



# ALA Washington Newsletter

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Attachments: 1) President's National Library Week Statement; 2) Freedom of Information Act Fees; 3) WHCLIS Legislation Cosponsors.

APRIL 17: WHITE HOUSE ANNOUNCED BILLINGTON TO BE NOMINATED LIBRARIAN OF CONGRESS\*

### NLW Library Legislative Day

On the eve of House consideration of the congressional budget, a record-breaking 520 library supporters from 43 states and the District of Columbia participated in the 13th annual Library Legislative Day of organized lobbying on April 7 during National Library Week. The day was sponsored by the D.C. Library Association and the ALA Washington Office.

### NLW Library Speeches

Rep. Major Owens' special order on April 8 during National Library Week prompted a total of 26 House members to make speeches about libraries and library issues. See the April 8 Congressional Record, pp. H1922-31, for speeches by Reps. Stratton, Owens, Williams, Biaggi, Martinez, Rangel, Derrick, Inhofe, Dymally, Brown of CA, Green, Rahall, Mazzoli, Hall of OH, Tallon, Fauntroy and Spratt, and on p. H1863 by Ravenel. See also speeches by Traficant, Ackerman and Lantos in the April 9 CR, pp. E1382-88, and by Bruce, Leland, Kostmayer, Spence and Manton in the April 10 CR, pp. E1395-1414.

### WHCLIS II

The Senate Education, Arts, and Humanities Subcommittee held a hearing on April 3 on S.J.Res. 26, legislation to authorize a second White House Conference on Library and Information Services in 1989. Witnesses were Librarian of Congress Daniel Boorstin; Bessie Moore, Vice Chair of the National Commission on Libraries and Information Science and ALA honorary member; Daniel Casey, NCLIS Commissioner and ALA Councilor; Charles Benton, NCLIS Chair Emeritus; Alexander Nole, Association

of Connecticut Library Boards; Joan Reeves, Rhode Island Coalition of Library Advocates and WHCLIS Task Force; Christie Vernon, ALA Legislation Committee Chair; Glen Wilde, Associate Dean, Extension and Life Span Learning, College of Humanities, Arts and Social Sciences, Utah State University; and three state librarians who served on the NCLIS WHCLIS Preliminary Design Group---Patricia Klinck of Vermont, Joseph Shubert of New York, and Wayne Johnson of Wyoming.

Sen. Claiborne Pell (D-RI), Subcommittee Chairman and sponsor of S.J.Res. 26, was unexpectedly called to the Senate floor, but issued an opening statement. He noted that a significant benefit of the first WHCLIS was an increase in Library Services and Construction Act title III interlibrary cooperation funding of 140 percent. He also said:

Our task at hand is to authorize this Conference so that the thinking and planning processes can begin in earnest. We must also look seriously at what type of Conference will work best today. In all likelihood, it will be structured very differently from the 1979 Conference---leaner and more focused. If some states do not wish to hold their own state-based meetings owing to scarce funds, we want to give them that option and, at the same time, encourage them to participate in perhaps new and creative ways.

Finally I want to address the issue of cost which has been of rightful concern. If the 1979 Conference were to be replicated in 1989 the total dollar cost has been alleged to be \$15 million. It is very unlikely, however, that this earlier Conference will be replicated. What with ten years of technological advances coupled with the flexibility offered by optional state conferences, I would hope that this figure could in fact be reduced. Whatever the ultimate cost, however, I am committed to limiting the federal contribution to \$5 million. The future health and vitality of our libraries is certainly worth this investment. As we saw with the last Conference, it took over 4 years to secure an appropriation, but once in hand a meaningful and worthwhile Conference resulted. This again is my aim.

Witnesses were generally very supportive of S.J.Res.26. Daniel Boorstin warned against being dazzled by the latest technologies. He recommended a White House Conference on Literacy, Books, Libraries, and Information Services "to free us from our technological traffic jam" and to keep "all our technologies in an effective and amiable alliance." Joan Reeves said the 1979 WHC changed her life, and caused her to devote the next several years to supporting libraries in Rhode Island. Christie Vernon recommended a national assessment or report card on libraries. Joseph Shubert provided a lengthy list of WHC accomplishments in New York. Patricia Klinck expressed concern that funding would be better spent on services, made suggestions to increase state flexibility, insure that funding not come from existing library programs, and recommended that the timeline be moved into the 1990s and that alternative conference formats be explored. Wayne Johnson criticized the 1979 WHC rules and regulations as inflexible for Wyoming's needs.

Sen. Robert Stafford (R-VT), who chaired the hearing in Sen. Pell's absence, expressed some concerns about another Conference and associated himself with the views expressed by the Vermont State Librarian. However, he said he would support the decision of the Subcommittee on S.J.Res. 26. His questions to witnesses focused on the cost of a second WHC and the accomplishments of the first WHC. Several witnesses noted that 55 of the 64 WHCLIS resolutions have been implemented in whole or in part. Charles Benton indicated the 1979 WHC cost \$8 million---a \$3.5 million federal appropriation for the WHCLIS, and \$4.5 million in other funding. To the

question of cost, Daniel Boorstin replied that "the test of cost effectiveness is not really applicable to the world of knowledge....the justification of libraries and of the growth of knowledge resides in the future....we must have faith in the possibilities of that future to justify libraries at all."

At least 50 legislators were added to the list of WHCLIS II cosponsors as the result of Legislative Day visits on April 7. The totals for S.J.Res. 26 and H.J.Res. 90 were 43 and 133, respectively, as of April 10. (See attached list.)

### Congressional Budget

House. H.Con.Res. 95 (H. Rept. 100-41), the FY 1988 congressional budget resolution developed by the House Budget Committee's Democratic majority, was passed by the House on April 9 by a vote of 230-192. (Technically, the text of H.Con.Res. 95 was offered by Budget Committee Chairman Bill Gray (D-PA) as a substitute amendment to H.Con.Res. 93.) Three other budget substitutes were defeated, including a negative vote of 27-394 for the President's budget. No Republican Budget Committee alternative was offered on the House floor.

The congressional budget resolution sets spending only in the sense of determining broad functional totals. For budget Function 500, education and job training, H.Con.Res. 95 assumes \$36.45 billion, compared with \$34.3 billion needed to maintain current services according to the Congressional Budget Office, and \$29.1 billion in the President's budget. For Education Department programs, including libraries, the budget assumes current services levels (current funding plus an inflation factor) plus some growth in unspecified high-priority programs.

THANKS NEEDED: The final vote appeared on p. H2004 of the April 9 Congressional Record. Thank members who voted yes, particularly those you visited on April 7. Your Legislative Day visits could not have been better timed.

Senate. On April 8 the Senate Budget Committee approved, on a party-line vote of 13-11, a revised budget plan of Chairman Lawton Chiles (D-FL). This plan assumes \$35.1 billion for Function 500 for education and job training, but the increase over current services could be used only for new job training and child care initiatives. The plan assumes that all discretionary programs would be frozen (with no inflation factor) and that \$500 million would be cut from existing education programs and \$500 million would be cut from existing job training programs.

On April 10, Sens. Hollings (D-SC) and Danforth (R-MO) together with Sens. Stafford (R-VT), Pell (D-RI), Hatfield (R-OR), Stennis (D-MS), Chafee (R-RI), Bradley (D-NJ), Weicker (R-CT), Dodd (D-CT), Sanford (D-NC), Simon (D-IL) and Harkin (D-IA) sent a Dear Colleague letter to all Senators stating they would offer an amendment to Function 500 which would assume the current services level for all education (and library) programs. It would also assume substantial increases for high-priority education programs (ECIA Chapter 1, Handicapped Education, and certain student aid programs, but this list would not be binding on appropriations committees). The Hollings-Danforth education amendment would add \$900 million to Sen. Chiles' total for Function 500. Later Sen. Daniel Moynihan (D-NY) also became a cosponsor of the amendment.

ACTION NEEDED: Thank Sens. Hollings and Danforth and the cosponsors of the amendment. Immediately urge other Senators to support the Hollings-Danforth education amendment to the Senate budget resolution. The budget resolution (no number yet) and amendment will be on the Senate floor within days after Congress returns from recess on April 21.

Librarian of Congress

On April 15, both the Washington Post and the New York Times reported that the White House intends to nominate James H. Billington, director of the Woodrow Wilson Center of the Smithsonian Institution, as Librarian of Congress. He is a historian, author, and authority on the Soviet Union, as well as having administrative experience as head of the Smithsonian center since 1973. No official announcement has been made as yet. The four final candidates were reported to include Robert Wedgeworth, Dean of the School of Library Service at Columbia University and former ALA Executive Director; Gertrude Himmelfarb, distinguished professor of history at the City University of New York; and Jaroslav Pelikan, Sterling Professor of History at Yale University.

On January 21 Rep. Major Owens (D-NY) introduced HR 683, a bill requiring the Librarian of Congress to be "appointed from among individuals who have specialized training or significant experience in the field of library and information science." On April 10, Sens. Daniel Moynihan (D-NY) and Mark Hatfield (R-OR) introduced S. 1020, a bill to create the office of Librarian of Congress Emeritus. The position would apply to each Librarian of Congress upon retirement, and would provide office space and parking privileges at the Library of Congress, but no salary.

Copyright

The Copyright Office held hearings April 8 and 9 to review Section 108 of the copyright law dealing with the rights of creators and the needs of users of works reproduced by certain libraries and archives. Section 108(i) requires the Copyright Office to report to Congress every five years as to whether or not a balance exists between creators' rights and users' needs. The first report was issued in 1983.

ALA witness Nancy H. Marshall, University Librarian, College of William and Mary, Williamsburg, Va., stated that it was ALA's opinion today as in the first review that "the provisions of Section 108 provide for the intended statutory balance, and that in implementation and practice Section 108 has achieved that balance....ALA does not believe that new legislation is needed at this time to either clarify existing legislation or to rectify any 'perceived' imbalance. This is particularly true since Section 108 deals primarily with print materials of books and periodicals."

The general consensus of witnesses was that a statutory balance is being achieved, but that the implications of new technology should be examined by the Copyright Office.

Marlene C. McGuirl, Chairperson of the Copyright Committee of the American Association of Law Libraries, appealed for some guidance with respect to technological innovations. She also pointed out a recent dilemma regarding some primary source materials. She said:

...government entities are increasingly contracting with commercial publishers for the production of their official documents. For example, many decisions of federal circuit courts and state courts are only being commercially printed and bear a copyright notice. If the only source of the law is through commercially published and copyrighted formats, the unconstrained dissemination of information to the public is inhibited. Law librarians operate on the premise that citizens not only have a responsibility to know their legal rights and duties, but also have a right to the information produced by their government, and at certainly no more than the cost of printing the information. A special exception for these primary source materials may be necessary. Otherwise, one of

the major tenets of our government's operation, that of having an informed citizenry, is arguably deterred by the operation of the copyright laws. In light of this dilemma, the Association seeks guidance with respect to this category of copyrighted primary source materials.

Supplemental or reply statements will become part of the record if received by 4:00 p.m. on June 15, 1987. Ten copies of such statements should be submitted to: Register of Copyrights, U. S. Copyright Office, Library of Congress, Department 100, Washington, DC, 20540. Register of Copyrights Ralph Oman must submit his report to Congress in January 1988. In addition to stating the extent to which Section 108 has achieved the intended balance, the report is to describe any problems and present legislative or other recommendations, if warranted.

#### Freedom of Information Act

See the fact sheet attached to this newsletter on Freedom of Information Act fees which provides information on new uniform FOIA fee schedule guidelines recently published by the Office of Management and Budget. There are likely to be congressional hearings soon on the issues raised by these guidelines, and whether they accurately interpret the intent of Congress in last year's FOIA amendments.

DATA NEEDED: In preparation for these hearings, the ALA Washington Office needs immediate information from libraries on the following questions: Has your library used the Freedom of Information Act? What has your experience been? Are the new guidelines or definitions likely to increase the cost to your library or make it more difficult to use FOIA?

#### IRS Lobbying Regulations

The Internal Revenue Service on April 9 issued a press release and sent a letter to selected members of Congress announcing major changes in the proposed regulations on lobbying by nonprofit 501(c)(3) organizations. IRS left open the possibility that it may "repropose part or all of the regulations." In the meantime, the regulations proposed last November are not in effect and are not to be used by IRS agents. IRS will involve interested parties in the development of a new version of the regs, which will apply only prospectively, and will pay particular attention to those issues receiving the most public comment. Such issues include the definition of lobbying, the allocation of expenses and other accounting rules, the reliance rules for grant-making by private foundations, and the rules concerning affiliated organizations. Those who contacted their legislators concerning the proposed lobbying regulations should thank them. The public hearing previously announced by IRS for May 11 will take place as scheduled. April 20 was the deadline for requests to speak.

#### NCLIS

On March 20 the Senate confirmed the nomination of George H. Nash to be a member of the National Commission on Libraries and Information Science. He replaces Byron Leeds whose term expired last July. Dr. Nash is currently writing a biography of Herbert Hoover. He was nominated by the President on January 26.

#### OMB Circular A-102

The Weekly Compilation of Presidential Documents of March 16, pp. 254-55, includes a memorandum from the President on March 12 directing the Office of Management and Budget to revise Circular A-102, Uniform Requirements for Assistance to State and Local Governments. The memorandum thus constitutes advance notice of the upcoming revision of this circular.

THE WHITE HOUSE

WASHINGTON

NATIONAL LIBRARY WEEK

April 5 - 11, 1987

I am pleased to extend warmest greetings to the American Library Association for the 30th annual observance of National Library Week.

America's libraries are one of the essential features of our modern society because they encourage literacy, knowledge and a better understanding of the world -- and, of course, because they serve as a depository of America's rich and diverse cultural heritage. It is indeed appropriate that each year we recognize America's libraries and the outstanding individuals who make them work so well.

Dr. Samuel Johnson said, "Knowledge is of two kinds. We know a subject ourselves, or we know where we can find information upon it." Humanity continues to make dramatic strides in expanding the frontiers of knowledge. Although no single individual can hope to master all, libraries make available to us the knowledge we seek or to guide us in pursuit of it. The wealth of services our libraries provide to our communities makes it possible to reflect upon our past so that we may be better prepared for all that lies ahead.

This celebration is but another reminder of how much we rely on our libraries. I urge all Americans to "take time to read" and to pay a visit to your local library during this special week and throughout the year.

Ronald Reagan

## FREEDOM OF INFORMATION ACT FEES

When Congress passed amendments to the Freedom of Information Act in October 1986 as part of the Anti-Drug Abuse Act of 1986 (PL 99-570), it intended to improve the fee and fee waiver provisions of the Act for the news media and public interest users of FOIA. Yet, the Office of Management and Budget has published uniform FOIA fee schedule guidelines (March 27 Federal Register, pp. 10012-10020) which are likely to make it more costly for libraries and nonprofit associations to use the FOIA. The issue is important for many libraries and associations since they are likely to be required to pay search costs in addition to fees for the reproduction of records. Two other categories of requesters will be charged for the cost of reproduction alone: educational and non-commercial scientific institutions and representatives of the news media. The guidelines do not provide guidance on when fees should be reduced or waived. Effective date of the OMB guidelines is April 27. Agencies are required to prepare regulations and request public comment implementing the OMB guidelines by April 25.

Educational Institutions and News Media. When ALA Washington Office Director Eileen Cooke filed comments with OMB in response to a January 16 Federal Register notice (pp. 1992-1994), she protested the narrow definition of educational institution proposed by OMB because it would have excluded libraries. However, the definition OMB adopted in the final regulations, although broader than the draft version, still excludes a library unless it is incidentally connected to an institution which OMB considers educational. The guidelines define the term "educational institution" in section 6.h. in this way:

...a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

Thus, a preschool with a program of scholarly research might qualify as an educational institution, but the New York Public Library would not.

The legislative history of the amendments makes a good case for including libraries as representatives of the news media. When Sen. Patrick Leahy (D-VT) supported the amendments, he stated that:

The bill provides the most favorable fee provision for those in the information dissemination business because the use of the FOIA for public dissemination of information in Government files is in the public interest....It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. As new technologies expand, there are new methods of communications which disseminate information to people through media other than traditional print or broadcast media, and these entities should be considered as 'representatives of the news media.'...In fact, any person or organization which regularly publishes or disseminates information to the public, whether in print or electronically, should qualify for waivers as a 'representative of the news media.' (September 30, 1986, Congressional Record, p. S14298)

Yet, the only reference OMB made to libraries in the guidelines was the following:

The news media perform an active rather than passive role in dissemination. Thus, they can be distinguished, for example, from an entity such as a library which stores information and makes it available on demand. (March 27, 1987, Federal Register, p. 10015)

Categories of Requesters. OMB has established four categories of requesters all of whom must reasonably describe the records sought:

- a. Commercial use requesters are those to whom agencies should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.
- b. Educational and non-commercial scientific institution requesters are to be provided documents for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly or scientific research.
- c. Representatives of the news media are to receive documents for the cost of reproduction alone, excluding charges for the first 100 pages. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.
- d. All other requesters shall be charged by agencies, if they do not fit into any of the categories above, fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

Libraries as Non-commercial Users. Rep. Glenn English (D-OK) included an analysis of the fees and fee waiver amendments to the Freedom of Information Act in the Congressional Record on October 8, 1986, (p. H9463) which made a reference to libraries:

A request from a public interest group, nonprofit organization, labor union, library, or similar organization, or a request from an individual may [not] be presumed to be for commercial use unless the nature of the request suggest that the information is being sought for a private, profit making purpose. The public redissemination of documents or information obtained from the government is specifically intended not to be treated as a commercial use regardless of the identity or status of the requester. (Note: Rep. English's omission of "not" from his October 8 statement was corrected on October 10 on p. E3596 of the Congressional Record.)

WHITE HOUSE CONFERENCE ON LIBRARY AND INFORMATION SERVICES  
Legislation for WHCLIS in 1989

As of April 10, 1987, 133 Representatives and 43 Senators had agreed to cosponsor the legislation calling for a WHCLIS in 1989. The measures, H.J.Res. 90 and S.J.Res. 26, were introduced on January 21, 1987, by Rep. William Ford (D-MI) and Sen. Claiborne Pell (D-RI).

State	H.J.Res. 90 Cosponsors	S.J.Res. 26 Cosponsors
AL AK AZ	Bevill (D) Young (R)	Shelby (D) Murkowski (R), Stevens (R)
AR AS CA	Hammerschmidt (R), Robinson (D), Anthony (D), Alexander (D) Sunia (D) Fazio (D), Dellums (D), Brown (D), Martinez (D)	Bumpers (D), Pryor (D)  Cranston (D)
CO CT DE		Wirth (D) Dodd (D)
DC FL GA	Shaw (R), Fascell (D), Smith (D), Grant (D), Chappell (D), Lehman (D) Lewis (D), Rowland (D), Gingrich (R), Barnard (D)	Chiles (D), Graham (D)
HI ID IL	Porter (R), Fawell (R), Hayes (D), Gray (D), Evans (D), Price (D), Bruce (D)	Inouye (D), Matsunaga (D) Simon (D), Dixon (D)
IN IA KS	Jontz (D), Jacobs (D)	Grassley (R), Harkin (D)
KY LA ME	Perkins (D), Mazzoli (D)	
MD MA MI	Cardin (D), McMillen (D), Mfume (D), Morella (R), Dyson (D), Bentley (R), Byron (D), Hoyer (D) Donnelly (D), Moakley (D), Atkins (D), Conte (R), Studds (D), Frank (D) <u>Ford (D), Kildee (D), Levin (D), Traxler (D), Dingell (D)</u>	Sarbanes (D), Mikulski (D) Kennedy (D), Kerry (D) Riegle (D)
MN MS MO	Oberstar (D), Penny (D), Sabo (D), Weber (R), Stangeland (R), Vento (D), Frenzel (R) Dowdy (D), Lott (R) Clay (D), Coleman (R)	Durenberger (R) Cochran (R), Stennis (D)

(over)

State	H.J.Res. 90 Cosponsors	S.J.Res. 26 Cosponsors
MT NE NV	Williams (D)  Bilbray (D)	Melcher (D), Baucus (D)
NH NJ NM	 Dwyer (D), Roe (D), Florio (D), Howard (D) Torricelli (D), Courter (R)	
NY  NC ND	Ackerman (D), Biaggi (D), Downey (D), Fish (R), Horton (R), Kemp (R), Manton (D), Mrazek (D), Owens (D), Rangel (D), Solarz (D), Towns (D), Weiss (D), Wortley (R), Stratton (D), Garcia (D), LaFalce (D), Scheuer (D), DioGuardi (R), Schumer (D), Hochbrueckner (D), Martin (R), Slaughter (D) Hefner (D), Lancaster (D), Jones (D), Clarke (D)	D'Amato (R), Moynihan (D)  Sanford (D)
OH OK OR	Traficant (D), Oakar (D)	Hatfield (R), Packwood (R)
PA PR RI	Weldon (R), Kostmayer (D), Kolter (D), Yatron (D), Ridge (R), Gekas (R), Foglietta (D), Goodling (R) Fuster (D) St. Germain (D), Schneider (R)	Heinz (R)  Pell (D), Chafee (R)
SC SD TN	Derrick (D), Spence (R), Ravenal (R), Spratt (D), Tallon (D), Patterson (D)  Boner (D)	Hollings (D)  Pressler (R) Gore (D)
TX UT VT	Wilson (D), Leland (D), de la Garza (D), Frost (D) Nielson (R), Owens (D)	Bentsen (D) Hatch (R)
VI VA WA	 Boucher (D), Wolf (R), Pickett (D) Swift (D)	Trible (R)
WV WI WY	Mollohan (D), Rahall (D), Staggers (D) Kastenmeier (D), Roth (R), Gunderson(R)	Rockefeller (D), Byrd (D) Kasten (R)