

# SECURITY, LIBERTY, AND THE USA PATRIOT ACT

Following the terrorist attacks on New York City and the Pentagon on September 11, 2001, Congress enacted and President George W. Bush signed an intelligence gathering bill. Introduced as the Anti-Terrorism bill on September 19, 2001, it was signed into law on October 26, 2001 as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or USA Patriot Act. It passed by margins of 357-66 in the House of Representatives and 98-1 in the Senate. Through amending older laws and creating new provisions, this bill has given the United States government unprecedented power to gather intelligence. Controversy over some of the provisions of the Act prompted Congress to implement a sunset clause regarding certain parts of it. These provisions would expire in 2011 unless Congress and the president reinstated them. Even though the Patriot Act has prompted vigorous debate, for the most part it remains in place today in its original form. Has the government found an adequate balance between liberty and security in its enforcement of the Patriot Act? What constitutional principles and liberties are at stake?

## CONSTITUTIONAL PRINCIPLES

- rule of law
- limited government
- natural rights
- liberty
- executive power
- due process, including searches and seizures

## Overview *(continued)*

### Objectives

- Students evaluate contradictory viewpoints of liberty and security.
- Students evaluate the constitutionality of the Patriot Act.
- Students evaluate whether the Constitution takes on different meanings during wartime.
- Students evaluate the significance of the fact that the Patriot Act's changes in criminal procedure would apply to every federal criminal prosecution, rather than applying only to terrorism investigations.
- Students evaluate the significance of protections against unreasonable search and seizure.

### Recommended Time

120-180 minutes

# Lesson Plan

## Materials

(Some readings are edited for length in the Handouts, but the full documents are available at the websites listed.)

- Handout A: Department of Justice Summary of USA Patriot Act  
[http://www.justice.gov/archive/ll/what\\_is\\_the\\_patriot\\_act.pdf](http://www.justice.gov/archive/ll/what_is_the_patriot_act.pdf)
- Handout B: Preamble and Fourth Amendment
- Handout C: U.S. Senator Rand Paul Opposition to USA Patriot Act, 2011  
<http://www.paul.senate.gov/record.cfm?id=331164>
- Handout D: President Barack Obama Press Conference – August 9, 2013  
<http://wh.gov/lg4h2>
- Handout E: Twitter Feed Template

## Background

A. Have students read **Handout A: Department of Justice Summary of USA Patriot Act**. As they read, students should annotate the document, listing constitutional principles and the Preamble's goals for government suggested by the summary of the Patriot Act. *Note: You might assign the reading and annotation of **Handout A** as homework in order to maximize class time for discussion.*

## Activity

- A. Have students work in pairs or small groups. Using available technology, project the text of the Preamble of the United States Constitution and the Fourth Amendment side-by-side, or provide each small group with a copy of **Handout B: Preamble and Fourth Amendment**. After students have discussed the questions at the bottom of the page for a few minutes, have groups report their responses and make a list of those responses on the board.
- B. To provide students with historical background, provide the following context information for the lesson:
- a. On September 11, 2001, Al Qaeda, a militant Islamist organization led by Osama bin Laden, carried out a series of violent surprise attacks on the United States. Nineteen Al Qaeda operatives hijacked four commercial airliners early that morning in order to carry out suicide attacks. In quick succession the hijackers deliberately crashed three of the planes into the twin towers of Manhattan's World Trade Center and the Pentagon. Passengers on the fourth plane attempted to regain control of the flight before it crashed into a field near Shanksville, Pennsylvania. Fatalities included the airline passengers and crews, individuals inside the buildings hit, firefighters and other first responders. Altogether, about 3,000 people were killed in that morning's terrorist attacks.

## Lesson Plan *(continued)*

- b. In response to the worst terrorist attack in U.S. history, President George W. Bush announced a War on Terror in a televised address to a joint session of the U.S. Congress on September 20, 2011. Operation Enduring Freedom, launched the next month, was an international military effort led by the United States to remove the Taliban government in Afghanistan which had harbored the Al Qaeda network and its training facilities there. In addition to the USA Patriot Act, Congress enacted more than a dozen laws addressing related issues, including victims' relief, air transportation, national defense, and the use of military force.
- C. Review the USA Patriot Act and reaction to it.
  - a. Have students take out **Handout A: Department of Justice Summary of USA Patriot Act**. As a class, review main ideas, purposes of the law, and constitutional principles identified by students.
  - b. Have students work in pairs. One student in each pair will read **Handout C: U.S. Senator Rand Paul Opposition to USA Patriot Act, 2011**. The other student will read **Handout D: President Barack Obama Press Conference – August 9, 2013**. They will each answer the comprehension and critical thinking questions on their respective handouts. Have students share their documents within their pairs, and keep a running list of Constitutional provisions/principles used to support the Patriot Act and those used to dispute the law.

### Wrap-Up

- A. Conduct a full-class discussion summarizing the constitutional implications of the Patriot Act. Wrap up with one or more of the following:
  - a. Students create political cartoons representing either the position of Senator Paul or the position of President Obama.
  - b. Create a text message or Twitter feed (including hashtags or #) dialogue between President Obama (@Obama) and Senator Paul (@Paul) which illustrates their positions. Provide at least 3 comments each that depict each position. Use **Handout E: Twitter Feed Template**.
- B. Fishbowl Debate
  - a. Conduct a Fishbowl Debate using this proposition: "The federal government has violated constitutional principles with regard to protecting liberty and security through the Patriot Act." Consider at least the following constitutional principles:

## Lesson Plan *(continued)*

1. rule of law
2. limited government
3. natural rights
4. liberty
5. executive power
6. due process, including searches and seizures
- b. Fishbowl Debate Procedure:
  1. Divide class into two groups.
  2. Assign one group to be the affirmative side and the other to be the negative side.
  3. Give students a few minutes prep time and have each side choose the first two or three students who will speak.
  4. Place two “hot seats” in the center of the room, between the two groups.
  5. Have each side’s first speaker take the hot seat.
  6. Using civil discourse, reasoned arguments based on the U.S. Constitution and other relevant texts, these students make each side’s opening argument. Students respond directly to one another, targeting the specific argument being made by one’s opponent in the hot seat.
  7. After a brief designated period of time for Speaker # 1 from each side (2–5 minutes), give the signal for the next speaker from each side to take the hot seats. Students extend and build on the initial arguments with relevant new facts and evidence—not simply repeating points previously made. Students may volunteer to speak after the first few speakers have provided the framework of the debate.
  8. Proceed in this manner until all useful arguments for each side have been presented, most students have been speakers, and the following objectives have been addressed:
    - Students evaluate contradictory viewpoints concerning liberty and security.
    - Students evaluate the constitutionality of the Patriot Act.
    - Students evaluate whether the Constitution takes on different meanings during wartime.

## Lesson Plan *(continued)*

- Students evaluate the significance of the fact that the Patriot Act's changes in criminal procedure would apply to every federal criminal prosecution, rather than applying only to terrorism investigations.
- Students evaluate the significance of protections against unreasonable search and seizure.

### Extensions

- A. Have students read Remarks from Senator Russ Feingold, October 25th, 2001 and answer these questions:
- a. <http://www.gpo.gov/fdsys/pkg/CREC-2001-10-25/html/CREC-2001-10-25-pt1-PgS10990-2.htm>
  - b. Comprehension and Critical Thinking Questions
    1. Identify at least 3 provisions of the Patriot Act which Senator Feingold supported.
    2. Why is it important that the changes in criminal procedure would apply to every federal criminal prosecution, rather than applying only to terrorism investigations?
    3. Why did Senator Feingold consider the provision allowing law enforcement officers to search homes and offices without notifying the owner prior to the search ("sneak and peek" searches) "a significant infringement on personal liberty"?
    4. Why might law enforcement agencies support a provision such as the one the Senator criticizes?
    5. What was the Senator's fear regarding the monitoring of computer communications? Why did he see this as problematic?
    6. How would law enforcement powers be expanded under the Patriot Act and FISA? In what ways might this expansion of law enforcement powers conflict with the Fourth Amendment?
    7. Underline or highlight 5 or 6 sentences in Senator Feingold's speech that you think convey his views most powerfully.
- B. Have students read Attorney General John Ashcroft – "Paradigm of Prevention" Speech, February 10, 2003 and answer these questions:

## Lesson Plan *(continued)*

- a. <http://www.justice.gov/archive/ag/speeches/2003/021003agcouncilonforeignrelation.htm>
- b. Comprehension and Critical Thinking Questions
  1. What did Attorney General Ashcroft mean by the phrase, “paradigm of prevention”? How is a paradigm of prevention different from the traditional goal of law enforcement - prosecution?
  2. Attorney General Ashcroft stated that the targets of the terrorists are “the shared values of free peoples.” What are some of those values?
  3. Did Ashcroft omit any “shared values of free peoples”? If so, what are they?
  4. Why do you think Attorney General Ashcroft emphasizes international cooperation?
  5. Why do you think he views information as the best friend of prevention?
  6. Why do you think Attorney General Ashcroft refers to previous generations’ struggle against communism?
  7. How many times in the document did Attorney General Ashcroft refer to “rule of law”? Define this term. What is the significance of his emphasis on that concept? In your opinion, how might enhanced law enforcement powers actually endanger the principle of rule of law?
  8. Underline or highlight 5 or 6 sentences in Attorney General Ashcroft’s speech that you think most powerfully convey his views.
- C. Have students read Steve Frank’s post, USA Patriot Act: What Has Changed and What Hasn’t?, February 10, 2011 and write a short op-ed on the issue.
  - a. <http://blog.constitutioncenter.org/2011/02/usa-patriot-act-what-has-changed-and-what-hasnt/>



# Department of Justice Summary of the Patriot Act

**Directions:** As you read, make marginal notes to identify constitutional principles and goals of government related to this law.

**Vocabulary:** electronic surveillance, wiretaps, FISA, FISC

## USA Patriot Act Department of Justice Summary

Congress enacted the Patriot Act by overwhelming, bipartisan margins arming law enforcement with new tools to detect and prevent terrorism: The USA Patriot Act was passed nearly unanimously by the Senate 98-1, and 357-66 in the House, with the support of members from across the political spectrum.

### The Act Improves Our Counter-Terrorism Efforts in Several Significant Ways:

**The Patriot Act allows investigators to use the tools that were already available to investigate organized crime and drug trafficking.**

Many of the tools the Act provides to law enforcement to fight terrorism have been used for decades to fight organized crime and drug dealers, and have been reviewed and approved by the courts. As Sen. Joe Biden (D-DE) explained during the floor debate about the Act, “the FBI could get a wiretap to investigate the mafia, but they could not get one to investigate terrorists. To put it bluntly, that was crazy! What’s good for the mob should be good for terrorists.” (Cong. Rec., 10/25/01)

**Allows law enforcement to use surveillance against more crimes of terror.** Before the Patriot Act, courts could permit law enforcement to conduct electronic surveillance to investigate many ordinary, non-terrorism crimes, such as drug crimes, mail fraud, and passport fraud. Agents also could obtain

wiretaps to investigate some, but not all, of the crimes that terrorists often commit. The Act enabled investigators to gather information when looking into the full range of terrorism-related crimes, including: chemical-weapons offenses, the use of weapons of mass destruction, killing Americans abroad, and terrorism financing.

**Allows federal agents to follow sophisticated terrorists trained to evade detection.** For years, law enforcement has been able to use “roving wiretaps” to investigate ordinary crimes, including drug offenses and racketeering. A roving wiretap can be authorized by a federal judge to apply to a particular suspect, rather than a particular phone or communications device. Because international terrorists are sophisticated and trained to thwart surveillance by rapidly changing locations and communication devices such as cell phones, the Act authorized agents to seek court permission to use the same techniques in national security investigations to track terrorists.

**Allows law enforcement to conduct investigations without tipping off terrorists.** In some cases if criminals are tipped off too early to an investigation, they might flee, destroy evidence, intimidate or kill witnesses, cut off contact with associates, or take other action to evade arrest. Therefore, federal courts in narrow circumstances long have allowed law enforcement to delay for a limited time when the subject is told that a judicially-approved search warrant has been executed. Notice is always provided, but the reasonable delay gives



law enforcement time to identify the criminal's associates, eliminate immediate threats to our communities, and coordinate the arrests of multiple individuals without tipping them off beforehand. These delayed notification search warrants have been used for decades, have proven crucial in drug and organized crime cases, and have been upheld by courts as fully constitutional.

**Allows federal agents to ask a court for an order to obtain business records in national security terrorism cases.** Examining business records often provides the key that investigators are looking for to solve a wide range of crimes. Investigators might seek select records from hardware stores or chemical plants, for example, to find out who bought materials to make a bomb, or bank records to see who's sending money to terrorists. Law enforcement authorities have always been able to obtain business records in criminal cases through grand jury subpoenas, and continue to do so in national security cases where appropriate. These records were sought in criminal cases such as the investigation of the Zodiac gunman, where police suspected the gunman was inspired by a Scottish occult poet, and wanted to learn who had checked the poet's books out of the library. In national security cases where use of the grand jury process was not appropriate, investigators previously had limited tools at their disposal to obtain certain business records. Under the Patriot Act, the government can now ask a federal court (the Foreign Intelligence Surveillance Court), if needed to aid an investigation, to order production of the same type of records available through grand jury subpoenas. This federal court, however, can issue these orders only after the government demonstrates the records concerned are sought for an authorized investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely on the basis of activities protected by the First Amendment.

**The Patriot Act facilitated information sharing and cooperation among government agencies so that they can better "connect the dots."**

The Act removed the major legal barriers that prevented the law enforcement, intelligence, and national defense communities from talking and coordinating their work to protect the American people and our national security. The government's prevention efforts should not be restricted by boxes on an organizational chart. Now police officers, FBI agents, federal prosecutors and intelligence officials can protect our communities by "connecting the dots" to uncover terrorist plots before they are completed. As Sen. John Edwards (D-N.C.) said about the Patriot Act, "we simply cannot prevail in the battle against terrorism if the right hand of our government has no idea what the left hand is doing" (Press release, 10/26/01)

Prosecutors and investigators used information shared pursuant to section 218 in investigating the defendants in the so-called "Virginia Jihad" case. This prosecution involved members of the Dar al-Arqam Islamic Center, who trained for jihad in Northern Virginia by participating in paintball and paramilitary training, including eight individuals who traveled to terrorist training camps in Pakistan or Afghanistan between 1999 and 2001. These individuals are associates of a violent Islamic extremist group known as Lashkar-e-Taiba (LET), which operates in Pakistan and Kashmir, and that has ties to the al Qaeda terrorist network. As the result of an investigation that included the use of information obtained through FISA, prosecutors were able to bring charges against these individuals. Six of the defendants have pleaded guilty, and three were convicted in March 2004 of charges including conspiracy to levy war against the United States and conspiracy to provide material support to the Taliban. These nine defendants received sentences ranging from a prison term of four years to life imprisonment.

## Handout A: Page 3

### **The Patriot Act updated the law to reflect new technologies and new threats.**

The Act brought the law up to date with current technology, so we no longer have to fight a digital-age battle with antique weapons-legal authorities leftover from the era of rotary telephones. When investigating the murder of Wall Street Journal reporter Daniel Pearl, for example, law enforcement used one of the Act's new authorities to use high-tech means to identify and locate some of the killers.

**Allows law enforcement officials to obtain a search warrant anywhere a terrorist-related activity occurred.** Before the Patriot Act, law enforcement personnel were required to obtain a search warrant in the district where they intended to conduct a search. However, modern terrorism investigations often span a number of districts, and officers therefore had to obtain multiple warrants in multiple jurisdictions, creating unnecessary delays. The Act provides that warrants can be obtained in any district in which terrorism-related activities occurred, regardless of where they will be executed. This provision does not change the standards governing the availability of a search warrant, but streamlines the search-warrant process.

**Allows victims of computer hacking to request law enforcement assistance in monitoring the “trespassers” on their computers.** This change made the law technology-neutral; it placed electronic trespassers on the same footing as physical trespassers. Now, hacking victims can seek law enforcement assistance to combat hackers, just as burglary victims have been able to invite officers into their homes to catch burglars.

### **The Patriot Act increased the penalties for those who commit terrorist crimes.**

Americans are threatened as much by the terrorist who pays for a bomb as by the one who pushes the button. That's why the Patriot Act imposed tough new penalties on those who commit and support

terrorist operations, both at home and abroad. In particular, the Act:

**Prohibits the harboring of terrorists.** The Act created a new offense that prohibits knowingly harboring persons who have committed or are about to commit a variety of terrorist offenses, such as: destruction of aircraft; use of nuclear, chemical, or biological weapons; use of weapons of mass destruction; bombing of government property; sabotage of nuclear facilities; and aircraft piracy.

**Enhanced the inadequate maximum penalties for various crimes likely to be committed by terrorists:** including arson, destruction of energy facilities, material support to terrorists and terrorist organizations, and destruction of national-defense materials.

**Enhanced a number of conspiracy penalties,** including for arson, killings in federal facilities, attacking communications systems, material support to terrorists, sabotage of nuclear facilities, and interference with flight crew members. Under previous law, many terrorism statutes did not specifically prohibit engaging in conspiracies to commit the underlying offenses. In such cases, the government could only bring prosecutions under the general federal conspiracy provision, which carries a maximum penalty of only five years in prison.

**Punishes terrorist attacks on mass transit systems.**

**Punishes bioterrorists.**

**Eliminates the statutes of limitations for certain terrorism crimes and lengthens them for other terrorist crimes.**

The government's success in preventing another catastrophic attack on the American homeland since September 11, 2001, would have been much more difficult, if not impossible, without the USA Patriot Act. The authorities Congress provided have substantially enhanced our ability to prevent, investigate, and prosecute acts of terror.

# B

## Preamble and Fourth Amendment

### Preamble

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

### Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Critical Thinking Questions

1. What concepts or principles of government do these statements have in common?
2. In what ways might tension develop between the goals expressed in the Preamble and the guarantees contained in the Fourth Amendment?



# Senator Rand Paul's Letter of Opposition to the Patriot Act, February 15, 2011

**Directions:** Read the passages below from a letter written by Rand Paul, an ophthalmologist who was elected as a U.S. Senator from Kentucky in 2010, to his colleagues in the Senate in 2011 and answer the questions that follow.

## Passage 1

Dear Colleague:

[Revolutionary era patriot] James Otis argued against general warrants and writs of assistance that were issued by British soldiers without judicial review and that did not name the subject or items to be searched.

He condemned these general warrants as “the worst instrument[s] of arbitrary power, the most destructive of English liberty and the

fundamental principles of law, that ever w[ere] found in an English law book.” Otis objected to these writs of assistance because they “placed the liberty of every man in the hands of every petty officer.” The Fourth Amendment was intended to guarantee that only judges—not soldiers or policemen—would issue warrants. Otis’ battle against warrantless searches led to our Fourth Amendment guarantee against unreasonable government intrusion.

## Questions

1. What were writs of assistance? Why did James Otis object to them?
2. What “fundamental principles of law” do you think James Otis and Senator Paul had in mind?

## Passage 2

My main objection to the Patriot Act is that searches that should require a judge’s warrant are performed with a letter from an FBI agent—a National Security Letter (“NSL”).

I object to these warrantless searches being performed on United States citizens. I object to the 200,000 NSL searches that have been performed without a judge’s warrant.

I object to over 2 million searches of bank records, called Suspicious Activity Reports, performed on U.S. citizens without a judge’s warrant.

As February 28th approaches, with three provisions of the USA Patriot Act set to expire, it is time to re-consider this question: Do the many provisions of this bill, which were enacted in such haste after 9/11, have an actual basis in our Constitution, and are they even necessary to achieve valid law-enforcement goals?

## Questions

1. What are NSLs and why do you think the FBI would want to use them? In what ways are NSLs similar to/different from writs of assistance? What principles/goals of constitutional government might be violated by such tools of the executive branch? What principles/goals of government might be strengthened?
2. In *Carroll v. United States* (1925), the Supreme Court ruled that warrantless searches of cars that might be transporting liquor in violation of the National Prohibition Act (1919) were unconstitutional. The Court explained that it “would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search...” This case established the Carroll doctrine, which allows a police officer to conduct a warrantless search of a vehicle only if he has probable cause to believe that a vehicle is transporting contraband or other items related to a crime, and that the vehicle could be removed from the area before a warrant could be obtained. To what extent, and based on what constitutional principles, is the Carroll doctrine relevant in considering of NSLs?

## Passage 3

The USA Patriot Act, passed in the wake of the worst act of terrorism in U.S. history, is no doubt well-intentioned. However, rather than examine what went wrong, and fix the problems, Congress instead hastily passed a long-standing wish list of power grabs like warrantless searches and roving wiretaps. The government greatly expanded its own power, ignoring obvious answers in favor of the permanent expansion of a police state.

It is not acceptable to willfully ignore the most basic provisions of our Constitution—in this case—the Fourth and First Amendments—in the name of “security.”

For example, one of the three provisions set to expire on February 28th—the “library provision,” section 215 of the Patriot Act—allows the

government to obtain records from a person or entity by making only the minimal showing of “relevance” to an international terrorism or espionage investigation. This provision also imposes a year-long nondisclosure, or “gag” order. “Relevance” is a far cry from the Fourth Amendment’s requirement of probable cause. Likewise, the “roving wiretap” provision, section 206 of the Patriot Act, which is also scheduled to expire on the 28th, does not comply with the Fourth Amendment. This provision makes possible “John Doe roving wiretaps,” which do not require the government to name the target of the wiretap, nor to identify the specific place or facility to be monitored. This bears an uncanny resemblance to the Writs of Assistance fought against by Otis and the American colonists.

## Questions

1. What provisions of the Patriot Act were set to expire in 2011 under a sunset provision?
2. What did Senator Paul see as the real reason behind the Patriot Act?
3. Section 215 of the Patriot Act authorizes the government to obtain “any tangible thing” relevant to a



terrorism investigation, even if there is no probable cause to believe that the “thing” actually relates to suspected terrorists or terrorist activities. What constitutional protections may be violated by this, and other aspects of Section 215?

## Passage 4

Other provisions of the Patriot Act previously made permanent and not scheduled to expire present even greater concerns. These include the use and abuse by the FBI of so-called National Security Letters. These secret demand letters, which allow the government to obtain financial records and other sensitive information held by Internet Service Providers, banks, credit companies, and telephone carriers—all without appropriate judicial oversight—also impose a gag order on recipients.

NSL abuse has been and likely continues to be rampant. The widely-circulated 2007 report issued by the Inspector General from the Department of Justice documents “widespread and serious misuse of the FBI’s national security letter authorities. In many instances, the FBI’s misuse of national security letters violated NSL statutes, Attorney General Guidelines, or the FBI’s own internal policies.” Another audit released in 2008 revealed similar abuses, including the fact that the FBI had issued inappropriate “blanket NSLs” that did not comply with FBI policy, and which allowed the FBI to obtain data on 3,860 telephone numbers by issuing only eleven “blanket NSLs.” The 2008 audit also confirmed that the FBI increasingly used NSLs to seek information on U.S. citizens. From 2003 to 2006, almost 200,000 NSL requests were issued. In 2006 alone, almost 60% of the 49,425 requests were issued specifically for investigations of U.S. citizens or legal aliens.

In addition, First Amendment advocates should be concerned about an especially troubling aspect of the 2008 audit, which documented a situation in which the FBI applied to the United States Foreign Intelligence Surveillance Court (FISC) to obtain a section 215 order. The Court denied the order on First Amendment grounds. Not to be deterred, the FBI simply used an NSL to obtain the same information.

A recent report released by the Electronic Frontier Foundation (“EFF”) entitled, “Patterns of Misconduct: FBI Intelligence Violations from 2001-2008,” documents further NSL abuse. EFF estimates that, based on the proportion of violations reported to the Intelligence Oversight Board and the FBI’s own statements regarding NSL violations, the actual number of violations that may have occurred since 2001 could approach 40,000 violations of law, Executive Order, and other regulations.

Yet another troublesome (and now permanent) provision of the Patriot Act is the expansion of Suspicious Activity Reports. Sections 356 and 359 expanded the types of financial institutions required to file reports under the Bank Secrecy Act. The personal and account information required by the reports is turned over to the Treasury Department and the FBI. In 2000, there were only 163,184 reports filed. By 2007, this had increased to 1,250,439. Again, as with NSLs, there is a complete lack of judicial oversight for SARs.

## Questions

1. Why do you think Senator Paul wrote that these other provisions of the Patriot Act “present even greater concerns”?
2. What did he mean by “NSL abuse,” and what do you think is the most troubling example he gave? What constitutional principles or protections are called into question by these abuses?
3. What role did Senator Paul believe the Patriot Act played in initiating these abuses?

## Passage 5

Finally, I wish to remind my colleagues that one of the many ironies of the rush to advance the Patriot Act following 9/11 is the well-documented fact that FBI incompetence caused the failure to search the computer of the alleged 20th hijacker, Zacarias Moussaoui. As FBI agent Coleen Rowley stated, “the FBI headquarters supervisory special agent handling the Moussaoui case ‘seemed to have been consistently almost deliberately thwarting the Minneapolis FBI agents’ efforts” to meet the FISA standard for a search warrant, and therefore no request was ever made for a warrant. Why, then, was the FBI rewarded with such expansive new powers in the aftermath of this institutional failure?

In the words of former Senator Russ Feingold, the only “no” vote against the original version of the Patriot Act,

“[T]here is no doubt that if we lived in a police state, it would be easier to catch terrorists. If

we lived in a country that allowed the police to search your home at any time for any reason; if we lived in a country that allowed the government to open your mail, eavesdrop on your phone conversations, or intercept your email communications; if we lived in a country that allowed the government to hold people in jail indefinitely based on what they write or think, or based on mere suspicion that they are up to no good, then the government would no doubt discover and arrest more terrorists. But that probably would not be a country in which we would want to live. And that would not be a country for which we could, in good conscience, ask our young people to fight and die. In short, that would not be America.”

I call upon each of my Senate colleagues to seriously consider whether the time has come to re-evaluate many—if not all—provisions of the Patriot Act. Our oath to uphold the Constitution demands it.

## Questions

1. Why do you think he wrote to his fellow Senators that their oath to uphold the Constitution demanded that they re-evaluate the Patriot Act? What constitutional principles do you think he had in mind?
2. Underline or highlight 5 or 6 sentences in Senator Paul’s speech that you think most powerfully convey his views.

## Handout C: Page 5

*Note: On May 26, 2011, Congress voted to extend for four years the following provisions that had been set to expire. The House of Representatives vote was 250–153, and the Senate vote was 72–23. Later that same evening, President Obama signed the legislation.*

- *Section 206 of the Patriot Act, which provides for roving wiretaps of those who try to avoid Foreign Intelligence Surveillance Act (FISA) monitoring.*
- *Section 215 of the Patriot Act, which allows the FBI to apply to the FISA court to issue orders granting the government access to any tangible items in foreign intelligence, international terrorism and clandestine intelligence cases.*
- *Section 6001 of the Intelligence Reform and Terrorist Prevention Act of 2004, which closes a loophole that could allow individual terrorists not affiliated with specific organizations to avoid FISA surveillance (the “lone wolf” provision).*





# Remarks from President Barack Obama, August 9, 2013

**Directions:** Read the passages below and answer the questions that follow.

**Background:** *In May and June 2013, Edward Snowden released to journalists information about secret U.S. National Security Agency (NSA) programs. Snowden was a computer systems administrator who had worked for the Central Intelligence Agency, the Defense Intelligence Agency, and as a private contractor inside National Security Administration facilities. He maintained that, through warrantless domestic surveillance, classified NSA programs violated the U.S. Constitution. He saw himself as a whistle-blower to help stop such abuses by making them public. In June, Snowden was charged with theft of government property and violation of the Espionage Act of 1917. He fled the U.S. in order to avoid prosecution, arriving in Moscow, Russia, and receiving temporary asylum to remain there in August. Shortly thereafter, President Obama held a press conference to address some of the concerns raised by Snowden's activities. Snowden has since been granted approval to live in Russia at least until 2017.*

**The White House East Room**

**Office of the Press Secretary**

**For Immediate Release**

**August 09, 2013; 3:09 P.M. EDT**

**Remarks by the President in a Press Conference**

## Passage 1

THE PRESIDENT: Good afternoon, everybody. Please have a seat.

Over the past few weeks, I've been talking about what I believe should be our number-one priority as a country—building a better bargain for the middle class and for Americans who want to work their way into the middle class. At the same time, I'm focused on my number-one responsibility as Commander-in-Chief, and that's keeping the American people safe. And in recent days, we've been reminded once again about the threats to our nation.

As I said at the National Defense University back in May, in meeting those threats we have to strike the right balance between protecting our security and preserving our freedoms. And as part of this rebalancing, I called for a review of our surveillance programs. Unfortunately, rather than an orderly and lawful process to debate these issues and come up with appropriate reforms, repeated leaks of classified information have initiated the debate in a very passionate, but not always fully informed way.

Now, keep in mind that as a senator, I expressed a healthy skepticism about these programs, and

## Handout D: Page 2

as President, I've taken steps to make sure they have strong oversight by all three branches of government and clear safeguards to prevent abuse and protect the rights of the American

people. But given the history of abuse by governments, it's right to ask questions about surveillance—particularly as technology is reshaping every aspect of our lives.

### Question

1. What specific incidents might the President have had in mind when he noted, "But given the history of abuse by governments, it's right to ask questions about surveillance—particularly as technology is reshaping every aspect of our lives"?

## Passage 2

I'm also mindful of how these issues are viewed overseas, because American leadership around the world depends upon the example of American democracy and American openness—because what makes us different from other countries is not simply our ability to secure our nation, it's the way we do it—with open debate and democratic process.

In other words, it's not enough for me, as President, to have confidence in these programs. The American people need to have confidence in them as well. And that's why, over the last few weeks, I've consulted members of Congress who come at this issue from many different perspectives. I've asked the Privacy and Civil Liberties Oversight Board to review where our counterterrorism efforts and our values come into tension, and I directed my national security team to be more transparent and to pursue reforms of our laws and practices.

And so, today, I'd like to discuss four specific steps—not all inclusive, but some specific steps that we're going to be taking very shortly to move the debate forward.

First, I will work with Congress to pursue appropriate reforms to Section 215 of the Patriot Act—the program that collects telephone records. As I've said, this program is an important tool in

our effort to disrupt terrorist plots. And it does not allow the government to listen to any phone calls without a warrant. But given the scale of this program, I understand the concerns of those who would worry that it could be subject to abuse...

For instance, we can take steps to put in place greater oversight, greater transparency, and constraints on the use of this authority. So I look forward to working with Congress to meet those objectives.

Second, I'll work with Congress to improve the public's confidence in the oversight conducted by the Foreign Intelligence Surveillance Court, known as the FISC. The FISC was created by Congress to provide judicial review of certain intelligence activities so that a federal judge must find that our actions are consistent with the Constitution. However, to build greater confidence, I think we should consider some additional changes to the FISC.

...while I've got confidence in the court and I think they've done a fine job, I think we can provide greater assurances that the court is looking at these issues from both perspectives—security and privacy.

So, specifically, we can take steps to make sure civil liberties concerns have an independent

## Handout D: Page 3

voice in appropriate cases by ensuring that the government's position is challenged by an adversary.

Number three, we can, and must, be more transparent. ...So at my direction, the Department of Justice will make public the legal rationale for the government's collection activities under Section 215 of the Patriot Act. The NSA is taking steps to put in place a full-time civil liberties and privacy officer, and released information that details its mission, authorities, and oversight. And finally, the intelligence community is creating a website that will serve as a hub for further transparency, and this will give Americans and the world the ability to learn more about what our intelligence community does and what it doesn't do, how it carries out its mission, and why it does so.

Fourth, we're forming a high-level group of outside experts to review our entire intelligence

and communications technologies. We need new thinking for a new era. We now have to unravel terrorist plots by finding a needle in the haystack of global telecommunications. And meanwhile, technology has given governments—including our own—unprecedented capability to monitor communications.

So I am tasking this independent group to step back and review our capabilities—particularly our surveillance technologies. And they'll consider how we can maintain the trust of the people, how we can make sure that there absolutely is no abuse in terms of how these surveillance technologies are used, ask how surveillance impacts our foreign policy—particularly in an age when more and more information is becoming public. And they will provide an interim report in 60 days and a final report by the end of this year, so that we can move forward with a better understanding of how these programs impact our security, our privacy, and our foreign policy.

### Questions

1. What concrete steps did the President describe in order to increase the confidence of the American people with respect to our surveillance programs? What constitutional principles are suggested by each of these steps?
2. To what extent did President Obama agree with Snowden's views?
3. President Obama listed four concrete steps that his administration would take beginning in 2013. Research these actions to determine what progress has been made with respect to these commitments.

### Passage 3

So all these steps are designed to ensure that the American people can trust that our efforts are in line with our interests and our values. And to others around the world, I want to make clear once again that America is not interested in spying on ordinary people. Our intelligence is focused, above all, on finding the information that's necessary to protect our people, and—in many cases—protect our allies.

It's true we have significant capabilities. What's also true is we show a restraint that many governments around the world don't even think to do, refuse to show—and that includes, by the way, some of America's most vocal critics. We shouldn't forget the difference between the ability of our government to collect information online under strict guidelines and for narrow purposes, and the willingness of some other

## Handout D: Page 4

governments to throw their own citizens in prison for what they say online.

And let me close with one additional thought. The men and women of our intelligence community work every single day to keep us safe because they love this country and believe in our values. They're patriots. And I believe that those who

have lawfully raised their voices on behalf of privacy and civil liberties are also patriots who love our country and want it to live up to our highest ideals. So this is how we're going to resolve our differences in the United States—through vigorous public debate, guided by our Constitution, with reverence for our history as a nation of laws, and with respect for the facts.

### Questions

1. What specific examples might the president have had in mind in referring to “the willingness of some other governments to throw their own citizens in prison for what they say online”?
2. President Obama stated that we resolve our differences in the United States “through vigorous public debate, guided by our Constitution, with reverence for our history as a nation of laws, and with respect for the facts.” What specific constitutional principles and/or virtues are suggested by this manner of resolving disputes?

**Directions:** Create a text message or Twitter feed (including hashtags or #) dialogue between President Obama (@Obama) and Senator Paul (@Paul) which illustrates their positions. Provide at least 3 comments each that depict each position.

**Rand Paul****Barack Obama****Rand Paul****Barack Obama****Rand Paul**



**Barack Obama**



**Rand Paul**



**Barack Obama**



**Rand Paul**



**Barack Obama**



**Rand Paul**

# Answer Keys

## Handout A: Department of Justice Summary of the Patriot Act

As they annotate their copies of this document, students may list constitutional principles and goals of government including republicanism, separation of powers, protection against unreasonable search and seizure, protection of free speech, justice, providing for the common defense, and promoting the general welfare.

## Handout B: Preamble and Fourth Amendment

1. Answers will vary, but may include the following points:

Protection against unreasonable searches and seizures was clearly one of the “blessings of liberty” that the Framers of the Constitution and Bill of Rights had in mind.

The requirement of specific warrants issued by judges supports the goal of establishing justice.

Complaint against the British crown’s use of writs of assistance and general warrants was a well-known colonial grievance, perhaps most famously highlighted by James Otis. Protection against such procedures was essential to form a more perfect union, insure domestic tranquility, and promote the general welfare of the people

Additional constitutional principles suggested by both documents are liberty, limited government, rule of law, natural rights, due process, and representative government.

2. It may seem easier to provide for the common defense if authorities are not bound by due process. However, can the government provide for the common defense if it alienates the very people whose support it needs?

## Handout C: Senator Rand Paul’s Letter of Opposition to the Patriot Act February 15, 2011

### Passage 1

1. Writs of assistance were general warrants that were issued by British soldiers in colonial America without judicial review and that did not name the subject or items to be searched. Otis objected to these writs of assistance because they “placed the liberty of every man in the hands of every petty officer.”
2. “Fundamental principles” might include liberty, natural rights, limited government, due process (including freedom from unreasonable search and seizure), separation of powers, rule of law, justice, freedom of speech, and others

### Passage 2

1. National Security Letters, or NSLs, from FBI agents took the place of warrants issued by judges. The FBI might use them in order to save time in urgent situations, or they might represent a pretext for abuse of power in some other situations. NSLs are very similar to writs of assistance because they remove any check on the officer conducting the search. They allow “fishing expeditions” where



## Answer Keys: Page 2

officers can make up their own rules for the search, and violate the principles of liberty, limited government, separation of powers, rule of law and due process. It would seem that NSLs are simply a modern version of general warrants.

2. The Court's (7-2) decision in *Carroll v. United States* (1925) upholding the requirement of probable cause for a search of a vehicle repudiates the reasoning behind modern NSLs. Principles of government include limited government, rule of law, due process, freedom from unreasonable search and seizure, and others.

### Passage 3

1. Under a sunset provision, the following provisions of the Patriot Act were to expire unless reauthorized by Congress and the President.
  - Section 215 allowing the government to obtain records, "any tangible thing," from a person or entity by making only the minimal showing of "relevance" to an international terrorism or espionage investigation.
  - Section 206, the "roving wiretap" provision of the Patriot Act
  - Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004, or the so-called "Lone Wolf" provision (Note—this one is not mentioned in the passage, but this is the third provision to which Senator Paul refers.)
2. Senator Paul suggested that the real reason behind the Patriot Act was to carry out a "long-standing wish list of power grabs like warrantless searches and roving wiretaps."
3. Constitutional principles that may be threatened by Section 215 are freedom from unreasonable search and seizure, freedom of speech (gag rule), due process, and others.

### Passage 4

1. Senator Paul explained that other provisions (National Security Letters and Suspicious Activity Reports) allow the government to gather a great deal of sensitive personal information without judicial oversight, leading to abuse. He described several reports documenting examples of abuse, for example, situations in which the FBI did not follow its own rules.
2. NSL abuse involves violating the NSL statutes, Attorney General guidelines, or FBI internal policies, as well as the collection of data on U.S. citizens or legal aliens. The Electronic Frontier Foundation ("EFF") estimates that, "based on the proportion of violations reported to the Intelligence Oversight Board and the FBI's own statements regarding NSL violations, the actual number of violations that may have occurred [from 2001 – 2008] could approach 40,000 violations of law, executive order, and other regulations." Students should be able to explain which example of abuse they consider the most troubling, and why. They may list constitutional principles such as freedom from unreasonable search and seizure, rule of law, due process, limited government, liberty, free speech, and others.
3. Senator Paul noted that the Patriot Act makes abuses like NSLs and SARs permanent. Students may note additional issues.



**Passage 5**

1. Senator Paul wrote that legislators are bound by their oath to the Constitution to re-evaluate the Patriot Act because he believes that many of its provisions, and the bureaucracy that developed to administer them, violate constitutional principles. Examples may include principles of liberty, limited government, separation of powers, rule of law, justice, due process, freedom of speech, and freedom from unreasonable search and seizure.
2. Students should be prepared to share and justify their assessment of the most important or most powerful portions of the entire document.

**Handout D: Remarks from President Barack Obama, August 9, 2013**

**Passage 1**

1. Student responses will reflect their background knowledge, which may include the following examples. Specific incidents in which government use of surveillance has abused the rights of citizens might include writs of assistance in colonial America, the U.S. Sedition Acts of 1798 and 1918, use of Stasi informants in Nazi Germany; law enforcement use of informants in the former Soviet Union; U.S. use of illegal surveillance of Vietnam War protesters during the Johnson and Nixon administrations, and North Korea's web of political informants.

**Passage 2**

1. President Obama describes the following steps:

First, Have Congress pursue appropriate reforms to Section 215 of the Patriot Act—the program that collects telephone records. Reforms might include greater oversight, greater transparency, and constraints on the use of this authority.

Second, additional changes to the FISC taking steps to make sure civil liberties are protected by ensuring that the government's position is challenged by an adversary.

Third, we can, and must, be more transparent: The Department of Justice will make public the legal rationale for the government's collection activities under Section 215 of the Patriot Act. The NSA is taking steps to put in place a full-time civil liberties and privacy officer. And finally, the intelligence community is creating a website that will serve as a hub for further transparency,

Fourth, the federal government is forming a high-level group of outside experts to review our entire intelligence and communications technologies. This independent group will make sure that there is absolutely no abuse in the use of surveillance technologies. Finally, they will provide an interim report in 60 days and a final report by the end of the year (2013), so that we can move forward with a better understanding of how these programs impact security, privacy, and foreign policy.

2. President Obama agreed with Edward Snowden's position in that safeguards must be imposed to prevent abuses of people's liberties and hold government to the rule of law even during wartime.
3. Student research would include a review of relevant steps since 2013 and should include current events.

### Passage 3

1. Student responses will reflect their background knowledge. Specific examples of other governments throwing their own citizens in prison for what they say online might include the following:
  - In Iran, posting illegal content or accessing blocked Internet content is punishable by long terms in jail.
  - In China, nearly 100 journalists and citizens are in prison because of their Internet activity. For example, cyber dissident Hu Jia was imprisoned for 3 ½ years and continues under house arrest.
  - Also in China, new users of micro-blogging sites are required to register with their name and telephone number, thus increasing the government's ability to track and potentially imprison them.
  - In Tibet, Buddhist monks are routinely under surveillance, and government authorities are prepared to raid monasteries at any given time. While no clear information exists regarding the arrest of any of the monks, computers, documents, photographs, and DVDs have been seized.
  - Additional likely countries to research: Turkmenistan, Saudi Arabia, Bahrain
  - Reporters Without Borders report, "Enemies of the Internet" suggests these additional countries and agencies as sources as potential abuse.
    - Belarus - the Operations and Analysis Centre conducts surveillance on its citizens.
    - India - the Centre for Development of Telematics
    - United Kingdom – the Government Communications Headquarters (GCHQ)
    - United States – the National Security Agency (NSA)
2. Specific constitutional principles might include liberty, limited government, separation of powers, rule of law, justice, due process (including freedom from unreasonable search and seizure), and freedom of speech. Virtues might include vigilance by citizens, justice, respect, responsibility, initiative, courage, honor, moderation, perseverance, resourcefulness, etc.

### Extension Activities

#### Remarks from Senator Feingold on October 25th, 2001

1. Students should refer to any 3 of these:
  - with a warrant the FBI should be able to seize voice mail messages as well as tap a phone.
  - to update the federal criminal offense relating to possession and use of biological weapons.
  - to make sure that phone conversations carried over cables would not have more protection from surveillance than conversations carried over phone lines.
  - to stiffen penalties and lengthen or eliminate statutes of limitation for certain terrorist crimes.
  - to assist the victims of crime,
  - to streamline the application process for public safety officers benefits and increase those benefits,

## Answer Keys: Page 5

- to provide more funds to strengthen immigration controls at our borders
  - to expedite the hiring of translators at the FBI, and many other such provisions.
2. Note to teachers: This is a key question to understanding the debate over the Patriot Act. Extending the new criminal procedure regulations to any federal criminal prosecution will result in significant reductions in due process protections for anyone accused of a federal crime.
  3. The longstanding practice under the Fourth Amendment of serving a warrant prior to executing a search could be easily avoided in virtually every case, because the government would simply have to show that it had “reasonable cause to believe” that providing notice “may” seriously jeopardize an investigation.” Notice is a key element of Fourth Amendment protections. It allows a person to point out mistakes in a warrant and to make sure that a search is limited to the terms of a warrant.
  4. Law enforcement agencies might support “sneak and peak” searches because they could make searches more efficient and safer for the officers conducting the searches.
  5. Senator Feingold predicted an abuse of power that might result from making it easier for owners of computers, such as employers, to give police permission to monitor communications from those computers. For example, an employer might use procedures aimed at terrorist activity trying to catch an employee violating the workplace rules regarding personal use of the computer. Feingold writes, “With this one provision, fourth amendment protections are potentially eliminated for a broad spectrum of electronic communications.”
  6. Law enforcement powers would be expanded because officers could use powers originally intended to conduct surveillance in foreign intelligence investigations in almost any domestic investigation of federal crime. The government would not have to meet the rigorous probable cause standard under the Fourth Amendment—as long as the government shows that intelligence is a “significant purpose” of the investigation—not the primary purpose as under previous law. It seems obvious that with this lower standard, the FBI would try to use FISA as much as it can. (Note Section 215.)
  7. Students should be prepared to share and justify their assessment of the most important or most powerful portions of the entire document.

### Remarks from Attorney General John Ashcroft, February 10, 2003

1. “Paradigm of prevention” refers to a new focus adopted by the U.S. and other freedom-loving countries. “We are working to bridge the gaps in our domestic law enforcement and security activities with greater cooperation and information sharing. We have broken down some of the artificial barriers separating needlessly our law enforcement and intelligence communities. Federal, state, and local law enforcement agencies have united in unprecedented cooperation, committed to a common goal.” The goal is to stop terrorism before it happens, not just prosecute and punish the guilty after the fact.
2. The shared values include the following
  - rule of law
  - progress and pluralism
  - tolerance and freedom

## Answer Keys: Page 6

- freedom of speech
  - freedom of religion
  - political democracy
  - equality and justice
3. Answers will vary; accept reasoned responses.
  4. Answers will vary, but may refer to Ashcroft's desire to demonstrate that the U.S. is not alone in its opposition to terrorism. He emphasized the common ground shared by nations that value freedom and the international threat of terrorism.
  5. Answers will vary, but Ashcroft explained that we have a better chance of preventing terrorism if we work with other countries to share information.
  6. Answers will vary, but may refer to the international effort to stop the spread of communism during the Cold War as a historical example of successful cooperation among countries.
  7. Ashcroft referred to "rule of law" at least 8 times in the document. Rule of law means that the laws of a country apply equally to everyone and are made by an open, fair, and predictable process. No one is above the law and the government must follow its own rules. Answers will vary regarding why Ashcroft emphasized the principle so much and how enhanced law enforcement powers might endanger the principle. Students might suggest that if law enforcement powers are enhanced, it becomes easier for officials to abuse the rights of the people. Accept well-reasoned responses.
  8. Students should be prepared to share and justify their assessment of the most important or most powerful portions of the entire document.