

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOE; AMERICAN CIVIL LIBERTIES  
UNION; and AMERICAN CIVIL  
LIBERTIES UNION FOUNDATION

Plaintiffs,

v.

04 Civ. 2614 (VM)

ALBERTO GONZALES, in his official capacity  
as Attorney General of the United States;  
ROBERT MUELLER, in his official capacity  
as Director of the Federal Bureau of  
Investigation; and MARION E. BOWMAN,  
in his official capacity as Senior Counsel to  
the Federal Bureau of Investigation,

**SEALED**

Defendants.

**DECLARATION OF GEORGE CHRISTIAN**

I, George Christian, of Trumbull, Connecticut, do declare:

1. I currently serve as the Executive Director of Library Connection, Inc. ("Library Connection"). I have been the Executive Director of Library Connection for three years.
2. I have a Bachelor of Arts degree in psychology from Trinity College. I also have a Master of Arts degree in Business Administration and a Master of Arts degree in Urban and Suburban Administration from the University of Bridgeport. I have a professional background in computer technology and software development.
3. Library Connection is a consortium of twenty-six public and academic libraries incorporated in Connecticut and located in Windsor, Connecticut. Library Connection's member libraries serve over 288,000 library-cardholders, as well as many other library users who do not have library cards.

4. Library Connection provides a number of services to member libraries. It administers an automated library system, which member libraries use for the cataloging and circulation of library materials, and to track borrowing trends and library usage. Library patrons can also use the system to search library collections, to reserve library materials, and to check the status of their accounts. Library Connection also provides telecommunications links to its member libraries and Internet access for use by staff and patrons at nineteen of its member libraries.
5. Library Connection and its members possess a wide array of sensitive information about library patrons, including information about the reading materials borrowed by library patrons and about the Internet usage of library patrons.
6. Library Connection maintains the borrowing history of all patrons at all its member libraries. Library Connection and its member libraries have always felt that this information is extremely private and confidential. The system has been configured so that member library staffs only have access to information about items that are currently on loan. Library Connection only retrieves other information to resolve disputes between patrons and libraries on whether materials have been returned and/or fines paid, or to resolve apparent malfunctions in the system software.
7. Library Connection is a member of both the Connecticut Library Association and the American Library Association. Library Connection abides by the American Library Association policies on the confidentiality of information about library patrons. Protecting library patron privacy and confidentiality has long been an integral part of the mission of libraries and of the American Library Association, the oldest and largest library association in the world. The American Library Association, with 64,000

members, recognizes that reader privacy is essential to the exercise of free speech, free thought, and free association. In a library, the right to privacy is the right to open inquiry without having the subject of one's interest examined or scrutinized by others. Librarians and library staff recognize an ethical responsibility to protect the privacy of library users. The ALA opposes "any use of governmental prerogatives that lead to the intimidation of individuals or groups and discourages them from exercising the right of free expression guaranteed by the First Amendment." American Library Association, Policy 53.4, adopted Feb. 2, 1973.

8. I believe that libraries are places where people are and should be able to go to access and explore information without the fear that others, especially the government, will monitor what they are searching for. Based on my experience working in the library community, I believe that many people use libraries to find information that is, to them, highly sensitive, embarrassing, or personal, such as information relating to health, sexuality, employment, and political beliefs. I believe that a free society depends on having spaces where people can explore various ideas, thoughts, and documents, both paper and electronic, without anyone, and especially without the government keeping track of what they are looking at. I believe that a lack of privacy in library records would produce a chilling effect that would make people less willing to use or to trust public libraries.

9. On July 13, 2005, Agent Aram A. Crandall and another agent delivered a National Security Letter to me at the Library Connection. The letter, which was dated May 19, 2005, was on FBI letterhead and signed by defendant Michael J. Wolf, Special Agent in

Charge, FBI New Haven Division. A copy of the letter is attached to this declaration as Exhibit 1.

10. The NSL served on Library Connection stated that Library Connection is “hereby directed to provide to the Federal Bureau of Investigation (FBI) any and all subscriber information, billing information and access logs of any person or entity related to the following: IP Address: 216.47.180.118, Date: 02/15/2005; Time: 16:00 to 16:45 (PM) EST.” It included a certification that the information requested was part of an international terrorism investigation or clandestine intelligence activities.

11. The NSL served on Library Connection stated, “You are further advised that Title 18, U.S.C., Section 2709(c), prohibits any officer, employee or agent of yours from disclosing to any person that the FBI has sought or obtained access to information or records under these provisions.”

12. The NSL stated that Library Connection must comply with the government’s demand. Library Connection strictly guards the confidentiality and privacy of its library and Internet records, and believes that it should not be forced to disclose such records without a showing of compelling need and approval by a judge. Rather than immediately providing the FBI with the information requested in the NSL, I contacted the American Civil Liberties Union (“ACLU”) to determine what, if any, options were available to me.

13. Prior to being served with an NSL, I had no knowledge of the NSL power or the fact that it could be used to demand library patron records without approval from a judge. I also had no knowledge that the government could request library patron records under a gag provision.

14. On August 9, 2005, Library Connection filed suit in the United States District Court for the District of Connecticut, challenging the constitutionality of the gag order and the validity of the NSL. Judge Hall granted us a preliminary injunction but stayed enforcement of the order pending the government's appeal to the Second Circuit Court of Appeals. The Court of Appeals consolidated the Library Connection case with the present case (which was concurrently on appeal) for purposes of the appeal. While both cases were pending before the Second Circuit, Congress substantially amended the Patriot Act. In May 2006 the Second Circuit remanded the Library Connection case back to the Connecticut District Court. At this time the District Court also lifted the gag order, after the government announced that it no longer intended to enforce it. On June 14, 2006, the FBI informed us that it was withdrawing the NSL.

15. The gag order in our case severely impacted my free speech rights and the rights of my colleagues at Library Connection. I believe that my experience with the gag provision, discussed below, illustrates problems that are likely to be experienced by future recipients of National Security Letters. I also believe that my experience illustrates why judicial oversight of the gag provision is so critical.

16. Initially, the gag provision required my attorneys to file our lawsuit entirely under seal. It took weeks of negotiation with the government before we could disclose -- through our attorneys only -- that we had filed a lawsuit challenging the constitutionality of a Patriot Act provision.

17. The gag prevented me from discussing the NSL with anyone. Because of the gag, I was afraid that if I discussed the NSL power, even in general terms, I would subject

both Library Connection and myself to serious sanctions, including possible imprisonment.

18. For example, as the Executive Director of Library Connection, I felt an obligation to inform the directors of all member libraries of the fact and scope of the NSL demand. However, the gag prevented me from saying anything. My discomfort became acute when, because the government failed to properly redact district court filings, the facts of the case became widely known. Because of the gag, I had to be evasive with my staff at Library Connection. I felt it was my job as Executive Director to be open with them about important issues affecting our organization and I believed that we, as a staff, should collectively determine the proper procedure for responding to the NSL. The gag also prevented me from discussing the NSL with my colleagues in other Connecticut library consortia and with other colleagues throughout the nation. I believed they had a right to know about the NSL power so that they could make informed choices about the ways in which they configured and used their systems. I believed that it was very important for these organizations to prepare and establish procedures for responding to a NSL before they actually received one.

19. The gag also prevented me from discussing the fact that Library Connection received an NSL with my family members and friends. Because of the gag, I had to make excuses to my family and friends when I spoke with my lawyers in connection with this case and when they asked me about news articles about my involvement with the case.

20. Because of the gag, the government prohibited me from attending the court proceedings in Connecticut. The hearing took place in Bridgeport and I had to watch it

on closed circuit television in a locked room at the Hartford Courthouse 60 miles away. I had to sit in a room with a security officer after going through two levels of security.

21. At the court hearing in Bridgeport, we also discovered the first of many government mistakes in the case: Government attorneys had neglected to redact the name of Library Connection's Vice President, Peter Chase, in an affidavit. My attorneys found the mistake and notified the court of it. The government then redacted Peter's name from the affidavit.

22. On September 21, 2005, the government discovered that it had neglected to redact a reference to Library Connection in one of the court documents. The Court in Bridgeport allowed the government to remove the document from the docket. Rather than simply redacting the references, the government redacted large portions of the text that had been public information for over a month. For example, the government redacted a passage in which I described our software system as complex and redacted all references to my board. I thought the government had gone too far and attempted to seal information that would not have identified me or Library Connection. My lawyers challenged the government's excessive redactions and the judge ruled in our favor.

23. The government even used the gag to redact direct quotes from legal opinions and a direct quote from a state statute in our legal papers.

24. The irrationality of the government's interpretation of the gag provision became most evident when the government insisted in keeping us silent even after our identity became public knowledge due to the government's repeated mistakes. After the government appealed Judge Hall's ruling granting us a preliminary injunction, the *New York Times* discovered that Library Connection's identity had been disclosed on PACER,

an online service of the United States Judiciary. The *Times* published a story disclosing our identity on September 21, 2005.

25. Because the cat was out of the bag, we assumed the government would give up, but it continued to insist that it would jeopardize national security for us to merely identify ourselves as recipients of an NSL.

26. We went back to the Second Circuit to ask the court to lift the stay, but the Court refused. The Supreme Court also refused to lift the stay, though it was clearly troubled by the case.

27. We had attached copies of the *New York Times* articles to our legal papers. To add to the absurdity, the government insisted that these news stories – which the entire world could read – remain under seal in court papers.

28. On November 6, 2005, the Washington Post also published a front page story about NSLs and identified Library Connection and me by name.

29. The whole world now knew Library Connection's identity, but we were still prohibited from lobbying Congress or speaking out about what had happened to us.

30. The fact that I remained gagged while my identity and Library Connection's identity were public knowledge was very frustrating. I received many telephone inquiries about the case at home and at work before the press understood my predicament and stopped trying to get a comment. The media's persistence inconvenienced my family and office staff. I had to ask my staff to let their phones roll to voice mail and then call our library customers back rather than answering all calls promptly. At home, neither nor my wife nor son felt free to answer the phone.

31. Once my entire board and staff knew about the NSL, I felt I was ignoring my responsibilities by not informing them about the case. I could not even tell them that we were being represented by the ACLU at no charge. I could not reassure them that our funds were not being consumed by the case.

32. The gag prevented me from participating in the very important public debate surrounding the reauthorization of the Patriot Act. Even though Library Connection's status as an NSL recipient and plaintiff in the lawsuit was widely disseminated in the media, I was unable to talk about it. The FBI's ability to use its new Patriot Act surveillance powers has been the subject of an extraordinary public debate since the Act was passed. Unfortunately, the debate was severely constrained because no one could provide firsthand information about the use of the Patriot Act powers. Even members of Congress could not get adequate information about the use of the statute. As the only known recipient of a National Security Letter demanding library records, Library Connection was in a unique position to educate the public and Congress about the dangers of the NSL power and the gag. The question of whether the FBI could use the Patriot Act to access library records was one of the most divisive issues in the debate and the government had said publicly that it had never used the Patriot Act provisions against a library. The Attorney General tried to paint those who were concerned about the privacy of library records as hysterical. I could have educated the public by correcting the government misrepresentation and I could have provided Congress with testimony of my firsthand knowledge of the scope and effect of the Patriot Act on libraries. I believe that if I could have testified before Congress and participated fully in the debate about the Patriot Act, Congress would have been more inclined to adopt additional safeguards.

33. In early March, Congress reauthorized the Patriot Act. Just three weeks later, the government lifted the gag against Library Connection. Since the Justice Department gave no other reason for its sudden decision to stop opposing my appeal of the gag order, I can only conclude that the intent of the delay was to keep me from speaking to Congress while the renewal of the Patriot Act was being debated. The fact that I can speak now is a little like being permitted to call the Fire Department only after a building has burned to the ground.

34. The revisions in the National Security Letter provisions of the Patriot Act contain some changes that I believe were prompted in part by Library Connection's case. I am pleased that it is now required that National Security Letters inform recipients of their right to consult a lawyer and their right to contest compliance with the letter in court. However, the basic concept of National Security Letters remains in place, and the FBI still retains the ability to gag National Security Letter recipients. In fact, the new law is in some ways more troubling than the old law. As I understand the new law, it basically precludes NSL recipients from obtaining relief from gag orders issued by the FBI. In other words, the new law precludes NSL recipients from obtaining the relief that Library Connection ultimately got in its case.

35. Other "positive" changes made by the new law are in fact virtually meaningless. The revised act exempts libraries from being targeted by NSLs, except those libraries that provide Internet services. If I had been able to speak to Congress before they renewed the Patriot Act, I could have informed them that practically all libraries provide Internet services. And, though the new law is meant to look like it provides protections for

libraries, libraries remain subject to NSLs to exactly the same extent that they were subject to NSLs under the old law.

36. The revised act also defines criminal penalties for violating the gag. This change is very troubling to me. The government may very well believe that I violated the gag by informing my Executive Committee of the NSL and asking the Committee to share with me the responsibility for determining how the corporation should respond. I did not feel I could commit the corporation to a legal suit against the Attorney General of the United States on my own, while keeping the governing body in complete ignorance. Now that there are specific penalties for violating the gag, I feel others in my position might be intimidated from taking the step I took. At Library Connection, as at many libraries and similar institutions, we have a policy that only the Executive Director can respond to law enforcement requests for information. I fear that in organizations that have repositories of data about the public, lower echelon employees can be intimidated by a gag order with specified criminal penalties into compromising the data they have been entrusted with and not informing anyone, even their superiors that they have done so.

37. If I had been able to speak out during the Patriot Act debate, I would have spoken out both about the gag provision and the NSL authority more generally. The NSL provision still allows the FBI easy access to the records (including library records) of innocent people. Ordinary people still can't use libraries without fear that their usage will be reviewed by the government. I see this as a violation of First Amendment rights. Freedom of inquiry is compromised when people feel their freedom to read is constrained by government oversight. Libraries exist to enable citizens to inform themselves on their

concerns, from Aids and breast cancer to signing statements and Wahhabism. An informed citizenry is a prerequisite for an effective democracy. I would have told Congress that the renewed Patriot Act would result in a less informed citizenry. Had I been able to speak publicly, I would have pressed Congress to protect library patrons' privacy. The gag provision prevented me from doing so.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this day, September 7, 2006.

  
George Christian

**Declaration of George Christian  
Exhibit 1.**



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to  
File No. NH-43906

New Haven Division  
600 State Street  
New Haven, Connecticut 06511

May 19, 2005

Mr. Kenneth Sutton  
Systems and Telecommunication Manager  
Library Connection, Inc.  
599 Matianuck Avenue  
Windsor, Connecticut

Dear Mr. Sutton:

Under the authority of Executive Order 12333, dated December 4, 1981, and pursuant to Title 18, United States Code (U.S.C.), Section 2709 (as amended, October 26, 2001), you are hereby directed to provide to the Federal Bureau of Investigation (FBI) any and all subscriber information, billing information and access logs of any person or entity related to the following:

**IP Address: 216.47.180.118, Date: 02/15/2005; Time: 16:00 to 16:45 (PM) EST**

In accordance with Title 18, U.S.C., Section 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States.

You are further advised that Title 18, U.S.C., Section 2709(c), prohibits any officer, employee or agent of yours from disclosing to any person that the FBI has sought or obtained access to information or records under these provisions.

You are requested to provide records responsive to this request personally to a representative of the New Haven field office of the FBI. Electronic versions of the records are requested, if available. Any questions you have regarding this request should be directed only to the New Haven field office. Due to security considerations, you should neither send the records through the mail nor disclose the substance of this request in any telephone conversation or electronic communication.

Your cooperation in this matter is greatly appreciated.

Sincerely,

Michael J. Wolf  
Special Agent in Charge