



An AALL member listens intently as the speakers of the program explain the implications of the USA PATRIOT Act for libraries.

Hot Topic Sparks Better Understanding of USA PATRIOT Act

by Leah Sandwell-Weiss

Over the past few months, the librarian world has been buzzing over the USA PATRIOT Act (*Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act*). Even the mainstream press has reported on how this act will

affect libraries throughout the country. (Check out the ALA's "FBI in Your Library" Web page at <http://www.ala.org/alaorg/oif/fbiinyourlibrary.html> for more information and links to press coverage.) As a result, the act was the "Hot Topic" at the AALL Annual Meeting in Orlando, Fla.

The program, J-5 "Hot Topic: The USA PATRIOT Act and Its Implications for Law Libraries," however, was not exactly what I expected. In contrast to the previous day's Plenary III Session, G-1 "Electronic Surveillance: Recent Legal Developments," the Hot Topic speakers provided their favorable views of the new law.

Robert O'Neill, executive officer of the Criminal Division, United States Attorney for the Middle District of Florida, first explained that his job requires that he enforce and apply the laws; thus, he avoids expressing any personal opinions about the changes made by the USA PATRIOT Act. He then described the law concerning pen registers and trap-and-trace devices prior to passage of the act. Pen registers record the phone numbers of outgoing calls; trap-and-trace devices record numbers for incoming calls. Both devices are placed on phone lines by phone companies pursuant to orders from a judge. Neither device can record the content of the calls. Obtaining a court order for both devices is fairly simple and the standard — that the information be relevant to the investigation — is very low.

O'Neill explained that the PATRIOT Act changed the prior laws in three significant ways.

First, law enforcement can now use the equivalent of pen registers and trap-and-trace

devices on other forms of communications, including e-mail and cell phones. This clarified the old law, which was unclear on this issue. O'Neill stressed that law officials could not get more information than in the past — i.e., no content, not even subject lines in e-mails.

The second change provided for nationwide effect of these court orders. Previously, law enforcement could procure orders only for the district in which they operated. With deregulation, the process of obtaining court orders for every district through which a phone call passed through had become time consuming. Now it is possible to request a court order for the first district in the chain and then follow the chain.

O'Neill minimized the impact of the third change; it requires officers to report certain information when law enforcement uses its own technology to acquire the information because the service provider lacks the capability to do so.

In O'Neill's opinion, these changes would ease restrictions for law enforcement. However, he recognized the tension between privacy and protection. The Federal Bureau of Investigation will be turning to libraries to help them find the information they need for their cases, O'Neill said.



Robert O'Neill explains how the USA PATRIOT Act expands law-enforcement authority.

Rodney Petersen, director of policy and planning, office of the vice president, and chief information officer at the University of Maryland, explained that he views the *PATRIOT Act* through the lens of someone primarily concerned with computer security. He posed a series of questions about electronic surveillance. For example, what level of trust is needed and how far should we go in the interest of security? He then illustrated how much surveillance already occurs today by examining a day in his life. During his typical day, his deleted e-mail is backed up on a server prior to deletion and on the sender's server; videocameras at traffic lights, on campus and elsewhere record when and where he traveled; logs keep records of when and how often he uses his wireless card; and hotel key cards provide records of when he entered and exited his room. Just think of the opportunities for surveillance during your normal day.

Petersen also discussed areas where library and university policies and procedures need to be reviewed. These include the procedures to handle law-enforcement inquiries; the privacy notices provided to computer users; determining the custodian of account information and electronic records; and how long network, system and host logs should be kept. He concluded by briefly discussing how to prevent computer attacks at universities. For more information about computer attacks, go to <http://www.educause.edu/security>.



From left: Panelist Robert O'Neill of the U.S. Attorney's Office for the Middle District of Florida and Moderator Robert L. Oakley listen as Rodney J. Petersen of the University of Maryland at College Park explains the basics of electronic surveillance.

During the brief question-and-answer periods, both presenters addressed the "trust" issues raised by the *PATRIOT Act*. O'Neill stressed that law officials have been directed by an internal Department of Justice memorandum not to use any content that might have been received via outgoing or incoming e-mail. Petersen admitted that the secrecy provisions of the *Foreign Intelligence Surveillance Act* troubled him. But he also noted that internal investigations, such as investigating employee misconduct, could be just as intrusive. The session concluded with Petersen again suggesting that librarians review how long they should keep nonpublic record information.

Overall, this was a good session. The articulate presenters provided new perspectives on the issues raised by the *PATRIOT Act* without blindly supporting the government's position. As one who attended both the electronic surveillance plenary session and this one, I came away with a more nuanced view of the act than previously. However, I still believe it contains some dangerous provisions.

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