Librarians and the Patriot Act

BY EMILY DRABINSKI

In 2003, Santa Cruz County library director Anne Turner proclaimed to her board of directors that the FBI "has not been here this month" (Murphy, 2003). An odd pronouncement, except in the context of the Patriot Act, which forbids librarians to tell anyone if the FBI has requested patron records. By making their absence explicit, Turner can get around the gag order—if she says nothing, the board will know the FBI has invaded the privacy of a patron. Turner is only one among many librarians galvanized into action since the October 2001 passage of the Patriot Act. This article addresses the effects of the Patriot Act on library professionals, documents our resistance efforts, and suggests that the maintenance of our profession requires a broader resistance to political and economic forces.

THE ROLE OF PRIVACY IN THE LIBRARY

Libraries enjoy a unique place in the public imagination: they are perhaps the only publicly funded institution people actually like. Unlike the rest of twenty-first century America, the library does not seek to maximize profit or develop markets. The library is a noncoercive public space where books, movies, music—the stuff of ideas and of entertainment—are purchased with collective funds and then shared in kind among members of the community. Ideally—though not always, in practice—it doesn’t matter in a library who you are or where you come from. Once over the threshold, all are free and equal members of a human community, with free and equal access to the sum of human knowledge. While different in some key respects, school, university, and public libraries share these essential values.

The right to free inquiry relies on a right to privacy. If a user suspects that her reading habits will be tracked, his access to information is fundamentally abridged. Libraries respond materially to this demand. Automated circulation systems are built to erase patron borrowing records as soon as materials are returned, and our code of professional ethics makes our commitment to patron privacy explicit.

While the Patriot Act and other post-9/11 legislation have had repressive consequences throughout society, Sections 215 and 205 of that Act are directly relevant to libraries, in that they directly and explicitly abridge the right to patron privacy. Section 215 amends the Foreign Intelligence Surveillance Act of 1978 to expand the range of material objects that may be legally obtained in a search by federal agents. Section 215 allows for the seizure of any “tangible thing,” a delimitation of the 1978 legislation that allows for the seizure of borrowing records as well as records of Internet activity in a public library. This provision was to sunset in March 2006. The reauthorization language demands that the FBI present “reasonable grounds” for the assumption that the records are “relevant,” and demands that any seizure order describe the records sought. While these are welcome changes, they do not fundamentally alter the right of law enforcement to seize patron records.

Section 505 of the Patriot Act of 2001 represents an additional federal intrusion on privacy rights. This section amended three federal statutes to extend the use of National Security Letters (NSLs) to libraries. NSLs are used to subpoena information without requiring that the agent bring evidence before a judge. Reauthorization language in 2006 releases libraries from compliance with NSLs when they are “functioning in their traditional roles.” However, libraries are still subject to NSLs when they provide Internet service to users.

A particularly insidious aspect of the Patriot Act for libraries is the mandate that librarians served with subpoenas or NSLs keep the information requests secret. The original legislation prevented librarians from telling anyone that information had been requested. Reauthorization language in sections 215 and 505 reform that language to allow disclosure to “any person to whom disclosure is necessary to comply with such order,” and allows recipients to obtain legal counsel in order to comply. While these changes may be some comfort to librarians, they are no comfort at all to patrons. If your borrowing records or records of your Internet activity are requested, it is illegal for anyone to tell you.

The gag order also works against organizing among librarians. In his discussion of the Library Awareness Program, a monitoring program dating to the 1980s, Herbert Foerstel notes that the atmosphere engendered by the Patriot Act is worse than previous library surveillance programs because of its secrecy: “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" (Foerstel, 2004). We can't talk to each other about any warrants we might receive, and so are limited in our ability to conceptualize the extent of the warrants. How can we know the extent of the problem when we are prohibited from speaking freely about it?

LIBRARIANS' OPPOSITION

Resistance by librarians has taken many forms, including local actions meant to inform patrons about the abridgement of their rights. Librarians in Santa Cruz posted signs warning patrons that the Patriot Act "prohibits library workers from informing you if federal agents have obtained records about you" (Egelko and Guara, 2003). Similar signs were posted by librarians in Killington, Vermont, and Skokie, Illinois (Murphy, 2003), and librarian-activist Jessamyn West offered a number of print-and-post signs on her blog, librarian.net (Foerstel, 2004). Santa Cruz librarians also began a policy of shredding documents daily, telling the New York Times that "the basic strategy now is to keep as little historical information as possible" (Egelko and Guara, 2003). The American Library Association website has collated a number of brochures and signs to distribute from New York City to Nampa, Idaho, and provides a hotline librarians can call if they receive section 215 subpoenas or NSLs.

Librarians have also challenged parts of the Patriot Act in court. Most famously, in Doe v. Gonzalez, four Connecticut librarians challenged the gag order embedded in Section 505 of the Patriot Act. The government eventually dropped their demand for secrecy, and the librarians have since discussed their frustration at their inability to contest government claims that library records were safe under the Patriot Act.

The American Library Association (ALA) is also heavily involved with lobbying and legislative efforts, and has worked in both the House and the Senate to introduce bills that would remove library records from the set of documents that may be seized under the Patriot Act. None of this legislation has moved out of committee.
WHAT ARE WE SO ORGANIZED?

What accounts for librarians’ organized and rapid opposition to the Patriot Act, beyond our structural support for privacy rights? For one thing, our institutional history of activism around intellectual freedom has produced institutional structures that channel opposition to specific kinds of abridgments of information access, including censorship and surveillance efforts. The ALA’s Office for Intellectual Freedom coordinates the profession’s resistance efforts through the Freedom to Read Foundation; roundtables and committees focused on local, state, national, and international conflicts over intellectual freedom; and the Intellectual Freedom Action Network, an electronic grassroots-activist listerv that generates rapid response from the professional community to threats against intellectual freedom.

There are, however, fundamental limits to a strategy of resistance that is essentially reactive and narrow in focus. While librarians respond quickly and effectively to challenges posed by the Patriot Act, we have little in the way of sustained resistance to systemic forces that undermine information equity and access in less visible but more fundamental ways. An assessment of our resistance to the Patriot Act gives us an opportunity to examine how librarians could cultivate a broader strategy of resistance to forces that threaten the basic values of our profession.

The surveillance and secrecy aspects of the Patriot Act are notable, but they are of a piece with public and private trends that predate the War on Terror. Henry T. Blanke, following on the work of Daniel Bell, David Harvey, Sue Curry Jansen and others, argues that the privatization and subsequent disappearance of information from public view is an essential feature of late-capsitalist development. Blanke articulates the problem this way: “With the growing economic prominence of information has come the encroachment of corporate capitalism into the public information realm and a concomitant distortion of information issues and policies to serve private interests. At stake is the future vitality of democratic public spheres of independent art, inquiry, discourse, and critique” (Blanke, 67). As information is increasingly commodified and entered into the realm of capitalist exchange, the library finds its core mission—to provide free and equal access to information—systematically compromised.

Take, for example, the role of for-profit database vendors in limiting information access. Database vendors like Elsevier, EBSCO, and ProQuest include a provision in most contracts that has a striking similarity to the gag order included in the Patriot Act. Most contracts, negotiated on an individual basis, include a confidentiality provision that prevents librarians from sharing the terms of their contracts with one another. Because we are prevented from speaking openly about the contracts we sign, we are limited in our ability to organize against other parts of our contracts that undermine systems of sharing and access. For example, contract terms often force librarians to agree that material contained in a database won’t be shared via our traditional interlibrary loan networks, and sometimes even demand that the library conduct surveillance of other libraries by requiring regular reports of who requests articles from the database via interlibrary loan. While less sensational and immediate than the Patriot Act, these tendencies of capitalism reduce access to information in fundamental ways. As a profession, we have few strategies for resisting the tyrannies of the capitalist marketplace.

ORGANIZING FOR THE FUTURE

Librarians can and do organize against government and corporate abridgments of our core professional values. Some of this activism is easy to identify. Librarians post anti-Patriot Act signs in our libraries, file lawsuits against the federal government for violating our privacy, and send letters and petitions to our congressional representatives decrying legislation that limits information access. Some of our activism is simply a part of our daily labor. As we produce information systems that actually erase data as a way to prevent surveillance, and work to develop more efficient systems for sharing information, we are working against government and economic forces that limit information access.

Our future would seem to depend, however, on an activism that thinks and acts beyond narrow and explicit abridgments of our institutional values. Librarians with a more far-reaching vision of professional activism find a home in the Progressive Librarians Guild (http://www.libr.org/plg). The PLG organizes librarians around broader issues of militarism, poverty, racism, and other progressive concerns. For radical librarians, the connections between the War on Terror, database contracts, and the right to free inquiry are easy to make. Perhaps our movement can be broadened through alliances with activists who share both vision and stakes with professional librarians, including teachers and others involved in the education professions.

WORKS CITED


