

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

[REDACTED];
**AMERICAN CIVIL LIBERTIES UNION;
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,**

Plaintiffs,

v.

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;
[REDACTED] in his official capacity
as [REDACTED] Federal Bureau of
Investigation,

Defendants.

DECLARATION OF [REDACTED]
[REDACTED]

Civ. Action No. 3:05cv1256 JCH

SEALED CASE

DECLARATION OF [REDACTED]

I, [REDACTED] of [REDACTED], do declare:

1. I currently serve as the [REDACTED] of [REDACTED] [REDACTED] one of the plaintiffs in this case. I have been the [REDACTED] [REDACTED] for two years. Prior to becoming the [REDACTED], I was employed by the predecessor of [REDACTED] [REDACTED] as the manager of their library automation system. I served in that capacity for one year.
2. I have a Bachelor of Arts degree in psychology from [REDACTED]. I also have a Master of Arts degree in Business Administration and a Master of Arts

degree in Urban and Suburban Administration from the [REDACTED]

[REDACTED] I have a professional background in computer technology and software development. Prior to working at [REDACTED] I was employed by [REDACTED] and [REDACTED] to manage software development projects. I also am an adjunct professor at the [REDACTED] although I have not taught for the past year..

3. [REDACTED]
[REDACTED]
[REDACTED] serve over [REDACTED] library-cardholders, as well as many other library users that do not have library cards. [REDACTED] provides a number of services to [REDACTED] It administers an [REDACTED] [REDACTED] for the cataloging and circulation of library materials, and to track community borrowing and library usage. Library patrons [REDACTED] [REDACTED] search library collections, to reserve library materials, and to check the status of their accounts. [REDACTED]
[REDACTED]. To the best of my knowledge, several thousand other libraries also use the [REDACTED] [REDACTED] also provides telecommunications links to its [REDACTED] [REDACTED] and Internet access for use by staff and patrons at [REDACTED]
[REDACTED]

5. [REDACTED] also provides staff expertise, training, consultation, troubleshooting and customization services to its [REDACTED]
6. [REDACTED] is governed by a fifteen-person Board of Directors composed of twelve representatives of [REDACTED] and three representatives of the communities served by the [REDACTED]. The Board of Directors is responsible for the legal and financial obligations of the organization. The Board of Directors has an Executive Committee comprised of the President, Vice-President, Secretary, and Treasurer of the Board. The [REDACTED] serves as staff liaison to the Executive Committee. The Executive Committee is empowered to act on behalf of the entire Board when necessary.
7. [REDACTED] 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.
8. [REDACTED] contains the borrowing history of all patrons at all its [REDACTED] since converting to the [REDACTED] in 2001. [REDACTED] and its [REDACTED] have always felt that this information is extremely private and confidential. The system has been configured so that [REDACTED] staffs only have access to information about items that are currently on loan. Once materials have been returned to a library (and any associated overdue fines paid), only [REDACTED] staff can retrieve historical information on patron borrowing. Such retrievals

are only used 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.

9. The libraries using [REDACTED] the software that runs [REDACTED] [REDACTED] have organized themselves into a User Group. The software is extremely complex, and, by sharing experiences, libraries can often achieve more from the software than they could on their own. Over time, the focus of the User Group has broadened to include the sharing of information and experiences on almost all topics of library administration. Within the user group community, there are Special Interest Groups (SIGs) that focus on the concerns of different portions of the User Group community (such as public libraries, law libraries, system administrators, circulation specialists, etc.). I served as the [REDACTED] of the [REDACTED] from [REDACTED] to [REDACTED]. I am currently still an active member of the [REDACTED]. There are about fifty library consortia, from around the country, in the [REDACTED]. The [REDACTED] was established so that library consortia using [REDACTED] have a forum to exchange information about the software, about the vendor [REDACTED] and to discuss the general operations of consortia and the challenges they face. The [REDACTED] meets both with and without [REDACTED] representatives present.

10. I have also been instrumental in getting the Executive Directors of the four [REDACTED] to meet on a quarterly basis to exchange

information on common administrative challenges faced by [REDACTED]

[REDACTED]. We have been doing this for two years.

11. [REDACTED] is a member of both the Connecticut Library Association and the American Library Association.

12. [REDACTED] abides by the American Library Association policies on the confidentiality of information about library patrons.

13. 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.

14. The [REDACTED]

[REDACTED]

[REDACTED] It is widely believed by [REDACTED] librarians that this statute denies access to patron borrowing information to state and local law enforcement officials.

15. 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.

16. On [REDACTED] FBI agent [REDACTED] of the FBI [REDACTED] Division, telephoned [REDACTED] [REDACTED] to inform him that the FBI would be serving an NSL on [REDACTED]. [REDACTED] did not describe the substance of the letter, and did not notify [REDACTED] about the NSL's non-disclosure provision. [REDACTED] asked [REDACTED] who could receive service of the NSL, and [REDACTED] told him that I, [REDACTED], in my capacity as [REDACTED] of [REDACTED] would receive service.

17. On [REDACTED] [REDACTED] and another [REDACTED] delivered an NSL to me at the [REDACTED]. The letter, which is dated [REDACTED] is on FBI letterhead and signed by defendant [REDACTED] [REDACTED]

FBI [REDACTED] Division. A copy of the letter is attached to this declaration as Exhibit A.

18. The NSL served on [REDACTED] prohibits any “officer, employee or agent...from disclosing to any person that the FBI has sought or obtained access to information or records under these provisions.”
19. The NSL served on [REDACTED] states that [REDACTED] 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: [REDACTED]
[REDACTED]
20. The NSL served on [REDACTED] includes a certification that “the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities.”
21. The NSL served on [REDACTED] 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.”
22. The NSL served on [REDACTED] further states, “You are requested to provide records responsive to this request personally to a representative of the [REDACTED] 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 [REDACTED]. 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.” (Emphasis in original.)

23. The NSL served on [REDACTED] does not specify any procedure by which [REDACTED] can challenge the validity of the NSL.
24. The NSL does not mention whether or not I am permitted to speak with a lawyer. The gag provision stated that I could not disclose the existence of the NSL to “any person.” I was, therefore, unsure about whether or not I was permitted to speak with a lawyer. When I spoke with [REDACTED] on [REDACTED], I told him that I wished to consult with an attorney about the NSL. [REDACTED] said that I should have my attorney call him, and gave me his phone number.
25. The NSL states that [REDACTED] must comply with the government’s demand. [REDACTED] strictly guards the confidentiality and privacy of its library and Internet records, and believes 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.
26. On [REDACTED] [REDACTED] called me to inquire about the status of [REDACTED] compliance with the NSL. I informed [REDACTED] that [REDACTED] had retained the ACLU as counsel. I asked [REDACTED] to direct further inquiries to counsel.

27. 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 complete gag provision.

28. As the [REDACTED] of [REDACTED], it is my duty and responsibility to keep each of the members of the [REDACTED] Board of Directors apprised of significant issues facing [REDACTED]. Although I have informed members of the Executive Committee that [REDACTED] [REDACTED] has been served with an NSL, because of the gag provision, I am unsure whether I am allowed to disclose this fact to the entire [REDACTED] [REDACTED] Board of Trustees. But for the gag, I would disclose the existence of the NSL to the full Board. I am, however, afraid to tell the entire Board about the NSL for fear of criminal sanctions, including possible imprisonment.

29. As the [REDACTED] of [REDACTED], I also feel an obligation to inform the directors of all [REDACTED] libraries, not just the dozen currently serving on the Board of Directors, of the fact and scope of the NSL demand. I know that they all have the highest regard for patron privacy, and would want to be accurately informed of the current situation.

30. The gag provision is also preventing me from discussing the fact that [REDACTED] [REDACTED] received an NSL with [REDACTED] full staff. Because of the gag, I have had to be evasive with my staff about what I am doing when I am either speaking with my lawyers or otherwise handling issues that have

arisen as a result of the NSL. But for the gag, I would disclose the existence of the NSL with my staff, both because I feel it is my job as [REDACTED] to be open with them about important issues affecting our organization, and because I believe that we, as a staff, should collectively determine the proper procedure for responding to the NSL. I am afraid that if I disclose the existence of the NSL to all of my staff and request their assistance in responding, I will endanger my own liberty and the future of [REDACTED]

31. The gag has prevented me from discussing the fact that [REDACTED] received an NSL with my colleagues in the other [REDACTED], and, nationally, with my colleagues in the [REDACTED]. I believe that it is very important that other consortia know that they, and, presumably, their patron usage records are subject to the NSL power. I believe that facilities providing library circulation systems and telecommunications services have a right to know about the NSL power and its applicability their records. I believe these facilities have a right to know this information so that they may make informed choices about the ways in which they configure and use their systems and about the information they provide to their libraries about their ability to provide privacy for patron records. But for the gag, I would disseminate information about the NSL power among my fellow [REDACTED] directors, and among the members of the [REDACTED]. But for the gag, I would also disclose to my peers the fact that [REDACTED] had received an NSL.

32. The gag provision has further prevented me from discussing the NSL power in general and the fact that [REDACTED] received an NSL specifically

with my colleagues in other libraries and library organizations outside of the [REDACTED]. Based on my work with libraries and library associations, I know that the library community is very concerned about the Patriot Act and its application to libraries. I believe that all libraries and library organizations should be aware that, under the Patriot Act, libraries may be served with an NSL and may be gagged from ever disclosing that fact to anyone, not just to the subject of the investigation. I believe that it is important for these organizations to prepare and establish procedures for responding to NSLs before they actually receive one. But for the gag, I would widely contact my colleagues in the library community to discuss the NSL power and to encourage them to develop policies within their own organizations for responding to an NSL should they receive one.

33. The gag provision is preventing me from working with my own staff, my board, and all my [REDACTED] to develop and publicly articulate a stance on the Patriot Act and the NSL power. After the Patriot Act was initially passed, I, along with many others in the library community, discussed how we might respond to the Act. [REDACTED] at the request of all [REDACTED] even sought legal counsel so that we could better understand both the scope and reach of the Act and what options we had in responding to its passage and implementation. We engaged in preliminary talks with the three other [REDACTED] to share the cost of counsel to provide advice for all our [REDACTED]. We had counsel start to prepare a document outlining possible stances libraries could take if they wished to challenge the Patriot Act. It was our intention to disseminate this document to all our [REDACTED] so that they

could, if they desired, use it as a template for preparing to respond to invocations of the Patriot Act. These efforts were discontinued when it was widely reported in the media that the government has stated publicly on multiple occasions that the Patriot Act had not been and would not be used to obtain library records. Based on these statements, we collectively decided that it was not an effective use of our limited resources to further develop challenges to the Patriot Act. Now that I know with complete certainty that the Patriot Act is being used to obtain library records, I want to disseminate this information to my [REDACTED] to my colleagues in other [REDACTED] and to other colleagues in the library community. But for the gag, I would disclose this information, and would recommend that our counsel resume work on how to respond to and challenge the exercise of Patriot Act powers.

34. The gag has also prevented me from discussing the fact that [REDACTED] [REDACTED] received an NSL with my family members and friends. Because of the gag, I have had to make excuses to my family and friends when I speak with my lawyers in connection with this case. I am particularly concerned about the impact of this situation on my sixteen year-old son. My son knows that something is going on that involves his father and law enforcement but is not aware of any specifics about the situation. My son has told me that he is afraid that I may be arrested. Because of the gag, I am unable to tell my son why I have been contacted by law enforcement officials. It has made me extremely uncomfortable and tense to have to be evasive and not open with my wife and son. But for the gag, I would tell my son that [REDACTED] [REDACTED] had been served with an NSL, and that we were challenging the

NSL because of the threat it poses to the privacy of library patrons. I have often shared with my son my belief that our society's strength lies in the individual liberties guaranteed by the Constitution, including the safeguards against unwarranted government infringements of those liberties. I have told him that I believe that portions of the Patriot Act are unconstitutional because they ignore those safeguards. But for the gag, I would also discuss the NSL with my son and would explain why I object to it. Because of the gag, I can neither fully alleviate my son's fears about my well-being and freedom, nor discuss the important constitutional issues raised by the NSL.

35. Because of the gag provision, I have also refrained from discussing the NSL power or disclosing the fact that [REDACTED] received an NSL with members of the general public. I believe that members of the public have a right to know that their library records are subject to what I believe are unconstitutional government searches. I also believe that members of the public have a right to know that the government can look at their library records without ever informing them or giving them an opportunity to challenge the search. But for the gag, I would inform members of the public about the NSL power and its application in the library context. Because of the gag, I am afraid that if I publicly discuss the NSL power, I will subject both [REDACTED] and myself to serious sanctions, including possible imprisonment.

36. The gag provision has also prevented me from disclosing the fact that [REDACTED] [REDACTED] has been served with an NSL to my representatives in Congress. I

have read and viewed many newspaper and television reports on the Patriot Act in general and on the reauthorization of the Patriot Act in particular. To the best of my knowledge, I recollect having read or seen reports stating that the Patriot Act has not been used against libraries along with assurances that it never will be so used. I believe that it is important that members of Congress know that libraries can and are being served with NSLs. But for the gag, I would contact my Congressional representatives and inform them that [REDACTED] [REDACTED] received an NSL. I find it ironic and undemocratic that, prior to receiving an NSL, I would have been allowed to question my congressional representatives about the NSL power but now that I have actual, first-hand, knowledge of the NSL power and its application, I am prohibited from sharing that information even with those elected representatives whose jobs include monitoring laws such as the Patriot Act.

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, August 15, 2005.

[REDACTED]