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Questions and Answers

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QUESTIONS AND ANSWERS

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"Questions and Answers" is a forum for the exchange of solutions, suggestions, and differences of opinion about problems that arise in the daily operation of law libraries. Questions are welcomed in all areas of library and information service, including reader services, technical services, and administration. Questions should be directed to Professor Nicholas Triffin, Law Librarian, Hamline University School of Law, 1536 Hewitt Avenue, St. Paul, Minnesota 55104. The compilers will attempt to provide prompt answers to every question submitted, regardless of whether it is chosen for publication.

Question:

I have been given a reference to a document entitled *Administrative History of the Justice Department under the Administration of Lyndon Johnson*. Can you tell me where I might find it?

Answer:

A survey of persons currently employed by the United States Department of Justice proved fruitless. Although some employees recalled this project, they did not know where the document could be found. The Main Library of the Department of Justice did not have the item in its collection, nor was there any mention of the document in any of the *Annual Reports of the Attorney General*.

I finally called the Lyndon B. Johnson Presidential Library in Austin, Texas. The librarian was familiar with the *History* and said that it was compiled in several looseleaf volumes. Because photocopying costs were quite high, I settled for copies of the title page and contents pages, which the library sent at no charge.

I then contacted the National Archives to see if the *History* was available there. The Archives staff pulled everything in the collection relating to the *History* for my observation the following day. The files included several of the documents mentioned in the table of contents, although most of these documents were in draft form.

Before Lyndon Johnson left the White House, he asked several federal agencies to compile histories of their accomplishments during the years of his presidency. The Justice Department's contribution, although meticulous in some areas, was sketchy and often devoid of any information in other areas. Many persons responsible for producing specific portions of the document may not have given this project a high priority.

Anticipating readers' interest in more information on presidential libraries, I decided to include some general information on these libraries in this column. The Presidential Libraries Act of 1955¹ authorized the General Services Administration (of which Archives is a part) to take over and operate any presidential library that was offered to the United States as a gift. The first presidential library, however, was created before the 1955 Act. In 1930, Congress authorized the Archivist of the United States to accept twelve acres of land at Hyde Park, New York, which Franklin D. Roosevelt donated for the construction of the Franklin D. Roosevelt Library. Franklin D. Roosevelt Library, Inc., a New York corporation, was organized to bear the cost of construction. Upon completion of the building, the Archivist accepted "such collection of historical material as shall be donated by the donor," in other words, by President Roosevelt.²

Since the creation of the Roosevelt Library, the federal government has neither assembled land for a site nor constructed buildings for a presidential library or museum. The United States will,

* Co-compiled in alternate issues of *Law Library Journal* by Nicholas Triffin, Hamline University School of Law.

1. Act of Aug. 12, 1955, ch. 859, 69 Stat. 695 (1955) (current version at 44 U.S.C. §§ 2103-2104 (1976)).

2. Joint Res. of July 18, 1939, ch. 324, sec. 201, 53 Stat. 1062, 1063 (1939).

under present law, accept the completed building as a gift and provide for future maintenance and operation of the library.³

In 1974, Congress enacted the Presidential Recordings and Materials Preservation Act.⁴ The Act abrogated former President Nixon's agreement with the Administrator of General Services about the disposition of Nixon's presidential papers and tape recordings. The agreement had provided for the eventual destruction of the tape recordings.

Nixon challenged the constitutionality of the Act, which gave custody of the materials to the General Services Administrator and prohibited their destruction. In *Nixon v. Administrator of General Services*,⁵ the U.S. Supreme Court held that the statute did not violate the principle of separation of powers, the privilege of confidentiality of presidential communications, Nixon's privacy or first amendment rights, or the bill of attainder clause of the Constitution.

The decision about which papers to include in a presidential library no longer depends on the whim of the President. The Presidential Records Act of 1978 amended title 44 of the *United States Code* "to insure the preservation of and public access to the official records of the President."⁶ By establishing procedures governing the preservation of and public access to presidential papers, Congress ended the tradition of private ownership of those papers.⁷

The General Services Administration currently operates seven presidential libraries. There are libraries and museums, for all presidents from Herbert Hoover through Gerald Ford, with the exception of Richard Nixon, whose papers are presently housed in Alexandria, Virginia. The Nixon and Carter libraries are being organized in San Clemente, California, and Atlanta, Georgia, respectively. The trustees of Stanford University recently approved the establishment of the Reagan library at Stanford.

Of the seven presidential libraries, the Eisenhower Library in Abilene, Kansas, was the least visited in fiscal year 1982. The Hoover Library, in

West Branch, Iowa, was the least expensive to operate. The Johnson Library had the most daily research visits and was the most expensive to operate. A total of 2,560 persons made 8,502 research visits to the seven libraries. Operating cost for all the presidential libraries in 1982 was nearly eleven million dollars.

The Roosevelt and Truman Libraries both contain approximately 45,000 monographs, nearly twice the amount in the next largest collection, the Kennedy Library. The Truman Library, with 70,000 serial items, has more than two times the number of serial items held by the Roosevelt Library, which has the second largest serial collection.

For more information on presidential libraries, contact the Office of Presidential Libraries of the National Archives and Records Service in Washington. The *Federal Yellow Book* includes the addresses and phone numbers of the libraries.

Question:

What is the *Book of Estimates*? I believe it has something to do with the federal budgetary process, but that is all the information I have.

Answer:

Before Congress enacted the Budget and Accounting Act of 1921,⁸ federal departments and agencies made individual requests for their operating funds. The Secretary of the Treasury compiled these requests in the *Book of Estimates* and then presented them to Congress.

The first Congress of the United States required that the Secretary of the Treasury "prepare and report estimates of the public revenue, and the public expenditures."⁹

Congressional appropriations statutes did not include the term "book of estimates" prior to the creation of the *Revised Statutes* in 1873. There it was stated that "all annual estimates for the public service shall be submitted to Congress through the Secretary of the Treasury, and shall be included in the book of estimates prepared under his direction."¹⁰

The Budget and Accounting Act of 1921 centralized authority to formulate the executive branch budget in the President and the Bureau of the Budget (now the Office of Management and Budget) for presentation to Congress. Congress' efforts to reassert control over the budgetary pro-

3. 44 U.S.C. § 2108(a) (1976) (when the Administrator of the General Services considers it to be in the public interest).

4. Pub. L. No. 93-526, 88 Stat. 1695 (1974) (codified at 44 U.S.C. § 2107 (1976)).

5. 433 U.S. 425 (1977).

6. Presidential Records Act of 1978, Pub. L. No. 95-591, 92 Stat. 2523 (1978) (codified in scattered sections of 44 U.S.C. (Supp. V 1981)).

7. 44 U.S.C. § 2202 (Supp. V 1981).

8. Ch. 18, 42 Stat. 20 (1921) (codified in scattered sections of 31 U.S.C.).

9. Act of Sept. 2, 1789, ch. 12, § 2, 1 Stat. 65.

10. Rev. Stat. § 3669, 18 Stat. 727 (1873).

cess resulted in the Congressional Budget and Impoundment Control Act of 1974.¹¹ In addition to amending the Budget and Accounting Act of 1921, the 1974 Act changed the start of the federal fiscal year from July 1 to October 1.¹² The Act also authorized the Comptroller General to review and to evaluate federal programs and activities.¹³ Section 300 of the Act created a calendar of stages in the budget and appropriation process and provided that Congress should complete its budgetary action no less than six days before the commencement of the upcoming fiscal year.¹⁴

Article I of the Constitution gives Congress authority to spend money but only when Congress makes appropriations to withdraw money from the Treasury.¹⁵ These appropriations are the legal authorization for the government to enter into obligations that will result in immediate or future outlays of federal funds.

Without congressional appropriations, the government must shut down. The Antideficiency Act¹⁶ provides that federal agencies cannot spend money in advance of appropriations. In recent years appropriations acts have become more and more difficult to pass. Consequently, federal agencies and programs have become increasingly dependent upon the passage of continuing resolutions to fund their operations. These continuing resolutions are, in essence, emergency appropriations which extend operating funds.

The appropriations process has become slightly more complex since Congress' first general appropriation in 1789 for the amount of \$639,000.¹⁷ Despite efforts to streamline the process, Congress and the President often have had major problems reaching agreement on how to allocate \$728,375,000,000, the total budget outlay for federal governmental operations in fiscal year 1982.¹⁸

11. Pub. L. No. 93-344, 88 Stat. 297 (1974) (codified in scattered sections of 31 U.S.C.).

12. *Id.* at sec. 501 (codified at 31 U.S.C. § 1020 (1976)) (amending § 237 of the Revised Statutes, as amended).

13. *Id.* at sec. 702 (codified at 31 U.S.C. § 1154 (1976)) (amending § 204 of the Legislative Reorganization Act of 1970, Pub. L. No. 91-50, 84 Stat. 1140, 1168).

14. *Id.* at sec. 300 (codified at 31 U.S.C. § 1321 (1976)).

15. U.S. CONST. art. I, § 8 & § 9, cl. 6.

16. 31 U.S.C. § 665 (1976).

17. Act of Sept. 29, 1789, ch. 23, 1 Stat. 95.

18. OFFICE OF MANAGEMENT AND BUDGET, U.S. EXECUTIVE OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT FISCAL YEAR 1984, at 9-55 (1983).

Question:

I don't want to appear naïve, but what is the difference between an "appropriation" and an "authorization"?

Answer:

The federal budget process also seems to confuse Congress and the President.

Authorization is an earlier step in the budget process than is appropriation. Authorizing legislation is

substantive legislation enacted by Congress that sets up or continues the legal operation of a Federal program or agency either indefinitely or for a specific period of time or sanctions a particular type of obligation or expenditure within a program. Authorizing legislation is normally a prerequisite for appropriations. It may place a limit on the amount of budget authority to be included in appropriation acts or it may authorize the appropriation of 'such sums as may be necessary.'¹⁹

An appropriation is

[a]n authorization by an act of Congress that permits Federal agencies to incur obligations and to make payments out of the Treasury for specified purposes. An appropriation usually follows enactment of authorizing legislation. An appropriation act is the most common means of providing budget authority. . . . Appropriations do not represent cash actually set aside in the Treasury for purposes specified in the appropriation act; they represent limitations of amounts that agencies may obligate during the period of time specified in the respective appropriation acts.²⁰

Appropriations may be made for one year's duration, for a definite number of years, or for an indefinite period (which is generally until all funds are expended). Appropriations may also be for either a specified or an unspecified amount of money. Indefinite appropriations usually contain the words "all or part of the receipts from certain sources" or "such sums as may be necessary" for

19. U.S. GENERAL ACCOUNTING OFFICE, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS AND RELATED ACCOUNTING ECONOMIC AND TAX TERMS 39-40 (1981).

20. *Id.* at 42.

a given purpose. Furthermore, appropriations may be current (made by Congress in or immediately prior to the fiscal year for which the funds are to be obligated) or permanent (which does not require continuing action by Congress).

To understand the federal budgetary process, you should be able to make the following distinctions: *Enabling* or *organic legislation* creates an agency, establishes a program, or establishes some other continuing government activity. Such legislation generally does not provide monies for operations. *Authorization legislation* permits the appropriation of funds to implement enabling legislation. The operating funds are not actually provided, although the legislation may suggest the appropriate amount to be spent. This legislation contemplates subsequent legislation actually appropriating these funds. *Appropriation legislation* allocates the funds for operating the agency or program.

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Question:

I seem to recall that several years ago the American Library Association issued a policy statement regarding the confidentiality of library circulation records. What exactly is the policy, and have any governmental units provided legislative protection for these records?

Answer:

The American Library Association's (ALA) concern for the confidentiality of library circulation records was heightened by two events in 1970. Agents from the U.S. Internal Revenue Service (IRS) had sought access to the circulation records of libraries in Milwaukee, Wisconsin, and Atlanta, Georgia, for the purpose of identifying individuals who had borrowed materials on the construction of explosive devices. The IRS had neither a subpoena nor a court order to back the requests.

On July 21, 1970, the ALA Executive Board issued an advisory statement. This statement provided guidance to libraries that were formulating policies about the confidentiality of their circulation records. The ALA's "Policy on Confidentiality of Library Records" was approved January 20, 1971, by the ALA Council and later modified April 4, 1975. After a preamble explaining the need for a policy statement, the policy reads:

[T]he Executive Board . . . strongly recommends that the responsible officers in each U.S. library:

1. Formally adopt a policy which specifically recognizes its circulation

- records and other records identifying the names of library users to be confidential in nature.
2. Advise all librarians and library employees that such records shall not be made available to any agency of state, federal, or local government except pursuant to such process, order, or subpoena as may be authorized under the authority of, and pursuant to, federal, state, or local law relating to civil, criminal, or administrative discovery procedures or legislative investigative power.
 3. Resist the issuance or enforcement of any such process, order, or subpoena until such time that a proper showing of good cause has been made in a court of competent jurisdiction.

On January 9, 1983, the ALA Intellectual Freedom Committee adopted "Suggested Procedures for Implementing 'Policy on Confidentiality of Library Records.'" The Committee recommended that persons requesting circulation or registration records be referred to the library director. The director should engage the assistance of legal counsel to determine whether the process, order, or subpoena was in proper order and showed good cause for its issuance. If the process was faulty, the director should insist that the requesting person cure any defects before the library releases any records.

As of March 1, 1984, the following states had enacted legislation protecting the confidentiality of library records:

| | |
|--------------|--|
| California: | CAL. GOV'T CODE § 6254(j) (West Supp. 1984). |
| Colorado: | COLO. REV. STAT. § 24-90-119 (Supp. 1983). |
| Connecticut: | CONN. GEN. STAT. ANN. § 11-25(b) (West Supp. 1978-83). |
| Delaware: | DEL. CODE ANN. tit. 29, 10002(d)(12) (1983). |
| Florida: | FLA. STAT. ANN. § 257.261 (West Supp. 1983). |
| Illinois: | Library Records Confidentiality Act, Pub. Act 83-179, 1983 Ill. Legis. Serv. 1333 (West), (to be codified in scattered sections of ILL. ANN. STAT. ch. 81 (Smith-Hurd)). |
| Indiana: | IND. CODE ANN. § 5-14-3-4(b)(16) (Burns Supp. 1983). |

| | |
|----------------|--|
| Iowa: | IOWA CODE ANN. § 68A.7(13) (West Supp. 1982). |
| Louisiana: | LA. REV. STAT. ANN. § 44:13 (West Supp. 1984). |
| Maine: | ME. REV. STAT. ANN. tit. 27, § 121 (Supp. 1983). |
| Maryland: | MD. ANN. CODE art. 76A, § 3(c)(ix) (1980 & Supp. 1983). |
| Massachusetts: | MASS. ANN. LAWS ch. 4, § 7(k) (Michie/Law. Co-op. Supp. 1984). |
| Michigan: | MICH. COMP. LAWS ANN. § 397.601-.605 (Supp. 1982). |
| Minnesota: | MINN. STAT. ANN. § 13.40 (West Supp. 1984). |
| Nebraska: | NEB. REV. STAT. § 84-712.05 (10) (Supp. 1983). |
| Nevada: | NEV. REV. STAT. § 239.013 (1983). |
| New York: | N.Y. CIV. PRAC. LAW § 4509 (McKinney Supp. 1964-1983). |
| Oregon: | OR. REV. STAT. § 192.500(1)(j) (1983). |
| Rhode Island: | R.I. GEN. LAWS § 38-2-2(d)(21) (Supp. 1983). |
| South Dakota: | S.D. CODIFIED LAWS ANN. § 14-2-51 (Supp. 1983). |
| Virginia: | VA. CODE § 2.1-342(b)(7) (Supp. 1983). |
| Washington: | WASH. REV. CODE ANN. § 42.17.310(1)(1) (Supp. 1983). |
| Wisconsin: | WIS. STAT. ANN. § 43.30 (West Supp. 1983). |

Three state attorneys general have arrived at different conclusions about the disclosure of library records. The Attorney General of Tennessee has determined that "public library records are subject to public inspection" under the Tennessee Public Records Act.²¹ Stating that library records are not exempted from disclosure due to confidentiality under the Public Records Act, the Attorney General of Tennessee suggested that it was up to the state legislature to exempt such records from disclosure.

The Attorney General of Texas concluded that information which would reveal the identity of a library patron and the material that the patron had borrowed was exempted from disclosure under the Texas Open Records Act because such information is confidential under constitutional law.²²

21. 9 OP. ATT. GEN. 217, No. 126, 80-25 (Tenn. Jan. 21, 1980).

22. Open Records Decision No. 100 (Tex. July 10, 1975).

He stated that, absent a showing of a clear and present danger, "the First Amendment guarantee of freedom of speech and press extends to the reader or viewer and protects against state compelled public disclosure of a person's reading or viewing habits."²³ The Attorney General of Nevada has held similarly that library circulation records are confidential as a matter of constitutional law.²⁴

The Library of Congress specifically exempts from disclosure materials "[r]elated to specific reader use of the collections, either in the Library or through lending service."²⁵ No federal statutory provision, however, specifically exempts circulation records of federal libraries from disclosure under the federal Freedom of Information Act,²⁶ and no opinion of the Attorney General of the United States has addressed this issue.

The American Association of Law Libraries' "Code of Ethics" includes two provisions on confidentiality. First, the Code endorses the American Library Association's statement that "A librarian . . . must protect the essential confidential relationship which exists between a library user and the library." Second, the Code states that:

In addition, the Association, in light of the special character and mission of its membership, espouses the principles that law librarians, while engaged in their professional work . . . have a special duty . . . to treat confidentially any private information obtained through contact with library patrons and not to divulge any confidential information to persons representing adverse interests.²⁷

This duty may include nondisclosure of circulation records.²⁸

23. *Id.* at 2.

24. ATT. GEN. OP. 80-6 (Nev. Mar. 10, 1980).

25. 36 C.F.R. § 703.3(a)(11) (1983).

26. 5 U.S.C. § 552 (1982).

27. AMERICAN ASSOCIATION OF LAW LIBRARIES, DIRECTORY OF LAW LIBRARIES xvi (1983) (Code adopted Sept. 1978).

28. 42 U.S.C. § 2000aa(b) (Supp. V 1981) prohibits, under certain circumstances, the search and seizure by state, local, and federal law enforcement officers of certain "documentary materials, other than work product materials, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of communication, in or affecting interstate or foreign commerce" without first obtaining a subpoena. The

Question:

Who was the first woman admitted to the Bar of the Supreme Court of the United States?

Answer:

Penny Hazelton of the Supreme Court Library answered this question. The first woman admitted to practice before the Supreme Court was Belva Lockwood, who was sworn in March 3, 1879. An 1873 graduate of the National University School of Law (later absorbed by George Washington University), Mrs. Lockwood was denied admission to the Court in 1873 because of custom. Because "immemorial usage" barred women from the practice of law, Chief Justice Waite implied that Congress would have to enact legislation permitting women to practice before the Supreme Court.²⁹ Congress enacted this legislation in 1879.³⁰

Chief Justice Waite's intransigence was not surprising after the Supreme Court's 1872 decision in *Bradwell v. Illinois*.³¹ In *Bradwell*, the Court held that the fourteenth amendment did not affect a state's right to deny women admission to the bar solely on the basis of gender.³²

legislative history of this statute indicates an intent to protect persons involved in both the creation and dissemination of information, for example, journalists and broadcasters, but not librarians.

Libraries belonging to licensing agent organizations, such as the Copyright Clearance Center (CCC), should be aware of the privacy implications involved. The Board of Directors of the CCC has approved a policy which reads in part:

CCC shall keep confidential and shall not disclose to publishers or anyone else, except pursuant to court process or order, any of the information User supplies it concerning specific User copying transactions. In the event of Court process or order requiring production of such information, CCC shall provide notification to User but shall not actively oppose providing the information sought . . .

Letter from David P. Waite, President, Copyright Clearance Center, Inc., to registered users (Dec. 27, 1982).

29. See 11 AM. L. REV. 357, 367 (1877).

30. Act of Feb. 15, 1879, ch. 81, 20 Stat. 292.

31. 83 U.S. (16 Wall.) 130 (1872).

32. *Id.* at 139. Actually, the Court held that the federal government could not take away a state's right to control and regulate the granting of a license to practice law and based its decision on the Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1872), delivered just prior to *Bradwell*, which limited federal intervention under the fourteenth amendment to discrimination on the basis of race.

Mrs. Lockwood was also the first woman to argue before the Court. In 1906, at the age of seventy-six, she argued the cause of the Eastern and Emigrant Cherokee Indians in *United States v. Cherokee Nation*.³³

Question:

Neither snow, nor rain, nor heat,
nor gloom of night stays these
carriers from the swift completion
of their appointed rounds.³⁴
What about nuclear war?

Answer:

You may rest assured. The United States Postal Service has a plan to insure, as much as possible, that you will get your Bender updates after the holocaust. In December 1981, the Postal Service published their *Emergency Planning Manual*, designed to provide policy and guidance for maintaining continuity of operations during both war-time and domestic emergencies.

According to this document, the Postal Service has two main national objectives—to ensure that the mail will be delivered and to protect postal employees from the effects of nuclear attack. The report focuses on the first of these objectives.

In the typically understated manner found throughout the *Manual*, the Postal Service declares that “[a]s a result of an attack on the United States, federal offices . . . may be untenable, destroyed, or otherwise unsuitable for . . . activities.” The goal, then, is to deal with the unfortunate occasion of nuclear war and to distribute the mail as effectively as possible under the circumstances.

Not unexpectedly, you may have to endure some hardships. Problems you should be aware of and perhaps should plan for are:

1. Express, insured, registered, certified, special handling, special delivery, and COD mail will be suspended.
2. Postal money orders for payment in the

country which is attacking the U.S. will be suspended.

3. Food stamps, passport application acceptance, and the sale of Migratory Bird Stamps will be suspended.

But don't be totally discouraged. There is consolation for persons in disaster or Displaced Persons Processing areas—postage will be waived for your personal correspondence and post cards.

The *Emergency Planning Manual* defines several terms which will be vital in such correspondence. If your purpose is to tell your friends and loved ones that a nuclear holocaust is imminent, you may use the term “preattack” in your letter. Preattack is defined as “that period between the time that an attack may be expected and the first detonation. [It] is a period of considerable uncertainty . . .”

The more courageous will send a letter during the “transattack” period. The *Manual* defines transattack as “that period of time from when the first detonations occur until no additional detonations can be reasonably expected. The imponderable in this time period is the uncertainty as to when the attack is over . . .”

But the postage-free period does not apply to the preattack or transattack period. You may do without postage during the “postattack” period, “that period between the cessation of the attack and the start of the recovery of the Nation . . . It is a period when the national leadership will be evaluating the full impact of the attack and will be planning a national recovery program.”

At this point, you may wonder how you will be informed of an oncoming nuclear attack, the preattack phase. The Federal Emergency Management Agency (FEMA) has responsibility for federal emergency preparedness planning, including wartime national emergencies as well as major natural disasters and domestic crises. FEMA designed the “attack warning system” to inform the public of imminent danger. The warning is three short siren blasts for three to five minutes or, for those persons listening to the stereo, a wavering tone over the airwaves. Those who are biking, hiking, or camping in areas ill-suited for such notice will indeed pay for their nature-communing ways. Let us hope they will not be depending on express mail.

33. 202 U.S. 101, 120 (1906).

34. Inscription, New York City Post Office, adopted from Herodotus.