
Librarian/Patron Confidentiality: An Ethical Challenge

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ABSTRACT

THE AUTHOR PRESENTS moral, legal, and professional arguments for the protection of a patron's privacy, reviews how some librarians have dealt with the issue, and concludes that librarians should lobby for legal recognition of librarian/patron privilege of confidentiality.

INTRODUCTION

Privacy, as the term is commonly used, means the unavailability to others of information about oneself. For many years in our history, the need to protect one's privacy was not an issue. Transactions involving personal information were simpler and, if records were generated at all, they were generally maintained by the individual. As society grew in complexity, so did its need for information. Up until recent times, however, this information was still easily protected.

Much of the records keeping that we did as a society had the protection of the fact that getting at the data was so damned difficult. Do you remember the old file cabinet? You had to get the drawer open, and then you had to go through this file and that file. The greatest protection of privacy was the old file cabinet that did not have enough oil on the drawer...

Suddenly the difficulty of opening the file cabinet is no longer there. You just push a button. You will get more data than you ever want to see about anything and everything. (Blaustein, 1984, p. 11)

COMPUTER TECHNOLOGY AND PRIVACY

Society has grown dramatically in complexity, generating an enormous increase in the amount of information that is recorded and in its capacity for retrieving this information. The government's

appetite for personal information has grown to an insatiable level. Surveillance devices have been developed and perfected. Dramatic advances in computer technology, perhaps most of all, have contributed to the increasing problem of maintaining an individual's privacy. Computers are capable of performing a multitude of repetitive tasks and of organizing and storing vast quantities of information, two functions that have made the work of the information professional infinitely more efficient. Along with the increasing capability of computers to manage vast amounts of information, there has been an increasing awareness of the computer's potential to seriously compromise the individual's right to privacy. This major issue has been identified in different professions. Business people, lawyers, and other professionals, for example, have expressed deepening concern for the increasing capability of government surveillance in the name of national security.

HISTORY OF PRIVACY INVASIONS

In the area of library and information science, the issue of privacy existed before computer technology advances became a reality. In 1970, for example, when there was growing interest on the part of the government in subversives, agents began to request slips and to make inquiries relating to borrowers of books about explosives. In Milwaukee, the city attorney ruled that such records were "public records," at which point the librarian complied. In the Atlanta Public Library, the same request was denied in the absence of a subpoena (Crookes, 1976, p. 3). The Seattle Public Library released its 1970 circulation records to the FBI when the agency presented a subpoena for the records in connection with a forgery case. In that same year, the library in Los Alamos, Texas, refused to turn over records that FBI agents had requested regarding individuals included on a subversives list (Linowes & Hyman, 1982, p. 495).

ALA ADOPTS PRIVACY POLICY

In 1970, the American Library Association (ALA) adopted its "Policy on Confidentiality of Library Records" in response to these attempts by U.S. Treasury Agents and others to examine various libraries' circulation records (Krug, 1988, p. 41). It was soon learned that the emphasis on voluntary compliance inherent in these guidelines was problematic at best. The American Library Association, therefore, began lobbying for protection legislation and at last report was successful in thirty-nine states and in the District of Columbia (Zubrow, 1989, p. 90).

Nonetheless, state, federal, and local officials continue to attempt to gain access to library personal data records. As recently as 1987,

FBI agents visited the Math/Science Library at Columbia University and asked the clerk who was on duty about foreigners who were using the library. This incident led to the disclosure of the now well-known FBI "Library Awareness Program" in which it was revealed that FBI representatives had visited libraries across the country seeking to obtain information about specific library patrons' subject interests including the materials they had borrowed (Schmidt, 1989, pp. 83-90).

There may have been a time when this information would have been difficult to find, a state of affairs that could have made it easier to resist compliance with such requests. As society, however, increasingly relies on information and moves into a near total technological environment, the issue of the individual's freedom becomes even more crucial. In our eagerness to gain technological control of the ever-expanding world of information, are we losing sight of the individual's right to privacy?

Some of the specific issues that have relevancy for information professionals are concerned with circulation and reference records. The general image of the librarian's role is the guardian of circulation records as well as provider of answers to reference questions. As such, the library has access to certain information about users that may be considered confidential. In both capacities, there is a direct link between the user whose confidentiality must be protected and the professional who is the protector of this confidentiality. The increasing computerization of both circulation and reference systems means that access to these records has increased.

Circulation systems, put simply, are "social surveillance" systems. Information on an individual's past is held in a central place and can be called up anytime. Technology now enables one to query the computer concerning the past performance of any patron within a few seconds. "Librarians dimly perceive the surveillance nature of circulation records." They have asked for driver's license numbers, social security numbers, place of work, and other data for the purpose of circulation. Is this information really necessary to maintain control over circulation (Crook, 1976, p. 483)? Furthermore, what does the library professional do when a U.S. Treasury Agent or other federal representative attempts to obtain information about the habits of a library's borrowers?

In many cases the reason for controversy is not the release of circulation records but rather the disclosure of a person's reference questions—information that is also considered confidential. The online phenomenon simply adds to this concern, and the reference interview itself may very well infringe on a user's privacy.

Librarians must be aware of the pitfalls that can be encountered

in collecting, organizing, and disseminating information. Additionally, we must recognize that the lines are not as clearly drawn as we would care to have them. There exists a fundamental conflict between society's need for information of many kinds and the individual's right to privacy protection. The "Library Awareness Program," for example, was justified by the FBI on the grounds that there was a need to protect the country from foreign spies who had exploited libraries by stealing proprietary and sensitive information (Schmidt, 1989, p. 84). In a democratic society, information is needed for many worthwhile purposes such as provision of services, the collection of taxes, protection against crime, and the maintenance of a free press. Citizens of a democracy, however, may at times find themselves in conflict; there exists a desire to preserve privacy and, concomitantly, the benefits of an open society.

When faced with decisions regarding requests for information of a private nature, librarians may often find themselves involved in the age old conflict between the common good and the sanctity of the individual member of society. What should one do when police who are investigating cross burnings seek the names of persons using materials on the Ku Klux Klan or when the district attorney's office investigating a rash of child murders seeks information on a suspect's reading habits or when a husband seeks information on materials that his wife has taken out in order to prove she was contemplating a divorce?

In all cases, whether it be a request from a family member, a law enforcement agent, or a reporter, the librarian is ethically and legally bound to make every effort to protect the individual's right to privacy no matter how convincing the argument for the release of such information appears in the light of the greater good. The individual's right to privacy should take precedence over the rights of society. A person's independence, dignity, and integrity are violated when one's right to privacy is infringed upon. In the words of Thomas Cooley (1868):

it is better oftentimes that a crime should go unpunished than that the citizen should be liable to have his premises invaded, his trunks broken open, his private books, papers, and letters exposed to prying curiosity.... (p. 306)

By extension, it is far better for a crime to go unpunished than to have a patron's reading habits revealed by a third party who is the custodian of this information. Librarians are in a very powerful position since they have direct access to the private reading and subject interests of their users. They have been entrusted with this power. It is, therefore, their moral obligation to keep this information confidential.

What is meant by privacy and is it a justifiable right? Privacy has been defined as:

the claims of individuals...to determine for themselves when, how and to what extent information about them is communicated to others. (Buchanan, 1982, p. 31)

the condition enjoyed by one who can control the communication of information about himself. (Lusky, 1972, p. 208)

selective control of access to the self or to one's group... (Altman, 1976, p. 8)

control over when and by whom various parts of us can be sensed by others. By "sensed" is meant simply seen, heard, touched, smelled or tasted. (Thomson, 1975, pp. 304-05)

[the] right that certain steps shall not be taken to find out facts [private facts] and ...[the] right that certain uses shall not be made of [these] facts. (Thomson, 1975, pp. 304-05)

having control over information about oneself. (Decew, 1987, p. 171)

The essence of privacy then is the ability to keep personal information from others, whether it be one's thoughts, feelings, beliefs, fears, plans, or fantasies, and the control over if and when this information can be shared with others. The right to privacy, furthermore, can be justified on both moral and legal grounds.

According to Edward Blaustein (1984), privacy is related to one basic value—the dignity of the individual which "defines man's essence as a unique and self-determining human being" (p. 1000). The concept of dignity as it relates to essential humanity has its roots in religious tradition (Berger et al., 1974, p. 89). Privacy provides the rational context for love, trust, friendship, respect, and self-respect, without which we would not be human. Brian Johnstone (1984) argues that: "Human dignity is closely tied to self-determination since the forms of domination and manipulation which deprive people of self-determination are a profound affront to human dignity." An individual, therefore, has a claim to privacy based on the requirements of self-determination in respect to the person's basic needs (pp. 86-88). Erving Goffman (1973) adds that privacy plays a key role in self-identity and personhood. The ability to control access to thoughts or actions is closely tied to one's notions of personal identity and selfhood (p. 178). This sense of self, Herbert C. Kelman (1977) believes, depends on maintaining a recognized boundary between self and environment, thus assuring private space on both physical and psychological levels. A central consideration in maintaining private space, he adds, is the inviolability of one's body and personal possessions (p. 188).

If privacy is a basic human need, it follows that, if it is absent, negative consequences will follow. Caplan (1982) argues: "Cognitive functioning can be impaired, physical and mental disorders can occur, the individual's sense of well-being is harmed, and the sense of personhood and of self is injured" (p. 178). People feel intruded upon

when questioned about their family affairs, their religious beliefs, or their past histories. Questions about personal fantasies, religious beliefs, or political opinions may, to varying degrees, be experienced as violations of private space.

Thus, respecting the rights persons have to privacy is as basic a requirement as there can be in ethics. "In the absence of privacy, there are no persons to serve as either the subjects or the agents of moral action and moral description" (Kelman, 1977, p. 188). Privacy is a right which must be taken seriously. It is a universal human need essential to one's sense of identity and well being. Since privacy is a basic human need, the moral right to privacy achieves a "primacy superior to that of other rights" (Beauchamp, 1982, p. 31).

Although not explicitly stated in the U.S. Constitution, there are those who argue that the desire for privacy was clearly in the minds of its framers when they added the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. According to the U.S. Supreme Court rulings, these amendments, taken together, constitute an individual's right to privacy ("How the Constitution Protects Your Right to be Left Alone," 1986, p. 12).

The development of the legal notion of privacy was first seriously addressed by the First Amendment which protects freedom of the press, speech, and peaceful assembly. The Fourth Amendment protects the right to be secure against "unreasonable searches and seizures." The Fifth and Fourteenth Amendments shield individuals from having to testify against themselves. The Ninth Amendment acknowledges rights not spelled out but which are equally important.

Samuel Warren and Louis Brandeis, in an article written in 1890, noted that the violation of an individual's right to privacy was a suitable subject in a court of law. They argued for the recognition of the right to privacy based on the principle of "inviolable personality"—i.e., "the right to be let alone"—which they felt was a right most valued by civilized men (p. 205).

Until about 1937, the concept of personal privacy was treated quite restrictively by American courts. The notion of privacy was used primarily to protect the interest of property holders. In the late 1930s, the original notion of inviolable personality was restored. The right of privacy was now perceived as the right to protection against intrusions into an individual's zone of privacy, which also includes the right to control information about oneself.

In the mid-1960s, a new concept of privacy was introduced when the Supreme Court affirmed a right to privacy older than the Bill of Rights, older than political parties, older than the school system. It could now be claimed that the "right to privacy asserts the sacredness of the person." The notion of privacy as seen in this context

existed to protect the individual from the intrusion of others, especially government (Johnstone, 1984, p. 76).

The courts were slow to acknowledge the right to privacy. It was not until 1965, in *Griswold v. Connecticut*, that the Supreme Court ruled that the Constitution guarantees a right to privacy ("How the Constitution Protects...", 1976, p. 12). In 1973, in the landmark *Roe v. Wade* decision, the Supreme Court once again relied on the constitutional right to privacy to protect the zone of individual choice in the matter of abortion (Johnstone, 1984, p. 76).

Concern about privacy began to increase as record keeping became automated, culminating in the Privacy Act of 1974, which takes as its basis the fundamental right provided by the Constitution to protect individuals from the growing ability, due to technology, to gather and control information (Johnstone, 1984, p. 77). "All people are by nature free and independent," the act states, "and have certain inalienable rights among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, and happiness, and privacy" ("Privacy Act of 1974," 1974, p. 1896). Under the act, federal agencies are required to establish appropriate measures to protect the confidentiality of personal data records. It is also specified that personal data cannot be used for a purpose other than the one for which it has been collected nor can it be disclosed to other agencies without the written consent of the subject ("Privacy Act...", 1974, pp. 1896-1910).

The basis for concern for intrusions into the privacy of personal reading habits begins with the First Amendment. Mark Wilson (1980) maintains that: "The recognition of a first amendment right to read and a finding that this right is unduly burdened by disclosure of library circulation records provide an initial basis for the imposition of constitutional limitations on access to library borrower lists" (p. 279). The First Amendment does not explicitly guarantee an individual's right to read or to acquire knowledge. The right to speak or to publish, Wilson continues, presupposes listeners or readers and their right to receive information. The right to read can be seen as a necessary corollary to freedom of the press and to freedom of speech (p. 279).

Wilson argues that a direct attempt to prohibit a reader's exercise of his First Amendment rights would most certainly be struck down as unconstitutional (p. 185). He bases his argument on the "chilling effect" doctrine in which the Supreme Court has held that the uncertainty of litigation and the possibility of erroneous conviction create an impermissible First Amendment "chill." That is, they inhibit individuals' exercise of their rights. The process of "imputing the substance of a book" to its readers and using it as a measure

of the reader's state of mind is, at best, a questionable endeavor. If reading habits, he continues, were admissible at trial, the possibility of improper interpretation and erroneous conviction would, without a doubt, inhibit the individual, or other individuals, from fully exercising the First Amendment right to read (p. 289).

The U.S. Congress has not enacted any federal legislation that specifically protects library confidentiality. In the 100th Congress, a bill was introduced "to preserve personal privacy with respect to the rental, purchase, or delivery of videotapes or similar audiovisual materials and the use of library materials or services" (Senate Bill 2361, 1988). Joint hearings were held, but when the committee reported its findings, the library privacy protection section had been eliminated. Although they agreed in principle with the needed restriction on disclosure of library borrower records, the subcommittee members could not resolve questions regarding problems that might occur in the provision of law enforcement. All of the statutory activity relating to privacy of library records has been at the state level. Of the thirty-nine states that now have statutes, seventeen have broad laws protecting all library records (Zubrow, 1989, p. 91). Many allow disclosure upon permission or written consent of the person identified in that record or to persons authorized to inspect such records. Only a few states allow information to be released at the request of a parent or custodian of a minor child. Almost all specify that disclosure may be made only upon presentation of a court order or a subpoena (Million & Fisher, 1986, p. 347).

Thus there is a strong moral and legal basis for protecting the confidentiality of a patron's library records. When confronted with a request for information of a private nature from a third party, whether it be a law enforcement agent, a reporter, or a family member, how have some librarians dealt with the challenge of protecting the individual's right to privacy? Several librarians describe the situations they were faced with and their responses. (These descriptions derive from several interviews that were granted on the proviso that they were to be kept confidential and hereafter will be referred to as "confidential interviews.")

Situation: An individual has gone on a shooting rampage at 3:30 in the afternoon at the local shopping mall, killing three people and seriously injuring seven. She had been in the library at 2:00 that same day and had taken out some books. Subsequently, reporters and detectives from the criminal investigation division and district attorney's office request information about the books the individual has taken out.

Response: The first request came from a reporter on a local newspaper who, when refused, accused the director of protecting a cold-blooded killer who did not deserve the same civil rights

as others. The heart of the struggle to defend the suspect's right to privacy centered on the endless visits by, and questions from, the detectives and staff from the criminal investigation division and the district attorney's office, as well as from the defense lawyers. After three months, the district attorney finally decided to go ahead and try to get a court order, which was subsequently granted. In consultation with the library's legal adviser, it was decided to show the requesters copies of the book cards rather than the originals. "Being interrogated by detectives and attorneys was a harrowing experience," the director confides. "They hammered at me until I became confused. They tried to get me to say things I didn't want to say. They wrote down the most casual remarks and used those responses later in court to discredit my testimony. They made me feel as if I were the one in the wrong....The events of the day of my testimony were unforgettable," she continues. "I spent nearly eight hours in a small guarded room with ten or more individuals waiting to testify. As I took the oath with my hand on the Bible and looked across the courtroom, I saw the suspect staring into my eyes. I felt guilty. I felt as if I were betraying her right to privacy in spite of all I had been through to protect it. I wished for something like the librarian/patron privilege" (Interview, August 18, 1988).

Situation: A book is returned to the library. When the circulation card is put back, the book drops to the floor falling open and revealing a very detailed description of an intended assassination plot, including the date, against the President of the United States.

Response: The director was aware that it is against the law not to report any knowledge one may have of a crime of this nature so she proceeded to contact the Secret Service after she was told the FBI was not the appropriate agency. When she told the agent what had happened, he asked her to reveal the name of the individual who had taken out the book which she would not do. She quoted from the state law which covered confidentiality of library records. The agent said that "no silly law superceded the federal statute." Subsequently, she discovered there was no such statute. They harangued her for five days during which they questioned her patriotism and professionalism. They tried to exert pressure on the mayor, the personnel director of the city, the city clerk, and the library board president. As a result of this pressure, these officials tried to persuade her to release the name. She would not do it. Eventually she was served with two subpoenas, one as an individual and the other as custodian of the records. She contends that they had been very clever in doing this for if they had given her the one subpoena as an individual she would have said "I'm not in charge of circulation and don't have that information." She had no problem in complying once she had been served with the subpoena. To infringe on someone's right without it, she contends, would have been troublesome to her. "I have a real problem with the release of information to begin with..." she continues "When it involves the life of another person, who are we to decide who is to live and who

is to die" (Interview, July 28, 1988)?

Situation: A deputy from the local sheriff's office, narcotics division has requested information on anything the library has on people who have been reading books on witchcraft, satanism, or the mutilation of animals. He has theorized that people involved in satanism tend to be drug users.

Response: The deputy produced a subpoena after he was told that he could not get the information without it. The subpoena was signed not only by the judge but by one of the assistant district attorneys. To have secured the cooperation of both of these officials indicated that they must have strong evidence against a particular individual or individuals. But it was soon discovered that they were not investigating any specific crimes or actions; they simply wanted to develop a file of potential drug abusers. In the meantime, the director scheduled a meeting with a higher official in the district attorney's office. He revealed that he had no previous knowledge of the subpoena since it had not been obtained from any of the higher officials in the department. He advised the director not to turn over any information until he checked further. The director informed the official that a reporter had been calling him to try to get some information whereupon the official responded that he thought this was supposed to be a secret investigation. Apparently someone had revealed details about the investigation without authority, which made this an issue of equal importance to that official. Subsequently, after discovering that the subpoena had not been preceded by a careful scrutiny of the facts, the district attorney's office withdrew it. It appears that the assistant district attorney had assumed that the sheriff's office had a strong need for it. He too had had second thoughts about the subpoena's validity since it requested too broad of a search. They had wanted twelve months worth of circulation records pertaining to everybody who had checked out books on satanism. A newspaper article subsequently appeared that outraged several library users. Some admitted to being so frightened they wanted to turn in their library cards. A mother would not let her son check out a book about witchcraft on his library card but rather checked it out on her own (Interview, September 6, 1988).

Situation: The President of the United States has been shot. The only piece of information on the alleged perpetrator is a library card. Hundreds of telephone calls are received by the library. *Newsweek* representatives appear with a copy of the state's Open Records Act and claim that the library must give them access to the perpetrator's library records.

Response: After it was revealed that the only piece of identification that the alleged assassin had on him was a library card, the phone started to ring at the library and continued for at least thirty-six hours.

Everyone, including the *London Times*, wanted to know what he had checked out. The library quoted its library board policy which forbade employees from giving out information. At that time, the librarian believed, due to the fact that the library still

used a microfilm system, that it would have been almost impossible to retrieve this information. Now they are automated and could respond within seconds. They had not set up strict rules that guided the staff in how to deal with requests of this nature. In general, they knew they should keep this information confidential. Callers besieged several branches wanting to know what he had read, where he lived, and had the members of the staff seen him? *Newsweek* people appeared on the scene the next day with a copy of the state's Open Records Act and insisted that the library must give them access to the circulation records. The librarian refused, but subsequently was told by the county attorney that the records must be shown to the requesters. The library complied and the *Newsweek* representatives spent three days reviewing all of the records, not only those of the suspect. At that time the library press criticized them for having given out the information. The librarian declared it was a very difficult time. Subsequently, the library director decided the library could not function under these constant requests for this information and ultimately decided to release the information to United Press International. The FBI finally served them with a subpoena, and the library turned over the books to them (to this day the books have not been returned). Since then the state has enacted a Privacy of Library Records Act. At the time of the affair, the county attorney said, "I hate to tell you, but courts do not care a great deal about what the American Library Association says. They never heard of it and could care less." The lesson learned in this case, says the librarian, is the necessity for a state law (Confidential interview, August 2, 1988).

Situation: A woman has asked for circulation records pertaining to her stepchildren. Three years before, she and her husband (the natural father) had obtained a court order mandating that the natural mother use the natural father's name. Could the library tell her what name was being used by the children?

Response: When the woman asked for the circulation records pertaining to her stepchildren, it was explained to her that there is a state confidentiality policy within the library and a state law that supports the policy. It was further explained that the library could give out the information if the patron could present a library card or if she could provide them with the patron's card number. The patron proceeded to give them some background information on her situation. Her husband had been divorced approximately eight years before, and there were two children as a result of this first marriage. Both parties had since remarried, and the natural mother was using the stepfather's name for the children. Three years before, the patron and her husband had obtained a court order that mandated that the natural mother use the natural father's name for the two boys. Apparently the court order had been ignored. The librarian sympathized with her predicament but could not reveal any information without a court order. Subsequently, the subpoena did arrive. The librarian conferred with the library's attorney. "In our data base," she explained, "we have the capability of searching the name

which appears on the subpoena in several different ways. In this case, it is complicated because the last name is a fairly common one and one of the children's first names was spelled incorrectly on the subpoena." The attorney advised them to supply the information only as it is requested on the subpoena. As a result, they did not supply the information on the child whose name was misspelled. The information pertaining to the second child was supplied. Soon after, the father came into the library asking if they could search the database by the various spellings. The staff member would not comply since the father did not bring a court order requesting such a search. Following this, the director received a phone call at her home from the father. She explained that they had followed the directions given by their attorney, but that if he could get another subpoena, which had the correct spelling and variations, they would give him the information he sought (Confidential interview, August 3, 1988).

Situation: An individual is caught forging documents in another state. He is one of the library's users. The librarian is handed a subpoena from the other state requesting this information.

Response: When the subpoena was presented, it was sent down to the library's legal counsel who immediately pointed out that it was not legal in this state. "We could have followed the letter of the law," the librarian explains, "and simply said no, but we brought judgment to bear and saw that it would be in our best interest to provide the information that was needed." They did feel certain, he adds, that what was asked for in the subpoena was legitimate. They did not supply any information beyond what was asked for in the subpoena nor did they reveal that they did indeed have other information that might be pertinent. The authorities wanted to know if the individual had used the library during a specific period of time and, if so, for what had he been looking. The librarian affirmed that he had been using the library during that time, but did not reveal what he had read (Confidential interview, June 30, 1988).

Whether or not one agrees with the specific actions taken by these librarians, it is necessary to recognize the context within which they were operating—the conflict between the common good and the sanctity of the individual. When asked how they view this conflict, most agreed that the rights of the individual should take precedence over the rights of society.

I think philosophically I would [say] that the rights of the individual are supreme....Society has a few rights, but I think basically the answer would be that the rights of the individual take complete precedence (Confidential interview, August 18, 1988).

Probably the edge should be given to the individual. How much of an edge depends on the situation....One is presumed innocent until proven guilty. The individual seems to need a little more help sometimes when the government seems so much more powerful (Confidential interview, June 30, 1988).

[The] two are equally important, but the rights of the individual take more precedence....Society always needs to prove its right to the

information whereas the person doesn't (Confidential interview, August 2, 1988).

The right of the individual should take precedence over everything....If there is a legitimate reason to know what a person is reading...then the law should be able to prove it (Confidential interview, July 28, 1988).

Judith Krug (1988), in her testimony before the Senate Committee investigating the feasibility of enacting a Video and Library Privacy Protection Act, eloquently reminded the listeners that:

One of the guiding principles of the library profession in this country is intellectual freedom. To librarians, this concept involves two inseparable rights. The first is the First Amendment right to seek and obtain access to all publicly-available ideas and information. The second is the right to have what one has sought and what one has used kept private. The right to information cannot help but be inhibited if personal reading or research interests can and will become known to others without one's own consent.

There are people in every community who believe that a person's interest in a subject must reflect not merely his intellectual interests, but his character and attitudes. Thus, in the view of some people, a person who reads the "underground press" is branded as a radical; a person who reads atheistic tracts is marked an atheist; a person who reads sexually oriented literature is identified as a libertine....Such characteristics are not justified or warranted by such literary pursuits but if charged, they can be personally and professionally damaging. (pp. 40-41)

Tenuous at best is the inference involved in probing individuals' mental processes through their reading habits. Recently, when a woman in Seattle was accused of putting poison in the Excedrin that killed her husband, it was discovered that she had taken out several books that discussed cyanide and poisonous doses. The prosecution used this information to substantiate theory that she had read this material in preparation for the murder. The defendant, on the other hand, claimed she had taken out the books for "information about poisonous plants because she was concerned about potential danger from local toxic plants for her granddaughter and children for whom she baby sat" ("Trial Under Way in Cyanide Death," 1988, p. A16). Morally and legally what individuals read or what information they seek is nobody else's business. A library user's privacy has clearly been invaded if a librarian reveals this information to an outsider. As indicated in the American Library Association's "Statement on Professional Ethics," librarians must protect each user's right to privacy with respect to information sought or received and materials consulted, borrowed, or acquired ("Librarian's Code of Ethics," 1982). This places an enormous responsibility of protecting the sanctity of the individual's right to privacy squarely on the librarian.

How can the interests of the library's patron be best served? Librarians should be granted the privilege of library/patron

confidentiality. Confidentiality refers to a general standard of professional conduct that obliges a professional not to discuss information about clients with anyone. It implies a contract not to reveal anything about clients without their agreement (Stover, 1987, p. 240). Privilege occurs when a certain type of relationship protects information derived from that relationship from being legally acquired (Stover, 1987, p. 241).

The profession must be able to legally defend the perspective outlined in a 1970 *American Libraries* editorial:

What an individual uses in a library may not be used against him; ... records of transactions between librarian and client may not be used against him in a court of law without his permission; ... a librarian [may] not be required to testify on types of material used by any given individual.

The library has long been recognized as a “sanctuary of ideas,” the editorial continues:

If the citizens of a free nation are to have access to materials which can express ideas unpopular with segments of its own society including the government, they must be free of the fear of intimidation and possible incrimination

Librarians must constantly provide the alternatives in idea and thought while respecting the individual right to privacy as he searches for his own solutions. (“Editor’s Choice,” 1970, p. 750)

The public must believe that the library is a sanctuary where individuals can feel unconstrained by the possibility that the materials they use, the books they read, or the questions they ask will become public knowledge. If a library earns a reputation for reporting on the actions of its citizens, it can be very serious. It could create obstructions to patrons’ pursuit of knowledge and have a “chilling” effect on their First Amendment right to read. If people cannot use the library because of fear, they are being denied free access. The following was reported in the *Brooklyn Heights Press* in 1988:

On Friday afternoon, a patron telephoned the Central Library to inquire whether the published proceedings of the recently-concluded Soviet Communist Party Congress were now available. She was told that they were not, but that information on the Congress could be found in *The New York Times*, available in the Periodical Division.

A short time later, the librarian received another call, from a woman who said the first caller had been her secretary. She had called the *Times* to obtain reprints of their reporting on the Congress, but was told she needed to know the names of the reporters who had filed the stories. The librarian told her that she could get this information from *The New York Times Index* at the library. At this, the patron asked, “If I come and ask for that material, will you report me to the FBI?”

Despite the librarian’s assurances that no-such thing would happen, the woman was unconvinced. She again said that she was concerned about sending someone to the library for this information because of her fear of the FBI. “I just don’t want to get in trouble with the government” she said. (“Seeking Spies,” 1988, p. 10)

Respecting the rights that patrons have to privacy is the basic requirement of the librarian's Code of Ethics. It is difficult to infringe on this right and feel morally justified in doing so. In the absence of a legal doctrine of professional privilege for client communication, the librarian, in a court of law, may be required to break confidentiality or be sent to jail. Librarians have little recourse to disclosures dictated by subpoenas. Subpoenas can be challenged, but to do so, the librarian must convince the court that the subpoena has been unlawfully issued in respect to a specific law. It is impractical for the reader of books or the user of library materials to come forward to challenge a subpoena. To do so would reveal the name of the individual involved and thus inhibit or "chill" the reader's desire to read certain books. It then becomes the responsibility of the holder of the records, the library, to raise the constitutional claims of the reader (Wilson, 1981, pp. 317-18).

If, with the help of legal counsel, it is determined that the subpoena has been properly issued, can the librarian be held liable for violating the First Amendment right of the patron by providing the information? (This has yet to be tested in court.) Judgment can also be brought to bear in how to respond to a subpoena. Some librarians admit to responding to requests in different ways depending on the urgency of the situation and how sympathetic they are to the request itself.

Depending on the situation we use some judgement in terms of how much or little we talk with them [requesters].... We read the subpoena very carefully and read the request very carefully and though we might not agree with what's being asked for, we wouldn't go against the law and if we disagreed we might cut back the amount of information. We would be very precise about what information they asked for and the exact date it was delivered. If they were off a day we would be precise and say nothing came in on that day. We would not offer the information.... [On the other hand] we can help to get the requester to be more focused. (Confidential interview, June 30, 1988)

In the absence of library/patron privileged communication, there are many librarians who have no legal support at all in protecting their patrons' First Amendment rights. Not all states have statutes; those statutes that do exist are not necessarily adequate nor is there uniformity in their coverage. Judith Krug, testifying at that same Congressional Hearing in 1988, elaborates:

Many of the statutes enacted...which protect the privacy of library records did not adequately anticipate the ways technology has changed the character of library use. Thus, many of these statutes apply to only one or two kinds of libraries, i.e., public, school and/or academic. In addition, many of the statutes refer to materials checked out of libraries. Increasingly, however, library patrons use online databases. Moreover, none of these statutes protect privacy rights of the information in multi-library, not to mention multi-state networks, many of which share not only cataloging but also circulation information.... Some of the state

laws apply only to public libraries, not to school libraries. Some apply only to those libraries receiving state funds. (pp. 45-46)

In the absence of library/patron privileged communication, are librarians morally bound to tell their clients that under certain legal conditions they may have to provide information about their research or reading interests to law enforcement officers? In other words, when patrons take out a book from the library or ask for reference help, they may have relinquished their right to privacy. In an effort to protect the patron by implementing tight procedures for concealing an individual's reading habits, John C. Swan (1983) wonders if we are not creating "an atmosphere inimical to the informal exchange of ideas.... Libraries, are among the last remaining places where people openly talk about books....An environment of secrecy can have a 'chilling' effect on the patron's First Amendment right to privacy" (p. 1650).

In the absence of librarian/patron privileged communication, can we really hope to provide the most efficient service if we are bound to keep as little information as possible of a private nature about our patrons? Walt Crawford (1988) describes the pitfalls inherent in standardizing patron and circulation information.

The computer makes it far easier to standardize patron and circulation information. A standard format would make it easier for a library to move from one system to another. Library systems could then be linked. A patron could conceivably present another library's card and receive service, and the library could gain immediate information as to the patron's status. However, this record has personal information. If the system is tapped into, patrons can be linked to materials currently charged out and to information within every library to which the system is linked. (pp. 15-16)

The reasons personal information is collected in libraries is to help the organization to keep track of materials and to provide better service. To use this information in any other way is most unethical. The concept of the library as "sanctuary" demands that the librarian be extended the same privilege of confidentiality granted to the attorney-client, the physician-patient, the accountant-client, or the journalist-informant relationships. Librarians thus far have not been granted this privilege in a court of law. The profession must, therefore, vigorously lobby for such a privilege. Otherwise, its practitioners will be facing the continuing problem of finding creative ways in which to protect their patrons from intrusions. Or they too may find themselves in a courtroom facing a patron and wishing, If only I had the protection of the privilege of confidentiality.

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