

Search warrant freezes, funding squeezes mark close of 114th Congress for ALA Washington

Name notwithstanding, Washington Hotline bulletins often involve glacial legislation. Not this time. Rule 41 of the Federal Rules of Criminal Procedure is a hot topic inside the Beltway and a front burner issue for ALA's Washington Office—and for good reason.

Tasked with investigating and prosecuting criminal cyberattacks, the FBI has long sought expanded legal authority to take active “countermeasures” to neuter or disable computers believed to be controlling or participating in cybercrime.

To the public this may initially seem like a reasonable approach, but scores of experts have pointed out that such “hacking back” raises a host of questions and deep concerns. These include the likelihood that the computers of innocent individuals may be incorrectly targeted by law enforcement; possible damage to machines, or the information on them, against which the government strikes back; and the enormous impact on personal privacy when the government enters a computer that holds a person's sensitive health or tax records, intimate correspondence, photos, and financial data.

Had the government gone to Congress to ask for a change in existing privacy laws, then that likely would have triggered multiple hearings where these issues could have been publicly explored. Instead, however, the FBI asked a little-known judiciary

advisory committee established to make changes in federal court procedures to dramatically broaden what kind of hacking they can engage in and how many computers (potentially millions) they can act against under a single warrant issued by a single judge of the government's choosing. Rule 41, adopted by the committee early in 2016 over the public objections of many groups, was the result.

By law, Congress was given the opportunity to put the new Rule 41 on hold, but only if it affirmatively acted to do so before December 1. While several bills to do just that were introduced, the Rule is now in full effect.

Look for a major push in the new Congress, and for ALA's Washington Office to ask for your help, to retroactively freeze searches under Rule 41 in their tracks.

On the good news side of the ledger, the new 115th Congress can afford—literally—to reconvene in January. Faced with the prospect of another government shutdown for lack of financial operating authority, as virtually its last substantive official act, the outgoing 114th passed a so-called “continuing resolution” to keep the lights on in every corner of the federal government through April 28, 2017.

The continuing resolution maintains funding across the board at current (FY2016) levels previously approved. For libraries, that means \$210 million for LSTA and Innovative Approaches to Literacy grants and about \$1.1 billion more for critical institutions and programs like the E-rate, Library of Congress, GPO, National Library of Medicine, and libraries for our troops and their families. *ZE*

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