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# Security Policy, State Power, and Professional Resistance: Libraries and the USA PATRIOT Act

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Security Policy, State Power, and Professional Resistance:  
Libraries and the Patriot Act

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May 3, 2008

## Abstract

Historically, national emergencies have prompted the US government to limit private rights in the interest of security. The librarian profession opposed such limitations in the USA PATRIOT Act because it contradicted their professional values. This paper examines how professional identity affects the interaction between librarians and the law. I gathered evidence through in-depth interviews with Twin Cities librarians. The paper concludes that librarian practices stemming from professional values hinder the full implementation of national security policy but do not lead to absolute defiance. This project illuminates the importance of professional groups as sources of private resistance to national security policy.

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## Chapter One: Introduction

On September 11, 2001 terrorist attacks killed thousands of Americans, injured even more, and put the United States in the unfamiliar position of having been attacked on its own soil. Uncertainty flooded the nation as debate began on how to deal with this untraditional stateless enemy. The Bush administration's answer came in the form of the USA PATRIOT Act (Patriot Act). This new piece of legislation greatly increased the authority of federal law enforcement and intelligence officers. Its broad reaching amendments to national policy inspired much opposition. Private groups worried that it overstepped the government's authority and limited precious civil liberties—one of many examples of the constant struggle between the public's interest in protecting security and the interests of private actors to maintain individual liberties. Among the private groups opposing the new legislation was the librarian community.

Protecting confidentiality during the Red Scare, opposing book censorship, and protesting governmental fishing expeditions in the 1980s, libraries have been long-time advocates of civil liberties. The Patriot Act asked these institutions to compromise the established relationships with their patrons through compelling the release of patron information. As a professional body, librarians fought against the legislation, joining a long tradition of private forces resisting government policy. Unlike most other sources of opposition, libraries have been charged with assisting in the implementation of this legislation. Like other professionals that help in the detection of crime—such as bankers and health professionals with regard to the detection of money laundering and child abuse, respectively—cooperation on the part of the professional is vital to the full realization of the public policy goals. There are threats to such professionals, particularly

the serious consequences for individuals or institutions that could follow a failure to comply with an investigation. Such a request would force librarians to choose between their professional commitments and staying within the bounds of the law. This difficult choice fuels the driving questions of this project: How did libraries respond to the Patriot Act? What was the role of the librarian professional identity in their response?

To answer these questions, this thesis explores the actions and opinions of individual librarians and the organizational responses of the institutions they serve. After determining librarians' primary individual objections to the Patriot Act, it examines the impact of these personal opinions on institutional procedure in response to the Patriot Act.

## **Research Design**

These questions prove difficult to answer because they explore how ideology affects individual opinion and institutional response. To gain knowledge of these interactions, this study employs semi-structured interviews with librarians. This study utilizes interviews because of their ability to shed light on individual beliefs and complex processes, such as decision-making. This method has been employed in similar studies to determine how laws have affected individuals within institutions.<sup>1</sup> Additionally, the relative dearth of publications on this subject make interviews a necessary predecessor to any wider-scale survey. This study utilized interviews to detect the range of possible answers making it possible for future research to utilize a survey-based approach.

Between October 2007 and February 2008, I interviewed 15 librarians in the Twin Cities

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<sup>1</sup> See Alan Neitzel's work with librarians in: "How Government Mandated policies Affect Those Responsible for Their Implementation: The USA PATRIOT Act and Academic Libraries," (2006): 1-197. For another example see Janet A. Gilboy's interviews with INS inspectors in: "Implications of 'Third-Party' Involvement in Enforcement: The INS, Illegal Travelers, and International Airlines," *Law and Society Review* 31, no. 3 (1997): 505-530.

metropolitan area. They were selected based on their position and their institution. All of the interviews were performed with administrators or senior librarians who have a role in the implementation of library policy or the execution of a law enforcement request. In order to uncover the full range of responses, I contacted participants from across different types of libraries that might impact their perception of risk or their professional association. Multiple individuals were interviewed from both urban and suburban public libraries as well as public and private academic libraries. Most of the librarians were contacted based on institution and position. Several, however, were contacted after being identified by other participants as being especially active in the response, or able to provide a unique perspective or specialized information. There are many aspects of the Twin Cities that make it an ideal case to study. Located in Minnesota, a state with distinct urban and rural areas, the Twin Cities is ethnically and socioeconomically diverse. 9.4 percent of the population over the age of five is foreign born. Almost 70% of these individuals have entered the state since 1990, and one-third of them have entered since 2000. Of these individuals, roughly 30% come from each Africa, Asia, and Latin America.<sup>2</sup> Among these immigrant groups are heavily Muslim populations. This diversity is important because it may play a role in how librarians perceive risk of FBI investigation. Minnesota's library presence also contributes to the appropriateness of the Twin Cities for this study. Minnesota has 359 public library outlets (central or branch libraries and book mobiles), which amounts to approximately one outlet per 15,500 people. This is close to the national average of approximately one outlet per 17,500 people. Minnesota's libraries possess 3.6 public internet terminals per 5,000 people for

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<sup>2</sup> United States Census Bureau. *American Community Survey 2006*. "Minneapolis-St. Paul-Bloomington 13-County Metro Area." Accessed on April 5, 2008 from <http://www.metrocouncil.org/Census/acs.htm>.

public use, compared to 3.2 per 5,000 individuals nationally. Among library staff, 65 percent of full-time librarians in Minnesota have American Library Association accredited Masters Degree, which is very close to the 68% national average.<sup>3</sup>

Subjects were contacted with an initial letter.<sup>4</sup> Accompanying this letter was a consent form guaranteeing confidentiality for the participants.<sup>5</sup> I then called them to set up a meeting time. I contacted 26 individuals and fifteen agreed to meet—a response rate of 58%. During the interviews I asked open-ended questions regarding individual and institutional reactions to the Patriot Act.<sup>6</sup> Focusing on the individual were questions designed to elicit professional identity, professionalization, and personal opinions regarding the Patriot Act. To determine the institutional response, I asked about any library changes in practice or policy, as well as what they would do in the case of an FBI inquiry. The interviews lasted between 60 and 100 minutes. I recorded and later transcribed.

This design has limits. Because of the scope and the nature of the project, I was unable to consider any rural libraries. Additionally, because of the sample, the design cannot reveal the frequency of different responses, only the range. Instead I utilize intentional sampling to guarantee that there are multiple instances of each type of library because of the small total number of individuals interviewed and the relatively large number of categories. Overall, this method proved to be a fruitful and appropriate way of addressing the questions posed.

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<sup>3</sup> Minnesota Department of Education. “2006 Public Library Statistics.” Accessed on April 5, 2008 from [http://education.state.mn.us/MDE/Learning\\_Support/Library\\_Services/index.html](http://education.state.mn.us/MDE/Learning_Support/Library_Services/index.html).

<sup>4</sup> See Appendix 1

<sup>5</sup> See Appendix 2

<sup>6</sup> See Appendix 3

## **Argument and Outline of Chapters**

The enactment of the Patriot Act caused great unrest among librarians. Their concerns led to institutional responses that delay or prevent the execution of FBI requests for information. This project highlights a tension created by the federal response to the events of September 11<sup>th</sup>. It illuminates the influence of professional identity on compliance with national security policy. A more thorough understanding of this effect better equips policy makers to make changes affecting professional bodies. Additionally, it provides an example of a profession as a source of resistance to policy.

Chapter Two of this thesis presents a brief history of civil liberties limitations in times of national emergency. After detailing the progression of repressive security policy from the Palmer Raids of the 1910s to the Vietnam War and the Patriot Act, the chapter discusses the hurried passage of the controversial Patriot Act and opposition to it. Chapter Three develops a theoretical framework by describing the characteristics of a third-party implementation strategy and forms of compliance that might accompany it. Also essential as a starting point for the empirical material that follows, the chapter outlines the concept of professionalism and then describe the development of the librarian occupation and professional identity. Chapter Four discusses the trends of individual opinions discovered in the interviews. It creates a typology of the librarian professional identity and then seeks to uncover how this identity affected individual feelings about the legislation. Chapter Five presents the findings from the interviews that relate to institutional response. It details the material changes made by the libraries and discusses how the professional identity preempted the Patriot Act by leading to the active deletion of records years before 2001. Finally, Chapter Six synthesizes this data to answer the

question of how professional identity affected the librarian response and how they resolved the inescapable conflict between professional identity and compelled compliance.

## Chapter Two: Civil Liberties, National Security, and Sept. 11th

To determine a country's national security goals, Henry Kissinger suggests we ask two questions: "What is it in our interest to prevent? What should we seek to accomplish?"<sup>7</sup> These questions may at first seem simple. However, experience shows that this is not the case in liberal democratic societies. In the United States, some of the values that are to be protected—the freedom of speech or protection from unwarranted search and seizure—inherently limit the government's abilities. Policymakers must seek to protect national security without limiting the rights of individuals. In times of national emergency, the government is given greater authority to infringe on private freedoms in order to achieve security. However, even in these cases, care must be given to maintain the balance between the public and the private. The United States has experienced such limits to private liberties on numerous occasions, despite resistance in many quarters. The presence of a vigilant and courageous populace greatly impacted the maintenance of civil liberties during the Vietnam War, while its silence was deafening during the McCarthyism of the 1950s.

Restrictive policies are not, however, a relic of the past. Recent insecurity prompted the passage of the Patriot Act. The act, passed after the attacks of September 11, 2001, greatly expanded the abilities of the federal law enforcement and intelligence communities. Among the affected organizations were the nation's libraries. In response to what they viewed as excessive invasion of privacy, the American library community acted as a private entity resisting an intrusive public security policy. The response of the

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<sup>7</sup> Quoted in Sam Charles Sarkesian, *U.S. National Security: Policymakers, Processes, and Politics*, (Boulder, Colorado: L. Rienner, 1995), 273.

librarian community serves as a valuable example into the impact of private resistance to security policy, exemplifying the constant struggle between the public and private realms.

This chapter begins by outlining times of restrictive security policy in the history of the United States, from xenophobic legislation in the 1910s to stifling draft practices during the Vietnam War. It then discusses the hurried introduction and passage of the Patriot Act in Congress. It goes on to look at groups that opposed that legislation—librarians among them. Before concluding, the chapter discusses the impact that the legislation had on libraries and their claimed basis for opposition.

### **Civil Liberties in Times of National Emergency**

Civil liberties violations in times of American national insecurity have typically involved challenges to personal privacy and the freedom of thought.<sup>8</sup> The twentieth century saw many such challenges from beginning to end. Around World War I, xenophobia was growing. With it came fear of immigrants holding anarchist or communist beliefs. A series of anti-anarchist and sedition laws was passed. German speakers or those with German sounding names were persecuted. Seemingly justifying these fears, followers of anarchist Luigi Galleani attempted, with some success, a coordinated series of bombings of government officials in the spring of 1919. Among their intended victims was U.S. Attorney General A. Mitchell Palmer. Palmer asserted that Communists were going to overthrow the United States government. Using authority granted by the Espionage Act of 1917 and the Sedition Act of 1918, he conducted a series of raids now referred to as the “Palmer Raids,” resulting in the arrest of about 10,000 immigrants, leftists, and unionists, some of whom were later deported.

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<sup>8</sup> Michael E. Tigar, *Thinking About Terrorism: The Threat to Civil Liberties in Times of National Emergency*, (Chicago, Ill.: American Bar Association, 2007), p 148.

Palmer's assistant was J. Edgar Hoover, who would later head the Federal Bureau of Investigation. As people learned of the lawlessness of these proceedings, their support waned.<sup>9</sup> As fear of socialism continued into the 1930s and 1940s, more laws were passed limiting First Amendment rights. Further legislation sought to limit advocacy for the overthrow of the government and the rights of labor unions. It also gave the government the ability to create concentration camps in times of emergency and changed procedure for deportation of aliens.<sup>10</sup> Public officials went on to several tribunals for the investigation of heresy, such as the House Committee on Un-American Activities.<sup>11</sup> The Japanese attack on Pearl Harbor gave rise to a devastating example of the American government's restriction of private freedoms. Out of fear of invasion and espionage, over 100,000 Japanese-Americans were placed in internment camps, regardless of citizenship or place of birth.<sup>12</sup>

After the war, fear of communist insurrection swept the nation, fueled by China's adoption of communism, the detonation of a Soviet bomb, and conflict in Korea. The conviction of Julius and Ethel Rosenberg seemingly justified these concerns. Capitalizing on these high running emotions was Senator Joseph McCarthy of Wisconsin. Through lists and hearings, he accused hundreds of state employees of Communist affiliation. History's judgment on the actual threat posed by communism undermined McCarthy's methods. The terrible impact on those caught in his crosshairs was dramatic, measured by lost jobs and public condemnation.

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<sup>9</sup> *ibid.*, 148-149.

<sup>10</sup> Cedric Belfrage, *The American Inquisition, 1945-1960: A Profile of the "McCarthy Era"*, 1st ed. (New York, N.Y.: Thunder's Mouth Press, 1989).

<sup>11</sup> *ibid.*, xii.

<sup>12</sup> Greg Robinson, *By Order of the President : FDR and the Internment of Japanese Americans*, (Cambridge, Mass.: Harvard University Press, 2001).

Government infringement of rights, justified by national security continued through the 1970s. Conscientious objectors to the Vietnam War were imprisoned. Peaceful demonstrators were arrested.<sup>13</sup> In some cases, they were punished by reclassification to earlier draft statuses. These would not be the last efforts of the government to limit private freedoms. As our national enemy transformed from an identifiable group of nations to a mysterious decentralized network of organizations, fear and insecurity flooded the nation accompanied by broad sweeping national security policy.

### **9/11 and the Patriot Act**

On September 11, 2001 almost 3,000 people died as a result of terrorist acts on the World Trade Center in New York City and the Pentagon, outside of Washington, D.C. American President George W. Bush afterwards announced that “freedom and fear [were] at war.”<sup>14</sup> His statement described the conflict between the terrorism committed by religious fundamentalists and American society. Over time, it would also come to describe the limitation of American freedoms due to fears created by the attacks, like prior periods in American history in which insecurity gave rise to restrictive legislation.<sup>15</sup>

On September 19, 2001, Attorney General John Ashcroft introduced the USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001). The purpose of the bill was to “enable law enforcement officials to track down and punish those responsible for the attacks and to protect against any similar attacks.” This wide-ranging bill combined

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<sup>13</sup> Tigar, 2007.

<sup>14</sup> Howard Ball 2004, 3.

<sup>15</sup> *ibid.*

previously drafted anti-terrorism policies to amend criminal statutes and laws regarding access to information by law enforcement officers. Among its changes were amendments to the Omnibus Crime Control Act of 1968, the Electronic Communications Privacy Act of 1986, the Money Laundering Act, the Right to Privacy Act, and the 1978 Foreign Intelligence Surveillance Act. It also created new crimes and extended the powers of law enforcement agencies, like the FBI.<sup>16</sup>

The bill met vocal opposition upon introduction but won out due to a sense of urgency and insecurity. Members of Congress voiced grave concerns over the bill regarding balance between security and civil liberties. Prominent members of both Judiciary committees worked intensely with members of the Department of Justice. The Attorney General was charged with the task of doing “all that [was] necessary, within the bounds of the Constitution, for law enforcement to fight [the] war on terror.”<sup>17</sup> A critical part of the law allowed for increased communication between federal law enforcement agencies. Separation between foreign-intelligence gathering bodies like the CIA and federal law enforcement agencies like the FBI were in place, having been enacted in response to past civil liberties abuses. However, the administration worked tirelessly to remove it in this case, due to the “new kinds of warfare the United States faced.”<sup>18</sup>

Some legislators were concerned about the content and the scope of the legislation. They felt that it undermined civil liberties protections and infringed on Fourth Amendment protections from unwarranted search and seizure. Senator Patrick Leahy (D-VT) worked with the Attorney General to reach a compromise. However,

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<sup>16</sup> *ibid.*, 41.

<sup>17</sup> Robert O'Harrow, *No Place to Hide: Behind the Scenes of Our Emerging Surveillance Society*, (New York: Free Press, 2005), 368.

<sup>18</sup> Ball 2004, 44.

Ashcroft later denied the existence of any agreement. Both houses of Congress quickly passed versions of the bill that were nearly identical to the draft submitted by the Department of Justice. The House bill, however, contained some terms to limit the expanded powers such as oversight conditions and a sunset clause. The final bill passed in the House of Representatives by a vote of 357-66. In the Senate, 98 Senators voted in favor of the bill, with one abstention and one—Russ Feingold (D-WI)—voting against. Feingold stated, “There is no doubt that if we lived in a police state, it would be easier to catch terrorists...But that would not be a country in which we would want to live.”<sup>19</sup> On October 26, 2001 President George W. Bush signed the Patriot Act into law.

### **Patriot Act Criticism**

Criticism of the legislation was not limited to those 67 legislators voting against it. Many groups, both liberal and conservative, were unsure about the constitutionality of the law; others were outspokenly critical. The American Civil Liberties Union (ACLU) in particular condemned the treatment of aliens under the act, with Nadine Strossen, ACLU President, arguing that the administration “made immigrants a proxy for terrorists.”<sup>20</sup> The ACLU was also the first organization to file a challenge to the constitutionality of the Patriot Act.

Multiple organizations representing librarians also expressed vehement opposition to the legislation. Also among the opponents, librarians comprised another group that was outspokenly opposed to multiple provisions of the Patriot Act. Unlike the ACLU,

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<sup>19</sup> *Congressional Record*. 2001. 107<sup>th</sup> Cong., 1<sup>st</sup> sess., vol 147, pt 136.

<sup>20</sup> Ball 2004, 73.

librarians were implicated in the implementation of the legislation. Table 2.1 outlines the sections of the legislation that impacted libraries.<sup>21</sup>

Table 2.1 Primary USA PATRIOT Act Provisions Affecting Libraries

<i><b>Patriot Act Section</b></i>	<i><b>Changes</b></i>	<i><b>Impact</b></i>
<b>Section 202</b>	Amends 18 U.S.C. § 2516	Expands list of actions warranting federal wiretapping to include felonies other than fraud.
<b>Section 207</b>	Amends Foreign Intelligence Surveillance Act (FISA) - 50 U.S.C. §1805	Authorizes “roving” wiretaps of suspect’s communications in all locations without specifying library affected.
<b>Section 213</b>	Federal Rules of Criminal Procedure Rule 41	Provides statutory basis for delayed notification of search and seizure – “sneak and peek”
<b>Section 215</b>	Amends FISA – 50 U.S.C. § 1861	Allows for court order of “any tangible thing” in investigation of terrorism or clandestine intelligence activity; places gag order on affected institution
<b>Section 216</b>	Amends Federal Pen Register and Trap and Trace Statute - 18 U.S.C. § 3121-27	Allows for the installation of devices to track real time records nationwide; the order only has to list initial provider and subsequent providers are required to comply.
<b>Section 505</b>	Amends 18 U.S.C. § 2709	Permits the use of National Security letters to order the turn over of records of electronic communication as long as they are relevant to investigations of terrorism.

On October 2, 2001 the American Library Association along with the American Association of Law Libraries and the Association of Research Libraries wrote a letter to Congress with the “Library Community Statement on Proposed Anti-Terrorism

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<sup>21</sup> This table borrows heavily from Mary Minow. 2002. "Library Records Post-Patriot Act (Federal Law)." (September 30, 2007) and Wiley Rein and Fielding. 2002. "The Search and Seizure of Electronic Information: The Law Before and After the USA Patriot Act." <http://www.arl.or/info/frn/other/matrix.pdf> (March 20, 2008).

Measures.” In this statement the group expressed their concerns with the Patriot Act. They list five major objections to the legislation. The first objection was to “the expansion of pen register and trap and trace devices to the Internet.”<sup>22</sup> Trap and trace devices secretly identify and locate sources of phone calls. Such tools the groups argue, would deal with much more detailed information than traditional telephone taps. Additionally, the installation in libraries would not allow the technology to be specific enough to ensure that only the information of a suspect would be recorded, thus infringing on the rights of others. Second, the groups objected to the expansion of access to business records through Section 215. Although the legislation did not explicitly identify libraries, they feared that expanded access to business records would mean expanded access to library patron records, subjected to lower standards and without judicial review. Such actions would run against a long-standing tradition of commitment to library user privacy. It also could apply to electronic records and individuals with no suspicion of criminal activity could have their activity reviewed. On a related note, the third objection concerned the expansion of access to educational records. This objection was made based on an individual’s right to control the disclosure of his private information in the best interests of democracy. The library associations also objected to the expanded definition of terrorism, concerned that low-level cyber criminals or hackers in libraries may, instead of being classified as and treated as a computer criminal, be subject to treatment as terrorists. Finally, the associations objected to government

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<sup>22</sup> Mary Alice Baish, Lynne Bradley, and Prudence S. Adler. 2001. *Library Community Statement on Proposed Anti-Terrorism Measures*.

mandate of new universal technology, arguing that this could lead some libraries to close because of additional costs to libraries.

In addition to dissent at the organizational level, there was great outcry at the grassroots level. On top of already stated concerns, many librarians were concerned about what procedure to follow if visited by law enforcement officers. Responding to their members need for practical advice, the American Library Association published a document entitled “Guidelines for Librarians on the U.S.A. Patriot Act: What to Do Before, During and After a “Knock at the Door?” in January of 2002. As the name suggests, this document offered guidelines on how institutions should respond to an FBI request for information. It advised the librarians to consult with legal counsel to ensure that inquiries were appropriate and legal. The ALA also recommended that libraries review and revise policies regarding record retention and procedure surround law enforcement inquiries. Finally, libraries were advised to train all employees on what to do if they were presented with a request. The document emphasized the importance of following these predetermined policies in order to maintain stability during what might become a chaotic time.<sup>23</sup>

The librarian community presented an organized and united opposition to the enactment and implementation of the Patriot Act. Their resistance and actions appear to be based on a common understanding of the role of libraries in society and the value of uncompromised access to information and confidentiality. This commitment is one of several whose origins may be traced through the development of the library profession.

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<sup>23</sup> American Library Association, “Guidelines for Librarians on the USA PATRIOT Act: What to Do Before, During and After a ‘Knock at the Door,’” January 19, 2002 [cited 2007]. Available from [www.ala.org/ala/washoff/woissues/civilliberties/theusapatriotact/patstep.pdf](http://www.ala.org/ala/washoff/woissues/civilliberties/theusapatriotact/patstep.pdf).

## **Conclusion**

Throughout its history the United States has struggled to maintain the proper balance between public safety and individual freedom. Times of national emergency have led to limitations of liberty in favor of national security. These restrictions on civil liberties meet resistance by private actors. Institutions such as the media and the legal profession have also played key roles in monitoring governmental abuses and advocating against them. The existence of such resistance begs the question: What are the conditions when private resistance can serve as a counterweight to government power?

In this Chapter Three, I suggest that such resistance may be especially effective when the groups are necessary for the implementation of the policy, as illustrated by the librarian community after the passage of the Patriot Act. Furthermore, their rationale for resistance—to protect user privacy demonstrates a unique ideological commitment to be considered.

## Chapter Three: Third-Party Implementation and Professionalism

The balance between public and private is placed in unique perspective when the government relies on private citizens or organizations in the implementation of legislation. These individuals then become pseudo-public agents whose behavior or cooperation is mitigated by other pressures like personal beliefs. The unique position of librarians as gatekeepers to information has placed them constantly in the crossfire of government policy. Over history they have been asked to assist law enforcement officers multiple times. The marked influence of their organizational values on response prompts consideration of the professional identity of librarians. To better understand the actions of this group, this chapter examines how their professional identity has grown over the past 150 years. As a source of access to many forms of information libraries have been particularly affected in times of national emergency—attempting to maintain a balance between government demands and individual freedoms. This unique role is considered through the theoretical lens of third-party enforcement.

This chapter outlines the theoretical framework of the study. It begins by describing third party implementation strategies: how they are defined and how compliance is decided. From there it goes on to discuss professionalism and the history of the library profession. It considers how they have acted as third-party implementers in times of national emergency. It concludes with a discussion of the current traits of their professional identity in order to better understand their interaction with the Patriot Act.

### **Third Party Implementation Theory**

Governmental reliance on other groups to assist in the execution of a law is not unique to librarians in this case. The IRS utilizes third-parties in the detection of money

laundering by requiring accountants and car dealers to report large cash transactions. Local law enforcement agencies require teachers and doctors to report suspected child abuse. Kraakman writes of “third-party enforcement strategies” in which liability is imposed on third-parties who have the ability to prevent wrongdoing.<sup>24</sup> However, more recent literature has recognized that similar schemes exist that do not necessarily meet this description. In these implementation plans, third parties have unique skills or access to information that is impossible or prohibitively expensive for the government to perform. Following Gilboy we can identify three key characteristics of third-party liability systems: “(1) Private entities are compelled to help deter misconduct; (2) civil and criminal sanctions exist for failure to perform duties; and (3) little or no compensation is provided to cover the costs of performing duties.”<sup>25</sup>

The type of response to such a scheme falls along a continuum of compliance.<sup>26</sup> At one end is compliance, from there it devolves into *complacency*, in which the duties are performed but it does not achieve the goal of the law, *withholding cooperation*, in which parties refuse to perform the mandated duties, finally the party may *avoid the burdensome or risky situation*, in this response the party removes itself from any position requiring the performance of the mandated duty. Many posit that the decision to comply with such a participation scheme was the result of weighing the costs of implementation with the possible penalties.<sup>27</sup> In some cases these approaches seem logical. If it is simply a question of finances, this decision-making process makes sense. However, this method

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<sup>24</sup> Reinier H. Kraakman, "Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy," *Journal of Law, Economics, & Organization* 2, no. 1 (1986): 53-104.

<sup>25</sup> Janet A. Gilboy, "Compelled Third-Party Participation in the Regulatory Process: Legal Duties, Culture, and Noncompliance," *Law and Policy* 20, no. 2 (1998).

<sup>26</sup> *ibid.*

<sup>27</sup> See Kraakman 1986. See also William C. Whitford, "A Critique of the Consumer Credit Collection System," *Wisconsin Law Review* (1979): 1047-1143.

ignores any role that context plays in interpreting the law. Gilboy however argues that complex factors such as personal and work-group norms also factor into these decisions.<sup>28</sup> Such contextual factors may explain the discrepancies in compliance between occupational groups charged with fulfilling the same duties. One of these factors is professional identity which influences an individual's priorities and resources.<sup>29</sup> They also impose a set of normative expectations.

### **Librarians as a Professional Body**

The term “professional” holds many meanings, both specialized and colloquial. To some it means any job requiring special education, but to others it requires that these occupations adhere to a set of formal values and theory.<sup>30</sup> Moore describes six requisites characteristics of a profession: 1) full-time occupation; 2) adherence to a set of normative and behavioral expectations, often embodied by a code of ethics; 3) organization created to “enhance and protect the calling;” 4) specialized knowledge based on educational training of exceptional duration that is recognized through specific credentials and is unique from other professions; 5) a service orientation; and, 6) autonomy in decision making due to specialized knowledge.<sup>31</sup> MacDonald describes a “professional project” in which an occupational group works to achieve a monopoly in the market for a service based on knowledge and expertise.<sup>32</sup> This is linked to the achievement of social status. The group carves out a specific niche for which it works to “produce the producers”—to

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<sup>28</sup> Gilboy 1998, 151.

<sup>29</sup> Gail L. Zellman, "Child Abuse Reporting and Failure to Report Among Mandated Reporters: Prevalence, Incidence and Reasons," *Journal of Interpersonal Violence* 5, no. 1 (1990): 3-22.

<sup>30</sup> Steven G. Brint, *In an Age of Experts: The Changing Role of Professionals in Politics and Public Life*, (Princeton, N.J.: Princeton University Press, 1994), 278.

<sup>31</sup> Wilbert Ellis Moore, *The Professions: Roles and Rules*, (New York: Russell Sage Foundation, 1970), 303; 245-301.

<sup>32</sup> *ibid.*

ensure that all entering the occupation meet certain criteria.<sup>33</sup> By doing so they attempt to monopolize professional knowledge. These factors “the kind of work, the sort of person and the quality of the knowledge,” help the group to achieve respectability. The group will also undertake other activities to achieve respectability.<sup>34</sup> Often professional groups reach agreements with the state to recognize the legality of their monopoly. Such recognition also helps to confer status and respectability.

In 1965, one author described librarianship as an “emerging profession.”<sup>35</sup> Despite the passage of more than 40 years, many still do not consider it as a true profession.<sup>36</sup> Abbott discusses three commonly referenced differences between professions and semi-professions: bureaucratic employment, lack of lifelong careers, and less esoteric forms of knowledge. He goes on to claim that the discrepancy between professions and semi-professions is arbitrary.<sup>37</sup> Because of the constant changing nature of information, librarians are required continuously adapt to do their jobs.<sup>38</sup> This suggests that librarians would not be well served by acquiring the necessary rigidity of a profession. Regardless of the technicalities, librarians do possess many commonly recognized characteristics of professionals. Many librarians hold their positions full-time. There are formal state and national level organizations which accredit schools to provide required graduate level education. They ascribe to a set of normative ethics and procedures. Additionally, the work that they perform is based on a specialized form of

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<sup>33</sup> Keith M. Macdonald, *The Sociology of the Professions*, (London; Thousand Oaks, Calif.: Sage, 1995), 224., 193.

<sup>34</sup> *ibid.*, 193.

<sup>35</sup> Bernard Barber, "Some Problems in the Sociology of the Professions." in *The Professions in America* (Boston: Houghton Mifflin, 1965), 22.

<sup>36</sup> Macdonald 1995, 224.

<sup>37</sup> Andrew Abbott. 1998. "Professionalism and the Future of Librarianship." *Library Trends* 46 (3): 430-444.

<sup>38</sup> *Ibid.*

knowledge. Because of this knowledge, librarians possess much autonomy to make decisions of library policy and practices—many administrative positions being held by librarians. For the purposes of this examination, librarians will be discussed as a profession as they meet most of the generally accepted criteria and any discrepancies are irrelevant for the purposes of the project. In order to better understand the community and its professional status, it is necessary to look at the history of the organization—its founding and development.

The first convention of librarians took place in New York in 1853. Those gathered decided to form a professional organization, though this goal was not realized until 23 years later. In 1876 in celebration of the national centennial, a group 103 of librarians held a convention in Philadelphia at which the American Library Association was born. The group ratified the preamble to their then nonexistent constitution. In the same year, librarians founded their own professional journal titled *Library Journal*. Specialized education would come later, when the first library school opened in 1887.

During the early twentieth century, the library community expanded greatly, but it would be national crisis that would be the greatest contributor to professional identity during that period. The ALA was very busy, holding conferences across the country and even opening an official headquarters. Yet, despite these activities, the group remained a relatively small and inward focused organization. In 1917, that began to change, when the United States entered WWI. Executive board members met to discuss the role of the ALA in the war effort. In this meeting several programs were instituted to help in the war effort, transforming the ALA into a public service organization. This new orientation marked an attempt among the library community to gain respectability for their

occupation, a key pillar of professionalism. While service was triggered by an international emergency, it had lasting effect on the outlook of the organization in the future.

An increased focus on training further supported the evolving professional identity. The Committee on Library Training was founded in 1902. Over time the number of institutions providing some form of librarian training grew. These programs lacked uniformity and organization. The quality of the instructors was questionable, and the relevance of the training was criticized by practicing librarians.<sup>39</sup> In 1923, the chairman of the Committee on Library Training advised the ALA to take a more active role in overseeing librarian education schools. In response to a study of libraries by Dr. Charles Williamson that confirmed popular doubts in the programs, the ALA issued its first set of minimum standards for library education programs in 1926. These standards furthered the evolution of the fledgling profession.

During the Great Depression, American libraries faced the same challenges as many organizations. They dealt with lack of staffing, resources and funds. ALA members were unable to pay their dues, and the organization suffered. The Carnegie Corporation supported the ALA with a \$1,000,000 grant in 1926 and a matching pledge of another million. The efforts succeeded but it did not solve their problems of low membership and unemployment. As the nation came out of the Depression, library problems began to improve.

In the late 1930s, as expectations of the United States' global responsibilities increased, the librarian community began to debate their identity. At a 1940 conference

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<sup>39</sup> Dennis Thomison, *A History of the American Library Association, 1876-1972*, (Chicago: American Library Association, 1978), 89.

of the ALA, a group of librarians sent a “peace telegram” to President Roosevelt urging him to “keep this country at peace.”<sup>40</sup> The ALA Board was upset and concerned. Having been mentioned in the telegram, they were afraid that it might be confused as having come from them. To preempt any mistake, they sent a letter to Roosevelt expressing their support. Additional conflict arose, however, when the question of censorship arose. Many were concerned about availability of “subversive publications,” and looked to libraries to suppress them. At a conference in Cincinnati in 1940, the former Attorney General of Ohio, Gilbert Bettmen, advocated the restriction of enemy propaganda, which he referred to as “purposely poisoned arrows.”<sup>41</sup> Arthur Garfield Hays, counsel for the American Civil Liberties Union, spoke against restriction as being undemocratic. The existing committee on censorship reminded the organization that they had passed the Library Bill of Rights the previous year, which required the ALA to support any library or librarian that faced demands for censorship. Such demands placed the library community in the position of choosing between government demands and professional values. The Intellectual Freedom Committee worked to prevent censorship of books such as John Carlson’s *Under Cover*, which detailed ten years that he spent as a member of various fascist organizations. Challenges to books spurred the addition of a sentence to the Library Bill of Rights that read: “Further, books believed to be factually correct should not be banned or removed from the library simply because they are disapproved by some people.”<sup>42</sup> Opinions about the Library Bill of Rights and the intellectual freedom were not united within the profession, however. The line between

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<sup>40</sup> *ibid.*, 143

<sup>41</sup> *ibid.*, 144

<sup>42</sup> *ibid.*, 145

censorship and book selection became more and more blurry as the public exerted their influence on librarians.

Librarians struggled to gain and retain status as they grappled with issues of public service, labor shortages, and wages. During World War II, like during WWI, they did work to provide books for the military and execute other public service projects. Other activity decreased however. The American Library Association did not hold any conferences. Libraries were also facing a shortage of librarians due to low attendance in library schools. The introduction of the “G.I. Bill of Rights” after World War II, increased enrollment, but it did not improve the shortage. Unlike increasing salaries in most fields, librarian salaries remained stagnant. They were unable to offer wages that were competitive with other fields. The ALA was forced to reconsider their existing educational requirements.

After the war, the fear of communism sparked an increase in censorship. In response the Intellectual Freedom Committee further revised the Library Bill of Rights, requiring librarians to challenge any attempts at censorship. Another issue of concern was loyalty investigations. The ALA adopted a resolution protesting such investigations as being “a serious violation of intellectual freedom.”<sup>43</sup> Concerns for intellectual freedom have continued through the 1960s. In 1967 the ALA called for action to fulfill the goals of the Library Bill of Rights by fighting censorship and promoting the freedom to read.

Government intrusion into libraries was not limited to censorship. In 1970, several government agencies attempted to use library records to determine suspects and criminals. The Alcohol, Tobacco, and Firearms Division of the IRS attempted to obtain library records to see who had been reading about such topics as guerilla warfare and

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<sup>43</sup> *ibid.*, 185.

explosives as part of an investigation of suspected explosive users. The ALA quickly reacted by condemning these investigations and requesting that librarians report any further requests. Even after changing their policies from requests for lists of people to the records of specific individuals, the ALA maintained their objections. They claimed that “the efforts of the federal government to convert library circulation records into ‘suspect lists’ constitute an unconscionable and unconstitutional invasion of the right of privacy of library patrons, and if permitted to continue, will do irreparable damage to the educational and social value of the libraries of this country.”<sup>44</sup> They recommended that libraries formulate confidentiality policies and the records not be turned over without a court order. These recommendations were also included in the “Policy of Confidentiality of Library Records,” which was released shortly thereafter. The IRS and ALA met later to determine guidelines for government use of library records. The agreement recognized “justifiable situations” but “unequivocally proscribed ‘fishing expeditions’”<sup>45</sup>

In the late 1980s, national security concerns once more led law enforcement officers into libraries. There were reports of FBI agents entering New York libraries requesting the aid of librarians in monitoring and collecting information on individuals, specifically those from “hostile countries.” Some librarians cooperated; others refused. The New York Library Association and ALA issued statements deploring these statements and requesting information on the scope of these inquiries. It was uncovered that these attempts were part of the FBI’s Library Awareness Program. The ALA and ACLU pressured members of Congress to investigate the program, and an investigation was conducted in the summer of 1988. The FBI attempted to avoid the

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<sup>44</sup> "Memo to Members," *American Libraries*, July-August (1970): 658.

<sup>45</sup> Herbert N. Foerstel, *Refuge of a Scoundrel: The Patriot Act in Libraries*, (Westport, Conn: Libraries Unlimited, 2004), 3.

congressional hearings, claiming that Capitol Hill was “an open area for Soviet officials.”<sup>46</sup> The hearings did take place in front of the House Subcommittee on Civil and Constitutional rights with testimony from officials of the ALA, the Association of Research Libraries, the Special Libraries Association, and librarians from some of the institutions affected. The special role of libraries was affirmed by Rep. Don Edwards (D-CA) the chairperson of the committee, who stated that they were “sacred institutions, which should be protected and nurtured.”<sup>47</sup> He emphasized that this program had “ominous implications for freedom of speech and privacy.”<sup>48</sup> It was eventually uncovered that this program affected numerous public and academic libraries in about ten states. These experiences demonstrate the commitment of the library community to patron privacy as well as the high esteem that libraries and librarians are held in. They were critical tests to the group’s commitment to their values and ability to organize and withstand pressure. Additionally, they illustrate the key role of librarians as gatekeepers to information for both their patrons and the government.

From the first seedlings of professional organization to the successful resistance of the 1980s, it is clear the librarians developed normative guidelines for behavior. Gorman identifies eight values that have “endured” to the twenty-first century. They are: stewardship, service, intellectual freedom, rationalism, literacy and learning, equity of access to recorded knowledge and information, privacy, and democracy.<sup>49</sup> Stewardship and service values encompass the need to preserve the human record and provide excellent service to communities and individuals. Intellectual freedom means the defense

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<sup>46</sup> *ibid.*, 8.

<sup>47</sup> *ibid.*, 9.

<sup>48</sup> *ibid.*, 9.

<sup>49</sup> Michael Gorman, *Our Enduring Values: Librarianship in the 21st Century*, (Chicago: American Library Association, 2000)

of the ability of all in a free society to read and see whatever they like. Rationalism encourages the application of rational principles to all library activities. Literacy and learning refers to the goal of a library to encourage learning and foster an environment for reading. Equity of access seeks the removal of barriers to information based on money or technology. Democracy refers to the promotion of an educated citizenry and democratic values. Finally, privacy refers to the goal of keeping patron information confidential. These values correspond with many of the tenets of the American Library Association's Code of Ethics and the Library Bill of Rights.<sup>50</sup> They are the product of rich and vibrant history of the librarian community.

By examining the development of the librarian community, it is possible to trace its efforts toward professionalism. They have created a jurisdiction and through accreditation standards they now "produce the producers." The struggle with low wages and unemployment of the Depression have been overcome, and librarians now enjoy social status as protectors of civil liberties and guardians and specialized knowledge. The "professional project" of librarianship has been rife with governmental conflict in times of national insecurity. Their professional identity is intrinsically linked to the provision of information, therefore efforts to inhibit such actions are met with great resistance.

The involvement of the FBI in libraries since the 1970s demonstrates earlier schemes of third party implementation, much like the one in the Patriot Act. In many of these instances the libraries did not comply with government requests. However, when considering the theoretical framework hindsight shows that the penalties for such

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50 See American Library Association Council. "Code of Ethics." Adopted June 28, 1995. Available from [www.ala.org/ala/oif/statementspols/codeofethics/codeofethics.pdf](http://www.ala.org/ala/oif/statementspols/codeofethics/codeofethics.pdf). See also American Library Association. "Library Bill of Rights." Adopted June 18, 1948, reaffirmed January 23, 1996. Available from [www.ala.org/ala/oif/statementspols/statementsif/librarybillofrights.pdf](http://www.ala.org/ala/oif/statementspols/statementsif/librarybillofrights.pdf).

behavior were slim. Lack of support for the FBI's methods and political influence of the library profession excused their behaviors.

While many libraries are not private entities, the government involvement in libraries has much in common with third-party implementation schemes. Libraries perform a unique duty in society by providing access to numerous forms of information. As a result they have the potential to know what many civilians are reading, listening to, and viewing. Their computer systems process millions of transactions every day. Access to their records could give the government much information about the public. Few other institutions have such a unique view into the curiosities and minds of individuals. By utilizing libraries, the federal government stands to gain sensitive information about millions of individuals. Additionally, failure to comply with FBI requests would lead to severe sanctions. A librarian who refused to comply with a search warrant would be subject to criminal penalties. Others who lack support from their institution could lose their jobs should they refuse to comply with law enforcement officers. Such grave consequences for noncompliance further support a classification of third-party enforcement strategy.

The scheme departs from Gilboy in the absence of compensation for costs imposed performing these duties. There has been no increase in library funding due to the Patriot Act. However, many libraries were funded publicly before the act was passed. Additionally, as written the act does not impose monetary costs on libraries. Rather, the act mandates cooperation in investigations through the provision of requested records. Libraries could act within the law without any changes in policy or resource allocation. However, many libraries instead exerted time and energy in formulating policies and

training their staff. Despite any costs imposed by these actions, they were not required by the law and thus differ somewhat from traditional third-party implementation strategies.

Previous research on this topic is limited. One study exists regarding the impact of the Patriot Act on librarians. Neitzel evaluates librarians' response to the Patriot Act using Smith's theory of policy implementation, which states that policy creates "tensions and strains" at various levels of the implementation process.<sup>51</sup> The goal of his research was to identify the "tensions and strains" created by the Patriot Act on those who share responsibility for implementing it, librarians. He concludes that the legislation did create strains, mostly having to do with patron privacy and records.<sup>52</sup> However, he does not make any conclusions about their response to the legislation, nor does he investigate the importance of professional values in daily decisions to maintain or release patron records. Although this research is thin, its presence denotes the significance of this topic.

## **Conclusion**

Libraries fill a critical role in society by mediating access to information for both private and government actors. The librarian profession has a robust identity that came into being in times of national emergency and confusion due to its role as a point of access to information. The current struggle over the Patriot Act exemplifies the group's commitment to its values, following a long history of protecting individual freedoms. The role of librarians in the implementation of Patriot Act, as well as previous national security practices, bears great resemblance to third-party enforcement strategies. As

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<sup>51</sup> See Smith in Neitzel, "How Government Mandated Policies Affect Those Responsible for Their Implementation: The USA PATRIOT Act and Academic Libraries," 2006.

<sup>52</sup> *ibid.*

such, it is possible to place their responses on a continuum of compliance. The professional identity of the group could greatly influence how it interprets the duties imposed by the Patriot Act as well as the decision to comply. Perceptions of librarians' roles within their communities as well as their opinions of the Patriot Act could provide insight into this issue. Additionally, it can be explored by what actions were taken by libraries after the implementation of the Patriot Act and to what extent they are complying with or disregarding the law. Such insights would be invaluable to the understanding of the role of professional groups as social actors, specifically their role in resisting national security policy.

## Chapter Four: Professional Values and Personal Concerns

In its public response, the ALA presented strong opposition to the Patriot Act, but as a huge and multi-sectional organization there was potential for great variance among librarians' individual opinions. Understanding librarians' individual attitudes toward the legislation is imperative in order to appreciate their response. The role of professional identity in shaping those opinions and reactions, in particular, rises to the fore because, as an autonomous group, librarians make many of the decisions affecting library policy. These group decisions will be considered in the Chapter Five.

Every librarian interviewed for this study opposed the provisions introduced in the Patriot Act that impacted libraries. They varied greatly, however, in the intensity and reasons for their opposition. The rationales for resistance stem from both ideological and practical concerns. The ideological arguments include concerns for democracy and a fear of limiting national freedom of thought. Their practical concerns can all be tied to some form of uncertainty—over frequency of use, implementation, or legality. Several rationales are unable to be classified as entirely one or the other: librarians do not see these measures as effective measures of capturing terrorists, and they fear lowering tried-and-true legal standards. Yet, almost all of these arguments clearly link to some facet of the professional identity and the value system of librarians. Librarians recognize and glorify of their role in society and take from history a desire to prevent the kinds of abuses they might have complied with in the past.

In this chapter I first consider how librarians construct their professional identities and how they believe these identities are transferred to new members of the community. I then discuss their various rationales for opposition, both ideological and practical.

Finally, this chapter concludes by considering how these reasons relate to the professional status of librarianship and the intense interconnectivity of the values librarians hold most dear.

### **Perceptions of Professional Identity**

In order to understand the individual response to the Patriot Act, it is important to understand how these individuals perceive their professional norms and culture. Throughout my interviews I encountered and at time invited ideological statements that form a portrait of a professional identity. These statements came both when directly elicited, and in response to other issues—demonstrating how completely they have permeated the decision-making processes of the individuals. The question “How do you see your role in the community?” inspired near universal references to the need “to encourage free and open access to information.” One public librarian generalized further to the importance of access: “access to ideas, information, programs, [and] resources.” The basic commitment to information undergirds the essential components of their professional commitments: literacy, service, preservation, equality of access, intellectual freedom, privacy, democracy and organization of information. Their values correspond very closely to the values identified by Gorman.<sup>53</sup> Several of these values do receive much greater attention. Librarians were described by one public librarian as having “almost a religious fervor for literacy,” and by another as being “very public service oriented.” There was great care also given to preserving a link to the past and to the rational and efficient organization of information. Receiving the greatest emphasis,

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<sup>53</sup> Michael Gorman, *Our Enduring Values: Librarianship in the 21st Century*, (Chicago: American Library Association, 2000). See page 21-22 of this paper for more about Gorman’s typology of the enduring values of librarianship

however, were the values of intellectual freedom, equality of access, privacy, and democracy.

### *Professionalization*

A number of hypotheses exist for the origin of these ethics within individuals: self-selection, education, and professionalization. Most librarians and library administrators possess Masters degrees in Library Science. However, it is becoming more common for administrators to be hired without such a degree. Nonetheless, the dominance of these graduate programs in the field and profession was clear. When asked what she believed to be the source of librarianships' values, one public librarian responded: "A little bit of both [education and self-selection]. All library schools have intellectual freedom courses. It's not a requirement, but in every class those issues are brought up time and time again." She refers to these values as supporting all of the other functions of librarianship, whether or not they receive direct attention. Others feel much more strongly about the role and importance of the Masters in Library Science. An academic librarian emphasizes library school as an acculturation process as well as a barrier to entering the profession:

As you go through library school you become acculturated. That's what that degree is, it's an acculturating process. Masters degrees for a profession are sort of a barrier to entry for those who want to move ahead. They have to go get that degree, but they're also an acculturating process so that values seep in.

She sees the MLS as the primary force behind acculturation and goes on to dismiss the idea of self-selection based on her own experience. The hypothesis of self-selection suggests that those who become librarians possess a commitment to values like access to information, intellectual freedom before entering the profession. The objections of the

earlier individual aside, most librarians agree that self-selection occurs to some degree, with one claiming that “people who are drawn to this kind of work are interested in those issues.” There is a general recognition of the professionalizing role of librarian graduate programs. It is equated to other professional education programs, which also include courses on ethics.

In the graduate program I attended and most graduate programs, that is part of the program, there’s a part on ethics...it’s a part of the coursework the same as it is for those attending law school, or medical school, or education, or anything that has that piece of the profession. It’s training to that extent.

Interestingly, there was little support for the development of professional values after entry into the workforce. Much of this is attributed to the shades of grey present in issues once perceived as black and white. When a librarian leaves library school to work on the “front lines” in the libraries, they are faced with many situations with no clear answer that test their professional values. Despite the blurred lines of professional values, they still provide ample basis for opposition to public policy that contradicts them.

### *Intellectual Freedom*

Intellectual freedom resides at the core of the librarians’ project, closely related to free and open access to information. The belief that an individual has the right to think freely without repercussion is a value held dear by many librarians. As a starting point in the promotion of intellectual freedom, librarians attempt to support any type of inquiry through the inclusion of a wide diversity of viewpoints in their collections. The failure to provide full and fairly represented information would constrain the intellectual pursuits of their patrons. For one academic librarian complete representativeness is imperative: “Our

role is to be a center of intellectual activity and we also maintain a collection that includes all points of view no matter what. It's important that every single point of view is included in the collection." Such an attitude may be the result of the academic mission of the library and students and scholars whose inquiry it must support. A public librarian also articulated the need for widespread types of information because of the "gatekeeping" role that libraries have acquired: "We are the person that says, 'Look these ideas need to be represented.' A lot of times if you go out to some of these small towns, we are the gatekeepers to all that information. People are relying on us to give all points of view on different subjects." The emphasis on representing all viewpoints is based greatly in the ideal of intellectual freedom. This individual, however, also makes reference to the removal of barriers to information that those in small communities might face.

#### *Equality of Access and Democracy*

Similarly, equal access to that information, another key element of the professional value system, allows for full intellectual freedom by removing barriers that disadvantaged members of the community face. Another public librarian discusses the desire to provide "wide forms of information, if not free of charge as cheaply as possible. Fair distribution of that. Providing informational resources that, in many cases, they can't get on their own." This librarian demonstrates his desire to remove all barriers to accessing information. Many reference the financial barrier to information. Perhaps this is due to the historical role of libraries providing access to otherwise prohibitively expensive technology. One administrator remembers the evolution of libraries in the region in regards to their commitment to removing burdens to access:

And I believe that a book is a technology that in the 1860s when [the Twin Cities] were developing this was really expensive for people, so they pitched in together and they created a less costly way to access this information. Well now the laptop's the expensive piece, and sure there's a whole group of the population that can afford it, but there's a whole group of the population that can't. We may be switching what the technology is, but our mission hasn't changed...there will always be a technology that's too expensive for people to access what they need.

She recalls the constant role of the library to provide access to information or resources for those who cannot afford it. Additionally, she reveals her belief that the access to computers today is of equal importance as access to books in the past. It also shows that because of disproportionate use of library materials the disadvantaged may face exceptional vulnerability to government action.

Money and geography are not the only factors limiting access; other barriers include age and language. As more and more documents and services are put on the internet, elderly community members go to their local libraries for the facilities as well as the expertise in using new technology. Libraries attempt to eliminate these barriers by providing classes on computer use and assisting older community members in tasks such as applying for Medicare Part D. Other institutions seek to assist those in the community that are unfamiliar with our language or governmental procedures to help apply for citizenship.

I think for [as long as this institution] has been around it's always been a facet of their service ethic, that the staff and the library board has always wanted to reach out to new populations, non-English speakers, and to provide them as much information to assist them become new citizens.

One suburban librarian provides insight into an alternative motivation for such service: "I believe that our mission is to provide access to information in a democratic environment. I know that sounds pretty trite, but I think that democracy depends upon a knowledgeable

set of citizens.” Librarians view themselves as promoting democracy by encouraging a marketplace of ideas and an educated citizenry. This is closely tied to the value of literacy – although democracy is not its only outcome. The support for democracy suggests resistance to actions which limit access to information or compromise the acceptability of diverse viewpoints.

### *Privacy*

From the commitment to intellectual freedom, a deep belief in personal privacy closely follows—a need to conceal and protect the secrecy and confidentiality of a patron’s activities. An academic librarian describes the close relationship between the two values:

Intellectual freedom is a very high value, that and privacy. They are sort of two sides of the same coin. You are free to pursue a line of inquiry and we will help you do that with all of these treasures that we have here. We will also protect the privacy of your endeavor and keep it confidential.

The value of privacy has been considered one of the “ethics of librarianship” for decades. A suburban library director identified the origin of this commitment as the period of McCarthyism in the United States, during which the government attempted to prove people’s political beliefs through their reading record. She claims this discouraged patrons from reading materials that might represent them as Communists, thus compromising the relationship between the library and the patron and limiting the types and quantities of materials checked out. Interview subjects paid significant attention to the historical importance of the exchange of ideas and information during times of national crisis, further emphasizing democracy. They view themselves as important centers of information and express a desire to protect intellectual freedom that was

betrayed in the past. Another librarian identifies the historical beginnings as the Cold War:

It's basically the cornerstone of our existence. We allow access to information and we uphold people's right to privacy and access and not to make judgments. It kind of goes back to the Cold War era when people were doing these witch hunts. People would say "You're a communist. Look at the books you've checked out. Look at what you're reading."

He feels more strongly about the role of librarians to protect intellectual freedom because of past abuses. A suburban librarian who acknowledges a "past history of abuse" and the inability to trust that the information will be used solely to advance our national security interests shares this sentiment. She claims that there have been "too many instances when that hasn't been the case." An urban librarian sees the context of a constant ebb and flow between civil liberties and national security during times of emergency: "Every time there's a national emergency of this kind, there always tends to be an overreaction. The internment of the Japanese after Pearl Harbor...so there's a real tendency to overreact." While this librarian refers generally to civil liberties in times of national emergency, another speaks specifically to the history of librarians in protecting them:

There are waves of this over time. You know when you're going along at the time, there's this patriotic burst. When a threat comes to the United States. But, we have rights too, and they need to be protected. This isn't the first time that this has happened, and librarians have a long history.

She feels strongly about the role of the library to protect civil liberties when such waves sweep the nation. Without doing so the core values of librarianship like access to ideas, intellectual freedom, privacy, and democracy will all suffer.

Much like opposition to book banning, librarians as a whole oppose sharing of patron records because it would allow the government to limit perspectives and diversity of opinion. It is clearly important to the librarians to maintain a trusting relationship with

their patrons. One public librarian expresses the link between privacy and the role of the library in the community:

We want you to feel that when you come into the library you can research anything you want and not feel like you have to justify why you're doing it or give an explanation...it's basically the cornerstone of our existence. We allow access to information and we uphold people's right to privacy and access and not to make judgments.

While this provides a theoretical explanation for library support of privacy, the fear runs deep that giving patron information to the government would compromise free inquiry. The fear that could result, said one librarian, is that "It's not okay to think what you want to think, or say what you want to say, or disagree or dissent." Librarians work to protect privacy for fear of a "chilling effect" on the pursuit of knowledge and exchange of ideas. More commonly used in references to the freedom of speech, this effect would contradict the entire purpose of libraries – the furtherance of ideas and promotion of a democratic society.

### **Reasons for Opposition**

The Patriot Act incensed the librarian profession on every level. Most simply, perhaps, are the direct conflicts between professional values and the legislation. The legislation also created concerns over uncertainty of how it would be implemented. Additionally, it creates a set of concerns which this paper classifies as policy considerations, neither wholly ideological or practical, that arise from disagreements over the effectiveness, necessity, and legitimacy of the legislation.

#### *Ideological Concerns*

The Patriot Act offends many of the values of librarianship in some way. However, the most frequently and fervently referenced are privacy and intellectual

freedom. Although the Patriot Act, unlike some of its predecessors, does not specify what is or is not appropriate material, librarians worry that the concession of privacy would lead to voluntary censorship on the part of the patrons. The Patriot Act requires the turning over of records upon request-records that librarians work diligently to keep secret. The use of such records in terrorist investigations suggests that government officials will use what an individual reads or looks up on the internet to determine if he is a terrorist. One librarian discusses the inherent conflict between the librarian's value system and the Patriot Act:

It seems like a contradiction to be for libraries and then be for the Patriot Act because what you're saying is "I'm for access to information, but I'm also for the government accessing your information and not being able to tell you and then judging what information is appropriate for you."

She explains why she feels no librarian should support the Patriot Act, referencing values such as access to information, privacy, and intellectual freedom. Another librarian addresses the value of democracy and its relationship with intellectual freedom and privacy: "It just seems very undemocratic and un-American to have these secret police going into libraries and checking records." One library director fears the implications of the Patriot Act for intellectual freedom, worried that the tone of the Patriot Act would lead to the belief that "you have to think a certain way, you have to behave a certain way, you have to talk a certain way in order to be considered a patriot." Another senior librarian expresses sheer disbelief at the policy, based on the high value placed on privacy:

You have the right to read what you want to read. It's nobody else's business; it's private. It was an astounding concept for libraries that the government could just walk in and say "Tell me every book that this person has checked out." Or "Let me see what sites this person has looked at." It's just like, you've got to be kidding.

This librarian was flabbergasted by the potential use of the Patriot Act; implied in her claims is the inherent value of privacy and confidentiality. Others fear that the Patriot Act would create a form of de facto censorship: “I think it does not respect the freedom of information and the individual’s right to know and learn what they want, to read anything they want.”

Underlying their arguments is the fear of a “chilling effect” on the pursuit of information. They reveal that part of the value of privacy lies in its ability to protect intellectual freedom. By compromising this value, one librarian fears that all inquiry will be innately restricted: “A customer doesn’t even know if they’re being watched so they might be reluctant to go into a library because they think ‘Hey, anything’s fair game. They could watch anything I do here,’ even if it’s for totally legal reasons.” He worries that patrons could perceive a sense of constant surveillance and be hesitant to use library resources at all, regardless of legality. In the logic of the librarians’ worldview privacy and intellectual freedom are inextricably linked. Without privacy, the relationship between the library and the patron is compromised. The user will attempt to act within the realm of what the government deems “appropriate” rather than pursue the line of inquiry that they might have otherwise. Such limits on thought could have negative effects for both the individual, the library, and for the underpinnings of a democratic society.

### *Uncertainty*

To librarians, some of the most distressing effects of the Patriot Act stem from the uncertainty associated with it. As with any legislation there are initial concerns regarding

how it will be used. In this case, these concerns were only enhanced by its hurried passage through Congress, use of a gag order, and the unfamiliarity of procedures involved. The forms of uncertainty can be organized into three categories: 1) uncertainty of scope, 2) institutional uncertainties surrounding implementation, and 3) legal uncertainty.

The uncertainty of scope stems greatly from the lack of public discussion of how or when it would be used as well as the secrecy imposed by the legislation. A common sentiment among the interviews in this project was the initial fear that Patriot Act requests for information were “going to happen everywhere.” Librarians opposed the law because there was a lack of understanding of how the law would be used, but they anticipated that “something might happen that would set up this huge controversy or conflict of interest.” The gag order associated with some sections of the act only intensified this fear. One academic librarian stated, “Because you couldn’t tell anyone, no one knew if ‘I’m the only one.’” The lack of general knowledge about how the act would be used also created uncertainty over how libraries should respond.

With the passage of the Patriot Act, many new laws became applicable to libraries. The institutions had to then devise plans as to what to do when approached. At first, many administrators were unsure what they would do when approached. Some of these concerns stemmed from the unfamiliarity of some Patriot Act related documents such as National Security Letters. Other concerns arose from the distinction between these requests and traditional requests received from local law enforcement officers. Having established procedures for such instances, Patriot Act situations lead librarians to

question: “Wow. What do we do when somebody comes in without that [a standard issued warrant]?” or “What do we do with that? What does it look like?”

Managers were unsure of how to support their staff members. Not all employees of libraries are librarians; they do not necessarily possess the training, education, and many other factors that lead to the adoption of critical values. If approached by an agent of the FBI, librarians fear how non-librarian staff might respond. In academic libraries where some of the employees are students, there was great concern over how patron privacy could be compromised if they were not properly trained. One librarian expresses this as her greatest concern:

What I was most concerned about was having a student working at the circulation desk and having someone come in and say “We’re serving you notice. We need this information.” There’s a lot of time when there aren’t staff members here, we’re concerned about what a student might do if approached.

These fears are due in part to the lack of professional training of students. They do not have the same set of professional values as their professional supervisors. Additionally, they aren’t necessarily aware of all of the components of a legitimate legal request. It is also evident that they are concerned about the consequences that might result from the power dynamic between a federal law enforcement officer and an undergraduate student.

Concerns for employees extend to public libraries as well. All of the libraries visited employ non-librarian staff, which raised some concerns over shared values like with student employees. However, there was also basic concern over what to tell any employee. If faced with a question, administrators were unsure of how to respond. One librarian discusses how this conflict forces her to put aside personal opinions and formulate a plan: “As a library manager, how do I support staff that have concerns? It is

what it is. What do I do with it? Whether I personally support it or not, it's in a work setting. I apparently have to have a plan now." This individual takes the law as given and debates how she must then act within it, despite personal beliefs.

New and unfamiliar legal documents and procedures also led to ambiguity within libraries. As described previously, the Patriot Act extended the applicability of the FISA court and National Security Letters to library records. While the FISA court can issue warrants, several librarians expressed concern that the documents would not be recognizable or that they would be unable to verify their legality. With the introduction of National Security Letters, such concerns grow even more intense.

I understand a subpoena. I understand a search warrant. But they have these letters, and I don't understand these letters and how do I know these are legit? I don't know how I react to someone saying "Hey I'm with the FBI." How do I determine if they are, and they give me some strange legal document that I've never seen before. That's just an insane way to do things.

This public library administrator was not the only subject to express such concern. Because of the unfamiliarity of the documents, many feared that they would be unable to determine what requests were legitimate or legally binding.

Legal uncertainty also applies to the failure of current Minnesota laws to address what counts as a library record, thus being retrievable through the Patriot Act. Multiple references were made to the Minnesota Data Practices Act. One librarian expressed extreme dissatisfaction in the completeness of the law in addressing libraries, and the failure of the librarian community to recognize that this is closely related to the Patriot Act. Another librarian refers to the same statute when she states: "There are some scary parts about it. One is clarity or lack thereof on what constitutes a library record and that's typically a state legal issue." Although the federal government created the Patriot Act,

this statement reveals that state law also impacts the applicability of the Patriot Act. The Patriot Act applies new laws to library records, but it is state law that defines what constitutes such records. However, according to some librarians, the definition provided by Minnesota statute, inadequately addresses the issue of digital or video records. Because they feel the state law fails to sufficiently address the concerns, librarians experience even greater distress.

Great uncertainty surrounded the Patriot Act at the time of enactment, influencing the reactions of both individuals and institutions. These institutional reactions are discussed in Chapter Five. Although some of this uncertainty has dissipated, it still substantially influences how librarians view the legislation

### *Policy Concerns*

Another set of objections appear on the policy level. They do not deal directly with the conflict between ideology and the law, nor do they stem from practical concerns regarding implementation. They instead consist of broad objections to assumptions of and changes made by the law. Within these complaints it is possible to discern influence of professional values. They also reflect opinions about security policy in general beyond the Patriot Act. These concerns may provide reasons and explanations for institutional response other than direct contradiction with ideology.

The first policy consideration undermines two basic assumptions of the Patriot Act: 1) given the right information the government will be able to prevent future terrorist attacks, and 2) library patron records are useful ways of predicting opinions and behavior. One public librarian addresses the first of these concerns by explaining his dislike for and

lack of faith in such expansive surveillance procedures in general and the ideas that they perpetuate in society:

[The Patriot Act] reinforces this idea that somehow all things [are] knowable. If only you could empower your intelligence forces enough, they could know everything. If they could know everything, then nothing would be a surprise and it would significantly reduce the danger and uncertainty in your life.

He recognizes that it is impossible to know everything and that attempting to results in an excessive amount of information, violating personal privacy in the process. He calls the ability to use all of this information “just a pipe dream” that “represented a foolish attempt to try to establish control over something that wasn’t going to increase anybody’s security.” Citing security experts, another individual refers to the extensive collection of information as “just a bunch of noise.” An academic librarian describes the danger of such judgments:

People’s intellectual lives are complicated. We’re interested in a lot of things. That’s why librarians exist. But to draw conclusions about what somebody intends or who they are based on what they’re curious about is a dangerous way to go.

This librarian is concerned of the effect on the individual’s privacy and intellectual freedom. While these individuals despise the idea of such a level of surveillance, another talks about the Patriot Act’s intentions in theory — the “idealistic” view of the legislation — versus it’s actual usefulness:

The idea of the Patriot Act sounds great. We have all these tools to get terrorists. The practical side is that very few if any of these seizing of library records have led to the capture of terrorists. There’s very little we can glean from any of the records, if anything...There’s been studies, you really can’t figure out someone’s intent a lot of times just based on what they’ve checked out. Maybe some guy is a chemistry student and he checked out a book that may have material on how to make a bomb, you’re really not weeding out.

Unlike the last librarian, he does not dispute or take issue with the theoretical ability to know everything. Rather he disagrees that using somebody's library records would aid in terrorist investigations. Patron records are a crude method, at best, to determine someone's opinions or motives. The inability to discern motivation or intent from library records limits the ability of the law to make any viable conclusions of someone's status as a terrorist. The example of a patron reading about bombs was a recurring example in the research. One librarian stated, "Just because you read about making a bomb doesn't mean you made one." This trope demonstrates a preoccupation among the interviewees with investigations surrounding terrorism. It establishes one method in which librarians envision the Patriot Act being applied—looking at what an individual has read as a way of predicting behavior. This demonstrates further preoccupation with what patrons are attempting to learn and ignores how the Patriot Act applies to requests for e-mail transmissions or web sites visited. Another librarian proposes what she feels is necessary to effectively predict illegal activity.

You need to look for a motive or you need to be able to profile for a certain cause or what kind of person would do such a thing? What would be a person that would want to blow up a building? Do we have cause to believe they came in the library? Would their records yield anything?

Librarians feel that by failing to determine a motive or establish that a suspect even used the library before requesting records, the Federal government excessively intrudes into the private lives of individuals with no yield. They argue that it is just "circumstantial evidence" that has many potential explanations.

Among many librarians there was a great sense of unease with the government. Multiple librarians express concern over governmental ineptitude as increasing their

concerns. An academic librarian identifies government ineptitude as contributing to her lack of faith in their ability to effectively use this intelligence.

I guess another reason that I have a lack of confidence is that even when presented with obvious facts about people that were involved in terrorist acts, they ignored those. So why would I have any trust that going after a fishing expedition for something that was much less obvious would produce results that they were seeking.

I don't know what bothers me more. Whether somebody made a concerted effort to subvert all this stuff and had a really good understanding and a good plan for how to make it work. Or that they're doing this anyway but they don't know what the hell they're doing. Maybe it's okay that if it's going to happen now there's going to be a backlash, and they're going to be so inept that they're not going to be able to accomplish much.

I guess I was just concerned that there were a lot of bone heads running around. Misdirecting. Spending energy. Spinning wheels and not accomplishing anything. Except if they feel they're not accomplishing anything it fuels the reason to think "If only I had more access..."

The evidence suggests that based on past failures to identify terrorists with more obvious data, librarians doubt the ability of the government to successfully use library patron records. Opinions regarding the incompetence of the Bush administration lead them to certainty of failure. This failure is seen as a positive side effect because it has the potential to generate political momentum against such intrusive and excessive measures. Alternatively, this lack of fruitfulness could lead to even more intrusive surveillance, further compromising civil liberties. While there are inconsistencies regarding whether the failures of this policy will lead to public support for further surveillance or backlash against it, there is significant evidence of lack of belief and trust in the government surrounding this issue. This lack of faith supports resistance against both the specific provisions of the Patriot Act and all of the actions of the incompetent administration.

Lack of faith and trust is embodied in the second policy-level objection. Concerns over the changing of established legal standards demonstrate a belief that the current administration is willing to go to whatever lengths necessary to get this information. Most of the librarians acknowledge that this information would have otherwise been available to law enforcement officers with warrants or court-issued subpoenas. However, things like the secret FISA court and the extension of NSLs to apply to libraries raises concern and a sense of going outside of the law. For one public librarian, the thought of such a request invokes “deep concern.” Another librarian is confused because “that information has always been available to law enforcement with warrants, too.” One public library administrator expresses her extreme confusion and exasperation with the legislation:

I just don't understand. I don't understand. There is nothing about the Patriot Act that I understand. I just think that we have legal processes and procedures where they can do all of this with judicial review.

She feels that through the use of established processes, both the FBI and the patron would benefit. She can help direct law enforcement to anything relevant or applicable instead of “forty days of records,” which also minimizes patron exposure. She feels greatly uncomfortable about circumventing a process that “has been thought about and reviewed and determined to be appropriate.”

The commitment to established standards is further illuminated by an academic library director who states, “Any time there's an alternative to what has always been an established legal precedent it always bothers me.” She views these efforts as attempts to break through existing protections and notes that the Bush administration has displayed many instances of “maneuvering around established legal precedent.” These concerns

demonstrate a commitment to established legal procedures, procedures that have withstood the test of time and were put in place to protect individuals from governmental intrusion. By going around these processes, it is unclear as to the legitimacy of the actions in general. Additionally, it raises additional fear for the privacy of the patrons.

These objections extend beyond political concerns to reflect professional ideals. The inability to glean useful information would not be objectionable absent inherent value placed on privacy and the fear of chilling patrons' intellectual pursuits. The objections to reframing legal standards relate directly to the principle of limited governmental intrusion and protected individual freedoms inherent in a liberal democracy. Furthermore, the manipulation of legal standards makes protections on privacy appear to be mere formalities. The presence of these objections demonstrate how the professional values permeate the librarians' political selves, interacting with perceptions of the government, to formulate political opinions and rationale for resistance.

## **Conclusion**

Librarians claim a distinct set of values as part of their professional identity. At the core lies the pursuit of information. Librarians attempt to organize information in such a way that makes it easy to use. They claim a desire to aid all patrons in their inquiries and try to eliminate all barriers to accessing information. They view themselves as working tirelessly to act as stewards preserving a cultural link to our past and encouraging literacy for our future. Additionally, they report to be tirelessly committed to intellectual freedom and the privacy necessary to maintain it. The reported goal of these values is to promote an educated society furthering the cause of democracy.

These values came under fire upon the enactment of the Patriot Act. Librarians felt that it violated patron privacy, discouraged intellectual freedom, and was ultimately undemocratic. Additionally, they were uncertain about how it would actually affect their organizations. On a policy level, they doubted the ability of the federal government to use this legislation to apprehend terrorists and feared the implications of the creation of alternative methods to retrieving information that was already available through existing legal procedures.

While opposition to the legislation is clear, this does not hinder its implementation, per se. Rather, it creates the backdrop for institutional decisions which must attempt to follow the law but are also made with the interests of their members and employees in mind. The individuals have made clear a respect for legal action on the part of both the government and individuals. They have also, however, demonstrated a deep commitment to fulfilling their roles in society of providing uncompromised access to information and the promotion of a democratic society. The next chapter explores how libraries, as institutions, responded to these concerns by enacting practices or policies and how those policies may or may not serve as resistance to the Patriot Act.

## Chapter Five: Interpreting Identity in Institutional Response

In its interaction with the law, an organization faces many potential paths to follow—to comply, to resist, or numerous gradations between. Its choice will be whatever the decision-maker views as the best potential outcome. This individual must weigh practical and ideological concerns of both the institution and the actors within it. Among them are concerns like promotion, finances, and professional values. In order to judge their compliance, it is necessary to evaluate how libraries, as institutions, responded to the passage of the Patriot Act. Institutional policies interact with individual beliefs on their way to determining the institution's level of compliance. The last chapter uncovered individual librarians' opinions regarding and objections to the Patriot Act. This chapter takes the next step by looking at how individual concerns play out in the institution's response to the legislation. The librarians' professional values are apparent in the reaction to the legislation; they were also the driving force behind the creation of policy years ago that greatly impact the implementation of the Patriot Act today.

Libraries have responded to the Patriot Act in a variety of ways, which share a set of similarities. All of the institutions studied in this research—ten in total—have considered the impact that the Patriot Act could have on their institution. With varying degrees of specificity, it was apparent that they all had clear plans of what they would do in the case of a law enforcement request, with further variance in how far these plans were articulated in writing. Such clarity is due greatly in part to the increased awareness given to the issue since the Patriot Act was enacted. Despite the lack of uniformity, there are several similarities among institutional responses. It seems that autonomy and public or academic affiliation do have some bearing on whether or not they would comply with

an investigation. Their procedures share an emphasis on the use of a chain of command and legal formalism. Many libraries have taken material steps to educate staff and patrons and to implement policies regarding the legislation. Multiple institutions turned to legal counsel for advice on the matter. The Patriot Act also placed great attention on how institutions maintained patron records, with most institutions' policies limiting the effectiveness of the legislation. These actions stem in part from the professional belief in protecting patron confidentiality. Professionalism further permeates the response through the American Library Association's influence on its individual members and the institutions for which they work. Although not binding, ALA resources are used in affirming a library's position on overarching issues such as the "Freedom to Read," and also on their specific response to the Patriot Act. Although few institutions would refuse to cooperate with a law enforcement request, librarians utilize other means to circumvent the purpose of the legislation and to protect user privacy. There is also other evidence of the importance of professional identity and affiliation in institutional response. This demonstrates the importance of professional resistance to a policy they are charged with implementing.

This chapter explores these dynamics by first examining what libraries would do in the instance of an FBI inquiry. Next, it discusses the affirmative changes made within institutions and the influence of the ALA in these changes. It goes on to discuss pre-existing policies that affect record retention and how they were influenced by professional values. Finally it considers the implications of these actions as forms of resistance.

## **Men In Black – The “What If” Scenario**

On the most basic level, compliance or noncompliance with the Patriot Act relies on whether or not an institution or individual would turn over requested records to a law enforcement agency. Among those surveyed, there were individuals of both mindsets. Others expressed uncertainty of how they would ultimately respond in such a situation. Nonetheless, all of the institutions are aware of the protocol that would be followed in such an instance. The procedures vary some by institution, but they share many characteristics. First, as institutions, libraries naturally operate through hierarchy. One commonality was the procedure of referring requests up the chain of command. Asked how the institution would respond to a law enforcement request, a number of librarians reflect the common, deliberate response that they have planned.

[The staff doesn't] act immediately when someone comes and says "I want to take that computer." There's a chain that they call, and I'm at the top.

I would go to [my superior]. We would go up the chain and contact legal counsel for the college. No action would be taken without appropriate communication with people that I report to.

Basically, if anything happens, nobody is to release anything. They are to call me and I talk to the college administration. It's too important not to [refer the matter to the administration], but we haven't had any [requests]...I guess we don't expect any at this point. But at that time, we didn't know that.

Wherever a request is received – from circulation desk to administration – the significance of the matter requires that the response come from the highest levels, and so the instructions firmly call for an internal mobilization. The procedure exists to protect privacy as well as remove employees from stressful and inappropriate situations. In both academic and public libraries, most library staff are not librarians. Not having been

subject to all the factors of professionalization, non-librarians may not have the same understanding of the library's commitment to privacy. Administrators possess greater understanding of the legal issues surrounding law enforcement requests and are able to speak for the institution with more authority. They are also able to ensure that the values of librarianship are adhered to in the manner they desire. "It's not something you put on your managers or staff because it's very serious," one public library administrator cautioned, "and we want to make sure it's a very small circle of people, kind of as a guarantee that we apply our own procedures and standards consistently." The chain of command removes lower ranking librarians from inappropriate situations. Also this serves as a way to ensure that standards that have been developed are applied correctly and minimizes any margin of error. A legal request requires a response made with authority on behalf of the institution. This raises the question: What values are exhibited by such an institutional response?

Library administrators are themselves not usually the final legal authority for the institution; they have relationships with their supervisors that must be maintained, including with higher administrators (as in a college or university) and library boards. They are accountable to these individuals and decisions made regarding law enforcement are often made in conjunction with or on advice from their supervisors. Communication with their superiors ensures that the actions taken are amenable to the greater institution, and potentially that he or she will have institutional backing and support if the library takes up a posture hostile to the government.

A second response of librarians, as articulated in their procedures, to a request for records lay in the attentiveness to the formalism of legal requirements before complying

with a request. Conforming to the absolute letter of the law is not required in such situations, suggesting that this formalism constitutes a mode of resistance by the libraries. The demand that legal requests follow proper protocol dominated interview responses regarding procedure.

Well if they didn't have a proper warrant [we wouldn't comply]. But you can't refuse. I know that this administration would not fight it. I can't imagine under what circumstance. The police come and they want us to cooperate in finding people for various reasons and we have worked with them on that. We're not opposed to working with law enforcement authorities when it makes sense, when it's appropriate.

Well they need to have a subpoena, there needs to be just cause. I think in the early days there was a lot of misuse of this in terms of not following proper procedures. In terms of where I go, if in the event that something comes to us, they have to have a subpoena.

[W]e would consult our policy on this and require that this FBI officer, "Where's your court order? You need to tell us exactly what you're looking for and what the circumstances are." Even under the Patriot Act, we would probably refer to [our attorney] to see if we need to comply, even though the attorney would probably come back and tell us that we have to comply.

These individuals recognize the law as binding and would ultimately comply, but they act to protect user privacy within the bounds of the law through adherence to legal requirements. By rejecting a request on a technicality or delaying its implementation, the libraries demonstrate a form of resistance. An awareness of past abuse further drives them to act to prevent it in the future. The evidence also refers to institutional utilization of attorneys. This librarian would delay compliance until told by an attorney that they were legally required. Libraries rely on legal counsel to examine law enforcement requests and advise on whether or not to comply. Attorneys assist in assuring strict adherence to legal requirements as well as distance librarians from making decisions of compliance.

Honestly, I know exactly what would happen. I would say “I have to get my Director of Technical Services.” I would tell him “Start downloading the records,” and I would call my attorney, and I would get my attorney there. But I would do it.

I would have to send them to the attorney’s office I guess...I like to think that I would say something, but I don’t think I would because my job’s at stake and I have to pay the bills. It really does come down to that sometimes.

These librarians both express concern over the act of turning over records but note their expected compliance. Both share the spirit of resistance as well as a fear of its consequences. Their reliance on attorneys is evidence of their concern for the legal well-being of themselves and their institution as well as the privacy of their community members. The attorney could provide advice on legal liability or other ways to act legally and still protect patron confidentiality. Evidence suggests that a librarian may use an attorney to remove herself from the position of making any decision on whether or not to comply. The risks of breaking the law are too steep and she cedes that responsibility to the institution’s attorney.

Those consequences are not steep enough to convince all librarians to comply with a request, however. Several interviewees did express that in the case of an FBI request, they would refuse to cooperate. Yet, among those interviewed, the only individuals who expressed any possibility of denying a legal Patriot Act request were administrators of academic libraries. Two such librarians spoke to the challenge:

What would I do? I don’t know, to be honest. To be honest, I don’t know. I would hope I would say, “No, I have to talk to the Dean.”...I might be very different when the FBI shows up.

I would say no. I would call my boss right away and I think the university would support me. It depends. So much of a community’s reaction, a person’s reaction sort of depends on the circumstances. I would hope that I would stick to my guns and that the university would support me. But it becomes a question of policy.

In both of these instances, the individuals reference their supervisors and the hope for institutional backing in the case of a denial to the FBI. Both, however, recognize that the end result may be the eventual release of information based on the response.

Though the sample of interviewees may be too small to draw a firm conclusion, that only academic libraries reported this as an option suggests several things. First it demonstrates the libraries' positions as subsidiaries of greater institutions. Any legal liability would extend to the college, not the library itself. Additionally, there are more levels at which the decision can be made. This allows the librarian to maintain a posture of professional integrity but to also shield himself from consequences of resistance to the government. Furthermore, this suggests that academic libraries may perceive a lower likelihood of FBI request because of the population that they serve. The setting of the library appears to play a significant role. Several of the academic librarians commented on the importance of sharing values with the academic community they serve.

For us there's a principle of academic freedom, and with public libraries they're responding to boards, so the boards can set policies. Your community sets standards. While we're dealing with a community at [this institution], it's an academic community, which has a different set of standards.

Norms, underlying legal compliance, flow from the community setting.<sup>54</sup> In the academic setting the principle of academic freedom, held much more widely but perhaps as deeply as the professional values of librarians, may greatly affect the standards to which the library is held.<sup>55</sup> In this case, the library may feel even greater permission or pressure not

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<sup>54</sup> See one example of the robust discussion of the interactions of social norms and the law see: Eric Posner, *Law and Social Norms*, (Cambridge, MA: Harvard University Press, 2002), 272.

<sup>55</sup> For more on the principle of academic freedom see Stephen H. Aby and Kuhn, James C., IV, "Academic Freedom: A Guide to the Literature," no. 20 (2000): 225; see also J. Peter Byrne, "Academic Freedom: A Special Concern of the First Amendment," *Yale Law Journal* 99 (1989): 251-2; See also Louis Joughin, *Academic freedom and Tenure: A Handbook of the American Association of University Professors*,

to comply. Conversely, public libraries are usually accountable to some type of Library Board made up of community members. These community members have not undergone the same professionalization, nor do they necessarily share the same commitment to freedom of inquiry as members of the academic community. A librarian from a suburban library reflected on the institutional limit on his/her personal or professional values.

There's only so much talking about whether it's right or wrong that I can do in a work setting. This is something that regardless of what my personal beliefs are on it; it's my job. I support our library board's policies on it, which include the freedom to read. I support my organizational message around complying with law enforcement as needed.

Distinguishing her personal beliefs from the work she does, this librarian disconnects her judgment of the Patriot Act from her response within her organization. Her primary allegiance is to her agency of employment rather than professional values. The nature of their institution plays a recurring part in their explanations for how they expect to behave.

This is exemplified by the response of an academic librarian:

Well it's a private institution. We don't have to let people go to school here. We don't have to allow people on campus if we don't want them here. That does make a difference, but that would not be a factor in terms of revealing somebody's [circulation] records. It's like a higher value. This is what is interesting about the library profession. There's a value that transcends the institution in part... I think that it's a different sort of affiliation than with the organization that pays me and I work for. That affiliation that people have to something that is bigger than the organization that they work for. The librarian has a professional duty that transcends the employer/employee relationship. That's the dramatic part of this story. That a librarian could be in the position of having to weigh employment with the desire to honor a professional value. I hope I am never in that position.

As important as the institution may be, professional values have the potential to overwhelm the organizational imperatives. The professional attachment is formed prior to

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(Madison, WI: University of Wisconsin Press, 1967), 343; Damon L. Krieger, "May Public Universities Restrict Faculty from Receiving or Transmitting Information via University Computer Resources? Academic Freedom, the First Amendment, and the Internet," *Maryland Law Review* 59 (2000): 1398.

the organization that merely “pays” for the work of the librarian. The librarian’s commitment to these ethics could create direct conflict with the law. The division of record maintenance responsibilities in academic institutions may partially explain these differences in response. In academic settings, libraries are responsible only for records of print resources, while campus information technology staff handle records of computer and internet use. Because of this separation, academic librarians may perceive little likelihood of a request for book records, and thus are more confident in their ability to deny law enforcement officers.

Beyond the role of academic freedom, institutional differences include the basic difference of who pays. Another reason for this divergence may be the location of libraries within county or municipal governments. Although answering to independent library boards, public libraries are dependent on tax dollars for funding. Such reliance may lead to a greater desire to cooperate with other government agents, despite them coming from a very distant branch within the federal government. Asked how public funding affects the decision to comply, one public librarian noted:

I think it creates problems. It’s politics. Politics always creates problems. How are you going to deal with politics? Are you going to swim in the water with the sharks? Are you going to struggle with the system? Or just try to get out of the pool? I think it creates a tension in anybody as they make those choices as to how much they want to speak out. Some people don’t mind complaining about everything. It doesn’t have to be the Patriot Act, whatever they don’t like their immediate reaction is they don’t like it. But they’ve made their decision about the politics. They don’t plan to try to get to the top of the mountain, but I think people who want to further their careers—want to get the next promotion, want to be seen as leaders—have to really look at the whole landscape and be really careful and thoughtful about what they say. I don’t know if that’s bad or good.

To succeed within a government bureaucracy, a librarian must constantly weigh the impact of expressing an opinion on the financial interests of her agency. She sees vocal

or material opposition to federal law as something that would ultimately hurt the standing of the library as well as the administrator's potential for advancement within the system.

The institutional responses of most libraries to FBI subpoenas or other requests demonstrate great efforts to protect user privacy and remain within the bounds of the law. A few academic institutions anticipated non-compliance. Perhaps their unique setting allows for such actions, or maybe it allows for greater allegiance to their professional values because they have more in common with the population to whom they report and serve.

### **Positive Action**

While libraries have always had to respond to requests from law enforcement, the passage of the Patriot Act did lead to some direct, affirmative action on the part of libraries—even those who would comply with a law enforcement request. A wide consensus commented that the Patriot Act's greatest impact was the increase in awareness surrounding data privacy. In the minds of some librarians, Patriot Act requests were not seen as different in kind from other law enforcement requests, but as one librarian noted, that was not the full extent of the law's possible impact:

If anything, one of the effects of the Patriot Act was to sensitize librarians all over the country. It raises awareness in the profession to the importance of privacy and confidentiality. I can imagine that people are even more steadfast in refusing an inquiry after the Patriot Act than before.

The Patriot Act possessed an unusual degree of salience; this may have brought to light an underlying conflict. The legislation forced libraries to reevaluate their existing practices and policies to make sure they were in line with the goals of the libraries. It forced the libraries to consider their plans of action should law enforcement arrive. "It was kind of a refresher course that we needed. Patriot Act or not, what do you do when

law enforcement shows up? You don't just turn everything over. You need to know the difference between a search warrant and a subpoena. You need to know that it's valid." The Patriot Act set into motion a wider reflection, such as the simultaneous need for employee education and policy formation. These elements were the primary positive responses of libraries to the Patriot Act.

### *Employee Education*

Because of the Patriot Act's amendments to statutes relating to government information requests, libraries were suddenly subject to new and unfamiliar laws. Many librarians expressed concern over how the law would be implemented, as seen in Chapter Four. In response to these concerns, all of the institutions in the study implemented employee training or education dealing with law enforcement requests. While all of this training related to the Patriot Act in some way, institutions framed their training in multiple ways. A number of institutions focused on the new applicability of laws due to the Patriot Act. These programs dealt in part with policy, but also with answering public concerns regarding the legislation.

When the Patriot Act was rolled out, there was training for staff, [but it was] more [like] education [on] what [to] do when customers come in asking about it? [We implemented it] to help us get better information, so we can work better with customers. Because people do read about all these things in the news and then come in and ask us about it.

The great emphasis placed on customer service reflects the desire of the institution to communicate to their patrons as effectively as possible the impact that the Patriot Act would have and to dispel any myths or excessive concern. In an instance where the relationship with the patron could be compromised, the libraries acted to disseminate accurate information. Still other institutions used the Patriot Act as a way of reevaluating

data privacy practices. Describing the training as “healthy” because it fostered a “recommitment to data privacy”, one librarian emphasized the extended discussions that took place in the institution following the introduction of the Patriot Act.

Because of previous interactions (or the potential for it), libraries typically had some policy or procedure in place to respond to law enforcement requests. This appears to be why most training specifically regarding the Patriot Act was in reference to answering patron questions and concerns and conversations regarding procedure in the case of a request was framed as a refresher or reevaluation. Another librarian talks of some of the practical concerns that they addressed in this education and reevaluation.

Education for staff, and we took a look at, at that time we had a local option for signing up for internet access where people would come and write their names down on a clipboard. We weren't always so great at good data managing. We'd leave a couple of days out there because the sheet wasn't full. That kind of thing. It caused us to take a look at some of those local practices. In that sense it was, if this is potentially going to be asked for, how are we managing it? Who gives somebody a box of paper? Should this be the same at our other libraries? We did some of that, sort of local conversations around doing a better job of keeping track of...looking at those kinds of data practices.

The institution, through conversation and education, attempted to identify and address all of the instances where patron privacy was not being protected or where the Patriot Act could affect their institutions. Another librarian noted its positive effect in helping the organization to “clarify the roles in the organization about who will handle a situation like this.” Through sessions they helped staff members to better identify data privacy concerns and recognize their role in any investigation. This enhancement of data privacy demonstrates that the Patriot Act did result in a backlash against the government. Records that were previously maintained, such as internet sign-up sheets, are now destroyed and unavailable for FBI retrieval.

## *Policy Creation*

Evaluations of practices and policies were common in librarians, with their results often revealing institutional shortcomings. Stemming from those evaluations, libraries established both formal and informal policies, with several academic libraries creating written policies. Much of the motivation seems to have come from their concern for employees.

[M]ost of the hours we're open, students are at that front desk, or non-librarians, so we want to protect them so they know what to do in the event of an emergency. We have emergency procedures, too. I put it in the same category. They have to know what to do when the siren goes off. So the policy is there for them, to protect them, they don't give away stuff without talking to somebody first. That was the primary reason for the policy.

We did put in place [a] policy.... We wanted to give our staff on the front lines the steps they should take should someone show up.

With the well-being of their employees at heart, the libraries instituted policies providing clear direction over what to do in the event of an FBI appearance. Based on concerns outlined in Chapter Four, there is substantial evidence that the policies were also implemented to protect user privacy.<sup>56</sup>

These policies were often dual-purpose, as they communicated institutional positions to the public. This was the case for another academic library, whose librarian reported that “we implemented our policy right away, which basically outlined what our practices were in terms of our procedure, the fact that we adhere to privacy and confidentiality. We wanted to make sure that that was front and center.” This individual framed the creation of this policy as a way to convey the institution’s position as well as what would happen in the case. Such policy may be created for the patrons of the library;

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<sup>56</sup> See page 38 for the discussion of concerns over non-librarian staff and loss of patron privacy.

it could also be due to a desire to communicate to government officials or lawmakers the disagreement with the legislation. The communication of a library's position was not limited to the posting of policies. Many institutions posted on their websites or in their buildings the implications of the Patriot Act for users. Such communication detailed what the Patriot Act did and what the library would do in the case of the policies. This warns government agents of the institution's resistance to the legislation and the efforts they will take to subvert it by broadcasting their efforts to protect user privacy.

### *Role of ALA in Institutional Response*

As the major professional organization of librarians, the American Library Association issued guidelines to institutions regarding how to respond to law enforcement requests. Their active role in lobbying and education places them in what appears to be a position of great influence, which raises the question: what was the role of the ALA in institutional responses to the Patriot Act?

Membership of the ALA is on an individual level. However, organizational policies are reflected in the policies and practices of many institutions. It is clear that at least some librarians follow ALA documents very closely when writing their own policies. Said one librarian,

We used their documents to write our own policy...The ALA has been very helpful. Their lobbying office works with Congress and they have attorneys who know more about these legal issues than they can possibly know. Yeah, we respect their documents and use them.

The admiration for the work of the ALA, both in its model documents and its wider advocacy and advice-giving, may appear to help smaller institutions in particular. They provide both representation to the legislature and legal advice in instances where it is not

readily available. This suggests a possible disparate impact on smaller libraries, leaving large libraries less affected by the organization's actions. Such reliance on resources is demonstrated by institutions' reliance on the ALA's website in policy creation.

I referred to their websites a lot in terms of formulating a policy that I felt represented our policies, procedures, kept us within the spirit of the law, and mainly was an informative "This is how we respond if someone submits a notice to us." I look to them for affirmation that I was on firm ground as far as what I could and could not say.

Rather than modeling the institution's policy after ALA documents, this librarian used advice as a benchmark for what was an appropriate response. The ALA documents are non-binding, of course, but by using them in the creation of institutional policy, libraries reaffirm the respect for the organization:

ALA is not at all binding for any library or staff member. It's a professional organization that does a lot of lobbying on behalf of libraries. We are bound by our funders, our taxpayers, or county administration. Many libraries use the ALA information [such as the Freedom to Read statement] as guiding principles. The library boards affirm those statements every year. It's sort of a cultural underpinning for the services we offer.

The ALA as an organization guides the profession but does not bind individuals to its opinions or actions. The librarian expresses her allegiance to her funders and board before her professional organization, providing another example of the tensions between institution and profession. She does, however, acknowledge the institutional use of ALA documents, affirming the influence that the ALA has within organizations.

Further evidence of organization influence comes when comparing the positive changes made by libraries with those suggested by the ALA. In their document "Guidelines for Librarians on the U.S.A. PATRIOT Act," they recommend that libraries

consult local legal counsel, review policies, and train staff.<sup>57</sup> These are completely consistent with the actions taken by participating institutions. Although there are several alternatives explanations for this relationship, its presence suggests another instance of institutional reliance on organizational suggestions or resources.

Institutional changes made after the Patriot Act were limited. Libraries enacted new policies and reviewed old ones. They also implemented education for both patrons and staff. While these changes may not seem to constitute significant resistance, it is necessary to keep in mind that they are not the only policies relevant to its implementation. Perhaps the limited positive response was due to previously installed protections in the form of record retention policies.

### *Record Retention Policies*

Perhaps the most important practices of a library in relation to the Patriot Act are how it handles and maintains its records. This is incredibly relevant because record retention dictates what records are available for law enforcement retrieval. In some ways this could determine or undermine the usefulness of the law. Libraries handle millions of data transactions for books and internet records. Unlike many other areas of response, the way that libraries handle patron records is remarkably consistent. In the case of records of print resources like books, most institutions delete the record upon return unless there is a fine associated with the book.<sup>58</sup> Digital records also are deleted regularly. In the case of electronic records, there was also an active effort to separate any record of

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<sup>57</sup> American Library Association, "Guidelines for Librarians on the USA PATRIOT Act: What to Do Before, During and After a 'Knock at the Door,'" January 19, 2002 [cited 2007]. Available from <http://www.ala.org/ala/washoff/woissues/civilliberties/theusapatriotact/patstep.pdf>.

computer use with identifying information about the user. Deletion upon return is the common method of handling transaction records of print resources. If a book is returned late, the institutions maintain the record until the fine is paid. Privacy and storage space motivate this active deletion. The same motivations affect their retention of electronic records. In these cases, however, additional factors complicate their maintenance. When making computers available for public use, many public libraries are faced with issues of scarcity and must consider how they will allocate the computers among patrons. Such allocation processes are often sources of conflict because libraries want to limit internet use per patron but also want to prevent the accumulation of any identifying characteristics of computer users. Many institutions have begun to use queueing software, a way of signing up to use computers digitally using a pass from the library or their library card number. There are also usually options to use the computers anonymously. In any case the institutions continually demonstrate active deletion of the records. These procedures demonstrate the libraries' desire to balance good service and fair distribution of resources with patron privacy.

Evidence points to privacy as a motivation for this deletion. Several other librarians agreed with this suggestion. One responded by saying that these policies were developed "absolutely, absolutely, absolutely" with the purpose of protecting patron privacy. Another describes the long-standing practice of deleting records as stemming from the code of ethics that states "[a patron's] information is nobody else's business." The role that professional identity plays in the maintenance of user records makes it a very important part of the reaction to the Patriot Act. By deleting records, libraries

demonstrate a type of complacency as described by Gilboy.<sup>59</sup> Although many would ultimately comply with a request, any request would yield little evidence, thus preventing the achievement of the goal of the law. They may also be viewed as a form of avoiding the risky situation. By deleting records and making public this fact, libraries may be lessening the risk that they would have any information requested. The presence of these practices may contribute partially to why librarians feel the Patriot Act is so ineffective. One librarian stated it plainly: “We couldn’t give them anything anyway. Our records are always erased. So if you checked out a book last month if you returned it, it’s erased. So there’s no ongoing record.” Because this is one of the profession’s greatest complaints about the legislation, it seems as though the presence of this practice may in fact bolster arguments for the removal of these provisions. Without mandating that libraries maintain records, the ability of the Patriot Act to retrieve any usable information seems minimal to the librarians.

## **Conclusion**

The response of libraries to the Patriot Act is linked closely to the concerns of their librarians. To remedy uncertainty about how the act would apply, they implemented educational programs. In response to concerns about federal agents circumventing proper legal means, librarians insist that before filling a request for information they demonstrate proper cause and are approved by the institution’s attorney. All of these actions were advocated by the American Library Association, and in fact many librarians admit relying on the ALA for assistance in their response to this issue.

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<sup>59</sup> Janet Gilboy, "Compelled Third-Party Participation in the Regulatory Process: Legal Duties, Culture, and Noncompliance," 135-55. A more thorough discussion of Gilboy’s theory occurs in Chapter Two on pages 22-24.

Facially, it appears as though practical, rather than ideological, concerns dominated the positive institutional response to the Patriot Act. However, these “practical” are also based in deep ideological apprehension. Many institutional protections of user privacy were established years earlier when deciding how to maintain their patron records. Libraries actively delete records in the interest of patron confidentiality. By instituting this policy libraries undercut any governmental attempt to use library records in the future. The administration’s failure to recognize this and to implicate library records in the Patriot Act regardless further contributes to librarians’ doubt in the competency of the administration or legitimacy of the legislation as discussed in Chapter Four.

Though varied, the influence of professional association is apparent in institutional decisions. Although the recommendations of the ALA are not binding, there is proof that many individuals in positions of authority rely on them when formulating policy. Degree of adherence to the librarian code of ethics varies according to institution, possibly explained by the conflict between institutional or professional priority contributes to this variance. Nonetheless, profession plays a key role in the formulation of all policies. Protection of privacy drove many efforts to resist the Patriot Act. The role of the professional organization as well as professional identity in how institutions interact with the Patriot Act demonstrate the ability of a profession to act as a form of resistance to policies that contradict their missions or organizational values.

## Chapter Six: Discussion and Implications

The Patriot Act implicated librarians in new schemes for the detection of terrorists. Even before its passage, the American library community spoke out against it. Motivated by professional values like privacy and intellectual freedom, professional organizations lobbied Congress, informed their members, and widely condemned the new legislation. Such a response was not unusual for the group, who serve as gatekeepers to information for both the government and individual citizens and have often been the subject of governmental pressure. These events provided the crucible necessary to commit to the strong and well-articulated code of ethics they claim today. While the organizational response was highly publicized, the response of individual librarians and libraries had remained greatly a mystery. This study, however, begins to answer those questions.

### **Summary of Findings**

The enactment of Patriot Act aroused deep distress among librarians due to widespread concern and disagreement with the legislation. As a core professional ethic, librarians work to provide information and to minimize anything that might subvert inquiry. This goal is strengthened through the promotion of subsidiary values like user privacy, equality of access, and intellectual freedom. These values guide many of the actions of librarians and policies of libraries, including librarians' objections to the Patriot Act. They feel it violates confidentiality, undermining intellectual freedom and democracy in the process. On a practical level, administrators were unsure of the law's reach and application. Among policy consideration were opposition to the creation of alternative methods of retrieving information and doubt in the ability of the law

enforcement agents to utilize library records to identify potential terrorists. These concerns are apparent among institutional responses.

True to the impulse of many librarians to defend the liberty of library users from government surveillance or investigation, many libraries are clearly prepared to resist, or at least delay, government agents. Few institutions would demonstrate noncompliance through refusal to turn over requested records, but those few who would perceive greater support from their communities possess greater insulation from an institutional umbrella, and are non-public institutions. These findings are consistent with Gilboy's argument that work-group values and norms impact level and type of compliance.<sup>60</sup> Additionally, it shows a possible influence of governmental affiliation as a motivator for compliance.

Aside from the hypothetical "what-if" situation, all institutions surveyed have taken some sort of action in response to the legislation. In response to concerns of implementation, institutions have educated their staff members as to the proper procedure to follow. Their plans of action all involve following a chain of command in order to remove staff members from stressful situations and to minimize the number of decision-making actors—assuring proper institutional response. In the case of a request, the institutions would be adamant that the requests met all of the legal requirements; if not legally binding, libraries would refuse to turn over the information. Many institutions would use attorneys to help navigate this process. This strict adherence to legal requirements suggests that libraries use formalism as a form of resistance. The biggest influence made by professional values on the implementation of the Patriot Act comes through libraries' record retention policies. Formulated years before the legislation was proposed, librarians began actively deleting records upon return in order to protect user

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<sup>60</sup> Gilboy 1998.

privacy. This behavior constitutes a form of “complacency” as the institutions would perform the tasks required by the law, but the absence of records compromises the purpose of the legislation. Most libraries stay within the boundaries of the law but do all that they can to hinder the achievement of its goal. They do so to protect the intellectual freedom of their patrons through the prevention or delay of government action. The value placed on privacy and intellectual freedom, and the lengths taken to preserve them, demonstrate how professional identity can influence response to national security policy. In response to a perceived abuse of state power, the library profession has mobilized in opposition to the Patriot Act, preventing its full realization.

### **Implications**

In an age of uncertainty, the American government must act to balance the competing interests of individual liberty and national security. Threats of terrorism lead to more extensive national security policy, garnering objections from private groups. At the same time, the government involves private groups in the implementation of these policies. Phone companies, medical professionals, and airlines have all been charged with a duty in the detection of terrorists.<sup>61</sup> Many variables factor into their decisions to cooperate. This study shows that a professional or other work-group identity or value system that contradicts the government mandate provides a significant counterbalance to the execution of these directives.

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<sup>61</sup> Gilboy 1998.

As our society witnesses the simultaneous growth in professionalism and third-party implementation strategies, the likelihood of overlap between the two increases.<sup>62</sup> This study suggests that the relationship of the mandated behavior to the profession's code of ethics may greatly determine the group's execution of the law. While this appears to be true in the instance of librarians and the Patriot Act, it may also prove to be the case in other situations where the law is in congruence with the professional identity. In such a case, these values may provide additional motivation for compliance to help outweigh any costs. Furthermore, these findings demonstrate that the effects of professional identity on individual or institutional actions are dependent on other contextual factors. In this group, professional association was not great enough to produce consistent behavior across institutions. Other factors like the community served, public affiliation/funding, and administrative shielding affect how an individual interprets his or her professional identities and which elements they choose to prioritize. Nevertheless these variables interacted with professional identity to create a weighed response considering all of the circumstances.

This study suggests the merits of further research down a number of avenues, such as the pursuit of additional data or differences in method and replicating this research in different geographic regions. While providing rich details of the decision-making processes and perceptions of professional identity, the interview technique does not lend itself to the production of generalizable statistics about the frequency of each technique. One direction for future research would be to survey a large sample of librarians. This would show how common each approach is and which sources of

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<sup>62</sup> For reference to the increased use of third-party enforcement strategies see Kraakman, "Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy," 53-104; See also, Gilboy 1998. Description on the proliferation of profession occurs in Macdonald, "The Sociology of the Professions," 224.

opposition are most prevalent. Additionally, this study was limited to the Twin Cities metropolitan area. Based on statements from interviews as well as the trend of policies to reflect the community served, it is probable that librarians more likely to comply with requests or to support the Patriot Act would be found in rural areas. Additionally, the study could benefit from comparing these results with those from a state with a different style of state library association. Several interview subjects commented on the laissez-faire nature of the Minnesota Library Association and contrasted it to other states that had more active associations. The presence of a more localized professional presence may result in a more organized or unified response from local libraries.

When the Department of Justice introduced libraries into the Patriot Act, they woke a sleeping giant—a very vocal organization with thousands of members and a history of protecting individual freedoms from intrusive government demands. While the national organization lobbies Congress to have these sections repealed, local librarians work much more stealthily to protect individual freedoms more than they already are. This study illuminates how that group of individuals has attempted to walk the thin line of professional allegiance and legal compliance. Because of the nature of their legal obligations and preexisting practices, libraries are able to stay within the bounds of both the law and, to a large extent, their professional identity. These actions, however, do effectively limit the utilization of these provisions of the Patriot Act, demonstrating the immense potential for professional organizations as a source of opposition to public policy.

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## Appendix One: Sample Letter

Macalester College  
1600 Grand Ave  
Saint Paul, MN 55105

October 12, 2007

Librarian Name  
Position, Institution  
Street Address  
City, MN XXXXX

Dear Interview Subject,

I am writing to request a meeting with you to discuss your work as a librarian.

As a student at Macalester College, I am currently undergoing an Honors Project in Political Science. I am interested in the way that librarian behavior did or did not change after the enactment of the USA PATRIOT Act. For my research, I am conducting interviews of librarians throughout the area from a variety of institutions. I am contacting you because of your position at INSTITUTION NAME.

There are a few things that I would like you to know when considering this interview. Only my advisor and I will know the specific individuals and libraries that I studied. In all publications and presentations you and your organization will be placed behind a pseudonym, and no evidence will be revealed that would make identification of you or your organization possible. The results of my project will be presented in a defense at the end of the academic year. I will also be submitting this project to political science conferences and journals. Enclosed is a consent form, required by my institution, that further details how this research is conducted. Should we arrange a time to meet, I will ask you to sign this form and return it to me. Your participation in this project is voluntary and your decision to participate or not will in no way affect your relationship with Macalester College.

I will contact you by phone sometime in the coming week. Do not hesitate to contact me before then. I can be reached by phone at (612)386-8623 or e-mail [aminge@macalester.edu](mailto:aminge@macalester.edu). If you feel that you have received this letter in error, please let me know. Additionally, if you feel that there is another person in your organization who would be better suited to answer these questions, I would greatly appreciate a referral.

Thank you,

Ahna Minge  
Macalester College, 2008 Political Science Honors Candidate  
Enclosed (1)

## Appendix Two: Sample Consent Form

### CONSENT FORM

#### Patriots for Privacy? Librarians and the USA PATRIOT Act

I am conducting a study of the impact of the USA PATRIOT Act on librarian behavior. You were selected as a possible participant because of your previous position within the INSTITUTION NAME. Please read this form and ask any questions you may have before agreeing to be in the study.

This study is being conducted by: Ahna Minge, Senior, Department of Political Science, [aminge@macalester.edu](mailto:aminge@macalester.edu) or (612)XXX-XXX. My faculty advisor for this project is Dr. Patrick Schmidt, Department of Political Science, (651) XXX-XXXX or [schmidtp@macalester.edu](mailto:schmidtp@macalester.edu).

#### **Procedures:**

If you agree to be in this study, I would ask you to do the following things:

- Participate in one interview lasting approximately one hour. In this interview I will ask about attitudes regarding the USA PATRIOT Act and changes in behavior since the passage of the legislation.
- If you consent, I will record and transcribe these interviews. You retain the option to turn off the recording at any point in time or to refuse the recording.

#### **Voluntary Nature of the Study:**

Participation in this study is voluntary. Your decision whether or not to participate will not affect your current or future relations with Macalester College. If you decide to participate, you are free to not answer any question or withdraw at any time without affecting those relationships.

#### **Risks and Benefits of Being in the Study:**

The study is not free of risk. It is not the purpose of this study to uncover or study illegal behavior, nor do I wish to learn of any information that you are not allowed to disclose due to a gag order from the federal government. However, the questions may induce voluntary disclosure, which would constitute a violation of the law. Also, you may reveal a practice or view that is not supported by the institution as a whole. Depending on the views of your organization, this could have professional repercussions.

The benefit of your participation is that you will be contributing to the body of scholarship regarding third-party agents contributing to the implementation of policy. This benefit may be entirely academic, but it may be felt practically as well. This research has the potential to affect how the government makes policy involving libraries in the future.

**Confidentiality:**

The records of this study will be kept private. I will not include any information that will make it possible to identify a subject in any paper or presentation I make based on this research. Research records will be stored securely and only researchers will have access to the records. The recordings of the interviews will be deleted at the end of the project.

**Contacts and Questions:**

You may ask any questions you have now. If you have questions later, you are encouraged to contact me or my faculty advisor. If you have any questions or concerns regarding this study and would like to talk to someone other than the researcher(s), you are encouraged to contact the Macalester College Institutional Review Board at 1600 Grand Avenue, Saint Paul MN 55105 or by phone at 651-696-6153.

*You will be given a copy of this information to keep for your records.*

**Statement of Consent:**

I have read the above information. I have asked questions and have received answers. I consent to participate in the study.

Signature: \_\_\_\_\_ Date:  
\_\_\_\_\_

Signature of Investigator: \_\_\_\_\_ Date:  
\_\_\_\_\_

## Appendix Three: Sample Interview Questions

### Personal history

What is your educational background?  
How long have you been working in the field?  
How long have you worked at this library?  
For which other libraries have you worked?

### Professional identity

What do you feel to be the role of libraries in a community?  
Do you participate in training or other activities that help to promote these values?  
How has professional literature influenced these values?

### USA PATRIOT Act

What was your position in the library in the fall of 2001?  
Do you remember the passage of the USA PATRIOT Act?  
What did you feel was the opinion about this legislation among your colleagues at the time?  
How did you feel about it?  
    At that time, what were your biggest concerns?  
How have these changed over time?  
Are you aware of the American Library Association's response to the legislation?  
How aware of it were you then?  
Did your library change its practices at all after the passage of the Patriot Act?  
    Was there any change in the maintenance of patron records?  
    Internet records?  
    Was any sort of Patron Education program implemented?  
    Did you formulate a plan of action should you have records requested?  
Why did you (not) make these changes?  
    Interest in national security?  
    Protect user privacy?  
    Role of librarians in community as source of information?  
What influence did the ALA's recommendations have on your changes?  
What do you feel is the present sentiment among librarians?