

## **The Patriot Act: What Is the Proper Balance Between National Security and Individual Rights?**

**Congress passed the Patriot Act shortly after the September 11 terrorist attacks. Did this law go too far in the name of national security?**

Terrorists struck America on September 11, 2001. Hijacking four planes, they flew two of them into the World Trade Center towers in New York and another into the Pentagon in Washington. The fourth plane crashed in Pennsylvania before it reached its target in Washington. Within two hours, both of the massive 110-story twin towers had collapsed. A wing of the Pentagon was severely damaged. More than 3,000 people died in the attacks. Two days later, the White House identified the culprits as members of Al Qaeda, an Islamic fundamentalist terrorist group based in Afghanistan but with terrorist cells throughout the world. The hijackers had worked out of Al Qaeda terrorist cells operating in the United States. No one knew whether more terrorist attacks were coming.

Soon after September 11, U.S. Attorney General John Ashcroft brought before Congress a list of recommended changes in the law to combat terrorism. Some of these measures had long been opposed by members of Congress as infringing on the rights of Americans.

But September 11 had swept away all previous objections. The U.S. Senate quickly passed the USA PATRIOT ACT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism). Only one senator, Russell Feingold (D-Wis.), voted against it.

President George W. Bush signed the Patriot Act into law. He praised the "new tools to fight the present danger . . . a threat like no other our Nation has ever faced." He also asserted that the Patriot Act "upholds and respects the civil liberties guaranteed by our Constitution."

The Patriot Act defines "domestic terrorism" as activities within the United States that . . . involve acts dangerous to human life that . . . appear to be intended--

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping. . . .

### **The Patriot Act and Privacy**

Some of the most controversial parts of the Patriot Act surround issues of privacy and government surveillance. The Fourth Amendment to the U.S. Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . ." It requires law-enforcement officers to obtain warrants before making most searches. To get a warrant, officers must make sworn statements before a judge "particularly describing the place to be searched, and the persons or things to be seized." The judge may only issue a search warrant if officers show "probable cause" that the person is engaged in criminal activity. Federal law requires that officers report to the court on the results of the search.

Surveillance such as wiretaps and physical searches requires officers to prove "probable cause" of criminality. Even before the Patriot Act, there were exceptions under federal law.

One was for so-called "pen-trap" orders. To obtain from a telephone company the numbers dialed to and from a particular telephone, officers must get a pen-trap order from a judge. They do not need to show probable cause, but must certify that the information is needed for an ongoing criminal investigation. The reason for the lesser standard is that these records are far less intrusive than wiretaps and physical searches.

Another major exception was for matters before the Federal Intelligence Surveillance Court. Congress created the court in 1978 following scandals revealing that U.S. intelligence agencies had spied on hundreds of thousands of American citizens, most notably the Reverend Martin Luther King Jr.

The court was a compromise between those who wanted to leave U.S. intelligence agencies free from any restrictions and those who wanted intelligence agencies to apply for search warrants like other law-enforcement agencies. Congress required U.S. intelligence agencies (the FBI and National Security Agency) to apply for warrants for wiretaps and other surveillance on foreign governments and suspected foreign agents. But because the agencies are not investigating domestic crime, they do not have to meet the probable cause standard. They only have to certify that the purpose of the investigation is to track a foreign government or agent. They do not have to report to the court on the results of the surveillance. The court meets in secret with only government representatives present and has never denied an intelligence agency's application for a search warrant.

## Public Opinion on the Patriot Act

**Should the government take all steps necessary to prevent additional acts of terrorism in the U.S. even if it means your basic civil liberties would be violated?**

**Or should the government take steps to prevent additional acts of terrorism but not if those steps would violate your basic civil liberties?**

	Aug. 2003	Jan. 2002
Take steps, even if civil liberties violated	29%	47%
Take steps but not violate civil liberties	67%	49%
No opinion	4%	4%

**Do you think the Bush administration has gone too far, has been about right, or has not gone far enough in restricting people's civil liberties in order to fight terrorism?**

	Aug. 2003	Jun. 2002
Too far	21%	11%
About right	55%	60%
Not far enough	19%	25%
No opinion	5%	4%

**How familiar are you with the Patriot Act: very familiar, somewhat familiar, not too familiar, or not at all familiar?**

Very familiar	10%
Somewhat familiar	40%
Not too familiar	25%
Not at all familiar	25%
No opinion	-

(Aug. 2003)

Source: The Gallup Organization

The Patriot Act expands all these exceptions to the probable-cause requirement. Section 215 of the act permits the FBI to go before the Foreign Intelligence Surveillance Court for an order to search for "any tangible things" connected to a terrorism suspect. The order would be granted as long as the FBI certifies that the search is "to protect against international terrorism or clandestine intelligence activities [spying]." But the FBI would not need to meet the stronger standard of probable cause.

The Patriot Act now authorizes this court to issue search orders directed at any U.S. citizen who the FBI believes may be involved in terrorist activities. Such activities may, in part, even involve First Amendment protected acts such as participating in non-violent public protests.

In Section 215, "any tangible things" may include almost any kind of property--such as books, documents, and computers. The FBI may also monitor or seize personal records held by public libraries, bookstores, medical offices, Internet providers, churches, political groups, universities, and other businesses and institutions.

The Patriot Act prohibits third parties served with Section 215 orders such as Internet providers and public librarians to inform anyone that the FBI has conducted a search of their records.

Section 216 of the Patriot Act extends pen-trap orders to include e-mail and web browsing. The FBI can ask Internet service providers to turn over a log of the web sites a person visits and the addresses of e-mail coming to and from the person's computer.

Another area of concern is Section 213 of the Patriot Act. It authorizes so-called "sneak- and-peek" searches for all federal criminal investigations. When applying for a search warrant, officers may show that there is "reasonable cause to believe that providing immediate notification . . . may have an adverse result." If the judge approves, then the FBI can delay notifying a citizen about the search for a "reasonable period." Thus, the FBI may search a citizen's home or business in secret. The FBI says these searches may be necessary to prevent the destruction of evidence or to

keep from jeopardizing an ongoing secret investigation.

## The Debate Over the Patriot Act

According to the Bill of Rights Defense Committee, three states (Alaska, Hawaii, and Vermont) and 149 cities, towns and counties have passed resolutions protesting provisions of the Patriot Act. In response to criticism of the act, Congress may be having some second thoughts. The House of Representatives voted 309-118 to repeal "sneak- and-peek" searches. In the Senate, Senators Lisa Murkowski (R-Alaska) and Ron Wyden (D-Ore.) have introduced the Rights of Individuals Act. This is a comprehensive bill, addressing a number of issues related to the Patriot Act. One part of the Murkowski-Wyden bill would limit "sneak and peek" searches. Those whose homes or offices had been searched under "sneak and peek" would have to be notified within seven calendar days.

Attorney General Ashcroft and other Americans defend the Patriot Act. "We are at war," Ashcroft says, "and we have to do things differently than we did before." He points out that the only purpose of the Patriot Act is "to prevent terrorists from unleashing more death and destruction." Ashcroft also argues that the courts and Congress still safeguard the constitutional rights of Americans.

Public opinion has consistently supported the Patriot Act. An August 2003 Gallup Poll asked whether the Patriot Act goes too far, is about right, or doesn't go far enough in restricting people's civil liberties. Only 21 percent responded that it goes too far. Fifty-five percent said it is about right, and 19 percent answered that it does not go far enough.

The first major legal challenge to the Patriot Act, the American Civil Liberties Union (ACLU) filed a lawsuit in July 2003 against Section 215 searches. The suit argues that these searches violate the Fourth Amendment's protection against unreasonable searches and seizures as well as First Amendment freedoms of speech and association.

In a report called "Unpatriotic Acts," the ACLU warned that American freedom was endangered by the Patriot Act: Section 215 is likely to chill lawful dissent. If people think that their conversations, their emails, and their reading habits are being monitored, people will feel less comfortable saying what they think--especially if they disagree with government policies.

In a *Washington Post* opinion piece, Heather MacDonald, a writer at the Manhattan Institute, defended the Patriot Act. She countered the ACLU by stressing that Section 215 requires a court order. She said there was no reason for anyone to feel "afraid to read books" or "terrified into silence." "Were that ever the case, it would be thanks to the misinformation spread by advocates and politicians, not because of any real threat posed by" the Patriot Act.

It will be quite some time before cases like the ACLU lawsuit will reach the U.S. Supreme Court. The basic question that the court will have to answer is: What is the proper balance between national security and protecting individual rights?

1. How does the Patriot Act define "domestic terrorism"? Do you think participants in public protests could ever be accused of "domestic terrorism" under this definition? Why or why not?
2. Below are two famous quotations. What do they mean? Which, if any, do you agree with? Explain.

*Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.*--Benjamin Franklin (1706-1790)

*There is danger that, if the [Supreme Court] does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.*--Justice Robert H. Jackson, dissenting in *Terminiello v. City of Chicago* (1949)

3. Using information and arguments from the article and class discussion write an essay on this question: *What is the proper balance between national security and the protection of individual rights?*