C. Allison Sills

The Ethical Tightrope

Navigating Library Values in the Face of the Parents' Bill of Rights and Patron Privacy Challenges

In the dance between safeguarding patron privacy and navigating the law, community colleges confront a pivotal question: How do we fulfill our legal obligations without compromising the ethical and legal bedrock of our profession? In North Carolina, where I work, since the Parents' Bill of Rights became state law in December 2023, community colleges have been pressured to compulsorily activate all patron checkout history for the first time in decades. Due to such pressure, a percentage of libraries have done so. From the historical echoes of the Red Scare and the PATRIOT Act to the contemporary challenges posed by political divisions, the need to shield individuals' privacy from potential abuse is paramount.

This article scrutinizes the ethical stance of the American Library Association (ALA), dissects current Federal and North Carolina laws, and grapples with the implications of the Parents' Bill of Rights. Our duty is clear—to resist interpretations that violate our professional ethics and to champion the privacy of our patrons with unwavering zeal.

Librarianship and Privacy

Between the 1890s and the 1930s librarianship was developing into its own profession. There were some early missteps before the 1920s, when libraries were directly associated with trials of anarchists. The government accused them of supplying literature to Russian agents. One librarian was even called to testify to the reading habits of the men.[1] Not only was this the start of ALA's views on intellectual freedom, but it also illustrated the need for librarians to consider how libraries were used to surveil the populace. As the profession matured, so did the desire to adopt the concept of confidentiality as an ethical obligation. The ALA formalized the Library Bill of Rights and Code of Ethics statements about confidentiality in 1939.

This, however, did not stop attempts by the government to use patron information collected by libraries. In the early 1970s, the Alcohol, Tobacco and Firearms Unit (mistakenly identified as the IRS, which was also under the Treasury Department at the time) attempted to access patrons' borrowing records searching for interest in bomb-making books.[2] In the 1980s, during the Cold War, the FBI surveilled patrons so conspicuously that they were brought before a House Judiciary Subcommittee to testify about their "Library Awareness Program."[3] After the PATRIOT Act was hurriedly passed in 2001, the FBI immediately started keeping tabs on the reading habits of people the government considered dangerous—including

C. Allison Sills is an instructional librarian at Central Carolina Community College in Sanford, North Carolina, email: asills@cccc.

US citizens. Not only were librarians incensed at the breach, but the PATRIOT Act also restrained them by gag order from acknowledging that such information was requested. Four librarians and the ACLU took a lawsuit to the United States Second Circuit Court of Appeals to be able to speak openly.[4]

In January 2002, ALA advised the nation's libraries to "avoid creating unnecessary records."[5] As of today, ALA dedicates no less than nine website pages to the topic of privacy. It is considered a core value that "privacy is essential to the exercise of free speech, free thought, and free association. Lack of privacy and confidentiality chills users' choices, thereby suppressing access to ideas. The possibility of surveillance, whether direct or through access to records of speech, research and exploration, undermines a democratic society."[6]

The Library Bill of Rights article VII states "All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Libraries should advocate for, educate about, and protect people's privacy, safeguarding all library use data, including personally identifiable information."[7] The Code of Ethics states, "We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted."[8]

Such rules and codes exist for a reason. A reason perhaps best summed up in the ALA's Freedom to Read statement which says, "suppression is never more dangerous than in such a time of social tension. Freedom has given the United States the elasticity to endure strain. Freedom keeps open the path of novel and creative solutions, while enabling change to come by choice. Every silencing of a heresy, every enforcement of an orthodoxy, diminishes the toughness and resilience of our society and leaves it less able to deal with controversy and difference."[9]

To meet this end, ALA has guidelines for vendors as well, including those that run our Integrated Library Systems, which include SirsiDynix's WorkFlows and Mobius's Evergreen. Besides being secure, using encryption and anonymization, the ALA suggests "data minimization" because "excessive data collection and/or retention puts users at an increased risk in the case of a data breach." It further guides that both "vendors and libraries should consider a government or law enforcement request only if it is issued by a court of competent jurisdiction that shows good cause and is in proper form. Vendors should inform and consult with the library when it believes it is obligated to release library users' information."[10] Transparency is an important part of privacy.

Privacy and the Law

Ethics are important, but they aren't law. What does the law say? Forty-eight out of 50 states have library patron privacy laws on the books.[11] In North Carolina, NC General Statutes, Chapter 125, Article 3 states, "A library shall not disclose any library record that identifies a person as having requested or obtained specific materials, information, or services, or as otherwise having used the library, except . . . , upon written consent of the user, or pursuant to subpoena, court order, or where otherwise required by law."[12] That last exception is where the newly approved Parents' Bill of Rights applies.

The Parent's Bill of Rights law mentions libraries once, and it reads that parents have "the right to review all available records of materials their child has borrowed from a school library."[13] There are two important considerations. The first is whether a community college is a public school unit, and the second is how to interpret "all available."

First, this line lives in Article 7B under "Public School Unit Requirements." Should this apply to community colleges? Community colleges often host high school students in Career & College Promise programs or host Early College schools. Thankfully, the Parents' Bill of Rights law also provides definitions. At the beginning of the bill, the "State" is defined as, "the State, any of its political subdivisions or public school units." The use of the word "or" implies that "political subdivisions" are distinct from "public school units." Community colleges do not fit best in the public school units definition because attendance in a community college program or early college is not compulsory, and the primary duty of a community college is to train and educate adult students. Community colleges can easily be defined as a political subdivision of the State in this case, which this law sees as distinct from public school units. Therefore, one can argue that the portion of the new Parents' Bill of Rights, Article 7B, that is focused on Public School Unit Requirements does not even apply to community colleges at all.

Second, if the law did apply, what does "all available" mean? Non-librarians and other proponents of this law might want to interject adverbs into the sentence like "all *potentially* available records." But librarians, who know why privacy is essential to their patrons, interpret it as written: "all available records." Under our code of ethics, we only keep current records, so we have no historical records to give. We were in compliance with the Family Educational Rights and Privacy Act (FERPA) law, which contains very similar language.[14] As far as librarians are concerned, we were already in compliance with this new law on day one.

Federal laws and the US Constitution also address the right to privacy. The First Amendment "implicitly safeguards the right to privacy in the form of freedom of thought and intellect. As eloquently articulated by Supreme Court Justice Louis Brandeis in his famous dissent in Olmstead v. United States: 'The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. . . . They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, THE RIGHT TO BE LET ALONE—the most comprehensive of rights and the right most valued by civilized men.'"[15] "In Griswold v. Connecticut (1965), Justice William O. Douglas placed a right to privacy in a 'penumbra' cast by the First, Third, Fourth, Fifth, and Ninth Amendments."[16]

What about future laws? In February 2023, the North Carolina Senate introduced SB 90, the Children's Laws Omnibus. It contained a section that addressed public libraries.[17] But it didn't pass because the votes were not there. One of the issues was "pushback within the caucus about some provisions concerning libraries or books."[18] A similar bill that was passed in Arkansas was immediately enjoined by a judge to protect librarians. The judge concluded that such a bill "unfairly restricts librarians' speech" and that the law "could lead to arbitrary interpretation and 'content-based restrictions' that violate the First Amendment right to freedom of expression, which would cause the plaintiffs 'irreparable harm.'"[19]

Breaking the Cycle

The law protects librarians, protects patrons, and protects privacy at the highest levels. Invasion of privacy by retaining patron checkout history is tantamount to book banning. If you surveil the populace, the populace will start to self-censor to prevent "potential" discrimination, which starts the fear cycle. Librarians afraid of a law change their behavior. Then citizens afraid of discrimination change their behavior and self-censor. The fear has to

stop. And it's our job to stop it.

Once a library begins keeping patron checkout history, that information becomes a public record. That means all records may be available per Freedom of Information Act request, and they are definitely available to subpoena and court order. Think of all the new policies and procedures your library will need to create to handle those.

Are you going to turn off or migrate children's accounts when they turn 18? How are you going to inform your patrons that tracking is on now? Avoiding doing so is an ethical breach that could progress into a lawsuit.[20,21] Who is going to handle a parent's checkout history search request? Everyone, including student workers, could easily look up that information and could spy on their fellow students' or even their instructors' reading habits. Do you regularly purge patron accounts? If you are keeping patron checkout history information, you should do so.

Sometimes the best choice is the easiest choice. Change nothing. This law did not require us to change our procedures. We always could tell parents what their children had checked out—currently. You are at greater risk of liability turning on checkout history because you are (1) potentially breaking state or federal laws by invading patron privacy, (2) breaking trust with every patron, (3) creating a chilling effect on patron usage as they begin to self-censor, and (4) breaking our professional code of ethics at its very core.

Privacy is vitally important to freedom of speech. In America, these freedoms are protected. Protecting patron checkout history is one of the seven most important rights libraries promise their patrons in the Library Bill of Rights. When we honor that agreement, we preserve trust in our institution, we encourage reading and learning, we protect our patrons from discrimination, we follow the majority of laws up to and including the federal level, and we support all cultures and promote intellectual diversity. It is our duty to protect our patrons' privacy as zealously as we are able. Even with laws like the North Carolina Parents' Bill of Rights, we have choices. Regardless of where you may live and work, I implore you to stand up for your patron's privacy and resist any pressure to keep patron history tracking on by default.

Notes

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