

THE PATRIOT ACT: WHAT IS THE PROPER BALANCE BETWEEN NATIONAL SECURITY AND INDIVIDUAL RIGHTS?

<http://www.crf-usa.org/america-responds-to-terrorism/the-patriot-act.html>

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 (**U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism). Only one senator, Russell Feingold (D-Wis.), voted against it.

The next day, the House of Representatives passed the bill 357-66. The final bill was 342 pages long and changed more than 15 existing laws. Most of the Justice Department's recommendations were incorporated into it, but several provisions will expire in 2005.

On October 26, 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. (A pen/trap device refers to a pen register that shows outgoing numbers called from a phone and a trap and trace device that shows incoming numbers that called a phone. Pen registers and trap and trace devices are collectively referred to as pen/trap devices because most technologies allow the same device to perform both types of traces [incoming and outgoing numbers]).

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.

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.

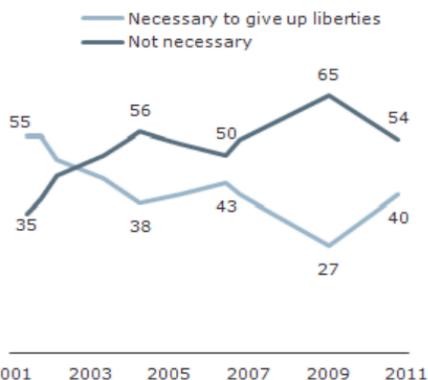
In Section 215, "any tangible things" may include almost any kind of property--such as books, documents, and computers. The FBI may also monitor or seize personal records held by public libraries, bookstores, medical offices, Internet providers, churches, political groups, universities, and other businesses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

Necessary to Give Up Civil Liberties to Curb Terrorism?



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Little Support for Phone Monitoring to Curb Terrorism

	Mid-Sept 2001	Aug 2002	Dec 2006	Aug 2011
<i>Percent who favor each as a measure to curb terrorism</i>	%	%	%	%
Requiring that all citizens carry a national ID card at all times	70	59	57	57
Extra airport checks on passengers who appear to be of Middle-Eastern descent	--	59	57	53
Government monitoring credit card purchases	--	43	42	42
Government monitoring personal phone calls and emails	--	33	34	29

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