

**AMERICA'S MOST DANGEROUS LIBRARIANS**  
**or**  
**THE USA PATRIOT ACT AND LIBRARIANS**

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Introduction to Library and Information Science  
Spring 2011  
March 21, 2011

## **The Attack - September 11, 2001, “9/11”**

On September 11, 2001, nineteen terrorists hijacked four commercial United States commercial airliners. Two of the planes were flown into the towers of the World Trade Center in New York, and one into the Pentagon in Washington DC. The fourth jet crashed into a field in rural Pennsylvania as the passengers attempted to wrest control from the hijackers. Over three thousand people died as a result, including all of the hijackers. That day signaled the end of American innocence about the invincibility of their country, and national security became the top priority of the United States.

The terrorist group al-Qaeda, with Osama bin Laden as its leader, claimed responsibility for the attacks. Originating in Afghanistan after the Soviet invasion in 1979, today bin Laden leads an organization with stated directives to Muslims to kill Americans and their allies, and to destroy Israel. It is thought that bin Laden began planning the US attacks in 1996, handpicking hijackers to take flying lessons ,to study US security procedures, and to assimilate into the American culture.<sup>1</sup> Bin Laden has never been found, and still considered to be one of America’s greatest threats.

## **The Response**

The United States responded to this attack by shutting down all airspace for three days to prevent further hijackings. Mass confusion and fear spread across the country. Because the hijackers had successfully passed through security checkpoints at airports, there was a call for increased security measures to be implemented. US flag sales at WalMart increased 1,800%,<sup>2</sup> and during this period of uncertainty, President Bush stood tall in his cowboy boots, looked us in

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<sup>1</sup> Borgna Brunner Laura Hayes, “Al-Qaeda — Infoplease.com,” <http://www.infoplease.com/spot/al-qaeda-terrorism.html> (accessed March 20, 2011).

<sup>2</sup> Paul A Ibbetson, *Living Under the Patriot Act: Educating a Society* (Bloomington, IN: AuthorHouse, 2007), 18.

the eye, and presented himself as the man to lead us out of our darkness. His approval rating shot up to historical highs.

The threat of more foreign terrorists infiltrating our borders and attacking from within kept the country on edge. President Bush and Congress Acted swiftly by creating new legislation, and one of the first was the passage of the USA PATRIOT Act.

### **The USA PATRIOT Act – October 26, 2001**

Cleverly titled to promote immediate passage, the acronym stands for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.” Claiming that more attacks were imminent, President Bush and Attorney General John Ashcroft urged Congress to pass the bill immediately, without change, deliberation, or debate typical of most legislation. When frightened, people are willing to give up more rights as their level of fear increases,<sup>3</sup> and Congress was able to pass the USA PATRIOT Act (the Act) forty-five days after 9/11. The Act was intended to address the new national security concerns revealed by the terrorist attacks. The vote was nearly unanimously in the Senate at 98-1, and 357-66 in the House.<sup>4</sup> The United States of America could now feel safer!

### **The Controversy**

Since its passage almost ten years ago, the USA PATRIOT Act has been the subject of many debates as it straddles the competing issues of civil rights versus public safety. According to the Department of Justice, the Act equips federal law enforcement and intelligence officials with the tools they need to mount an effective, coordinated campaign against our nation's terrorist enemies. However, the Act's reach must be balanced with the need to protect civil

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<sup>3</sup> Amitai Etzioni, *How Patriotic Is the Patriot Act?: Freedom Versus Security in the Age of Terrorism* (New York: Routledge, 2004), 17.

<sup>4</sup> “What is the USA Patriot Web,” <http://www.justice.gov/archive/ll/highlights.htm> (accessed March 3, 2011).

liberties. The American Civil Liberties Union (ACLU) claims that US PATRIOT Act vastly expands the government ability to spy on its own citizens, while simultaneously reducing the checks and balances on those powers, such as judicial oversight, public accountability, and the ability to challenge government searches in court.<sup>5</sup> Civil libertarians feel that the Act violates the First and Fourth Amendments as follows:<sup>6</sup>

First Amendment: The right to free speech. The Act allows investigation into citizens' First Amendment activity of free speech (privacy of reading material), and by enforcing gag orders even if there is no need for secrecy.

Fourth Amendment: Guards against unreasonable search and seizure. The Act allows the FBI to demand records without any sort of judicial oversight. The FBI felt that it was important to be able to move swiftly in the event of suspicious actions, and that the time it might take to obtain a search warrant could undermine an ongoing investigation.<sup>7</sup>

### **The Effect on Librarians**

The Act covers 350 subject areas that involve forty different federal agencies.<sup>8</sup> This paper will focus on Sections 215 and 505 of the USA PATRIOT Act as these are the sections that most affect librarians' responsibilities. Section 215 of the Act allows the Federal Bureau of Investigation (FBI) to demand any person or entity to turn over "any tangible things," so long as the FBI specifies that the order is for an authorized investigation to protect against international terrorism or clandestine intelligence activities. This is accomplished by the issuance of a

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<sup>5</sup> Etzioni, *How Patriotic Is the Patriot Act?*, 9.

<sup>6</sup> Ibbetson, *Living Under the Patriot Act*, 94.

<sup>7</sup> Ursula Gorham-Oscilowski and Paul T. Jaeger, "National Security Letters, the USA PATRIOT Act, and the Constitution: The tensions between national security and civil rights," *Government Information Quarterly* 25, no. 4, OmniFile Full Text Mega (October 2008): 630-35.

<sup>8</sup> Ibbetson, *Living Under the Patriot Act*, 6.

National Security Letter (NSL) under Section 505.<sup>9</sup> Those who are asked to turn over records by an NSL are subject to a gag order; they may tell no one that they were asked, or whether records were given to the FBI. Probable cause or search warrants are not required, and persons under investigation are not allowed to be notified.<sup>10</sup>

As a part of his 2003 tour promoting the US PATRIOT Act, Attorney General Ashcroft belittled the “hysteria” of claims that libraries are subjected to search, claiming that the USA PATRIOT Act was never used to check library records:<sup>11</sup> safe in the knowledge that gag orders would prevent any rebuttal from those who had received them.

### **America’s Most Dangerous Librarians**<sup>12</sup>

On July 13, 2005, George Christian, Executive Director of Library Connection, Inc., is visited at his office by two FBI agents. The Library Connection, Inc. is a consortium of twenty-seven libraries located in the Hartford, Connecticut area that share a common computer system. An agent hands Christian a National Security Letter dated May 19, 2005, requesting information about a specific IP address registered to Library Connection, Inc. for a date five month earlier, on February 15, 2005. This NSL allows the FBI to demand these electronic records without a search warrant, and Christian is now under a gag order.<sup>13</sup> Fortunately, Christian is prepared for a visit from the FBI, and he decides that he is going to oppose the request as he believes it to be

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<sup>9</sup> Ibid., 32.

<sup>10</sup> “Reform the Patriot Act | Section 215,” <http://www.reformthepatriotact.org/215.html> (accessed March 3, 2011).

<sup>11</sup> Eric Alterman and Mark Green, *The Book on Bush: how George W. (mis)leads America* (New York: Viking, 2004), 92.

<sup>12</sup> Amy Goodman and David Goodman, *Standing Up to the Madness: Ordinary Heroes in Extraordinary Times*, First Edition/First Printing (stated). (Hyperion, 2008), 61.

<sup>13</sup> Ibid., 54.

unconstitutional. He is well aware of his responsibility as a librarian: “Librarians’ professional ethics require that personally identifiable information about library users be kept confidential. This principle is reflected in Article III of the Code of Ethics which states that “[librarians] protect each library user’s right to privacy and confidentiality with respect to information sought or received, and resources consulted, borrowed, acquired, or transmitted.”<sup>14</sup> In other words, library professionals feel that the government should not spy on its citizens.

After the agents leave, Christian calls his attorney for advice, and to set up a meeting with rest of the Executive Committee of Library Connections, Inc. Christian feels that he cannot make the decision to respond on his own, and that it is his fiduciary responsibility to include rest of the Executive Committee in any decisions he might make regarding the library, its assets, and involvement in a legal action.

The three other members of the Executive Committee are Peter Chase, Director of the Plainville Public Library, Janet Nocek, Director of the Portland Public Library, and Barbara Bailey, Director of the Welles-Turner Memorial Library in Glastonbury. At the meeting with the attorney, all four arrive at a consensus that is their obligation to uphold the laws of the Constitution, and that they wish to challenge the constitutionality of this request. Their attorney informs them that their only recourse is to sue the Attorney General of United States. In addition to this colossal undertaking, all four librarians are also now bound by the gag order. Because there is no evidence that a judge had found probable cause, and there is no court order, the four feel that the FBI and the terms of the PATRIOT Act are extending beyond the Constitution’s reach.

The Executive Committee decides to hire ACLU attorneys to assist them because of the

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<sup>14</sup> “ALA | Confidentiality and Coping with Law Enforcement Inquiries,” <http://www.ala.org/Template.cfm?Section=ifissues&Template=/ContentManagement/ContentDisplay.cfm&ContentID=21654> (accessed March 3, 2011).

enormity of what is ahead. They decide on their plan: (1) to seek an injunction relieving Library Connection, Inc. from having to comply with the National Security Letter, (2) to seek a ruling to have all use of NSLs be declared unconstitutional, and (3) to seek relief from gag rules associated with NSLs so the Executive Committee may present their actions to their full Board. They also want to be able to talk about this NSLs as a part of the national debate over the renewal of the PATRIOT Act.

The ACLU files suit on behalf of the four plaintiffs in Federal District Court in Bridgeport, Connecticut in August 2005. “America’s most dangerous librarians” are not allowed to attend the proceedings of *John Doe V. Gonzales* because of the risk that they could be identified as the plaintiffs. Due to the gag order, they had to watch from a locked room in another courthouse because the government felt that they were a “threat to national security.”<sup>15</sup>

During this hearing, Judge Hall asks to review the government’s evidence to justify keeping the gag order in place. The government insists on submitting secret evidence, which neither the plaintiffs nor their attorneys are allowed to see. In spite of this evidence, Judge Hall rules that the gag order is unconstitutional. “The potential for abuse is written into the statute,” Hall noted in her decision. “The very people who might have information regarding investigative abuses and overreaching are preemptively prevented from sharing that information with the public and with the legislators who empower the executive branch with the tools used to investigate matters of national security.”<sup>16</sup> The Justice Department immediately appeals this

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<sup>15</sup> “The ACLU of Texas Interviews George Christian,” *Texas Library Journal* 84, no. 3, OmniFile Full Text Mega (Fall 2008): 115-17.

<sup>16</sup> “Federal Court Finds Patriot Act Gag On Connecticut Library Is Unconstitutional,” <http://www.libraryjournal.com/article/CA6256310.html> (accessed March 3, 2011).

decision, and the gag order remains in place while the case is under appeal.<sup>17</sup>

What is the significance of the gag order? The librarians want to be able to warn other librarians about the threat of receiving an NSL, to share this information with their staffs and families, and to be able to tell patrons that they are trying to protect their confidentiality. They know that they are obligated to tell their auditors, as members of the Executive Committee, because they have a fiduciary responsibility to reveal whether they are a party to any pending legal action. In addition, they feel that it is extremely important to testify to Congress that NSLs are a threat to privacy in libraries, before Congress votes on renewing the PATRIOT Act. Just as significantly, they are concerned about accidentally revealing their receipt of an NSL to anyone while under the gag order. If they do, they could be prosecuted and receive a five- year jail sentence.<sup>18</sup>

Their fears about outing themselves seem to become a moot point. In August 2005, the government itself reveals their identities when they fail to redact the plaintiffs' names from an affidavit and from their website. That fall, the New York Times publishes a story that they had discovered the identity of the plaintiff as Library Connections, Inc. The Washington Post publishes, as the lead story on the front page, an article about George Christian and NSLs, and that since the enactment of the PATRIOT Act, over 30,000 NSLs per year have been issued. In spite of their identities now being a matter of public record, the "Connecticut Four" as they become known in the media, remain under a gag order, still unable to testify to Congress.

In November 2005, the Second Circuit Court of Appeals in New York begins to hear the

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<sup>17</sup> "Librarians Demonstrate Silently Against Patriot Act," <http://www.libraryjournal.com/article/CA6262249.html> (accessed March 3, 2011).

<sup>18</sup> "Librarians Speak Out for First Time After Being Gagged by Patriot Act | American Civil Liberties Union," <http://www.aclu.org/national-security/librarians-speak-out-first-time-after-being-gagged-patriot-act> (accessed March 3, 2011).



appeal. This time the librarians can be present, but they still have to conceal their identities; they have to enter and sit separately, and there can be no eye contact with each other or with their attorneys. During the hearing, the government argues that revealing the librarian's identities would endanger national security; that no one in Connecticut reads the New York Times, and that 58% of the public doesn't believe the newspapers anyway! The Library Connections, Inc. is named six times by the New York Times, and Chase and Christian are specifically named in numerous newspapers. Attorney General Gonzales, however, claims to Congress that there is no statutory justification for claims of privacy.<sup>19</sup>

Since the Appellate Court has not yet ruled on the gag order, the ACLU attorneys take the case to the Supreme Court in an attempt to have it lifted. The Connecticut Four feel that they must testify before Congress before the revised PATRIOT Act is signed into law. The Supreme Court refuses to take action; the Bush Administration reassures Congress that there was no spying on libraries. On March 9, 2006, the revised USA PATRIOT Act is signed into law by President Bush.

The newly revised PATRIOT Act claims to restore civil liberties but in actuality it does not. The FBI can still use NSLs if the library provides Internet access. If the government states that lifting a gag order would affect national security, the court must accept this and dismiss any challenges. There is still no judicial review.

A few weeks later after the PATRIOT Act is renewed, the FBI lifts the gag order on the librarians; shortly thereafter, the FBI completely abandons its case, removing the PATRIOT Act from the danger of court review. Many thought that the gag order remained in effect as long as it

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<sup>19</sup> "The ACLU of Texas Interviews George Christian."

did so that the lack of a viable case against the librarians would not become public knowledge.<sup>20</sup>

On May 30, 2006 the librarians hold their first of many press conferences.<sup>21</sup> They try to accept every invitation to speak out about the FBI spying on citizens, and on the effect that an NSL can have on a person's professional and personal life. George Christian testified in front of the United State Senate Judiciary Subcommittee on April 11, 2007 in which he noted that he and his Executive Committee colleagues are the only individuals who have had their gag order lifted, and are legally able to speak about their ordeal. Because no one else has had their gags lifted, the public, Congress, the media, are completely unaware of the large number of NSLs that have been served and how civil rights are impacted.

### **The USA PATRIOT Act Today; Are We Safer Because of It?**

The USA PATRIOT Act remains in effect. It has been extended several times with minor revisions, with its most recent extension occurring on February 28, 2011. Section 215 has been extended for three months, to expire on May 27, 2011. Some may note that there have been no major attacks on US soil since the passage of the Act in 2001, but whether this is a result of the PATRIOT Act cannot be proven. As for whether there have been any convictions of terrorists resulting from the presentation of an NSL to a librarian, the attendant gag orders prevent the public from knowing. National security remains a priority, however, the threat of imminent attack appears to have abated. As the level of fear decreases, our willingness to accept loss of civil rights also decreases, and we all need to take a stand in defense of our constitutional rights. The first step is awareness, the next is knowledge, after that is a plan for action.

All librarians, staff, and volunteers should be trained under established library policy so

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<sup>20</sup> "FBI Drops "John Doe" Case; Librarians Say Publicity Was the Key," <http://www.libraryjournal.com/article/CA6347404.html> (accessed March 3, 2011).

<sup>21</sup> "Librarians Speak Out for First Time After Being Gagged by Patriot Act | American Civil Liberties Union."

that they would know how to respond to any outside requests for information.<sup>22</sup> The American Library Association encourages libraries to use circulation software that erases personal information once books are returned, and many libraries no longer save personal records to avoid having to release records.

If you see a sign in a library that reads “The FBI has not been here,” **watch for its removal.**

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<sup>22</sup> “ALA | Confidentiality and Coping with Law Enforcement Inquiries.”

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## Bibliography

- “ALA | Confidentiality and Coping with Law Enforcement Inquiries.”  
<http://www.ala.org/Template.cfm?Section=ifissues&Template=/ContentManagement/ContentDisplay.cfm&ContentID=21654> (accessed March 3, 2011).
- Alterman, Eric, and Mark Green. *The Book on Bush: how George W. (mis)leads America*. New York: Viking, 2004.
- Etzioni, Amitai. *How Patriotic Is the Patriot Act?: Freedom Versus Security in the Age of Terrorism*. New York: Routledge, 2004.
- “FBI Drops "John Doe" Case; Librarians Say Publicity Was the Key.”  
<http://www.libraryjournal.com/article/CA6347404.html> (accessed March 3, 2011).
- “Federal Court Finds Patriot Act Gag On Connecticut Library Is Unconstitutional.”  
<http://www.libraryjournal.com/article/CA6256310.html> (accessed March 3, 2011).
- Goodman, Amy, and David Goodman. *Standing Up to the Madness: Ordinary Heroes in Extraordinary Times*. First Edition/First Printing (stated). Hyperion, 2008.
- Gorham-Oscilowski, Ursula, and Paul T. Jaeger. “National Security Letters, the USA PATRIOT Act, and the Constitution: The tensions between national security and civil rights.” *Government Information Quarterly* 25, no. 4. OmniFile Full Text Mega (October 2008): 625-44.
- Ibbetson, Paul A. *Living Under the Patriot Act: Educating a Society*. Bloomington, IN: AuthorHouse, 2007.
- Laura Hayes, Borgna Brunner. “Al-Qaeda — Infoplease.com.”  
<http://www.infoplease.com/spot/al-qaeda-terrorism.html> (accessed March 20, 2011).
- “Librarians Demonstrate Silently Against Patriot Act.”  
<http://www.libraryjournal.com/article/CA6262249.html> (accessed March 3, 2011).
- “Librarians Speak Out for First Time After Being Gagged by Patriot Act | American Civil Liberties Union.” <http://www.aclu.org/national-security/librarians-speak-out-first-time-after-being-gagged-patriot-act> (accessed March 3, 2011).
- “Reform the Patriot Act | Section 215.” <http://www.reformthepatriotact.org/215.html> (accessed March 3, 2011).
- “The ACLU of Texas Interviews George Christian.” *Texas Library Journal* 84, no. 3. OmniFile

Full Text Mega (Fall 2008): 115-17.

“What is the USA Patriot Web.” <http://www.justice.gov/archive/ll/highlights.htm> (accessed March 3, 2011).