

2009 National Library Legislative Day Report
Arthur K. Cabrales, NLA Delegate

Attendees

This year, 13 librarians and library supporters made the trip to Washington, D.C. to participate in the American Library Association's 2009 National Library Legislative Day. The attendees were: Sara Jones, Director, Carson City Library; Steve Neighbors, Strategic & Operational Solutions, Inc., Tammy Westergard, Deputy Manager, Business Development, Carson City; Jeanette Hammons, President, Nevada Library Association; Joan E. Vaughan, President-elect, Nevada Library Association; Laura Oki, Assistant Director, Elko County Library; Denise Gerdes, Past-president, Nevada Library Association; Teresa Manix, Las Vegas-Clark County Library District; Arthur Cabrales, Las Vegas-Clark County Library District; Verlia Davis-Hoggard, Trustee, Las Vegas-Clark County Library District; Tom Fay, Director, Henderson Libraries; Karen Starr, Nevada State Library and Archives;

Briefing Day—Monday, May 11

This full day of issue briefings prepared all of the National Library Legislative Day participants for their Congressional visits by giving them the necessary information and key messages. The agenda for the Briefing Day was as follows:

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| 8:00-9:00 am | Continental Breakfast and Check-In
(State Coordinators pick up bags and folders and then distribute them to participants. They also pick up the folders for Capitol Hill visits.) |
| 9:00-9:15 am | Welcome and Announcements
Speakers: Barbara Folensbee-Moore, President, DCLA; Jim Rettig, President, ALA; Ken Wiggins, Committee on Legislation, ALA |
| 9:15-9:45 am | New Congress, New Administration: What to Expect in the 111th Congress
Speakers: Emily Sheketoff, Executive Director, ALA Washington Office |
| 9:45-10:15 am | Appropriations: Plenary Session
Speakers: Melanie Anderson, Office of Government Relations; Adrienne Hallett, Professional Staff for Labor, Health and Human Services, Education and Related Agencies Subcommittee |
| 10:15-10:30 am | Break |
| 10:30-noon | Advocacy: Bringing the Message Home
Speakers: Stephanie Vance, Advocacy Guru and Kristin Murphy, ALA Washington Office
The latest on Economy, Broadband, CPSIA and many more issues will be discussed as a real-world application of advocacy |
| Noon-2:00 pm | Lunch On Your Own |

- Noon-2:00 pm **ACRL Member Luncheon**
- 2:00-2:45 pm **Copyright: Plenary Session and Strategy (Roundtable Discussion)**
Corey Williams, Associate Director, Office of Government Relations; Jonathan Band, Esq.
- 2:45-3:30 pm **Breakout Sessions:**
- Session A: Internet and Telecommunications**
John Windhausen Jr., Esq., Telepoly Consulting
- Session B: Patriot Act**
Lynne Bradley, Director, Office of Government Relations
- 3:30-3:45 pm **Break**
- 3:45-4:30 pm **Stimulus: The American Recovery and Reinvestment Act (ARRA)**
Speakers: Vic Klatt, Van Scoyoc Associates; Congressional Hill Staffers; Melanie Anderson, Associate Director, Office of Government Affairs
- 4:30-5:15 pm **FLLAN Meetings/State Meetings**
- 5:30-7:30 pm **Reception (Rayburn Foyer, House side)**

A Sampling of Key Issues and Messages

Library Services and Technology Act (LSTA) and Improving Literacy Through

School Libraries funding: A "Dear Colleague" letter is being circulated in the Senate by Senators Jack Reed (D-RI) and Olympia Snowe (R-ME) in support of funding for both of these programs. The letter is addressed to the Senate Labor, Health and Human Services and Education Appropriations Subcommittee and requests that the Senate include \$300 million for LSTA and \$100 million for the Improving Literacy Through School Libraries program for FY 2010.

The Message: *It is critical we increase the number of signatures on the letter. Last year we had 47 signatures. If we don't have 60 signatures on the letter, it will be impossible to convince the Senate Appropriations Committee to increase funding for both of these programs.*

GPO & the Federal Depository Library Program (FDLP): Congress should support the full amount listed in the Public Printer's FY 2010 budget request of \$166,300,000 for the GPO, including \$40,900,000 for the Salaries and Expenses (S&E) Appropriation of the Superintendent of Documents and \$93,300,000 for the Congressional Printing and Binding (CP&B) Appropriation. The majority of the S&E appropriation is for the FDLP by which congressional and other important government publications and information products are disseminated to the nearly 1,300 participating academic, research, public, federal, law and other libraries nationwide.

The Message: *The FDLP is vital to the dissemination and acquisition of federal government information by our citizens. We believe that the FY 2010 S&E budget request is essential to the program. Since GPO is responsible for permanent public access to the content of its Electronic Collection, funding to strengthen digital archiving and migration capabilities is a critically important component.*

H.R. 801, "The Fair Copyright in Research Works Act:" Rep. Conyers (D-MI), chairman of the U.S. House of Representatives Committee on the Judiciary, introduced H.R. 801, "The Fair Copyright in Research Works Act," on February 3, 2009. Unfortunately, this not-so-new bill seeking to amend copyright code and create a new category of copyright work differs only in bill number assigned from its predecessor in the 110th Congress—H.R. 6845 that ultimately died in the House Judiciary Committee.

And just as in the last Congress, *H.R. negates or reverses the National Institutes of Health (NIH) Public Access Policy currently in place*, rolling back hard-fought progress on public access to taxpayer-funded NIH research on the Internet. The bill would effectively reverse the NIH Public Access Policy, as well as make it impossible for other federal agencies to put similar policies into place.

The NIH Public Access Policy grants millions of Americans access to vital health care information through the National Library of Medicine's PubMed Central database where nearly 3,000 new biomedical manuscripts resulting from NIH tax-payer-funded research are deposited for public accessibility each month.

Each manuscript is deposited within 12 months after the publication date, as the NIH Public Access Policy adheres to a 12-month embargo period.

H.R. 801 would prohibit the deposit of these manuscripts, seriously impeding the ability of researchers, physicians, health care professionals, and families to access and use this critical health-related information in a timely manner.

The Message: *The American Library Association strongly opposes H.R. 801 as it seeks to amend copyright law and reverse the NIH Public Access Policy.*

Universal Service Fund (USF) Exemption from Anti Deficiency Act (ADA)

Rules: The E-rate discount program for public libraries and K-12 public and private schools was frozen for several months in 2004, following a major shift in requirements that made the Universal Service Administrative Company (USAC), the organization that manages USF for the Federal Communications Commission (FCC), comply with government accounting rules under the ADA. This requirement forced the FCC to freeze e-rate funds and temporarily halt pending commitments to e-rate participants for the subsequent year. This led to major disruption for participants by withholding funds from vendors, libraries and schools, making it impossible for them to plan and budget for pending e-rate related services. To avoid subsequent freezes, Congress has passed a one-year exemption each year since.

ALA and others now seek a permanent exemption in order to provide stability and certainty to the E-rate program. The one-year-at-a-time exemptions have demonstrated that there are reasonable procedures in place at USAC and the FCC

and that USF need not be subject to ADA cash-flow rules. Stability for the USF program is necessary because the E-rate remains essential for public libraries and K-12 public and private schools to afford the ongoing monthly costs of telecommunications services needed to serve students and library users of all ages. Every state benefits with the deepest discounts going to the poorest communities. Over the 12 years of the program, public libraries have received telecommunications discounts of over \$600 million.

The Message: *Support E-rate discounts for libraries and schools. Pass a permanent exemption for USF funds from Anti Deficiency Act (ADA) accounting requirements.*

In the Senate: ALA urges passage of S. 348, a bill introduced by Senators John D. Rockefeller (WV) and Olympia Snowe (ME), two of the original sponsors of the E-rate program.

In the House: ALA urges passage of a companion bill, H.R. 2135, introduced by Rep. Denny Rehberg (MT).

Simplification of the E-Rate Applications:

The Message: *Congress should encourage the FCC to accept the "ALA Simplification Proposal" and move forward on this approach to increasing library and school participation in the e-rate, thus, benefiting a wider range of communities. With over 11 years of feedback from E-rate libraries, ALA proposed to the FCC, in filings over the last three years, recommendations to simplify the E-rate application and disbursement process. The "ALA Simplification Proposal" would promote increased library participation in the E-rate discount program and provide for improved oversight and accountability. Congress can demonstrate support for the E-rate program by asking the FCC to consider ALA's proposal to simplify the E-rate application process.*

Consumer Product Safety Improvement Act of 2008:

In August 2008 Congress passed legislation titled "The Consumer Product Safety Improvement Act of 2008" (CPSIA). This legislation seeks to decrease the levels of lead and phthalates in products intended for children under the age of 12 and will be enforced by the Consumer Product Safety Commission (CPSC).

Under the CPSC General Counsel's interpretation of the CPSIA, books will be subject to the same testing standards as children's toys. Very few recalls have actually involved books; in fact, the recalls surrounding books have not happened because of the books themselves but rather the toys that were attached to the books that were considered potential choking hazards. In spite of this information, the standard hardcover and paperback books would be subject to the same testing standards as children's toys under the new legislation.

The ALA Washington Office submitted a comment letter to the CPSC and has not yet received a response. The Washington Office has not yet received a response. The Washington Office has consulted with an attorney who advised that ALA's comment letter to the Consumer Product Safety Commission offered a statutory interpretation

that the Consumer Product Safety Improvement Act does not apply to libraries, even if it applies to books.

H.R. 1692 was introduced by Rep. Fortenberry and states that CPSIA was not intended to apply to ordinary books—those books that are published on paper or cardboard, printed by conventional publishing methods, intended to be read, and lacking inherent play value. H.R. 1692 also states that testing has shown that finished books and their component materials contain total lead content at levels considered non-detectable, and the Center for Disease Control and Prevention (CDC) has determined that there is little risk to children from lead in ordinary books.

The Message: *Congress should clarify CPSIA, specifying what was and was not intended to be included. While we fully support protecting our children, the law as it stands has left many questions. Congress should also urge the CPSC to respond to the ALA's comments and give us needed guidance in enough time to come into compliance with the law. Congress also should consider supporting H.R. 1692 to exempt ordinary books from CPSIA.*

Surveillance and Privacy: Section 215 of the USA PATRIOT Act:

Section 215 of the USA PATRIOT Act is scheduled to be reauthorized by the end of the year along with other sections: the lone wolf and roving wiretap provisions. Section 215, the business records section, but more often referred to as the “library provision” (even though the word libraries is never mentioned), has been an extremely troublesome provision for the library community since the Act was passed in 2001 and reauthorized in 2006. In anticipation of the reauthorization debates expected to start this summer, new as well as returning members of Congress should know why the library community continues to seek reform to Section 215 and other surveillance laws.

The USA PATRIOT Act was introduced and passed quickly after September 11, 2001 (USA PATRIOT stands for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism”). The PATRIOT reauthorization act was signed into law in March 2006. It differs somewhat from the original legislation and included a sunset of December 31, 2009 for Section 215 but essentially made no other changes to this section.

Section 215 gives the FBI expansive authority to search business records, including library records. The FBI may request the records secretly, and is not required to prove that there is “probable cause” to believe the person whose records are being sought has committed a crime or is in contact with a terrorist. A librarian who receives an order is prohibited from revealing it to anyone except those whose help is needed to produce the records.

There are at least three cases where the FBI has issued a subpoena or a National Security Letter (NSL) to libraries. In 2004, the FBI issued a subpoena to a library in rural Washington State demanding a list of patrons who had checked out a biography of Osama bin Laden. It sent NSLs to libraries seeking Internet records in 2005 and 2007. The most notable case is the “Connecticut Four” who were successful at getting the gag order removed by a court. In these more public cases, the FBI withdrew the orders after they were challenged by librarians.

Privacy is essential to the exercise of free speech, free thought and free association. In a library, the subject of users' interests should not be examined or scrutinized by others. This long standing principle committed to patron privacy is reflected in library confidentiality laws in 48 states and the District of Columbia.

Libraries clearly function under the rule-of-law and cooperate with law enforcement when presented a lawful court order to obtain specific information about specific patrons under their respective state laws. Certainly, librarians are as committed to following the federal laws as well and are concerned about keeping our nation safe.

But librarians have also been leaders in the fight to advocate for changes in the PATRIOT Act and related laws to protect civil liberties. ALA remains concerned that Section 215 goes beyond the traditional methods of seeking information from libraries and should be modified during its pending reauthorization. ALA does not, per se, oppose the extension of Section 215, if greater legal protections are included such as higher legal standards for individualized suspicion to obtain 215 orders, a realistic system for appeals and due process, and changes to the stringent gag rule that accompany such orders.

Rep. Jerry Nadler (D-NY) reintroduced the National Security Letters Reform Act (H.R. 1800) on March 31; Sen. Russ Feingold (D-WI) is expected to introduce a bill later. Several House Republicans introduced legislation for a ten year extension to the three sections due to sunset in December. FBI Director Robert Mueller has called for extension of the three provisions although it is unknown if he and/or the White House might agree to modifications.

The Message:

Congress should understand the privacy principles that guide the library community and cause concerns about the PATRIOT Act, National Security Letters, and other laws and policies that threaten civil liberties. Before proceeding on Section 215 this year, Congress should:

- *Conduct a comprehensive review of all surveillance laws and tools, including Section 215 and NSL laws, and investigate abuses in their implementation;*
- *Reconsider warrantless subpoenas, increase court review, assure congressional oversight and establish measures and guidelines to prevent abuses;*
- *Reform these surveillance laws to insure the critical balance between protecting our nation's security and preserving our civil liberties.*

Congressional Visits—Tuesday, May 12

Due to various Congressional committee meetings, our schedule of meetings with Nevada's two Senators and three Representatives was skewed towards the afternoon:

- 10:00 am: Congresswoman Shelley Berkley (meeting with legislative assistant Jennifer Pollack)—Cannon House Office Building #405
- 2:30 pm: Senator John Ensign (meeting with legislative assistant Andrew Shaw)—Russell Senate Building #119

- 3: 30 pm: Congressman Dean Heller (meeting with legislative assistant Scott Riplinger)—Cannon House Office Building #125
- 4: 30 pm: Senator Harry Reid—Capitol Office #S221
- 5: 30 pm: Congresswoman Dina Titus—Cannon House Office Building #319

At each office, we discussed many of the issues that we were briefed on during the previous day. Since we had a private business person and at least two business development people on our team, we were able to their viewpoints on the importance of supporting libraries.

One of the highlights of the day was our visit with Senator Harry Reid in his Capitol office. We had the opportunity to ask him to sign the Senate "Dear Colleague" letter. In his role as the Senate Majority Leader, he stated he was unable to sign the letter but said he would give his support to those issues of importance to Nevada libraries.

We ended our day with a visit to Nevada's newest Representative, Dina Titus. Even though she was running late due to a scheduled committee meeting, she was still able to meet with us. Since Denise Gerdes and a couple of other members of our team have had previous interactions with Congresswoman Titus, we had a great opportunity to make our case for the important role libraries play in the lives of her constituents.