

Security, Liberty, and the USA PATRIOT ACT

OVERVIEW

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?

LEARNING OBJECTIVES

- 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.
- 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.

CONSTITUTIONAL PRINCIPLES

- rule of law
- limited government
- natural rights
- liberty
- executive power
- searches and seizures

RECOMMENDED TIME: 120 – 180 minutes

BACKGROUND READINGS: (Some readings are edited for length in the Handouts, but the full documents are available at the following websites.)

1. Department of Justice summary of USA PATRIOT Act (Handout B)
http://www.justice.gov/archive/ll/what_is_the_patriot_act.pdf

2. U.S. Senator Rand Paul opposition to USA PATRIOT Act, 2011 (Handout C)
<http://www.paul.senate.gov/record.cfm?id=331164>
3. President Barack Obama Press Conference – August 9, 2013 (Handout D)
<http://wh.gov/lq4h2>

ACTIVITIES

1. Have students work in pairs or small groups. Using available technology, project the text of the Preamble of the U.S. Constitution and the Fourth Amendment side-by-side, or provide each small group with a copy of **Handout A: 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.

2. To provide students with historical background, provide the following context information for the lesson:

- 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.
- 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, 2001. 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.

3. Review the USA PATRIOT Act and reaction to it.

a. Have students read **Handout B: 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. 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.

4. 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**.

C. 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:

- rule of law
- limited government
- natural rights
- liberty
- executive power
- searches and seizures

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.
 - 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.

EXTENSIONS

Additional documents that students might explore are the following:

1. **Remarks from Senator Russ Feingold on October 25th, 2001**

<http://www.gpo.gov/fdsys/pkg/CREC-2001-10-25/html/CREC-2001-10-25-pt1-PgS10990-2.htm>

Comprehension and Critical Thinking Questions

- a) Identify at least 3 provisions of the PATRIOT ACT which Senator Feingold supported.
- b) Why is it important that the changes in criminal procedure would apply to every federal criminal prosecution, rather than applying only to terrorism investigations?
- c) 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"?
- d) Why might law enforcement agencies support a provision such as the one the Senator criticizes?
- e) What was the Senator's fear regarding the monitoring of computer communications? Why did he see this as problematic?
- f) 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?
- g) Underline or highlight 5 or 6 sentences in Senator Feingold's speech that you think convey his views most powerfully.

2. Attorney General John Ashcroft – “Paradigm of Prevention” Speech, February 10, 2003

<http://www.justice.gov/archive/ag/speeches/2003/021003agcouncilonforeignrelation.htm>

Comprehension and Critical Thinking Questions

- a) 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?
- b) Attorney General Ashcroft stated that the targets of the terrorists are “the shared values of free peoples.” What are some of those values?
- c) Did Ashcroft omit any “shared values of free peoples”? If so, what are they?
- d) Why do you think Attorney General Ashcroft emphasizes international cooperation?
- e) Why do you think he views information as the best friend of prevention?
- f) Why do you think Attorney General Ashcroft refers to previous generations’ struggle against communism?
- g) 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?
- h) Underline or highlight 5 or 6 sentences in Attorney General Ashcroft’s speech that you think most powerfully convey his views.

3. Read Steve Frank’s Feb. 10, 2011 post, **USA PATRIOT Act: what has changed and what hasn’t?** <http://blog.constitutioncenter.org/2011/02/usa-patriot-act-what-has-changed-and-what-hasnt/>

Write a short op-ed on the issue.

4. Encourage students to research further developments related to the Patriot Act.