



## *American Association of Law Libraries*

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## **TAKE ACTION NOW**

### **Your Calls Are Still Needed! Help Pass the *Charles H.W. Meehan Law Library Improvement and Modernization Act* ([H.R. 6589](#))**

In September, Congress returns from the August recess with just a few weeks left in the session. That means time is running out for you to contact your House Representative to ask him or her to co-sponsor [H.R. 6589](#), the *Charles H.W. Meehan Law Library Improvement and Modernization Act*. Please [take action](#) now! Thank you to those who already made calls and visited your Representatives during the August Recess.

By taking action, you can help ensure that the Law Library of Congress can become the first-rate law library that legal researchers, members of the public, and Congress deserve. Please show your support for the Law Library by [taking action](#) today!

## **UPDATES FROM THE HILL AND THE WASHINGTON OFFICE**

### **AALL Continues to Track Hot 110<sup>th</sup> Congress Items**

With the end of the 110<sup>th</sup> Congress quickly approaching, the Washington Affairs Office continues to track pending legislation on important topics related to access to government information and government accountability which AALL supports.

### **Controlled Unclassified Information**

On July 30, the House of Representatives passed two bills, [H.R. 6193](#) and [H.R. 6576](#), to limit and standardize the use of control markings for Controlled Unclassified Information (CUI). These bills come as a response to a [memorandum](#) issued by the White House in May on new rules governing the designation and sharing of CUI and its control markings, such as “For Official Use Only” (FOUO) and “Limited Official Use” (LOU).

Though both bills respond to the Presidential Memorandum, each treats its effort to limit and standardize the use of control markings differently. [H.R. 6193](#), the *Improving Public Access to Documents Act of 2008*, would require the Secretary of Homeland Security to develop and administer policies, procedures, and programs to promote the implementation of a CUI Framework at the Department of Homeland Security. [H.R. 6576](#), the *Reducing Information Control Designations Act*, would require the Archivist of the United States to promulgate regulations to be adopted throughout the government. H.R. 6576 would also require the Archivist to establish procedures for members of the public to challenge control markings. For a more detailed explanation of the bills, including a side-by-side comparison, see [OpenTheGovernment.org's analysis](#).

### **State Secrets Privilege**

Earlier this year, [Sen. Edward M. Kennedy](#) (D-MA) introduced legislation to establish standards and procedures to limit the use of the state secrets privilege. [S. 2533](#), the *State Secrets Protection Act*, would create procedures for the judiciary to review the information that the government seeks to protect and then determine the likelihood that harm would result from evidence disclosure. The Committee held a [hearing](#) on the state secrets privilege in January.

On August 1, the Senate Judiciary Committee released a [report](#) on the state secrets privilege. The report notes, “Facing allegations of unlawful Government conduct ranging from domestic warrantless surveillance, to employment discrimination, to retaliation against whistleblowers, to torture and ‘extraordinary rendition,’ the Bush-Cheney administration has invoked the privilege in an effort to shut down civil suits against both Government officials and private parties. Courts have largely acquiesced.” The report asserts that legislation is necessary to restore the proper balance between the right to an open and accountable government and the protection of legitimate state secrets. The report includes dissenting views from several Republican members of the Judiciary Committee.

[Rep. Jerrold Nadler](#) (D-NY-8) introduced similar legislation in the House to establish judicial review of state secrets claims. [H.R. 5607](#), the *State Secret Protection Act of 2008*, declares that in any civil action brought in federal or state court, the government may assert the state secrets claim by refusing to give evidence only if the government shows that public disclosure of the evidence that the government seeks to protect would be reasonably likely to cause significant harm to the national defense or the diplomatic relations of the United States. On July 31, the

House Judiciary Committee's Subcommittee on Constitution, Civil Rights and Civil Liberties held a [hearing](#) on H.R. 5607.

### **Signing Statements**

Earlier this month, the House Armed Services Committee released a [report](#) on Presidential signing statements, following up to a [hearing](#) the Subcommittee on Oversight and Investigations held in March. The hearing and this follow-up report examine the practical effect of the President's recent signing statement accompanying the 2008 National Defense Authorization Act ([P.L. 110- 181](#)). The report notes, "Signing statements may, if used appropriately, serve a legitimate function as a tool for continuing dialogue between the President, Congress, and the public. On the other hand, signing statements may be a mechanism to expand executive authority at the expense of the legislature."

As documented by the T.J. Halstead of the Congressional Research Service in his report, [Presidential Signing Statements: Constitutional and Institutional Implications](#), "While presidents have issued signing statements for quite some time, this President has issued a significantly larger percentage of signing statements challenging or objecting to various provisions of the law." For more information about the increasing use of signing statements in this administration, see OpenTheGovernment.org's [Secrecy Report Card 2007](#). The new edition of the Secrecy Report Card will be released in September.

### **Secret Changes to Executive Orders**

As we [reported](#) earlier this month in the *Washington Blawg*, the Senate is currently considering legislation that would prevent the President from secretly modifying or revoking a published executive order. [S. 3405](#), the *Executive Order Integrity Act of 2008*, comes in response to a secret opinion by the Department of Justice's Office of Legal Counsel (OLC), revealed last year by [Sen. Sheldon Whitehouse](#) (D-RI). Sen. Whitehouse found that, "There is no constitutional requirement for a President to issue a new Executive order whenever he wishes to depart from the terms of a previous Executive order. Rather than violate an Executive order, the President has instead modified or waived it." S. 3405 would prevent a President from changing an Executive Order in secret by requiring that notice be placed in the Federal Register within 30 days if a President revokes, modifies, waives, or suspends a published Executive Order or similar directive.

## **Whistleblower Protections**

On August 14, President Bush signed the *Consumer Product Safety Commission Reform Act* ([P.L. 110-314](#)) to provide whistleblower rights to nearly 20 million workers. The legislation provides protections, enforceable by jury trials, to workers connected with the manufacture, distribution, and retail sale of products ranging from toys to clothes, linens, car seats, hardware and household appliances. On July 16, AALL signed on to a [letter](#) to conferees in support of reconciling the two consumer products safety bills, [H.R. 4040](#) and [S 2045](#), to guarantee whistleblower protections. We applaud Congress for taking action to protect those who speak out to ensure government accountability.

In addition, we are still monitoring House and Senate legislation, [H.R. 985](#) and [S. 274](#), to protect federal scientists and FBI and intelligence agency whistleblowers and to strengthen protections for federal contractors. In June, we joined 111 other organizations on a [letter](#) to members of Congress in support of reconciling the House and Senate legislation. To learn more about the campaign to protect whistleblowers, please visit [Public Citizen's Take Action Page](#).

## **Library of Congress and Others Partner to Preserve Government Web Sites**

The Library of Congress and the U.S. Government Printing Office have joined the California Digital Library, the University of North Texas Libraries, and the Internet Archive in an effort to provide permanent public access to and preserve government web sites. The organizations will work collaboratively to harvest public government web sites at the end of President Bush's term in January 2009. According to the Library of Congress's [announcement](#), "This harvest is intended to document federal agencies' online archive during the transition of government and to enhance the existing collections of the five partner institutions."

AALL applauds these partner institutions for their commitment to permanent public access and preservation. However, we are disappointed that the National Archives and Records Administration (NARA) decided not to conduct its own harvests of federal agency web sites. NARA claims that agencies are responsible under the Federal Records Act for managing their own web records, including whether to preserve a periodic snapshot of its entire web page. In April, AALL signed on to a [letter](#) to Allen Weinstein, the Archivist of the United States, urging him to rescind the decision and continue NARA's web harvesting program. The letter states, "A NARA snapshot of federal agency web sites at the end of an Administration is as critically important as the snapshot of the White House and Congressional web sites. These records are

essential components of our Nation's history. No other agency has both the public mandate and the public accountability necessary for protecting historical records.” Unfortunately, NARA continues to stand by its decision.

## **OUTSIDE THE BELTWAY: CHAPTER NEWS**

If you have news on policy or legislative issues in your AALL Chapter, please [let us know](#). News might address legislation you are tracking, events your chapter is hosting, or anything you think might be of interest to our community. We’d love to hear from you!

### **Chapters Show Support for the Law Library of Congress**

The [Mid-America Association of Law Libraries](#) (MAALL) wrote letters to the House Subcommittee on Legislative Branch’s Ranking Member [Tom Latham](#) (R-IA-4) and Representative [Ray Lahood](#) (R-IL-18) this month, asking them to co-sponsor H.R. 6589, the *Charles H.W. Meehan Law Library Improvement and Modernization Act*. The [San Diego Area Law Libraries](#) (SANDALL) wrote a letter to [Susan Davis](#) (D-CA-53), a member of the Committee on House Administration, to thank her for her support of H.R. 6589, which the Committee on House Administration reported favorably on July 30, 2008.

In addition, last month the [Northern California Association of Law Libraries](#) (NOCALL) wrote to California Representatives [Zoe Lofgren](#) (CA-16) and [Daniel E. Lungren](#) (CA-3) to thank them for introducing H.R. 6589 and to emphasize the positive impact that H.R. 6589 will have on the services that California law libraries can provide to their constituents. Thank you to MAALL, SANDALL, and NOCALL for their efforts on behalf of the Law Library!

Members of Congress still need to hear from you to ask them to support H.R. 6589. Please [take action](#) today!

**FREE TIME WELL SPENT: *Further Reading for the Information Policy Junkie***

### **Reporters Committee Releases White Paper on Access to Military Dockets**

Following more than a year of investigating issues surrounding access to military court dockets and proceedings, the Reporters Committee for Freedom of the Press released a [White Paper](#) this

month on the public's access to military court dockets and proceedings. Journalists, lawyers, military officers and experts on the military were interviewed for the project. The Reporters Committee also commissioned a study by the Tully Center for Free Speech at the S.I. Newhouse School of Public Communications at Syracuse University to examine practices at one-fourth of the U.S. military bases around the world. Results and findings of the study project are available on the [Tully Center's web site](#).

### **How Will the Candidates Treat Executive Power?**

“The Bush administration has dramatically expanded executive authority over the past seven years, and the next chief executive will have to decide whether to cling to that power or relinquish it.” In a piece on NPR's [All Things Considered](#), Ari Shapiro looks into how presidential candidates John McCain and Barack Obama will handle Executive Power, including the use of signing statements, torture policies, and whether the president needs Congress' permission to go to war. You can listen to the broadcast or read the transcript [here](#).

### **New Pew Research Center Survey: How We Consume News**

The Pew Research Center for the People and the Press released their [Pew Research Center Biennial News Consumption Survey](#) this month. Pew identified four distinct segments in today's news audience: Integrators, who comprise 23% of the public; the less populous Net-Newsters (13%); Traditionalists -- the oldest (median age: 52) and largest news segment (46% of the public); and the Disengaged (14%). The report documents the rise of online news and the drop in the consumption of traditional news. The report also explores the habits of “Integrators,” who use both traditional and online news sources to get their information. A summary of the key findings is available from Pew [here](#).

### **NRC Report Concludes Public Outreach Improves Decision Making**

The [National Research Council](#), the research arm of the [National Academy of Sciences](#), released a new report on public participation in agency decision making. The report, “[Public Participation in Environmental Assessment and Decision Making](#),” concludes that public participation improves the quality of federal agencies' decisions about the environment. Importantly, the report notes that, “Well-managed public involvement also increases the legitimacy of decisions in the eyes of those affected by them, which makes it more likely that the decisions will be implemented effectively.” The report was sponsored by the [Environmental Protection Agency](#),

the [Department of Energy](#), the [Food and Drug Administration](#), and the [Department of Agriculture](#). [See the press release here](#).

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