daycare center, buildings were evacuated, and campus businesses forced customers out the doors and locked them. Everyone on campus was told to assemble in a nearby parking lot. Immediately University administrators were confronted with how to deal with the basics: restrooms, water, and food for thousands of people.

Students still in pajamas wondered how to get shoes, parents searched for children from the daycare center, staff worried about keys and valuables they had left in offices. Everyone worried about how to contact loved ones who may be picking up media announcements already being broadcast about the emergency on American University campus. No one knew for sure how long we would be evacuated nor the source of the bomb threats. We only knew that if we made it past 12 noon, the campus might be safe for our return.

Fortunately it was a beautiful day so we were not coping with rain, snow or freezing temperatures. In the end, food and water were provided by neighborhood stores and restaurants; nearby churches opened their facilities for restrooms; and

cell phones helped to keep people in contact. Many people, after consulting with supervisors and establishing mechanisms for communicating, temporarily left the area for lunch and rest. By 1:45 p.m., after the bomb squads and dogs had searched the grounds and every building, campus was reopened and we began re-establishing our routines.

Preparing for disasters
before 9/11

In the early 1990s American University Library personnel compiled a comprehensive disaster preparedness manual and a companion piece in the form of a laminated "crib sheet" that is assigned to each service desk and office. The planning efforts have paid off on numerous occasions: floods, fire alarms and serious medical emergencies. On September 13, 2001 when the entire campus had to be evacuated, library personnel carried their training to a new level.

When we all fled to the parking lot, library personnel knew that a "library spot" had to be designated and everyone needed to know where to assemble. The early ones out the door gathered a critical mass from the library in a shady area near the back of the lot. They then helped to spread the word as they spotted other staff from the library in the crowd. They intercepted me as the last person out of the library and led me to where the 80 or so others were assembled by this time. Many people had grabbed those "crib sheets" along with their lists of staff emergency telephone numbers and cell phones. All of these became particularly valuable as we coped with the crisis.

A few days later we learned of another way that the library disaster preparedness planning had paid off. The young woman who received the second bomb threat, not knowing about the first bomb threat that morning, was a student working at the reception desk in a residence hall. She was

Immediately University administrators were confronted with how to deal with the basics: restrooms, water, and food for thousands of people.

also a part-time student assistant in the library who had been briefed the previous day by her library supervisor about what to do in emergency situations. Those procedures, fresh in her mind, kicked into gear. She recorded the critical data from the caller and immediately reported the information to campus security. Her training and attention to detail lead to the safe evacuation of campus and eventually to tracking the source of the two calls. A disgruntled student was identified and prosecuted.

Following so closely on the heels of 9/11 when awareness of pending terrorist disasters and adrenaline were so heightened, the events of September 13 drove home on a very personal level what it feels like to be in a war zone. We were forced out of our familiar workplaces and displaced into new environments where sources of food, water, clothing and shelter were unknowns. I can now identify more easily with people around the globe who live through tragedies of war or natural disasters. The fear of not knowing what will happen next was a new sensation and one that caused great anxiety among us. Reflecting on this life-altering experience, I have come to regard the environment in the U.S. previous to September 11, 2001 as Camelot.

Preparing for disasters *after* 9/11

In the days that followed the bomb threats, the University responded most appropriately. Administrators immediately collected copies of emergency preparedness plans from campus offices where they existed. They gathered employees representing each unit to participate in designing a University master plan for responding to emergencies and to undergo training so they could provide emergency support.

That master plan was released in April 2002 and the library is now adapting its own plan so that the two are aligned. In addition, we are designing new training so that library personnel will be prepared to respond to new types of threats.

What are the "new" threats to libraries? The plans that libraries compiled in the 1990s and earlier prepared us to cope with floods, fire, bomb threats and theft. Now we must consider bio-terrorism to water, air and postal systems; violent attacks to buildings; criminal use of library computer equipment; and assaults on patrons or staff. Truly we face a new and more complex set of challenges.

In addition to cataclysmic physical disasters, we must be prepared for threats to our values. How do we respond when law enforcement agents enter our libraries and demand to see the circulation records of our borrowers? What do we tell government agents who want to confiscate computer hard drives to track the Web-searching habits of patrons? What do we say when they ask librarians to monitor the use of public meeting spaces by "suspect" groups. How do we answer patrons who question the content of exhibits featuring Middle Eastern traditions or the Koran?

Are we prepared as individuals? Do we have procedures clearly articulated? As managers are we giving our staff the words to use for coping with these unexpected but highly likely scenarios? It has become essential for staff in all areas of the library to be prepared to respond to unusual emergencies and demands.

Fortunately librarians have resources from which to draw as we face these challenges. There is no need for each library to start from scratch. We can share our talents and, for example, stretch the missions of our consortia. Several libraries together can establish a task force to draft emergency preparedness plans that can then be adapted by each library to its unique community.

> The plans that libraries compiled in the 1990s and earlier prepared us to cope with floods, fire, bomb threats and theft. Now we must consider bio-terrorism to water, air and postal systems; violent attacks to buildings; criminal use of library computer equipment; and assaults on patrons or staff.

Impacts of 9/11 on Counterintelligence

by Patrick G. Hagen

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for Counterintelligence

Naval Criminal
Investigative Service

... the urgency of moving information to the fleet and decision-makers and coordinating global movements of personnel, while still grappling with the shock of friends and acquaintances lost, was a monumental and emotional task.

As a senior at Southern Oregon University it was my every intention to enter the international business arena. Nevertheless, I was intrigued by an announcement from the placement center for positions within the Naval Criminal Investigative Service (NCIS), and decided it was worth a practice interview. The rest, as they say, is history. Upon hiring, I initially worked in the area of criminal investigations and counter-narcotics operations before my assignment to counterintelligence in the Philippines. Now, 16 years after that practice interview, I am the Deputy Assistant Director for Counterintelligence with the NCIS, an organization that is 97 percent civilian with 150 locations around the world. Such is the path that brought me to the normally hectic schedule of directing the global counterintelligence activities of the NCIS and the Anti-Terrorist Alert Center (ATAC) on the morning of September 11, 2001.

The impacts of the September 11 attacks on the World Trade Center and the Pentagon were profound and irreversible for the counterintelligence community and NCIS. Due to the sudden compression of time and the requirements for threat analysis, the urgency of moving information to the fleet and decision-makers, and of coordinating global movements of personnel, while still grappling with the shock of friends and acquaintances lost, was a monumental and emotional task. In the hours that followed, the pressure for information grew as people and other organizations overcame the initial shock and began to come online with an information thirst that had no historic equivalent. Initial surprise was quickly overcome by resolve. The emphasis of the ATAC has always been to move terrorism information

quickly and directly to the Navy and Marine Corps. The Navy's emergency terrorist message was launched within minutes and the fleet was ready.

On a number of occasions over the past year I have been asked for sensational anecdotes of panic, confusion, or hysteria within the command center that I directed. Admittedly, there was a flurry of activity, sorrow for the victims, concern for the safety of family and friends, a real fear of additional attacks, and a level of anger percolating below the surface. All participants struggled with the desire to stay with the job, be with their family, find those who were lost, and the uncertainty of who was next on the targeting list. The tenuous control of emotions observed on the faces of our co-workers stirred the resolve of everyone, and ultimately moved many to work multiple days without sleep. The mission, the command center, and the work became their focal point.

The exponential increase in appetite for information was not new for the NCIS. One year earlier the attack on the USS Cole had caused a similar surge of activity. Lessons learned from that tragic event had already been inculcated into the task force structure and information flow processes. Speed of response was improved, command center requirements were known, and directives were readily turned into reality. The organizational machine was in high gear within minutes after the World Trade Center attacks.

What was the mission? Collect, analyze, and disseminate relevant threat information to all elements of the Department of the Navy, provide protection where possible to those NCIS was responsible for, support the overall national efforts to quickly acquire information, and prepare for the deluge of information requests. There was also an underlying recognition that we had just entered a new era, still undefined, which would change how we thought and

13

responded, especially in the information arena. Information as a business was about to make an evolutionary leap.

To put context to today's challenges, a historic look back into the past of the counterintelligence community gives some insights into how far information capabilities have evolved. In the 1980s, counterintelligence information sharing was predominantly based on interpersonal contacts across organizational boundaries and the dynamics of institutional agreements. Information was compiled into voluminous documents of sometimes grandiose size whose value was jokingly determined by the document's weight rather than content. Physical libraries of these large volumes of texts and studies, neatly stacked and orderly, could be found throughout the counterintelligence community.

These products had been developed over the course of time and with significant expenditure of intellect. The approaches to information development and use were dominated by a plodding bureaucratic methodology. Speed was not important and production was based predominantly on past needs and not current situations. These gold mines of information were jealously guarded by those who collected and compiled the information. Ironically, access to the information was not always impeded by "need-to-know" for security purposes. In reality, access was dominated by the "need-to-know where to look" in a physical building or room, or "need-to-know the topic as filed." Both of these were serious impediments to the speed, use, and relevant application of information.

The global information age that followed began to automate the electronic systems and caused a nationwide cultural acceptance that information should be more readily available. Information

availability slowly evolved, becoming easier to transmit across organizational boundaries, but was still impeded by human relationships and/or institutional arrogance and bureaucratic hoarding. Notwithstanding a much more proficient and automated capability, the user was still hindered by the residual processes of the past. The automated systems were just a faster means to acquire information; the customer was still required to know where to look and forced to labor in the process of "pulling" information.

This simplistic look at counterintelligence information history reveals yet another obstacle to be overcome. The movement toward more accessible information was impeded by the barriers of information power. The "cliché" coin of the realm in the 1980s was "the holders of the most information have the power." Concurrent with the information age of the 1990s, an effort at fundamental change began in information power bases. The new coin gradually became "the speed of information transfer is the power," with integrity and relevance as key components. Organizations in a hoarding mode, making no efforts to push information to the broader customer community, began to find themselves bypassed by other, more agile information competitors. The monolithic institutions still retained significant "hoards" of information, but with digital analytical tools and faster movement of information, their relevance began to diminish as customers realized there were other places to go for information.

The antiquated approach of large products whose value was based upon size was no longer as important as the speed and impact of information. The ability of an organization to compress the time lag from the acquisition of information in the field, through the analysis process, and the ultimate transmission to a customer became the currency of value within the counterintelligence community.

Few organizations within the U.S. government have the multiplicity of mis-

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sions uniting law enforcement, counterintelligence, military, and security into one compact capability. NCIS developed and launched a strategy to exploit this unique capability. NCIS began to combine these disparate professions and their respective information sources to better frame the threat and to provide a unique service that many traditional counterintelligence and intelligence organizations could not emulate. NCIS also went on a campaign to place personnel within the various customer organizations to more readily understand their needs and better craft future products. Internal shifts in priorities and directed counterintelligence activities were made to match the new customer needs that surfaced during the customer integration effort. The integration effort showed dramatic differences in each customer's priorities and interests. This resulted in an information priority shift from the "cold war" one-size-fits-all product to the customizing of products to each customer's needs. Standardized approaches gave way to a continual remixing of counterintelligence and law enforcement methodologies creating a somewhat amorphous approach to the new world problems.

Due to the global nature of the Department of the Navy and the complexity of an extremely mobile force, the "pulling" of information was deemed inadequate to the organizational needs of the Department. This problem set was acknowledged by the counterintelligence community and the aforementioned integration effort provided great insights into addressing this problem. Business marketing thought was interwoven into the age-old standard military requirements process. NCIS became more cognizant of customer routines and timetables for decision-making processes, and began a transition to identify means whereby information could be "pushed" to the customer, on time, and in a more usable form. This simple concept of "push, not pull" is at the forefront of all modernization efforts by the

counterintelligence community and NCIS.

Post USS Cole, the U.S. counterintelligence community initiated a number of incremental steps to change information use and distribution channels. The attacks on September 11 took those ongoing efforts and compressed them into a six-month revolution of change. The genetic makeup of the counterintelligence community will never be the same and has forced new information-sharing initiatives that didn't exist in the past. Parochial information boundaries are crumbling, and new systems and analytical tools are displacing the traditional library and historical filing processes. These are taking the form of "piles of digital data" used by multiple consumers with diverse needs. Each consumer can produce products based upon various needs not necessarily linked to the original requirement for the data.

The competitive counterintelligence bureaucracies that entered the 21st century are now seeking ways to support and assist each other. Competition is giving way to a "coalition" between law enforcement, counterintelligence, military, and intelligence organizations. Technology is paving the way for information sharing that is not based solely on interpersonal relationships. Rather than creating redundant systems that would facilitate the "hoarding of data" in the traditional sense, these previous competitors are seeking to exploit each organization's strengths and work closer to shore up the weaknesses. Institutional efforts to control the entire global counterintelligence market are giving way to organizations seeking ways to identify their own specific "market" niches, and through automated collaborative systems provide information to the larger coalition.

Another element of change is in the analysis of information by professions and outlooks previously deemed to be only

> This simple concept of "push, not pull" is at the forefront of all modernization efforts by the counterintelligence community and NCIS.

supporting roles. Counterintelligence organizations are seeking personnel outside of the traditional law enforcement and military professions that have fed the counterintelligence community. Those institutions that are able to hire across a diverse professional backdrop are quickly learning that diversity of backgrounds and perspectives are sometimes as much a key to analytical success as the primary information collected.

> NCIS is drawing on our nation's diverse culture to enhance our abilities to protect. The use of diverse ideas is also the antithesis to the narrow focus and single-mindedness of terror.

The critical nature of intelligence analysts and librarian functions cannot be overstated during this new era. The compilation of information, combined with ensuring appropriate information flow, data storehouses, and pipelines for dissemination are crucial to organizational viability. Almost any organization can acquire data through field activities. It is through the analytical process that raw data becomes usable information. NCIS and the counterintelligence community are aggressively increasing the number of information specialists at the cost of more traditional assets, thus ensuring that the heart of the organization remains strong and viable. The transmission of data from the field to the analyst and hence from NCIS to the customer can be almost instantaneous. It is the ability to filter information through an informed knowledgeable cadre of analysts that impacts on speed. Information reaching a customer after a terrorist attack occurs defeats the entire mission of the organization. In the never-ending effort to provide relevant and timely information to the customer, it is critical that sufficient resources, systems, and manpower are applied to this phase of the process.

Notwithstanding the positives, change does not come without stress. One impact on this new information sharing revolution is a breakdown of the past incentive structure. Who gets the credit for stopping the next terrorist attack? The mutual reliance on each other results in spreading the credit and making exclusivity difficult. This is further exacerbated as each organization seeks to retain identity, while supporting the coalition and balancing customer requirements.

NCIS is currently in the middle of the ongoing effort to create an environment in the counterintelligence community that facilitates daily communication among the organizations. This is necessary to meet the challenges presented by global situations that are constantly changing. NCIS is drawing on our nation's diverse culture to enhance our abilities to protect. The use of diverse ideas is also the antithesis to the narrow focus and single-mindedness of terror. Our universities, institutions, government, and for my part, the counterintelligence community must retain this ability to evolve if we are to succeed against hostile entities. It is incumbent upon those managing these efforts to ensure progress, while maintaining diligent oversight and balance in the protection of individual rights, as we strive to ensure our nation's security.

Editor's Note

Click here for more information:

United States Intelligence Community
http://www.intelligence.gov/index.shtml

USIC—Counterintelligence
http://www.intelligence.gov/
2-counterint.shtml

Naval Criminal Investigative Services
http://www.ncis.navy.mil/

NCIS—Counterintelligence
http://www.ncis.navy.mil/
activities/Counterintel/Counterintel.html

Life With the USA PATRIOT Act:

At the Crossroads of Privacy and Protection

by Robert Truman

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Six weeks after the attacks on the World Trade Center and the Pentagon, President Bush signed the USA PATRIOT Act into law. This sweeping law, purportedly aimed at fighting terrorism, amends more than 15 different statutes. The provisions of the USA PATRIOT Act address topics from increasing border patrols to processing visas to limiting money laundering. Some of these amendments are uncontroversial additions to the law; others, such as the various ways the Act extends the long arms of the law, are more notorious.

The increased surveillance powers are forcing librarians to come to a new understanding of the relationship between privacy rights and patron information. The new laws make it easier for authorities to follow the path of individuals up to and through the library doors. And into library computers. And library networks. And library sign-up sheets. And, well, any records the library keeps on its patrons. Because of the serious privacy implications, librarians face the task of maintaining and upholding traditional intellectual freedom principles in a severely changed legal climate.

The Uncertainty Principle

Since the first of this year, law enforcement authorities seeking information on 46 different patrons have approached 24 libraries in Oregon. Maybe.

Actually, no one knows. Or at least, those who do aren't telling. The far-reaching business records provision of the USA PATRIOT Act has been treated with a modified "no tell, don't tell" policy: The FBI refuses to share, and the act itself contains a built-in gag order keeping librarians from reporting that an order for production of patron records has taken place (50 USCA 1861(d), 1990 & Supp. 2002). The Justice Department insists these statistics are classified and refuses to release them to Congress in the open (Bryant, September 22, 2002). In fact, to

date it remains unclear whether the Justice Department has provided the information to Congress in any form.

The American Library Association's (ALA) Freedom to Read Foundation and civil liberties groups recently filed suit seeking release of the number of times the federal government has sought records from libraries, bookstores or Internet service providers under the USA PATRIOT Act (Madigan, 2002). The data may be secret, but one fact is quite clear: searches under the USA PATRIOT Act have been taking place in libraries. A survey of U.S. libraries estimated that approximately 200 libraries had been contacted by law enforcement for patron information in the three months following passage of the Act (Estabrook, 2001; Poynder, 2002).

The lack of hard numbers contributes to a climate of uncertainty and possibly even fear in libraries. It is difficult to imagine how release of USA PATRIOT Act statistical information could have an impact on national security. It is, unfortunately, not difficult to imagine the effect that abuse of government surveillance powers can have on public discourse.

Chilling Effects on Cognitive Liberty

In a chilling public service announcement aired this past summer, a young man approaches a librarian with a request for books. The librarian announces the books are no longer unavailable and asks the patron's name. When the patron turns to leave, two men in suits stop him. The Ad Council created this ad as part of their "Campaign for Freedom" aimed at highlighting the dangers outside forces present to our freedoms. This spot struck a chord with a library community copinxg with the dangers presented by the expanded access provisions of the USA PATRIOT Act (ALA, 2002, *American Library*). It concisely illustrates the fear that when "they" know what "you" are reading, self-censorship is sure to ensue.

Free speech, free thought, and free association are privacy's raisons d'etre. Our freedoms, our civil liberties, are perhaps most at risk when citizens are too fearful to exercise them. Thus, libraries can only promote intellectual freedom when they act as impartial information resources, not when fear of intimidation or retaliation is present. After all, there is no need to ban a book when readers will be too fearful to pick it up. In effect, the First Amendment is circumvented by "threatening readers rather than prohibiting what they read" (Gelsey, 2002).

"In a library (physical or virtual), the right to privacy is the right to open inquiry without having the subject of one's interest examined or scrutinized by others" (ALA, 2002, *Privacy*). It does not necessarily take an actual violation of patron privacy, such as that illustrated in the Ad Council spot, to chill "cognitive liberty" (Gelsey). Courts have made it quite clear that freedom of speech includes the right to receive information and ideas. "It makes no difference that one can voice whatever view one wishes to express if others are not free to listen to these thoughts" (Tattered Cover v. City of Thornton, 2002). An environment of fear and uncertainty is one of chilled speech, and one that compromises the First Amendment. The effort to force the Department of Justice to publicly account for its library surveillance is one way to remove such uncertainty. Another is for librarians to better understand the reach of the USA PATRIOT Act's surveillance provisions and, with that knowledge, plan for patron privacy. The threat to cognitive liberty is lowered when libraries avoid creating unnecessary files of personally identifiable information and when our patrons are made aware of the privacy strengths and weaknesses of libraries.

> Today, we take an essential step in defeating terrorism, while protecting the constitutional rights of all Americans.
>
> —PRESIDENT BUSH
> Remarks at signing of
> USA PATRIOT Act of 2001
> (October 26, 2002)

A New Take on "Search the Library"

Libraries may experience a dramatic increase in law enforcement visits because of the ways search, seizure, and surveillance powers were enhanced by the USA PATRIOT Act. The expanded categories of material available under certain types of orders, the creation of nationwide search warrants and orders, and the lower thresholds the government must reach to receive a court order add up to easier law enforcement access to library information.

It is this last element, the lowering of the standards the government must meet to compel production of information, where the USA PATRIOT Act most expanded potential law enforcement access to library records, data, and infrastructure. Understanding the legal standards required to compel disclosure of information is the key to making sense of search and seizure law. These standards, created by statute and by courts interpreting the Fourth Amendment, can be placed along a continuum, from the lowest threshold to the highest:

1. *No legal process.* The government can acquire the information without process or order. Available when emergency, consent or exigent circumstances, among others, are present.

2. *Subpoena.* Signed by prosecutor (grand jury subpoena) or by agent (administrative); standard is relevance to investigation. Libraries can often move to quash in court.

3. *Relevance court order.* Court order required. Government can obtain the order merely by certifying to the court that the information likely to be obtained is relevant to a law enforcement investigation.

4. *Articulable facts court order.* Court order required. Government can obtain the order by offering specific and

articulable facts establishing reasonable grounds to believe the information to be obtained is both relevant and material to an ongoing investigation.

5. *Probable cause search warrant.* Search warrant required. Government can obtain the warrant by offering facts establishing a likelihood that a crime has occurred and that evidence of the crime exists in the location to be searched.

6. *"Super" search warrant.* Special search warrant required. Extra threshold requirements added (e.g., exhaustion of all other means of obtaining the evidence, requiring special authorization, etc.).

7. *The government may not acquire the information under any legal process.* The law may forbid the government from acquiring the information through any legal process.
(Adapted from Kerr, in press)

For most patron information the probable cause threshold has stood as a high standard, effectively keeping government intrusion in libraries, and the concomitant effect on cognitive liberty, at a low level. However, low thresholds for certain limited types of searches did exist before the USA PATRIOT Act. For example, transaction and account records for e-mail services have only required the lower specific and articulable facts standard (18 USCA 2703(c)(1), 2000 & Supp. 2002). Another example, administrative subpoenas, have often been served on libraries, typically requiring merely an affirmation of relevance to an investigation. These, however, are often successfully fought by libraries as unreasonably broad or for intruding on the free speech rights of the search subject.

The USA PATRIOT Act's most startling amendment to the surveillance laws,

section 215, extends the types of records available to the FBI while significantly lowering the threshold standard an agent must demonstrate to gain a court order. The title of this section belies its importance: "Access to certain business records for foreign intelligence and international terrorism investigations" (18 USCA 1861–1862, 2000 & Supp. 2002). This law was formerly limited to the collection of business records in very limited situations and required a showing of specific and articulable facts that the person the records pertained to was an agent of a foreign power. "Agents of a foreign power" referred generally to intelligence officers or members of an international terrorist association (Dempsey, 2002).

In one fell swoop, section 215 changed that by expanding the scope of access while lowering the threshold required for a court order. First, section 215 expands the scope of government access to records by authorizing the government to seize "any tangible things (including books, records, papers, documents, and other items)" which can include floppy disks, data tapes, computers with hard drives, and any library records stored in any medium (50 USC 1861(a)(1), 1991 & supp. 2002). Thus circulation records, Internet use records, registration information, and even "saved searches" and other customization tools are now within this section's reach (ALA, 2002, *The USA Patriot*).

Second, the USA PATRIOT Act lowers the standards required for a court order by eliminating the "agent of a foreign power" limitation. Now the search need only relate to investigations against international terrorism or clandestine intelligence activities. This effectively drops the threshold for an order to a very low legal standard, apparently requiring only that the agent believe the records sought are related to

We should turn our energies to preventing the reality of terrorism and not be deterred by the bugbear of privacy.

—ANONYMOUS
Assistant Director of a Massachusetts public library
(Poynder, 2002)

The USA PATRIOT Act
is treason
pure and simple

—KAREN SCHNEIDER
(2002)

such investigations. One concern is that the broad language of the statute will allow fishing expeditions in library records: it is not clear at all that an application for a court order under section 215 need name an individual. Of final concern are the secrecy provisions: no one can disclose that the FBI has sought or obtained information under this section, no notice is required to be given to the person under investigation, and the court order itself shall not disclose the purposes of the investigation (50 USCA 1861(c)(2), 1861(d), 1990 & Supp. 2002).

How then can section 215 pass First and Fourth Amendment scrutiny? It may not, though not for lack of trying. The section provides a modicum of protection for free speech rights, allowing for court orders on investigations of "United States persons" provided that they are not "conducted solely upon the basis of activities protected by the First Amendment" (50 USCA 1861(a)(1), 1861(a)(2)(B), 1990 & Supp. 2002). This may not be enough to pass constitutional muster as the "solely" requirement would seem to leave plenty of room for investigations based primarily on protected activities. Those secrecy provisions may likewise be constitutionally suspect (American Civil Liberties Union, 2002).

The Fourth Amendment may provide even less protection because section 215 amends the Foreign Intelligence Surveillance Act (FISA). "Foreign agents" have no Fourth Amendment protections, and courts have acknowledged that the executive branch has broad discretion in national security matters. Thus, the FISA was designed to maintain a balance between national security and privacy through the foreign agents provision and through the use of "minimization procedures" for searches involving U.S. citizens (Evans, 2002). The USA PATRIOT Act may have gone too far in tipping the

balance to security. Sharing that belief is the ACLU, which is seeking a librarian willing to defy the gag order and challenge the act (Piore, 2002).

Responsibility for protecting citizens' rights under FISA lies with the "secret" Foreign Intelligence Surveillance Court (FISC), which reviews applications under the Act. In May, 2002, for the first time since its founding in 1978, the secret federal court balked at a Justice Department request, publicly admonishing the department for breaking down the wall between domestic law enforcement and foreign intelligence gathering. The court rejected the Department's interpretation of the USA PATRIOT Act, which allowed law enforcement to piggyback on the broad, low-threshold section 215 provisions without having to show probable cause. The Department of Justice has appealed the decision.

Two other provisions of the USA PATRIOT Act directly affect libraries. "Pen registers" and "trap and trace devices" are terms derived from the "good-old days" of surveillance. Pen registers tracked outgoing phone numbers; trap and trace devices tracked incoming phone numbers. Now, after the USA PATRIOT Act, Pen/Trap orders refer to the real-time interception of non-content electronic information. Non-content information such as e-mail headers, IP addresses, URLs, and routing and addressing information for Internet traffic can be intercepted under a Pen/Trap order (ALA, 2002, *The USA Patriot*).

Because Pen/Trap orders capture real-time transaction records, not content information, investigators need only certify that the information sought is "relevant to an ongoing criminal investigation" (18 USCA 3122(a)(1), 3122(a)(2), 2000 & Supp. 2002). Courts do not require probable cause because such content is treated like the writing on the outside of an envelope. Viewable in the open, the writer can have no reasonable expectation of privacy. The content inside the envelope, the letter, does have protection

under the Fourth, as does e-mail content.

Libraries are far more likely to come into contact with Pen/Trap orders than in the past because the USA PATRIOT Act allows for nationwide execution of these orders. If a suspect's path takes them into the library for, say, e-mail communication, an existing Pen/Trap order could be used to place a device on the computer or network to intercept the non-content information. Many public libraries may have Pen/Trap surveillance in place and not be aware of it. Often the actual interception of electronic information takes place at the Internet service provider, whether municipal or private. These providers are ordered to keep silent by the nondisclosure provision of section 216 (18 USCA 3123(d), 2000 & Supp. 2002).

The USA PATRIOT Act has also extended the availability of wiretaps which, unlike Pen/Trap orders, do intercept electronic communication content. Criminal investigation wiretap orders may only be granted upon a showing of probable cause that the target committed one of a list of serious crimes, now including terrorism and computer crimes (18 USCA 2516(1), 2000 & Supp. 2002). FISA wiretap orders are more likely to make their way to library networks, because the threshold to receive an order is slightly lower and because the Act allows roving surveillance authority (18 USCA 1805(a), 1805(c)(2)(B), 2000 & Supp. 2002). Roving wiretaps allow agents to target surveillance to an individual, rather than a particular device. Thus, as the individual moves from the phone in the coffee shop, to one in an office, to one in a library, the roving wiretap can follow (Rackow, 2002). Again, libraries may never become aware of these wiretaps since installation will be at the phone company or Internet service provider.

There are a number of other legal processes through which government authorities can gain access to information, many of which predate the USA PATRIOT Act. Two excellent matrices, *Library Records Post-PATRIOT Act* (Minow, 2002) and *The Search & Siezure of Electronic Information: The Law Before and After the USA PATRIOT Act* (ALA, 2002), provide overviews of the type of information sought and the legal process required.

What to Do When They Knock on Your Door

All these new laws, so little time to comply. What should a library do when law enforcement stops by ready to take advantage of the surveillance provisions of the USA PATRIOT Act? In short: prepare, train and follow up.

You are not alone in this. The American Library Association provides guidelines to help librarians prepare for investigations: *Confidentiality and Coping with Law Enforcement Inquiries: Guidelines for the Library and its Staff* (ALA, 2002) and *Guidelines for Librarians on the U.S.A. PATRIOT ACT: What to do before, during and after a "knock at the door"* (ALA, 2002). The ALA also provides suggested procedures for implementing policies, many of which are available online or in the *Intellectual Freedom Manual* (Office for Intellectual Freedom, 2002). Mary Minow provides a number of helpful ideas in her fine *Library Journal* article "The USA PATRIOT Act" (2002). In that same issue Karen Coyle explains what a privacy audit is and how librarians should go about conducting one. Many more resources on privacy are available at the ALA Office of Intellectual Freedom's *Privacy and Confidentiality* site at http://www.ala.org/alaorg/oif/privacy.html

The End of Patron Privacy?

Can it be that the USA PATRIOT Act marks the end of privacy in American libraries? I do not think so.

This faith is not based on any illusion that the federal authorities will refrain from abusing the broad powers handed them, though I continue to hope for such restraint. Nor does it rest on a belief that

Click here for more information:

ALA—USA PATRIOT Act in the library:
http://www.ala.org/alaorg/oif/usapatriotlibrary.html

ALA—Libraries & the PATRIOT legislation:
http://www.ala.org/washoff/patriot.html

ALA—Privacy & confidentiality:
http://www.ala.org/alaorg/oif/privacy.html

ALA—Privacy resources for librarians & families:
http://www.ala.org/alaorg/oif/privacyresources.html

Center for Democracy & Technology—USA PATRIOT Act Resources:
http://www.cdt.org/security/010911response.shtml

the courts will strike down law enforce-
ment actions that curtail civil liberties in
libraries. Too often in our past serious
intrusions on civil liberties have been
overlooked in times of national emer-
gency. And though the House of Repre-
sentatives did include a sunset provision
in the USA PATRIOT Act, so that various
amendments such as section 215 will
expire on December 31, 2005, neither do
I rely on Congress alone to restore the
balance between security and privacy.

In the end, it is my confidence in
librarians and the ends to which they will
go to protect civil liberties that gives me
hope. They have long been in the van-
guard of the fight for freedom. Through
preparation, advocacy, agitation, and
working together with others who appreci-
ate the fragility of our liberties, librarians
can prevail to protect personal privacy.

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Libraries' Responses
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lbry) received donations of materials from the local Islamic and Jewish communities for the Library's collection during 2001 and 2002. Working with these community groups, OIT sponsored a speakers' series in the Fall of 2002, according to Marita Kunkel, Director of the Library.

In April 2002, the **Newport Public Library** sponsored a program by Afghan-American photographer Ibrahim Wahab, reported Reference Coordinator Sheryl Etheridge. Entitled *Where is Afghanistan?*, the program documented Wahab's recent two-month visit to his homeland. Sheryl observed, "Many people spoke up and asked what they personally could do to help. They came to the program to learn about Afghanistan, and left with a fresh, new perspective."

The Rev. Peter Marshall wrote, "Life is measured not by its duration but by its donation." The quality of our professional life is indeed measured by the donation that we make to our clients of our unique professional skills. We must not think that our response in any library was unimportant or insignificant: all of us who thought about the nature of our work and the needs of our clients, and who used the resources we had to meet those needs—all of us were responding to the sudden and special crisis in our communities. And I use the term "community" deliberately to mean those people whom we serve, regardless of the type of library we work in. Academic and special libraries have communities of users, just as public and school libraries have communities.

The examples described in these pages are only a partial demonstration of the response of Oregon libraries. They are, however, exemplary in their scope and initiative. When we look back on the effects of September 11, we can be proud of the responses that Oregon librarians made to this historic crisis.

Library Life in the Shadow
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The American Library Association's Washington Office has brought together valuable "best practices" in its Web site on privacy, and frequently sponsors programs at conferences addressing these issues. The ALA Office of Intellectual Freedom has prepared numerous statements and guidelines over the years that can be incorporated into our plans. As libraries we are accustomed to sharing resources and this is an opportune time to do so.

Threats to the values of library service in a democracy have always been present. But in this climate, when everyone has experienced the fear of terrorism, there is more sympathy for the threats to become reality in our libraries. Sympathy for restricting privacy, confidentiality and intellectual freedom lies not just within our communities but also among our administrators; perhaps even among ourselves.

The USA PATRIOT Act, an acronym that stands for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, passed in 2001 and is in place. This is a time to be mindful of our values, our policies and the law. This is a time to establish the parameters of how far we each are willing to go to protect the intellectual freedom of library users on the one hand, and to protect our communities on the other.

The ALA Washington Office URL is: www.ala.org/washoff/patriot.html

OLA Quarterly Publication Schedule 2003

The *OLA Quarterly* is an official publication of the Oregon Library Association. Beginning with volume 3, number 4 the *Quarterly* is indexed in Library Literature. Each issue of the *OLA Quarterly* is developed by a guest editor(s), on a topic decided by the Publications Committee. To suggest future topics for the *Quarterly*, or to volunteer/nominate a Guest Editor, please click on the appropriate e-mail link.

Vol./No.	Theme	Deadline	Pub. Date	Guest Editor
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Vol 9 • No 2 Summer 2003	OLA President-elect's Issue: Diversity in the Profession	April 15, 2003	June 15, 2003	Faye Chadwell University of Oregon
Vol 9 • No 3 Fall 2003	Energizing Young Adult Services	July 15, 2003	September 15, 2003	Christine Perkins Oregon Young Adult Network
Vol 9 • No 4 Winter 2003	Other Voices: Library Associations in Oregon	October 15, 2003	December 15, 2003	To be Announced