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Vol. 2008, Issue 9

September 24, 2008

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UPDATES FROM THE HILL AND THE WASHINGTON OFFICE

New York Times on the Loss of Federal Electronic Government Information

On September 13, 2008, the New York Times featured on its front page an article about the challenges of preserving federal online government information. The article, "[In Digital Age, Federal Files Blip into Oblivion](#)," outlines the problems with records preservation at the federal agencies. As we described in a [popular entry](#) on the Washington Blawg, Acting Washington Affairs Representative Mary Alice Baish expresses in the article AALL's concern that huge amounts of information on agency Web sites from the past eight years of the Bush administration will disappear with the upcoming change of administration.

The article also addresses concerns raised by AALL in a [letter](#) to members of Congress last April about the decision of the National Archives and Records Administration (NARA) not to harvest agency Web sites at the end of this administration. NARA's decision contradicts AALL's [Government Relations Policy](#), which includes "[Principles and Core Values Concerning Public Information on Government Web Sites](#)" that explicitly state it is government's responsibility to ensure the entire life-cycle of information on their Web sites, including its accessibility, reliability, official status, comprehensives and preservation.

As we [previously reported](#) in the blog, the [Library of Congress](#), the [California Digital Library](#), the [University of North Texas Libraries](#), the [Internet Archive](#), and the [U.S. Government Printing Office](#) in August [announced](#) a collaborative project to conduct their own harvests of government Web sites. While we are extremely pleased with this effort to ensure the preservation of federal online government information, we remain disappointed that NARA is dodging its own responsibility to conduct these agency harvests.

Senate Subcommittee Addresses Secrecy and the Rule of Law

On September 16, 2008, the Senate Judiciary Committee's [Subcommittee on the Constitution](#) held a [hearing](#) on "Restoring the Rule of Law." The hearing featured eleven witnesses and included more than twenty-four submissions of statements for the record. The purpose of this hearing, Subcommittee Chairman [Russ Feingold](#) (D-WI) said, was "to hear from legal and historical experts on how the next President should go about tackling the wreckage that this President will leave." Sen. Feingold noted that he would submit the hearing record to the incoming president, and statements of the witnesses and all of the submitted written testimony

are available on Sen. Feingold's (D-WI) [Web site](#). The webcast of the hearing is available on the Subcommittee's [Web site](#).

On the day of the hearing, Sens. Feingold and [Dianne Feinstein](#) (D-CA) introduced a bill that would require the Attorney General to report to Congress when the Department of Justice's Office of Legal Counsel (OLC) issues a legal opinion concluding that the executive branch is not bound by a statute. [S. 3501](#), the *OLC Reporting Act of 2008*, responds to the Bush Administration's use of secret OLC opinions to justify policies on matters such as torture and warrantless wiretapping. The bill is endorsed by Dawn Johnsen, former Acting Assistant Attorney General of the OLC, and Bradford Berenson, former counsel to President Bush. The Judiciary Committee an [Executive Business Meeting](#) on Thursday, September 25, 2008 to consider the bill.

House Oversight Subcommittee Holds Hearing on FOIA Ombudsman

On Wednesday, September 17, the House Oversight and Government Reform's [Subcommittee on Information Policy, Census, and National Archives](#) held a hearing on the implementation of the Office of Government Information Services (OGIS), the Freedom of Information Act (FOIA) ombudsman office created by the OPEN Government Act ([P.L. 110-175](#)). Congress placed OGIS within the National Archives and Records Administration (NARA) to review agency compliance with FOIA and offer mediation services to requestors. However, the White House has stated that the Department of Justice (DOJ) should instead carry out the responsibilities of the office.

In his [testimony](#), Archivist of the United States Allen Weinstein encouraged Congress to work with the White House to resolve their differences on whether OGIS should be located at NARA or the DOJ. As AALL stated in letters to the [House](#) and [Senate](#) Appropriations Committees in February 2008, allowing DOJ to oversee the office in charge of FOIA mediation services would create a major conflict of interest, and it contradicts Congress's explicit intent.

The other witnesses at the hearing, including [Thomas Blanton](#), Director of the National Security Archive at George Washington University, [Patrice McDermott](#), Director of OpenTheGovernment.org, and [Terry Mutchler](#), Executive Director of Pennsylvania's Office of Open Records, offered recommendations for creating a successful ombudsman office. To access the witness testimony, visit the [Subcommittee's Web site](#). For a more detailed summary of the hearing, see the [Blawg](#).

Judge Orders VP Cheney to Preserve Records

On September 8, 2008, [Citizens for Responsibility and Ethics in Washington](#) (CREW), the [American Historical Association](#), the [Organization of American Historians](#), the [Society of American Archivists](#), and historians Stanley Kutler and Martin Sherwin filed a [complaint](#) against Vice President Dick Cheney, the Office of the Vice President (OVP), the Archivist of the United States and the National Archives and Records Administration (NARA), asking a federal judge to declare that Vice President Cheney's records are covered by the [Presidential Records Act](#) (PRA) and that the records must be preserved for the American public.

Advocates fear that Vice President Cheney and the OVP may not turn over their records to NARA at the end of this administration, instead disposing of the records under the presumption that the Vice President and OVP are not covered by the PRA. In 2001, President Bush issued [Executive Order 13233](#), which gave current and former presidents and vice presidents broad authority to withhold presidential records. The executive order also declared that the PRA applied only to the "executive records" of the vice president. Since this executive order, Vice President Cheney has repeatedly declared that he and the OVP are not part of the executive branch.

On September 20, a federal judge issued a [preliminary injunction](#) requiring Vice President Cheney, the OVP, the Executive Office of the President, the archivist and the National Archives and Records Administration to preserve all vice presidential records, broadly defined to encompass all records relating to the vice president carrying out his constitutional, statutory or other official or ceremonial duties.

See the [Blawg](#) for more information about the law suit and background on legislation supported by AALL, [H.R. 1255](#) and [S. 886](#), to reverse E.O. 13233.

Senator Says Government Spending Site Fails to Post Updated Information

[USAspending.gov](#), created by mandate in 2007 to fulfill one of the requirements of the Federal Funding Accountability and Transparency Act of 2006 ([P.L. 109- 282](#)), has failed to provide up-to-date information on government contracts and grants, according to an [article](#) published earlier this month in NextGov. Senator [Tom Coburn](#) (R-OK), an original co-sponsor of the 2006 law, criticized agencies, who he says are not posting information on each grant and contract awarded, as required by the law. In June, Sen. Coburn and Sen. [Barack Obama](#) (D-IL) introduced the

Strengthening Transparency and Accountability in Federal Spending Act of 2008 ([S.3077](#)) to strengthen the current law by making technical corrections to the 2006 law by increasing the data available to the public, improving data quality on the USASpending.gov Web site, and providing more information about contractor and grantee performance. AALL sent a [letter](#) to Sens. Coburn and Obama in support of the bill.

OUTSIDE THE BELTWAY: CHAPTER NEWS

If you have news on policy or legislative issues in your AALL Chapter, please [let us know](#). News might address legislation you are tracking, events your chapter is hosting, or anything you think might be of interest to our community. We'd love to hear from you!

U.S. Courts Library in Denver Holds Popular Constitution Day Event

In honor of the original signing of the United States Constitution, the U.S. Courts Library in Denver hosted a very successful Constitution Day event on Wednesday, September 17. For several weeks, the library sent out e-mails full of trivia and ideas on how to learn more about the Constitution. Thanks to staff creativity and artistic skill, visitors to the library's table had the opportunity to sign a modern day replica of the Constitution. Some signers were even brave enough to try the quill dipped in ink! Pocket Constitutions and cookies (courtesy of the library staff) were also available to all signers. We couldn't have been more thrilled with the turn-out and the enthusiasm – we had over 275 signers and gave away more than 250 pocket Constitutions. In the coming weeks, we will show off the Constitution in the library's display case. Although it was not officially a CoALL-sponsored event, several CoALL members participated.

-Submitted by Madeline Kriescher, U.S. Courts Library, 10th Circuit

FREE TIME WELL SPENT: Further Reading for the Information Policy Junkie

Secrecy Report Card Shows Expansion of Government Secrecy

[OpenTheGovernment.org](#)'s fifth annual report, [Secrecy Report Card 2008](#), demonstrates the continued expansion of government secrecy across a broad array of indicators. This year's report

is divided into three parts: Information Trends, Money Trends and Legislative Initiatives toward Executive Branch Openness. Among the major findings:

- **Classification activity still remains significantly higher than before 2001**

In 2006, the number of original classification decisions increased slightly to 233,639, after dropping two years in a row. The numbers remain significantly higher than before 2001.

- **FOIA Requests Continue to Rise; Backlogs Problems Persist**

Almost 22 million Freedom of Information Act (FOIA) requests were received in 2007, an increase of almost 2% over last year. The 25 departments and agencies that handle the bulk of the third-party information requests, however, received 63,000 fewer requests than 2006 — but processed only 2,100 more.

- **Reported Invocations of the State Secrets Privilege Continue to Rise**

Invoked only 6 times between 1953 and 1976, the privilege has been used a reported 45 times - an average of 6.4 times per year in 7 years (through 2007) — more than double the average (2.46) in the previous 24 years.

The Secrecy Report Card also describes some current legislative initiatives aimed at increasing openness in the executive branch. These include the enactment of the OPEN Government Act ([P.L. 110-175](#)) to reform FOIA, efforts to rein in controls of Sensitive But Unclassified information ([H.R. 6576](#) and [H.R. 6193](#)), and bills to reduce overclassification in the federal government ([H.R. 6575](#) and [H.R. 4806](#)). See the [Blawg](#) for further descriptions of other openness bills that AALL supports.

Poll Finds Public Supports Constitutional Separation of Powers

In August, the Associated Press and National Constitution Center conducted a [poll](#) of views on the Constitution, released in time for Constitution Day on September 17. The poll found that Americans strongly oppose giving the president more power at the expense of Congress or the courts, even to enhance national security or the economy. Read the [AP story here](#).

VOTE411.org

[VOTE411.org](#) is a "one-stop-shop" for election-related information, launched by [the League of Women Voters Education Fund](#) (LWVEF) in 2006. It provides nonpartisan information to the public with both general and state-specific information on various aspects of the election process,

including absentee ballot information, factual data on candidates in various federal, state and local races, ID requirements, and polling place locations. This Web site may be especially useful for law librarians who foresee receiving election-related questions as November 4 approaches.

Law Library of Congress Launches Redesigned Global Legal Monitor

This month, the Law Library of Congress announced the launch of the redesigned [Global Legal Monitor](#). The new Global Legal Monitor can be used to view legal developments by more than one hundred topics and by more than one hundred and fifty jurisdictions. Each legal development has its own permanent link. Users can keep up-to-date on new legal developments by [subscribing](#) to the RSS feed or email.

Government Printing Office Nominated for “Green” Award

The U.S. Government Printing Office (GPO) has been named a finalist for Computerworld’s international [Green It award](#) in the category of “ROI in Green Computing” for practicing sustainable environmental stewardship in the information technology area of the agency. Winners of *Computerworld’s* Green Computing Awards will be announced on September 18, 2008, during Computerworld's Green IT Symposium in National Harbor, Maryland.

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