HOW THE PATRIOT ACT AFFECTS YOU

Adapted from a statement prepared by Dan McNeil and David Strom - AFT Legal Department

Brief Overview

The “USA Patriot Act” became law on October 26, 2001 in reaction to the 9/11 attacks. In general, it lowers the traditional legal standard the federal government uses to gain access to private information from “probable cause” to something that more closely resembles “suspicion.”

In amending over 15 federal statutes, the Patriot Act expands the authority of the Federal Bureau of Investigation and law enforcement to gain access to business records, medical records, educational records, library records and internal communications, including stored electronic data and communication. It also expands the laws governing wiretaps and “trap and trace” phone devices to apply to Internet and electronic communications.

Privacy Of Student Records

The federal government may obtain a court order requiring that an educational institution turn over records considered relevant to a terrorism investigation by certifying that “specific and articulable facts” support the request. This may be done without the student’s consent and may include medical records. The institution need not make a record of the disclosure, nor is the institution legally liable, as long as it turns over the records “in good faith.”

Monitoring Of Foreign Students

The federal government will collect from the colleges information such as name and address, immigration status, enrollment status and disciplinary actions resulting from criminal convictions. Over 200 colleges and universities have been required to turn over such information to the FBI, INS and other law enforcement agencies since 9/11.

Amendments to the Foreign Intelligence Surveillance Act ease some of the restrictions on foreign intelligence gathering within the United States. For example, surveillance or searches may now be authorized under the FISA when gathering foreign intelligence is a significant reason for the application, rather than the reason, as previously stipulated. Surveillance may take place without identifying the specific

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location where the surveillance is to occur. E-mail is treated the same as telephone conversations.

The FISA court already operates in secret and does not publish its decisions.

The USA Patriot Act in the Library

Section 215: Access to Records Under the Foreign Intelligence Security Act

- Allows an FBI agent to obtain a search warrant for “any tangible thing,” which can include books, records, papers, floppy disks, data tapes and computers with hard drives.
- Permits the FBI to compel production of library circulation records, Internet use records and registration information stored in any medium.
- Does not require the agent to demonstrate either “probable cause,” the existence of specific facts to support the belief that a crime has been committed or that the items sought are evidence of a crime. Instead, the agent only needs to claim that he/she believes that the records he/she seeks may be related to an ongoing investigation related to terrorism or intelligence activities.
- Libraries or librarians served with a search warrant issued under FISA rules may not disclose, under the penalty of law, the existence of the warrant or the fact that records were produced as a result of the warrant. A patron cannot be told that his or her records were given to the FBI or that he or she is the subject of an FBI investigation. Section 215 overrides state library confidentiality laws protecting library records.

Section 216: Relating to the Use of Pen Register and Trap and Trace Devices

Essentially this extends the laws that permit eavesdropping on telephone conversations and surveillance of telephone records to all Internet traffic, including e-mail addresses, IP addresses and URLs of web pages. Known as the “carnivore,” this provision permits the broad collection of emails, both addresses and entire messages, even of those who are not targeted in the investigation.

Libraries that provide access to the Internet and email service to patrons may become the target of a court order requiring the library to cooperate in the monitoring of a user’s electronic communications sent through the library’s computers or network.

Federal government agents seeking warrants under the pen register statute only need to affirm that the information sought “will likely be relevant to an ongoing criminal investigation.”

Furthermore, state law enforcement agencies may apply for and obtain an order under this provision, which is not limited to the investigation of terrorism or foreign intelligence matters.

Campus Police cooperation with the FBI

- The FBI is employing campus police on a part-time basis to monitor political and religious activities on campus and investigate student, faculty and staff backgrounds and activities.
- Campus police cooperating in FBI investigations on terrorism are prohibited from reporting to the head of the campus police or any other member of the university on their activities.

It is Time

In January, at a meeting the KFT initiated, I had the opportunity to meet with Speaker of the Assembly Albio Sires. We discussed the serious labor issues at Kean University and the importance of the Council’s legislative initiatives. I repeated our message once again — it is time to address the Council’s legislative priorities.

The fact is that it’s time for the legislature to address public sector employee legislation. This issue has also been a hot topic at meetings of the Public Employee Committee (PEC) of the New Jersey AFL-CIO. The PEC is comprised of representatives from the AFT, CWA, IFPTE, AFSCME and other public employee unions. At our most recent meeting, we unanimously decided that we have had enough of the Assembly’s inertia on public sector labor issues. To remedy this situation, we came to a consensus on four bills that the PEC has flagged as priority legislation. Each bill has minimal budgetary impact and enhances public sector labor relations. On February 14th we met with Speaker Sires to discuss the bills and inform him of our collective resolve to see the four bills become law.

It is time for the Democratic Party to address the concerns of its public sector employees. It is also time for you to show your support for your elected union leadership and to show solidarity with New Jersey Public Employees. You have demonstrated your support in the past by supporting the Council’s COPE effort and by voting for the legislators who we are now lobbying for passage of these bills. At the appro-

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New Jersey AFL-CIO Campaign Training

by Jon Erickson
(Kean Federation of Teachers & Council Legislative Representative)

Over the past year the labor community participated in various political campaigns. Mostly, we worked to get someone elected with the hope that their success would give us elected officials who push for programs and policies that we support. The labor community actively supports election candidates, but few of us decide to run for office ourselves. Perhaps so few of us run is because the prospect of raising funds, finding support and targeting voters with a message they can support is overwhelming.

In our State, the New Jersey AFL-CIO developed a program called the Labor Candidates School. It’s designed to help candidates become strong electoral contenders. When I ran for borough council seat in 2004 I participated in the program and strongly recommend that others do it as well.

The criteria for becoming a labor candidate are that an applicant must be an active member of a labor union; he/she has to secure the endorsement of his/her Local President; and an applicant must have the endorsement of his/her Central Labor Council.

My Local President and the Middlesex County Central Labor Council, which is headed by John Briscoe, supported my application. With their support I was eligible to attend the NJ AFL-CIO’s Labor Candidate School (see page 8.)

The training was held the last weekend in June at the Rutgers Labor Education Center. John Shea, the AFL-CIO’s C.O.P.E. Coordinator, ran the program and brought in campaign experts from around the country to conduct workshops. The two and a half day training included sessions on developing a message, targeting voters — including other union members — fund raising and budgeting, ELEC campaign finance regulations and GOTV efforts.

One of the most important elements of the training was that I had the opportunity to meet other labor union members who were running for office. The Labor Candidates School is an excellent place to learn the craft of campaigning.

When I applied to the Labor Candidate School, I wasn’t sure what it meant to be a labor candidate. I learned that besides the mechanics of running a campaign, I could count on the support of the labor community. The Central Labor Council contributed to my campaign, did three mailings to union members in my borough and ran a phone bank on my behalf. The NJ AFL-CIO supported me by providing campaign literature that was attractive and well-written. I was pleasantly surprised by the extent and the quality of their efforts on my behalf. Finally, as a resident of a community that includes many Rutgers University faculty, I deeply appreciated the support the Rutgers Chapter of the AAUP showed when it sent out an email to its members about my campaign.

I hope you can tell from my experience with the New Jersey AFL-CIO Labor Candidates School, that the labor community will support your efforts to seek elected office. Believe me that their support can make a big difference between being known as an “also ran” or a “candidate-elect” like myself.

Remember, when you or I hold an elected office, we will be either in a position to make public policies or along with other elected representatives we will have influence over the development of public policies. I have always strongly supported our efforts in lobbying our legislature for labor’s fair share of the State’s resources. However, wouldn’t it be better if many more of us were at the table carving up the pie?
We all do it from time to time. We use our workplace computers to check our private e-mail accounts, to surf the web and do a little online shopping and we sometimes send our coworkers jokes and cartoons. Admittedly, most employers tolerate such activities. Even if in some instances, when employers wish to discipline employees for using work computers for other than work assignments, the Union can usually sort things out in our favor. However, when employees cross the line between an occasional harmless foray into cyberspace and a disastrous trip to the seedier side of the web — such as online porn sites, the Union will find it difficult, if not impossible to defend you.

Grievance chairs are already dealing with email and web use issues in the workplace. The rapid proliferation of email and web use raises the issue of employees' expectations of privacy regarding email and internet technology in the workplace. This VOICE article is meant to be a gentle reminder to think about the consequences of your computer use in the workplace.

Privacy Clause in the Full-Time Agreement

The Agreement contains a privacy clause under Article XI Section M. which states, “The Colleges/Universities will not abrogate the lawful rights of employees as to opening of their mail or the privacy of their offices or personal belongings” (p. 16). When the Council first crafted this contract language, e-mail was not specifically the object of the clause. Therefore, it does not necessarily prohibit an employer's legal right to monitor your email usage. Nonetheless, when the Union files a grievance regarding the monitoring of email (especially if the employer wants to administer discipline or terminate employment), the Union will argue that the intent and the language of XI.M. reasonably includes email. However, it is downright impossible to argue that employees have a reasonable expectation to privacy when it comes to surfing the internet; or, if you send an email containing blatantly offensive or illegal content and the recipient reports you.

Using the Web

Downloading materials from questionable sites and spending time surfing the web on “company time” are very risky. Do not think that you will never be found out. In recent months, tech services entered a unit member’s office on a work order to repair equipment and found downloaded pornography. Of course, the unit member thought no one would ever see this material and argued that an employee has a right to privacy in this matter. This is not so. College and university employees have lost their jobs over such activity. Because equipment and time belong to the employer, the Union has been able to do little to help the involved unit member.

The Council’s Position

The Council operates under the premise that all employee email is the legal property of the College/University. In fact, the Union strongly advises grievance chairs not to file grievances or conduct any but the most routine union business over the College/University email system.

The Union bases its position on court cases whereby “an employee does not have a reasonable expectation of privacy in email communications voluntarily made over the company email system, not withstanding any assurances from the employer that such communications were private and would not be intercepted by management” (Michael A. Smyth v. The Pillsbury Company, No. 05-5712, January 18, 1996). The court's reasoning is that email communications are voluntary in nature and as such, are distinguishable from a forced disclosure of employee communications or other invasions of privacy such as urinalysis or a property search that results in a termination. The court also believes that management's interest in preventing the inappropriate or even illegal use of email outweighs employees' privacy interests in those communications (United States District Court for the Eastern District of Pennsylvania).

What To Do

Most institutions have a written policy in Employee Handbooks about electronic monitoring of employee email and internet use. Grievance officers should be familiar with their institution’s policy.

Legally, an employer can incorporate some of the following statements in an email policy:

• Email is to be used for business purposes only.
• Information transmitted and stored is the sole property of the employer.
• There is no right to privacy in any matter created, received, or sent on the email system—messages may be accessed and reviewed by the employer.

Whether members use email for union or non-union business, a good rule of thumb is that there shouldn’t be anything in an email that wouldn’t be appropriate in an interdepartmental memo. Also, remember that in large institutions with network servers, all data are downloaded to a storage site once a day and thus can be reviewed at a later date including your email messages and your history of web site visits.

EXERCISE COMMON SENSE WHEN SENDING EMAILS AND SURFING THE WEB ON CAMPUS COMPUTERS
AFT Local 1796 - William Paterson University - Holds Workshop for Professional Staff Performance Based Promotions

AFT Local 1796 - William Paterson University - has worked very hard to establish a successful Performance Based Promotion (PBP) program for Professional Staff. Since its inception five years ago, the number of performance-based promotions have steadily increased (from four to six this year) and each promotion slot has been filled with an exceptional professional staff member. Enthusiasm for the process has grown tremendously with more eligible applicants applying every year.

In response to this enthusiasm, Professional Staff Co-officers, Shari Selke and Ed Matthews, and the Assistant Professional Staff Officer, Iris DiMaio, with support from the Local’s Executive Board, decided to sponsor an informational workshop on the PBP process. Although it was intended primarily for the professional staff eligible to apply for a promotion this year, the workshop was open to all. Participants reviewed portfolios from successful candidates (Shari and Ed have earned promotions in past years and have served as portfolio coaches for individuals when requested). Twenty people attended including several who had received promotions in the past.

We held the workshop on Thursday, December 9, 2004, during the university’s “common hour,” 12:30-1:45 P.M. Many staff members found the common hour convenient and scheduled their lunchtime around this event. To encourage participation the Local provided a light lunch.

Each person who attended received an information packet that included the following:
1. A list of the current eligible professional staff.
2. The calendar of deadlines/events/announcements for the promotions.
3. The university’s policy which includes eligibility, criteria and application procedures from the Faculty and Staff Handbook.
4. The application, which must accompany a candidate’s portfolio.
5. The WPU Provost memo stating the number of promotions available this year.

Participants discussed in detail each of the items in the packet then followed up with a Q & A session. One of the things that has helped make the PBP process at WPU successful is the peer review committee, which is similar to the ones used in the faculty retention and promotion processes. Many of the questions centered on the peer review committee and its process. Some questions were about how the committee is formed; how the committee reviews a candidate’s qualifications; and the committee’s overall selection process. Ed, Shari and Iris have all served as members of the peer review committee at one time or another and were able to field those questions with expertise (See Iris DiMaio’s related article). To no one’s surprise, everyone agreed that the peer review process is a fair and equitable procedure.

This workshop was such a success that the Local intends to make it an annual event. The Local hopes that with workshops like this more eligible professional staff will apply for promotions. Also, with a larger pool of applicants the Local gains greater leverage to negotiate with the Administration for more promotion slots next year. Hopefully this trend will continue, not only at William Paterson but also at other New Jersey colleges and universities.
Professional Staff - Promoting Ourselves

By Iris DiMaio

In almost every VOICE issue, the Council staff write about the working conditions of professional staff in the nine state colleges and universities. Usually those VOICE articles are advisory ones that are meant to assist professional staff with understanding contract language or with navigating through reappointment procedures; however, since the Council staff do not have first-hand knowledge of what it is like to work on campus, for a change we thought you would enjoy hearing from a professional staff colleague.

Iris DiMaio is an Assistant Director for the Center of Continuing Education and Distance Learning at William Paterson University. She graciously contributed the following article about her experience of applying for a Performance Based Promotion. Iris is the Assistant to the Professional Staff Representative for Local 1796. She is also a delegate to the Council, which is where she first discussed the ways in which professional staff should, as she notes, “become their own best advocates” for success. We hope you enjoy reading Iris’ article and that you find her tips for putting together a promotion portfolio helpful.

As a professional staff member at William Paterson University, I have had many positive experiences. I truly enjoy my daily routine and job responsibilities and have learned all about Continuing Education, business, and the amazing world of academia.

Along the way I have accrued a comprehensive portfolio from the body of work I undertake at William Paterson University. Professional staff portfolios are extremely important, especially when we have the opportunity to earn pay raises, promotions, career development funding and reclassifications to higher titled positions.

Professional staff personnel should never be shy about or ashamed of promoting ourselves; however, I sometimes sense that many of us are uncomfortable doing so. I’m unsure of the exact reasons why — perhaps it’s the fear that we might be perceived as shameless, self-promoting and conceited opportunists. This is, of course, absurd.

If we don’t take pride in our professional accomplishments and make management aware of them, especially when applying for a better position in the organization, then who will? We all work extremely hard in our specific job responsibilities and always strive for excellence in our work. For the most part, our supervisors recognize that we have gone beyond the call of duty to address our institutions’ immediate needs and emergencies. But if they happen to miss our accomplishments, we should make them aware and not be ashamed to do so. Think about it. If we don’t share with our supervisors and the administration the letters and e-mails of appreciation we receive, we are undermining our own accomplishments. It’s important to remind ourselves that only we know and understand the type of work we do and what it takes to get it done; sometimes with little or no resources.

I would bet that if you review your professional experiences, many of them deserve acknowledgment. In my situation, besides my daily job responsibilities, I am very involved with my AFT Local. By becoming active in the union in general, and local leadership in particular, I learned the importance of community service (i.e., volunteering on committees) and maintaining my own personnel folder with letters of support and appreciation from faculty, students, colleagues and organizations. Both of these are key components for compiling a promotion folder.

It is also important to meet with a Human Resources (HR) representative to review your personnel file at least once a year to find out if the administration has added new documents. Remember, you should have only one HR file, which is the official file that contains your confidential personnel information and any positive or negative written comments regarding your appointment that the College/University generates. (If your department has a file, discuss its purpose with your supervisor). During your meeting with HR, you should request copies of any documents you don’t have, such as yearly and multiyear evaluations, generic job specifications and local job descriptions. If you don’t already keep a separate personnel file at home, please create one. It’s been my experience that if the College/University loses any of your retention documents, it can be difficult, if not impossible, to recreate them. All of this is part of taking the responsibility of promoting yourself and becoming your own best advocate.

As with the other state institutions, William Paterson University has Performance-Based Promotions for Professional Staff. In this procedure of applying for promotion, the professional staff member has the opportunity to “tell his/her story” by preparing a professional portfolio to present to the Performance-Based Promotion Committee. The committee is comprised of five professional staff members who evaluate applications and then make recommendations to the administration on who meets or exceeds the performance criteria. The University determines the number of promotions available and makes the final determination on the committee’s...
recommendations. Successful applicants move to the next higher title in their State title series.

The performance-based promotion process is very competitive. For example, last year at William Paterson University, fifteen qualified people submitted their portfolios but the University only had four promotion slots available. As you can imagine, it was a very difficult task for the Committee to recommend only four of the fifteen applicants — every one of whom was worthy of a promotion.

Here are some ways you, as a professional staff member, can organize your portfolio to promote yourself and become your own best advocate:

• Inform your supervisor about your plans for applying and get an idea if he/she supports you.
• Ask your supervisor for a letter of support. His/her letter will make your portfolio stronger.
• Meet with a Human Resources representative to review your personnel file and make copies of any documents you don’t have (i.e., evaluations). Make sure to submit three of your best performance evaluations (they have to be within the last five years).
• Request letters of recommendation from everyone you have worked with on projects and programs who can attest to your professionalism.
• Provide documentation of your work through brochures, flyers, certificates, video, DVD, CD, grants, etc.
• When you write your self-assessment, it’s important to be specific about your work and accomplishments. Remember — you are promoting your “self”.
• When you organize your portfolio, make sure to include a table of contents, which makes it easier for your readers to navigate through your supporting documents.
• Remember to meet the calendar deadlines your institution publishes — missing a deadline may seem like a minor thing, but it could mean a complete halt of the entire process.

COUNCIL SUPPORTS JNESO STRIKERS

On a bitter cold night in January, the Council staff joined Rowan Local 2373 President Nick DiObilda in a strike rally to support the striking JNESO District Council 1, IUOE members. The nurses at Our Lady of Lourdes Hospital have been on strike since April 19, 2004. The strike issues are over control of working hours and overtime, shift assignments, employment status, subcontracting and layoffs. The hospital is using two union busting firms: US Nursing Corporation and 1st Call Security in an effort to break the strike.

To date, management has lost two arbitrations and was defeated on appeal to the NJ Department of Labor to stop strikers’ unemployment benefits. However, it is appealing all rulings and attempting to modify one award that forces it to negotiate over subcontracting.

The Council, Rowan AFT Local 2373 and Montclair AFT Local 1904 have made donations to the striking workers.

To make a donation to these valiant workers contact: Virginia Treacy, R.N., Executive Director (jnesonj@aol.com); District Council 1-IUOE; 146 Livingston Ave.; New Brunswick, NJ 08901

Don’t just stop there — Be your own best advocate!

As I write this article, I am working on my own portfolio for a Performance-Based Promotion application. I was overwhelmed when I read the letters of support and recommendations I received from individuals who have worked with me. I have to say that when I first asked my colleagues for letters of support, I thought they would think I was a show off or a rank opportunist. However, as it turned out, they thought no such thing and their expressions of appreciation for my work was extremely gratifying to read. Their letters and positive comments made me realize that I do a good job and go beyond the call of duty to represent my Department and the University.

I decided to share their letters with the Provost’s Office and I also wanted to see if I could add some of these letters to my HR file. I called HR and inquired about the process of adding information to my file. I was surprised and pleased to learn that every employee has the right to add letters of support to his/her personnel file at anytime. I selected two letters and submitted them to Human Resources to be added to my personnel file. I also sent a copy to the Provost’s Office to inform the administration of the type of work I do to fulfill the University’s mission. Yes, in this wonderful academic environment, I have learned to be proud of my accomplishments and promote myself.

Finally, the reason I wanted to write this article is because I hope that AFT professional staff learn to promote ourselves and become our own best advocates in order to highlight the work we perform for our institutions. I believe professional staff are the backbone of our institutions. I also think we are under recognized for the quality of our work, which after all, makes it possible for the colleges/universities to fulfill their missions and goals.

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Wanted: Labor Candidates

Working together we’ve elected 309 New Jersey union members to public office. Now, rank-and-file union members are advancing our working families’ legislative agenda as they chair the powerful New Jersey Senate and Assembly Labor Committees and the influential Senate State Government Committee. Also, union members fight for working families on County Freeholder Boards, in our towns as mayors and council members, and on our local school boards. Looking ahead, 2005 will be a banner year for New Jersey State AFL-CIO Labor Candidates!

The New Jersey State AFL-CIO 9th Annual Labor Candidates School is scheduled for August 5-7, 2005 at the Rutgers Labor Education Center. Also, the 6th Annual School Board/Non-partisan Seminar will be held on Saturday, March 12, 2005 in our Trenton office. Political experts will train participants on all aspects of campaigns with topics ranging from voter contact and targeting voters.

All non-incumbent Labor Candidates are required to attend and graduate from the Labor Candidates School before resources can be earmarked for his/her election campaign. Any union member who seeks election or re-election to public office this year should contact John Shea, NJ State AFL-CIO COPE Director, as soon as possible to receive a “Labor Candidates Survey” to complete. He can be contacted at (609) 989-8730 or cope@njafclio.org.

Please help us identify, recruit and advocate for qualified union members to become candidates for election to public office. Working in partnership with our Central Labor Councils, Building Trades Councils, affiliated unions and all elected Labor Candidates, we will continue to advance our working families agenda at every level of government. We look forward to many more election successes, together.