DttP

Documents to the People

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- Government Information Policy and Secrecy
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- Official Languages and Delegated Legislation in Canada
- Interview with the Incoming GODORT Chair

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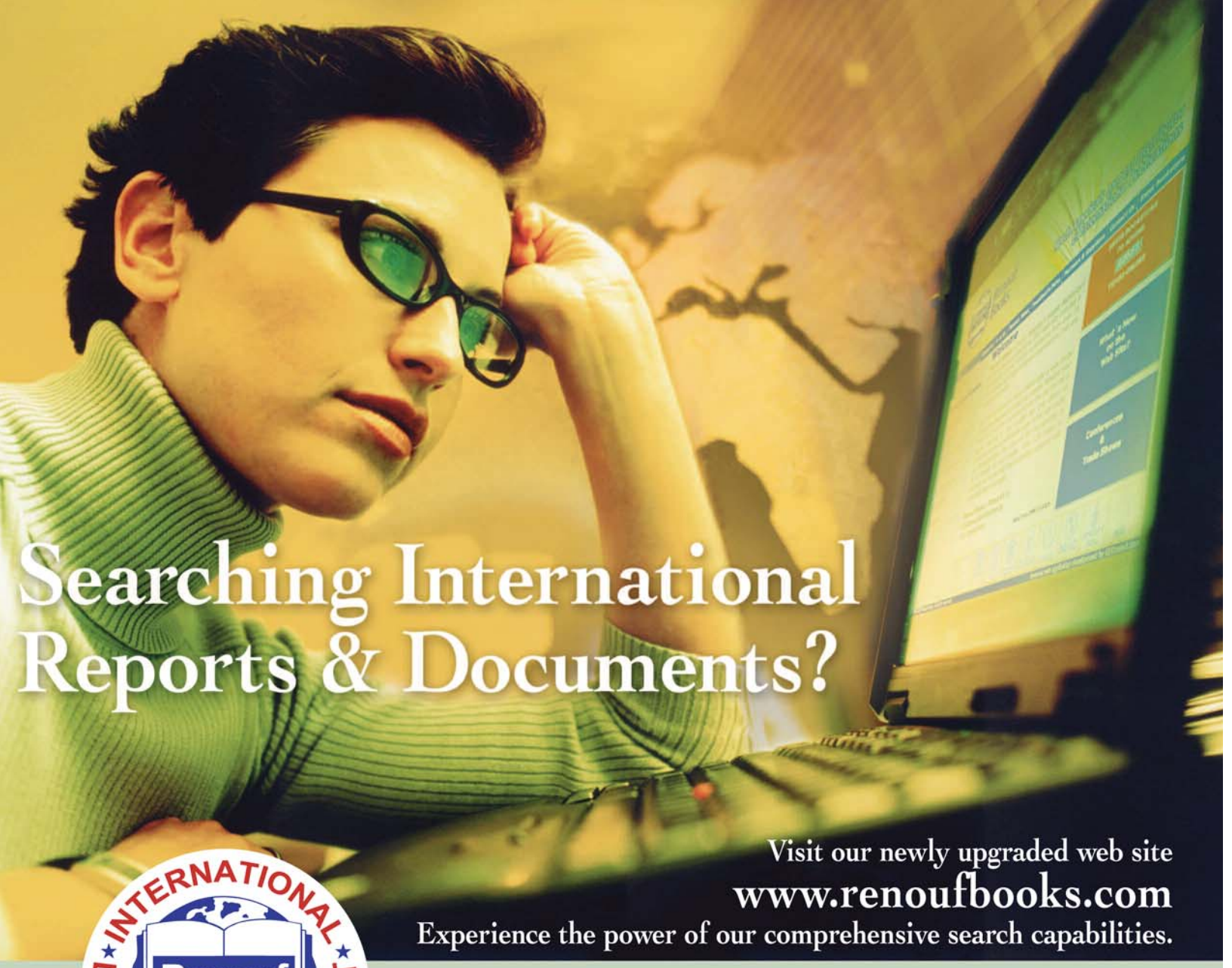

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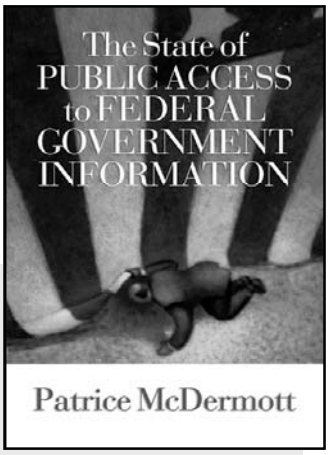

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Editor's Corner

On My Reading List

Andrea Sevetson

One of the side benefits of being the *DttP* editor is that I get copies of the other journals produced by ALA. Sometimes there isn't a lot there to excite me, but other times I think about my readings quite a bit.

Tops on my list right now . . . Ann Pechacek, "I Can't Live without My . . . Teens' Top Ten High-Tech Gadgets and Web Sites," *Young Adult Library Services* 5, no. 2 (Winter 2007): 9, 16. This is because the top ten gadgets listed were: computer, cell phone, iPod/MP3 player, digital camera, game systems, flash drive, television, TiVo, DVD player, and microwave. Being a bit past the teen years, I keep thinking about my ten. Certainly, unlike a teenager, I don't need all of these things to live. The hardest part of this, for me, is separating the work stuff I absolutely need from the "if I were stuck on a desert island with electricity" stuff. This is an article that comes back to me at odd times. I still haven't reconciled my own top ten.

Another great article is from M. Kathleen Kern, "Get to Know Your Gadget Guy or Gal: Tips from an Accidental Library Technologist on Staying Current," *Reference & Users Services Quarterly* 46, no. 2 (Winter 2006): 12–15. Her article includes interesting web sites and tips for staying informed, and each entry has an annotation. A great article for those of us who feel we're straying ever further from being informed.

My final item is a bit of a busman's holiday: Diane Zabel, "From the Editor: Advice for Prospective Authors," *Reference & Users Services Quarterly* 46, no. 2 (Winter 2006): 4–5, 11. RUSA has a good journal, so reading what she has to say about the material *RUSQ* receives was interesting. In the same vein, another article I've read recently was from Scott Nicholson, "Tutorial: Writing Your First Scholarly Article: A Guide for Budding Authors in Librarianship," *Information Technology and Libraries* 25, no. 2 (June 2006): 108–11. Both are good articles for budding authors who need to figure out how it all gets done.

These are interesting to me because of the various situations we find ourselves in when editing *DttP*. Probably one of the more interesting opportunities that comes up is when people offer to write for *DttP* but don't have a topic in mind. I don't keep a list of topics or assignments, so unless you've got something in the back of your mind, I'm not a huge help.

If you want to write professionally, what are your options? The most important thing is to write about something that interests you. By your sheer passion for the subject you can interest people in it. A really interesting reference query that sent you in all kinds of directions can spark an interesting article about sources for particular types of material, or it could spark your interest in the topic as a whole, leading to a different type of article.

One of the biggest issues we face is working with first-time authors. Getting started writing for professional journals can be intimidating! When I started I just knew my reviewers were long-time librarians who knew much more than I did on any topic. And I was convinced they were all reading my text and laughing hysterically. I think my best move was to find a co-author to work with—that way we proofed each other, asked questions, and put out a much better product that I ever could have alone.

Everything I've ever read about writing tells you to find at least one person to read and offer comments on what you've written. It makes a lot of sense—wouldn't you rather have someone you know and like offer you helpful comments than sending it to some complete stranger?

The other piece of consistent advice is to check out any style manuals or instructions to authors (usually posted on web sites). *DttP* has ours at www.ala.org/ala/godort/dttp/instructionsforauthors/instructionsforauthors.doc. We've spent a lot of time on this, so there are sample citations to refer to (I use this all the time), approved abbreviations, and more.

In This Issue

Ben Amata, our contributions editor, has put together an interesting series of articles on government information policy and secrecy. We thank the authors who put the time in to contribute to this issue! We also have an interview with the incoming GODORT chair, Bill Sleeman (2007–2008), so you'll be able to learn a bit more about him and his likes and dislikes. Thanks for trying this out with us, Bill.

Enjoy your issue of *DttP!* ▮

From the Chair

Aimée C. Quinn

Although this is my last column, I would like to try something new by having our chair-elect, Bill Sleeman, add some of his own thoughts regarding GODORT and the direction it is moving. To many members, ALA is overwhelming and frustrating. I have heard that some of you feel that GODORT echoes ALA, and I think that some of the frustration is driven by how we schedule and coordinate our meetings. GODORT is a more formally organized round table than some others. Because of this formality, we usually work well within the ALA structure. Recently two smaller round tables, after they missed ALA deadlines and were unable to schedule rooms, contacted me for help with organizing their programming. As a result, one round table decided not to hold a formal program but discuss the issue of better structure over dinner; the other is still trying to work out the direction they wish to go. Thanks to the Program Committee's hard work, GODORT met the ALA deadlines and has a very good program titled *What Difference Does It Make What Congress Published? American History in the Earliest Congressional Documents* coming up this summer in Washington, D.C. In addition we have scheduled an outstanding preconference on *International Documents in an Electronic Age the Open Internet and Beyond: Challenges, Tasks, and Tools for All Libraries*.

These activities, along with other work we are developing, are available on our web site at www.ala.org/ala/godort. Along with our web site is our new wiki, where members can work on issues from home and still contribute. At Midwinter, I agreed to develop a blog, which is now available at godortchair.blogspot.com.

I thank each member for your hard work and dedication. It has been a privilege to serve as your chair.

From the Chair-Elect

Bill Sleeman

I want to thank Aimée for the chance to drop in a few comments here. Normally, the chair-elect's first column isn't out until ALA Annual, but as there is often work that needs to be accomplished ahead of time, this can sometimes be too late. One project that I want to draw your attention to is ALA'S Day on the Hill, scheduled for Tuesday, June 26, 2006. There are many important issues—GPO funding, EPA libraries, DOPA—that our membership can and should take the lead on. I have been in contact with ALA, and I hope that GODORT can have a strong presence that day. Look for more information forthcoming on our web site and the wiki.

Another important initiative just getting underway is our strategic planning effort. As Aimée and I mentioned, GODORT's structure can serve us well when we are dealing with "Big ALA," but we also understand that, for some, our round table can be far too time-consuming. Many of our members serve in a variety of professional roles beyond government information, and have a need to get to more than just GODORT events at ALA. We are alert to that, and I hope that in the coming year Aimée and I can address some of this in the scheduling, and that the strategic plan will help us to more fully resolve this challenge for the future. ▮

On the Range

Limited English Proficiency

Brian Rossmann

Recently I helped an undergraduate student at my reference desk who had discovered the National Institute on Drug Abuse publication *Methamphetamine Abuse and Addiction* in our catalog, scribbled down the SuDoc call number, and was attempting to locate the document in our stacks. As we were making our way over to the stacks, I noticed her call number: HE 20.3965/2:M 56/SPAN. "Oh . . ." I remarked, ". . . this is a Spanish language document; is that what you are looking for?" She responded immediately that it could not be in Spanish because it was published by the United States government. As I explained to her that there are a number of non-English items in our government documents collection she became increasingly agitated. "But, Americans don't speak Spanish! What if *I* want to read this?" Fortunately, we do also hold the English version of this title, and she had calmed down by the time she checked it out and departed (both documents are also available online at purl.access.gpo.gov/GPO/LPS6527 and purl.access.gpo.gov/GPO/LPS14815).

Perhaps I should not have been surprised by her reaction. Up here "on the range" in Montana, only about 2.4 percent of the population is of Latino or Hispanic origin (2005 numbers from the Census web site). I was also following State House Bill No. 549, *An Act Requiring English Proficiency for Licensing of Drivers*, which was being debated at the time (data.opi.mt.gov/bills/2007/billpdf/HB0549.pdf). It was a proposal that would have required drivers to prove proficiency in English before receiving a license in the State of Montana. (This bill has since missed the deadline for general bill transmittal

and thus died in committee.) Linguistic and ethnic diversity are not traits of the Big Sky state. Not surprisingly, our Spanish language documents tend to not get much use.

However, as many of you will know from your own experiences in your libraries and communities, matters are very different elsewhere in the nation. Indeed, according to the Census 2000 Brief, *Language Use and English Speaking Ability: 2000* (www.census.gov/prod/2003pubs/c2kbr-29.pdf) the percentage of the U.S. population that speaks a language other than English at home has increased from 13.8 percent in 1990 to 17.9 percent in 2000; and 8.1 percent of the population (about 21 million people) speak English "less than very well." Because of this, federal government executive agencies are *required* to provide appropriate access to people with limited English proficiency (LEP). On August 11, 2000, President Clinton signed Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (www.usdoj.gov/crt/cor/Pubs/eolep.pdf), which states in its goals:

> The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment topromoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without undulyburdening, the fundamental mission of the agency.

Furthermore, the *OMB Policies for Federal Agency Websites* (www.whitehouse.gov/omb/memoranda/fy2005/m05-04.pdf) states that executive agencies must maintain accessibility and appropriate access to their web sites for LEP people, and agencies must determine whether any individual document on their sites requires translation.

Perhaps the best place to begin to learn more about non-English U.S. government information is the *Spanish and Other Language Websites* page at webcontent.gov (www.usa.gov/webcontent/managing_content/specific_websites/other_languages.shtml). It explains that providing access to LEP people is important because "many people who are eligible for federal services can't effectively use those services because they aren't yet proficient in English." Some examples it lists for non-English language government web sites are:

- GobiernoUSA.gov, which is the federal government's Spanish language portal; the U.S. Government's Multilingual Gateway (www.pueblo.gsa.gov/multilanguage/multilang.htm?urlnet99) which offers general government information in more than twenty-five different languages;
- the Social Security Multilanguage Gateway (www.ssa.gov/multilanguage/index.htm) providing access to its content in fifteen different languages;
- MedlinePlus in Spanish (medlineplus.gov/spanish), where Spanish language speakers can search for information in their native language to answer health questions.

While it might have come as somewhat of a surprise to my patron who discovered a Spanish language government publication on methamphetamine in Montana State University's documents collection—clearly federal government agencies are issuing plenty of information in languages other than English, and these documents are finding their way into our collections or will be accessed online from depositories. Moreover, depending on where your library is located, odds are that you are, and will continue to, encounter LEP patrons who are searching for government information that they can use. We have an obligation to do our best to facilitate access to this information. And folks such as myself, who do not regularly encounter LEP patrons, can perhaps make use of non-English language government documents to better educate our patrons about the increasing linguistic diversity of the nation. ▮

Washington Report

Mary Mallory

Government information enthusiasts have had a few familiar signposts to enjoy as they await spring. This year's *Economic Report of the President*, the latest edition of George Bush's papers (January 1 through June 30, 2003, *Public Papers of the Presidents of the United States*), and a new White House web site (www.whitehouse.gov) became available in the midst of the nation's official Presidents' Day celebrations on February 19, 2007. In regard to WhiteHouse.gov, David Almacy, the White House Internet and e-communications director, indicated that in addition to "freshening the look and feel of the site, our goal was to improve access to information about the President's speeches, events and policies." He emphasized that one reason for the upgrade was to "highlight existing features," including RSS news feed subscriptions, weekly e-mail updates, audio podcasts, photos, and on-demand video.[2]

While Congress as a whole has assiduously undertaken legislative and related activities on ethics and lobbying rules, earmarks, the Iraq war, the 9/11 Commission initiatives; and FY2007 continuing appropriations, the House Committee on the Judiciary, chaired by John Conyers Jr., began an investigation of "Presidential Signing Statements under the Bush Administration" on January 31, 2007. The Senate Committee on the Judiciary had held a similar hearing on June 27, 2006.[3] In a different venue, Senate Judiciary chair Patrick J. Leahy stated that the Bush Administration had raised this practice

to an "art form."[4] In a *CQ Weekly* cover story, Adriel Bettelheim notes that these provide President Bush with a means to assert his ideas of executive power, and that these allow the president to "disregard laws and congressional directives as he sees fit."[5] In that President Bush did not veto a single bill during his first term, John W. Dean describes the signing statements as "directives to executive branch departments and agencies as to how they are to implement the relevant law."[6] The number of signing statements cited has ranged from more than 100 to 150 that appear to critique more than 500 to 1,100 provisions of laws.[7] As is well known, bill signing statements appear in the *Weekly Compilation of Presidential Documents* and the *Public Papers of the Presidents of the United States.* At present the *American Presidency Project* at the University of California, Santa Barbara (www.presidency.ucsb.edu) has more than 69,235 documents on presidential studies, including President Bush's signing statements, linked from the "Documents" section. An FAQ by John T. Woolley, one of the creators of the site, along with Gerhard Peters, is included. This resource, in addition to the primary materials, the laws, and the numerous media analyses, provides further insight on the law-making process, power, and politics, and the need to know and the ability to interpret.

Public access to presidential papers and records also is a congressional theme these days. On March 1, 2007, the House Committee on Oversight and Government Reform's Subcommittee on Information Policy, Census, and National Archives held a hearing on the Presidential Records Act of 1978 and its implementation. Part of the hearing's purpose was to examine the potential impact of Executive Order 13233 (2001), which expands sitting and former presidents' power to restrict access to presidential materials. Although Allen Weinstein, archivist of the United States, minimized the effect of E.O. 13233, several other witnesses expressed concern, and Robert Dallek, historian and author of presidential histories, said that access to the material "is not some academic exercise that should be confined to history departments. What we learn from the opening of presidential records is instrumental. . . . We need access, and Bush's executive order carries the possibility that we will lose this access."[8] On the same day as the testimony, Henry A. Waxman, chair of the U.S. House Committee on Oversight and Government Reform, along with other representatives, introduced H.R. 1255, the *Presidential Records Act Amendments of 2007*, to nullify the 2001 executive order.[9]

Southern Methodist University (SMU) has been drawn into this controversy, as it is planning to build the George W. Bush Presidential Library and policy center. The Society of American Archivists (SAA), other academic and library organizations, and even some Methodist ministers have asked SMU to reject the library, given the battles over E.O. 13233 and selected presidential archives.[10]

On February 14, 2007, the same subcommittee held a hearing on the *Freedom of Information Act (FOIA)* to obtain an update on Executive Order 13392 (2006), whereby agencies were to develop FOIA improvement plans. William Lacy Clay, who chairs the subcommittee, relayed his concerns that the current administration was "shielding information."[11] The Congressional Research Service has issued a related report entitled, *Freedom of Information Act (FOIA) Amendments: 110th Congress* (updated February 1, 2007, www.fas.org/sgp/crs/secrecy/RL32780.pdf). The prepared statement of Linda Koontz, the General Accountability Office director of information management issues, also has been issued under the title *Freedom of Information Act: Processing Trends Show Importance of Improvement Plans* (February 14, 2007, www.gao.gov/htext/d07491t.html). Annual FOIA reports can be found at www.usdoj.gov/oip/04_6.html. Of related interest, the Public Interest Declassification Board has made its first annual report available at www.fas.org/sgp/othergov/pidb2006.pdf.

Whether symptomatic or not of the administration, a current phone directory for the Vice President of the United States is unavailable. The 2004 edition, "For Official Use Only," seems to be the latest produced.[12] The revised *List of Classes of United States Government Publications Available for Selection by Depository Libraries*, December 2006, includes item number 0766-C-32, the *Executive Office of the President Telephone Directory*, distributed in microfiche, and classed as PREX 1.22:. However, the Vice President of the United States entries do not include a telephone directory.

The Senate also has been busy addressing major issues of concern to archivists, library professionals, and the public. Harry Reid introduced S. 1, the *Legislative Transparency and Accountability Act of 2007*, on January 4, 2007; it was quickly debated, and passed by a vote of 92-4 on January 18. It is currently under consideration in the House. Apparently, "the bill addresses dozens of ethical points on members' dealings with lobbyists, including gifts and travel."[13] It also would add:

> "Rule XLIV (Earmarks) to the Standing Rules of the Senate to make it out of order to consider any Senate bill, amendment, or conference report, unless a list of all its earmarks, the identity of the Member or Members proposing them, and an explanation of their essential governmental purpose, along with any associated joint statement of managers, is made available to all Members, and to the general public on the Internet, for at least 48 hours before its consideration."[14]

Russell Feingold introduced S. 236, the *Federal Agency Data Mining Reporting Act of 2007*; similar legislation died in the previous Congress. It is also anticipated that the *Federal Research Public Access Act of 2006* will be reintroduced.

In response to the closings of some U.S. Environmental Protection Agency (EPA) libraries and the threatened closings of other federal libraries, including additional EPA libraries, ALA's Committee on Legislation—Government Information Subcommittee, its Federal and Armed Forces Libraries Round Table, and GODORT, as well as the newly formed Ad-Hoc Committee on Federal Libraries, have been involved

in the effort to save these libraries' operations and services to the public and their scientific constituencies. EPA officials and staff attended a number of open meetings at the ALA Midwinter Meeting in Seattle, January 19–23, 2007, and they were joined by at least two Government Accountability Office staff members at intake sessions and responded to questions by various ALA committees' members and librarians. On February 6, ALA president Leslie Burger testified before the U.S. Senate Committee on Environment and Public Works on the issue of EPA libraries. Her testimony is linked from the ALA Washington Office's EPA Libraries web page, www.ala.org/ala/washoff/WOissues/governmentinfo/epalibraries/epalibraries.htm. The ALA resolution is linked from this page as well; other background information is provided. Other library organizations, including AALL, the Medical Library Association, and the Special Libraries Association (SLA), also have been active in this cause célèbre. Stay tuned and be sure to complete the Action Alert at www.capwiz.com/ala/issues/alert/?alertid=9167501.

Although cherry blossoms (a different variety) have already appeared in the nation's capital, the official National Cherry Blossom Festival begins March 31, 2007, and the list of events can be found online at www.nationalcherryblossomfestival.org/events/eng/event_search.php3?event_category=A. Other reasons to celebrate spring 2007 follow:

- Sunshine Week 2007, "Closed Doors, Open Democracies?" is on March 11–17. Ira Flatow, host and executive producer of National Public Radio's Science Friday, and two panels of government and other experts, will kick off this year's events with a national dialogue addressing issues of access to government information, including the impact of government suppression and manipulation of scientific information on public health and safety. The event is hosted by AALL, ALA, Association of Research Libraries, League of Women Voters, National Coalition Against Censorship, National Freedom of Information Coalition, OpenTheGovernment.org, SLA, Sunshine Week, and Union of Concerned Scientists. If you missed it, you will probably be able to order a CD-ROM of the program. Last year's program, *Are We Safer in the Dark?,* is available on DVD, costs $25, and can be obtained via the SLA web site, www.sla.org/marketplace/stores/1/DVD_-_Are_We_Safer_in_the_Dark_P90.cfm. Curious about Sunshine Week's origins? Just remember, "like many families, Sunshine Week's grandfather lives in Florida."[15]
- In 2007, forty-three land-grant universities celebrate one hundred years in the FDLP.
- Valuable publications on climate change, including Library of Congress Science Tracer Bullets Online, "Global Warming and Climate Change," www.loc.gov/rr/scitech/tracer-bullets/globalwarmingtb.html, and the EPA's "Climate Change," epa.gov/climatechange/index.html. How many federal depository libraries have preserved tangible or electronic copies of the Science Tracer Bullets Online series? As the "Global Warming and Climate Change" title is updated, will the older editions be retained, and should these be?
- June 26, 2007, is ALA Day on the Hill, www.ala.org/ala/washoff/washevents/woannual/dayonthehill/dayonthehill.htm; ALA GODORT may participate. For further details, contact Bill Sleeman, bsleeman@law.umaryland.edu.
- Reader Advisory—Phillip Cooper's 2002 book, *By Order of the President: The Use and Abuse of Executive Direct Action,* assesses the uses and abuses of signing statements by presidents Ronald Reagan, George H. W. Bush, and Bill Clinton. Cooper has updated his study to include President George W. Bush in an article for the *Presidential Studies Quarterly* 35, no. 3 (Sept. 2005): 515–32.
- Daily Dose—There are a number of diligent people who are reporting on current events and the status of government information through formal and informal mechanisms. For keeping track regularly, try one or several of the following: *AALL Washington E-Bulletin*, *beSpacific*, *First Monday*, *Free Government Information (FGI)*, *OMB Watch*, *Open Government: A Journal on Freedom of Information, Red Tape Blog,* and *Secrecy News*. ▮

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News from the North

Official Languages and Delegated Legislation in Canada: The Legislative Instruments Re-enactment Act

Ian McDonald

Under the auspices of the Canadian federal Department of Justice, a major research project has been undertaken to identify legislative instruments that must, under the terms of the Legislative Instruments Re-enactment Act, be repealed and re-enacted in both official languages in order to ensure their constitutional validity.

The *Constitution Act, 1867*, that established Canada as a federal union, is, as subsequently amended, the major written element of Canada's constitution.[1] Section 133 of this legislation sets out the equality of the English and French languages in Parliament, in the legislature of Quebec, in the federal courts, and in the courts of Quebec. It also explicitly states that Acts of the Parliament of Canada and of the legislature of Quebec shall be printed and published in both languages.[2]

In Canada federal bills are, and always have been, tabled in both official languages. Consequently, they are passed in both official languages, and the two linguistic versions are of equal authority. But prior to 1969, when the first *Official Languages Act* was passed, the situation was unclear with respect to regulations and other legislative instruments. In the early years, most regulations and orders-in-council were made in one official language and then published, in the *Canada Gazette*, in English and French.[3]

Delegated legislation arises when Parliament, by statute, confers upon an outside authority (Cabinet or an individual Minister) the right to make rules and regulations that have the force of law. The *War Measures Act* of 1914 gave Cabinet broad regulatory powers but made no provision for the publication of orders and regulations. Prior to World War II there was no systematic method of publishing orders-in-council. Some appeared in the *Canada Gazette*, while during 1877 to 1920 others were published with the annual *Statutes of Canada*. A separate volume, *Orders in Council, Proclamations, Departmental Regulations, &c., having Force of Law in the Dominion of Canada,* was published in 1874, with the first consolidation appearing in 1889.[4]

The *Statutory Orders and Regulations Order, 1947,* included the first provision for the publication in Part II of the *Canada, Gazette* of all proclamations, orders, rules, and regulations of a legislative character or of an administrative character, having general effect or imposing a penalty. The *Statutory Orders and Regulations Order, 1949*, required the Clerk of the Privy Council to publish in English and French a consolidation of regulations. This Order provided that all statutory instruments made by the Governor in Council or Treasury Board were to be submitted to the Governor in Council for re-enactment prior to being included in the *Statutory Orders and Regulations, Consolidation, 1949*. The foreword to that consolidation noted that "the systematic publication of statutory orders 'of general or widespread interest or concern' is a fairly recent development."[5]

In 1950, *The Regulations Act* required that each regulation-making authority must submit copies in English and French of every regulation it produces to the Clerk of the Privy Council within seven days, and that these must be published in both official languages in the *Canada Gazette* within thirty days.[6]

The 1969 *Official Languages Act* for the first time clearly

established that thenceforth all rules, orders, regulations, by-laws, and proclamations required to be published by or under the authority of an Act of Parliament must be made and published in both official languages (a legislative instrument is enacted in both official languages when both versions are signed by the competent authority prior to its being printed and published.)[7] In 1979 and 1981, two key Supreme Court decisions (*A.G. Quebec v. Blaikie No 1)* and *A.G. Quebec v. Blaikie No. 2)* held that section 133 applied to the enactment of laws and not just to their publication, and that it also extended to delegated legislation; these principles were incorporated into the 1988 Official Languages Act.[8] The 1978 *Consolidated Regulations of Canada* were made in full compliance with Section 133.[9]

In *Blaikie No. 2* the Supreme Court distinguished between *regulations* enacted by government (delegated legislation), which are subject to these constitutional requirements, and *rules and directives of internal management*, which are not. The dividing line between these categories may not always be clear.[10]

The *Statutory Instruments Act* of 1971 had established a joint Senate and House of Commons committee to scrutinize regulations in order that Parliament could exercise to at least some extent a power of review over the rapidly growing body of delegated legislation.[11] In 1986 prepublication of proposed regulations in Part 1 of the *Canada Gazette* was made mandatory under the *Government of Canada Regulatory Policy*, in order to allow public comment and input.[12]

In 1996 the Standing Joint Committee for the Scrutiny of Regulations questioned the validity of five pre-1970 regulations because they were enacted in English only, contravening section 133 of the *Constitution Act, 1867*. The parliamentary committee rejected arguments in the government response that Cabinet had acted in good faith, in the belief that section 133 did not apply to regulations, and that their subsequent publication in the 1978 *Consolidation* attested to their legal validity.

Over the next several years, an exchange of correspondence took place between the Minister of Justice and the chairs of the Joint Committee. Essentially, both sides maintained their positions. While the government remained of the opinion that the regulations in question were constitutionally valid and in compliance with section 133, the Minister took note of the Joint Committee's concerns and advised that she had requested Department of Justice officials to study the question and to suggest ways of removing any uncertainties regarding the validity of federal regulations and other legislative instruments.[13]

The result was Bill S-41, the Legislative Instruments Re-enactment Act (LIRA), introduced in the Senate on March 5, 2002. Its goal was to allow for the re-enactment of certain legislative instruments that were originally enacted in only one official language in order to resolve any uncertainty with respect to their legal validity. Under the bill, legislative instruments that were enacted in one official language only but published in both were automatically and retroactively re-enacted in both official languages. The bill also conferred regulation-making powers on the Governor-in-Council to retroactively re-enact, in both French and English, legislative instruments that were enacted in one official language and published in that language only, or exempted by law from the requirement to be published. [14]

In the Senate, the Standing Committee on Legal and Constitutional Affairs made a number of significant amendments to Bill S-41, adding a rigorous review process for the implementation and operation of clause 4, the most discussed aspect of the bill. Clause 4 applied to legislative instruments that were: (1) enacted in only one official language; and also (2) either published in only one official language or not published at all because they were exempt from the usual publication requirements. The original version of the clause had given the Governor in Council a large degree of discretionary authority to deal with such instruments, and the Senate Committee curtailed this discretion by introducing several key amendments.[15]

The Committee report was tabled on June 4, 2002, and the bill, as amended, came into effect as the *Legislative Instruments Re-enactment Act* upon receiving Royal Assent one week later.

The act stipulated that steps were to be taken to identify those legislative instruments that could potentially be deemed invalid, and a report made to Parliament on their status within six years of enactment. At the end of this period, targeted legislative instruments that had not been re-enacted would automatically be repealed. In the case of texts published but not enacted in both official languages, the act removed any doubt as to their legal validity.[16] Instruments targeted for re-enactment were those made under a legislative rather than administrative power, and that created a rule of conduct, had binding effect (the force of law), and were of general application; power being conferred by or under an Act of Parliament, and exercised by the Governor in Council, a minister (or ministers) of the Crown, or with their approval.[17]

In order to meet the requirements of the *Legislative Instruments Re-enactment Act*, an exhaustive research effort has been undertaken to identify legislative instruments published in only one language at the time of their enactment. The act applies to both legislative instruments in force, and repealed legislative instruments enacted between 1867 and 1988, and grants a discretionary power to determine which instruments must be re-enacted.

Justice Canada is overseeing the implementation of the Act and coordinating efforts among government departments and agencies to identify instruments to be re-enacted. The departments and agencies' mission was to check both published and unpublished (archival) sources, identify those instruments targeted by the act, and report back by January 2007. From their findings, a report will be made by the Minister of Justice to Parliament by June 13, 2008.

A departmental researcher could begin by reviewing the history of the department and then, using the 1988 *Table*

of Public Statutes, create a master list of statutes and legislative instruments, which it administered on September 15 of that year. Published legislative instruments were to be traced back to their original enactment by means of the consolidated indexes of statutory instruments, the annual indexes to the *Canada Gazette,* and indexes to consolidated regulations. The Justice Canada Library and Library and Archives Canada (LAC) cooperated in providing researchers access to their holdings of the *Canada Gazette* and reference assistance in tracking down orders-in-council. As for unpublished legislative instruments, the archival tools required to trace them include the annual indexes known as the Privy Council Register, a digitized orders-in-council database, and departmental records.

Along with Justice Canada, LAC has been a key player in the LIRA project. In partnership with the Office of the Prime Minister and Justice Canada, it launched, in September 2005, *By Executive Decree*, a web exhibition funded by the Department of Canadian Heritage through its Canadian Culture Online initiative. Featuring historical documents of the Privy Council Office, together with photographs, maps, and documentary art, it looks at Canadian history through the operations of the executive branch of government. A key complement to the exhibition is an historical database of orders-in-council, covering the years 1867 to 1910. The database consists of an electronic finding aid for these records. Archival descriptions in the finding aid are linked to digital images for each OIC up to and including 1890, and are available on the web through the online research tool ArchiviaNet.[18]

With respect to legislative instruments exempted from publication, LAC's holdings date from 1867 to 1999, making it the only complete collection for public use. Access to them is through the annual volumes of the Privy Council Register. Each of these indexes covers one year and is arranged chronologically, with a keyword index at the back. Once relevant instruments were located, a list was compiled and compared to those published in the *Canada Gazette*. If they were found in both sources, they had already been translated. The remaining orders-in-council could then be located using Finding Aid 2-39, available in print format and via ArchiviaNet on the LAC web site. Originals could be ordered from offsite storage and examined on-site to determine their relevance for the purposes of the project.

Each department was tasked with preparing a report that describes measures taken to find the instruments covered by section 4(1) of the LIRA. Separate lists were compiled of instruments published in only one language and of instruments enacted in only one language and exempt from registration or publication, either under an enabling statute or sections 7, 15(1) or 15(2) of the *Statutory Instruments Regulations.* In those two instances the department had to identify those instruments to be translated and re-enacted. As for instruments enacted in only one language and exempt from publication under section 15(3) of the *Statutory Instruments Regulations*, the department needed only indicate how many would and would not be re-enacted.[19]

The task facing the LIRA researchers was an arduous one; a review of the entire body of delegated legislation promulgated from Confederation to the late 1980s. Wendy Hubley and Micheline Beaulieu have described some of the difficulties encountered in identifying and locating legislative instruments.[20] This challenge, and the importance of the LIRA project, was explored in detail by speakers at a Justice Canada LIRA Information Conference for Government Departments and Agencies hosted by the LIRA team in December 2005; no effort was spared to ensure that the job would be done properly. ▮

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State & Local Documents Roundup

What's Up, Washington?

Kris Kasianovitz

"'Electronic state publications are vulnerable because websites are redesigned or disappear when new office holders assume their duties, and agencies or commissions may cease to exist.' According to Reed, these electronic publications may disappear if the State fails to act."[1]

This quote from Sam Reed, Washington's secretary of state, is the mantra of librarians working with state and local (and federal, international, foreign) government information collections. We are all still working toward solutions to the born-digital dilemma. My first State and Local Documents Roundup column (*DttP* 31, no. 3/4, [2003]: 10–12) discussed the impact e-government laws were having on library collections. Then, only a handful of projects were underway to grapple with born-digital government records and publications. Most states having some form of state government depository laws did not explicitly address how born-digital government publications would be collected or preserved; even more difficult was the enforcement of depository laws for those who were collecting born-digital publications.

Since that time, many projects and initiatives have taken off and are helping to shape the state depository laws, tools, technology, and processes for collecting and making born- digital state government information permanently accessible. The Washington secretary of state has pushed the envelope to mandate the digital collection and preservation of state records, publications, and even entire agency web sites. At the 2007 ALA Midwinter Meeting, Cheryl Nyberg's "Let's Get Digital" presentation showcased the Washington State Digital Archives (lib.law.washington.edu/_cheryl/digital.html). This project is both digitizing and taking digital-deposit of state records. Cheryl also touched on the born digital collection of state publications, accessible via Washington State Library's catalog.

I was fortunate to connect with Marlys Rudeen, deputy state librarian at the Washington State Library, to find out more about this collection. We talked about a number of issues, including the state law that now requires digital deposit, and the administration and technical aspects of the collection. In her own words, here's Marlys' description of the Washington State Library's project.

The Collections

The Digital Archives and the State Library are both part of the same agency, Office of the Secretary of State. The Digital Archives project focuses on providing public access to government records; for example birth, census, death, naturalization, marriage and military (www.digitalarchives.wa.gov/default.aspx). The State Library is collecting born-digital government information that is for public consumption (www.secstate.wa.gov/library/catalog.aspx). There is a third component to the records and publications archive—Find-It! Washington (find-it.wa.gov). Find-It! spiders current government (both state and local) web sites and serves them up to users. But it does not archive them for the future, and the license through Google doesn't allow for sites to be spidered to the fullest without going over a document limit. The search engine is powered by the Google Search Appliance and licensed for one million web pages.

A Brief Legislative History

Cheryl noted in her presentation that, "The Washington State Library has been collecting digital documents from Washington state agency web sites. In fact, a law enacted in March and effective in June 2006, gave the State Library express authority to 'preserve and make accessible state agency electronic publications.'" In the last legislative session, the Revised Code of Washington (RCW) was revised to include electronic formats. (Chapter 40.06 RCW, apps.leg.wa.gov/RCW/default.aspx?cite=40.06&full=true)

The state library was involved in the making of this legislation. We assisted in drafting the language. One of the state senators introduced the bill, SB6005, on our behalf, and a member of the House dropped a companion bill in the House, HB 2155. It was actually a bit of a cliffhanger. There is a cutoff date every legislative session, and if a bill does not make it to a floor vote by the cutoff it's dead. The cutoff date came and went with our bill not making it. It was late Friday afternoon, and we were really discouraged and made heartening comments to each other. "There's always next year." "At least we got a hearing." "Next year we'll have to move faster." The next Monday afternoon we were extremely sur-

prised to hear that as part of an agreement between senators, our bill had been called to the floor—after the cutoff—and passed. It passed in the House within another day or so, and there we were.

Project Description

The state library has statutory responsibility for the collection and preservation of state publications. It is our intention to build onto the infrastructure of the digital archives to create a digital depository of state publications. We have a budget request submitted to the Legislature this year that would give us a couple of project positions to do this. I can talk in general about what the process would look like, but we haven't built any of these modules yet, and I'm sure the design will change as we do.

We want to develop a web-based submission process so that agencies can submit their publications easily. We also want to retain the ability to go out and collect publications ourselves if needed. The agencies would supply some basic metadata along with the file. At some point we'd like them to pass through our cataloging department to proof the metadata supplied and either derive a temporary catalog record or somehow mark the record for later cataloging. The second part of the process would be to ingest into the digital depository: creating the redundant backups and saving the original format as well as creating an XML version for ease of migration in the future.

We do want these publications to remain as part of the library's collection and to be represented in the library's catalog. This provides a way of integrating the print and digital collections in a single search. Even once we have a system up and functional, the question of how to keep up with the volume of e-publishing is keeping me up nights.

Staffing and Funding

Staffing is two FTE, both two-year project positions—a developer at the digital archives and a cataloger here at the state library. Other state library staff already working on publications also will have roles. The actual work takes place in two locales: application development at the digital archives in Cheney, Wash. and work with agencies, depository libraries, and cataloging/workflow at the state library, Olympia, Wash.

Funding is $331,000 over two years. After that the library has said we will absorb the costs. We had put together a list of about ten states (some state libraries, some archives, some both) that wanted to work on a pilot project with the National Digital Information Infrastructure and Preservation Program (NDIIPP) fund—but those funds didn't materialize. So at the moment it's just the state library and the digital archives.

Working with the Agencies for Compliance

We've visited a variety of agencies to discuss the changes; the response is varied. But then so was response to the print requirements. Several agencies have downloaded publications from the web and sent them to us. There's a lot of work still to do. I'd like to have the web-based submission process in place as soon as possible to make complying with the legal requirement as simple as possible, and have clear instructions and options in place as we talk to agencies—we're not there yet.

Collection Policy

We're responsible for all publications from state agencies. In the RCW we have defined that as: ""State publication" means information published by state agencies, regardless of format, intended for distribution to state government or the public. Examples may include annual, biennial, and special reports required by law, state agency newsletters, periodicals, and magazines, and other informational material intended for general dissemination to state agencies, the public, or the legislature." The difference here between the archives and library is that we collect materials that are intended for public distribution, not for internal consumption.

We are crawling, capturing, and harvesting current publications and documents. As for selecting the agencies, we need to do them all, but started by dividing up the larger ones among several staff. As I mentioned before, when

GODORT Membership: Membership in ALA is a requisite for joining GODORT.

Basic personal membership in ALA begins at $50 for first-year members, $25 for student members, and $35 for library support staff (for other categories see www.ala.org/Template.cfm?Section=Membership).

Personal and institutional members are invited to select membership in GODORT for additional fees of $20 for regular members, $10 for student members, and $35 for corporate members.

For information about ALA membership contact ALA Membership Services, 50 E. Huron St., Chicago, IL 60611; 1-800-545-2433, ext. 5; e-mail: membership@ala.org.

we've done some agency visits, we've come away with a CD full of e-pubs from the web site. But basically we're trying to cover the larger agencies first.

Another new development is that the digital archives is doing some snapshots of sites—archiving whole web sites. They intend to pass on to us all the documents that can be identified by format (PDFs, Word and Excel files) for our project. That won't pull in any e-pubs in HTML or other web formats, but it captures a mass of files in one fell swoop. Of course, now we have to sort them out, move them to the server, and attach some metadata.

Dealing with agencies that have information contained in a database or other dynamic format is a huge question, and I don't have an answer yet. Another related issue is information that used to be issued in regular printed versions and now is only available in an online database. How do we preserve that? What kind of functionality needs to be provided in an archived version?

Technical Notes

We are using the open source HTTrack Web Copier software. The software is meant to allow batch downloading. A problem we've run into with the software is that web sites are not standard in design, structure, format. We try to limit the downloads to just publications. Sometimes a web site is set up so that we can capture an entire directory of publications, but we end up doing a lot of individual documents as well. It depends on the web site. We are still on our first run-through, so we haven't worked out an automated crawl and harvest timeline yet. Because the software is open source, libraries can download it and put it to use (www.httrack.com).

Once objects are captured, items are added to our OPAC as temporary records when they are first downloaded—we do them in batches. Later the catalogers go back and do full cataloging—this is done on OCLC. Records can be downloaded from OCLC or from the OPAC. We chose to use the regular catalog record in order to integrate with the print collection and to allow depository libraries to download records to their own catalogs. Cataloging records are revised once a link to a live page dies. We provide links to both the live and archived object when the item is added to the catalog. The cataloging staff runs a link-check program at regular intervals; when the live link goes dead it is removed.

The digital objects are stored on the library's server; we are planning to use a digital depository based on the applications developed by the digital archives for long-term storage. Part of the digital archives/digital depository strategy is to be able to migrate when necessary, which is why we store each record or publication in an XML version. This is part of the system that the digital archives has developed using Microsoft Biztalk as a base, and writing some of their own application code and business rules (www.microsoft.com/biztalk/default.mspx).

Want to find out more? Contact:

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Reference

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Tech Watch

Tell Me Something Good

Amy West

Chat software, while popular for many years now, has started to get some respect as a professional tool, too. However, there are many flavors of chat software, each with different pros and cons, and keeping them all straight can be an onerous task.

In the simplest form, chat software is software that allows two or more users to talk in nearly real time over a computer. Chat software can be stand alone or be integrated into broader services, it can focus on group discussions or one-to-one conversations, and it can be free or fee-based. First-generation chat software required that each participant have an account on the same network and that each participant download desktop client software.

One type of chat software with which many librarians are already familiar are the virtual reference packages such as QuestionPoint and VRL Plus. Each of these combines a basic chat component with additional features, such as question and answer management and collaborative browsing. To use these tools, both the librarian and patron must be logged onto the same server so that their browsing may be coordinated or that the chat session is logged into a knowledge base and so forth. However, the patron needn't have an account with the vendor. It is possible that, in order to control the number of questions coming in, a library might institute other mechanisms to limit access to a service.

Another form of chat software is instant messaging (IM). AOL Instant Messenger (AIM), Microsoft's MSN Messenger, and Yahoo! Messenger are the three biggest of the IM networks. To talk to anyone on any of these networks, one must have an account with them and download desktop client software. Although Yahoo! and MSN now can communicate directly, there is no major move to integrate networks yet. Jabber, an open source IM system, can connect across networks, but making that work is not as easy as it could be, and one still must have accounts with all of the networks one wishes to chat on.

As a result, libraries that wish to offer IM reference must have accounts with as many of the major IM networks as possible. New tools have been developed that help to manage these accounts. Trillian, which is available in a free and fee-based version (Trillian Pro), helps to manage multiple contact lists and provides bells and whistles not usually available outside of the individual networks such as Yahoo! Still though, both the patron and the librarian have to have accounts on the same networks to talk.

Another wrinkle in IM software is that it's often on a list of software prohibited from installation on staff and public computers. Once again a third-party product comes to the rescue: Meebo.com. Meebo, in addition to managing multiple IM accounts like Trillian and Jabber, gives librarians the option of embedding chat windows within web pages. As long as a librarian is signed in to Meebo, a patron may start a chat without having an account with either Meebo or any of the other IM networks. The University of California, Berkeley, is already using Meebo this way, as seen in figure 1.

As IM continues to grow in popularity, the ability to talk across networks will hopefully become more straightforward. It also will be interesting to see how IM rates against the virtual reference software so many libraries have invested in. While not comprehensive, this list of chat services available across the U.S. is illuminating (liswiki.org/wiki/Chat_reference_libraries#United_States), as it appears that IM software is gaining significant acceptance. ▮

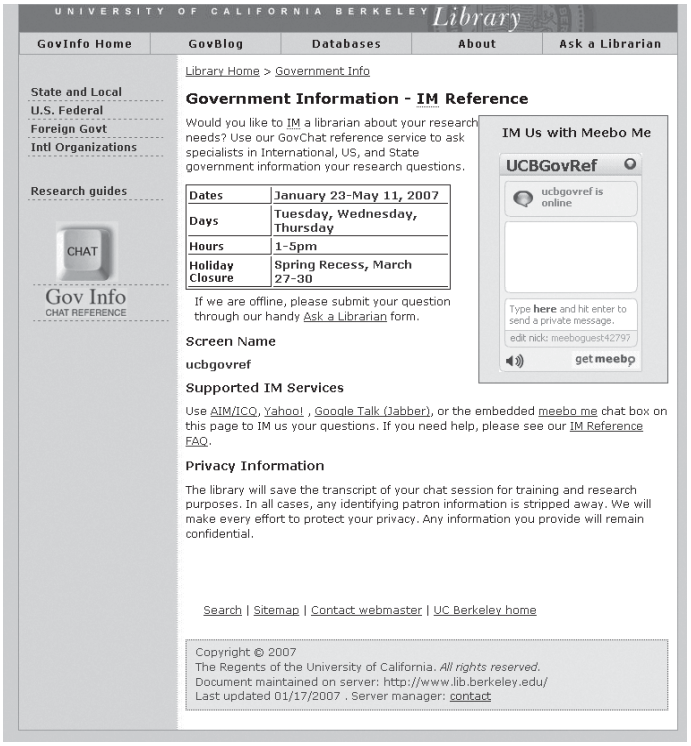

Figure 1. University of California-Berkeley's Chat Page with Meebo

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Government Information Policy and Secrecy

An Introduction

Ben Amata

As long as there have been sovereign states, there has been a need for governments to maintain secrets for self-preservation. It is equally true that in a democracy citizens have the right to know how their government functions and to be accountable to them. There is a tension in trying to balance these two competing needs. The United States has a long tradition of making government information freely available to its citizens, and the Federal Depository Library System is a testament to its effort to keep its public informed. Surveys of the public in the modern era, particularly since September 11, 2001, continue to support the idea that the American public is very concerned about their national security. Unfortunately, history has provided numerous instances when the U.S. government abused its authority and hid mistakes or misdeeds under the rationale of secrecy or national security.

We have assembled a series of articles to explore several major aspects concerning government information policy and secrecy. Rhonda Fowler provides a general background and recent history concerning government information policy dissemination and secrecy. Patrice McDermott explains how the United States has developed two juxtaposed policies: a government culture of secrecy and legislative efforts to create a counterculture of openness. Susan Nevelow Mart explores the role of the government whistleblower and inappropriate keeping of secrets. And Gwen Sinclair examines the effect of government secrecy on libraries, historically the main source for disseminating government information to the public.

We hope our readers find these articles stimulating and thought provoking about this extremely important and timely issue.—*Ben Amata, Contributions Editor*

I've Got a Secret

Government Information Availability and Secrecy

Rhonda E. Fowler

"The United States has the most open government in the world, but it also has the most secretive government in the world, if you measure it by the production of new secrets."—Steven Aftergood, director of the Project on Government Secrecy at the Federation of American Scientists[1]

Secrets and information, what do they have in common? A secret is something you don't want anyone to know, something you keep to yourself or those you trust. "Knowledge obtained from investigation" is the definition of information, according to *Webster's Dictionary*. As a new government documents librarian, my interest was piqued by the subject of secrecy. As I looked for information on this topic, I thought information that exposed the vulnerabilities of the United States to a terrorist attack or gave away our technology secrets would be classified. I didn't know that something could be classified at first, declassified, and then classified at a later time. In this article I will discuss the types of material that are unavailable to the public and how that type of information has grown over the years.

While looking at information from databases as well as popular search engines, I found there are many groups who watch what goes on in the information-availability world. In theory, I would think that any American citizen would be able to request government information and have that information sent to him or her. However, what the information is will determine whether you get it. There is sometimes the runaround you receive before finding out that the report you want falls under one of the nine exception rules that the Freedom of Information Act (FOIA) has established (5 U.S.C.552). What are those nine exemptions? They are: information "'properly classified' in the interest of national defense or foreign policy"; "information related solely to the agency's 'internal personnel rules and practices'"; "information that is specifically exempted from disclosure by separate statute"; "'trade secrets' or other confidential commercial or financial information"; "inter- or intra-agency memorandums or letters not subject to discovery in court"; "personnel, medical and similar files, compiled for law enforcement purposes that would constitute a 'clearly unwarranted invasion of personal privacy' among other similar types of information"; "reports prepared by or for use by agencies regulating financial institutions; and geological and geophysical information and data concerning wells, including maps."[2]

We depend on the media to be able to research the information and get it to us. When the information is not accessible, the public's right to know is jeopardized. But just how concerned is the public? A poll conducted in 2000 by the Center for Survey Research and Analysis at the University of Connecticut asked the question: "Government secrecy—Are you very concerned, somewhat concerned, not too concerned, or not at all concerned about the issue?" Of the participants, 38 percent were "very concerned," 34 percent "somewhat concerned," 17 percent "not too concerned," 8 percent "not at all concerned," and 4 percent responded "don't know/no answer." This poll was taken in 2000, so the results are dated, and in my opinion the public might be even more concerned if they participated in a poll this year. The participants' political opinions might also weigh in the results. It does show, however, that a very small percentage of people polled have no opinion of the question.[3]

What occurs when those efforts to bring us this information are threatened and the information that we seek is denied or disappears from the airwaves? Is the government withholding information to protect the American public? How long has this secrecy been going on, and what effect does this have on the freedom of the press?

I found that the more I looked for information, the more questions I had about the availability of government information. There are often are roadblocks to the information becoming public. For example, in 2006, U.S. Attorney General Alberto Gonzales threatened to prosecute journalists for writing about the National Security Agency's clandestine and illegal monitoring of U.S. overseas telephone calls. His basis for this threat was the 1917 Espionage Act (40 Stat. 217), an act making it illegal for unauthorized personnel to receive and transmit national defense information.[4] This act, signed by President Woodrow Wilson at the end of World War I, helped create the twentieth-century "culture of secrecy."[5] The act also made it a crime to obtain or to disclose national defense information to a foreign government, especially if it was information that could hurt the United States. It seems as if the attorney general was stretching the definition of this act to be able to justify trying to prosecute those journalists.

As early as the 1950s, the media tried to tackle govern-

ment secrecy by forming the Freedom of Information Committee within the American Society of Newspaper Editors (ASNE). They found out that basic information was being denied to the press and therefore the American people.[6] Their legal counsel Harold Cross also found that the government disclosure was "unsystematic and often biased against disclosure to newspapers."[7]

How hard a time are journalists having when it comes to obtaining information that they need in order to publish an article? According to Charles Lewis, it took twenty researchers, writers, and editors at the Center for Public Integrity six months and seventy-three FOIA requests, including successful litigation in federal court against the Army and State Department, to begin to discern which companies were getting the Iraq and Afghanistan contracts and for how much.[8] This might be an extreme example of how long and how difficult it is for information to be made public, but unless you have tried to gain access to something and been constantly denied despite your best efforts, then it probably does not mean that much. Do most Americans realize that some of the information they want is unavailable? Or do they trust the government enough to assume that if they don't tell us about something, then it is for the safety of all involved?

An earlier case that went all the way to the Supreme Court was *New York Times v. United States,* where in a 6-3 vote, the court found that the *New York Times* was within its constitutional rights when it published stories on the Pentagon Papers (403 U.S. 713). Is that information somehow covered under the nine exemptions of the classification of documents? Can that information be seen as a threat to the national security of the United States?

According to *Issues & Controversies on File,* supporters of the media feel they have a duty to report on what goes on in the U.S. government as truthfully and completely as possible. Many support the notion that the public has a right to know what the officials they elected are doing and if those actions are illegal or in violation of the Constitution.[9]

Critics of the media believe that the government needs a certain amount of secrecy so that it can protect the U.S. effectively. They go further to state that the media puts innocent Americans in danger by exposing government secrets.[10] Responsible journalists are not trying to hurt the country but feel that it is in the best interest of the U.S. citizen to know certain facts.

Secrecy began once the U.S. became a major world power in the twentieth century, according to *CQ Researcher.*[11] Most of the information read for this article pointed to 9/11 as a pivotal time when secrecy and withholding information grew greatly in the interest of national secrecy. After 9/11, the Department of Homeland Security was established. At that time three other agencies—the Department of Health and Human Services, the Department of Agriculture, and the Environmental Protection Agency—were given unprecedented power to classify their own documents as secret if needed in the interest of national security.[12] Reading further on information that could be a threat to national security and what would happen if that information was given to the public, I found an article that stated the three questions that should be asked about disseminating information needed to keep the public informed.[13] These three questions are: (1) "Does the information fall within a class that should presumptively be kept secret? This would include operational plans, troop movements, technological methods of surveillance, and advanced weapons designs." (2) "Does the information's important public value outweigh any risk of harm from public disclosure? In the Clinton administration information from the EPA's Toxic Release Inventory was released, including emergency evacuation plans. It was felt that the public receiving important public safety information was not of any value to terrorists. Also the disclosing of the capabilities of our oldest spy satellite systems caused no harm to our security, while the information proved to be of great value to scholars, as well as to the natural resource and environmental communities." (3) "Does the release of the information inform the public of security vulnerabilities that, if known, could be corrected by individuals or public action? Without openness, people would lose trust in their government and government would lose its ability to do its work."[14] I would add a fourth question: when can it be safe to assume that the information will no longer be a threat to the national security of the U.S. and can be declassified?

When the information becomes declassified, how long does it take to get it ready for the public? Well, first you have to look at how much information you are talking about. On December 31, 2006, according to the *Washington Post,* the paradigm of secrecy shifted. Seven hundred million pages of secret documents became unsecret. They became declassified; of those, 400 million had been classified at the National Archives, 270 million at the Federal Bureau of Investigation, and 30 million elsewhere.[15] As stated, this would seem like a victory for freedom of information, as envisioned by President Bill Clinton when he signed Executive Order 12958 in 1995, and affirmed by President Bush in 2003, which mandated that twenty-five-year-old documents be automatically declassified unless exempted for national security or other reasons. Now for those who think they can rush down to the National Archives to check them out like a newly delivered government document, think again. They still remain secreted away, according to the *Washington Post,* which also states that it could be years before these public documents can be viewed by the public.[16] Why, you might ask? As many librarians know, there is the technical processing of any material that comes in. We understand that material does not just appear on the shelves, but it takes effort to get it there. At as the National Archives, fifty archivists can process 40 million pages in a year, but they are now facing 400 million![17] This backlog measures 160,000 cubic feet inside a vault with special lighting and climate control. Not only are the archivists faced with an overwhelming amount of documents to go through, they are also faced with competing declassification instructions from various agencies.[18] The agencies have different dialects, different set of codes for

communicating what they want done with the material by the National Archives. As an example, one agency might use "R" to mean release, and another might use an "R" to mean retain.[19] Trying to decipher these codes can take up time with phone calls to agencies to understand their systems.

Managing all this secrecy—to store it, secure it, process it—cost the country $7.7 billion in 2005 according to J. William Leonard, director of the Information Security Oversight Office, which reports to both to the National Archives as well as the White House.[20] When should information be removed from public disclosure and kept secret? Most people would probably agree that when the Office of Pipeline Safety removed maps, coordinates, and emergency response plans from their sites that it was a smart thing to do, or that. Preventing access to the coordinates of our nuclear reactors is in the interest of national security.[21]

The Internet has given the public the ability to find information on just about every topic imaginable. So, there is a high expectation of what should be available for public viewing. If something happens that is of interest to the American public, then we expect to be able to read about it in the paper or surf the Internet to find information. We would not expect to surf the Internet and come up empty if we were looking for information on the war or some type of disaster that happened in the United States, or globally for that matter. According to Barb Palser, the U.S. Judicial Conference, which is the body that sets federal court policy, decided that federal criminal case filings will no longer be available on the Internet through a system called PACER (Public Access to Court Electronic Records). Palser further states that many government entities have yet to catch up with the digital age, let alone the Internet age.[22] Could this be part of the problem? Perhaps government officials are uncomfortable with how easy it is to find information electronically. If you had to go through print indices to find information and then go to the source, this would take time that you might not want to devote to this endeavor. On the other hand, now that information is available electronically with some keystrokes, you might not even have to leave your home to search for the information. Even if the actual document is not on the Internet, you get an idea of what the document is about.

Why all of the secrecy? Don't people have a right to know what is going on in the government, and where the government stands on issues that concern the American public? One reason of concern perhaps could be because President Clinton, in 1995 through an executive order, stated that all documents under National Archives' purview and more than twenty-five years old be made public, unless they met strict national security requirements.[23] Unfortunately, four years later there was a leak of U.S. nuclear secrets to China, and the reaction of Congress was to pass a congressional amendment to severely limit declassification. President Bush decided to "further amend Clinton's executive order and delay the declassification of Reagan-era documents."[24] Originally the intent was to protect military secrets; however between 2000 and 2006 the executive order that President Bush signed expanded what was declassified to include "anything embarrassing to the government including information on unsanctioned Central Intelligence Agency programs and military intelligence blunders that occurred more that forty years ago."[25] Another form of secrecy is in the difficulty of placing a (FOIA) request for certain documents. With all of the availability of information online, the public expects to find the information they are looking for right away. They are somewhat skeptical when they are told the information is not available.

I'm not talking about classified information that is dangerous to our national security as stated above, but information that you should be able to gather with a FOIA request. Many have heard that if you want information, you submit a FOIA request. Sounds simple enough; however, in October 2001 Attorney General John Ashcroft advised federal agencies "to make broader use of the FOIA's exemptions to withhold materials requested under the law."[26] The public's right to access government information is protected by FOIA, which is supposed to stop the increase and tendency by federal agencies to cover their actions in secrecy. The Senate Committee on the Judiciary, which was charged with reporting on the bill introducing FOIA, concluded "A government by secrecy benefits no one. It injures the people it seeks to serve; it injures its own integrity and operation. It breeds mistrust, dampens the fervor of its citizens, and mocks their loyalty."[27] With all of the runaround that people are getting when they submit a FOIA request, it does breed mistrust, as if all of the information that is needed is a threat to national security.

Citizens are more informed then ever, especially with cable television and the Internet. Computer prices have come down, making it easier for people to get online. Many public libraries have computers available for their patrons to use for surfing the web as well as doing research. With just a few keystrokes into a search engine, information comes on the screen. But, is the information that is found accurate and current? Who put the information online, and can it be trusted? Citizens need to be informed, especially about information that is helpful to their way of life. Medical information, information about the latest scam being investigated by the government, is what people are interested in. FOIA was passed in 1966.[28] According to the *Freedom of Information Act Guide*, "the Freedom of Information Act generally provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions."[29] It's the nine exemptions or one of three special law enforcement record exclusions that are puzzling to most. Are these exemptions or record exclusions really that important to the security of the United States? Is the government being especially cautious post-9/11?

Since 9/11 there have been many more restrictions on the documents that are being made available to the public.

According to the *Secrecy Report Card 2005* on OpentheGovernment.org, there were 15.6 million secret documents in 2004, or 81 percent more than in 2000. Nick Schwellenbach, who refers to the *Secrecy Report Card,* states that 14 million new classification decisions were made in 2003, up 60 percent from 2001. For this same period of time taxpayer dollars that were spent on classification increased nearly two billion dollars to six billion dollars annually.[30] He further states restrictions to government data have serious consequences. He cites the *9/11 Commission Report,* which states that "the biggest impediment" to getting the analysis needed to combat terrorism "is the human or system resistance to sharing information."[31] Information is kept under wraps by the agencies instead of being shared so that it gets in the right hands. What this restriction has done is increased the number of FOIA requests over the past six years.[32]

When books are banned and you look at some of the reasons for the banning, if it were a book that was banned twenty years ago it might seem quite irrelevant at this time. Is that the same with government information? If something is classified and then many years later is thought not to have been that dangerous in the first place, does this mean that the government was too quick to classify some documents in the first place? It is better to be safe than to be sorry, many may believe. After all, does it really hurt the public not to know something? That depends on what information it is that you don't know.

Executive Order 13292, dated March 25, 2003, amends Executive Order 12958, and seeks to prescribe a uniform system for classifying, safeguarding, and declassifying national security, including information relating to defense against transnational terrorism. It further states that our democratic principles require that the American people be informed of the activities of their government. Our nation's progress depends on the free flow of information. What does it mean when the information does not seem to be free flowing? If the American people have a right to know what their government is doing, why is it becoming more difficult to find this information out?[33] If our nation's progress depends on this free flow, does it mean that we are not progressing as well as we should be? When it comes to the information from the government, if it is classified then it must fit into one of three levels. They are: Top Secret, Secret, and Confidential.[34] The definitions for all three begin the same way, the information would cause "grave damage to the national security that the original classification authority is able to identify or describe."[35] The difference in the three is that Top Secret means "the information would cause grave damage, Secret would cause serious damage, and Confidential would cause damage to the national security that the original classification authority is able to identify or describe."[36] The question I have is, what determines when information can cause grave damage or just damage to the national security of the country? According to this Executive Order 13292, the only people who can classify information in the first place are the president in the performance of duties and the vice-president, agency heads, and officials designated by the president in the *Federal Register,* and U.S. government officials delegated this authority pursuant to paragraph 3 of Sec. 1.3. Classification Authority as written in Executive Order 13292. Except for agency heads, there don't seem to be a lot of people deciding what should or should not be classified and seen by the American public.[37] It is not explained fully what constitutes what type of information for what category, except to say intelligence activities, military plans, scientific, technological, or economic matters relating to national security and other examples similar to this. If you had a broad scope, almost anything coming from the government could fit into one of the categories necessary for classification.

If you were writing a paper or an article about a topic of controversial interest, how can you be sure that the information you are researching is complete? If you come across roadblocks when you are looking for information, the curious researcher might want to know what they don't want me to know about x. We all know that the more you make something inaccessible, the more people want to access it.

So what is an information seeker to do with all of these stipulations on what can be found and used? As mentioned above, submitting a FOIA request is in order, but what happens when your requests go unheard? Do you spend money to go to court to fight for what you believe you are entitled to read? Do you form a group or create a web site to publicize the fact that information from the government is hard to come by?

According to the *Secrecy Report Card,* $134 is spent creating new secrets for every $1 spent releasing old secrets. The good news, as they state, is that this is a $14 drop from 2004.[38] When you look at such web sites as OpenThe Government.org, it makes you wonder just what do we know? Do you have the attitude of what I don't know won't hurt me? Or, do you wonder what they are keeping from me?

When did information get to the point that it was necessary to withhold from the public? Just what is the fear of people knowing what is going on? The American public might feel that it is important that information that might cause safety vulnerability to the country be kept under wraps. But, how is the decision made as to what might cause harm to the national security of the country? According to the *Secrecy Report Card,* the recent growth of secrecy started in the Clinton administration, and has continued into the Bush administration. For example, the federal government spent $6.5 billion in 2003 creating 14 million new classified documents, more than in the past decade.[39] What are they, and who decided to make them a secret? Also, according to the *Progressive Librarian,* there were more than 3 million FOIA requests for information from the government agencies.[40] According to Matt Welch's article in *Reason* magazine, during the current president's first term the number of classified documents nearly doubled from 8.7 million to 15.7 million.[41] Verifying this information with other sources comes up with similar figures on the amount spent and the amount classified. What has been removed? There are examples of

documents removed from agency web sites and databases; however, there is not a complete list, inventory, or catalog of what has been removed. If there was a list available, then at least before you took the time to submit a FOIA request you would know that document you want is not available. On the other hand, if there was a list, then it might pique a person's interest in what they can't get.

OpenThe Government.org found that the government is keeping other sensitive information from public inspection by placing it in a growing number of new categories known as "pseudo classification"—information that is sensitive but not classified. In 2005 there were fifty of these categories; in 2006 there were sixty of these categories.[42]

If we can't get the information from those who seek to report it to us, then how can we stay aware of what is going on around us? Think about the times there have been reports of an epidemic or pandemic of some sort, and it was not disclosed to the public. Did the government intentionally decide not to make public information that could have helped the residents of New Orleans make better decisions, or at least know that there was a possibility that the levee would not withstand that type of hurricane? That is a question that has no answer. It really depends on where you stand on open government and whether you think that the government is being honest and upfront on what is being disclosed to the public by the media, or if they are keeping the American public in the dark.

As stated above, this subject has brought on more questions than answers on the topic of government information being available and the secrets surrounding that information.

The desire not to start a panic is well noted, but it also should be noted that people have a right to know what will impact their lives, and the media has a responsibility to report that information to us in an honest fashion. ▮

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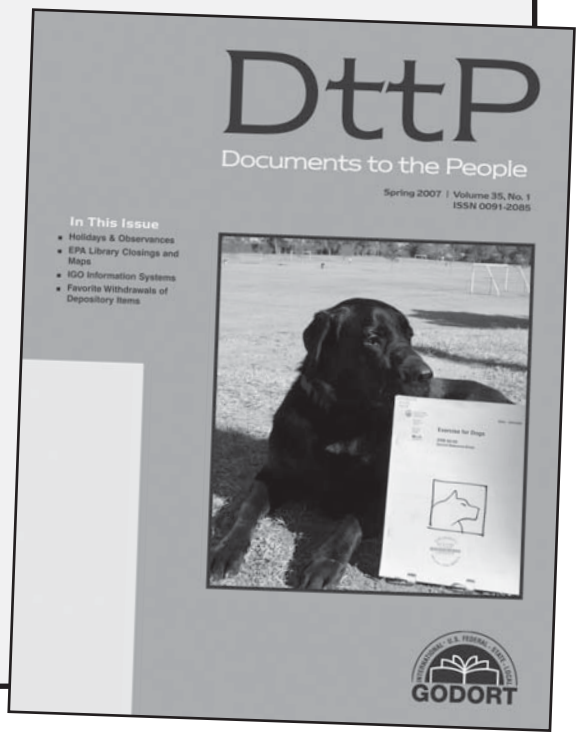

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Current Government Information Policy and Secrecy

Patrice McDermott

The subject of this article creates an interesting juxtaposition. Currently, we have lots of both—lots of policy and even more secrecy. This article will explore how that happens.[1]

In a report issued in 1997, Senator Daniel Patrick Moynihan analyzed what he called the government culture of secrecy around national security information.[2] I believe his insights provide a useful way of not only looking at classified information but also understanding our current confrontations with expanding government secrecy. Moynihan argued that secrecy is a mode of regulation. It is, he said, the ultimate mode because the citizen does not even know that he or she is being regulated. In contrast to normal regulation that "concerns how citizens must behave, and so regulations are widely promulgated . . . [secrecy] . . . concerns what citizens may know—and the citizen is not told what may not be known."[3] Moynihan further argues that this culture of secrecy will moderate "only if there comes about a counterculture of openness; a climate which simply assumes that secrecy is not the starting place."[4]

We have had efforts in this country, starting primarily in the mid-1960s with the passage of the Freedom of Information Act (FOIA) to create such a counterculture of openness. The efforts, however, have not been well-sustained—it was ten years between House oversight hearings on the implementation of FOIA and the 1996 E-FOIA amendments—and the implementation of the various laws has often been problematic. But there *are* reasonably good statutes on the books. Let's take a look at what the situation is in terms of government information policy.

Paperwork Reduction Act and Circular A-130

1980 Paperwork Reduction Act

In the Paperwork Reduction Act of 1980 (P.L. 96-511), Congress gave OMB the authority for, and charged it with, a broad range of responsibilities related to information management.[5] The intent of the act included minimizing the federal paperwork burden; minimizing the cost to the federal government of collecting, maintaining, using and disseminating information; maximizing the usefulness of information collected by the federal government; and ensuring that the collection, maintenance, use, and dissemination of information by the federal government is consistent with applicable laws relating to confidentiality, including the Privacy Act (5 U.S.C. 552a).

1985 Circular A-130

Circular A-130 "The Management of Federal Information Resources" (OMB) required agencies to look first to the private sector when planning information activities, and not to disseminate information that the private sector might otherwise sell. In effect, through A-130, the Reagan administration conveyed the following message about information dissemination: "when in doubt, don't!"[6] The circular also distinguished "access to information" from "dissemination of information"—the former being the process of providing information upon request, and the latter referring to the legally mandated or government-initiated distribution of information to the public. It advocated waiting for the public to approach agencies and request information.[7] The circular also used the term "government information," rather than "public information." This implied that government publications, previously considered public information and often freely available, were now government information distributed only on request or under legal entitlement.

1986 Amendments to the Paperwork Reduction Act

Amendments to the Paperwork Reduction Act (PRA) added a purpose to the Act—"to maximize the usefulness of information collected and disseminated by the Federal Government." Agencies were made responsible for periodically evaluating, and, as needed, improving, the accuracy, completeness, and reliability of data and records contained within the federal information systems. Readers familiar with the Data Quality Act will recognize this language.

1994 Rewrite of Circular A-130

Circular A-130 was revised in 1994 in a manner that makes informing the public an integral part of agency missions, thus encouraging agencies to proactively *disseminate* information, rather than solely reacting to public information requests. Agencies are instructed to avoid disseminating information solely through electronic means, unless the agency knows that a substantial portion of the intended audience has ready

access to the necessary information technology, or that exclusive use of such method would not impose substantial costs to users and directs agencies to apply lifecycle management practices and benefit/cost evaluation to information resource management and dissemination activities.

The 1994 circular continues to use the term "government information," meaning "information created, collected, processed, disseminated, or disposed of by or for the Federal Government." It does not to this day use "public information," although "public information" is used in both the PRA and, by reference, in the E-Government Act of 2002.

1995 Revision and Reauthorization of the PRA

The 1995 reauthorization of the PRA requires agencies to implement a management system for all information dissemination products, and states that, at a minimum, such a system would: (1) assure that information dissemination products are necessary for proper performance of agency functions; (2) ensure that members of the public with disabilities have reasonable access; (3) facilitate availability of government publications to depository libraries through the Government Printing Office; and (4) include, as an integral part, communication with the public to include adequate notice when initiating, substantially modifying, or terminating significant information products. It reminds agencies that their information dissemination practices are to achieve the best balance between the goals of maximizing usefulness of the information and minimizing the cost to the government and the public.

The reauthorized PRA uses the term "public information," which it defines as "any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public," replacing the term "government information." As noted above, Circular A-130 continues to use "government information."

This distinction is quite important, and in the drafting and lobbying efforts around the E-Government Act, the public access community fought for the definition that the 1995 reauthorization of the Paperwork Reduction Act used—"public information means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public"—despite our fear, due to the changed environment, that the latter term would be read as only that information the government chooses to make public. And, as it happens, that is indeed the way that OMB interpreted it.

E-Government Act of 2002

The E-Government Act of 2002 was seen as an opportunity to effect a real change in how government identifies and makes available information—and it started out with that vision in mind.[8] However, between the changes the Office of Information and Regulatory Affairs made to the draft statute and OMB's implementation of the final act, the opportunity has been largely squandered. A key component of the bill was the section on "Accessibility, Usability, and Preservation of Government Information," intended to create an open and consultative process, laying the groundwork for both government and the public to know what information the government creates and collects. It also would have begun the process of creating standards and guidelines for permanent public accessibility of government information created and disseminated digitally.

The act requires each agency to:

- consult with the Interagency Committee on government information and solicit public comment;
- determine which government information the agency intends to make available and accessible to the public on the Internet and by other means;
- develop priorities and schedules for making that government information available and accessible;
- make such final determinations, priorities, and schedules available for public comment;
- post such final determinations, priorities, and schedules on the Internet; and
- submit such final determinations, priorities, and schedules to the director, in the report established under section 202(g).

Implementing the E-Government Act

A full and faithful implementation of Section 207 ("Accessibility, Usability, and Preservation of Government Information"), especially the subsection on "categorization," could have had significant implications for improving public access to government information.[9] For example, the implementation of searchable identifiers, such as a facility or corporate identifier, could become the building blocks for searching across agencies or departments to obtain information; for example, to identify information across the government on a particular company and for companies to integrate their required reporting.

The provisions in subsection 207(d) of the act require the Interagency Committee on Government Information (ICGI) to make recommendations in four distinct areas: (1) a definition of which government information should be categorized; (2) a standard for searchable and persistent identifiers to be applied to items of categorized government information; (3) a standard set of categories (for example, "bibliographic attributes") for categorizing government information; and (4) an open standard for interoperable search of government information so categorized.

The recommendations were to be transmitted to the OMB by December 16, 2004. That transmittal occurred on time, but you would never know that any final recommendations had been submitted by the Categorization of Government Information Working Group (CGI) because they are found neither on OMB's E-Government site nor on the site maintained by the CIO Council. The CGI recommended that the federal government adopt the following definition for "categorizable" government information:

> . . . any information product, regardless of form or format, that a U.S. Federal agency discloses, publishes, disseminates, or makes available to the public, as well as information produced for administrative or operational purposes that is of public interest or educational value. This includes information created or exchanged within or between agencies. Not included are Federal government information holdings explicitly provided in law as so constrained in access that even a reference to the holding is kept from public view for a specified period of time.[10]

In September 2005, the OMB and the General Services Administration (GSA) Office of Governmentwide Policy put out a Request for Information (RFI) to industry, academia, and government agencies (note, no library associations, no public interest organizations, no members of the public).[11]

GSA/OMB summarized and concluded from this study and other available literature that:

> with respect to disseminating Federal information to the public-at-large, publishing directly to the Internet all agency information intended for public use and thereby exposing it to freely available or other search functions is the most cost-beneficial way to enable the efficient and effective retrieval and sharing of government information.[12]

It is also, according to OMB, a way to solve problem of finding out what the public wants from its government:

> Clearly it is not remotely possible for Federal agencies to engage in comprehensive interaction with all members of the public-at-large. Therefore, again, this study supports, as a general principle, direct publication to the Internet is the best way to promote general dissemination and sharing of government information.[13]

On December 16, 2005, OMB issued a memorandum (M-06-02) on "Improving Public Access to and Dissemination of Government Information and Using the Federal Enterprise Architecture Data Reference Model."[14] It includes as recommended procedure that advance preparation, such as using formal information models, may be necessary to ensure effective interchange or dissemination when interchanging data among *specific identifiable groups* or disseminating significant information dissemination products.[15] According to OMB, these groups can include any combination of federal agencies; state, local, and tribal governments; industry; scientific community; academia; and *specific interested members of the general public*."[16] The memorandum contains no indication of any public involvement in that process, even a required notification that some members of the public are more equal than others.

The memorandum also sets agency responsibilities in terms of "information dissemination products" which Circular A-130 defines as "any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, *disseminated by an agency to the public*."[17] A truncated version of the CGI's recommended definition and of the "public information" incorporated in the E-Government Act.

FOIA—Freedom of Information Act

Before enactment of FOIA, the burden was on the individual to establish a right to examine records in the possession of agencies and departments of the executive branch of the U.S. government and to prove she or he had a need to know.[18] There were no statutory guidelines or procedures to help a person seeking information. There were no judicial remedies for those denied access.[19] Prior to FOIA's passage, public access to records of federal agencies was governed by Section 3 of the Administrative Procedure Act, which had been interpreted as giving agencies unlimited discretion to withhold such records. Efforts to amend this system began as early as 1955, but were not successful until 1966.[20]

FOIA establishes a presumption that these records are accessible to the people. It provides a means for the public to access information created and held by federal agencies. Those seeking information are no longer required to show a need for information, and the act provides administrative and judicial remedies when access is denied. It replaces the "need to know" standard with a "right to know" doctrine: the government now has to justify the need for secrecy. The act requires agencies to disclose records, upon written request by an individual, unless the records fall within one of nine exemption areas (including classified information, agency administration and personnel information, trade secrets and confidential information). FOIA does not apply, however, to documents produced or held by federal elected officials, including the president, vice president and members of Congress. In 1997, the Supreme Court let stand a lower-court ruling that records kept by the president's National Security Council are not subject to disclosure under the Freedom of Information Act.

E-FOIA: Electronic Freedom of Information Act

The amendments that comprise the E-FOIA mandate that agencies make all reasonable efforts to provide government records available to requestors in the medium of their choice.[21] E-FOIA amends FOIA's definition of "record" to mean that all information collected and maintained by an agency (except as exempted by the act), regardless of format, is subject to E-FOIA. It also requires agencies to provide an index of all of an agency's major information systems, and a description of these and of records locator systems maintained by the agency.

Which gets us to explaining why, despite so much legislation about openness, we have so much secrecy.

Executive Order 13292 (2003)

On March 25, 2003, the Bush administration issued Executive Order 13292.[22] This action made a few—but significant—changes to the 1995 Clinton order, E.O. 12958.[23] The Clinton E.O. mandated that all classified information contained in records of twenty-five years old and older, with permanent historical value, be automatically declassified within five years of enactment of the executive order (unless an agency acted to keep them classified, based on an exemption provided in the order). Agencies had five years to complete their records reviews, with 15 percent of the reviews to be completed within the first year. An amendment extended the deadline for eighteen months, after agencies appealed to the president that they were unable to meet the 2000 deadline. It was later extended again. December 31, 2006, was set as the deadline for what has turned out to be a truly massive declassification effort.

The 2003 Bush Amendment (E.O. 13292) left the structure of the Clinton order mostly intact, but significantly changed the presumptions about classification. It removed the requirement that, if there were a significant doubt about classification, it should not be classified. Other changes include:

- set presumption that information in categories "shall" be considered for classification rather than "may" be classified;
- expanded categories to include information infrastructure, weapons of mass destruction (WMD), and terrorism;
- allowed for easier reclassification of information;
- removed presumption of ten years for classification if no date can be determined.
- eliminated requirement that each agency make plans for declassification;
- extended the deadline for automatic declassification to December 2006;
- allowed the CIA director, unless overruled by the president to block decisions by the Interagency Security Classification Appeals Panel (ISCAP) to declassify information;
- expanded protection of information provided by foreign governments.

The first executive order on national security information was issued in 1940 by President Franklin Roosevelt. From the issuance of E.O. 10501 in 1953, under President Eisenhower, and for most of the next thirty years, presidential classification directives consistently narrowed the bases and discretion for assigning official secrecy to executive branch documents and materials. The trend was reversed with E.O. 12356, issued by President Ronald Reagan in April 1982. This order expanded the categories of classifiable information, mandated that information falling within these categories be classified, authorized the reclassification of previously declassified documents, admonished classifiers to err on the side of classification, and eliminated automatic declassification arrangements.

While we have not gone all the way back to the Reagan order, we have seen in the current Bush Administration a strong use of classification (and re- and de-classification powers) to control—or attempt to regain control—over information that is not harmful to the national defense or security, but embarrassing or ideologically inconvenient.

There is not space in this piece, but there is ample documentation to be found on over-, mis-, and re-classification of information in the Bush administration. It has not all been to prevent harm to national security. The administration, moreover, has been quite willing to declassify, sometimes only partially, information when it suits their purposes—at the same time that they are going after whistleblowers in national security agencies and other leakers.

Impact of the Ashcroft and the ISOO-DOJ Memoranda

Readers will be aware of the memoranda issued in 2001 by Attorney General Ashcroft and in 2002 by White House Chief of Staff Andrew Card (accompanied by a memorandum from the Justice Department's Office for Information and Privacy and the Information and Security Office (ISOO)).

A 2002 report by the GAO, requested by Senator Leahy and Representative Stephen Horn, asked for the views of FOIA officials and requesters regarding the impact of the

post-September 11 environment on implementation of the FOIA. GAO found that agency officials and FOIA requesters viewed the impacts differently.[24] Agency officials characterized the effects on FOIA implementation as relatively minor, except for mail delays associated with the anthrax problem. Members of the requester community, however, expressed general concern about information dissemination and access to government information in light of removal of information from government web sites after September 11. In addition, some requesters characterized Justice policies issued since that time as representing a shift from a "right to know" to a "need to know" that could discourage the public from making requests.

In March 2003, the National Security Archive conducted a FOIA Audit on the implementation of Attorney General Ashcroft's FOIA memorandum.[25] Among their findings was that five of thirty-three federal departments or agencies surveyed (15 percent) indicated significant changes in regulations, guidance, and training materials; and that the Ashcroft memorandum was widely disseminated. In one of the more flamboyant responses to the AG's memo, the Department of Interior disseminated it to all FOIA officers by an e-mail titled "News Flash—Foreseeable Harm is Abolished."

The Justice Department has consistently stated that the information discussed in the "Card Memorandum"—on safeguarding information related to WMD and "sensitive" information—is not meant to tell agencies that it is exempt from disclosure. The public access community believes, however, that many agencies have used the guidance as an excuse to not release information that does not meet any of the nine FOIA exemptions and is not classified.

In its 2006 government-wide audit of the ways that federal agencies mark and protect information that is unclassified but sensitive for security reasons, the National Security Archive found that at least half of the agencies that responded to their inquiries subject "sensitive but unclassified" information to greater review and more restrictions when requested under FOIA; only two made any attempts at ensuring that the restrictions were balanced with the public's right to know.[26]

The other major impact of the Card/DOJ-ISOO memoranda has been a proliferation of what some are calling "pseudo-classifications." More than one hundred such control markings have been identified by the government program tasked, by a December 2005 memorandum from the White House, with standardizing procedures for sensitive but unclassified information. Of those, approximately thirty have a basis in sixteen statutes. Doing the math, that would indicate that around seventy have no legal basis—the agencies are just making them up as they go along.

As noted above, these markings are only supposed to indicate that the information marked needs to be "safeguarded," held carefully and reviewed carefully when considered for release or disclosure. The reality, however, is that the markings create a black hole. Unlike the classification system, which has clear policies and processes, the use of these markings rarely have specific limitations on who can apply them, how they are to be reviewed or appealed, and when they are to be removed. Unlike the classification system, most agencies have few or no controls on how the markings are applied. The executive orders establishing classification policy prohibit the use of classified markings to conceal embarrassing or illegal information, for example.

In the 2006 audit mentioned above, the National Security Archive reviewed thirty-seven major agencies and components and found little consistency in labels, procedures, guidance, training, or internal controls. Only eight of the thirty-seven agencies have policies that are authorized by statute or regulation, while twenty-four were following only their own internal guidelines. Eleven have no policy at all. Nearly one-third of the policies allow any employee to designate information as sensitive, but they do not set policies on how the markings can be removed; only seven include qualifiers or cautionary restrictions that prohibit the use of the policy markings for improper purposes, including to conceal embarrassing or illegal agency actions, inefficiency, or administrative action. The review also found that policies set after 9/11 were vague, open-ended, or broadly applicable compared with those before.

So, despite reasonably good (although far from ideal) legislation that is intended to build the basis for a "counterculture of openness," we have growing secrecy. The tone of the executive branch is set by the White House, and there is no doubt what the tone of this administration is. Up until the elections of 2008, the Congress was largely supine and did not confront the secretiveness of the administration. With the 110th Congress, we are beginning to see oversight and confrontation of the White House's practices, but no real effort to date to substantively strengthen and expand openness. The Congress is young, so hope is still possible. ▮

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Notes and References

1. These issues are discussed in much greater depth in the author's forthcoming book on the state of public access to federal government information. The book will be published in late 2007 by Bernan, www.bernan.com.
2. U.S. Commission on Protecting and Reducing Government Secrecy, *Report of the Commission on Protecting and Reducing Government Secrecy: Pursuant to Public Law 236, 103rd Congress,* 105th Cong., 1st sess., 1997, S. Doc 2. www.fas.org/sgp/library/moynihan/index.html.
3. Ibid, xxxvi.
4. Ibid, xxxix.
5. Public Law 104-13 [44 USC Section 35] 1980; Reauthorized in 1986; amended in 1989, 1995; up for reauthorization since 2001.
6. J. Timothy Sprehe, "OMB Revision Hammers out A-130's Kinks," *Federal Computer Week 7* (July 12, 1993): 16, 18.

7. Public Law 104-13, op cit.
8. Public Law 107-347, 116 Stat. 2899, 44 U.S.C. § 101, H.R. 2458/S. 803, is a United States statute enacted on Dec. 17, 2002, with an effective date for most provisions of Apr. 17, 2003.
9. The attentive reader will note the use of the past tense here. GILS has been officially removed as a standard and, as is discussed below, OMB has decided to ignore the requirements of the E-Government Act.
10. Categorization of Government Information Working Group of the Interagency Committee on Government Information (ICGI), Recommendations on the Categorization of Government Information, Dec. 16, 2004. www.ala.org/ala/washoff/WOissues/governmentinfo/ICGIreport14dec04.pdf. This report is on the ALA site because OMB removed it from the various E-Government Act implementation sites maintained by OMB and the CIO Council. The earlier, draft, version was, however, left up.
11. www.fbo.gov/servlet/Documents/R/1282831. At the time that we learned of this RFI, the library community was not able to ascertain who had been asked to respond. We asked for a chance to review and comment on the results and were told it would be offered. It was not. It is apparent, to me, that the whole effort was orchestrated if not "rigged."
12. One has to go to Appendix B of the report to get to the specifics. General Services Administration, *Efficient and Effective Information Retrieval and Sharing Request for Information RFI Response Analysis*, Dec. 2005, pp. B1–B13. Other literature reviewed by GSA/OMB included, for example, John Battelle, *The Search: How Google and Its Rivals Rewrote the Rules of Business and Transformed Our Culture* (New York: Portfolio, 2005).
13. Ibid., 10.
14. www.whitehouse.gov/omb/memoranda/fy2006/m06-02.pdf
15. Emphasis added.
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17. Emphasis added.
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26. National Security Archive, Pseudo-Secrets: A Freedom of Information Audit of the U.S. Government's Policies on Sensitive Unclassified Information, Mar. 2006, www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB183/press.htm [NSA p. 21].

Documents, Leaks, and the Boundaries of Expression

Government Whistleblowing in an Over Classified Age

Susan Nevelow Mart

You are working in a government agency library or archive. An agency employee asks you to locate and deliver some reports that were prepared ten years ago on a highly sensitive environmental matter. The reports are marked "sensitive security information." The reports happen to be on a matter that interests you, and you read them. Several reports discuss the actual location of an endangered species habitat. You read that, in addition to the tiny endangered animal, there is nuclear waste on the site. The reports are returned, and you decide to take another look at an especially interesting one. You discover that the location of the habitat has been altered and the references to the existence of nuclear waste have been changed.

Although this scenario is imaginary, it does not stray that far from the realm of the possible. The Bush administration did in fact replace explicit language on the dangers of global warming in a 2003 Environmental Protection Agency (EPA) report with language that was "vague and disingenuous about the scientific causes of global warming."[1] That fact was made public by EPA employees.[2] A whistleblower at the Federal Bureau of Investigation (FBI) has accused employees of falsifying documents relating to his claims of officially sanctioned violations of citizens' constitutional rights.[3] And no one would know the story of the clandestine reclassification of more than twenty-five thousand documents at the National Archives and Records Administration (NARA) pursuant to secret memoranda of understanding if dedicated researchers had not made a public outcry.[4]

What to do when you discover wrongdoing while working for the government is partly, of course, a matter of conscience and proof. But what protections you have from retaliation if you blow the whistle on fraud, waste, deception, or other violations of the law will vary. It makes a difference who your employer is, what has been uncovered, and what kind of documents are involved. It's never easy to make the decision to be a whistleblower, but only insiders are in a position to expose wrongdoing, fraud, failure, or mismanagement.[5] Daniel Ellsberg, famous for releasing the Pentagon Papers in 1971, recently wrote in the *Federal Times:*

> It is a time for unauthorized truth-telling . . . We cannot rely on the media to tell the truth without your help. Some of you have documentation of wrongly concealed facts and analyses that are vital to a genuine public debate regarding crucial matters of national security, whether foreign or domestic.[6]

Some members of Congress agree. Representative Christopher Shays, at a Committee on Government Reform hearing titled "National Security Whistleblowers in the Post-September 11th Era: Lost in a Labyrinth and Facing Subtle Retaliation" reminded federal employees that they are "ethically bound to expose violations of law, corruption, waste, and substantial danger to public health or safety. . . . The use of expansive executive authorities demands equally expansive scrutiny by Congress and the public. One absolutely essential source of information to sustain that oversight: whistleblowers."[7]

There is a fair amount of agreement among experts with disparate political backgrounds that excessive secrecy is actually a danger to national security. At the most basic level, law enforcement agencies need access to information to solve the crimes of terrorism. Retired FBI agent Richard Marquise, speaking to law enforcement officials about solving the bombing of Pan Am Flight 103 over Lockerbie, Scotland, said that "Pan Am 103 didn't get solved because we were really good. It got solved because people finally sat down and said let's share information.[8] The 9/11 Commission wrote that "only publicity" could have "derailed the attacks," citing a statement by the terrorists' paymaster that had the terrorists known that Zacarias Moussaoui had been arrested at a flight school in Minnesota, bin Laden would have called off the attacks. [9]

Another reason information needs to be freely accessible is that access to all of the relevant information means both a better pool of information for decision-making and less ability to ignore the full weight of unpleasant or contrary information, which can have a disastrous effect on decision-making. One of the most famous examples of this also involves a whistle-blower: the Morton Thiokoll engineer who warned his bosses that the space shuttle Challenger was not ready for launching. The management ignored his warnings, and NASA officials, with serious financial and political reasons to proceed, accepted management's decision.[10]

The Challenger was launched and the engineer's predictions came trued: seven people, including school teacher Christa McAuliffe, died.[11] The public, and Congress, were unaware that there had been scientific dissent until the post-

crash investigation.[12] This type of decision-making, where the decision makers are insulated "from external forces that would challenge the prevailing view" and where the "collective predisposition" is corrosive to critical analysis is called groupthink.[13] The Senate Intelligence Committee has suggested that groupthink contributed to the flawed decision making that led to the recent invasion of Iraq.[14]

Part of the problem with access to government information, both to the public and to governmental decision-makers, is that too many documents are classified and therefore unavailable for public airing. We live in an era of rampant classification. In 2005 hearings before the House Committee on Government Reform, the estimates for the amount of over classification ranged from the Pentagon's estimate of 50 percent, the Information Security Oversight Office's estimate of 60 percent, the 75 percent estimate of the chair of the 9/11 Commission, to the 90 percent estimate made by the National Security Council executive secretary under President Reagan.[15] Erwin Griswold, who was the solicitor general of the United States in the 1970s and the counsel for the United States in its efforts to suppress the Pentagon Papers, had this to say about excessive secrecy:

> It quickly becomes apparent to any person who has considerable experience with classified material that there is massive overclassification and that the principal concern of the classifiers is not with national security, but with governmental embarrassment of one sort or another. There may be some basis for short-term classification while plans are being made, or negotiations are going on, but apart from details of weapons systems, there is very rarely any real risk to current national security from the publication of facts relating to transactions in the past, even the fairly recent past. [16]

Over classification is just one part of the problem. Fewer documents are being declassified.[17] And the increasing use of pseudo-classification has put untold numbers of government documents out of easy reach of the public or other government personnel who might need the information for decision-making. Pseudo-classification is the practice of labeling documents with such terms as "sensitive but unclassified (SBU)."[18] This type of classification is a flag to agency employees responding to Freedom of Information Act (FOIA) requests or to interagency requests for information to deny access, as the Department of Justice has made clear in directives to agencies to protect SBU from FOIA requests even if it is not classified "by giving full and careful consideration to all applicable FOIA exemptions." [19]

The number of types of SBU has increased exponentially. One agency alone—the Centers for Disease Control—has twenty-seven categories of SBU.[20] And there are more than fifty SBU classifications in use by a wide range of agency officials.[21] The problem is enormous. A recent report, *Pseudo-Secrets: A Freedom of Information Audit of the U.S. Government's Policies on Sensitive Unclassified Information,* found that not one federal agency reports on the use or impact of sensitive unclassified information policies, that 29 percent of the agencies reviewed, including the Department of Homeland Security's (DHS) 180,000 employees, allows **any** employee to mark a record as SBU, and that all but eight agencies implement their policies without either statutory authorization or administrative rulemaking.[22]

When National Security Archive director Thomas Blanton released the report to the House Subcommittee on National Security, Emerging Threats, and International Relations, he testified that "neither Congress nor the public can tell for sure whether these kind of markings and safeguards are actually protecting our security or being abused for administrative convenience or cover-up. That is the bottom line."[23]

Nonpartisan research supports the conclusions reached by the National Security Archive's audit. The Government Accountability Office (GAO) looked at how twenty-six federal agencies handled SBU information in a 2006 report titled *Information Sharing: The Federal Government Needs to Establish Policies and Processes for Sharing Terrorism-Related and Sensitive but Unclassified Information,* and concluded that the agencies are using different SBU designations "to protect information that they deem critical to their mission . . . For most designations there are no government wide policies or procedures . . . "[24]

The Congressional Research Service, the public policy research arm of the Congress, released a report titled "*Sensitive But Unclassified" Information and Other Controls: Policy and Options for Scientific and Technical Information,* noted that federal agencies don't have: "uniform definitions of SBU or consistent policies to safeguard or release it, raising questions about how to identify SBU information, especially S[cientific] and T[echnical] information; how to keep it from terrorists, while allowing access for those who need to use it; and how to develop uniform nondisclosure policies and penalties."[25] If you are a potential government whistleblower, it may make a difference whether or not the documents that support your need to blow the whistle—the violations of law, corruption, waste, or other matters posing a substantial danger to public health or safety—are classified or are SBU.

Classified Documents

For a government employee, releasing classified national defense or atomic information to a foreign government or agent of a foreign government isn't whistleblowing, it's a crime.[26] The Defense Department employee who leaked the classified information to two lobbyists with the American Israel Public Affairs Committee (AIPAC) pleaded guilty to "passing classified information."[27] Much more controversial is the federal government's attempted prosecution of the two AIPAC lobbyists for violating the provisions of the Espionage Act, for receiving the information and passing it on to the press, "in violation of 18 U.S.C. § 793 (d) (e) and (g)."[28]

Because the case involves conversations more than documents, the prosecution has raised alarm among journalists, who say the law's "broadness collides with First Amendment protections because it could criminalize even casual conversations about anything that might harm the armed forces."[29] The district court will allow the case to proceed against the two former lobbyists, although the court will require the government to prove that the defendants willfully committed the prohibited conduct.[30] When the information exchanged involves intangible information, the government must prove that the defendants had reason to believe the information "could be used to the injury of the United States or to the advantage of any foreign nation."[31] While this is a fairly high standard, some commentators believe the District Court failed to give the First Amendment implications of the case sufficient weight.[32] The case has not yet gone to trial, so the story is far from over.

Government lawyers haven't ruled out using the law to prosecute members of the press for publishing classified leaked information, but admit that there has there has never been such a prosecution.[33] But threatening reporters with prosecution under espionage laws if a story with classified information is printed has certainly happened before. In one instance, James Risen and Eric Lichtblau of the New York Times were threatened with prosecution when they broke the National Security Agency (NSA) wiretapping story. Risen doesn't think his stories "have harmed national security nor, he said, has anyone made a serious case that any story written or broadcast in the past 25 years has done so."[34] There was, of course, a whistleblower involved in the NSA wiretapping story.[35] No one would know that the NSA was listening to the conversations of American citizens without a warrant without a whistleblower, and it is information that all Americans need to know.

For the government employee, leaking classified documents to the press is a more complex matter. It can result in prosecution. Daniel Ellsberg was prosecuted for leaking the Pentagon Papers case and was prepared to go to jail.[36] The case against him was dismissed because of the government's misconduct.[37] According to former Attorney General John Ashcroft, "Although there is no single statute that provides criminal penalties for all types of unauthorized disclosures of classified information, unauthorized disclosures of classified information fall within the scope of various current statutory criminal prohibitions."[38] As Steven Aftergood has commented, "if you leak information to the press, the person who leaks the information is subject to penalties while the person who receives it is not."[39] The Espionage Act or a claim of executive authority does not prevent the publication of the classified information, as the Supreme Court held in the Pentagon Papers case: ". . . The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic."[40]

So the burden of potential prosecution is on the whistleblower. The fact that a document is marked "classified" has so far been sufficient to satisfy the prosecution's burden of proof that a defendant "communicated" information, so it is not up to the whistleblower to determine whether or not the classification determination is correct.[41] Whistleblowers who release classified information to the public do so at great risk, but that has not prevented a steady stream of mostly anonymous whistleblowers from leaking information that they consider to be of major importance for the public to know. Why do they do it? The words of one whistleblower may explain it:

> My boss, the one who told me to lie to the FBI. He got a promotion. You know what I do now? I deliver pizza . . . So, I think I was crazy to blow the whistle. Only I don't think I ever had a choice. It was speak up or stroke out. So all I can say is that I wouldn't do it again if I didn't have to. But maybe I'd have to. I don't know.[42]

Reclassified Documents

Even though a whistleblower may not be a person who can determine whether or not a document is properly classified, the glare of publicity on leaked but improperly classified documents may lead to declassification. That's what happened when General Taguba's scathing report on interrogation procedures at Abu Ghraib and the now-infamous photographs of prisoner abuse by American military personnel were made public. When the Taguba Report was leaked by an anonymous whistleblower, it was classified "secret."[43] According to the American Federation of Scientists "By classifying an explosive report on the torture of Iraqi prisoners as 'Secret,' the Pentagon may have violated official secrecy policies, which prohibit the use of classification to conceal illegal activities."[44] The majority of the Taguba Report has now been declassified, and the Department of Defense has revised its classification standards.[45] But at the time of the original leak, the government was calling for the prosecution of the whistleblower.[46]

Internal Complaints

What about those whistleblowers who complain of wrongdoing within their government organizations? Although there are bureaucratic channels for reporting misconduct within federal agencies, the fate of whistleblowers who make internal complaints has never been a happy one.[47] Sibel Edmonds, a contract translator for the FBI who complained about possible spying in her unit, is living refutation of that old maxim of jurisprudence: there is no wrong without a remedy.[48] Edmonds had evidence of some strange goings-on in the translation department and was worried that one of the translators was a spy; she passed her suspicions along to her supervisors, and eventually to the Office of Professional Responsibility and the Office of the Inspector General, both set up to investigate claims of

internal wrongdoing.[49] She passed a polygraph test, but so did the target of her complaints. Edmonds was fired.[50] Every attempt Edmonds has made to seek redress for her treatment by the FBI has been blocked by a very broad use of the "states secret" privilege—the government has successfully claimed that the entire subject matter of Edmonds' lawsuits are state secrets.[51] According to Anne Beeson of the ACLU, who was representing Edmonds, the states secret privilege is normally used to block the production in open court of specific evidence the government believes would harm national security, but the lawsuit can usually go forward even if every piece of evidence can't be used.[52] Not in the Edmonds case.

The state secrets privilege has been successful despite the fact that Edmonds had testified before Congress in unclassified briefings, so that the basic subject matter of her allegations is actually known to all.[53] The FBI attempted to retroactively classify letters posted on the Internet by members of Congress regarding the briefings; the letters were removed from congressional web sites, but in the settlement of the FOIA lawsuit that followed, the government agreed that the retroactive classification was ineffective.[54] But Edmonds has still not had her day in court.

Other whistleblowers have testified about the retaliation they have faced. Army officer Anthony Shaffer, who blew the whistle on some unutilized pre-September 11 intelligence information, told a House Government Reform subcommittee about the retaliation he faced, adding:

> I became a whistle-blower not out of choice, but out of necessity, Shaffer said. Many of us have a personal commitment to . . . going forward to expose the truth and wrongdoing of government officials who—before and after the 9/11 attacks—failed to do their job.[55]

Federal intelligence whistleblowers have been called the "undead," stripped of their security clearances and unable to work.[56] Haig Melkessetian is one of the undead, relegated to a lesser job, for testimony about MZM (a government contractor in Iraq) that led to the downfall of the Representative Randall Cunningham.[57] There are so many "undead" that in 2004 Sibel Edmonds founded the National Security Whistleblowers Coalition.[58]

Limitations on Workplace Speech

When employees complain to their superiors about illegal or improper activities, and are retaliated against, some of them file lawsuits. Whistleblower suits usually include civil rights claims that First Amendment free speech rights have been violated. The Supreme Court recently decided a case that limited employees' First Amendment protections when the government is the employer. In *Garcetti v. Ceballos*, a deputy district attorney filed a civil rights complaint alleging he had been retaliated against at work for writing a disposition memorandum in which he recommended dismissal of a case for what he felt was governmental misconduct.[59] In dismissing the attorney's First Amendment claims, the Court rejected "the notion that the First Amendment shields from discipline the expressions employees make pursuant to their professional duties."[60]

The plurality (four of the nine justices) in *Garcetti* felt that existing whistleblower protection laws and labor laws would "protect those who seek to expose wrongdoing."[61] In one of the dissents, the Court noted that there is no comprehensive state or federal scheme that protects whistleblowers, so that some First Amendment protection is needed.[62] Protected whistle-blowing is "defined in the classic sense of exposing an official's fault to a third party or to the public."[63] Garcetti leaves a government employee with more comprehensive legal protection by speaking in a public forum or going to the press with allegations than if the employee complained to a supervisor.

Whistleblower Protections

The *Garcetti* decision led to swift congressional action. The 109th Congress had introduced a number of whistleblower protections laws, including a stalled Senate Bill, S. 494, the Federal Employee Protection of Disclosures Act, which had provisions reversing the effect of *Garcetti.*[64] Following the *Garcetti* decision, the Senate voted 96-0 to add the bill as an amendment to the 2007 National Defense Authorization Act, to try and push the bill through.[65] Although the bill was not passed, it was just reintroduced in the 110th Congress as S. 274.[66] To keep up on bills protecting whistleblowers, the Government Accountability web site at www.whistleblower.org is a valuable resource.

The current Whistleblower Protection Act 67 is one of a patchwork of federal laws protecting government employees from retaliation. There are more than fifty statutes that may apply in specific employment contexts, and a survey of these laws is available at WhistleblowerLaws.com. The site includes useful links for whistleblowers, as well as links to federal laws. This is also a list of states with laws that protect whistleblowers, either by a public policy exception to the "employment at will" doctrine, by specific statutory protection for whistleblowers, or by explicit statutory protection for government whistleblowers. The National Conference of State Legislatures has a fifty-state guide with links to each state's whistleblower laws at www.ncsl.org/programs/employ/whistleblower.htm. If you are thinking of becoming a whistleblower, the Government Accountability Project has a guide titled *Blowing the Whistle: Twelve Survival Strategies.*[68]

Not a Whistleblower

Most of us will never have to make the decision about whether we should become whistleblowers or remain silent. Many whistleblowers have a terrible time, and the effects on work and life are usually disastrous. But getting information out to the people who need it is a pretty normal role for librarians, and there examples of librarian whistleblowers. A dissident KGB archivist, Vasili Mitrokhin, smuggled thousands of the former Communist Party's secret files to the West.[69] There are other avenues beside whistleblowing to help ensure that access to government information is not blocked. Getting involved in professional organizations and public interest groups and working on information policy are ways to work for continued public access to information. Librarians have been on the frontlines of that battle for quite some time. ▮

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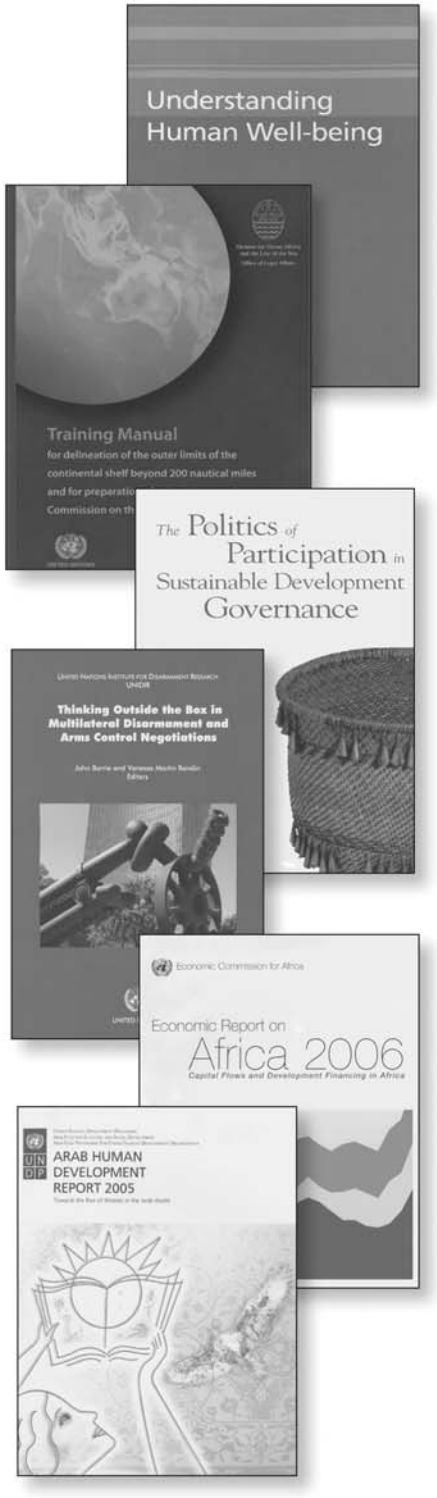

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How Government Secrecy Affects Libraries

Gwen Sinclair

Members of the public who need government information often find that the documents they require are not available in libraries. For example:

- A university professor visited libraries seeking information about relations between Japan and the U.S. during the Cold War. Little did he realize that relevant documents from the 1960s and 1970s would not be available in libraries because they had not been declassified.
- A researcher sought information about criteria used in the assignment of priority levels to animals and plants on the Endangered Species List. A librarian determined that the criteria were listed in an internal Fish and Wildlife Service document that was not available in libraries.

The above are real-life instances of government information missing from libraries. Although there are many reasons why government information may be unavailable in libraries, this article focuses on how libraries have been affected by restrictions on access due to government secrecy.

There is no agreement that U.S. citizens have an absolute right to government information. Supreme Court decisions have been sufficiently narrow that they do not serve as precedents defining a broad right of citizen access to government information.[1] More importantly, a significant number of high-level bureaucrats do not share the conviction that open government is desirable. Librarians, however, particularly those working in federal depository libraries, operate under the belief that there is an implied, if not explicit, right of public access to documents published by government agencies, and that libraries are an essential component of that public access. Title 44: *Public Printing and Documents* of the *United States Code* governs the dissemination of government publications:

> 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 through the facilities of the Superintendent of Documents for public information (44 USC 1902, www.access.gpo.gov/su_docs/fdlp/pubs/title44/chap19.html).

It is widely acknowledged that agencies have not followed the letter of the law in this regard. Many exceptions and loopholes exist, and there appears to be little or no oversight over agencies' compliance. It is difficult to determine how much information is being withheld from distribution either as a result of deliberate secrecy or due to a failure to provide publications to the Superintendent of Documents. The GPO is at the mercy of the agencies and has no statutory authority to dictate what is released or how publications are disseminated.

While government secrecy has attracted a great deal of attention since 9/11, there is nothing new about the federal government's reluctance to promote transparency. Sociologist Max Weber argued that bureaucracies have a natural tendency to be secretive.[2] Aftergood identifies three types of government secrecy: genuine national security secrecy, political secrecy, and bureaucratic secrecy. Of the three, he asserts that bureaucratic secrecy, the tendency of organizations to limit information about themselves in order to control perceptions, is the most pervasive in government agencies.[3] This paper discusses various manifestations of these types of government secrecy and their effects on libraries.

Document Classification and Reclassification

Classified information related to national security or internal documents of agencies may be properly withheld from the FDLP. Recently, however, agencies have begun withholding information that contains "sensitive security information" (SSI) or is considered "sensitive but unclassified" (SBU). A March 2006 GAO report to Congress concluded that there are no government-wide guidelines or standards related to designating SBU information.[4] In fact, it is even difficult to access agencies' guidelines about which standards they are applying to determine the SBU designation. The *CDC Information Security Manual*, to give one example, has been removed from the Centers for Disease Control (CDC) web site, and the current version is available only on the CDC intranet. The Federation of American Scientists (FAS) has posted the text of a previous edition at www.fas.org/sgp/othergov/cdc-sbu-2006.html.

Not only are classified documents inaccessible, but documents that reference them may also be restricted, even though no other part of the secondary document is classified. Once classified, documents almost never make it into the

stream of government information that is publicly released. A few organizations, such as the Federation of American Scientists and National Security Archive, make documents obtained through Freedom of Information Act (FOIA) requests available on their web sites. Some declassified documents also are available through commercial sources. For example, the *Declassified Documents* database (currently available from Thomson Gale) and *Digital National Security Archive* from ProQuest provide access to a few formerly classified documents, many of which have been redacted. Because they are rarely published by agencies, only a small number of declassified documents have been issued through the FDLP—one such example is the *Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq* (www.gpoaccess.gov/serialset/creports/iraq.html). The Documents Expediting Project (DOCEX) at the Library of Congress used to be a conduit for declassified documents; part of its demise was attributed to the discontinuation of a number of Central Intelligence Agency (CIA) titles, according to a 2004 letter from Michael W. Albin of the Library of Congress.[5] When documents are withheld because of secrecy, there's a good chance they'll never get in the pipeline to be distributed through libraries, and researchers will have to use a variety of sources outside of libraries to access the information.

Even declassification is no guarantee that documents will remain accessible. The National Security Archive reported that the Departments of Energy, State, and Defense had reclassified documents containing previously released information about the size and composition of the U.S. nuclear arsenal.[6] Even laws and regulations can be classified or restricted because they contain sensitive security information. For example, the Transportation Security Administration's regulations relating to security screening have not been publicly released.[7]

Unfortunately, many documents that are born secret are not subject to declassification schedules at all and may be kept secret forever, no matter what the subject matter.[8] The larger the number of classified or SBU documents, the less likely that they will be reviewed for later disclosure because there is a growing backlog of classified documents to be reviewed. Most agencies rely on retirees to work on FOIA cases, but budget cuts have limited the number of employees who can be assigned to these requests, which are a low priority.[9] There are already many exemptions to FOIA (for example, court documents, intelligence agencies, and so on). It is not surprising, then, that exemptions would be sought as part of a new agency's enabling legislation.

Congressional Proceedings

Many Congress proceedings are not publicly accessible. While some of this secrecy derives from the speech or debate clause of the Constitution, other secrecy orders are imposed by the administration. Congressional publications are not subject to FOIA, so citizens are dependent upon Congress to be liberal in granting access to information about its debates.

Classified bills are available for members of Congress to review before they vote. According to a *Boston Globe* report, however, many legislators are loathe to read the bills under the restrictive security conditions imposed by the administration. Most rely instead on unclassified summaries, which provide incomplete information.[10]

Secret sessions of Congress may be held for impeachment proceedings, consideration of national security legislation, or other matters that require confidentiality. For example, consideration of treaties by the Senate is secret. These secret sessions of Congress are excluded from the *Congressional Record*. House sessions can be kept secret for thirty years or longer, and the Senate decides on a case-by-case basis when to unseal its secret proceedings.[11]

Congressional Research Service (CRS) reports are not disseminated through the FDLP because they are considered privileged communications under the speech or debate clause of the Constitution.[12] A former CRS director defended the policy by stating, "The knowledge that CRS reports will not automatically be made available to others enables Members thoroughly to explore and develop legislative proposals without the danger of premature publicity which could well damage their freedom to study and choose among alternative policies."[13] In spite of this claim, CRS reports are available by subscription through LexisNexis and many are also available for free from a variety of web sites.[14]

GAO reports may be embargoed or restricted when issued and are later released at the discretion of the congressional committee that requested the report.[15] GAO reports have even been classified; for example, a GAO report on the missile defense system was classified by the Department of Defense.[16]

Scientific and Technical Information

Many libraries joined the FDLP in part to have access to the vast resources of the government, particularly with regard to scientific and technical literature. Restrictions on access to depository materials available online has resulted in the blocking of material that was previously distributed to depository libraries in tangible formats. While it is a simple matter to block access to an entire class of materials on a server, it is much more difficult to go through the process of requesting that the Superintendent of Documents withdraw an entire series of documents from depository libraries. As a result, there have to date been no large-scale withdrawals of government publications from the print or microform collections of depository libraries.

Following 9/11, many documents relating to environmental hazards and the security of potentially dangerous sites such as nuclear power plants and chemical plants were removed from the Internet due to concern about their potential usefulness to terrorists. Restrictions on this type of information also have affected citizens who are seeking data about potential hazards in their neighborhoods. One prominent example is risk management plans (RMPs) that the Environmental Protection Agency (EPA) requires of industrial facilities to inform the public about potential threats from chemical releases. Concern from the industry about revealing trade secrets and the potential utility of this information to terrorists caused the EPA to remove the RMP*Info database from its web site and limit access to it by requiring viewing in EPA reading rooms.[17]

The Nuclear Regulatory Commission (NRC) removed thousands of reports from its web site following 9/11. All but about one thousand reports have since been restored to public view, but the controversy over the availability in libraries of information about nuclear weapons and vulnerability of nuclear power plants is a long-standing one.[18] The Union of Concerned Scientists has obtained Greenfield Community College Library's collection of NRC microfiche, which it intends to make available to researchers upon request.[19] Interestingly, an MSNBC report claims that the same sensitive documents removed from the NRC web site are still available in libraries on sets of NRC microfiche, and the NRC seems to be unconcerned about this situation.[20]

Other groups of technical reports removed following 9/11 remain inaccessible. The Los Alamos National Laboratory (LANL) technical report library was taken down from the public web and remains unavailable from LANL.[21] Most of the reports, however, have since been made accessible through the FAS web site (www.fas.org/sgp/othergov/doe/lanl/index.html). The American Library Association (ALA) also revealed that technical reports were removed from Department of Energy (DOE) *Information Bridge* and Defense Technical Information Center. Because there was no comprehensive list of these documents before their removal, it is difficult to state how many of them may have since been restored to public view.[22]

Even patents can be kept secret. Secrecy orders may be imposed upon patent applications that have been determined to contain information that could harm national security.[23] In other words, searchers seeking patent information about certain types of technologies, such as weapons systems or encryption, will not be able to retrieve secret patents, and patent seekers will not be able to determine whether their inventions might be placed under secrecy orders because there is no way for them to know in advance which technologies will trigger the scrutiny of secrecy reviewers at the Department of Defense. OpenTheGovernment.org reported that in 2006, 106 secrecy orders were issued on patents, and 4,915 secrecy orders are currently in effect.[24]

Government secrecy is also mandated by laws restricting the disclosure of trade secrets. For instance, the EPA is limited in its ability to release information about chemicals provided by chemical manufacturers under the *Toxic Chemicals Safety Act* because it is considered confidential business information by the companies.[25] For the same reason, the Federal Communications Commission (FCC) has declined to release its database of Form 477 filings, which are documents that allow the FCC to compile reports on broadband competition, because it contains confidential business information.[26]

In addition to the born secret national security documents that are exempt from mandatory declassification schedules, another category of government information that escapes dissemination altogether is born secret research. OMB Watch reported that the proposed Biomedical Advanced Research and Development Agency (BARDA) would be exempt from FOIA, and research results would be kept secret for an indefinite period of time.[27] The National Security Agency (NSA) has attempted to control cryptological research, with mixed results.[28] Of course, research related to weapons systems, especially nuclear weapons, also is secret.

Many libraries are dependent upon government mapping products for maps and geographic information. Unfortunately, a number of map products and other types of geospatial data, including the locations of utilities and pipelines, maps of military installations, plans of federal buildings, and so on, have been removed or withheld in recent years due to national security concerns.[29] Access to satellite imagery also has been restricted or limited to low-resolution images in some cases. Most librarians are familiar with the Superintendent of Document's 2001 letter requesting that a CD-ROM containing data about surface water supplies be withdrawn from depository libraries. In many cases, the information is still available through other sources, so restricting distribution through federal government channels does not eliminate access; however, libraries must create their own gateways to these resources.

Diplomatic Records and Treaties

Information regarding sensitive diplomatic negotiations and the exchange of diplomatic information has traditionally been held confidential. Perhaps the most prominent demonstration of the lingering effects of secrecy is the publication *Foreign Relations of the United States* (*FRUS*), the official record of United States diplomatic history. Excessive delay in the publication of volumes has long been a source of frustration for researchers and librarians. Most of the delay can be attributed to the difficulty that the historians at the State Department have had in accessing other agencies' records, particularly those of the CIA. The CIA's reluctance to release information, and the agency's excessive foot-dragging in declassifying records, have meant that *FRUS* volumes are now published more than thirty years after the events they cover.[30] There is also acknowledgement that *FRUS* volumes

that cover Guatemala and northeast Asia (and probably volumes on Japan and other countries as well) have presented an incomplete history of the United States' activities in those countries, even though *FRUS* is supposed to be an authoritative source for diplomatic history.[31] Libraries are thus compelled to collect additional nongovernment publications to fill in gaps and provide more complete coverage.

Documents librarians are aware that *Treaties and Other International Acts* is an incomplete record of the agreements to which the U.S. is a party. Treaties may be kept secret when they relate to intelligence agreements or defense-related cooperation. For instance, the 1960 treaty of mutual cooperation and security with Japan is still secret.[32] To give another example, the existence of the 1948 UKUSA agreement related to the sharing of communications intelligence between the U.S., U.K., and other nations was not officially acknowledged until recently, and the text of the treaty is not available.[33]

Military and Intelligence Agencies

Information about the organization of military and security agencies and their budgets can be difficult or impossible to obtain. The *United States Government Manual* excludes certain agencies; for example, the existence of the National Reconnaissance Office (NRO) was declassified in 1992, but it is not listed in the 2006 *Manual*. The Defense Department telephone directory, formerly distributed to depository libraries, is no longer available from GPO or on the Internet.[34] Both the NRO and NSA have web sites, but they provide little information about the agencies. In fact, the National Security Agency Act of 1959 (P.L. 86-36) states, "No law shall be construed to require the disclosure of any information concerning the organization, functions, or activities of the NSA, or of any information regarding the names, titles, salaries, or number of persons employed by NSA."[35] The NSA web site provides access to a few declassified documents relating to past activities, such as the Venona program, which collected Soviet diplomatic communications; nonetheless, the documents have significant excisions. The most recent documents available from NSA relate to the Gulf of Tonkin incident in 1964. Nothing has apparently been released about intelligence operations related to the Bay of Pigs invasion, although interest in the incident is bound to increase following the release in 2006 of the film *The Good Shepherd*. CIA documents are, for the most part, exempt from FOIA and are rarely released. Very few CIA documents have made their way into libraries over the years.

To give an indication of how long it may take intelligence agencies to declassify records, the National Archives announced in 2007 that groups of documents relating to Japanese and Nazi war crimes and the war in the Pacific had been released. These documents, dating from World War II and later, had been classified for decades. It is difficult to imagine what national security requirements were being met by their continued restriction.[36]

In addition to intelligence-related information, documents that used to be distributed in tangible form to depository libraries, such as the Department of Defense *Joint Electronic Library*, have been removed from the Department of Defense web site.[37] Restrictions on maps of military installations prevent citizens from being aware of potential environmental hazards, such as toxic waste or unexploded ordnance. Discarded ordnance, chemicals, equipment, or other potential hazards to navigation in rivers or oceans may not be indicated on government charts. It's a good thing that many libraries are in the practice of stamping their charts, "Not for navigational use."

Large portions of the federal budget, including the budgets of the CIA, NSA, and NRO, are kept secret. OpenTheGovernment.org reported that 19 percent of the current defense budget is secret.[38] Librarians must direct users to non-government resources like Center for Strategic and Budgetary Assessments (www.csbaonline.org) for estimates.

Internal Use Only

Agencies have the right to designate their publications as operational or for internal use only, thus exempting them from distribution or dissemination outside the agency. Many documents have been withdrawn from depository libraries because the publishing agency claimed that they were official use only publications that should not have been distributed by the FDLP. One instance in which this practice was thwarted was when the Justice Department requested that asset forfeiture manuals that had been distributed to depository libraries years earlier be withdrawn because, as internal operational publications, they should not have been made public. However, librarians protested, pointing out that the length of time that the publications had been available was an indication that no harm would be done by their continued availability.[39] As a result, the Justice Department withdrew its request.

Operational documents can be requested through FOIA, but they may be redacted. For example, the FDLP sent a letter requiring the withdrawal of *75 Years of IRS Criminal Investigation History* from depository libraries. A library that later requested the publication through FOIA received a redacted copy with names and photographs of the subjects of tax investigations blacked out (Mabel Suzuki, personal communication). Memory Hole has made an unredacted copy of this Internal Revenue Service official use only publication available on its web site (www.thememoryhole.org/irs/75_years.htm).

Like the EPA risk management plans mentioned above, other internal documents may be accessed—but only if the user is able to visit an agency reading room in person. Researchers wishing to see the FBI's *Freedom of Informa-*

tion/Privacy Acts Manual obtained a court order to require the FBI to make it available in the FBI reading room at its headquarters.[40] In this case, the document was not secret, but the agency was reluctant to provide access to its internal procedures for handling FOIA requests. Limiting the public to viewing documents in agency reading rooms removes the anonymity and privacy that most libraries insist upon for their users.

How Can Libraries and Librarians Respond to Government Secrecy?

Librarians have long complained that materials received through the FDLP are an incomplete representation of government publishing. Well before electronic dissemination became the primary distribution method for federal documents, librarians were pointing out fugitive documents whose status had little to do with secrecy but was more the result of agencies' lack of commitment to or ignorance of the requirement to provide documents to the FDLP. In the electronic environment, it has become extremely easy for agencies to sidestep the FDLP and for documents to disappear before they have been noted or cataloged by GPO. It is evident that Congress has not granted GPO the authority to gain control over access to agency publishing. Many librarians have already recognized that there must be a concerted effort on the part of libraries to locate, identify, and acquire electronic publications in order to maintain public access.

Many organizations and individuals work to make fugitive or secret government publications available, including journalists, professional associations, think tanks, and others. FAS, OMB Watch, and National Security Archive, to name a few, post many documents that have disappeared from government web sites or that were obtained through FOIA requests. However, their purposes and missions differ from those of libraries, which collect comprehensively in particular agencies or subject areas. Furthermore, these watchdog organizations may not be able to guarantee free, permanent public access to government information. Moreover, some organizations' web sites are not arranged in a logical manner to facilitate access, and they sometimes lack effective search mechanisms.

One way in which librarians have exercised muscle in the debate over secrecy has been through lobbying Congress to support access to government information by using its oversight of agency publishing. Librarians also have not been shy about creating an outcry over the removal of publications from public view, such as the Department of Justice asset forfeiture manuals mentioned above. Some libraries have created their own online searchable archives of selected publications that have been withheld from distribution through the FDLP. As with the National Security Archive, libraries can mount these uncovered documents on their own servers and make them available through search engines and shared cataloging records. A good example is Thurgood Marshall Law Library's collection of CRS reports (www.law.umaryland.edu/marshall/crsreports/index.asp).

Until these archiving functions have become established in libraries, librarians have other tactics at their disposal to find secret documents. We can maintain knowledge of such independent resources as Memoryhole.org (www.thememoryhole.org), Wayback Machine (www.archive.org), and others that archive documents while keeping in mind that these web sites are run by nonprofit organizations, and the documents posted on them may not be accessible permanently. Librarians also have submitted FOIA requests for documents that are important for their constituents. In addition, libraries may create collections or gateways for community information, which can include formerly secret documents.

Conclusion

As libraries move away from ownership and embrace access, a library's collection of government information becomes a mutable, amorphous entity whose content changes with each occupant of the White House. When access is denied or restricted, the quality of research is diminished. People typically use information that is the most convenient to access. Few researchers have the time or resources to go through FOIA to get the information they need.

Government secrecy also impacts libraries' ability to provide information about government activities. Restrictions on specific data, such as environmental risks from chemicals or munitions storage, may eventually be available to libraries in an abridged form, but citizens who need more detailed information will have to reveal their identities to obtain it. On the other hand, people are becoming accustomed to having to register for everything they do online, and anonymity is not guaranteed in many online environments. It may be that the public does not value anonymous access to government information.

Often, agencies do not see disseminating information to the public to be their responsibility or even part of their mission. The electronic age has made it much easier to share information, but it has also given government agencies additional incentives to keep information secret from its inception. Many documents do not need to be classified, but government agencies have found it easier to keep information secret than to go through the laborious process of reviewing documents for release. For instance, after 9/11, agencies removed entire categories of documents from public view (such as the NRC documents), knowing it would take a long time to review them for release. The approach taken by agencies seems to be that if documents are never released in the first place, the agency won't be put in the embarrassing position of later withdrawing them and hoping that there aren't still copies in circulation.

Librarians argued against Internet filtering because it removed access to the good along with the bad. Government secrecy resembles filtering—agencies want to protect national security and privacy, but they also restrict much valuable material that should not be secret. While we acknowledge the need for secrecy in some situations, librarians will continue to battle needless secrecy because of its detrimental effect on our ability to meet the public's need to be informed about their government. ▮

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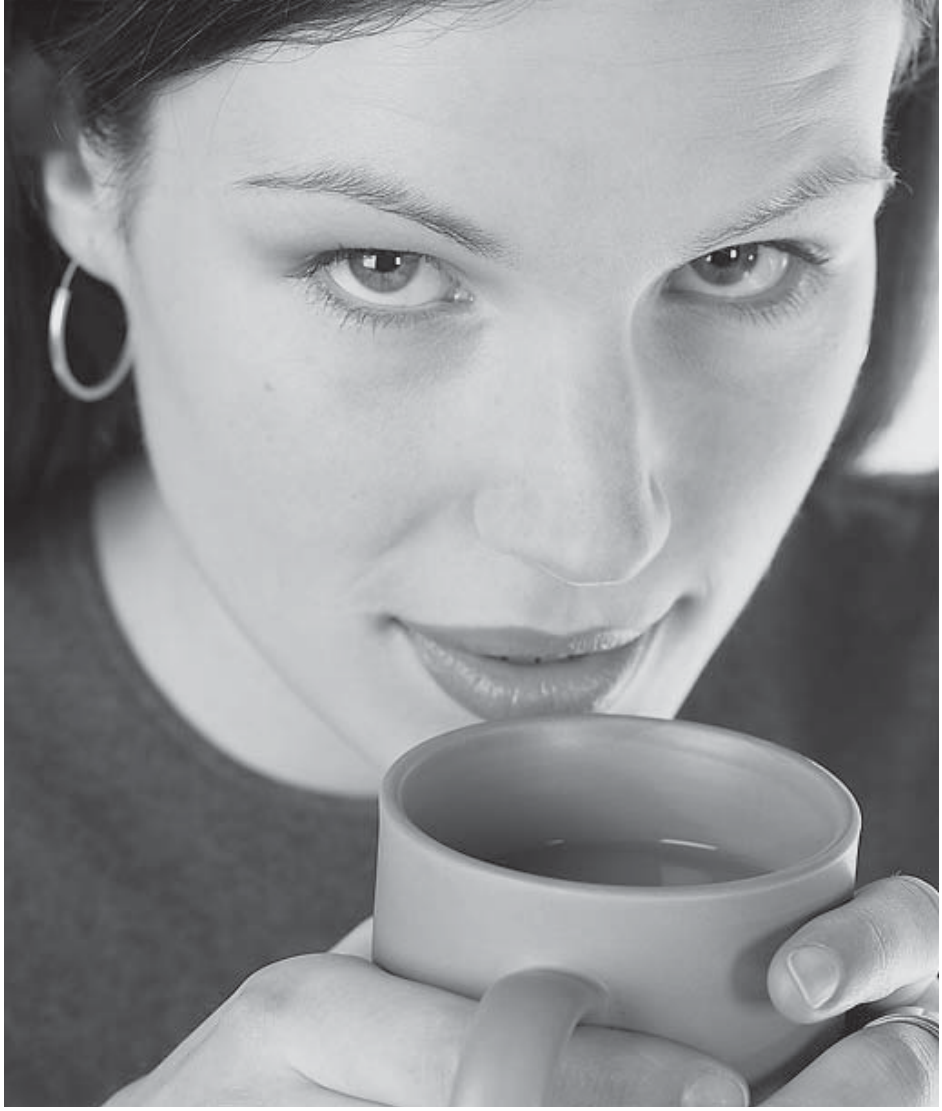

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Beyond the Library

Uncovering Users' Needs and Marketing Your Expertise

Jesse Silva and Sherry DeDecker

Prior to the fall 2006 Federal Depository Library conference, LexisNexis sent librarians an invitation to enroll in a free, one-day seminar titled "Beyond the Library: Uncovering Users' Needs and Marketing Your Expertise." We jumped at the chance!

Jesse: As a new documents librarian, I've made it a goal to take advantage of every training opportunity that I hear about. When I saw that LexisNexis was offering this marketing workshop, I changed my flight and hotel reservations and flew in a day early so I could participate. Now, I must admit that I took a marketing class in library school a couple years ago. While the class was one of the best I took in grad school, it was nothing compared to the workshop.

Sherry: I've been a government information librarian for years now, but lately have been given the additional responsibilities of the information services department. Marketing is one of those areas where I welcomed all the advice I could get! This turned out to be one of the best seminars I've ever attended.

The day started with breakfast provided by LexisNexis and a mad dash for coffee, especially for those of us not on Eastern Daylight Time (we were still on the Pacific circadian rhythm).

Nancy Cline, Harvard College Librarian, gave a fascinating overview titled "What Color is your Parasail . . . Don't Get Left Holding the Tow Rope." The key from this presentation is that an idea can take you high into the air. Those who do not want to change can hold the tow rope. She compared the current work culture of libraries, where change is *very* slow and failure is looked down upon, to the work culture of Google. At Google, failure is expected, and if you are not failing more times than you are succeeding, then you are not trying hard enough. Libraries need to adopt a more Google-like work culture.

Change is inevitable; however, the library as an institution is very conservative and change happens slowly. At the same time, the medium and formats in which we are working change very rapidly. Nowhere is this clearer than in government information librarianship. Paper to electronic, ownership to access, collections to services—librarians have seen much of this happen in the last ten years. With this in mind, we must realize that we cannot ignore change. It is going to happen, so it's essential that we learn to accept and anticipate it.

According to Cline, we need to deal with legacies, not let them strangle us. Legacy practices, procedures, and systems need to be closely examined for their worth, and updated or modified so these systems do not restrict us from making the changes needed to meet our goals, service or otherwise. As we move forward, we need to assess our knowledge base: what are our strengths and skills versus what can we count on our colleagues for?

Marketing MBA in Fifteen Minutes

Diane Smith, senior director for editorial products at LexisNexis, gave an enlightening presentation on marketing, stressing that marketing is not selling. It's the homework that assesses user needs and determines whether an opportunity is there. She shared with us the "secret" marketing formula, which we will spell out here:

R → (STP) → MM [4P/4C] → MP → I → C

For those of us who are not familiar with this formula, the variables translate to:

R for Research. This can be thought of as market research. The number one rule when doing market research is to suspend all beliefs that you know what is good for your users. We know, this is a scary thought because librarians pride themselves on knowing what is best for their users. However, users change. What may have been working a couple years ago is not working now. You need to go into market research blind. This can be done with surveys, focus groups, talking to your users.

S+T for Segmentation and Targeting. This is where you define your user group. Is there a potential user group that would benefit from your services? This involves a SWOT analysis, where you identify your Strengths, Weaknesses, Opportunities, and Threats. What are your strengths and weaknesses? What are some opportunities that you can identify? And what are some threats?

Positioning is where you look at what you are comfortable doing. What do you do best? What are you willing to do? What are you comfortable risking? Thinking about these is important, because your limits are set here. If you work in a highly politicized environment, you may want to set some low limits. If you are fortunate to work in a collegial environment, the sky can be your limit for risk. Risk

taking is something that should be an ongoing discussion with your supervisor. What is the organization comfortable doing? What are limits within your organization? Knowing this information will better assist you with the assessment of where you want to be.

MM—Marketing Mix. This is where the fun begins. After you know your user, after you examine what you are comfortable doing, developing a marketing mix is where we should let go of our fear of failure. Your goal should be to exceed customer expectations. You'll find that the more you offer, the more your customers will expect, so this is a moving target.

The marketing mix is based on the 4 Ps or the 4 Cs: Product/Customer Benefit, Price/Cost, Promotion/Communication, Place/Convenience. What product or customer benefit are you offering? Is there a price or cost? Even if there is no cost, a good marketing mix will include this information. How do you plan on promoting or communicating your idea? The sky is the limit for this. Entertain all ideas that are presented. And finally, where do you plan to offer your services, and is this convenient for your users? As you think about these questions, also consider your competition: how are you different from the competition, where do you match or exceed the competition, are you constantly improving over the competition, and what specific benefits do you offer over the competition?

MP is the marketing plan. When you know all the above information, write down how you are going to market your services to your users. Writing the marketing plan will illustrate possible holes in the plan. Are you including all your shareholders, all your possible ties to the users? Think of this step as creating a road map from where you currently are to where you are going.

I for implementation. This is where you carry out your marketing plan exactly as you wrote it down.

C is control. After you have carried out your plan, you will need to evaluate and measure your success, impact, or possible failure. Remember, failure should not be thought of as a bad thing, because you can learn a lot from failure. In order to be truly innovative, you need to fail at least 50 percent of the time. Take what you learn and redo your plan. If you succeeded, evaluate your plan in a year. Users are constantly changing, and what may work for marketing your service or expertise now may not work in a year or two.

Developing the Marketing Plan

Now that the audience was all enthused and ready to write their marketing plans, Mary Lee Kennedy, head of the Harvard Business School Library, took us through the steps in actually making and implementing a plan. She also stressed that if you don't have more failures than successes, you're not doing the job right.

Kennedy conducts quarterly meetings in her library where staff come up with three lessons learned and three successes. Their customer-centric approach stresses that you must understand your target audience and what they need *now*.

Step one in developing the framework for your plan is to understand your distinctive capabilities. What makes you different? This difference is your core value to the organization. Step two is to define your customer's needs, and be able to articulate the value of your services in terms that can be clearly understood. From that point, identify required shifts in the current work atmosphere, and recruit partners and allies. Kennedy also emphasized that your achievements must be measurable in order to assess the level of your success.

Branding

Another highlight of the seminar was hearing professional marketers discuss the process of branding yourself. In order to create a brand, you need to get out and engage as many people as you can into conversations about their perceptions of you and the services you provide. Be a sponge and listen how others perceive you. Engage your critics and others who do not use the library. Listen to this group's vocabulary. Do not argue with them, just listen, as they may have a concern that you never thought about.

When talking to people about the library and your services, ask them about their memories. A good question is to ask about their first memory of using the library. If there is a pattern, these first memories will clue you into where you could focus your marketing efforts. Also, if your library currently has a developed marketing strategy, these discussions can lead to an evaluation of the current strategy. If the current marketing plan is not working, go back and rework the message.

When thinking of a personal brand, consider what makes you unique. What do you do that no one else does? As government information librarians, we are fortunate to be handed a great opportunity for personal branding. Many librarians are not comfortable working with government information due to its complexity. So by default, we become the go-to people for information from the government. We must use this to our advantage in developing a personal brand.

What People Took Away from the Workshop

The following is a partial list of the ideas participants took from the workshop.

- Libraries need to be comfortable with failure. Failure is a great way to learn.

- Assess everything.
- Write down the marketing plan.
- Ask, don't assume.
- Embrace change proactively.
- Identify and articulate connections.
- Enlist staff in the process.
- Market the value of the people and the collection.
- Consistently communicate your message.
- Change the perception of failure to lessons learned.
- Develop a personal branding.

Applying the Theory to Practice

Jesse: My attending the marketing seminar at LexisNexis coincided perfectly with the preliminary planning of our user-based web site redesign at the University of California Berkeley (UCB). During the seminar, I could see where the process of developing a marketing plan could be put into place alongside our redesign process. We are conducting a survey and will be conducting one-on-one interviews with users to gain a better perspective on what our users want from our web site. This data gathering for our redesign presents a perfect opportunity to do some market research. Because of this, we are incorporating the market research and the preliminary development of a marketing plan into our web site redesign process.

While we at UCB are combining this marketing research with our user-centered web site redesign process, please realize that this is only one way to gather information. Simply engaging in open conversations with users at the reference desk is a great way to start market research. Talk to others you suspect may be able to utilize government information and your services but currently do not. You will learn from your users as to what they need and how best to reach them. Having this information is the key to developing a solid marketing plan to attract new users to your services.

Sherry: This seminar coincided with our launch of a University of California collaborative chat reference service. As often happens, we launched the chat service before assessing user needs and our ability to respond to those needs. We're now working backwards: using the statistics we've collected to plan for future staffing.

We already know this is a popular service, and it will grow as we market it more aggressively. In order to prepare for anticipated growth, we are preparing a survey of librarians to assess interest and availability for staffing this service. We are also analyzing transcripts of chat sessions, looking for expressed statements of satisfaction or any user comments to help us improve the service. We're the prime example that falls into the "Googly" workplan—we're not afraid of failure! As the marketing presenters made clear, it's important to use what we've learned in order to plan for a successful venture. ▮

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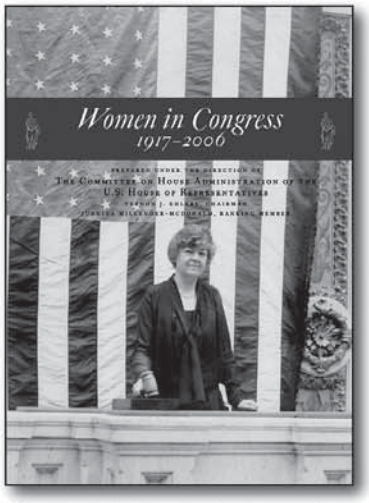
The Remarkable Stories of Women in the U.S. Congress



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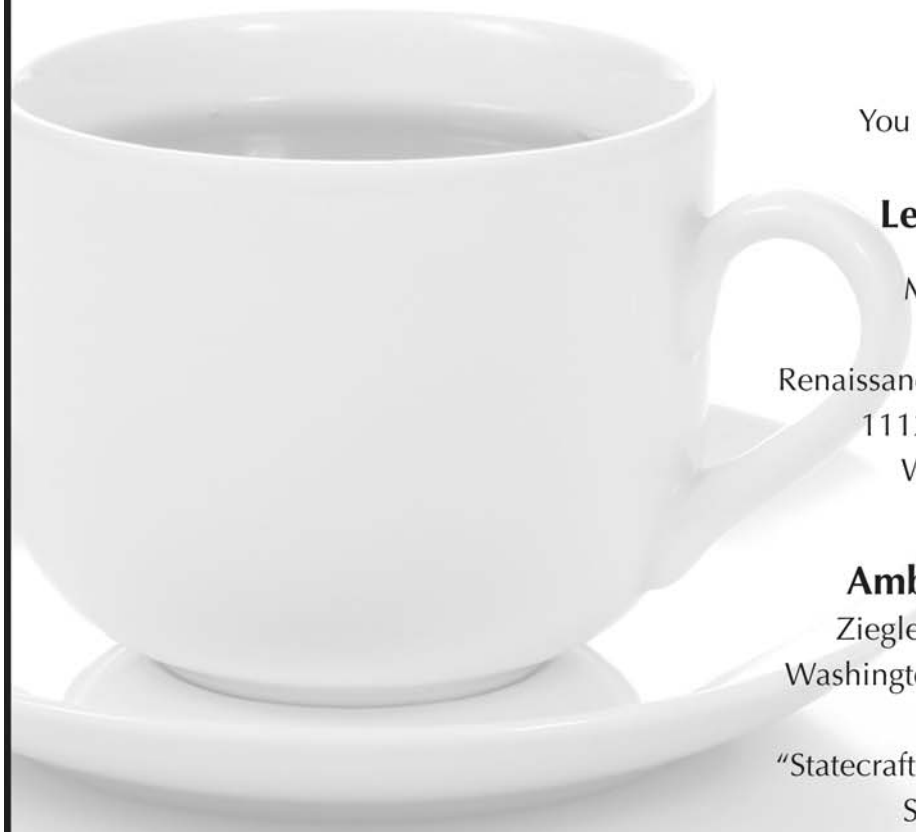

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Tips from Tim

"Available from NTIS" and Other Technical Report Horror Stories

Tim Byrne

Technical reports are not everyone's cup of tea. They are low-use items that most libraries don't collect. They are in collections, for the most part, that are uncataloged, unloved, and little cared for. They get little use and take up a lot of space. What's not to love? But they can be of incredible importance to scientists and engineers, and that is why we keep them. They are actually pretty neat to have until you run out of space. I am currently working on a task force that is trying to digitize federal technical reports. The task force is made up of librarians from around the country who work with technical reports and have a high appreciation of their value. Thus it seems a little strange that we are all working so hard to get rid of the print and microfiche technical reports in our collections.

Most libraries that do have technical reports started collecting them in the late 1940s or early '50s. In some libraries, the federal technical reports are housed in the government publications collection. In others, they are found in the engineering or science collections. For the most part, regardless of where they reside, they are uncataloged. This, of course, makes them hard to find, which adds to their popularity.

Until fairly recently, technical reports were not included in the depository library program, and most technical reports for the last ten years or so are available via the web. Just *where* on the web you can find them can be a challenge, but, hey, that's why we make the big bucks. But it really wasn't that long ago that here were three words we all hated to see in a bibliographic citation: "Available from NTIS." This, of course, meant that the report in question was sold by the National Technical Information Service, and chances were pretty slim that it had been distributed to depository libraries. While there was always a chance of getting a copy from the issuing agency, most agencies would just refer you back to NTIS. So the only sure way to get a copy of a government-sponsored technical report was to pay for it, something most depository librarians really hated to do. We are supposed to get government documents for free as depository items, and having to pay for something we should get for free always hurts. Plus, if you did order the report, you either went cheap and got a microfiche copy or you paid a little more and got a photo reproduction. Neither of these formats was particularly great if the report had color images or lots of tables with small print. I must admit, however, that the quality of the NTIS microfiche was a lot better than much of the microfiche done by GPO contractors in the late 1980s.

Technical reports were the first government publications distributed in microfiche. The Atomic Energy Commission (AEC), which first distributed paper copies of AEC reports in 1948, began distribution in microformat in 1953. Note I didn't say microfiche or even microfilm. No, they distributed microcards, which are pretty much the same as microprint, except smaller, about 3 x 5 inches. I would say that microcards and microprint were the Betamaxes of the microform industry, but that sort of dates me and a lot the younger readers won't have any idea what a betamax is. At any rate, after a couple of years, AEC did switch to microfiche. It was

Samples of different microfiche

still 3 x 5 inches, but at least it is a format for which most of us have equipment that can read it and even make copies. But you have to remember that it takes a while for standards to be developed, and, eventually, a microfiche standard of 4 x 6 inches was agreed upon and AEC made the switch.

All would have been well with the AEC microfiche except that AEC was distributing silver halide microfiche. This was the archival standard and is great under archival conditions, meaning it never gets used. Unfortunately, silver halide film tends to scratch easily. So in the late seventies, the Department of Energy (DOE), the successor agency to AEC, and most other government agencies switched to distributing diazo microfiche, which stood up to use much better. The downside is that you can't file silver halide and diazo together or the chemicals in the film break down to acid and do terrible things to other film and your cabinets. This meant that libraries had to file the DOE microfiche separately from the AEC/ERDA/DOE microfiche. This, of course, wasn't a problem unless you were looking for a report from the late seventies that could have been distributed in silver or diazo. Not a real big deal, except in my library where we have the DOE diazo fiche on the third floor and the silver halide AEC/ERDA/DOE fiche in the basement.

The National Aeronautics and Space Administration (NASA) is the other agency that distributed technical reports in microfiche. Again, this was before there were standards. The fiche NASA sent out was 5 x 8 inches. NASA also eventually changed to the standard size. While this older NASA fiche is still readable, you can only read it one half at a time as it has to be inserted sideways into a fiche reader.

The high point for technical reports in the FDLP was probably 1984, when GPO and the Department of Energy reached an agreement to have DOE distribute research and development reports to depositories in microfiche. DOE even agreed to let depositories choose to receive previously published DOE reports back to 1976. The low point for technical reports in the FDLP was definitely later, in 1984, when the boxes and boxes and boxes of DOE microfiche started showing up. In the survey for the DOE microfiche, GPO had tried to warn depository librarians as to the approximate size in linear inches of each category of the retrospective DOE collection. So while it shouldn't have been a surprise to get so much microfiche, it was a shock to most. On top of the sheer amount of microfiche was the fact that the fiche in the boxes were in no particular order. Usually, when you buy a large fiche collection, it comes to you in order and you can just put it into the cabinets. Not so with the DOE fiche. In fact, the task of filing all that fiche was so great that, in many libraries, the boxes of DOE fiche were stacked up under tables in the documents office and there they stayed for many years. Nowadays, the DOE reports are available online, so the big difference is that there is no filing required. But what remains the same is that, like the microfiche, GPO still doesn't catalog the online DOE reports. ▮

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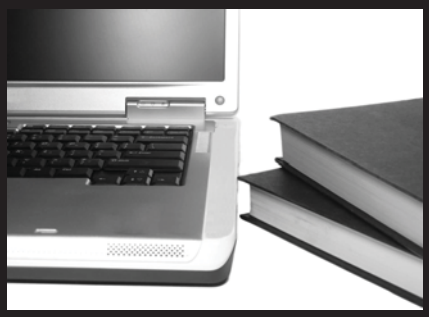

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Interview with Incoming GODORT Chair, Bill Sleeman (2007-2008)

In an effort to get to know the incoming GODORT chair a bit better, we sent Bill the following, somewhat nosy, list. Bill was kind enough to fill in the blanks for us, and we print them here, so that you can get to know him better as well.

Favorite Spot in Baltimore: One of my favorite spots—although not the only one—is the parking lot of the Rotunda Shopping Center (near the Giant Supermarket) in Baltimore. I love Baltimore's skyline, a great mixture of the old and new, and from the parking lot (on the top of a hill) you can get a great view of the entire city.

Favorite Pastime: Anything with my family. I am blessed with the best family a person could want and my favorite pastime is just being with them. When not with them, a good long run is my second choice.

Favorite TV Shows: *That '70s Show.* I grew up with these people, and there isn't an episode that goes by that I don't think to myself "I remember doing that" or I know someone who did. Also, the *Weather Channel.* I admit it, I am a *Weather Channel* junkie!

Favorite Book: A favorite book for a librarian is a near-impossible question as there are far too many good ones. Certainly one that has affected my life and that I go back to fairly often is *The Seven Storey Mountain* by Thomas Merton.

Favorite Movies: A little easier than "favorite book"—definitely *Chinatown. L.A. Confidential* is a close second.

On Your Reading List Now: I usually have a stack of books going at any one time; right now I am working my way through *Love and Hate in Jamestown,* re-reading *Desire of the Everlasting Hills: The World Before and After Jesus,* and slowly reviewing a case book on land-use law.

Favorite Coffee Drink: I drink a lot of coffee, but am totally unsophisticated when it comes to types: 7-11, Starbucks, eight-o-clock brand, I don't care as long as it is hot and black.

Favorite Type of Food: Fruit pies and tarts (to go with the coffee)!

Favorite Conference Town: San Antonio—ALA could go there every year as far as I am concerned.

Favorite Vacation Spot: Every year my family goes "up north" (Michiganders will know what that means) to Traverse City to stay at a cottage that has been in my wife's family for years. It is one of those places where the kids can run around and swim all day, you can kick back with a cup of coffee (there's the coffee again!) and really relax with family.

Historical Figure You'd Like To Meet: My great-great-grandfather, who came to the U.S. from Ireland right before the American Civil War. Some of the stories I've heard are suspect (as family histories often are); it would be great to hear his stories directly.

Pet Peeves: I have a lot actually. A "veritable pocket full of peeves" but litterbugs (yes, I still think Woodsy the Owl's advice is the best advice) is probably one of my biggest. I see so much trash when I am out running, and I am always astonished and saddened at how widespread litter is—from neighborhoods to national parks, people just don't seem to care what happens to their trash.

What Inspires You about Your Job: I really enjoy working directly with the students and faculty. This really is the most rewarding part of my job, helping them find and understand some obscure bit of information that they need for their research. ▮

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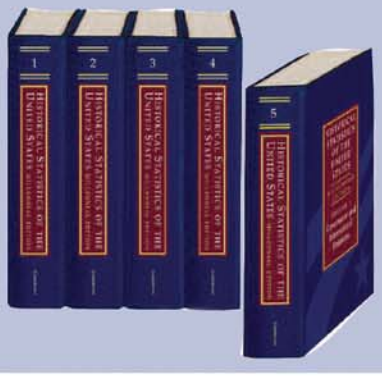

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