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# United States Senate

WASHINGTON, DC 20510-4904

March 28, 2005

VIA FAX: (202) 456-6915

Frances Fragos Townsend  
Assistant to the President for Homeland Security  
Executive Office of the President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Ms. Townsend:

I read with interest news stories about your recent remarks concerning the USA PATRIOT Act at a meeting of the American Bar Association's Standing Committee on Law and National Security. As you may know, I opposed the PATRIOT Act when it first came before the Senate, and I have supported legislation to modify certain controversial PATRIOT Act provisions that I believe went too far in providing broad governmental powers divorced from appropriate oversight and accountability mechanisms.

In the course of my work on the PATRIOT Act over the past four years, I have consistently attempted to engage in a productive, fact-based debate with those in the Administration who disagree with me. Unfortunately, those efforts have not always been reciprocated. The Administration has not been adequately forthcoming with Congress or the public about its use of PATRIOT Act powers. Nor has there been adequate consultation thus far on modifications that have been proposed to the Act or on the Administration's plans to seek new powers.

That is why I was pleased to read that you stated at the ABA event that you value debate on these important issues, and that you urged that the PATRIOT Act debate be kept "honest." But based on those reported remarks, I was surprised and disturbed to read the following additional account in a March 17, 2005, *Associated Press* story:

Townsend said she recently asked an audience to indicate how many people were concerned about the "library records provision" in the act.

"Probably 70 percent of hands went up," Townsend said. "And people were really stunned that there is nowhere in the Patriot Act the mention of library records."

If reported accurately, this statement was highly misleading. While the word "library" does not appear in the PATRIOT Act, the Act *does* change the rules for government access to library and other records. Your reported comments suggest quite the contrary.

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I assume you are aware that Section 215 of the PATRIOT Act permits the FBI to obtain *all* types of business records – including library records, as well as medical records, bookseller records, and many other types of records – without demonstrating that the records pertain to a particular crime, or a particular terrorist or spy. Because of the lack of constraints on this power, this provision has given rise to serious and legitimate First Amendment concerns on the part of, among others, librarians.

For you to suggest that there is no “library records provision” in the PATRIOT Act is, in my view, the antithesis of engaging in the honest debate that you called for in your remarks to the ABA. Indeed, there is no PATRIOT Act provision targeted specifically at libraries because the provision at issue is much, much broader in its effect.

Perhaps your quote was taken out of context or clarifying remarks made at the event were not included in the news reports. I hope that is the case, and that you will alert the press and the public that you did not mean to suggest that the PATRIOT Act has no effect on the government’s power to get access to library records. To leave the story as reported would, in my view, be irresponsible.

I would appreciate receiving an explanation of your remarks and hearing what steps you have taken to correct the misimpression you may have left that library records are not covered by the PATRIOT Act. I look forward to further honest discussion of these issues with you and others in the Administration.

Sincerely,

A handwritten signature in black ink that reads "Russell D. Feingold". The signature is written in a cursive, slightly slanted style.

Russell D. Feingold  
United States Senate