



members and the millions of library users in America, we offer this declaration in support of the American Civil Liberties Union's petition to lift this "gag order" that bars its client from speaking about his interactions with the FBI in the case of *ACLU v. Gonzales*.

3. For over half a century the American Library Association has actively sought to protect the freedom of Americans to read and receive information without the threat of surveillance as part of their First Amendment rights to free expression. The protection of library user privacy is an essential tenet of the ALA's mission, as privacy is essential to the exercise of free speech, free thought, and free association, the foundation of our democracy.

4. Libraries have a history of positive working relationships with local law enforcement. But the relationship between libraries and federal law enforcement became strained when the FBI launched its "Library Awareness" program in the 1980s. Under the Library Awareness program the FBI sought to recruit librarians who would report on the reading habits of foreign library users. Public outcry over that initiative resulted in 48 states passing laws that explicitly protect the privacy of library records. The remaining two states (Hawaii and Kentucky) have Attorney General opinions echoing the idea that library records are entitled to more protection than other business records.

5. Since the passage of the USA PATRIOT Act [citation] in 2001, ALA has worked with Congress, the Courts, and the Bush Administration to strike a sound balance between the privacy rights of library users and the needs of law enforcement. The USA PATRIOT Act threatens the privacy granted library records by the state privacy laws referred to in paragraph 4 above. The USA PATRIOT Act makes no distinction between library records and other business records and thus, in effect, removes protections explicitly granted these records under state laws. Since the passage of the PATRIOT Act in 2001 ALA has worked closely with Congress and the Administration to communicate librarians' and the public's concerns over the new powers granted the government to obtain library records.

6. As part of ALA's effort to ensure that librarians and library workers adhere to the law under the PATRIOT Act while continuing to protect the confidentiality of library records, ALA issued "Confidentiality and Coping with Law Enforcement Inquiries: Guidelines for the Library and its Staff." The ALA Washington Office has held more than 5 national meetings with members on the USA PATRIOT Act, has briefed local library groups over 20 times, has sent more than 50 electronic news messages to members regarding the PATRIOT Act and has fielded more than 100 inquiries from media on libraries and the PATRIOT Act. The American public has counted on ALA to inform the debate about the USA PATRIOT Act—and the public's concern about provisions of the Act are growing. To date, 389 localities have passed resolutions against the USA PATRIOT Act.

7. Since the passage of the USA PATRIOT Act, ALA has actively worked with Members of Congress and representatives of the U.S. Department of Justice both to communicate librarian and library user concerns about expanded government powers under the Act and to achieve a balance in the law that addresses these concerns while still giving law enforcement the tools it needs to protect citizens from terrorist threats.

8. From the outset of our efforts on the PATRIOT Act, representatives of the U.S. Department of Justice publicly mocked librarians' concerns. Former Attorney General John Ashcroft said in September 2003, "According to these breathless reports and baseless hysteria, some have convinced the American Library Association that under the bipartisanly [sic] enacted PATRIOT Act, the FBI is not fighting terrorism; instead, agents are checking how far you've gotten in the latest Tom Clancy novel." [*New York Times*, September 16, 2003] Later that month the Attorney General again attacked the concerns of librarians and the public over expanded government power under the PATRIOT Act, saying, "The fact is, with just 11,000 FBI agents and over a billion visitors to America's libraries each year, the Department of Justice has neither the staffing, the time nor the inclination to monitor the reading habits of Americans. No offense to the American Library Association, but we just don't care." [CNSNews.com, September 22, 2003]

9. In the face of the Justice Department's dismissive attitude about the public's fear of government surveillance of reading records, ALA faced an uphill battle to convince Members of Congress that our fears were indeed valid and not mere "hysteria." In an effort to establish a working relationship with the Justice Department, ALA representatives met with Attorney General Alberto Gonzales in May, 2005. But our meeting with the Attorney General gave us little information to report to our constituents and thus did little to quell librarians' and the public's concerns.

10. In 2003, 2004, and 2005 ALA advocated support of H.R. 1157, the Freedom to Read Protection Act, a bill to prohibit the FBI from using section 215 of the PATRIOT Act to obtain "library documentary materials that contain personally identifiable information concerning a patron." In 2003 Rep. Bernie Sanders (D-VT), the bill's author, attempted to append H.R. 1157 to the Commerce-Justice-State spending bill for FY2004, but that attempt failed when the vote was held open an additional fifteen minutes and several Members of Congress changed their votes. The amendment was offered again in June 2005 and this time it passed the U.S. House of Representatives with a vote of 238 – 187.

11. ALA also advocated in 2004 to support H.R. 3352, a bill to require the FBI to "specify that there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or agent of a foreign power." In addition, ALA supports the passage of the SAFE Act in the House and Senate (S. 737/H.R. 1526). The SAFE Act is a narrowly-tailored bi-partisan bill that would retain all of the expanded authorities created by the PATRIOT Act but place important checks and balances on these authorities.

12. In our work on the PATRIOT Act, ALA continues to encounter many questions from Members of Congress, the public, and the media, as well as from our own members. These interested parties all want the same information from us: As the Justice Department continues to assert that it has no interest in library records—yet continues also to insist that the Sections of the PATRIOT Act that grant the government additional powers to search library records are essential to national security efforts—our

constituents and colleagues need hard evidence about law enforcement interest in library records. Interested parties also continue to express a desire to speak to a librarian who has received this kind of law enforcement request. Since the Justice Department will give us no information on the number of times it had used Section 215 or Section 505 powers nor will it give us any information on the circumstances surrounding its demands for library records, we have little information to offer.

13. In an attempt to answer these questions and to satisfy our own questions about law enforcement activity in libraries, ALA sought funding for, and conducted, a study to measure that activity and its impact on librarians and library users. This study – which included a statistically valid survey and structured interviews of public and academic libraries – is the most comprehensive of its kind.

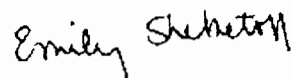
14. We released findings from that study in June 2005 to wide public, Congressional, and media interest. We found that, contrary to Justice Department claims, federal, state, and local law enforcement agents were visiting libraries and requesting patron records. Our study found more than 200 requests for library records from law enforcement since 2001. The study also documents real anxiety among library users trying to gauge the impact of law enforcement activity on the services they receive and the materials they access. This concern was echoed by librarians attempting to balance their responsibility to protect patron privacy with the needs of law enforcement. (*Impact and Analysis of Law Enforcement Activities in Public and Academic Libraries*. Available: <http://www.ala.org/ala/washoff/oitp/LawRptFinal.pdf>)

15. Even now that our study is complete, many questions remain. Because of the non-disclosure orders attached to searches under the USA PATRIOT Act Sections 215 and 505, we were unable to ask survey respondents about the nature of their contacts with law enforcement. Although we know now that law enforcement is visiting libraries, we do not know—because it is illegal for us to ask the libraries--how many of these searches fall under the PATRIOT Act. There is a hole in our knowledge about law enforcement interest in libraries, and we continue to find that the public and the media are frustrated

by our inability to answer their specific questions about the types of contact law enforcement has with libraries and whether this contact is PATRIOT-related.

16. The ACLU client who has come forward is the first such person able to testify about the impact of the FBI's demands for library records. The public, Members of Congress, and the media want very much to hear first-hand evidence about the impact of law enforcement interest in library records. Moreover, this case represents a valuable opportunity for librarians to learn what to expect from this type of request from law enforcement. Should the client be allowed to speak, ALA will put him in touch with Congressional leadership who will begin debating PATRIOT Act reauthorization legislation next week. ALA will put the client in touch with the members of the media who have continually asked to speak to someone who has first-hand experience with a PATRIOT Act request for records. ALA will arrange an opportunity for this person to speak at a national meeting of librarians so that he can inform librarians about how to work effectively with the government while minimizing intrusion into library patron's privacy rights. The ACLU's client is an essential voice in the debate.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed on this 30 day of August, 2005.



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Emily Sheketoff