On Creating a Surveillance State

(And How Librarians Attempted to Dismantle It)

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Introduction

"Strengthening government makes democracy weaker, removing the underpinnings,"[1] is a sentiment of neither the political left nor christian conservatism. In theory counterintuitive, as democracy to the left is afforded with more governmental powers. While the right desires a smaller federal state and in practice seems to care very little about pluralist democratic values. Jessamyn West, a librarian in Vermont, may be considered at face value an anarchist. But regardless, she stands to reveal the underappreciated role that librarians serve in a democratic society. Politicians and statesmen come and go, but librarians remain. Laws and policy may attempt to change the law of the land, but as will be revealed, the often forgotten importance of librarians is their historical battle to maintain the right to privacy in the safe havens they provide.

A keystone of American democracy is the idea that access to information remains free and unregulated for the purposes of maintaining a well-informed populace. In the 1980s and 2000s, there would be two episodes of countersurveillance programs led by the FBI that would attempt to clampdown on civil liberties due to different periods of international crises. These examples serve to trace both the progression of tactics as well as the continued effort by librarians, and their national organizations, to prevent government agency overreach into one of America's oldest institutions, the public library.

For the first section of this paper, Herbert N. Foerstel's book *Surveillance in the Stacks* provided a detailed history of the FBI's Library Awareness Program, with other details coming from government agency documents and reports, news articles from the time, and American Library Association newsletters and articles that documented different appearances of the FBI across America. Finally, the Congressional Subcommittee hearing brought in some of the main players of this time period and provided additional information from firsthand testimonies. For the

1 Jessamyn West, Zoom Call with Librarian Jessamyn West, interview by Henry Wandover, December 5, 2023.

second section, there is more of a focus on legal analysis, as the details of episode two pertain more to the passing of influential bills as well as legal cases. As a result, literature in this section is primarily reading from the Patriot Act and its continuations as well as bills that are retroactively amended by the Patriot Act. Other books used for reference included the guidebook on civil liberties, which helped in creating the chronology of events before and during the two episodes, and the book *From the Palmer Raids to the Patriot Act* by Christopher Finan, which contained a section about the freedom of information implications during the Patriot Act era that helped build out the timeline of events following the terrorist attacks on September 11. Additionally, I interviewed librarian Jessamyn West about how she became a librarian to understand the methodology of the career as well as how she participated in battling the Patriot Act during that period. It should be noted that the section about the Patriot Act doesn't include any number of library visitations and focuses on the singular case due to there being no hard evidence of the actual number of FBI investigations. In tracing the history of amendments made to FISA, there is no reporting of past requests to Congress or the public. There were surveys conducted, such as one by the University of Illinois reporting that 85 libraries of 1,020 nationwide had been asked by federal or local law enforcement for information about patrons reading documents about 9/11. However, the purpose was to compare the Library Awareness Program pre- and post-9/11, with the latter employing the use of NSLs and gag orders to get what they wanted. As a result, no number is given because the point of the NSL is that the recipient can't speak out—until the John Does in the case discussed were able to break that rule effectively.

Following the introduction, Part 1 will cover the beginning of the Library Awareness Program and the history of civil liberties in America to better contextualize this niche slice into the larger picture. Part 2 will then focus on the Patriot Act onward, including an analysis of the

political tensions of the time, the bill itself and what that meant specifically for libraries this time around, and a discussion of the significant case at the time, which would begin the process of dismantling Section 215 by at least dissuading agents to use library records or interrogate librarians. Finally, the conclusion will discuss the effects of the Patriot Act in 2020 to highlight the impact that librarian resistance had.

Part 1 – The Library Awareness Program

Ashes in the Fall: A Soviet, A Guyanese Student, and the Government's Boogeyman (1983–1986)

During rush hour on August 23, 1986, on a dank Queens subway platform, Gennadi Fyodorovich Zakharov stood in the half light at the far end of the station waiting. He assumed the public location would provide ample cover, as people escaped the heat in the city above. But on this day, his rendezvous with his protégé Leakh Bhoge would be his last.

Gennadi Zakharov was a 39-year-old physicist and Soviet national, employed as a scientific aide for the United Nations Secretariat. He had been living in New York City since the early '70s without incident until the course of his tenure would dramatically change. It was in April of 1983 that he made the initial contact with Bhoge (whose code name with the Soviets would be "Birg") on the Queens College campus.[2] This would kick off a four-year-long relationship, in which Zakharov requested his asset to sign a contract pledging to gather information about robotics and computer technology for the KGB (the Soviet foreign intelligence). For his efforts, Bhoge was promised to be compensated extensively by the USSR through his retainer Zakharov.[3] What was unknown to the Soviet then, but is clear from interviews and information releases, is that Bhoge was quickly recruited by the Federal Bureau of Investigation (FBI) to operate as a counterspy for the United States government.

2 Raymond L. Garthoff, *The Great Transition: American-Soviet Relations and the End of the Cold War* (Washington D.C.: Brookings Institution Press, 1994), 281–83, https://archive.org/details/greattransitiona00gart/page/280/mode/2up.

3 Michael Daly, "I Spy: How a Queens College Student Helped Catch a KGB Agent and Set off a Superpower

Leakh Bhoge was unflatteringly described by the FBI as "a resident alien from a Third World Country."[4] He was a Guyanese immigrant, from a lower-middle class background, who, while working to obtain his US citizenship, attended Queens College pursuing a degree in computer science. He lived in the East New York section of Brooklyn on Sheridan Avenue in a meager basement flat. In an interview conducted by *New York Magazine* years after his undercover work with Zakharov, Bhoge described his life there as less than glamorous, lamenting that "James Bond had an elaborate lifestyle, fancy cars, a lot of girls, I worked in a factory, even though I had a college degree," pretty much living hand-to-mouth. He complained, as he was barely compensated by both parties, that he "lived in a basement and had to pay the bills.[5]"

It all began when Zakharov entered his life. Initially he was enticed by the idea when after a few weeks of "work," he was walking around with $10,000. Due to a change of heart, a week on, he brought that sum in whole to the New York branch of the FBI under a new pseudonym, this time "Plumber." The reason for giving up the cash, according to Bhoge, was his motto, "to protect the national security of this country, every person should make this their No. 1 priority...[6]" It's after this contact with the FBI that Bhoge would be recruited as a counterspy.

For two years after this meeting, Bhoge would gather non-classified scientific articles housed on microfiche from various public and academic libraries in and around the city, including

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Showdown," *New York Magazine*, April 6, 1987, Google Books, https://books.google.com/books?id=nuUCAAAAMBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false, 46.

[4] Ibid.

[5] Ibid, 34.

[6] Robert D. McFadden, "A Counterspy Says He Got Few Rewards," *The New York Times*, May 31, 1987, https://www.nytimes.com/1987/03/31/nyregion/a-counterspy-says-he-got-few-rewards.html.

such institutions as Columbia, Princeton and the University of Connecticut. He used his student credentials from Queens College to gain access in order to make this mission possible. While

academic libraries were very much open to the public at the time, and continue to be now, Zakharov viewed the option of hiring an American as the safest one. He and Zakharov would then periodically meet, usually in parks, subway stations, or restaurants—with Chinese restaurants being Zakharov's preferred destination—Bhoge all the while continuing his studies at Queens College and after.

In February of 1985, Bhoge graduated and began working at the H. G. Machine and Tool Company in Long Island City as a milling machine operator, all of which was a part of an FBI plan intended to keep Zakharov interested in what he could provide, as this particular company was a military subcontractor that made parts for F-15 engines.[4]

However, in spite of what Bhoge could offer in terms of potential military secrets, Zakharov began to have the creeping feeling that something was awry. For even as he and Bhoge had been co-conspirators for four years now, this would be the first time that Bhoge would be bringing him classified documents. This made him very nervous, specifically, as he later said there was something off about Bhoge's manner when he delivered the schematics for F-15 engines from a job he believed he had helped him get with the sessions of professional resume preparation he had arranged for him.[5]

Against his best judgment, Zakharov brought along $1,000 in cash for the classified documents, but as soon as the folder was in his hands, a couple in running shorts on the platform stopped kissing and revealed themselves as FBI agents. This led to a short-lived chase after Zakharov dropped the documents and attempted to make a mad dash towards the stairs up and out of the platform.

4 Ibid.

5 Phillip Lentz and Chicago Tribune, "U.S. Indicts Soviet in Spy Case," *Chicago Tribune*, September 10, 1986, https://www.chicagotribune.com/news/ct-xpm-1986-09-10-8603070494-story.html.

Almost immediately he was tackled by agents, arrested for multiple espionage charges the couple explained as one handcuffed him. This arrest, as it turned out, was facilitated by the fact that since Bhoge began working at that factory he had been requested by the FBI to wear a wire tap for the majority of his encounters with Zakharov.[6]

Yet even without diplomatic immunity, Zakharov would only be held for about a month. For seven days after his arrest, Moscow would report that the KGB had a *US News & World Report* correspondent, Nicholas Daniloff, in custody on suspiciously similar espionage charges.[7]This set in motion a chain of events, where the US and Russian courts would go through their criminal proceedings where both defendants disputed the charges while negotiations ensued between Secretary of State George P. Shultz and Soviet Foreign Minister Eduard V. Shevardnadze.[11] On September 30, 1986, both Zakharov and Daniloff were freed from prison and allowed to return to their home countries; the White House would deny that this was a trade in any way.[12]

While Bhoge was left unsatisfied, due to his promised $100,000 (from the FBI) for cooperating as a double agent never materializing, and as his time with the H. G. Machine and tool Company came to an end, it would seem this was to be an open and shut case. But such nefarious actions on the part of these intelligence agencies were not isolated, as the Cold War was entirely "fought" via foreign espionage as both parties (Washington and Moscow) worked tirelessly to get an upper hand on the other. In many ways, it was a zero-sum game, but the repercussions on civil society in terms of the free access to information, as a cornerstone of the democratic ideology,

6 Ibid.

7 Garthoff, *The Great Transition*, 281-283.

[11] Lentz, "U.S. Indicts Soviet in Spy Case."

[12] Garthoff, *The Great Transition*, 281-283.

would bear the brunt of this quid pro quo, as they traded what they presumed would guarantee the nation's safety for the rights and freedoms of its people, in a sense, backpedaling democracy.

This incident would prove to be the genesis of a new form of surveillance that had far-reaching effects on the civil liberties afforded in the Bill of Rights—a unique and insidious incursion into privacy of the American citizenry fomented in whole by the FBI. hat Gennadi Zakharov unknowingly communicated to the FBI was that the free flow of information, specifically to what is is held in the nation's libraries, was a chink in their armor of their counterintelligence efforts against the USSR, and later, as will be discussed, cause to impose surreptitious restrictions on the liberties of the citizenry it is empowered to protect.

Gross Incompetence: The Library Awareness Program (~1973–1988)

As the snow melted, after an unremarkable winter, and the optimistic grin of spring came to bear, unknown to the public, the FBI would enact a new counterintelligence program as a stop gap to the Zakharov case—or as it initially appeared. On Thursday, June 4, 1987, two FBI agents innocuously strolled into the Columbia University Mathematics Library without a hint of suspicion by the staff behind the librarian station.[8] The library is a massive five-story brick building that houses publications on both mathematical theory as well as an extensive science and technology wing, where in order to gain access, a patron must walk a direct path past the clerk's desk. These agents weren't there to bag a suspect or check out reading material. They were there as the face of what would become known to the public as the Library Awareness Program.[14] In a released Freedom of Information Act (FOIA) request, this operative may have been referred to as Development of Counterintelligence Among Librarians; however, in this case, that information was not properly archived, so it will remain known as the former. In the Columbia Mathematics

8 C. James Schmidt and F. Simora, "Rights for Users of Information: Conflicts and Balances among Privacy, Professional Ethics, Law, National Security," The Bowker Annual Library and Look Trade Almanac, 1989, 83–90.
14 American Library Association and C. James Schmidt, "The FBI Library Awareness Program," The ALA Yearbook of Library and Information Services: A Review of Library Events 1988 14 (1989): 125–27.

Library case, the agents were only able to speak to this clerk for less than a minute before a librarian would interrupt the exchange, assuming it was some kind of interrogation, and request them to cease. The agents were encouraged to go to Paula Kaufman's office for their request before seeking any information from library staff. Nonetheless, for unknown reasons, the agents would instead exit the premises and return the following Thursday.

Kaufman, the then acting vice president of Information Service and University Librarian for Columbia, would later describe the event in testimony in front of the House Subcommittee on Civil and Constitutional Rights, recalling that two men from the FBI began by trying to illustrate the grave danger that she and her staff would be in if they allowed foreign agents, particularly Soviets, to come into their library and allow them access to the journals that the library subscribed to. (She noted, quite jovially, that this broad distinction of "Eastern European sounding" could well and likely include that of Zbigniew Brzezinski, President Jimmy Carter's National Security Advisor, who was a member of their faculty and not known by many of the staff.[9]) This, they warned, was done with the end goal of "piec[ing] together bits of information [that] would threaten our national security."[16] But, without pause, she refused to cooperate, and in response, the agents switched their tactics, warning her that beyond this threat, there's the possibility of recruitment of students by these foreign agents and claiming that this has often occurred in libraries to help them gather sensitive information. Again refusing to cooperate, she cited this whole plan as both a violation of university policy and their first amendment rights. This stance, as it can be assumed, would be interpreted by many librarians as a breach of a bedrock principle of freedom of information, the pursuit of it as well as a repudiation of censorship efforts of any kind by an agency or office.

9 Don Edwards et al., "Testimony on the Federal Bureau of Investigation's Library Awareness Program," TV (Broadcasted on C-SPAN) (Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, on FBI Investigation of Library Use and Users, June 20, 1988), https://www.c-span.org/video/?3074-1/fbi-library-awareness-program. [16] Ibid.

In discussions about this topic, there are three oft-cited documents: the Library Bill of Rights, published by the American Library Association (ALA) in 1936 and renewed in 1986; its first tenant is that books and other library resources are provided for information or interest regardless of origin, background or views[10]; the Policy on Confidentiality of Library Records, put together by the ALA Council in 1975 and amended in 1986, focusing on records associated with patron names remaining confidential and even being denied to agencies of state or federal level unless a subpoena is attached with the inquiry[11]; and the Statement on Professional Ethics presented at the annual ALA conference in San Francisco in 1975, revised and published in 1979 as the Code of Ethics, recounting a similar sentiment of protecting a user's right to privacy along with a librarian being required to provide the highest level of service through fair and equitable circulation and unbiased responses to all requests.[12]

A counter to Kaufman's testimony and the ALA position(s), it should be noted that according internal FBI communication, the free availability of these materials posed a serious threat, as they were "...sensitive but unclassified information which [would provide] the Soviet Union with the necessary tools to keep pace with American scientific and technological achievements." Following this line of thought, the agency would later admit in the same report that "the information available to the SIS [Soviet Intelligence Services] in the specialized and technical libraries is not classified, restricted or unlawful to collect and maintain."[13][14] So it is clear that the

10 ALA Council, "Library Bill of Rights," Intellectual Freedom: Issues and Resources (American Library Association, January 29, 2019), https://www.ala.org/advocacy/intfreedom/librarybill.

11 ALA Council, "Policy on Confidentiality of Library Records," Intellectual Freedom: Issues and Resources (American Library Association, July 7, 2006), https://www.ala.org/advocacy/intfreedom/statementspols/otherpolicies/policyconfidentiality#:~:text=Advise%20all%20librarians%20and%20library.

12 American Library Association, "On Professional Ethics," ALA Report 12, no. 6 (June 1981): 335, https://www.jstor.org/stable/25625674?seq=5.

13 United States Federal Bureau of Investigation, Intelligence Division, "The KGB and the Library Target,

14 -Present (Effective Date of Study, January 1, 1988)," Google Books (FBI Headquarters, Washington D.C.: The Division, January 1, 1988): 2, 5 https://books.google.com/books/about/The_KGB_and_the_Library_Target_1962_pres.html?id=VzqMzwEACAAJ.

main thrust of the argument here is that their obsessive concern for the security risks trumps the free access to information as guaranteed by the Bill of Rights as well as the mentioned statues within the ALA fold, as it is much easier to clamp down on civil liberties than develop policies to protect them. And in the light of Cold War intrigue, the "us vs. them" mentality could be said to set a precedent and psychologically condition the development of further incursions in privacy and access to information, in the end providing the moral authority to challenge other liberties essential to democracy and the American open society ideology and leading the public to a general acquiescence for their loss.

But what seemed to worry the FBI more than foreign nationals finding their way into the country was the free availability of our collective knowledge, as is available in printed documents. Due to timing and how their report would describe it, it would seem as if the FBI was acting in the best interest of American security. *The New York Times* would break the story to the public in September of 1987, revealing to the American public what exactly was happening in academic and public libraries alike. The story even made its way to Moscow, where the Telegraph Agency of the Soviet Union published the story under the title "FBI Spying on Library Visitors".[15] The *Times* claimed that fewer than 20 libraries had been asked to cooperate and that the program was sequestered to the New York area. James Fox, then deputy assistant director of the New York FBI office, in an interview with McFadden, confirmed that "hostile intelligence has had some success working the campuses and libraries, and we're just going around telling people what to be alert for. All we are interested in is the fact that a hostile diplomat is there. We don't want librarians to become amateur sleuths. We turn on the warning lights. It's a preventive system aimed at stopping espionage before it hurts us."[16]

15 American Library Association and C. James Schmidt, "The FBI Library Awareness Program," *The ALA Yearbook of Library and Information Services: A Review of Library Events 1988* 14 (1989): 125–27, https://archive.org/details/alayearbookoflib0000amer/page/126/mode/2up.

16 Robert D. McFadden, "F.B.I. In New York Asks Librarians' Aid in Reporting on Spies," *The New York Times*,

Fortunate for him, there was no way to prove if he's lying, or truly unaware of the full extent of the situation. But given the lack of hard evidence, as the Times piece infers, it would seem the latter is more likely, and that leads to an interesting situation. In that same subcommittee, Duane Webster, then executive director of the Association of Research Libraries in DC, in their network of 127 different libraries, reported that "our information contradicts that. Our members from throughout the country indicate that this is much more broadly based than simply the New York libraries. We have reports from eighteen distinct libraries that have indicated approaches by the FBI."[23] Herbert N. Foerstel, a librarian and extensive researcher on this topic, concluded that what he saw as "surveillance and recruitment efforts" were happening within his own institution (Maryland University) in Maryland as well as Virginia, Florida, Pennsylvania, Ohio, Wisconsin, Michigan, Utah, Texas, and California[17]. Additionally, a Freedom of Information Act (FOIA) request for Toby Macintosh, a reporter for the Bureau of National Affairs, made earlier that year in January confirmed the existence of the program along with it not being limited to the New York City area.[18, 26] While it's not a new idea that what the government is committing during counterintelligence missions is not public information, what's interesting is that there appears to be no communication internally. James Fox in New York has no idea what his larger organization is doing, or if he is obscuring the truth, then there is a fear that what is happening could be assumed to be incompetence, in other words, shooting fish in a barrel.

September 18, 1987, https://www.nytimes.com/1987/09/18/nyregion/fbi-in-new-york-asks-librarians-aid-in-reporting-on-spies.html. [23] Duane Webster, "Testimony on the Federal Bureau of Investigation's Library Awareness Program."

17 Herbert N. Foerstel, *Surveillance in the Stacks: The FBI's Library Awareness Program*, 1st ed. (Praeger, 1991), 60–70.

18 American Library Association and C. James Schmidt, "The FBI Library Awareness Program," 125-127. [26] G. F., "Transcript of Closed NCLIS Meeting Details FBI's 'Library Awareness Program,'" *American Libraries* 19, no. 4 (April 1988): 244, https://www.jstor.org/stable/25631139?seq=2.

Along with the discrepancy related to where the program was in operation, librarians questioned their tactics as well. Kaufman illustrates the general take of the members of the profession in an earlier interview:

> They explained that they were doing a general "library awareness" program in the city and that they were asking librarians to be alert to the use of their libraries by persons from countries "hostile to the United States, such as the Soviet Union" and to provide the FBI with information about these activities...I explained that we were not prepared to cooperate with them in any way, described our philosophies and policies respecting privacy, confidentiality and academic freedom, and told them they were not welcome here.[19]

Following the *Times* article, the Intellectual Freedom Committee (IFC), a subcommittee of the ALA, which specifically focuses on the rights of library users created in 1940, would put out a statement on October 1 1987 (less than a week after the *New York Times* article blew the lid off the story) advising both academic and public libraries that this program was "an unwarranted government intrusion upon personal privacy that threatened the First Amendment rights to receive information."[20] IFC Chairman C. James Schmidt testified that:

> Perhaps libraries are the greatest resource that free people can claim, they are the only place in our society where people can find materials representing all points of view concerning the problems and issues confronting them as individuals and as a society. In addition libraries make these materials available and accessible to everyone who desires or requires them regardless of age, race, religion, national origin, social or political views, economic status or any other character[21].

19 Robert D. McFadden, "F.B.I. In New York Asks Librarians' Aid in Reporting on Spies."

20 American Library Association, "ALA Council Condemns FBI Program," ed. Judith F. Krug and Henry F. Reichman, *Newsletter on Intellectual Freedom* 37, no. 5 (September 1988): 146, 166, 166–67, 172–73, https://archive.org/details/sim_newsletter-on-intellectual-freedom_1988-09_37_5/mode/2up.

21 C. James Schmidt, "Testimony on the Federal Bureau of Investigation's Library Awareness Program." [30] Benjamin Franklin, John Woolman, and William Penn, *The Autobiography of Benjamin Franklin ; the Journal of John Woolman ; Fruits of Solitude* (New York: P.F. Collier, 1909), 150–55.

Schmidt's intent was to illustrate the raw importance that libraries hold in a democratic society, not as the physical space but rather to the ability for free intellectual exploration. Benjamin Franklin, founding father and pioneer of what would become a public library, believed that a public library was a social liberty, a republican institution that promoted both equality and a national consciousness. In his autobiography he wrote, "These libraries have improved the general conversation of the Americans, made the common tradesmen and farmers as intelligent as most gentlemen from other countries, and perhaps has contributed to some degree to the stand so generally made throughout the colonies in defense of their privileges."[30] At that time, most libraries only serviced those in academia or the wealthy. Franklin and his fellow Junto members (primarily merchants) introduced the Philadelphia Library Company, which allowed nonmembers to offer some form of collateral to be able to access its collection. In short, from its beginning to the modern public library, there is a long history of civil liberties and the political importance that libraries give to a democratic society. The academic libraries in question are not so different from public libraries; what separates them is semantics, with the former being labeled as different due to its collection being geared more toward academics; however, at Columbia, and in most cases, they are open to the public.

To corroborate their conclusions, the IFC had monitored the program for 18 months before they released their statement about what they had discovered, that the Library Awareness Program was a systematic and coordinated interagency effort to prevent access to unclassified information. Organized by the Interagency Technology Transfer Intelligence Committee, a group of 22 federal agencies hosted by the CIA (US Central Intelligence Agency), to be a part of a larger international counterintelligence operation, this was revealed in 1982 when the CIA would produce a report on Soviet acquisition of western technologies. Updated in 1985, toward the tail end of the Zakharov case, this report served as a plausible justification for this program among others hosted by the

shadow intelligence state.[22] This would also confirm much of what Foerstel would posit in both his testimony and later in his tell-all book, *Surveillance in the Stacks,* in which he wrote that "later inquiries into the FBI's library surveillance programs found that the programs had actually operated during a three–year period beginning in 1973, and then again in 1985."[23] James Geer, assistant director of the FBI Intelligence Division, indicated again that the program traces back to the seventies with an earlier attempt carried out by the Bureau.[24]

Essentially what has occurred is that since the seventies, the Bureau has suspected that libraries could be used for nefarious purposes. While sparse, there are cases all the way up until the mid-eighties; however, it's at this time that more responsibility had been placed on the Bureau. After Gennadi Zakharov was able to slip past the watchful eye of foreign counterintelligence, more pressure was put on the agency to prevent this kind of thing from ever happening again. However, there was little legal precedence for them to stand on, as 38 states had statutes to protect their reading history,[34] and librarians had once again shown that they are very adamant about protecting the sacred tradition of free intellectual exploration—regardless of national origin. There was no requirement for compliance, and librarians never outright pointed to any form of severe abuse of power by those who knocked on their door. Geer would assert that they had never asked employees to break state laws or violate professional ethics, claiming that in some instances their queries about users may have preceded the adoption of such state laws.[25]

Yet by the mid to late 80's, a sea change occurred, because of the fall-out from the hearing and what was brought to bear by the ALA and their supporters, it seemed the FBI program had

22 Central Intelligence Agency, "SOVIET ACQUISITION of MILITARILY SIGNIFICANT WESTERN TECHNOLOGY: AN UPDATE," *CIA Reading Room - FOIA* (Washington D.C., September 1, 1985), https://www.cia.gov/readingroom/document/cia-rdp88b00443r000201080007-7.
23 Herbert N. Foerstel, *Surveillance in the Stacks: The FBI's Library Awareness Program*, 1st ed. (Praeger, 1991), 14.
24 American Library Association and C. James Schmidt, "The FBI Library Awareness Program," 125-127.
[34] Ibid. 126.
25 Ibid. 127.

been exposed for what it was—a government intrusion of the first magnitude. Because of everything unearthed in the Subcommittee on Constitutional Rights hearing, new legislation was being proposed in the House. The Video and Library Privacy Protection Act contained further protections for the privacy of users of libraries that would complement the existing laws in those 38 states and Washington, DC, in large part adopting nationally what the ALA already had in its guidelines. In fact, the bill was a joint effort among the ALA, Congressional staff, the bureaucratic Office for Intellectual Freedom (ALA/IFC), as well as many other organizations that emphasize these rights.[26] But any anticipation proved to be sorely misplaced, as in the closing days of the 100th Congress, overseen by then Senator Joe Biden's Judiciary Committee, there was the threat of a new amendment that would have gone further to negate protections that existed in those states, enacting draconian restriction over libraries to be able to curtail any efforts to by law enforcement to dial back existing liberties. To avoid a complete blowout, the ALA withdrew their support after months of building, in a way, "their" bill. In the end, the "Library" was completely dropped, and it became just the Video Privacy Protection Act, leaving librarians and their advocates unsatisfied and feeling as if they had missed an opportunity.[27]

The following year, in November, FBI Director William Sessions held a news conference discussing FBI "snatch authority" and was interrupted with a question by a reporter: "Do you personally approve of the 266 investigations into critics of the program?" Sessions denied this fact, confidently barking that only 27 scientific and technical libraries in the New York area were investigated. As has been previously stated, this is an obscuring of the truth, if not a flat-out lie. Further, FBI personnel like Geer have already confirmed the chronological extent as well as the

26 "Video and Library Privacy Protection Act of 1988," Pub. L. No. 4947 (1988), https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=59eac147ba394711307f973cb3da477254c5858b, 2, 13.

27 Committee on the Judiciary, "The Video Privacy Protection Act of 1988" (Washington D.C., October 18, 1988), https://epic.org/wp-content/uploads/privacy/vppa/Senate-Report-100-599.pdf.

wider geographic targeting, not to mention outside Bureau reports. Again, this could contribute to the idea that communication channels about the program were weak, even nonexistent. Doubling down that there were only 80 to 90 actual investigations,, he capped off this detour by saying, "No, I did not know it, but you asked if I would approve of it, that sort of check is routinely made on investigations, and yes, I would have approved."[28] That being the last note in the program's lifetime before the turn of the century, no new reports came out in the news nor from the ALA, so if something had happened, then they had complied entirely.

If anything can be said, it's that this incident in time would pave the way for future occurrences. Decades into the future, once the wall that represented a world torn in two had finally been crushed, the battle over civil liberties would continue in the stacks, where complaints from the Bureau in the past would be remedied with the tools that had been afforded to them in the new context of the world's affairs. Foerstel would close out his testimony with a statement that would unknowingly predict the future, offering to Representative Don Edwards, who was at that time was comparing the plight of Winston in *1984* to this question of freedom of information, "Maybe I'm being naive, but this seems to be more gross incompetence rather than sinister conspiracy here."[29]

But there again, perhaps this could be viewed as an attempt to bring a form of repression where what you read, and what you think is the provision of powerful entities who sought to control the scope of content available to the general public. However, all the pieces don't seem to fit. There was no gag order, no end goal or even a consistent plan from chapter to chapter of the larger department. In many ways it was just a reaction, although there are legitimate fears when it comes to geopolitics. Nonetheless, it was a group of librarians who were successful in upholding the values of democracy against a government sanctioned surveillance program that sought to

28 William Sessions, "FBI News Conference," TV Broadcast, C-SPAN, November 7, 1989, https://www.c-span.org/video/?9840-1/fbi-news-conference.
29 Herbert N. Foerstel, "Testimony on the Federal Bureau of Investigation's Library Awareness Program."

trample the basic civil liberties of its citizens. For now, there was reassurance from the often elderly bookkeeper that they were indeed safe, and so it would come to an end, but the ALA and their allies kept a light on to watch for anything that might find its way in from the dark.

Sleep Now in the Fire: An Interim (1798–1978)

Burned into the psyche of the voting class is the slow operation of the federal government. Originally proposed by our founding fathers to prevent a state of tyranny akin to the one that original settlers had taken great strides to escape, the supposed genius of the American system has now become a cornerstone of what defines democracy in the modern era. Simply put, checks and balances creates a government structure that is segmented, in the American case as well as other presidential democracies, into three parts, where each has the ability to "check" the other. An easy example is the case that if a proposed bill was passed through both parts of the bicameral legislation, it can still be blocked for whatever reason. One doesn't necessarily have to be cited by the executive branch, or even further, that bill could be signed and passed, but the judiciary branch could deem such an act unconstitutional, what is known as judicial review as established through Marbury v. Madison.[30] Furthermore, the intent of the American project, as immortalized through the words of James Madison, was idealized as a society "broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority."[31] History has proven to be unkind to the minority.

The history of America is often conflated with the genesis of liberal democracy, as it was the soon to be American superpower that put Europe back together following the decimation of the

30 John Marshall, William Marbury v. James Madison, Secretary of State of the United States (Supreme Court of the United States 1803).

31 James Madison and Alexander Hamilton, "The Structure of the Government Must Furnish the Proper Checks and Balances between the Different Departments," Federalist Papers, no. 51 (February 8, 1788), https://guides.loc.gov/federalist-papers/text-51-60#s-lg-box-wrapper-25493427.

Second World War.[32] However, whether or not one believes that America is democratic, at the end of the day, the path to the present is littered with controversy and government abuse. Centuries ago, the Alien and Sedition Acts of 1798 aimed to strip the rights of noncitizens through beefing up the requirements of citizenship as well as granting the president the power to imprison and deport noncitizens carte blanche. For those citizens, the sedition side completely criminalized any form of protest against the federal government, citing, "if any person shall write, print, utter or publish...scandalous and malicious writing or writings against the government of the United States...or to excite against them...or to stir up sedition…"[33] Quite frankly, it's a complete rejection of what Madison claimed America offers its people, as the minority in this case is silenced—imprisoned or fined—or, if an alien, not even a consideration.

If anything, the fears of the modern era (communism, fascism, terrorism) would see civil liberties take a massive blow after what appeared to be centuries of progress; from its founding to the Civil War and abolition to organized labor battles, it would have seemed at the turn of the century that the rights of citizens would have continued to climb.[34] The 20th century and the spread of Communism across Europe struck more fear into the American establishment than that of fascism. Both the First and Second Red Scare saw the tightening of civil liberties, as the Espionage Act of 1917 punished anarchists and other radicals opposed at all to US military efforts in Europe,[35] while the second scare began with the Smith Act of 1940, which gave the state the right to prosecute those who were a part of organizations linked to communist ideals. Dennis v. United States (1951) put into effect the Smith Act[36] following the close of the war as tensions between the

32 Richard M Freeland, The Truman Doctrine and the Origins of McCarthyism: Foreign Policy, Domestic Politics, and Internal Security, 1946-1948, vol. 10 (1972; repr., New York: Knopf, 2008), 167–72.
33 United States Congress, "An Act for the Punishment of Certain Crimes against the United States," 1 § (1798), https://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/5th_Congress/2nd_Session/Chapter_74.
34 Michael C LeMay, Civil Rights and Civil Liberties in America: A Reference Handbook (Contemporary World Issues), 1st ed. (ABC-CLIO, 2020), 337–51.
35 United States Congress, "Espionage Act," Pub. L. 65–24 § (1917), https://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_40/65th_Congress/1st_Session/Chapter_30.
36 Howard W. Smith, "Smith Act," Pub. L. 76–670 § (1940),

Soviets and Americans would begin to skyrocket. Eugene Dennis, general secretary of the American Communist Party, along with other high-ranking members were arrested and convicted of violating the Smith Act with unsubstantiated claims that they had encouraged members to commit violent acts. Hugo L. Black presided over the case as an associate supreme court juror. Dissenting from the majority of his colleagues, he began to ponder the worrying question of what has happened to the sanctity of civil liberties, posing:

> So long as this Court exercises the power of judicial review of legislation, I cannot agree that the First Amendment permits us to sustain laws suppressing freedom of speech and press on the basis of Congress' or our own notions of mere "reasonableness." Such a doctrine waters down the First Amendment so that it amounts to little more than an admonition to Congress. The Amendment as so construed is not likely to protect any but those 'safe' or orthodox views which rarely need its protection.…Public opinion being what it now is, few will protest the conviction of these Communist petitioners. There is hope, however, that, in calmer times, when present pressures, passions and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society.[37]

Poignantly, Black acknowledges that, in most cases, the First Amendment is only upheld in majority support, what he calls "safe or orthodox." Like the later cases of Zakharov and the Library Awareness program, when the actions of individuals are in the name of national security, the founding doctrine of the First Amendment and the promised liberty that such a document would entail seems to, casually speaking, fly out the window. This is the foundation that the '54 McCarthy hearings would take full advantage of, that enemies and undesirables, citizen or not, can be stripped of their rights as private individuals under the guise of protecting the nation.

As tensions cooled, there appeared to be a looser grip on the reins in that there was some giveback after what seemed to be a full-on assault on society. This era, which would encapsulate the term of Chief Justice Earl Warren, began in 1954 and lasted through 1969. His first case on the

https://en.wikisource.org/wiki/Alien_Registration_Act_of_1940.

37 Fred M. Vinson, Dennis v. United States (341 U.S. 494) (Supreme Court of the United States June 4, 1951).

bench would see the unanimous court decision in Brown v. Board of Education of Topeka (1954), prompting the desegregation of private and public schools.[38] The civil rights case, backed by the ACLU, would, while not in the scope of this paper, bridge the racial divide in America and bring civil liberties, in a sense, to a historically racist precedent of treating Black Americans as second class citizens, embodied in the doctrine "separate but equal."[39] More on the track, Katz v. United States (1967)[40] reached the decision that telephone conversations should be private and were in fact protected by the Fourth Amendment—the right of the people to be secure in their persons, houses, papers, and effects. The following year, Congress was, in all essence, forced into recognizing and legislatively clarifying that, indeed, an agency of the state would require a court order, based on probable cause, before being allowed to monitor communication, as confirmed in 1968 with Title III of the The Omnibus Crime Control and Safe Streets Act (1968; often referred to as Wiretap Act).[41]

This unspoken cooldown would soon sunset as threats related to the Eastern Bloc arose by the end of Warren's tenure. Elsewhere, as the library program was running under the radar, the Church Committee (or formerly the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities) was investigating and compiling their findings on covert operations by agencies such as the CIA and FBI. In 1976, they would alert to the public in an issued report[42] the details of counterintelligence missions helmed by those same agencies, most famously the FBI's COINTELPRO, which entailed surveillance and infiltration of

38 Supreme Court of the United States, Brown v. Board of Education of Topeka (347 U.S. 483) (Supreme Court of the United States May 17, 1954).
39 Supreme Court of the United States, Plessy v. Ferguson, 163 U.S. 537 (Supreme Court of the United States May 5, 1896).
40 Supreme Court of the United States, Katz v. United States (389 U.S. 347) (Supreme Court of the United States October 18, 1967).
41 United States Congress, "Omnibus Crime Control and Safe Streets Act of 1968," Pub. L. 90-351; 34 U.S.C. § (1968), https://transition.fcc.gov/Bureaus/OSEC/library/legislative_histories/1615.pdf, 17-32.
42 Frank Church et al., "Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities," United States Senate (Washington DC: The Church Committee, April 29, 1976), https://www.senate.gov/about/powers-procedures/investigations/church-committee.htm.

American political and civil-rights organizations, such as the Socialist Workers Party in ‘61, Ku Klux Klan in ‘64 and the Black Panthers in ‘67, as well as MKUltra,, in which the CIA drugged and tortured unaware US civilians with LSD as part of an interrogation research program and which, to this day, is still believed to be a fabricated conspiracy. The latter breach of civil liberties contributes to the idea that what the counterintelligence agencies wanted during this period was to control the minds of civilians, to understand how they think, and to better catalog them as either patriots or terrorists.

In an attempt to revive trust and leash what all could clearly see to be a mad dog cut loose, the Foreign Intelligence Surveillance Act (FISA)[43] passed in 1978, creating a Congressional oversight of these “dogs” and their methods of collecting and analyzing intelligence for purposes of national security. Title III of the Wiretap Act would remain intact for the time being. FISA regulated accumulation of data in relation to investigations of nondomestic groups or individuals that did not require the watched to be suspected of any criminal activity whatsoever; they only had to be non-American. Furthermore, the 11 magistrates of the Foreign Intelligence Surveillance Court (FISC), after review of requests by the Attorney General to conduct investigations, the records of cases were not to be disclosed to those who were being actively investigated.

As for the citizens of the US, the Wiretap Act would be their bulwark for the time being. The Library Awareness Program and the subcommittee hearing would reveal that at least one of the programs had flown under the gaze of the Church Committee. This was likely due to the fact that, as Foerstel would insinuate, snooping through the stacks had been marginally incompetent and, in terms of counterintelligence, not viewed as outwardly offensive to the liberties of citizen and foreign national as some of the other blitzes carried out by the crazed hounds of the United States. This was far from the end but rather a pretext to the continuation of the program into the

43 United States Congress, “Foreign Intelligence Surveillance Act of 1978,” Pub. L. 95-511; 50 U.S.C. ch. 36 § (1978), https://www.govinfo.gov/content/pkg/COMPS-1449/pdf/COMPS-1449.pdf.

next millennia, where the fear of communism faded as walls crumbled and where xenophobia and isolationist idealism instead found a new threat to democracy and a new reason to backslide.

Part 2: The Patriot Act

War Within a Breath: 9/11

At the root of it all, the September 11 attacks revealed to both the state and society at large that America was not invincible nor unaffected by what was happening overseas. Unlike the attack on Pearl Harbor, which was a provocation for the US to enter the battlefield, the attacks supported by Al-Qaeda were a direct result of a multitude of American actions in the Middle East. However, that is a sentiment and knowledge only appreciated in the time the days immediately following 9/11 were a different story. Americans were transfixed by the image of the World Trade Center crumbling, taking the lives of American civilians with it, and that uncomfortable feeling was compounded by it being endlessly broadcast on television.[44]

Even since the Gulf War in the early 90s, there had been a steady increase of depression linked to media coverage, with it reaching a peak of three-fourths of the nation experiencing depression following the 9/11 attacks.[45] It became an emotional burden to stay tuned in, witnessing everything on demand from the Gulf War to the '93 car bombing at the World Trade Center to the Oklahoma City bombing of the Alfred P. Murrah Federal Building in 1995 to the 2001 attacks. The threat of the Soviet Union had diminished, with Germany unionized and Boris Yeltsin as the head of a messy newly established liberal democracy. These attacks would bring to the attention of the nation a new threat to American democracy, and terrorism would provide the state with a blanket cause to fight back.

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44 Christopher M Finan, *From the Palmer Raids to the Patriot Act : A History of the Fight for Free Speech in America* (Boston, Mass.: Beacon Press, 2007), 270.

45 Pew Research Center, "American Psyche Reeling from Terror Attacks," *Pew Research Center - U.S. Politics & Policy* (Washington D.C., September 19, 2001), https://www.pewresearch.org/politics/2001/09/19/american-psyche-reeling-from-terror-attacks/.

On October 26, forty-five days after Flight 11 crashed into the North Tower, President George W. Bush hurriedly scribbled his initials onto a bill that had swiftly made its way through the halls of congress;. Turning his attention to the cameras that had occupied the East Room, bouncing his pen back and forth, he proclaimed that "this law will give intelligence and law enforcement officials important new tools to fight a present danger."[46] His words echoed those of his attorney general, John Ashcroft, who, appearing before the Senate Judiciary Committee, said that "terrorism is a clear and present danger to Americans today...[information available to the FBI] indicates a potential for additional terrorist incidents."[47]

46 Homeland Security, "USA PATRIOT Act," Homeland Security Digital Library, October 26, 2001, https://www.hsdl.org/c/tl/usa-patriot-act/.

47 Michael Elliott, "'A Clear and Present Danger': As Americans Worry about Truck Bombs, Germ Warfare and Worse, They Wonder: Can Our Government Do Anything to Stop the next Terror Attack? ," CNN, October 1, 2001,

Indeed a catchy phrase, its genesis is in Schenck v. United States (1919),[58] in which Chief Justice Oliver Wendell Holmes Jr. posits that "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic...the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about substantive evils that Congress has a right to prevent."[59] Charles Schenck was charged with the Espionage Act during the first Red Scare for circulating pamphlets critical of the military draft. Holmes' court, in full knowledge, upheld his conviction, ruling that the Espionage Act did not violate the First Amendment, establishing a legal framework in which the court could bend the meaning of that liberty. *Clear and Present Danger* would be used as the title for Tom Clancy's 1989 political thriller novel, depicting a dystopian world with rampant abuse of political and military power by a government bureaucracy where it was nigh impossible to find someone to blame for actions illegal in a democracy.

The cooldown of the battle on civil liberties, as previously discussed, could safely be said to have ended in the face of this new threat. Following Oklahoma City, the eye of the federal state was beamed in on acts of terrorism, both domestic and foreign. Starting in 1996, with the Antiterrorism and Effective Death Penalty Act, the crackdown on civil liberties would begin once again. The Death Penalty Act removed habeas corpus protections for noncitizens as well as began to expand executive power to deem individuals or groups "terrorists," along with reinvigorating prior restraints on the rights of noncitizens considered controversial.[60] However, akin to governmental actions in the past to suppress civil liberties, the bill that Bush had quickly signed

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http://www.cnn.com/ALLPOLITICS/time/2001/10/08/danger.html.

58 Supreme Court of the United States, Schenck v. United States (249 U.S. 47) (Supreme Court of the United States March 3, 1919).

59 Ibid, 52.

60 "Antiterrorism and Effective Death Penalty Act," Pub. L. 104-132; 18 U.S.C. § (1996).

would become a powerful tool in the hands of the FBI in recontextualizing the Library Awareness Program.

Sinister Conspiracy?: The USA PATRIOT Act (2001)

Passing remarkably quickly, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (2001), or USA PATRIOT Act (The Patriot Act) would single-handedly define a new era of counterintelligence. A lone senator—Russel Feingold—would vote against its passage, citing that "we must continue to respect our Constitutions and protect our civil liberties in the wake of the attacks… [as well as protect] against the mistreatment of Arab Americans, Muslim Americans, South Asians, or others in the country.[48]" His opposition stuck out like a sore thumb in Congress and generally went against what most Americans were feeling at the time; in direct response to the attacks, a little over half the population felt it necessary to give up civil liberties to curb terrorism,[49] and trust in government in 2001 was at 60 percent—the highest it had been in 30 years and slightly under the approval rating during Nixon's first term.[50] The House again reflected this overwhelming emotional reaction with a 357–66 majority.

Intelligence agencies would be granted awesome powers for the use of monitoring communication under the Patriot Act, along with a tightening on border control, immigration as well as money laundering.[51] Again emphasizing that the normal operation of the legislature is a slow process except, as history has shown, with regard to those bills that would clamp down on

48 Russell Feingold, "On Opposing the U.S.A. Patriot Act," In-Person (October 12, 2001).
49 Pew Research Center, "United in Remembrance, Divided over Policies: 10 Years after 9/11," *Pew Research Center U.S. Politics & Policy* (Washington D.C., September 1, 2011), https://www.pewresearch.org/politics/2011/09/01/united-in-remembrance-divided-over-policies/.
50 Pew Research Center, "Public Trust in Government: 1958-2023," *Pew Research Center - U.S. Politics & Policy* (Washington D.C., September 19, 2023), https://www.pewresearch.org/politics/2023/09/19/public-trust-in-government-1958-2023/.
51 United States Congress, "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstructing Terrorism (USA PATRIOT Act) Act of 2001," Pub. L. 107–56 § (2001), https://www.congress.gov/107/plaws/publ56/PLAW-107publ56.htm, 115.
United States Congress,

civil liberties for national security, as in the case of the Patriot Act, where 300 pages, filled to the brim with a response to this surprise attack that comes off more as a rash emotional response than a well thought-over pragmatic plan, attempting to make up for the hit by empowering these agencies, such as the FBI and CIA.

Section 215 of the Patriot Act was one of the sections that was qualified by sunset provisions that Congress had to review before 2005; 23 years and a day later, Section 215 amended Section 501 of FISA, which had organized the FISC to handle surveillance order requests from agencies like the FBI for purposes related to protecting against "international crime and terrorism."[52] Section 215 made the implications for a request to collect nearly any kind of information even broader than it was before. As noted previously, this is one of those sections that reads emotionally rather than strategically, diminishing the standard of legal surveillance acquisitions even more so than it was before. Furthermore, the threshold for these requests contained no stipulations, as there was no clear requirement for probable cause. Borrowing some of the language of Section 501, it stripped out any form of check that it would be used only for noncitizen record collection.[53] In its own language, it strikes out Sections 501 through 503, replacing them with only a rewritten Section 501 and Section 502. Section 503 was a stipulation that semiannually the Attorney General must report to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate as to all the requests made to FISC.[67] The Patriot Act not only would pose the infamous demand that any institution can be made to produce "any tangible thing,"[54] (as long as it is relevant

52 "Foreign Intelligence Surveillance Act of 1978," Pub. L. 95-511; 50 U.S.C. ch. 36 § (1978), https://www.govinfo.gov/content/pkg/COMPS-1449/pdf/COMPS-1449.pdf, 48-49.

53 "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstructing Terrorism (USA PATRIOT Act) Act of 2001," Pub. L. 107–56 § (2001), https://www.congress.gov/107/plaws/publ56/PLAW-107publ56.htm, 287-288. [67]

"Foreign Intelligence Surveillance Act of 1978," 49-50.

54 United States Congress, "USA PATRIOT Act," 287.

according to the agency), but it would also strip away an essential communication channel meant to check the power of the FISC. While FISA was meant originally as a precaution against countersurveillance abuse—it appeared to work as such during the Library Awareness Program, as there never had been indication that a court approved the request of foreign national reading records in their canvases—it wound up with the Patriot Act amendments aiding in the opposite direction. On top of this, as opposed to the Library Program, investigations now contained gag orders for the recipients, forbidding them from reporting the order to colleagues or others.[55] Although lacking any form of specification related to institutions that may be vulnerable, there was a fear that Section 215 would see a return of the Library Awareness Program in the new millennia. Paula Kaufman, who 20 years later was now working as the Dean of Libraries at the University of Illinois, responded by warning, , "This is a 'brave new world'...in light of the Patriot Act, we must be diligent to ensure that greater national security will not erode the civil liberties that form the national character for which we have fought so long and so hard."[56]

New Era, Same Story (2001–2005)

An interview with Vermont librarian Jessamyn West, whom Wired has described as a "radical librarian,"[57] and who presents herself as an anti-capitalist in her extensive blog post collection,[58] showed her to be a person who is seeking to repair democracy to a purer (fairer) form. She spoke of her desire while attending the University of Washington "[to] push the possibility of librarianship to achieve social gains."[59] West isn't alone in this sentiment. As mentioned

55 Ibid. 288

56 Paula Kaufman, "New Encroachments Recall Old Ones," *Library Journal* 127, no. 16 (October 1, 2001), https://go.gale.com/ps/i.do?id=GALE%7CA93085019&sid=sitemap&v=2.1&it=r&p=EAIM&sw=w&userGroupName =nysl_me_bardgrad&aty=ip.

57 Adam Penenberg, "Don't Mess with Librarians," Wired, September 15, 2004, https://www.wired.com/2004/09/dont-mess-with-librarians/.

58 Jessamyn West, "Librarian.net – Putting the Rarin Back in Librarian since 1999," Jessamyn West's Blog, April 1999, https://www.librarian.net/.

59 Jessamyn West, Zoom Call with Librarian Jessamyn West, interview by Henry Wandover, December 5, 2023. United States Congress,

previously, the ALA Bill of Rights and Code of Ethics bind librarians and patrons in a relationship similar to that of attorney and client. What exists still is a stereotypical view of librarians as bespectacled, ancient creatures that act as wardens of their domain, prepared to shush anyone speaking above a certain decibel. However, as perhaps the Library Awareness Program illustrates, that is far from the truth. Rather, they serve a special role in the intersection of and exchange between government and the people. West, for one, claims that "librarians can't be too open, as they are the government."[60] There is some truth to that statement, as public libraries are nothing if not state government investments, and its workers, like those who work in social services, are government employees. They are tasked, aware or not, with facilitating the exploration of knowledge for the purpose of creating the next generation of informed voting citizens—along with providing an unbiased space in which all who wish can, and should, take advantage of all there is to offer, as public truly means public since there many avenues by which to attain a library card regardless of circumstances.

If libraries guarantee this flow of information from government to citizen, what the Bush Administration began to do was a direct attack on that principle. In November, following the introduction of the Patriot Act, an executive order[61] was filed that would further restrict the power of the 1978 Presidential Records Act (PRA). Continuing in the vein of FISA's Section 503 to be more upfront with actions taken behind closed doors, PRA mandated the preservation of all presidential records and changed their legal ownership from private to public.[62] Reagan had begun to limit access in 1989 when he passed Executive Order 12667; however, Bush attempted to set a precedent where former presidents should outright refuse writing a clause allowing for greater

60 Ibid.

61 George W. Bush, "Executive Order 13233—Further Implementation of the Presidential Records Act" (Washington DC, November 1, 2001), https://www.govinfo.gov/content/pkg/WCPD-2001-11-05/pdf/WCPD-2001-11-05-Pg1581.pdf.

62 "Presidential Records Act of 1978," Pub. L. 95–59; 44 U.S.C. ch. 22 § (1978),

discretion to withhold documents—this would include statesmen from Reagan to Bush. Around the same time, due to all the excitement and internal restructuring of a multitude of government entities, Ashcroft set himself on receding the historic support the Department of Justice (DOJ) had for the FOIA, deciding to encourage, via memo, a broad range of exemptions encompassing all federal agencies and departments from being mandated to disclose what once normally would have been—changing the principle from a "right to know" to a "need to know."[77] Again the given reason would be for purposes of national security retracting the element of transparency which had been significant as an attempt to prevent further civil liberty abuse.

Furthermore, the Bush Administration would limit access to information on government web sites and depository libraries (exclusively government document archives), withdrawing previously open records from the National Archives.[78] With actions like these, the relationship between the state and libraries worsened, as even during times of national crisis, they believed that First Amendment rights are no less important. As the Patriot Act was in the works and the blatant privatization of the federal state was rolling, the ALA partnered with the American Civil Liberties Union, the Eagle Forum, the Muslim Public Affairs Council, the Second Amendment Foundation and over 150 different origination in an union known as the 'In Defense of Freedom' Coalition. The ACLU had a mounting fear that due to the recent attacks, Congress would without a doubt return with a blitzkrieg on the rights of citizens and even more so on noncitizens. On September 14, members of dozens of civil liberties groups squeezed into the ACLU's national office

https://uscode.house.gov/view.xhtml?path=/prelim@title44/chapter22&edition=prelim.

[77] John Ashcroft to Heads of all Federal Departments and Agencies, "The Freedom of Information Act," October 15, 2001.

[78] Christopher M Finan, *From the Palmer Raids to the Patriot Act*, 272.

United States Congress,

conference room, with some spilling out onto the garden. A conference had been called in which the establishment of the Coalition would happen alongside their 10-point statement and make plans to advocate against any potential crackdown.[63] As one could expect, most of their demands were either ignored or rejected by congressmen as they worked on crafting the Patriot Act and were not enough to halt the forward motion.

The Patriot Act, as it existed in 2001, along with Section 215, featured two other areas that are vital to understand going forward. Section 215 for libraries meant there was little in the way of government agencies having access to patron records due to the guidelines of collection having changed very quickly in the 2000s after decades of stability. Laid bare were both library records and electronic information systems—both "tangible objects." Furthermore, this meant a large time dedication and staff power to meet the requirements of such an order. Forced to dig through multiple mediums, from patron footprints in books, flash drives, servers, individual hard drives, logs of Internet use, circulation transactions, and associated registration in print and an electronic format. All this would be laid bare to federal scrutiny. And as a tangible object may reside in a specific place, such blank check searches would allow for the review of a whole host of personal information.

Section 505 entirely redefined the rules for serving a National Security Letter (NSL), a unique search procedure authorizing the FBI to coerce the handing over of client records, whether they be banks, internet service providers (ISPs), telephone companies or other institutions. In this case, the library, when served, is bound by law to not disclose to anyone their status of aiding with an NSL. In the past, NSLs were intended to siphon records from an institution pertaining to a client believed to have probable cause related to its status as a foreign power. With the Patriot Act

63 Ibid., 278-280.

rewrite, the FBI could now act even if the records were tangentially related to an authorized investigation, meaning that even if a person wasn't the target of an investigation, if there was any kind of reason provided as to the usefulness of their record, it could be pulled legally. Also included was the expenditure of NSL approval authority to any Special Agent in charge of any of the FBI's 56 field offices.[64] Their interpretation of Section 505 left libraries vulnerable, as they were now equipped with public access computers connected to the internet, so they could be deemed ISPs. Lack of clear documentation for NSL usage meant library patron data was now, at the snap of a finger, no longer private.

The other sections, 507 and 508, revoked privacy protection for personally identifiable histories under the ownership of educational institutions. In the case of an academic library, for example, student files may be turned over to law enforcement during terrorism investigations only, requiring a DOJ sign-off that files *may* contain something pertaining to the case,[65] overriding existing state policies that uphold total confidentiality of educational records.

In the face of the Patriot Act and the unethical expanses of surveillance rules, libraries were forced to comply even if they disagreed. If Kaufman had that same experience in 2001 on, there wouldn't have been a chance to say no, and no one would have heard anything of it. The earlier program was kinder in that regard, lacking any respect for civil liberties but not a hard and fast rule. That is exactly what the Patriot Act changed. The FBI had learned from its mistakes and saw that librarians are, for the most part, not easy to work with—Geer would echo this sentiment back then from reported experiences by agents. This time they had the upper hand. West recalls a "collective trauma" awaiting a knock on the door, as she took the role as an opportunity to do good for the community and the democratic process, the underpinnings of which were under direct siege by a warship directed by Ashcroft. She didn't lose faith or burn out, along with other librarians

64 United States Congress, "USA PATRIOT Act," 97-98.
65 Ibid.

who kept hold of their values, attempting to serve their patrons as well as manage their privacy while working through a totalitarian thunderstorm hanging over the public library.

Active Resistance

The Defense of Freedom Coalition was the most significant attempt to block the passage of the Patriot Act, but with that failure, reality set in; libraries begrudgingly accepted this new world order and attempted to band together in ways that wouldn't break the law yet would resist this new challenge to privacy. The ALA's Office of Intellectual Freedom put together comprehensive practical guidelines for responding to warrants or NSLs from the FBI or other government agencies, and by the end of January 2002, librarians would either receive these by mail or be pointed toward an online database.[66] Library organizations across the States brought awareness to the dangers that the Patriot Act brings with it. Staff were trained and boards adopted ALA policies governing library records and personally identifiable information. Institutions examined their current practices regarding information in the public view and relearned how to be discrete about sign-in sheets. Others took more drastic measures, such as the Santa Cruz library board, which instituted a new policy of shredding documents daily in 10 branches across the city. One librarian, Barbara Gail Snyder, reported to *The New York Times* that "the basic strategy now is to keep as little historical information as possible."[67] Originating as well as in Santa Cruz was the practice of posting warning signs to communicate the gag order placed on librarians in the unknowable situation where a patron is being investigated. ALA director in Westchester, NY, Maurice J.

66 American Library Association, "GUIDELINES for LIBRARIANS on the U.S.A. PATRIOT ACT What to Do Before, during and after a 'Knock at the Door?'" (Washington, D.C.: American Library Association Washington Office, January 19, 2002).

67 Dean E. Murphy, "Some Librarians Use Shredder to Show Opposition to New F.B.I. Powers," The New York Times,
April 7, 2003, sec. U.S., https://www.nytimes.com/2003/04/07/us/some-librarians-use-shredder-to-show-opposition-to-new-fbi-powers.html.

Freedman reported that these practices were being employed in Killington, Vermont, and Skokie, Illinois as well and saw them as unnecessarily alarming patrons about the dangers of the Patriot Act. West, perhaps due to her more radical view of librarianship, very much outwardly supported this practice and provided free use of signs she had created on her website (see Figure 1).[68]

Figure 1. *Five Technically Legal Signs.*
Made by Jessamyn West

Taking a more cautionary stance, Freedman argued that "there are people, especially older people who lived through the McCarthy era, who might be intimidated by this...as of right now, the odds are very great that there will be no search made of a person's records at public libraries, so I don't want to scare people away."[69] His more reactionary belief was rooted in the case that disclosure limits were at this time clearly articulated by laws in 48 states (except for Hawaii and Kentucky) and the District of Columbia. State law would have to be amended to comply with the Patriot Act, but some believed that precedence would stand.

68 Jessamyn West, "Librarian.net – Putting the Rarin Back in Librarian since 1999."
69 Dean E. Murphy, "Some Librarians Use Shredder to Show Opposition to New F.B.I. Powers."

By 2005, more than 400 communities and the states of Colorado, Idaho, Maine and Montana would pass resolutions calling for the reform of the Patriot Act. Deciding not to wait and hope that this imagined reality may come true, many decided to take on specialized initiatives to protest the Patriot Act. These included community groups that exclusively checked out books on counterintelligence and civil liberties, as they felt they could be suspects and unknowingly be watched.[70] Three years before, a British man had been arrested in a Punta Gorda library after using one of the public computers to view websites about mineral supplements and the Baghdad Battery.[7172]

Attorney General Ashcroft spoke in September 2003, two years after the Patriot Act was passed, indicating that concerns related to libraries were "breathless reports and baseless hysteria."[73] His 17th speech in one month, this one, and all previous ones, were in defense of the extensive counterterrorism effort and against those who called it government overreach. In fact, he had just finished a road show across the Eastern seaboard where he spoke to law enforcement officials about the benefit of the Patriot Act. Emily Sheketofi, executive director of the ALA at the time, saw this as a win, saying that "If he's coming after us so specifically, we must be having an impact."[89]It's unclear at this point to those outside if the FBI had visited libraries during that time. Foerstel, still in the game, acknowledges the new challenge in comparison with the old program, writing, "We know the chilling possibilities that these new authorities represent, but they will be more difficult to document and assess because of the unprecedented gag order that the Patriot Act imposes on librarians, booksellers, and others served with the newly authorized secret warrants."[74]

70 Eberhart, George M, "Libraries Cope Creatively With The Patriot Act," American Libraries, 2003, 98.

71 Staff Reports, "London Man Arrested at Punta Gorda Library with Unknown Substances," Herald-Tribune, July 29,

72 , https://www.heraldtribune.com/story/news/2002/07/29/london-man-arrested-at-punta-gorda-library-with-unknown-sub stances/28406991007/.

73 Eric Lichtblau, "Ashcroft Mocks Librarians and Others Who Oppose Parts of Counterterrorism Law," The New York Times, September 16, 2003, sec. U.S., https://www.nytimes.com/2003/09/16/us/ashcroft-mocks-librarians-and-others-who-oppose-parts-of-counterterrorism-l aw.html. [89] Ibid.

74 Herbert N Foerstel, Refuge of a Scoundrel, 1st ed. (Waltham, MA: Libraries Unlimited, 2004), 210–222.

In further retaliation, the ALA began a campaign of button wearing and other promotional items with the tagline *Another hysteric librarian for freedom*. In an attempt to clarify the situation, Mark Corallo, a spokesman for the department, claimed the speech was more so an indignation of the ACLU and politicians who had "persuaded librarians to mistrust the government," saying that the "[American Librarian Association] has been somewhat duped by those who are ideologically opposed to the Patriot Act."[75] Whatever the intent, this back and forth between librarians and the DOJ would raise the unanswered question that Foerstel was fearful of: Had library information been collected? Many had been preparing for this, while others had resigned it as an unthinkable situation, but no one knew at this point if anything had happened. There wasn't an avenue like before for a Kaufman to throw a flag.

By the end of 2003, the FBI alerted that the Homeland Security Advisory System threat level had been raised from Yellow to Orange due in part to their investigations leading to the conclusion that terrorist operations were using almanacs to select potential targets and organize operational planning.[92] Thiso stirred up fears that libraries were no longer a free and safe place to think and that either the FBI could be watching you or you could be sharing a desk with a terrorist.

By 2005 it was still unknown whether libraries had been a subject of searches, and at this time, the Patriot Act's sunset clause was fast approaching.[76] A safeguard was put in place that would suspend sections like 215 on December 31st; due to the fast nature of the act passing and the latent as well as extensive powers gifted to intelligence forces, Congress saw the need for a point at which they would have the chance to evaluate the past four years. While the majority had no qualms with letting what had been be, bands of representatives and senators began to work on challenges to the likely case that the renewal would go through without a hitch. What the ALA,

75 Eric Lichtblau, "Ashcroft Mocks Librarians and Others Who Oppose Parts of Counterterrorism Law," [92] FBI Counterterrorism Division to Law Enforcement Agencies, "FBI Intelligence Bulletin No. 102," October 24, 2003, https://cryptome.org/fbi-almanacs.htm.

76 United States Congress, "USA PATRIOT Act," 25.

ACLU and other members of the Defense of Freedom Coalition had been advocating for as well as how librarians had been contending with this encroachment had laid the groundwork for their appeal. At the time, Representative Bernie Sanders was very much influenced by his constituents in the Vermont Library Association to introduce on the floor of the House the Freedom to Read Protection Act in March of 2005, an attempt to exempt libraries as well as bookstores from Section 215, in effect raising the threshold at which institutions can be served an NSL.[77] There were other attempts by House and Senate members to thwart different elements of the Patriot Act, and all the while Ashcroft continued to deny that any library had been served an NSL and questioned, "How far have you gotten on the latest Tom Clancy novel?"[78]

The Connecticut Four: The Final Showdown

Earlier in the year, unknown to anyone but the parties involved, the FBI would come knocking and it would blow up in their face. On July 8, Ken Sutton was sitting by the phones when one began to ring. A dark, foreboding voice indicates that he is in fact an agent of the FBI. Sutton was employed at the Library Connection, a consortium of 27 libraries located across Hartford. The agent informed Sutton that the Library Connection was going to be served a NSL very soon and inquired into who was in charge. Sutton offered up George Christian, as he was the consortium's Executive Director. The NSL would arrive five days later with directions from the FBI to provide them with "any and all subscriber information, billing information, and access logs of any person or entity related to the following IP address," for a 45-minute period on February 15.[79] The typical details of an NSL were presented, alerting to the gag order being in effect and instructing the recipient to deliver the records to the New Haven field office only, no exceptions.

77 Christopher M Finan, *From the Palmer Raids to the Patriot Act*, 284-288.
78 Eric Lichtblau, "Ashcroft Mocks Librarians and Others Who Oppose Parts of Counterterrorism Law."
79 Federal Bureau of Investigation, "Library Connection National Security Letter," ACLU, May 15, 2005, https://www.aclu.org/legal-document/library-connection-national-security-letter?redirect=cpredirect/25995. 97 Victor Marrero, John Doe and American Civil Liberties Union v. John Ashcroft (U.S. District Court for the Southern District of New York September 2004).

Christian had been alerted by Sutton almost immediately, so he had time to compose himself, and in preparation, he had looked into an earlier decision by the District Court in New York in which they were able to invalidate the NSL statute.[97] Due to this discovery, Christian began to question the two agents about both the gag order and an NSL in general, claiming that it was unconstitutional, and one of the two gave him "a threatening scowl, a business card, and instructions to have his lawyer call the FBI."[80] Opting to take the harder path of resistance, Christian called an emergency meeting of the Executive Committee of Library Connection's Board of Directors, including Barbara Bailey, Peter Chase, and Janet Nocek, and legal counsel provided eagerly by the ACLU—ready to take the battle now that the site had been revealed. The first objective was to relieve the gag order so that the full Board of Directors and the public would be aware of the NSL that had been served on the library. This was an attempt to provide a solid answer to the question wondered by library organizations for years. As well as providing Congress with vital information for the ongoing deliberations about the expiration of 215. Ultimately unsuccessful, as they were unable to reach a consensus before sunset clause expiration and Congress opted to extend the expiring sections until March 10, 2006.

The Executive Committee chose to go forward in fighting the NSL because the FBI's request for subscriber information linked to that IP address was broad in its scope.[81] How the router's security protocol worked at the Connection was by randomly assigning a different address each time a computer was activated to maintain privacy. The manual tracing of a router's path on the specified date was flatly an impossible task, so the FBI chose to ask for the identity of every computer user for that time period. This could also mean that every computer user in the library since the NSL was issued was at risk, as discrete logins were no longer an option with the agency's

80 Amy Goodman and David Goodman, "America's Most Dangerous Librarians," Mother Jones, October 2008, https://www.motherjones.com/politics/2008/09/americas-most-dangerous-librarians/.
81 George Christian, "Doe v. Gonzales: Fighting the FBI's Demand for Library Records - Statement of George Christian," American Civil Liberties Union, May 30, 2006, https://www.aclu.org/documents/doe-v-gonzales-fighting-fbis-demand-library-records-statement-george-christian.

attention. The Executive Directors were demanding judicial review. For some odd reason, the NSL served to Christian in July was dated back in May addressed to Sutton, again concerning the lack of urgency on the part of the agency about national security.[82] It begs the question in both past and present programs that if libraries are such a sore spot in counterintelligence, why is there such a slow and unorganized force behind it?

In August 2004, the ACLU would file and pursue a suit, on behalf of the Library Connection, in the Federal District Court of Bridgeport, initially against Ashcroft; however, it would promptly be renamed *Doe v Gonzalez* after Ashcroft's successor Alberto Gonzales. Affidavits were supplied by both Chase and Christian, but due to the circumstances, neither was allowed to appear at the hearing. In September, the district judge ruled that the gag was a form of prior restraint and, after review of the evidence, that there was not a compelling reason in which to maintain the gag.[83] Citing it as both a violation of the First and Fourth Amendment due to it effectively barring judicial challenge, and nondisclosure being an attack on the freedom of speech. Before the plaintiffs could celebrate this small victory, the DOJ appealed the ruling, in effect, maintaining the gag.

This hearing would cause a slight stir in the public consciousness, as the media was able to identify the gagged "John Doe" plaintiff as a library consortium in Connecticut after the government failed to properly redact identifiable information from its court papers. A few weeks later, *The New York Times* was able to uncover that Library Connection had been mistakenly disclosed in an online version of the court's proceedings and revealed the consortium's true identity.[84]

82 Federal Bureau of Investigation, "Library Connection National Security Letter."
83 American Civil Liberties Union Foundation, Doe v. Gonzales (United States District Court, D. Connecticut September 5, 2005).
84 Alison Leigh Cowan, "Librarians Must Stay Silent in Patriot Act Suit, Court Says," The New York Times, September 21, 2005, sec. New York, https://www.nytimes.com/2005/09/21/nyregion/librarians-must-stay-silent-in-patriot-act-suit-court-says.html.
[103] American Civil Liberties Union Foundation, Doe v. Gonzales (United States Court of Appeals for the Second

The Second Circuit Court of Appeals would hear *Doe v Gonzales* in November of 2005.[103] This time Christian and Chase were allowed to attend with strict stipulations that they enter and leave the building separately and not sit next to each other during the hearing. With the leak in the air, government attorneys insisted that copies of the news stories identifying the plaintiffs that had been submitted to their counsel remain under seal, although their status was far from a secret at this point to those who were watching. ACLU lawyers would argue that "now that John Doe's identity has been widely disseminated, the government's sole basis for the gag has wholly evaporated."[8586]" Running out of time, as Congress would complete the renewal of the Patriot Act before the Appellate Court could rule on the gag order, the *Doe* attorneys attempted to forward the case to the Supreme Court for emergency relief; however, the Court refused to remove the gag,[105] and the Patriot Act was renewed, keeping intact the nondisclosure of the John Does.

In May of the following year, the government attorneys would inform the Second Circuit that the FBI would now rescind the gag. They also requested that the earlier decision reached by the lower court be vacated. Refusing to do so, the judge in the Second Circuit would add that "a ban on speech and a shroud of secrecy in perpetuity are antithetical to democratic concepts and do not fit comfortably with the fundamental rights guaranteed American citizens."[87]

The Connecticut John Does, including Christian, Bailey, Nocek and Chase, were now unshackled by the NSL as of May 31, and feeling deep gratitude toward the ACLU and the judges that weighed in the direction of democracy, they would speak to many journalists to disclose their stories. Chase recalls in *Mother Jones* the day that his son greeted him with "Dad, you just got a call from the Associated Press saying the FBI is investigating you. Is that true? Why haven't you

Circuit May 23, 2006).

85 Amy Goodman and David Goodman, "America's Most Dangerous Librarians."

86 US 1301 (2005); Justice Ruth Bader Ginsburg denied the emergency application to vacate the lower court's stay: "A decision of that moment warrants cautious review."

87 American Civil Liberties Union Foundation, Doe v. Gonzales (Second Circuit).

[107] Amy Goodman and David Goodman, "America's Most Dangerous Librarians."

told us?"[107] He was forced by the gag not even to disclose the facts to his own family. In a retrospective a decade later, the Connecticut Four would collectively declare that "this was a win for civil liberties."[88]

On August 2, 2006, Supreme Court Justice Ruth Bard Ginsburg demanded the full disclosure of *Doe v Gonzales* records, and subsequently the ACLU posted all court records and documents to their websites, internalizing digitally the battle that had taken place. The ALA commended the Connecticut Four for all their tenacity and honored them with the Robert Downs Award at their 2006 Annual Conference. *T*he *New York Times* estimated that roughly 30,000 NSLs were issued each year and noted how surprising it was that one of the only publicly known challenges of the statute was carried out by four unexpectedly dedicated librarians.[109]

Conclusion

Epilogue: Improvement and the Great Footnotes of History

The USA PATRIOT Improvement and Reauthorization Act was signed into law on March 9, 2006.[89] It was a stitched-together reauthorization of many bills, approved by both the House and Senate, and one of the bills that went into effect was intended to strengthen civil liberty safeguards. Fourteen of the sixteen expiring Patriot Act sections were now hard law, while Sections 206 and 215 were redirected to sunset on December 31, 2009. The new law attached greater congressional oversight through an annual report from the Attorney General about the total number of 215 orders, with specific accounting for those orders seeking library circulation or patron records. Enhanced procedural protections that required library records production now needed to be approved by the FBI Director, Deputy Director or Executive Assistant Director for National

88 Barbara Bailey et al., "Connecticut Four Reunite against FBI Overreach," American Libraries Magazine, September 28, 2016, https://americanlibrariesmagazine.org/blogs/the-scoop/connecticut-four-librarians-fbi-overreach/.
[109] Alison Leigh Cowan, "Four Librarians Finally Break Silence in Records Case," The New York Times, May 31, 2006, sec. New York, https://www.nytimes.com/2006/05/31/nyregion/31library.html.
89 United States Congress, "USA PATRIOT Improvement and Reauthorization Act of 2005 ," Pub. L. 109-177 § (2006), https://www.congress.gov/bill/109th-congress/house-bill/3199. [111] Ibid.

Security, and application requirements now needed a "statement of facts," a reasonable grounds for a 215 order opposed to the previous threshold of being "sought for an authorized investigation." And in direct response to the Connecticut *Does,* a judicial review process for 215 recipients who wish to challenge was acknowledged.

The Improvement and Reauthorization Act furthermore clarified that NSLs were liable to modification or outright rejection by the recipients as decided by a reviewing court, with an emphasis placed on the status of libraries, amending it to " the services of which include access to the Internet...is not a wire or electronic communication provider for purposes of this section, unless the library is providing services defined (elsewhere) as...electronic communication services."[111] While this was intended to ensure that libraries that provide internet access would not be subject to NSLs, librarians were not fully assured by this improvement to the Patriot Act. Michael Gorman, ALA President at the time, called *Reauthorization* "purely cosmetic" and said it was provided only for "quelling the rising tide of public unease about the government's policies."[90] Furthermore, George Christian, for obvious reasons, was on lookout for the response and warned that "it is widely believed that some civil liberties were restored in the (new) Patriot Act, but they were not...any library providing Internet service can still be served with an NSL that is essentially every library in the United States today."[91] At their 2007 Annual Conference, the ALA would adopt a resolution that condemned NSLs seeking library records and demanded even more congressional oversight.[92] Congress would not match that request.

90 Gorman, Michael, "President's Message: Those Lost Liberties May Be Your Own," American Libraries 37, 6, June/July 2006, 5.

91 "Former 'John Doe' Warns Of Patriot Act Abuse." American Libraries 38, 6, June/July 2007, 30.

92 American Library Association, "American Library Association Urges Congress to Reform Laws Governing the FBI's Use of National Security Letters," American Library Association (Chicago, IL, June 11, 2007), https://www.ala.org/ala/pressreleases2007/july2007/nsl07.htm.

Fast-forwarding to May 31st, 2015, the Senate would allow three provisions, including Section 215, to expire, meaning they would revert to their pre-Patriot Act status[93]—only to be revitalized a mere two days later by the USA Freedom Act. However, five years later on Monday, March 15, 2020, Section 215 would (pertaining to time of writing) finally expire with the sunset clause, as lawmakers failed to come to a reasonable agreement on reforms to FISA.[94] Then Senator Majority Leader Mitch McConnell knew that the USA FREEDOM Reauthorization Act would fail in the Senate, so he introduced a bill that would merely extend all provisions for 77 days without any new reforms. But it was too late. The House had left the capital on Friday after passing a large two-trillion dollar coronavirus relief package.[95] Those 20 year long surveillance tools went out not with bang but a whisper.

In the end, while this is but one tool in the large belt of surveillance forces that often impede on the civil liberties of Americans, it's a win nonetheless, as you can't take down an elephant with a butter knife. Libraries breathed a sigh of relief, for what now amounted to a half-century-long campaign between the attacking forces of the FBI and surveillance state, librarians had come out of it successful. Organizations like the ALA or ACLU may have been good for advocation, but what steered the Library Awareness Program away was librarians like Kaufman or Foerstel. And when they came back swinging with NSLs, four regular librarians took them to court and struck a blow that would eventually kill the beast. While the battle for the underpinnings of democracy will most likely never end, as the state will constantly try to hoard more power, it can be somewhat of a comforting thought that citizens, including the elderly woman who will promptly

93 Dia Kayyali, "Section 215 Expires—for Now," Electronic Frontier Foundation, May 31, 2015, https://www.eff.org/deeplinks/2015/05/section-215-expires-now.
94 India McKinney, "Section 215 Expired: Year in Review 2020," Electronic Frontier Foundation, December 29, 2020, https://www.eff.org/deeplinks/2020/12/section-215-expired-year-review-2020.
95 Emily Cochrane and Sheryl Gay Stolberg, "$2 Trillion Coronavirus Stimulus Bill Is Signed into Law," The New

shush you because of even the quietest cough, are the core of a democratic society and the agents of astronomical importance that often go underappreciated, or even completely unbelieved.

York Times, March 27, 2020, sec. U.S., https://www.nytimes.com/2020/03/27/us/politics/coronavirus-house-voting.html.

Bibliography

ALA Council. "Library Bill of Rights." Intellectual Freedom: Issues and Resources. American Library Association, January 29, 2019. https://www.ala.org/advocacy/intfreedom/librarybill.

Eberhart, George M, "Libraries Cope Creatively With The Patriot Act," American Libraries, 2003, 98.

———. "Policy on Confidentiality of Library Records." Intellectual Freedom: Issues and Resources. American Library Association, July 7, 2006. https://www.ala.org/advocacy/intfreedom/statementspols/otherpolicies/policyconfidentiality#:~:text=Advise%20all%20librarians%20and%20library.

American Civil Liberties Union Foundation. Doe v. Gonzales (United States District Court, D. Connecticut September 5, 2005).

———. Doe v. Gonzales (United States Court of Appeals for the Second Circuit May 23, 2006).

American Library Association. "ALA Council Condemns FBI Program." Edited by Judith F. Krug and Henry F. Reichman. *Newsletter on Intellectual Freedom* 37, no. 5 (September 1988): 146, 166, 166–67, 172–73. https://archive.org/details/sim_newsletter-on-intellectual-freedom_1988-09_37_5/mode/2up.

———. "American Library Association Urges Congress to Reform Laws Governing the FBI's Use of National Security Letters." *American Library Association*. Chicago, IL, June 11, 2007. https://www.ala.org/ala/pressreleases2007/july2007/nsl07.htm.

———. "GUIDELINES for LIBRARIANS on the U.S.A. PATRIOT ACT What to Do Before, during and after a 'Knock at the Door?'" Washington, D.C.: American Library Association Washington Office, January 19, 2002.

———. "On Professional Ethics." *ALA Report* 12, no. 6 (June 1981): 335. https://www.jstor.org/stable/25625674?seq=5.

American Library Association, and C. James Schmidt. "The FBI Library Awareness Program." *The ALA Yearbook of Library and Information Services: A Review of Library Events 1988* 14 (1989): 125–27.

Ashcroft, John. Letter to Heads of all Federal Departments and Agencies. "The Freedom of Information Act," October 15, 2001.

Bailey, Barbara, Jan Nocek, Peter Chase, and George Christian. "Connecticut Four Reunite against FBI Overreach." American Libraries Magazine, September 28, 2016. https://americanlibrariesmagazine.org/blogs/the-scoop/connecticut-four-librarians-fbi-overreach/.

Bush, George W. "Executive Order 13233—Further Implementation of the Presidential Records Act." Washington DC, November 1, 2001.

https://www.govinfo.gov/content/pkg/WCPD-2001-11-05/pdf/WCPD-2001-11-05-Pg1581.pdf.

Central Intelligence Agency. "SOVIET ACQUISITION of MILITARILY SIGNIFICANT WESTERN TECHNOLOGY: AN UPDATE." *CIA Reading Room - FOIA*. Washington D.C., September 1, 1985. https://www.cia.gov/readingroom/document/cia-rdp88b00443r000201080007-7.

Christian, George. "Doe v. Gonzales: Fighting the FBI's Demand for Library Records - Statement of George Christian." American Civil Liberties Union, May 30, 2006. https://www.aclu.org/documents/doe-v-gonzales-fighting-fbis-demand-library-records-statement-george-christian.

Church, Frank, John Tower, Howard Baker, Gary Hart, Philip Hart, Walter Huddleston, Charles Matthias, Walter Mondale, Robert Morgan, and Ricahrd Schweiker. "Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities." *United States Senate*. Washington DC: The Church Committee, April 29, 1976. https://www.senate.gov/about/powers-procedures/investigations/church-committee.htm.

Cochrane, Emily, and Sheryl Gay Stolberg. "$2 Trillion Coronavirus Stimulus Bill Is Signed into Law." *The New York Times*, March 27, 2020, sec. U.S. https://www.nytimes.com/2020/03/27/us/politics/coronavirus-house-voting.html.

Committee on the Judiciary. "The Video Privacy Protection Act of 1988." Washington D.C., October 18, 1988. https://epic.org/wp-content/uploads/privacy/vppa/Senate-Report-100-599.pdf.

Cowan, Alison Leigh. "Four Librarians Finally Break Silence in Records Case." *The New York Times*, May 31, 2006, sec. New York. https://www.nytimes.com/2006/05/31/nyregion/31library.html.

———. “Librarians Must Stay Silent in Patriot Act Suit, Court Says.” *The New York Times*, September 21, 2005, sec. New York. https://www.nytimes.com/2005/09/21/nyregion/librarians-must-stay-silent-in-patriot-act-suit-court-says.html.

D. McFadden, Robert. “A Counterspy Says He Got Few Rewards.” *The New York Times*, May 31, 1987. https://www.nytimes.com/1987/03/31/nyregion/a-counterspy-says-he-got-few-rewards.html
.

———. “F.B.I. In New York Asks Librarians’ Aid in Reporting on Spies.” *The New York Times*, September 18, 1987. https://www.nytimes.com/1987/09/18/nyregion/fbi-in-new-york-asks-librarians-aid-in-repo rting-on-spies.html.

Daly, Michael. “I Spy: How a Queens College Student Helped Catch a KGB Agent and Set off a Superpower Showdown.” *New York Magazine*, April 6, 1987. Google Books. https://books.google.com/books?id=nuUCAAAAMBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

Edwards, Don, Paula Kaufman, C. James Schmidt, Duane Webster, and Herbert N. Foerstel. “Testimony on the Federal Bureau of Investigation’s Library Awareness Program.” TV (Broadcasted on C-SPAN). presented at the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, on FBI Investigation of Library Use and Users, June 20, 1988. https://www.c-span.org/video/?3074-1/fbi-library-awareness-program.

Elliott, Michael. “‘A Clear and Present Danger’: As Americans Worry about Truck Bombs, Germ Warfare and Worse, They Wonder: Can Our Government Do Anything to Stop the next Terror Attack? .” *CNN*, October 1, 2001. http://www.cnn.com/ALLPOLITICS/time/2001/10/08/danger.html.

F., G. "Transcript of Closed NCLIS Meeting Details FBI's 'Library Awareness Program.'" *American Libraries* 19, no. 4 (April 1988): 244. https://www.jstor.org/stable/25631139?seq=2.

FBI Counterterrorism Division. Letter to Law Enforcement Agencies. "FBI Intelligence Bulletin No. 102," October 24, 2003. https://cryptome.org/fbi-almanacs.htm.

Federal Bureau of Investigation. "Library Connection National Security Letter." *ACLU*, May 15, 2005. https://www.aclu.org/legal-document/library-connection-national-security-letter?redirect=cpredirect/25995.

Feingold, Russell. "On Opposing the U.S.A. Patriot Act." In-Person. presented at the Associated Press Managing Editors Conference at the Milwaukee Art Museum, October 12, 2001.

Finan, Christopher M. *From the Palmer Raids to the Patriot Act : A History of the Fight for Free Speech in America*. Boston, Mass.: Beacon Press, 2007.

Foerstel, Herbert N. *Refuge of a Scoundrel*. 1st ed. Waltham, MA: Libraries Unlimited, 2004.

Foerstel, Herbert N. *Surveillance in the Stacks: The FBI's Library Awareness Program*. 1st ed. Praeger, 1991.

Franklin, Benjamin, John Woolman, and William Penn. *The Autobiography of Benjamin Franklin ; the Journal of John Woolman ; Fruits of Solitude*. New York: P.F. Collier, 1909.

Freeland, Richard M. *The Truman Doctrine and the Origins of McCarthyism: Foreign Policy, Domestic Politics, and Internal Security, 1946-1948*. Vol. 10. 1972. Reprint, New York: Knopf, 2008.

Goodman, Amy, and David Goodman. "America's Most Dangerous Librarians." Mother Jones, October 2008. https://www.motherjones.com/politics/2008/09/americas-most-dangerous-librarians/.

Hartig, Hannah, and Carroll Doherty. "Two Decades Later, the Enduring Legacy of 9/11." *Pew Research Center - U.S. Politics & Policy*. Washington D.C.: Pew Research Center, September 2, 2021. https://www.pewresearch.org/politics/2021/09/02/two-decades-later-the-enduring-legacy-of -9-11/.

Homeland Security. "USA PATRIOT Act." Homeland Security Digital Library, October 26, 2001. https://www.hsdl.org/c/tl/usa-patriot-act/.

Kaufman, Paula. "New Encroachments Recall Old Ones." *Library Journal* 127, no. 16 (October 1, 2001). https://go.gale.com/ps/i.do?id=GALE%7CA93085019&sid=sitemap&v=2.1&it=r&p=EAIM&sw=w&userGroupName=nysl_me_bardgrad&aty=ip.

Kayyali, Dia. "Section 215 Expires—for Now." Electronic Frontier Foundation, May 31, 2015. https://www.eff.org/deeplinks/2015/05/section-215-expires-now.

L. Garthoff, Raymond. *The Great Transition: American-Soviet Relations and the End of the Cold War*. Washington DC: Brookings Institution Press, 1994. https://archive.org/details/greattransitiona00gart/page/280/mode/2up.

LeMay, Michael C. *Civil Rights and Civil Liberties in America: A Reference Handbook (Contemporary World Issues)*. 1st ed. ABC-CLIO, 2020.

Lentz, Phillip, and Chicago Tribune. "U.S. Indicts Soviet in Spy Case." *Chicago Tribune*, September 10, 1986. https://www.chicagotribune.com/news/ct-xpm-1986-09-10-8603070494-story.html.

Lichtblau, Eric. "Ashcroft Mocks Librarians and Others Who Oppose Parts of Counterterrorism Law." *The New York Times*, September 16, 2003, sec. U.S. https://www.nytimes.com/2003/09/16/us/ashcroft-mocks-librarians-and-others-who-oppose-parts-of-counterterrorism-law.html.

Madison, James, and Alexander Hamilton. “The Structure of the Government Must Furnish the Proper Checks and Balances between the Different Departments.” *Federalist Papers*, no. 51 (February 8, 1788). https://guides.loc.gov/federalist-papers/text-51-60#s-lg-box-wrapper-25493427.

Marrero, Victor. John Doe and American Civil Liberties Union v. John Ashcroft (U.S. District Court for the Southern District of New York September 2004).

Marshall, John. William Marbury v. James Madison, Secretary of State of the United States (Supreme Court of the United States 1803).

McKinney, India. “Section 215 Expired: Year in Review 2020.” Electronic Frontier Foundation, December 29, 2020. https://www.eff.org/deeplinks/2020/12/section-215-expired-year-review-2020.

Murphy, Dean E. “Some Librarians Use Shredder to Show Opposition to New F.B.I. Powers.” *The New York Times*, April 7, 2003, sec. U.S. https://www.nytimes.com/2003/04/07/us/some-librarians-use-shredder-to-show-oppositionto-new-fbi-powers.html.

Penenberg, Adam. “Don’t Mess with Librarians.” Wired, September 15, 2004. https://www.wired.com/2004/09/dont-mess-with-librarians/.

Pew Research Center. “American Psyche Reeling from Terror Attacks.” *Pew Research Center U.S. Politics & Policy*. Washington D.C., September 19, 2001. https://www.pewresearch.org/politics/2001/09/19/american-psyche-reeling-from-terror-attacks/.

———. “Public Trust in Government: 1958-2023.” *Pew Research Center - U.S. Politics & Policy*. Washington D.C., September 19, 2023. https://www.pewresearch.org/politics/2023/09/19/public-trust-in-government-1958-2023/.

———. "United in Remembrance, Divided over Policies: 10 Years after 9/11." *Pew Research Center - U.S. Politics & Policy*. Washington D.C., September 1, 2011. https://www.pewresearch.org/politics/2011/09/01/united-in-remembrance-divided-over-poli cies/.

Robbins, Louise S. "The Overseas Libraries Controversy and the Freedom to Read: U.S. Librarians and Publishers Confront Joseph McCarthy." *Libraries & Culture* 36, no. 1 (2001): 36. https://doi.org/10.1353/lac.2001.0021.

Schmidt, C. James, and F. Simora. "Rights for Users of Information: Conflicts and Balances among Privacy, Professional Ethics, Law, National Security." *The Bowker Annual Library and Look Trade Almanac*, 1989, 83–90.

Sessions, William. "FBI News Conference." TV Broadcast. *C-SPAN*, November 7, 1989. https://www.c-span.org/video/?9840-1/fbi-news-conference.

Smith, Howard W. Smith Act, Pub. L. 76–670 § (1940). https://en.wikisource.org/wiki/Alien_Registration_Act_of_1940.

Staff Reports. "London Man Arrested at Punta Gorda Library with Unknown Substances." Herald-Tribune, July 29, 2002. https://www.heraldtribune.com/story/news/2002/07/29/london-man-arrested-at-punta-gorda -library-with-unknown-substances/28406991007/.

Supreme Court of the United States. Brown v. Board of Education of Topeka (347 U.S. 483) (Supreme Court of the United States May 17, 1954).

———. Katz v. United States (389 U.S. 347) (Supreme Court of the United States October 18, 1967).

———. Plessy v. Ferguson, 163 U.S. 537 (Supreme Court of the United States May 5, 1896).

———. Schenck v. United States (249 U.S. 47) (Supreme Court of the United States March 3, 1919).

United States Congress. An Act for the Punishment of Certain Crimes against the United States, 1 § (1798). https://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/5th_Congress/2nd_Session/Chapter_74.

———. Antiterrorism and Effective Death Penalty Act, Pub. L. 104-132; 18 U.S.C. § (1996).

———. Espionage Act, Pub. L. 65–24 § (1917). https://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_40/65th_Congress /1st_Session/Chapter_30.

———. Foreign Intelligence Surveillance Act of 1978, Pub. L. 95-511; 50 U.S.C. ch. 36 § (1978). https://www.govinfo.gov/content/pkg/COMPS-1449/pdf/COMPS-1449.pdf.

———. Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351; 34 U.S.C. § (1968). https://transition.fcc.gov/Bureaus/OSEC/library/legislative_histories/1615.pdf.

———. Presidential Records Act of 1978, Pub. L. 95–59; 44 U.S.C. ch. 22 § (1978). https://uscode.house.gov/view.xhtml?path=/prelim@title44/chapter22&edition=prelim.

———. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstructing Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56 § (2001). https://www.congress.gov/107/plaws/publ56/PLAW-107publ56.htm.

———. USA PATRIOT Improvement and Reauthorization Act of 2005 , Pub. L. 109-177 § (2006). https://www.congress.gov/bill/109th-congress/house-bill/3199.

United States Federal Bureau of Investigation, Intelligence Division. “The KGB and the Library Target, 1962-Present (Effective Date of Study, January 1, 1988).” *Google Books*. FBI Headquarters, Washington D.C.: The Division, January 1, 1988.

https://books.google.com/books/about/The_KGB_and_the_Library_Target_1962_pres.html?id=VzqMzwEACAAJ.

Video and Library Privacy Protection Act of 1988, Pub. L. No. 4947 (1988). https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=59eac147ba394711307f973cb3da477254c5858b.

Vinson, Fred M. Dennis v. United States (341 U.S. 494) (Supreme Court of the United States June 4, 1951).

West, Jessamyn. "Librarian.net – Putting the Rarin Back in Librarian since 1999." Jessamyn West's Blog, April 1999. https://www.librarian.net/.

———. Zoom Call with Librarian Jessamyn West. Interview by Henry Wandover, December 5, 2023.