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"Librarians Shushed No More:" The USA PATRIOT Act, The "Connecticut Four," and Professional Ethics

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Note: I acknowledge here the major source of this account is George Christian's "Testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Property Rights," April 11, 2007.

Abstract :

Upholding user privacy is one of the highest ethical principles in librarianship and is included in most national library associations' ethical codes. This paper is an account of how the Library Connection, a Connecticut USA consortium, displayed extraordinary courage to protect their users' privacy on the Internet. To date, the Library Connection's successful challenge to the USA PATRIOT Act is the first for the US library community. Based on the Library Connection's testimony to the United States Senate, this paper will 1) give a step-by-step account of the librarians' ordeal; 2) will underscore the ethical principles the Library Connection upheld; and 3) discuss what can be learned from their experience.

The Story

Librarian George Christian is the Executive Director of the Library Connection, Inc., in Windsor, Connecticut. The Library Connection is a 27-member library consortium in the Hartford, Connecticut area. Their mission is to provide a shared OPAC (online public access catalog) for its members, with searching, circulation, and patron records online.

On July 8, 2005, an agent from the FBI (Federal Bureau of Investigation), a US federal agency, contacted Ken Sutton the IT manager for the Library Connection and told him that the Executive Director of the Library Connection consortium was about to be served with a National Security Letter (NSL). The agent did not reveal what the letter would say, but of course this message sent a chill through George Christian as the Executive Director. US

librarians had been alerted by their state and national library organizations that they might receive such letters.

The USA PATRIOT Act

The USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) was signed into law on October 26, 2001, shortly after the attack on the United States on September 11, 2001. Most of Congress would later admit that they had not read the entire act to understand its long-term ramifications. The law was passed during a highly emotional time for Congress and the rest of the US, when citizens were understandably concerned that the events of September 11 not be repeated. And so the USA PATRIOT Act made it easier for national security interests of the USA to be enforced. There is of course still a significant public debate about whether the act does strengthen national security, but that is its intention. For libraries, here are the important issues:

- The legal standard for obtaining a search warrant with "probable cause" is significantly lowered. For example, before the PATRIOT Act, the warrant was required to show "probable cause" that library information was "relevant" to the crime committed was related to a terrorism investigation.
- The FBI was authorized to use a special search warrant from a FISA court, whose proceedings were closed to the public.
- The FBI was authorized to use these special search warrants to retrieve library circulation records, or usage records from library computers, of someone being investigated by the government.
- The PATRIOT Act overrides existing state library privacy laws.
- The PATRIOT Act prohibits the library from notifying the press, the patron under suspicion, or ost other people that an investigation is underway. (The reauthorization act now allows librarians to notify their immediate supervisor and the library's legal counsel.) This provision is known as the "gag order."
- In some cases, the FBI is allowed to take records related to Internet usage without a warrant.

These activities and policies conflict with existing ALA professional ethics in a number of ways, but most importantly with the protection of user privacy, which will be discussed later in this paper.

National Security Letters and the FISA Courts

National Security Letters (NSL's) are the communications from the FBI to anyone suspected of violating the USA PATRIOT Act. These letters are requested by FISA courts—secret courts authorized in the United States Foreign Intelligence Act of 1978. These court proceedings and records are closed to the public. If the US Attorney General (a member of the President's Cabinet) determines that a national security emergency exists, he/she may authorize wiretapping or other surveillance before obtaining authorization from a judge. The judge must be notified within 72 hours.

US libraries sometimes had received court-ordered warrants or subpoenas before. But always before the USA PATRIOT Act, the court needed to show "probable cause." For example, let's say that a local sheriff came to a college library and asked to see what books a murder suspect had checked out. Perhaps the suspect had performed a series of murders in a particular way. Maybe he had left a puzzle at the murder scene. IF, and only IF, the local police had "probable cause" to believe that the key to the murders lay within the books he had checked out, could the library release the circulation records to the police. Otherwise, all 50 states of the United States have privacy laws that prohibit a library from revealing what books a patron has checked out or consulted.

A National Security Letter does not require "probable cause." So, if the Attorney General suspects a particular person, he or she can get a National Security Letter demanding that an organization like a library must hand over whatever records are demanded—without a judge ruling that there is strong reason to believe that the library records will reveal important information to solve the murder.

What Happened to the Library Connection: The Story Continues

So how did all this related to George Christian in Connecticut when he received the National Security Letter in July of 2005? Fortunately, George Christian is a librarian who takes his professional ethical responsibilities seriously. He was well aware of the American Library Association's Code of Ethics. He was well aware of the principles of privacy and of intellectual freedom as expressed by the association in its *Intellectual Freedom Manual.* He found out that the New York State District Court had found the entire NSL statute unconstitutional. And so this courageous librarian decided that he had enough grounds to oppose the efforts of the FBI to collect information.

On July 13, 2005, two FBI agents delivered the letter to Mr. Christian. One of the agents pointed out that the letter requested information about the use of a specific IP address registered to Library Connection, Inc. In other words, the FBI wanted to know who was using a particular terminal for 45 minutes on February 15, 2005. Because of the network configuration, this meant that George Christian was requested to reveal the identity of

every single user of every single computer terminal at one of the member libraries. The agent reminded Mr. Christian of the "gag order"—that he could not disclose to ANYONE that the FBI was trying to collect this information.

Mr. Christian did not want to impede the investigation of a possible terrorist activity that could endanger the US or employees of the Library Connection. But because he noticed that the letter was dated May 19—two months earlier—he concluded that this was not really an urgent matter. And so he told the FBI that he wanted to consult his attorney before complying with the request. The FBI agent gave a phone number where the attorney could contact him.

Then, Mr. Christian called the Library Connection attorney. It was then that Mr. Christian learned that the only way he could contest this request from the FBI was to take the US Attorney General to court!

He then went to his Executive Committee. He called an emergency session, which included the three librarians who would become the other three to form the "Connecticut Four." They are: Barbara Bailey of the Glastonbury Public Library; Peter Chase of the Plainville Public Library; and Janet Nocek, Director of the Portland Public Library. (I want to note here that Janet had lost a friend in the 9/11 attacks, but she was able to separate her personal grief from the fact that the "gag order" in her mind violated the US Constitution.) These are all small town libraries in the state of Connecticut. So this committee met with their attorney and decided to call on the American Civil Liberties Union (ACLU), often a partner with library associations in civil liberties issues like this one. The group decided not to comply with the FBI request and its gag rules. Their first strategy was to LIFT THE GAG ORDER. Why? First, they felt very uncomfortable not telling the member libraries what was going on because it was, after all, member library money funding the consortium. Second, they wanted to publicize the issue at a point when there was a national debate about the PATRIOT Act renewal. They suspected that Connecticut citizens would be very upset to learn that Connecticut state library privacy laws were being violated without the knowledge of the patrons using the library.

As George Christian testified to the US Senate: "As a law-abiding citizen and as a person committed to the principles of librarianship, it did not nor does not make sense to me that such intrusions into the privacy of our library patrons is reasonable, especially a wholesale request for information about many patrons, not necessarily a library patron that is the legally deemed specific target of an investigation. Fishing expeditions should not be allowed in libraries . . ." I will discuss the importance of his professional ethical values later, but his awareness of them is significant.

And so a lawsuit was filed in Federal District Court in Bridgeport, CT. Because of the "gag order," none of the four librarians involved were allowed to appear in court because their identities would be revealed. So they had to watch the proceedings on closed circuit TV.

The gag order had also prevented these librarians from telling their families, their fellow staff members, or anyone else. You can only imagine the stress and concern this caused them. They also wanted to tell their Congressional representatives, who were about to vote on the reauthorization of the PATRIOT Act, parts of which were supposed to "sunset" in December 2005.

Although the judge ruled that they should not be gagged, the Justice Department appealed, and during the appeal they remained gagged. The son of one of the librarians asked, "Dad, is the FBI after you?" All he could say was that he was involved in a court case and that it was extremely confidential.

Meanwhile---people in Connecticut and around the country began to hear about the case, but they had no idea who was involved. I remember hearing that a library consortium in my own state had challenged the US Attorney General in court over the USA PATRIOT Act. The consortium was known only as "John Doe," and the case was *Doe v. Gonzalez* (then the Attorney General). So you can only imagine the speculation that was traveling all over Connecticut and the librarians involved were gagged.

But, thanks to our relatively free press, *The New York Times* found a court document in which Library Connection's name had not been redacted and so they published the story on September 21, 2005. Papers all over the US picked up the story. On November 6, 2005, the *Washington Post* ran the story on the front page and revealed the problems the potential invasion of library patron privacy. They revealed that there had been 30,000 NSL's issued per year since the USA PATRIOT Act.

And yet despite the accidental revelations, the Connecticut Four were still not allowed to speak to their Congressional representatives. They were advised to say, "No comment."

The next court case was November 2005, at the New York 2d Circuit Court of Appeals, which is the step right before the U.S. Supreme Court. At this point the Connecticut Four were allowed in the court, but had to enter, leave, and sit separately. They could not establish eye contact among themselves or their attorneys.

To me one of the most extraordinary arguments by the government attorneys was that the gag should still not be lifted, even if the names of the plaintiffs were named in the *New York Times*. They argued that nobody in Connecticut read that particular newspaper. Connecticut is adjacent to New York state, and a great percentage of its citizens work in New York City and read the *Times* on their way to work on the train every single day.

On March 9, 2006, President George W. Bush signed into law the revised Act. Soon after, the Connecticut Four were allowed to speak. A few weeks after that, the FBI said they no longer needed the information they had originally sought from the Library Connection computers and abandoned the case. In so doing, they removed the USA PATRIOT Act from court review.

George Christian told the Congressional Committee: "Since then, we have tried to accept every invitation to library groups, colleges and civic organizations. We want people to know that the FBI is spying on thousands of completely innocent Americans. We feel an obligation to the tens of thousands of others who received National Security Letters and now will live under a gag order for the rest of their lives . . . Because of the gag order, you, our Senators and elected representatives and the American public, are denied access to the stories and information about these abuses. This is information you need to conduct oversight, work for appropriate changes to current law and seek to protect our constitutional rights."

What Librarians Can Learn From the Library Connection Case

I will now summarize what I believe librarians, at this session on ethics in the library workplace, can learn from this very important event (to date, no other librarians have challenged the USA PATRIOT Act in this way):

1. Librarians need to understand their country's legal balance between the protection of freedom of expression and the protection of national security. Many librarians believe that the interests of national security, important as they are, have become an excuse for chilling the freedom to read.

2. Librarians need to understand what legal rights they have to promote the freedom of expression in libraries, and the rights their library patrons have to gain access to information. These rights should be documented in writing and held in a folder, easily accessible, for law enforcement officials who might visit the library asking about library circulation records or book purchasing policies. For example, in the US these would include the First Amendment of the US Constitution, each state's library confidentiality law, and others.

3. National library associations need to develop a code of ethics. Many are written and can be found on the IFLA/FAIFE web site: www.ifla.org, click on FAIFE and then on "codes of ethics." 34 countries have published their codes of ethics there. Your country's code should include the freedom to access information of any kind, and the right of librarians to provide such access. The code should also protect patron privacy, so that no government official can find out what a particular person has been reading or accessing on the Internet.

   Examples:

   - Czech Republic: "respect the rights of users to privacy and anonymity . . . protect user personal data . . ."

- Indonesia: "Every Indonesian librarian should respect the secrecy of the information of personal character."
- Jamaica: "The librarian should respect the confidentiality of any information revealed by the user in the course of research."
- The American Library Association has begun a campaign for user privacy, co-sponsored by the Soros Open Society Institute. You can find tool kits, press information, and other assistance at : http://www.privacyrevolution.org

4. Libraries should have a pamphlet about what staff should do if a government official visits the library and wants information on a particular patron. All staff should be trained. In many, many countries, library staff have rights in such a situation. Your national library association can assist you in knowing what these rights are. For example, even under the PATRIOT Act, US librarians are allowed time to consult with an attorney before revealing any kind of personal information about any patron. Often library staff are intimidated and too readily hand over information that might be private.

5. Librarians need to examine their hearts and consciences and demand of themselves that they separate their personal emotional responses from their professional responsibilities. Many librarians in New York City knew librarians who were killed in the Twin Towers, but that did not keep them from providing access to information to their patrons—even information about 9/11 that many believed was offensive or false.

6. Librarians need the support of a strong national library association. In the case of the Connecticut Four, they were not allowed to share their burden, but in most cases, the national library association can provide legal and ethical assistance and moral support. This is one of the many reasons IFLA is focusing on strengthening national library associations.

7. Librarians need to learn advocacy skills. This includes getting space in the local print press, on such social network sites as YouTube and Facebook, radio, and other media. They need to get the attention of key local, state, and national leaders to push their agenda. Again, I commend IFLA/FAIFE for its focus on advocacy. Library Connection got lots of attention in our local newspaper, the *Hartford Courant*, the state's most prominent newspaper, and also in the New York and Washington, DC newspapers. It moved from a local to a national story. Librarians must gain these media skills and other skills to push our agenda.