

# USA PATRIOT Act in America's Libraries

## Pro

"... when someone e-mailed a bomb threat against a local high school in our county, she got caught because the police traced the e-mail to a Tacoma Public [Library] computer. They looked up the time and date, figured what computer it came from, figured out who was using that computer at the time, and turned over the woman's name to police. She's now in jail."

— "You Are Under Attack 24 Hours a Day, 7 Days a Week" by Michael Schuyler in *Computers in Libraries* magazine, May 2003; Information Today, 143 Old Marlton Pike, Medford NJ 08055 [www.infotoday.com](http://www.infotoday.com)

This is exactly what's right with legislation like the USA PATRIOT Act, according to those who view the Act as a needed tool in fighting terrorism, in fighting the new kind of enemies America has been facing since the terrorist attacks of Sept. 11, 2001. It's always a delicate balance between homeland security and civil liberties; in times like these, the fulcrum needs to shift in the direction of security for the nation, they say. Only bad guys have something to fear from the Act.

## Con

"This past October, a man looking at foreign-language pages on the web in a New Jersey library was taken into custody as he left the building. Another patron ... had become alarmed at seeing non-English text on his neighbor's screen and had called the cops; they held the man for two days without charging him, without letting him call his lawyer or call home. They finally released him without any comment."

— "The New Censorship" by Sara Paretsky in *newstatesman*, June 2, 2003

This is exactly what's wrong with the USA PATRIOT Act, according to those who see it as a threat to the civil liberties that Americans hold near and dear (and which are constitutionally protected). They state that the Act gives unprecedented authority to the government to march with storm trooper precision over freedom to speak, freedom to read, freedom to inquire, freedom from unwarranted search and seizure; at the very least, they say, it has a chilling effect on individuals' exercise of those freedoms.

By Stefanie Pettit

## USA PATRIOT Act

Just what is it about this USA PATRIOT Act that has caused it to evoke such passionate responses across the country, with college faculties and college libraries visibly on the front lines?

Congress passed the 342-page **U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism (USA PATRIOT) Act on Oct. 26, 2001 (357-66 in the House, 98-1 in the Senate), six weeks after the 9/11 terrorist attacks in New York City, the Pentagon and in an aircraft over Pennsylvania — and after just one day of hearings. It amended 15 existing laws and applies to every business, association, university, library and individual.

What particularly troubles librarians and academics is Section 215, which:

- makes *all* business records, including circulation, computer use, book sales and database use, subject to search
- allows the government to get approval for searches with less stringent probable cause requirements, get such approval from an essentially secret court and demand immediate access (previously, a subpoena, which a library could challenge in the courts, was required) and
- forbids librarians from revealing that a search warrant has been issued

# USA PATRIOT Act and Libraries

A conflict between Homeland Security & Civil Liberties?

No group has been more vocal or active in its opposition to elements of the USA PATRIOT Act than American libraries. No libraries feel the pointy end of the issue's spear more profoundly than those at colleges and universities, where free and open inquiry and access to information are their life's blood, their reason for existence.

The spear has even pricked Eastern's own John F. Kennedy Library, which continues to wrestle with the freedom to read and the legal aspects of the issue.

Academic libraries are potentially more vulnerable than most because of the kinds of resources they provide, said Pat Kelley, Eastern's dean of Information Resources, who enumerated such possibly "suspect" materials as books on civil engineering, journals providing viewpoints on U.S. government activities, political collections, biochemical literature and more.

Partially in response to the USA PATRIOT Act and partially to make clear long-standing privacy policies at Eastern, in June the JFK Library approved the "EWU Libraries' Policy on Confidentiality of Library Records," speaking to the fact that "privacy of inquiry is critical to the exercise of academic freedom, and that privacy of library users is inviolable and protected by Washington state law." (The full text is available at <http://www.library.ewu.edu/about/confidentialityrecordspolicy.html>)

"You have to understand that librarians go to the mat over people's right to get information about whatever they want and to have confidence in their access without fear," she said. "A democracy can only function if its citizens have access to the information they need and want in order to make informed decisions. Scrutinizing what they read or research violates everything we hold dear."

Niel Zimmerman, emeritus professor of public administration with a specialty in constitutional law and civil liberties, agrees. The speed with which the Act came into being may not have made for



Pat Kelley in Eastern's John F. Kennedy library.

carefully crafted legislation and is drawing fire from such unlikely coalitions as the American Civil Liberties Union (ACLU) and the American Conservative Union, he said.

U.S. Attorney Gen. John Ashcroft, who undertook what *The New York Times* described as a cross-country "charm offensive on behalf of the USA Patriot Act" this summer, has said in many interviews that the Act merely extends the nation's current tools for fighting drugs to fight-

the House Judiciary Committee issued a press release indicating that it was satisfied with the Department of Justice's use of Section 215."

Pat Kelley appreciates these arguments. "Librarians have families, too, and we

"I wonder whether government officials will understand and recognize what goes on in an academic setting. I am concerned, too, that this will make American universities less hospitable for international students, whose use of materials from international sources may bring them greater scrutiny."

— Niel Zimmerman, special assistant to the dean of the College of Business & Public Administration and emeritus professor of public administration.

"The problem now is with the floating definition of what the term terrorist means. Does it now mean that someone with dissident views can be labeled a terrorist? I think it's as anti-American and unpatriotic as can be if we create a sense of paranoia as a result of this Act."

— Anthony Flinn, professor of English and president of the EWU Faculty Organization.

ing terrorism and that concerns are over-reactions based on misunderstanding of the law.

James A. McDevitt, U.S. Attorney for the Eastern District of Washington, agrees, stating that "there has been much misinformation – or even disinformation – about the supposed use of Section 215 at libraries. In October 2002,

are concerned about their safety and this nation's security," she said. "While I am not comfortable with many of the solutions offered in the Act, I understand that our laws have not kept pace with technology. This raises the issue about whether we are handicapping ourselves as a nation if we swing too far in favor of individual rights."

Opponents and proponents understand one another's side of the issue but

draw different conclusions as to what needs to be done to fight terrorism post-9/11. So, the battle over the USA PATRIOT Act has been joined.

Restrictions on America's traditionally open society are not without precedent during times of turmoil. Bill Youngs, EWU professor of history, noted that the Alien & Sedition Acts of 1798 severely regulated speech. It became a crime to criticize the president, and indeed, one congressman went to jail for doing so.

More recently, and with hardly any serious objection, tighter airport security has been viewed as a benefit to society, although it has restricted certain freedoms of movement and brought about individual searches not previously conducted.

Other actions taken during times of crisis in the nation have not fared well in the light of history – internment of Japanese Americans during World War II, the McCarthy Hearings of the 1950s and subsequent blacklisting of suspected Communist sympathizers, some states forbidding the teaching of German during World War I, and more.

Not willing to wait for the judgment of history, the 64,000-member American Library Association moved decisively, especially against Section 215 of the Act, passing a resolution opposing “any use of governmental power to suppress ... or to intimidate individuals using free inquiry.” It has provided documentation, resources, advocacy contacts and more on its website and to its members.

Communities and libraries from rural Tennessee to North Pole, Alaska, have passed resolutions ranging from urging caution and review of the Act to calling for its repeal. And, in fact, there are some measures now under debate in Congress which would scale back the USA PATRIOT Act.

On the other side, however, there is current congressional consideration of a proposal (Domestic Security Enhancement Act of 2003) – informally known as PATRIOT Act II – which, among other provisions, would make virtually all of a college's records available to law enforcement without a warrant.

Many libraries across the country have engaged in both active and passive resistance – from posting signs that warn of possible surveillance and the daily shredding of Internet signup sheets to one librarian in Santa Cruz, Calif., beginning each staff meeting with an

announcement that “we have not been served with a search warrant this week.” This way her staff knows that if she ever fails to make that announcement, a warrant has indeed been served but that she has not violated the law by announcing the fact.

The USA PATRIOT Act does not require that libraries keep certain kinds of records, and therein lies a saving grace, Kelley said. “We can't turn over records we don't have or never created in the first place,” she said.\*

At Eastern's library – and, indeed, at

“Universities uphold the importance of free inquiry, and we don't want to chill that inquiry by having researchers and students think that their every move is being tracked by the government. On the other hand, law enforcement worries that universities might become a safe haven for terrorist organizing. The traditional university tendency to allow dissent could potentially turn into a systematic effort for terrorists to hide their activities under the name of academic freedom.”

— Peter P. Swire, law professor at Ohio State University and advisor to the Clinton administration on privacy issues, in “Colleges Fear Anti-Terrorism Law Could Turn Them Into Big Brother.”

*Chronicle of Higher Education*, March 1, 2002

many libraries across the nation:

- there are no signup sheets in order to use a public-access computer and, after a user logs off, the computer automatically returns to its default settings
- once a book is returned and any fines paid, the record of who borrowed it is deleted (it was this way long before the USA PATRIOT Act)
- there is no tracking of who is searching in the catalog system (or elsewhere) or what is being searched
- library staff have received training in

what to do should the FBI or other law enforcement officials arrive demanding information

“We obey the law here,” said Dave Nelson, head of Information Services at the JFK Library. “But we want our library patrons to be reassured that their transactions with us – and we have some 130,000 transactions a year – are as safe and as

“If the Act is used as intended, to gain information to protect the country against terrorism, then it's a useful piece of legislation. If it's abused, then it compounds the mistrust people have in government.”

— Tom McGill, director of public safety at Eastern and chief of University Police

private as we know how to make them.”

Faculties across the nation also have joined the discussion with vigor, most siding with the civil libertarians — which is not surprising, given that the college experience is all about free inquiry and learning. Eastern's Faculty Senate took action, as have many faculty groups all over America, passing a “Resolution on the USA PATRIOT Act and Related Measures that Infringe on the Rights of Members of Eastern Washington University” this spring which:

- opposes any use of governmental power to suppress the free and open exchange of knowledge and information or to intimidate individuals exercising free inquiry
- urges all members of the university community to defend and support the privacy of users of the university library and endorse the free and open access to knowledge and information
- considers sections of the USA PATRIOT Act to be “a present danger to the constitutional rights and privacy rights of members of university communities ...”

“A reduction in civil liberties does not increase security,” said Tony Flinn, Faculty Organization president at Eastern. “When the discussion moves to a balance between civil liberties and security, we are talking about ‘special conditions,’ and I fear that under those kinds of conditions, anything can happen.”

“How to strike a balance depends on how a need is perceived,” noted

\* Naturally, there are some records. For example, copyright concerns require certain tracking regarding photocopying of materials received on interlibrary loan, and short-term records are created. There is some lag time for the normal expunging of certain records, particularly for those that are not automatically done electronically.

Any concerns can be addressed to the JFK Library at (509) 359-2264.

Niel Zimmerman. "What is reasonable to do depends on that perception. Still, what concerns me here is the extent to which we extend the metaphor of the war against terrorism to those people who *might* commit a terrorist act, which would extend the rationalization for

"Following 9-11, the number one goal of the Department of Justice (DOJ), and thus this office, is to protect America against the threat of terrorism. We in DOJ will direct our efforts against this threat in the most aggressive manner, legally and logistically possible: We make no excuses in this regard."

— James A. McDevitt,  
U.S. Attorney, Eastern  
District of Washington

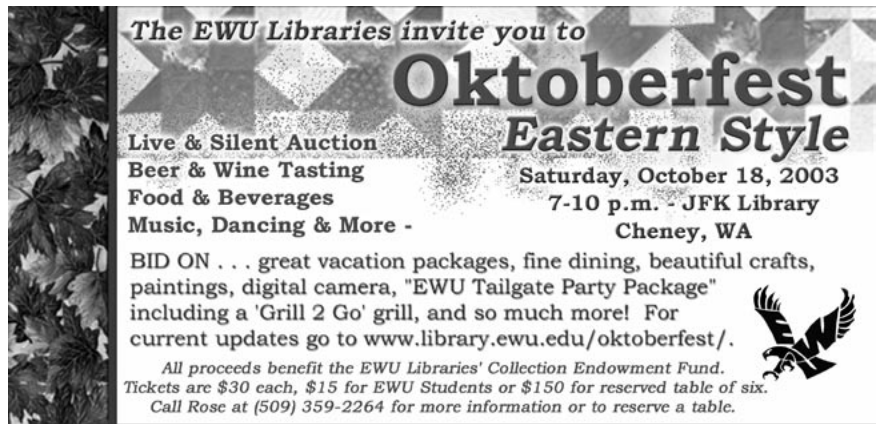
government surveillance, arrest powers and ability to hold people incommunicado based on what people are thinking, or maybe reading, not just what they are doing."

McDevitt, the U.S. Attorney based in Spokane, added: "Just like any other business or endeavor, libraries should not

be allowed to become a safe haven for terrorists or terrorist activities. Obtaining business records is a long-standing law enforcement tactic ... Thus, the acquisition of library records is nothing new."

Thus, the debate over the USA PATRIOT Act continues. As it moves from the corridors of Washington, D.C., more and more into the living rooms of America, libraries are likely to be carrying the weight of the civil liberties spear for some time to come.

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The EWU Libraries invite you to  
**Oktoberfest  
Eastern Style**

Live & Silent Auction  
Beer & Wine Tasting  
Food & Beverages  
Music, Dancing & More -

Saturday, October 18, 2003  
7-10 p.m. - JFK Library  
Cheney, WA

BID ON . . . great vacation packages, fine dining, beautiful crafts, paintings, digital camera, "EWU Tailgate Party Package" including a 'Grill 2 Go' grill, and so much more! For current updates go to [www.library.ewu.edu/oktoberfest/](http://www.library.ewu.edu/oktoberfest/).

All proceeds benefit the EWU Libraries' Collection Endowment Fund.  
Tickets are \$30 each, \$15 for EWU Students or \$150 for reserved table of six.  
Call Rose at (509) 359-2264 for more information or to reserve a table.



## Literary Giants Highlight *Get Lit!* Events

Literary giants **Kurt Vonnegut, Garrison Keillor, Dave Barry** and **Lynda Barry** will visit Spokane next April for *Get Lit!*, the annual literary arts festival coordinated by the EWU Press.

**Scheduled for April 14-18**, *Get Lit!* 2004 will include writing workshops, panels, readings, school visits, poetry slams, food, music and more.

Ticket packages are already available; individual tickets are available beginning Oct. 1. Ticket prices run \$30-55 for individual events to \$63-90 for the Sunday, April 18, events (Dave Barry and Garrison Keillor) to \$94-121 for a complete festival pass. For tickets, call Ticketswest at 325-SEAT or (800) 325-SEAT. (A limited number of discounted tickets for EWU employees and students will be available Oct. 1 from the EWU Press — 623-4286.)

**For specifics on schedules and tickets,**  
check out <http://ewupress.ewu.edu> and <http://ticketswest.com>