The Connecticut Four

Abstract

Patrons come to a library to exercise intellectual freedom with the understanding that their privacy will be honored. They have a natural trust that their conversation with a librarian or the resources they use at the facility will not be visible to anyone else. There are mechanisms in place through agencies like the FBI to gain access to what would otherwise be considered private. Obtaining personal use information of this nature would typically have to go through some level of judicial approval. National legislation has been passed to give federal agencies a loophole to gain private information without judicial oversight. Challenging the national security state with the rights of citizens detailed in the United States Constitution is the vehicle to oppose such practices. When a group of librarians stood up for the rights of library patrons, they were supported by librarians from all over the country and represented by the ACLU. Perseverance and boldness in the face of intimidation lead to securing the privacy rights of library patrons everywhere.

The Connecticut Four

Libraries are a normal part of the American community. They are in schools, churches, government agencies, and neighborhoods. There is a basic understanding that librarians are trained professionals in information science who manage and organize a vast collection of materials (Sokanu Interactive Inc, 2019). Then, there is the side of being a librarian that is not considered until a patron's constitutional rights are in jeopardy. The average library client is unaware of the steps taken to safeguard the privacy of the user as to the materials or resources they have consulted. Librarians receive continued training on privacy and confidentiality regarding patron information (Marden, 2019, p. 38). There is a presumption that anything that is discussed with a librarian regarding the quest for information will be confidential. Any information about a library patron needs to be requested in a systematic manner for there to be unfettered cooperation. The dedication by librarians to guard our constitutional right to privacy will always be under a cloud of suspicion from those whose mission is to protect us from foreign threats (Foerstel, 1991, p. 3). The presence of librarians in our society also serves as a protector of individual privacy and is addressed among the professional associations with due diligence. Libraries have always collected information on their patrons which is uniformly referred to as "personally identifiable information (PII)" (Nicolas-Rocca, 2019, p. 58). "…PII has the potential to build up an image of a library patron that could potentially be used to assess the patron's character" (Nicolas-Rocca, 2019, p. 58). The Federal Bureau of Investigation (FBI) and other agencies have a false presumption that they should have easy access to the data that is collected through the various electronic information systems.

Reading is the gateway to knowledge and understanding, as well as a portal for pleasure and entertainment. Citizens have no inclination that pursuing any of these areas would give rise

to an investigation. Libraries have transitioned into the digital age by providing electronic resources and access outside of the traditional setting. The information highway is in full operation and librarians are trained to offer relevant services to an ever-changing community of users. “The American library has become, in many respects, the Nation’s most basic First Amendment institution. Indeed, libraries serve as a primary source for the intellectual freedom required for the preservation of a free society and a creative culture” (Molz, 1974). This freedom can be compromised when a federal agency raises a question of national security.

The debate about library patron privacy is rooted in American history in the First, Fourth, and Fifth Amendments. “Throughout history, official surveillance of the reading habits of citizens has been a litmus test of tyranny” (Burnham, 1989, p. 6). There has been an unfortunate practice by the FBI to exploit its authority given by executive power with regards to information access and technology data by justifying it as a mission of counterintelligence (Foerstel, 1991, p. 11). Citizens expect there to be a balance in the quest for national security and the protection of First Amendment rights (Foerstel, 1991, p. 6). The American Library Association (ALA) is one organization that has stood for the right of the patrons. They have adopted a Library Bill of Rights and pioneered a Freedom to Read initiative in order to establish the position that libraries take with patron usage information. These efforts act as a type of insurance to prevent further demands on patron’s privacy. “I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations” (Madison, 1788). There have been numerous times that the ALA has been in the middle of checking the actions of the FBI and other agencies. Librarians and various associations continue to support the individual and their intellectual freedom.

Changing domestic safety concerns have significantly impacted how our nation regards privacy and information collecting by government agencies. The terror attack on the World Trade Center on September 11, 2001, led to the creation of the USA PATRIOT Act (USAPA), giving federal law enforcement agencies greater power in gathering information. A key component that is often avoided when acting under the USAPA is judicial oversight. Librarians have cooperated with subpoenas and other actions that have gone through the appropriate process for a legal request. The practice of doctor/patient privilege and attorney/client privilege is akin to the relationship between a librarian and the patrons that they serve by establishing a relationship of trust on a professional level (Matz, 2008, p. 71). There would be a drastic decrease in library usage by upstanding citizens if they thought that information and data on their usage could be made available to a fact-finding agency.

On July 13, 2005, George Christian was serving as the executive director for a library consortium known as the Library Connection (Goodman, 2008, p. 54). “They [FBI] proceeded to hand Christian a National Security Letter (NSL) demanding ‘any and all subscriber information, billing information and access to any person or entity’ that had used computers in the twenty-seven libraries between 2 P.M. and 2:45 P.M. on February 15, 2005” (Goodman, 2008, p. 52). The directive in the letter made it clear that any recipients could not disclose to a patron that information had been requested or received. Christian communicated to the agents that he believed the request was unconstitutional (Goodman, 2008, p. 53). Christian was aware of a New York State District Court finding that ruled the statute regarding an NSL as unconstitutional (Jones, 2009, p. 196). One observation that also caused doubt was the date on the NSL of May 19, 2005 and did not seem to justify the sense of urgency being imposed (Jones, 2009, p. 197). This was his inspiration to oppose the letter that his consortium had received.

The wording in the NSL was so threatening that he was not even certain he could contact an attorney. Christian proceeded to call an emergency meeting of the four-panel executive committee to discuss the letter delivered to him by the FBI. The members of this committee were Barbara Bailey, Peter Chase, and Janet Nocek. The four members of the committee proceeded to meet with an attorney. They were advised that everyone on the committee would have to follow the provisions laid out and were under a gag order. John Doe Connecticut became a year-long ordeal where the four Connecticut librarians would have to argue their position against entities that were focused on national security without being able to speak publicly to support their position (Goodman, 2008, p. 58). The librarians could never have anticipated what they were about to endure.

> This has become the perfect crime: only the victims of this abuse know how people's rights are being trampled under the guise of fighting 'terrorism.' Yet the victims are gagged, so no one has been able to describe their ordeal… until now (Goodman, 2008, p. 55).

The gag order would affect their work settings, community interactions, and their home lives as media outlets put puzzle pieces together to find out the identity of the four librarians bringing the suit. The committee members faced instances where they could not tell their families where they were going, questions from their children would have to go unanswered, and the fragility of their security not to divulge what was happening even with the slightest nuance. It was perplexing to consider that the gag order could extend to talking with legal counsel or other select individuals that may be affected by the case that was about to be played out.

The freedom of every library patron to research based on their own intellectual pursuits was in jeopardy without any form of judicial oversight in place, making every user suspect without cause (Chase, 2016). It is ingrained in the fabric of our nation to secure confidentiality and privacy to library patrons "with respect to information sought or received and resources

consulted, borrowed, acquired, or transmitted" (Marden, 2019, p. 38). These actions appeared to be legal under the USAPA, but it was questionable as to if it was right. These four librarians decided to become plaintiffs to challenge the legality of the NSL and the gag order (Goodman, 2008, p. 55). This was the only logical response to the events that had taken place.

Legislative decisions based on what representatives think is best can violate a citizen's individual rights. The USAPA is often interpreted as vesting investigative authority in response to what we read (Mukasey, 2004). The librarians were stripped of their civil rights that they were secure in as the result of an NSL (Goodman, 2008, p. 56). There was no court order as the librarians were being commanded to turn over information about their patrons based on the request of the FBI. This act was void of a subpoena or any type of judicial oversight. "A court order protects you because you have a neutral third-party – the court – and you must convince them that a crime has been committed" (Goodman, 2008, p. 59). A sacred trust is violated between the librarian and the patron if information that is presumed confidential is available on demand.

The four librarians engaged the American Civil Liberties Union (ACLU) to represent them in what became known as John Doe Connecticut v. Gonzales. The two primary requests were for an injunction to prevent them from having to comply with an NSL that they deemed to be unconstitutional. Additionally, action was taken to have the gag order lifted. The four believed that their fellow citizens would want to be aware that public libraries were declared a battleground in the fight against terrorism. They also believed that they had a personal constitutional right to discuss the dynamics of the events considering their positions in the information seeking process. The plaintiffs in the law suit claim the action taken by the FBI violated the First, Fourth, and Fifth Amendments (John Doe, et al. v. Alberto Gonzales, 2005).

The preliminary injunction "challenging the constitutionality of U.S.C. section 2709" argues the following:

1. that § 2709 violates the First Amendment by prohibiting any person from disclosing that the FBI has sought or obtained information with an NSL;
2. that § 2709 violates the First Amendment by authorizing the FBI to order disclosure of constitutionally protected information without tailoring its demand to a demonstrably compelling need;
3. that § 2709 violates the First and Fourth Amendments because it fails to provide for or specify a mechanism by which a recipient can challenge the NSL's validity;
4. that § 2709 violates the First, Fourth, and Fifth Amendments by authorizing the FBI to demand disclosure of constitutionally protected information without prior notice to individuals whose information is disclosed and without requiring that the FBI justify that denial of notice on a case-by-case basis; and
5. that § 2709 violates the Fifth Amendment because it is unconstitutionally vague (John Doe, et al. v. Alberto Gonzales, 2005)

The plaintiffs argue that these five provisions prove the instrument to be unconstitutional (John Doe, et al. v. Alberto Gonzales, 2005).

A nation of librarians was on alert. "The first hearing of the Library connection case took place in Federal Ct. in Bridgeport in September 2005. Notably missing from the courtroom were the plaintiffs as they had been declared a 'threat to national security' and were barred from attending" (Goodman, 2008, p. 61). The plaintiffs in the case were reduced to having to view the proceedings from a Hartford court house via closed-circuit television. The presence of these four was represented in a different way as librarians filled the rows of the courtroom in Bridgeport. Some documents that were released by the government did not fully redact the information regarding the four librarians and Peter Chase's identity was discovered. The New York Times acted on a hunch and published the names of the Library Connection's executive committee members.

> But, thanks to our relatively free press, the *New York Times* found a court document in which Library Connection's name had not been redacted and so they published the story on September 21, 2005. Papers all over the US picked up on the story. On November 6,

> 2005, the *Washington Post* ran the story on the front page and revealed the problems with the potential invasion of library patron privacy (Jones, 2009)

The ACLU proceeded to hire a criminal attorney to represent Peter Chase. His lawyer advised to leave his home to avoid being served (Goodman, 2008, p. 63). Chase was hiding from authorities and was forced to live like a fugitive for the perceived criminal act of the defense of the individual right to free speech and privacy (Goodman, 2008, p. 63). "Judge Janet Hall ruled on September 2005 US District Court in Bridgeport that the gag order violated the librarians' first amendment rights and that there was no compelling reason why revealing their names would hinder the government's investigation" (Goodman, 2008, p. 64). The Department of Justice appealed this decision which kept the gag order in place.

The entire process changed the dynamics for library privacy. "The Connecticut John Does have shown the world a face of defiance and even genuine patriotism within the bounds of responsible behavior" (Matz, 2008, p. 72). The reauthorization of the Patriot Act in March of 2006 offered little in the way of modifications to address the glaring issues in the case of John Doe Connecticut v. Gonzales. The main modification required the FBI to show "reasonable grounds" when requesting any library information (Goodman, 2008, p. 71). The Justice Department abandoned its fight to keep the gag order in place and it was lifted, but the documents related to the case remain sealed. George Christian made a bold statement in the aftermath of the case. "People think our gifted founding fathers set up this system with a Bill of Rights and that we are all protected. But it's human nature that people in power feel they need more power to get the job done right…. If you don't stand up to these encroachments on our liberties, we'll lose them" (Goodman, 2008, p. 71). The NSL was retracted and the case was eventually dropped, removing the gag order so that the Connecticut librarians are some of the few people ever under such an order that are now able to discuss it (Glaser, 2015). This

experience contributed to librarians notifying the public about the actions of the FBI and how their privacy could be at risk. Some libraries participated in a practice of posting a sign that read, “The FBI has not been here. (Look very closely for the removal of this sign.)” (Glaser, 2015). Libraries now have digital privacy training, they assess the need for digital record keeping, and they have procedures for eliminating materials that could be collected and eventually requested by a federal agency (Glaser, 2015). Completely removing information about what a patron has used at a library further enhances the trust between the librarian and the patron.

Security education, training, or awareness (SETA) programs are becoming a standard component of library training (Nicolas-Rocca, 2019, p. 59). There are now standard methods in place at libraries across the nation. These components include digital privacy training, determining any needs for digital record keeping, and a procedure is in place to delete any unnecessary information regarding a patron’s usage history. Libraries are entrusted with a vast amount of personal information that is categorized as confidential. This is a common concern with the online presence of patrons within library systems or data collection as part of the function. We are all faced with the collection of data and how it can be used that can be juxtaposed to our basic rights declared in the United States Constitution (Marden, 2019, p. 38). The response to this infringement on the privacy rights of patrons was appropriate and the results served to protect the rights of the individual.

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