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National Commission on Libraries and Information Science (1990-1991): Article 02

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First Lady Barbara Bush journeyed from the nation's capital to Los Angeles in February to view the operation of the County of Los Angeles Public Library's literacy hotline. She was greeted at the Montebello Community Library by State Librarian Gary Strong and County Librarian Sandra Reuben. There she met adult learners and tutors, recognized the work of the library staff, and was presented a library sweat-shirt and her own library KeyCard.

WASHINGTON OBSERVER

by Frankie Pelzman

FOIA continued...

Early in March Representative Don Edwards (D-Calif.) as chair of the Subcommittee on Civil Constitutional Rights of the House Judiciary Committee held oversight and authorization hearings for the Federal Bureau of Investigation. He was responsible for the oversight hearings last year on the FBI and the Library Awareness Program. His opening remarks, and those of his witnesses, illustrated the role of policy and procedure in those matters where, seemingly, the intent of the Freedom of Information Act (FOIA) is thwarted. That is, the FBI labors under budgetary constraints similar to those constricting most federal programs today. As Edwards noted in his opening state-

ment, when the subcommittee last focused on the FBI's compliance with FOIA, the situation was considered a crisis: the backlog ran between 6,000 and 8,000 requests.

Today the backlog fluctuates between 8,000 and 10,000. A requester, even when the FBI has no problems with the release of information, has a potential wait of nearly a year, although legislation specifies the response time to be within ten days.

This lag time reflects, in part, the loss of forty-three staff positions at the same time that the total number of requests per year has reached about 16,000. Seemingly, then, it is understandable that when a request requires actual analysis or other processing of documents, the FBI's ad-

mitted average response time has risen to 326 days. These figures, the rise in FOIA litigation, and the need for a variety of processing procedures that are not common at other agencies combine to create the bottleneck, according to the chief of the FBI Freedom of Information and Privacy Acts Section, Emil Moschella.

Without denying those facts, others brought different perspectives to the hearing. Lengthy testimony by Sheryl Walter, associate general counsel, and Thomas Blanton, deputy director of the National Security Archive (NSA), used a case study familiar to librarians, the FBI Library Awareness Program. Without reviewing the testimony and its extensive exhibits, it is important to note that we are concerned here not just with administrative procedures but with matters of civil liberty; it is those concerns that are central to the questions NSA addressed to the subcommittee: Why did the New York office of the FBI believe its critics might be Soviet-inspired? Who were the 226 individuals checked on and what did the records checks turn up? Which field offices have conducted library visits, and under what "like programs"? How does the FBI reconcile its recruitment of assets in the library community with the privacy rights of library users?

The NSA testimony suggests the problem is not just with procedure but with policy, including but not limited to the reasons for staff vacancies, the status given to FOIA professionals, and the like. According to NSA, "without [the subcommittee's] active intervention, the natural process of bureaucratic arteriosclerosis would threaten to repeal the Freedom of Information Act...."

Lines of authority

The National Commission on Libraries and Information Science is meeting in Winter Park, Florida as this is being written. A series of communications since the commission's December meeting spell out a scenario that is probably being played out at that meeting; it is difficult to look over the agenda and not see the scheduled items as signifying more than their innocuous listing would suggest. There is nothing unexpect-

UPFRONT *News*

ed: discussion of the White House Conference, NCLIS goals and structure. Most exciting is the second of the commission's hearings on library and information services for native Americans, this time focusing on southeastern tribes in a parallel to the NCLIS field hearings in Santa Fe over a year ago. The new chair of the commission, Charles Reid (confirmed by the Senate on March 16), has made these hearings a major substantive effort on the part of the commission and is to be commended for the continuation of the original effort. Additional hearings are to be held in the Northeast and in the Northwest. Reid has appointed Hakim Khan, formerly acting director of the Department of Education Office of Indian Education, as NCLIS special assistant on library services to native Americans.

The agenda item that reads "Executive Session (if necessary)" is the only indication that it may not be business as usual at NCLIS. In a February meeting, Daniel Carter, NCLIS vice-chair and chair of the White House Conference Advisory Committee (WHCAC), distributed a memorandum, dated February 12, that set out the opinion of the Department of Justice (DoJ) in regard to a number of questions raised by NCLIS Executive Director Susan Martin. These had to do principally with the lines of authority between NCLIS and the White House Conference Advisory Committee and essentially concluded that under the statute establishing the advisory committee and under the Federal Advisory Committee Act, an advisory committee "cannot be delegated the NCLIS's non-advisory executive function."

The thrust of the memorandum casts some doubt on recent activities of NCLIS and the White House Conference Advisory Committee. We now learn that in December, Senators John Glenn and Carl Levin wrote to Jerald Newman, then chair of NCLIS, expressing concern about certain actions of Daniel Carter. The letter from the Senate Committee on Governmental Affairs queries the legal authority for some of Carter's decisions, e.g., his exercise of procurement authority over federal funds, his possible "inadequate and untimely documentation" for 1991 appropria-

tions, and his closed meeting to select an executive director for the White House Conference. (The appointment of Linda Resnik as executive director of WHCLIS was reported in "Upfront/News," March 1990.)

Newman, as chair of NCLIS, responded with a letter dated January 8, 1990. It generally supports Carter and states that "when Mr. Carter's appointment as a commissioner of NCLIS expired on July 19, 1989, I authorized him, as chairman of WHCAC, to distribute and obligate funds for the WHCLIS in accordance with the WHCLIS budget and subject to applicable law (including FACA) subject to my ultimate approval and guidance." Further, he responded that Carter "has the authority to appoint staff, including the executive director for the WHCLIS..." with a search committee made up of members of WHCAC.

Some of the information in Newman's letter was provided in a December 26, 1989 letter from Mary Alice Hedge Reszetar, NCLIS associate director, in response to Newman's request for information. Reszetar described in what capacity(ies) Carter has acted: as WHCAC chair, "he has acted as acting executive director and/or chairman of a federal agency similar to NCLIS. Also, he acted as head of the agency by approving all of the advisory committee personnel records, including his own...including acting as the ethics officer by checking and signing 'no conflict noted' on the Confidential Statement of Employment and Financial Interests, on his own form." Her letter continues to suggest that overall Carter "seemed to be taking on a role with the White House Conference which does not necessarily come with being the chairman of the advisory committee." She also noted that DoE's Budget Office advised a NCLIS administrative officer in July that Treasury Allotment forms would require the signature of the NCLIS executive director and not that of Mr. Carter. The administrative officer apparently did not advise her supervisors of the DoE decision until November. In the interim, a memorandum from the administrative officer informed certain DoE offices that "Daniel H. Carter is the chairman of

the advisory committee for the White House Conference on Libraries and Information Services. He will be signing all documents for signature...."

This letter generally reflects the position Reszetar took in a November 6, 1989 memorandum to Carter and on that same date, the position of a similar and more detailed memorandum from Susan Martin to Newman. The Reszetar memorandum notifies Carter that as NCLIS Designated Federal Official she is unable to approve holding a meeting of the selection committee without appropriate concurrences and public notification. She suggests that a meeting would be appropriate between Newman, Carter, Martin, and other suitable federal officials. In a separate memorandum of the same date, Martin wrote to Newman about the "confusion" surrounding the Executive Director Selection Subcommittee meeting. She also notes that the nature of WHCAC is principally advisory, that it is the "commission [that] is authorized to engage personnel to assist 'the commission and the advisory committee.'" and that the delay in transmitting information about the signatory authority for funds resulted in "a civilian employee...without proper authority" signing almost \$250,000 in purchase orders.

In the earliest memorandum presently available (November 6, 1989), Martin suggests several actions to Newman: that a memo be sent to Carter about the selection process for a WHCLIS executive director; that NCLIS maintain its fiscal responsibility; that Carter's signatory authority be rescinded; that NCLIS reassert its involvement in the WHCLIS process; and that Newman come to Washington for a meeting with the appropriate persons.

Certainly all these issues are capable of resolution, but they may create a drag on the timetable for the conference. There is, however, one oddly discomfiting line in the April report of the NCLIS executive director. In a paragraph discussing the conference she notes: "We are currently sixteen months away from the National White House Conference, *if it is held July 9-13, 1991, as scheduled.*" (Emphasis added.) ■

Senators, federal agencies question authority of WHCLIS committee

The authority of the White House Conference Advisory Committee (WHCAC) has been questioned by the Department of Education, the General Services Administration (GSA), and two U.S. Senators. The Senators specifically questioned the spending and personnel-appointment power exercised by WHCAC Chair Dan Carter.

The 30-member committee is charged with advising the National Commission on Libraries and Information Science (NCLIS) on conducting the 1991 White House Conference on Library and Information Services (WHCLIS).

Last October Mary Alice Reszetar, NCLIS's designated federal official to the Advisory Committee, expressed concern to NCLIS Executive Director Susan Martin that the committee may be operating outside its charter. After consulting GSA and Department of Education officials, Martin told then-NCLIS Chair Jerald C. Newman in a Nov. 6 memo that "we have major problems on our hands. . . . We have been advised that this is the kind of situation that sometimes leads to public embarrassment for top-level agencies. . . ."

According to the memo, NCLIS had delegated "its authority for conference direction, procurement, contracting, personnel, and oversight responsibilities" to the Advisory Committee. The memo said that WHCAC Chair Carter had instructed NCLIS staff member Vivian Terrell to send a memo to the Department of Education last July asking for sole signatory authority for WHCLIS financial and fiscal documents.

Although the department's budget office denied the request, Martin's memo continues, almost \$250,000 in purchase orders had been signed since July by Carter, "a civilian employee without properly authorized signatory authority." Martin points out that since the committee's purpose is primarily advisory, its members cannot be given the fiscal authority reserved to NCLIS.

Both the GSA and the Education Department suggested that Carter was "acting outside his authority. . . and, they stated repeatedly, needs to be 'reined in' by the Commission," said the memo. The agencies said that NCLIS was "operating illegally and may be subject to legal action, both in fiscal and personnel matters."

The memo also said that at an April

1989 meeting Carter urged the Advisory Committee members to lobby their Congressmen for funds for WHCLIS, in violation of the law prohibiting federal employees from lobbying Congress.

"Questionable actions"

In a Dec. 7 letter to Newman, Senators John Glenn (D-Ohio) and Carl Levin (D-Mich.), both members of the Committee on Governmental Affairs, expressed concern about "reports of questionable actions" taken by Carter. The Senators asked Newman to explain the legal authority for Carter's claim that the committee was not subject to Federal Advisory Committee Act (FACA) management and fiscal controls. They also asked why Carter was allowed to exercise authority over federal funds and requested a report on the total expenses incurred by the committee and those paid to Carter. Another question was why NCLIS delegated the personnel authority to select a WHCLIS executive director to a subcommittee of the advisory committee, in violation of FACA.

Newman's Jan. 8 reply stated that NCLIS did not contest the applicability of FACA, but pointed out that FACA requirements and applicability "can sometimes be unclear." Newman said that when Carter's appointment as an NCLIS member expired on July 19, 1989, he authorized him "to distribute and obligate funds for the WHCLIS in accordance with the WHCLIS budget and subject to applicable law

(including FACA)."

Regarding personnel authority, Newman said the WHCAC chair has the legal authority to appoint staff, including the executive director, and that Carter had sought assistance from a search committee made up of WHCAC members.

Newman told the Senators that at its Dec. 11-12 meeting, NCLIS reaffirmed its authority, stressing that WHCAC should plan and conduct WHCLIS under the direction of NCLIS.

In a Feb. 22 reply, Sen. Levin expressed concern over Newman's omission of any reference to the concerns voiced by Martin in her November memo that to exercise such authority is improper and contrary to legal advice. Levin said he was asking GSA for a written opinion on the matter.

Justice's opinion sought

At the suggestion of NCLIS Chair-designate Charles Reid, Martin requested an opinion on NCLIS's authority and its relationship to WHCAC from the Department of Justice's Office of Legal Affairs. The 10-page opinion, which generally stresses WHCAC's advisory role and inability to delegate its functions and responsibilities, largely confirms the earlier Department of Education and GSA interpretations. At a WHCAC meeting Feb. 16, Newman said the Justice opinion would be followed by the committee in the future.

In a March 30 letter to Reid, three members of the House Subcommittee on Post-secondary Education—Reps. Patrick Williams (D-Mont.), William D. Ford (D-Mich.), and Major Owens (D-N.Y.)—said they were "troubled by the seriousness of the charges and hope that, under your direction, they will be carefully reviewed and addressed." They called the credibility of WHCLIS "of utmost importance to the Subcommittee" because of the expectation that its recommendations will serve as the basis for the next reauthorization of the Library Services and Construction Act.

Reid, who replaced Newman in mid-March, told *AL* that he felt the Congressional concerns "have been resolved with my chairmanship." He said that before Newman stepped down, he asked the Department of Education to conduct audits of NCLIS and WHCLIS "to clear up the matter."
—G.F.

Martin to leave NCLIS

Susan K. Martin has announced her resignation as executive director of the National Commission on Libraries and Information Science, effective June 30. Martin, who came to NCLIS in August 1988, will become university librarian at Georgetown University in July.

Martin told *AL* her tenure at NCLIS was "an extremely valuable experience. I wouldn't have missed it for the world," but when the Georgetown position became available "it was very hard to resist." She regretted the fact that she would miss the opportunity to work with new NCLIS Chair Charles Reid, but added that since she would remain in the Washington area she would be able to work closely with her successor during the transition.