

MODULE 8

Lecture 1

Ethical Issues and the Information Seeker

By

Debbie Hansen

Up until now the focus of LIBR 200 has been on the information-seeking behavior of various communities and the resources, services, and strategies information professionals have developed to meet these communities' information needs. When connecting users to information, information professionals endeavor to recognize and be sensitive to the interpersonal and sociocultural dynamics involved in helping people locate information. We also assume responsibility for bridging the communication gaps that are an inherent part of information service.

However, there are additional factors that influence an information professional's ability to provide users with the information they seek. At times we are asked to provide information that we're not comfortable with. At other times we withhold information because of the nature of the request. The two key factors in determining whether or not we answer a user's question are 1) professional ethics and 2) legal precedents.

I remember experiencing many ethical dilemmas when working in libraries and archives. There were various incidents and interactions that, upon reflection, bothered me in terms of the information I was being asked to provide as well as how I responded to certain people and their questions.

One my most memorable experiences happened back in the late 1980s when I was in charge of the local history room at the Anaheim Public Library. I had just started teaching for SLIS and had cut back my hours to half time. I usually worked the afternoon so I'd be there when the history room was open to researchers. I was driving to work one day, and on the radio I heard a news flash that a shooting had taken place in an Anaheim high school. The reporter stated that a 15-year-old boy armed with a rifle had taken his drama class hostage. At first, the students thought it was a joke—sort of an acting exercise. Slowly they realized it wasn't a joke; this kid really was threatening to shoot someone. One of the students challenged the boy with the rifle, saying "Go ahead, shoot me." And the kid with the

rifle shot this other student! Chaos ensued, police were all over, and eventually the assailant was arrested and the victim taken to the hospital. Luckily the boy who was shot survived, so it wasn't as tragic as the many horrible campus shootings that have occurred since then.

I arrived at the library and innocently walked up to the second floor where the local history room was located. When I got to the door, I was swarmed by TV and newspaper reporters, all wanting to get information contained in the archives, especially photos of the boys involved in the shooting. We had a collection of yearbooks from Anaheim middle schools and high schools, which, of course, included many photos. I went to the stacks to find the pertinent yearbooks, but they were gone! There was an empty space on the shelves where the books should have been.

I kept telling the impatient reporters that the annuals were somewhere in the library as special collections materials didn't circulate. Then my assistant took me aside and whispered that earlier that day, just after the shooting, a reporter from the *Orange County Register* came in. I wasn't there, so another staff person had gone into the history room and retrieved the yearbooks. She gave them to the reporter and let him take them back to the newspaper offices to make copies of the photos. The reporter promised to bring the yearbooks back to the library within the hour.

In the staff person's defense, our library had a close relationship with the local newspapers. We often let reporters check out non-circulating materials for their stories, including photos. The newspapers gave us materials for our historical archives in return. So the library and the local newspapers had an informal arrangement, and this staff person was operating within this customary practice.

As you can imagine, the other reporters were furious, especially since they'd been waiting for me for over an hour. Then they discovered that the books had been given to a competitor newspaper. The reporters felt manipulated and lied to. I called the *Register* demanding the books be returned right away and was assured that this would happen soon.

The reporters waited a long time for the annuals to be returned, but they never showed up. The reporters sat staring at me. They were incensed. Eventually they left, and obtained copies of the yearbook photos from the

OC Register. In their news reports they credited the *Register*—not the library—as the source of the photos!

The reason I'm telling you this story is that there are so many ethical issues involved in this scenario. Here are some of the obvious ones.

1. Equal access to materials and information. By giving preferential or exclusive treatment to one newspaper, the library staff behaved unethically.
2. Freedom of the press. We need to provide information to the press according to the First Amendment of the US Constitution.
3. Privacy. What about the rights of the minors involved in the shooting? Should the library have given out their photos? What about protecting the access to and use of their likenesses?
4. Professional conduct. A staff member violated policies of the library to benefit a certain individual or organization.
5. Confidentiality. We librarians (ok, I did) told the reporters that the *Orange County Register* had the high school annuals. Information professionals are not supposed to divulge a patron's information request or circulation records. This is not only unethical, it's illegal!

As this experience reveals, information work can be fast paced and stressful, and under pressure it's easy to respond unthinkingly and take actions that are inconsistent with our professional values and ethics. In this situation, our library director was very understanding and used the incident to have the staff reflect on what went wrong and how we would respond in the future. Everyone involved was embarrassed, but we ended up with a stronger professional bond afterwards.

Ethical Dilemmas in Professional Practice^{*}

Such ethical crises are not uncommon in a library, archives, or other information environment. Working with people seeking information—either

^{*} Citations for the articles mentioned in this are provided in the list of sources below.

in the public or private sector—requires spur-of-the-moment decision-making which often tests our values and ethics.

A fundamental tenet of librarianship is to provide the information requested by every patron or client in an *equal* and *neutral* manner. You don't make value judgments when helping people locate information. You don't provide certain information to one person and withhold it from others.

Ethical dilemmas occur when different values (professional and personal) come into conflict. They often arise when you are uncomfortable with the implications of a question and how that information might be used. Could this information be used in a way that's harmful to others? To society? Or even to the person requesting it? For example, a number of years ago, there was a debate within the profession about the book *Final Exit*, which is a guide to how to commit suicide. Should you have this book in your collection? What if someone wants to check it out?

Another example I've read about has to do with the assassination attempt on Ronald Reagan in 1981. Several hours after John Hinkley shot the president, a woman identifying herself as a journalist called the library in John Hinkley's hometown and asked the librarian to look in the telephone book for phone numbers of anyone named Hinkley residing there. The librarian wondered whether the caller really was a journalist. How was this person going to use this information? If the Hinkley family (or any poor soul named Hinkley) was harassed or injured, would the librarian or library be culpable? The librarian considered withholding the information, but ultimately did not, since the information was readily available in the library and given out over the phone on other occasions.

A second type of ethical dilemma occurs when someone wants information that might harm your employer. I had this uncomfortable experience as an academic librarian when a graduate student came to me with a completed doctoral dissertation that lacked a list of references at the end. The dissertation was in APA style so she had the authors' last names and publication dates in the text. But she needed help finding the full citations for her reference list. I asked her about the books and articles—discipline, possible publishers, subject area, etc.—to get some clues as to which databases I should recommend. She didn't seem to have any idea of what the items were about, possible titles, or where they might have been published.

I was writing my dissertation at the time, and I certainly knew my sources cold. I may not have known the exact title or publisher, but I could come close. I suspected she hadn't written the dissertation but was passing it off as her own. I was very unhappy dealing with her so after she left I consulted my supervisor. Maybe we should contact the chair of her department, I suggested. The head of reference said absolutely not. She reminded me that we are neutral information providers; we don't pass judgment on someone's request, and we certainly don't reveal their reference questions to others (like faculty).

A third type of ethical dilemma happens when a librarian is confronted with a request for information that conflicts with his or her own values and beliefs. One of the most harrowing examples happened in the medical library profession. The debate was over a classic reference source on human anatomy, *Pernkopf's Atlas*, which was first published in the 1930s. The compiler of this anatomy reference book, Eduard Pernkopf, was a prominent physician and professor of anatomy as well as the director of the Vienna University Medical School. His atlas is a classic source on human anatomy and is famous because of the beauty and accuracy of its illustrations.

Pernkopf was also a virulent Nazi, who fired all Jewish and non-Nazi faculty members in the university's medical program. He dedicated the school's curriculum to the study and practice of eugenics, which included sterilizing people deemed by the Nazis as genetically inferior. In 1995, an article in the *Annals of Internal Medicine* revealed that the artists who did the illustrations for this famous reference book were Nazis, some even signing SS after their names. The original preface openly stated that the models for the illustrations were executed war criminals, which, in Pernkopf's words, were "fortunately plentiful."

You can imagine librarians' horror at having a book like this on their reference shelves. Yet to censor the atlas by removing it from the collection would be unethical, too. What did they do? According to the survey conducted for the 1995 article, not one librarian removed the book from their reference collection. Instead, they inserted a note provided by the publisher explaining the history of the text. In this way library users could make their own informed decisions as to whether or not to use this source.

There have been some interesting studies to see how librarians handle such ethical dilemmas in practice. One of the most famous was conducted by Robert Hauptman in the late 1970s. This was during a period of international terrorism, and Hauptman decided to see what librarians would do if he asked them to help him find information on how to build a bomb. The bomb, he told librarians, didn't have to cause a big explosion, just be powerful enough to blow up a small suburban house. Hauptman had a beard and dressed scruffily so as to seem disreputable. He asked his question in both academic and public libraries. He found that not one librarian refused to help him find this information. He was quite dismayed and argued that it is socially irresponsible to give out certain information and that librarians should balance the needs of patrons with the needs of society. To quote Hauptman, "Protecting and advancing the free flow of information is commendable, but there may be times when it is ethically unacceptable."

Not surprisingly, Hauptman's writings on professional ethics sparked a lot of controversy. His critics argued that the profession's primary obligation is to provide patrons with information requested without filtering that request through a set of personal values or assumptions as to how the information might be used. They argued that there's a big difference between reading about something and actually doing it.

One of Hauptman's most vocal critics was the late John Swan. Swan rebutted Hauptman in several articles, arguing: "Providing information is an act of personal as well as professional commitment. You or anybody else who comes to the reference desk asking for information about building a bomb has a right to whatever guidance the librarian can give him." To do otherwise, Swan argued, would result in professional chaos. If every librarian filtered information requests through a set of personal criteria, too many people would be turned away for illegitimate reasons.

An interesting follow up to Hauptman's study was done by Robert Dowd, who at the time was a doctoral student at UCLA. In this case, Dowd asked the librarians for some help on finding out how to free-base cocaine. In this situation, again, not one librarian questioned why he needed the information or how he planned to use it. Most librarians responded in a straight-forward manner, using the library's resources to locate pertinent information. One librarian was especially helpful, suggesting a head shop down the street and that he take a look at *High Times* magazine. Other librarians were only minimally helpful. They took a more passive-

aggressive approach by simply pointing to an area of the library and suggesting that he look over there. They didn't refuse to answer the question, but didn't provide much help.

As you can imagine, this issue has taken on more immediate importance since 9/11. When photographs of the planes' hijackers were released, a public librarian in Delray Beach, Florida, recognized some of the suspects as men who had used the library's computers. She called the police to report this. In doing so, she broke the law, as well as ignored a basic tenet of the ALA's Code of Ethics. Still, the librarian believed that she did the right thing. "People were murdered and people have the right to know that terrorists were here in our library using our public facilities." Acting on this information, the FBI got a court order to remove the library's computers hoping to find some emails from the accused terrorists. The library director, however, censored the employee for breaking not only library's rules but also Florida law. The president of ALA issued a statement that the organization regretted the librarian's actions, however well-intentioned. The Homeland Security Act now preempts state laws on patron privacy and makes the action taken by the librarian legal. I'll talk more about this later.

Unethical Practice

Ethical dilemmas are most obvious when it comes to providing information services. But there are ethical aspects to other professional activities that also impact our work with information communities. Let me review some of the major areas of contention.

1. Levels of Service. Is it ethical to provide different levels of service because of the status, influence, or wealth of a user? In a special library or corporate setting, yes. In a public or academic setting, no.

2. Fees for Service. Is it ethical to charge for certain types of materials or service, even if charging discriminates against those who can't afford to pay? It happens all the time and depends on the type of information organization that you work in. Many feel that to charge for materials or services in a public library is unethical. I have a personal beef against my local library for charging me to checkout popular movies, even though documentaries and educational films are free. Why discriminate?! This policy doesn't apply to fiction and nonfiction books.

3. Dispensing Professional Advice. To what extent can a librarian provide information that requires the expertise of another profession? When do you cross over from *providing information* to actually *dispensing professional advice*? The hot areas are medical information and legal information. Librarians are advised to show sources and explain how to use them, but not interpret the information. Yet you have the books in your collection; you help people use them; how can you not go the next step and help them understand the information without appearing rude? Studies of individuals seeking medical or legal information have found that users often leave the library disgruntled because the librarian didn't help them understand the information they located. But ethically, the librarians couldn't.

4. Violating Copyright. The role of the information professional is to provide access to information at the lowest cost. At the same time, we must respect authors' copyrights. Fortunately, there are library exceptions written into the US copyright law that allow libraries, archives, and other repositories to collect and make available copyrighted materials. The legal concept of fair use also allows libraries to copy and distribute limited amounts of copyrighted material (say for interlibrary loan) without getting the copyright holder's permission.

Copyright also covers "expurgation." Expurgation means deleting, altering, editing, or obliterating part of a book or other resource. This is censorship; it also violates copyright. I once read about a librarian who did this with a popular children's book that had anatomically correct pictures of children in it. She added diapers. That's expurgation.

Another issue involving copyright has to do with displays and digitization. Current copyright law allows libraries and archives to display copyrighted items, so long as the display is in the building where the item is permanently located. This applies to digitized copies as well. A library or archives can include copyrighted materials in an in-house website or database. However, people must be in the library to view the materials—as they would be when looking at a book or document sitting in a display case. Digitizing items still under copyright and putting them on a public website, however, violates copyright law. You'll be learning a lot more about US copyright law and fair use in your LIBR 204 class, so I won't belabor the point here. Just keep in mind there are both ethical and legal dimensions when it comes to dealing with copyrighted material.

5. Collection Development. Information professionals confront ethical issues when it comes to collection development as well. We'll be spending a lot of time talking about this topic in our lecture on intellectual freedom, so I'll just introduce the topic now.

The acquisitions librarian is expected to collect materials representing all points of view and avoid censoring information at all costs. Ethical tensions are bound to arise when selection goes against the interests and values of certain segments of the community. Often a librarian confronts the unpleasant possibility that an item he or she selects for the library will cause controversy and generate negative publicity for the institution. In other instances, a publication may be personally offensive to the librarian or may have the potential to harm others, particularly children.

In dealing with collection development, the librarian must balance the professional ethics of providing materials representing all points of view with the needs and values of the information communities that he or she works with. Every institution has—or should have—a detailed collection development policy that guides acquisitions decisions as well as some sort of procedures in place in the event a patron challenges an item in the collection. Because there are legal as well as ethical dimensions to this area, I'll cover censorship in more depth in next week's lecture.

6. Private interest and personal advancement. There was a situation that made the newspapers not long ago, where a library director resigned from her job because she had been using her professional position for personal gain. In this case, she used the library's discount with different vendors to purchase books for her own personal library. Can you imagine jeopardizing your job and good name to save a few bucks in this way?

It's incumbent upon librarians not to use their positions for personal gain or advantage. The woman who asked for help with locating references for her dissertation also wanted to buy me a thank-you gift. That's the last thing I needed! On the other hand, she came from a culture in which thank-you gifts were quite common, if not obligatory. Remember a few weeks ago when I discussed the importance of cultural competence? It was at work in this situation, too.

This issue is particularly important for archivists and rare book librarians and is addressed clearly in the Society of American Archivists' Code of Ethics. Information professionals who are expert in rare materials are often collectors of old books and manuscripts themselves. They might do business with a rare book dealer for both personal and professional purposes. It's very easy to use one's professional contacts and influence to enhance one's own collection of rare books and manuscripts. It's a no-no.

7. Privacy. I've saved the most contentious issue for last: privacy. What do you do if the information someone seeks is, or may result in, an invasion of another person's privacy? There was an interesting controversy a few years ago when a public librarian in Michigan wrote a fictionalized account of her work experiences titled *The Library Diaries*. In it, she described many of her patrons, referring to them as "crazy, bums, ignorant, and perverts." Although she used a pseudonym, her depictions were so accurate as to make these people identifiable. She was fired for invading her library patrons' privacy.

Patron confidentiality is a major component of ethical practice. An individual's reading choices are confidential. The questions they ask, the reference sources they consult, the internet sites they visit, and the books they check out are all confidential.

Patron confidentiality is supported by the U.S. Constitution, specifically:

- 4th Amendment: protection against unlawful search and seizure
- 5th Amendment: protection against self-incrimination
- 14th Amendment: due process

Patron confidentiality is also established by federal and state law. Congress passed the Privacy Act in 1974, updated in 1988, which forbids the creation and maintenance of secret files and databases on people or using information collected for one purpose for some other purpose. For example, the government isn't supposed to take data submitted to the IRS for taxes and use it for some other, unspecified purpose.

In libraries, this law relates specifically to circulation records. Librarians argue that circulation records are created to document the whereabouts of library materials. They were not created to track someone's reading interests or political activities and should not be used for purposes

for which they were not intended. Individual states have also passed legislation making library records confidential. Because of these laws, libraries purge circulation records and internet use records when the patron has finished using the materials, usually within 48 hours.

Ironically, patrons often ask for a list of books they have checked out to keep track of what they have read and are annoyed when the circulation staff can't provide them with this information. In this situation, staff members need to make it clear to our patrons that we intentionally break the connection in our databases between patron record and bibliographic record so as to protect their privacy.

Law enforcement *can* get access to library records. The officers have to go before a judge and prove that library records are needed in an on-going criminal investigation. If they can show cause, they will get a court-ordered subpoena, and the library will release its patron records.

Because of the debates surrounding the USA Patriot Act and more recently the NSA's controversial collecting of personal data, this seems like a fairly new topic, but librarians have been concerned about patron confidentiality for more than 30 years. Privacy first attracted professional notice in the 1970s when the FBI began monitoring library patrons in what they called the "Library Awareness Program." Federal agents sought to restrict certain individual's access to government documents that were freely available in public and academic libraries, especially scientific data. To do this, they recruited library workers to report to the FBI any "foreigners," especially those with Russian or Eastern European accents, who showed an interest in these types of materials. FBI agents targeted library staff, mostly at circulation desks, appealing to their patriotism and asking them to report the circulation records of suspicious characters.

The ALA protested this invasion of privacy, confronting the FBI directly and speaking before a Congressional hearing on the matter. The ALA urged librarians to not cooperate with the FBI, unless enforcement officials secured a legally binding court-ordered subpoena. The FBI refused to back down; in fact, they started investigating and creating files on librarians who protested the surveillance. The FBI has never publicly ended this program, but today librarians are much more informed of the ethical and constitutional issues involved.

And now we have the USA Patriot Act, passed in October 2001 in response to 9/11 and reauthorized in 2011. An acronym for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, the USA Patriot Act supersedes or simply conflicts with earlier laws passed in the wake of the Library Awareness Program. The USA Patriot Act makes it easier for the FBI or other law enforcement agencies to access people's personal data, including circulation and Internet records. Instead of requiring law enforcement to obtain a court-ordered subpoena, authorities need only a search warrant to gain access to library circulation and internet records. In getting this search warrant, law enforcement does not have to demonstrate "probable cause"—the existence of specific facts to support the belief that a crime has been committed or that the items sought are evidence of a crime. Instead, officers need only to state to the court that the library records are in support of an ongoing investigation related to terrorism or intelligence activities.

Also, the search warrant is not approved by a judge, but by a special court called a FISA (Foreign Intelligence Surveillance Act) Court whose members are unknown and their decision-making kept secret. Local authorities can also obtain a national security letter from the FBI which authorizes them to look at patron records. Librarians served with a FISA court-ordered search warrant or an FBI national security letter are automatically placed under a gag order and may not disclose to the patron or anyone else the existence of the warrant or the fact that library records were released as a result of the warrant. The librarian is not supposed to keep any record of the search or tell anyone about the investigation. The gag order is in effect for one year.

Librarians have vigorously protested the library provisions in the USA Patriot Act as unnecessary and unconstitutional. It violates patrons' constitutional rights to privacy and due process and violates librarians' free speech. In fact, in 2005 several librarians in Connecticut filed a lawsuit against the federal government claiming that the law's gag order violated their free speech. In *John Doe vs. Gonzales*, a district court judge ruled in favor of the librarians, saying that:

The government may intend the non-disclosure provision to serve some purpose other than the suppression of speech. Nevertheless, it has the practical effect of silencing individuals with a constitutionally protected interest in speech and whose voices are particularly

important in an on-going national debate about the intrusion of governmental authority into individual lives.

The judge also said that the potential for abuse is written into the Patriot Act and that “the very people who might have information regarding investigative abuses . . . are preemptively prevented from sharing that information with the public.”

The Justice Department filed an appeal, but later dropped it so as to avoid bringing the Patriot Act to the Supreme Court.

The American Library Association’s Washington Office monitors the issues and debates surrounding the USA Patriot Act and provides current information on its website. The ALA also gives advice to librarians on how to deal with patron information inquiries from government officials. Here’s the link:

<http://www.ala.org/advocacy/advleg/federallegislation/theusapatriotact>

Conclusion

As you can see, providing users with the information they request involves more than simply understanding their information-seeking behavior. It is impacted by professional ethics and public policy as well. Moreover, what constitutes ethical practice can vary depending on the information environment within which one works. In lecture 2, I’ll discuss professional codes of ethics and explore some of their similarities and differences.

Sources

American Library Association. (2010). Intellectual freedom manual. Chicago: ALA.

American Library Association. (2007). The USA Patriot Act in the library. Retrieved from <http://www.ala.org/offices/oif/ifissues/usapatriotactlibrary>

- Caidi, N. & Ross, A. (2005). Information rights and national security. *Government Information Quarterly*, 22(4), 663-684.
- Dowd, R. C. (1989). I want to find out how to freebase cocaine; Or, yet another unobtrusive test of reference performance. *Reference Librarian*, no. 25-26, 483-493.
- Foerstal, H. C. (1991). *Surveillance in the stacks: The FBI's library awareness program*. Westport, CT: Greenwood Press.
- Hauptman, R. (2007) Access subverted. *Journal of Information Ethics*, 16(2), 3.
- Hauptman, R. (1998). Professionalism or culpability? In *Ethics, Information and Technology Readings*, ed. R. N. Stichler & R. Hauptman, 291-295. Jefferson, N.C.; London: McFarland & Co.
- Israel, H.(1998). The Nazi origins of Eduard Pernkopf's Topographische Anatomie des Menschen: The biomedical ethical issues. *Reference Librarian*, no. 31-32, 131-146.
- Reid, M. (2009). The USA Patriot Act and academic libraries, *College and Research Library News*, 70, 646-650.
- Schafer, J. (2007). Rebuttal to "Access Subverted" [Reply to Access Subverted by Robert Hauptman]. *Journal of Information Ethics*, 16 (2), 4-5.
- Sturgeon, R. L. (2007). Laying down the law: ALA's codes of ethics. *American Libraries*, 38(10), 56-57.
- Swan, J. (1998). Untruth or consequences? In *Ethics, Information and Technology Readings*, ed. R. N. Stichler and R. Hauptman, 64-75. Jefferson, N.C.; London: McFarland & Co.
- Wiener, P. B. (1987). Mad bombers and ethical librarians: A dialogue with Robert Hauptman and John Swan. *Catholic Library World*, 58, 161-163.

Wolkoff, K. N. (1996). The problem of holocaust denial literature in libraries. *Library Trends*, 45, 87-96.