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**The USA Patriot Act**

<http://gjs.appstate.edu/media-coverage-crime-and-criminal-justice/usa-patriot-act>

## **Introduction**

On September 11, 2001, the United States was attacked in a brutally violent way. Nearly 3,000 Americans lost their lives in a couple of hours. In the wake of the attacks, Congress passed a law – the USA PATRIOT Act – that broadens definitions of terrorism, toughens sentences for convicted terrorists, and generally makes it easier for law enforcement and intelligence agencies to gather and share reams of information – some related to terror investigations and some not.

The USA PATRIOT Act stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism." This bill was signed into law with little debate on October 26, 2001, only 45 days after the attacks that rocked our country. The vote in favor of the law was overwhelming and bi-partisan – 98 to 1 in the US Senate and 357 to 66 in the US House of Representatives. Yet, the bill was 342 pages long, and many members of Congress now say they did not even read it before voting in favor.

Author Steven Brill (2003) asserts in his book, *After: Rebuilding and Defending America in the September 12 Era*, that the version of the USA PATRIOT Act voted on by Congress was not the bill that had been approved in committee and that had been endorsed by the American Civil Liberties Union (ACLU). Additionally, no conference report was included when the bill was presented to the Congress, meaning the compromise product negotiated by the conference committee was not submitted to each chamber of Congress for its consideration.

Constitutional lawyer and author Stephan Rohde (2003) explains that the ACLU engaged in the process of legislation. Compromises were made, some of the more egregious provisions of the administration's bill were removed. Then the bill went into conference committee in October of 2001 and that's when John Ashcroft said, "If you don't pass the original bill as introduced by the administration the next terrorist attack will be on your shoulders." Intimidated in that fashion, stamped 3:25 a.m. in a closed session, the conference committee of the Senate and the House reverted to the original administration bill and we got the USA PATRIOT Act. Men and women who voted for it called the ACLU the next morning and said, "What did I vote for?"

According to Bernard Weiner (2003), professor of American politics and international relations at Western Washington University and San Diego State University: "The White House hustled the so-called USA PATRIOT Act through a frightened Congress in a patriotic blur, just a few days after the attacks, with few, if any, of the legislators having had time to read the final version."

If such claims are true, then the law may not be a rational response to the attacks of September 11, 2001. Rather, the law could possibly be a well-coordinated and long-planned effort by some in the Justice Department to tilt the scales so far in favor of law enforcement and intelligence agencies that civil liberties of Americans may be sacrificed as a result. Only

time will tell if this is the case.

In this paper, I outline basic facts of the USA PATRIOT Act, discussing its benefits and threats to civil liberties. I also lay out important realities of the law, including how it is being used, and examine whether the intrusions it imposes on American citizens are reasonable. I also discuss the backlash against the law. I conclude with a discussion on the likely future of the law and implications of the law for the criminal justice discipline. The main purpose of the paper is to thoroughly summarize and critically analyze the USA PATRIOT Act, for the benefit of those working in the discipline of criminal justice – who have, as of the current day largely ignored the law.

### **Purposes and Benefits of the USA PATRIOT Act**

The stated purpose of the USA PATRIOT Act was: "To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes." It is these "other purposes" that have legal experts and normal citizens very worried. This law is very complex and it modifies several existing laws, including the Electronic Communications Privacy Act, Computer Fraud and Abuse Act, Foreign Intelligence Surveillance Act, Family Education Rights and Privacy Act, Pen Register and Trap and Trace Statute, Money Laundering Act, Immigration and Nationality Act, Money Laundering Control Act, Bank Secrecy Act, Right to Financial Privacy Act, and the Fair Credit Reporting Act (Electronic Privacy Information Center, 2003).

Many parts of the law may be needed to prevent future acts of terrorist violence against the United States. For example, the law encourages and makes it easier for law enforcement agencies at different levels of government to share information, as well as for federal agencies with varying missions to share information on people seeking admission into the United States. The Justice Department asserts that this makes it easier for them to "connect the dots" of information in order to develop a complete picture about potential terrorist threats (US Department of Justice, 2003; US Department of Justice, 2005b).

Additionally, the law makes it easier to enforce money laundering statutes and to freeze assets of certain organizations in order to disrupt financing of terrorists. The law also increases the ability of law enforcement officials to intercept discussions of terror plans by granting them greater power to monitor telephone and Internet conversations of suspects.

Further, the law increases funding to patrol and secure the Northern border of the United States, a border that has already been exploited by would-terrorists. The law permits the Attorney General to pay rewards to combat terrorism and provides funding opportunities for training of firefighters and other first responders.

Finally, the USA PATRIOT Act grants government agencies powers in terrorism investigations that it already uses in non-terrorist crimes. An example is delayed notification search warrants, which "are a long-existing, crime-fighting tool upheld by courts nationwide for decades in organized crime, drug cases and child pornography" (US Department of Justice, 2005b). According to the Justice Department, the law "codified the authority law enforcement had already used for decades. This tool is a vital aspect of our strategy of prevention – detecting and incapacitating terrorists before they are able to strike." Another

example is greater power to tap and monitor telephone and Internet use of mobile suspects through "roving wiretaps," which have been used in other criminal offenses for years.

### **Will the USA PATRIOT Act Protect America?**

For the first two years under the law, no one knew for sure just how the USA PATRIOT Act was actually being used, mostly because the Justice Department resisted virtually all requests for information based upon claims that the information is classified in order to protect national security. Part of the problem with the USA PATRIOT Act is that its implementation has been so secretive.

Early claims by the Justice Department offered some clues about how the USA PATRIOT Act was being used. For example, in sworn testimony to the House of Representatives Committee on the Judiciary, then Attorney General John Ashcroft noted 70 investigations into "terror's money trail," where he claimed more than \$125 million in assets and over 600 accounts had been frozen around the world. Further, he said hundreds of suspected terrorists throughout the US had been identified and tracked, with nearly 20,000 subpoenas and search warrants issued (US Department of Justice, 2003).

The Attorney General also reported that more than 1,000 international terrorists, spies and foreign powers were investigated using Foreign Intelligence Surveillance Act (FISA) tools in 2002 alone. The Justice Department requested 170 emergency warrants from the FISA Court, more than triple the total number of emergency FISA warrants obtained in the previous 23 years (Congressional Record, 2002). The Justice Department did not mention how many American citizens were investigated using FISA warrants.

The FISA Court is a top-secret court created in 1978 by Congress for "the purpose" of regulating foreign intelligence gathering activities. Amended by the USA PATRIOT Act, the Court now can grant secret warrants for investigation of normal criminal matters, as long as "a significant purpose" is for intelligence gathering. Senator Orrin Hatch (R-UT), offered the following clarification, as part of the Congressional Record (2002): "It was our intent when we included the plain language of Section 218 of the USA PATRIOT Act and when we voted for the Act as a whole to change FISA to allow a foreign intelligence surveillance warrant to be obtained when 'a significant' purpose of the surveillance was to gather foreign intelligence, even when the primary purpose of the surveillance was the gathering of criminal evidence."

The change in language from "the purpose" to "a significant purpose" is important, because it allows the Justice Department to investigate normal American citizens for non-terrorist criminal matters using secret warrants granted by the top secret FISA Court, thereby eroding the Fourth Amendment's protection of unreasonable search and seizure. Since such warrants are secret, they may not be challenged or appealed by suspects.

In response to negative media attention and increased public concern about the law, caused in part by changes to the FISA Court rules, Attorney General John Ashcroft launched a national promotional tour of the USA PATRIOT Act, where he primarily spoke to law enforcement and military officials. The Department of Justice also created an official USA PATRIOT Act website.

During 2002-2004, many of Ashcroft's speeches were offered on the USA PATRIOT Act web site in order to explain the benefits of the law. In one speech, Ashcroft asserted that the law does three things: "First, it closes the gaping holes in our ability to investigate terrorists. Second, the [law] updates our anti-terrorism laws to meet the challenges of new technology, and new threats. Third, [it] has allowed us to build an extensive team that shares information and fights terrorism together" (US Department of Justice, 2003). In another speech, Ashcroft asserted "... we have used the tools provided in the [USA PATRIOT Act] to fulfill our first responsibility to protect the American people. We have used these tools to prevent terrorists from unleashing more death and destruction on our soil. We have used these tools to save innocent American lives. We have used these tools to provide the security that ensures liberty" (US Department of Justice, 2003).

There is no specific evidence offered by the Justice Department to prove which components of the USA PATRIOT Act are necessary to prevent terrorism. Ashcroft did claim to have "... neutralized alleged terrorist cells in Buffalo, Detroit, Seattle and Portland" and to have brought 255 criminal charges and achieved 132 convictions. He also discussed a few individual cases where law enforcement officials successfully made arrests of people suspected of planning and funding future terrorist attacks. Yet, Ashcroft provided little evidence how the USA PATRIOT Act actually was used in these cases, leaving the impression that standard law enforcement techniques might also have been responsible for the successes.

In sworn testimony to the US House of Representatives Committee on the Judiciary, Ashcroft said: "Our ability to prevent another catastrophic attack on American soil would be more difficult, if not impossible, without the [USA PATRIOT] Act. It has been the key weapon used across America in successful counter-terrorist operations to protect innocent Americans from the deadly plans of terrorists" (US Department of Justice, 2003).

Shortly after President George W. Bush was re-elected in November 2004, a new Attorney General was nominated by Bush and affirmed by the Senate. After taking the oath of office, Attorney General Alberto Gonzalez began speaking in public and to Congress in support of the USA PATRIOT Act.

Additionally, the Justice Department's USA PATRIOT Act web site was updated with new facts and figures pertaining to the use of the law. For example, the web site currently advertises successes of the law, as part of America's overall "war on terror." Among its claims, it says it is "disrupting terrorist threats, and capturing the terrorists that would carry them out" including:

- disruption of over 150 terrorist threats and cells;
- elimination of about two-thirds of al-Qaeda's senior leadership;
- incapacitation of 3,000 operatives;
- disruption of five terrorist cells in Buffalo, Detroit, Seattle, Portland, and Northern Virginia;
- criminal charges in terrorism investigations against nearly four hundred individuals;
- convictions of two hundred individuals;
- removal of more than five hundred individuals linked to the September 11th investigation from the United States; and
- identification and tracking of hundreds of suspected terrorists throughout the United States

(US Department of Justice, 2005b).

Further, the web site claims its "human sources of intelligence related to international terrorism have increased 63% since 9/11, and our human sources of intelligence related to domestic terrorism have increased by 30% since 9/11, with the quality of this human intelligence having improved significantly ... Our counterterrorism investigations have more than doubled since 9/11" (US Department of Justice, 2005b).

The web site also claims that government agencies have dismantled terrorist financial networks. Among its successes are:

- designation of forty terrorist organizations;
- freezing of \$136 million in assets around the world; and
- criminal charges for "terrorist financing-related crimes" against more than one hundred individuals in twenty-five judicial districts, and more than fifty convictions (US Department of Justice, 2005b).

Most of the above claims do not actually pertain to the USA PATRIOT Act, so it is strange that they are included on a web site devoted to the law. As for the USA PATRIOT Act, the web site does claim that the Justice Department is using new legal tools to detect, disrupt, and prevent potential terrorist plots. Congress has provided better tools to make sure we are doing all we can, legally and within the bounds of the Constitution, to detect, disrupt, and prevent acts of terror ... The [USA] PATRIOT Act allows investigators to use the tools that were already available to investigate organized crime and drug trafficking. These tools have been used for decades and have been reviewed and approved by the courts. ... The [USA] PATRIOT Act facilitates information sharing and cooperation among government agencies so that they can better "connect the dots." In the past, different agencies and departments were collecting data but not sharing it with each other. Now we are able to share that data to prevent future attacks ... The [USA] 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 legal authorities left over from the era of rotary telephones ... The [USA] 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 detonates it. That's why the Act imposed tough new penalties on those who commit and support terrorist operations, both at home and abroad (US Department of Justice, 2005b).

### **Threats to Civil Liberties**

Despite assurances by the Justice Department, civil libertarians maintain that the USA PATRIOT Act unnecessarily erodes the freedoms that Americans enjoy (Center for Constitutional Rights, 2002). Perhaps this is why nearly four hundred towns and counties have passed resolutions against the provisions of the USA PATRIOT Act that threaten civil liberties. Additionally, seven states have done the same, as have scores of organizations across the country.

Legal experts have suggested that the USA PATRIOT Act erodes elements of several of the Bill of Rights to the US Constitution. This includes the First Amendment (freedom of speech and assembly), Fourth Amendment (freedom from unreasonable search and seizure), Fifth

Amendment (right to due process of law), Sixth Amendment (right to speedy, public, and fair trials, right to confront accusers, and right to a criminal defense), and Eighth Amendment (freedom from excessive and cruel & unusual punishment).

For example, the USA PATRIOT Act allows government police agencies to access medical, financial, library, educational, and other personal records of any people as long "a significant purpose" is for "the gathering of foreign intelligence" and to forbid librarians and business owners & employees from informing people that their records have been requested or seized (USA PATRIOT Act, 2001).

Government agents can tap any and all phones of citizens and monitor their Internet use, tracking every phone call made and received and every web site visited. Under orders from the Justice Department, police can also enter people's homes and seize their property without even informing them a search has taken place (through "sneak and peak warrants"). Law enforcement agencies are empowered to spy on religious and political organizations and individuals without any evidence of criminal activity. Potentially, citizens can be detained against their will and refused access to lawyers, based on secret evidence.

Most troubling, Americans can be labeled "domestic terrorists" if they engage in "[criminal] acts dangerous to human life" in a way that "influences the policy of a government by intimidation or coercion" or "intimidates or coerces a civilian population" (USA PATRIOT Act, 2001).

Although Justice Department officials assure us that the USA PATRIOT Act does not interfere with behavior protected under the First Amendment, it is in fact possible that a person who unintentionally plays a role in another's injury at a political event could be prosecuted as a domestic terrorist. Imagine if a federal police officer was injured stopping an anti-war protester who trespassed onto federal property because he or she wanted to make a statement against a war in order to influence the policy of the government. This could fit the definition of a domestic terrorist. On its updated USA PATRIOT Act website, the Department of Justice addresses what it calls myths and facts of the law. It claims the belief that "peaceful protestors and activists can be arrested" for domestic terrorism under the law is a myth. It further states that: "Domestic terrorism under the PATRIOT Act is limited to conduct that:

1. breaks criminal laws AND
2. could result in death AND
3. was committed with the intent to commit terrorism (US Department of Justice, 2005a, emphasis in original).

Note that the third factor listed ("was committed with the intent to commit terrorism") is not actually included in the text of the USA PATRIOT Act! In fact, during 2002-2003 on the USA PATRIOT Act website, the Justice Department claimed:

The [USA PATRIOT Act] limits domestic terrorism to conduct that breaks criminal laws, endangering human life. Peaceful groups that dissent from government policy without breaking laws cannot be targeted. Peaceful political discourse and dissent is one of America's most cherished freedoms, and is not subject to investigation as domestic terrorism. Under the

[law], the definition of 'domestic terrorism' is limited to conduct that (1) violates federal or state criminal law and (2) is dangerous to human life. Therefore, peaceful political organizations engaging in political advocacy will obviously not come under this definition (US Department of Justice, 2003).

That the Justice Department has recently added additional text ("was committed with the intent to commit terrorism") that does not exist in the USA PATRIOT Act is dishonest and misleading. Further, it raises the possibility that law-makers (who largely did not read the bill they voted for) may be more likely to vote for renewal of the law later this year when renewal of the law comes up for a vote.

Some aspects of the law were originally intended to sunset at the end of 2005 (Congressional Research Service, 2002a). According to the Congressional Research Service (2002b), the following sections of the law sunset were to sunset on December 31, 2005: Sections 201, 202, 203(b), 203(d), 204, 206, 207, 209, 212, 214, 215, 217, 218, 220, 223, and 225. Of the many troubling sections of the law, those that most often appear in resolutions against the law include:

- Section 213 – Authority for delaying notice of the execution of a warrant;
- Section 215 – Access to records and other items under the Foreign Intelligence Surveillance Act;
- Section 218 – Foreign intelligence information;
- Section 358 – Bank secrecy provisions and activities of United States intelligence agencies to fight international terrorism;
- Section 411 – Definitions relating to terrorism;
- Section 412 – Mandatory detention of suspected terrorists; habeas corpus; judicial review;
- Section 507 – Disclosure of educational records;
- Section 508 – Disclosure of information from National Education Statistics Act surveys; and
- Section 805 – Material support for terrorism.

Thus, of those sections identified most commonly as threats to civil liberties, only two of them (Sections 215 and 218) were set to sunset at the end of 2005.

The Justice Department wants to make the law permanent and to expand it. Therefore, throughout its web site, the Justice Department suggests that the threat posed to civil liberties is trivial. In July 2005, the US House of Representatives voted 257-171 to make permanent 14 of 16 provisions in the USA PATRIOT Act that were set to expire, and extends two others for another 10 years. This time the effort was not bi-partisan, as 14 Republicans voted against the renewal and only 43 Democrats supported it (while 156 voted no).

An amendment to renew the expiring provisions for only four more years was defeated 218-209. Representative James Sensenbrenner, who had said that USA PATRIOT Act renewal would "be done over my dead body ... I said at the time I did not think there were the votes to pass the [USA PATRIOT Act] in the House without the sunset and I still stand by that" (Gilbert, 2003), said after the House renewed the law: "Why sunset legislation where there's been no actual record of abuse and vigorous oversight?"

One amendment did pass overwhelmingly in the House by a vote of 402-26. It requires

personal approval by the FBI director of any requests for bookstore or library records of suspected terrorists.

Also in July 2005, the US Senate voted unanimously to extend the expiring sections of the USA PATRIOT Act for four more years (Eggen, 2005). This includes the most troubling provisions of the law, which allow the FBI to seize personal records through FISA Court warrants and that permits the FBI to use "roving wiretaps." According to Eggen, the Senate bill "would tighten the requirements that must be met in order to seize business records, allow people to challenge warrants issued by the secret intelligence court, and require that the subjects of secret searches be notified within seven days unless an extension is approved by a judge." This is probably why the bill passed unanimously.

Note: The USA PATRIOT Act was renewed in March 2006. 14 of 16 provisions originally set to sunset are now permanent law, and 2 others were expanded for four years.

### **Back to the Future? Important Realities of the USA PATRIOT Act**

In the more than three years since the law was passed, at least five important realities have come to light that contradict Justice Department claims about the non-threatening nature of the USA PATRIOT Act. First, there are dozens of cases where the USA PATRIOT ACT has already been used in the investigation of alleged non-terrorist crimes involving American citizens. The Justice Department is using warrants it receives from the top-secret Foreign Intelligence Surveillance Act (FISA) Court to obtain permission to investigate Americans in cases where regular criminal courts would not grant warrants (Letter to Representative James Sensenbrenner, 2003).

For example, new powers granted to law enforcement by the USA PATRIOT Act were used in a corruption case involving a Las Vegas strip club against strip club magnate Michael Galardi. The Federal Bureau of Investigation (FBI) used the USA PATRIOT Act to obtain financial information about key figures in this ongoing political corruption probe that was in no way related to terrorism (Associated Press, 2003).

Galardi is a convicted criminal and an owner of 20 strip clubs, yet he is protected in the same way as the rest of us from government agencies pursuing criminal charges. In response to the Galardi case, Senator Harry Reid (D-NV), said the USA PATRIOT Act goes too far: "The law was intended for activities related to terrorism and not to naked women ... Let me say, with Galardi and his whole gang, I don't condone, appreciate or support all their nakedness. But having said that, I haven't heard anyone say at any time he was involved with terrorism" (Associated Press, 2003).

According to Laura Murphy, spokesperson for the American Civil Liberties Union (ACLU): "The use of the [USA PATRIOT Act] against a sin city vice lord should give pause to anyone who says it has not been abused ... The attorney general didn't tell Congress that he needed the [law] to raid nudie bars" (Associated Press, 2003).

Spokespersons for the Justice Department rarely talk about using the USA PATRIOT Act for non-terrorist crimes, instead choosing to promote the law's benefits to prevent terrorism. Yet, when asked about the use of the law for non-terrorist criminal matters, members of the

Justice Department admit they are using the law this way and they brush aside any legitimate concerns. For example, Justice Department spokesperson Mark Corallo said: "I think any reasonable person would agree that we have an obligation to do everything we can to protect the lives and liberties of Americans from attack, whether it's from terrorists or garden-variety criminals" (Lichtblau, 2003b, emphasis added). That the USA PATRIOT Act empowers law enforcement agencies to "fight" crime in ways that contradict individual rights granted by the US Constitution is apparently irrelevant.

Second, numerous law-abiding Americans (such as college freshman A.J. Brown of Durham, North Carolina) have been approached, questioned, and interrogated without probable cause of any criminal activity, simply for engaging in political speech protected by the Constitution. Brown was approached by federal agents in her dorm room after being accused of having anti-American materials in her room. The "materials" turned out to be a poster expressing opposition to the death penalty that also depicted President Bush's image (Bush oversaw nearly 150 executions as governor of Texas).

Others, including North Carolina Green Party activist Doug Stuber and Green Party coordinator Nancy Oden, were separately denied access to airplanes because they were listed as "likely terrorists" and flagged by airport computers (Moore, 2003; Shearer, 2002). These abuses are widespread, and even now the Justice Department has admitted to some of them. For example, in the case of Brandon Mayfield – who was arrested in connection with the Madrid train bombings – Attorney General Gonzalez admitted (after first denying) that provisions of the USA PATRIOT Act were used during the investigation of Mayfield, who is a Muslim convert with no connections whatsoever to the bombings. A fingerprint found at the scene was mistakenly matched to Mayfield, and he was arrested and detained for two weeks until the FBI discovered the print was not his (Callimachi, 2005). No one outside of the Justice Department knows which provision of the law was used against Mayfield because that information is classified.

The Justice Department's Inspector General is required by the USA PATRIOT Act, to document every six months allegations of civil rights and liberties violations against the Justice Department. In July 2003, the Inspector General's report documented 34 credible civil rights and civil liberties violations under the USA PATRIOT Act. This was out of the more than one thousand complaints to the Justice Department about the law. The allegations included "excessive force by Bureau of Prisons correctional officers, verbal abuse by prison staff, rude treatment by immigration and naturalization inspectors, unwarranted cell searches and illegal searches of personal residences and property" (Bohn, 2003, emphasis added). The report also contained "credible accusations ... against employees of the F.B.I., the Drug Enforcement Administration and the Immigration and Naturalization Service."

In an earlier report, the Inspector General noted that "hundreds of detainees had been mistreated" after being rounded up after the attacks of 9/11: "That report found that many inmates languished in unduly harsh conditions for months, and that the department had made little effort to distinguish legitimate terrorist suspects from others picked up in roundups of illegal immigrants" (Shenon, 2003). Amazingly, the Justice Department still claims, through its USA PATRIOT Act web site, that not a single civil rights abuse has been substantiated. For example, on its "USA PATRIOT Act News Archive," the Justice Department claimed on May 10, 2005 that: "Every six months, the Justice Department's Inspector General is required to report to Congress on civil liberties violations caused by the PATRIOT Act. Since 2001,

the IG has verified NO civil liberties violations." (US Department of Justice, 2005a, emphasis in original). Similarly, on April 21, 2005, the Justice Department claimed: "Section 1001 of the Patriot Act requires the inspector general of the Department of Justice to determine and report to Congress civil liberties violations. To date, the inspector general has issued six reports and not found a single example of a civil liberties violation relating to authority granted under the Patriot Act. Upon request, the American Civil Liberties Union reported to Senator Diane Feinstein that they had also found no civil liberties violations" (US Department of Justice, 2005a, emphasis in original).

No one can know for sure why the Justice Department maintains innocence in the face of evidence pointing to its guilt. Nor can we know why Representative James Sensenbrenner said, during discussions of whether to renew the USA PATRIOT Act, "Why sunset legislation where there's been no actual record of abuse and vigorous oversight?" This is same person who, as Chairman of the House Judiciary Committee, abruptly ended hearings on renewal of the USA PATRIOT Act when, according to him, Democrats strayed off topic by delving into alleged Guantanamo Bay abuses.

The fact is no one really knows how many USA PATRIOT Act abuses have occurred. Since implementation of the law is secret, it is impossible to know how many Americans have been investigated, why, and which investigations were necessary and legal. Stories of individual abuses are popping up across the country. For example, a student at Appalachian State University in Boone, North Carolina, was warned in a letter from the Department of Homeland Security that he was being monitored, simply because he bought a book from Amazon.com (Boulmay, 2003). The book, *The Turner Diaries*, is used for at least one course on campus in the Department of Political Science and Criminal Justice. Such activities by law enforcement appear unwarranted to many. More importantly, they appear to be an inefficient use of resources that could better be directed at actual terrorist threats.

Third, hundreds of libraries reported that they have had requests about patrons from law enforcement agencies, including the FBI (Library Research Center, 2003). This counters statements by the Justice Department on its web site that:

The [USA PATRIOT Act] specifically protects Americans First Amendment rights, and terrorism investigators have no interest in the library habits of ordinary Americans. Historically, terrorists and spies have used libraries to plan and carry out activities that threaten our national security. If terrorists or spies use libraries, we should not allow them to become safe havens for their terrorist or clandestine activities... (US Department of Justice, 2003).

Fourth, the nation's secret FISA court identified more than 75 cases in which it says it was misled by law enforcement agencies such as the FBI in attempts to justify using wiretaps and other electronic surveillance for intelligence purposes. Some of the misleading requests were based on the USA PATRIOT Act (Shenon, 2002).

Fifth, law enforcement agencies have spied on and infiltrated peace groups in different areas of the country under new powers granted to them by the USA PATRIOT Act (American Civil Liberties Union, 2002; Rhodes, 2003). For example, in October 2003, the FBI sent a memorandum to local law enforcement officials in Washington D.C. and San Francisco –

cities where hundreds of thousands have gathered on at least four occasions to protest the war on and the occupation of Iraq – to monitor rallies for the purpose of collecting intelligence on law-abiding Americans. The goal, according to the FBI, was to identify "anarchists and extremist elements" that may have been plotting violence (Lichtblau, 2003a).

Governmental officials have stated that it was wise to be present at these events for several reasons. First, violence was possible. Second, the law enforcement community thought supervision of such protests provided a unique opportunity to learn the strategic methods of large-scale organizations. Third, given the size of the crowds, the participants might have appeared as suitable targets for terrorists seeking a large body count.

David Cole, Professor of Law at Georgetown University, and co-author of *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (2002), responded to such reports by saying:

There is no Fourth Amendment constitutional problem with the government surfing the Web or going into a public space or attending a public event ... But there are significant First Amendment concerns. There is a real cost to the openness of a free political society if every discussion group needs to be concerned that the FBI is listening in on its public discussions or attending its public meetings (Lichtblau, 2003a).

According to Karl Campbell, Associate Professor of History at Appalachian State University, former US Senator Sam Ervin (D-NC), a staunch defender of civil liberties, once warned: "When people fear surveillance, whether it exists or not, when they grow up afraid to speak their minds and hearts freely to their government or to anyone else, then we shall cease to be a free society."

Hofstra University Law Professor Eric Freedman agreed, and suggested the potential costs to freedom outweigh the benefits of the law: "There is a high likelihood that the weapon will be used in unintended ways and create more collateral damage in the First Amendment area than it will result in law enforcement gains" (Lichtblau, 2003a).

Some scholars disagree about the significance of such FBI activities. For example, Northwestern University School of Law Professor Steven Lubet commented that: "They're not conducting surveillance of a peace movement ... J. Edgar Hoover has been dead for 30 years, and there is no reason the abuses of the 1960s should prevent the FBI from taking prudent measures today" (Liptak, 2002).

Yet, some law enforcement activities under the USA PATRIOT Act are reminiscent of Hoover's Counter Intelligence Program (COINTELPRO), which spied on and infiltrated Martin Luther King, Jr., the Southern Christian Leadership Conference, the Student Non-Violent Coordinating Committee, the Congress on Racial Equality, the Black Panthers, anti-war groups, and any other members of the "New Left" (including former Beatle John Lennon). This program was ruled a threat to a free society by the Church Commission in 1976. One notable quote from the Church Commission's final report seems to have great relevance for today: "... the violent acts of political terrorists can seriously endanger the rights of Americans. Carefully focused intelligence investigations can help prevent such acts. But too often intelligence has lost this focus and domestic intelligence activities have invaded

individual privacy and violated the rights of lawful assembly and political expression" (Select Committee to Study Government Operations, 1976).

### **The Backlash Against the USA PATRIOT Act**

The Justice Department has argued that the USA PATRIOT Act was well-intended and is necessary to protect us from terrorism. Former Attorney General John Ashcroft zealously defended the law on these grounds and current Attorney General Alberto Gonzalez is doing the same. Yet, millions of normal, law-abiding American citizens are troubled by the USA PATRIOT Act. Simply stated, there is now widespread concern across America, by citizen groups, student groups, labor organizations, religious organizations, libraries, and city, country, & state governments against the provisions of the USA PATRIOT Act which threaten civil liberties.

Because there is now widespread concern over how the law threatens civil liberties – even unnecessarily – a battle is being waged by normal Americans against the Justice Department and the provisions of the law that erode American freedoms. As of October 17th, 2005, 389 towns and counties and seven states have passed resolutions reaffirming their commitment to civil liberties and against the provisions of the USA PATRIOT Act which threaten them. These places, called "Civil Liberties Safe Zones," represent 62.1 million Americans (Bill of Rights Defense Committee, 2005). The National League of Cities – the oldest and largest national organization for American cities, which serves as a resource and advocate for 18,000 cities, towns, villages, and 225 million Americans – also passed a resolution calling for the modification of the USA PATRIOT Act (Bill of Rights Defense Committee, 2005).

The New York City Council passed a resolution calling for modifications to the USA PATRIOT Act. The significance of this cannot be understated, given this is the city that suffered the worst of the attacks of September 11th. Council member Bill Perkins (D-Manhattan) said: "The [USA PATRIOT Act] is really unpatriotic, it undermines our civil rights and civil liberties ... We never give up our rights ... that's what makes us Americans" (Garcia, 2004).

Typically, resolutions have been worded using affirmative language (e.g., "we reaffirm our commitment to civil liberties") and have pertained only to those sections of the USA PATRIOT Act which seem on their face to be unwarranted intrusions into the private lives of Americans. The goal of the resolutions seems to be to send a message to Congress, the White House, and to the Justice Department that the USA PATRIOT Act goes too far. For example, Representative John Coghill (R-AK), who cast a supportive vote in favor of the Alaskan resolution, said: "We hope that a resolution like this, with the bipartisan support that it has, will urge Congress to re-examine the provisions of the USA PATRIOT Act that challenge the individual freedoms that make this country great. If we sacrifice our freedom, we let terrorism win." The resolution passed the Alaskan Senate unanimously and the Alaskan House by a vote of 32-1 (Schabner, 2003).

The first resolution was passed on January 7, 2002 in Ann Arbor, Michigan. The second was passed in Denver, Colorado on March 18, 2002. The next three resolutions were passed in Massachusetts, including the fifth by the town of Northampton on April 2, 2002 (Bill of Rights Defense Committee, 2005). Members of the Northampton group then formed the Bill

of Rights Defense Committee in order to encourage "local communities to take an active role in an ongoing national debate about antiterrorism measures that threaten civil liberties guaranteed by the Bill of Rights, such as the USA PATRIOT Act." Citizens in scores of other towns, cities, and counties are working on similar measures. Citizens in several other states are also working on passing resolutions.

Dozens of organizations have also passed such resolutions, including the American Library Association (ALA), North Carolina Library Association, Veterans for Peace, the National Lawyers Guild, and the National League of Cities. Many religious organizations have also passed resolutions. Dozens of other organizations have created websites outlining the threats posed by the USA PATRIOT Act, including the American Civil Liberties Union (ACLU), the Center for Constitutional Rights, the Electronic Frontier Foundation, the Electronic Privacy Information Center, the Lawyers Committee for Human Rights, and many more.

When the American Library Association passed its resolution against the USA PATRIOT Act on January 29, 2003, stating that it "considered sections of the USA PATRIOT Act a present danger to the constitutional rights and privacy rights of library users," then Attorney General John Ashcroft responded by characterizing concern over the law by saying:

If you were to listen to some in Washington, you might believe the hysteria behind this claim: 'Your local library has been surrounded by the FBI.' They stop patrons and librarians and interrogate everyone like Joe Friday ... According to these breathless reports and baseless hysteria, some have convinced the American Library Association that under the bipartisan [USA PATRIOT Act], the FBI is not fighting terrorism. Instead, agents are checking how far you have gotten on the latest Tom Clancy novel (Oder, 2003).

The American Library Association responded on its website: "The Attorney General has characterized ALA and librarians in general as 'dupes' of civil liberties groups (i.e., we are too dumb to figure out the problems with the USA PATRIOT Act ourselves and are easily misled) and as 'hysterical.'" ALA President Carla Hayden responded:

We are deeply concerned that the Attorney General should be so openly contemptuous of those who seek to defend our Constitution. Rather than ask ... librarians and Americans nationwide to 'just trust him,' Ashcroft could allay concerns by releasing aggregate information about the number of libraries visited using the expanded powers created by the USA PATRIOT Act (American Library Association, 2003).

After many months of wrangling, Ashcroft agreed to release records which indicated that Section 215 of the USA PATRIOT Act had never been used to obtain information from American libraries (Lithwick and Turner, 2003).

If the exchanges between the ALA and Attorney General over the USA PATRIOT Act seem like a battle, that is because it has been. Although both sides have backed off, then Attorney General John Ashcroft turned off some citizens and groups with comments suggesting that people concerned with civil liberties are part of the problem of terrorism. For example, Ashcroft said "... to those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists for they erode our national unity and diminish our resolve. They give ammunition to America's enemies and pause to America's friends.

They encourage people of good will to remain silent in the face of evil" (Cable News Network, 2001).

Given all the backlash against the law, the Justice Department finally released (on July 13, 2004) a report in defense of the USA PATRIOT Act. The title was, Report From the Field: The USA PATRIOT Act at Work (US Department of Justice, 2004). The report claims that the USA PATRIOT Act protects the country from terrorist acts and that it has been used successfully in more than 300 cases. Yet, the report does not:

- Explain how the Department of Justice is using the most controversial sections of the USA PATRIOT Act. Even the number of times that Section 215 has been used is classified;
- Provide information on how the crimes could have been solved without the USA PATRIOT Act or, in several cases, how the prosecutor could have obtained a conviction had he or she not threatened the defendant with a longer sentence or even with being named an "enemy combatant";
- Describe embarrassing cases, such as the Detroit case in which Attorney General Ashcroft twice violated a court-imposed gag order, for which he was formally and publicly admonished; the recent acquittal by a jury of University of Idaho student Sami Omar Al-Hussayen; or the decision of Federal Judge Audrey Collins that part of the USA PATRIOT Act's material witness section is unconstitutional;
- Demonstrate that even a single charge of terrorism using the USA PATRIOT Act's tools has stuck;
- Show that the USA PATRIOT Act has helped to identify anyone connected with the September 11 attacks or with the anthrax or ricin attacks; and
- Indicate how many Americans are under surveillance (Bill of Rights Defense Committee, 2004).

Further, the Department of Justice admits throughout the report that normal American citizens have been investigated, arrested, convicted, and punished for engaging in ordinary, non-terrorist related crimes (such as child pornography, domestic violence, sexual assault, and an array of computer-related crimes). What may trouble some about these cases is that the USA PATRIOT Act was not intended to be used this way (not in its stated purpose), and the law is thus being used to make an end run around the US Constitution to solve normal, non-terrorist criminal cases.

### **Bi-Partisan Agreement to Modify the Law**

Opposition to the USA PATRIOT Act has grown into a bi-partisan effort. For example, the US House of Representatives voted in a bi-partisan way, 309-118, to withdraw funding for "sneak and peak" warrants authorized by the USA PATRIOT Act (Congressional Record, 2003).

Perhaps most surprising, given the partisan nature of American politics, is that prominent conservatives have expressed concern and/or opposition to parts of the USA PATRIOT Act and/or the war on terror. These include David Keene (Chairman of the American Conservative Union), Grover Norquist (President of Americans for Tax Reform), Phyllis Schlafly (President of the Eagle Forum), Lori Walters (Executive Director of the Eagle Forum), William Safire (columnist for the New York Times), Rep. Ron Paul (R-TX), Former House Majority Leader Dick Armey (R-TX), Representative Butch Otter (R-Idaho),

Paul Weyrich (President of the Free Congress Foundation) Pat Buchanan (Editor, American Conservative Magazine and former Presidential candidate), Charlton Heston (President, National Rifle Association), Wayne LaPierre (Executive Vice President, National Rifle Association), Senator Arlen Specter (R-PA), former Congressman Bob Barr (R-Ga), and Newt Gingrich (Former Speaker of the House).

Former House Majority Leader Dick Armey (R-TX), a very conservative Congressman who usually voted along with most members of his political party, said: "The Justice Department ... seems to be running amok and out of control ... This agency right now is the biggest threat to personal liberty in the country." David Keene, Chairman of the American Conservative Union, said: "It is ironic that the [USA PATRIOT Act] was passed to protect America and yet some of the new powers challenge the very essence of what defines us as a nation – our freedoms and our liberty. We hope that Congress will take appropriate steps to implement a more proper balance between national security and civil liberties" (American Civil Liberties Union, 2004).

Arlen Specter, also a member of the Senate Judiciary Committee, commented on Section 215 of the USA PATRIOT Act (which allows government agencies to track what people read at libraries and bookstores): "I don't think that's any of the government's business. I don't think what people read is subject to inquiry. What difference does that make? It has a chilling effect on fundamental freedom of activity" (American Civil Liberties Union, 2004).

Bob Barr, former Republican member of Congress, commenting about the then lack of proof of abuses, stated: "I don't care if there were no examples so far. We cant say we'll let government have these unconstitutional powers in the USA PATRIOT Act because they will never use them. Besides, who knows how many times the government has used them? They're secret searches" (American Civil Liberties Union, 2004).

When Newt Gingrich was asked, "You're a conservative, you're not concerned about being on the same side of this issue as the ACLU or other left and liberal organizations?" he replied: "I think that when you're trying to restrict the power of the State there's a very broad coalition that shows up on same side and philosophically on that kind of an issue you've got to decide do you really want that level of power to be controlled by political figures or do you want to protect the individual's rights" (American Civil Liberties Union, 2004).

A bi-partisan coalition has emerged to pass legislation to do just that. For example, the Security and Freedom Ensured Act (SAFE Act) would amend the provisions of the law that allow the FBI to conduct surveillance of Americans with limited judicial involvement in the process. Roving wiretaps and delayed notification through "sneak and peek" search warrants would be curtailed. The bill is supported by a diverse group of liberal and conservative groups, including the American Civil Liberties Union, Gun Owners of America, American Library Association, Free Congress Foundation, and the American Conservative Union (American Conservative Union, 2003).

Despite this bi-partisan effort, figures in the Bush Administration are not willing to let the USA PATRIOT Act be amended. For example, on January 28, 2004, then Attorney General John Ashcroft sent a letter to Senator Orrin Hatch (R-UT) stating opposition to the SAFE Act. The bill, if passed, "would make it more difficult to mount an effective anti-terror

campaign..." according to Ashcroft. Ashcroft alleged that the SAFE ACT would make it more difficult to track would-be terrorists, would run the risk of tipping them off about investigations, and would deny law enforcement access to crucial intelligence records. President Bush would be advised to veto the SAFE Act if passed by the Congress (Letter from the Office of the Attorney General, 2004).

Another example shows how far some are willing to go to prevent the USA PATRIOT Act from being amended. On July 8, 2004, the Sanders-Paul-Conyers-Otter-Nadler amendment to the Commerce, Justice, State and Judiciary Appropriations Bill of 2005 failed to pass the House of Representatives after a 210-210 tie vote. The amendment, which had enough votes to pass the House until the Republican leadership suspended the voting rules so they could convince some to change their minds, would have created an exception for libraries and bookstores under Section 215 of the USA PATRIOT Act. Why did it not pass? Mostly it was political.

When the time limit was reached for the scheduled 15 minute vote, the original margin of 219-201 was enough to pass the amendment. The House leadership allowed 23 extra minutes of voting beyond the normal 15 extra minutes to convince just enough colleagues to change their minds or else the amendment would have passed. House Majority Leader Tom DeLay (R-Texas) encouraged Republican members to switch their votes. And several members did, perhaps because of two reasons.

First, President Bush threatened to veto the bill if the amendment was included. Chief Deputy Majority Whip Eric Cantor (R-Virginia) said: "The president issued a veto threat, so absolutely, we had to defeat it" (Pershing and Billings, 2004). Second, the Justice Department sent a letter to the Congress saying that at least twice in recent months "a member of a terrorist group closely affiliated with al-Qaeda used Internet services provided by a public library" (Lichtblau, 2004).

At the local level, prosecutors have gotten into the game. For example, US Attorney for Massachusetts, Michael J. Sullivan, tried to stop communities in the state from passing resolutions opposing provisions of the USA PATRIOT Act. He circulated a letter and other materials defending the law and has even sent representatives to Massachusetts Town Meetings where resolutions are being considered. The letter contains broad claims of success under the USA PATRIOT Act but no indication whatsoever that the law has actually been used in any of the cases it cites. And the letter falsely implies that would-be shoe bomber Richard Reid was stopped by the USA PATRIOT Act (Bill of Rights Defense Committee, 2004). If you recall, Reid was discovered trying to light his shoe bomb on fire with a lighter by observant passengers while on board an airplane!

### **The Battle Continues**

The backlash against erosions to civil liberties has now reached the courts. First, a US District judge (Audrey Collins) ruled that part of the USA PATRIOT Act is unconstitutional, saying the ban on giving expert advice or assistance to groups designated international terrorist organizations (Section 805) is impermissibly vague and in violation of the First and Fifth Amendments. Judge Collins said: "The [USA PATRIOT Act] places no limitation on the type of expert advice and assistance which is prohibited and instead bans the provision of

all expert advice and assistance regardless of its nature" (Frieden, 2004). Judge Collins again rejected Section 805 of the USA PATRIOT Act after Congress rewrote it for clarity (Deutch, 2005). In her ruling, Judge Collins wrote: "The court finds that the terms 'training,' 'expert advice or assistance' in the form of 'specialized knowledge' and 'service' are impermissibly vague under the Fifth Amendment" and "Even as amended, the statute fails to identify the prohibited conduct in a manner that persons of ordinary intelligence can reasonably understand."

Second, another federal judge (Victor Marrero) ruled that the provision that allows the FBI to issue itself national security letters (part of Section 215) is unconstitutional because it allows the FBI to demand information from Internet service providers (ISPs) without judicial oversight or public review (Eggen, 2004).

Third, U.S. District Court Judge Janet Hall ruled lifted a gag order that had been imposed on a librarian by the FBI under the USA PATRIOT Act. The librarian received an FBI letter demanding numerous records on an individual under surveillance (Coyne, 2005, 2005).

Courts also have ruled on some of President Bush's executive orders, which also allegedly weaken civil liberties. Three such cases serve as further evidence of the battle at hand. First, in December 2003, the Ninth Circuit Court of Appeals voted 2-1 that the US government must allow Falen Gherebi, a Libyan captured in Afghanistan by the US military, access to a lawyer (Cable News Network, 2003a). He was being held by the US military, without charges, in Cuba, along with more than 600 others designated as "enemy combatants." Supreme Court Justice Sandra Day O'Connor, who has jurisdiction over appeals from this Circuit Court, granted a request from the Bush administration to stop a lower court from communicating with a detainee at Guantanamo Bay, Cuba, in essence staying the ruling of the appeals court (Yahoo News, 2004).

Second, also in December 2003, the Second US Circuit Court of Appeals voted 2-1 that the US government must release Jose Padilla, an American citizen, from military custody within 30 days. Padilla was held as an "enemy combatant" in the United States since May 2002 for suspicion of planning to detonate a dirty bomb in the United States. He was not been charged with any crime (Cable News Network, 2003b).

Third, in January 2004, the Supreme Court agreed to consider the case of Yaser Esam Hamdi, an American and Saudi citizen being held as an "enemy combatant" in a Navy brig in Charleston, South Carolina. Hamdi was held, without charges, since he was captured in Afghanistan (Stout, 2004).

The Supreme Court ultimately ruled on two of these three cases, dismissing the other without comment. In each, it sided with the US Constitution and struck a blow to the Bush Administration. Although the US Supreme Court acknowledged that President Bush has the authority to declare even American citizens as "enemy combatants," it ruled all enemy combatants, including foreigners, be given access to American courts and be accorded some type of court processes to determine the merits of their legal claims. One of these cases pertained to an American citizen – Jose Padilla – who was held as an enemy combatant but uncharged with any crimes for two and a half years. A federal judge (Henry Floyd) ruled that he must be charged with a crime or released within 45 days (Associated Press, 2005). Padilla

is supposedly only one of only two US citizens designated as enemy combatants since the attacks of September 11, 2001. The other, Yaser Hamdi, was "released in October after the Justice Department said he no longer posed a threat to the United States and no longer had any intelligence value" (Associated Press, 2005). Hamdi, a Saudi national born in the United States, had been kept in solitary confinement for two years without access to an attorney. He returned home to Saudi Arabia.

We now know that innocent people have been held for years in Guantanamo Bay Cuba as enemy combatants. We know this because the Administration has allowed some to be freed and has admitted mistakes in their cases (Savage, 2004). This is a reminder of the stakes here.

With all the backlash against the Justice Department and the USA PATRIOT Act, many may feel confident that the USA PATRIOT Act is destined to be changed by Congress given the incredible demand. Yet, the Justice Department is defending the law in many notable ways.

First, the Justice Department wants to make the USA PATRIOT Act permanent law, rather than allowing parts of it to sunset at the end of 2005. As noted earlier, both the House and Senate have passed their own versions of bills to renew the USA PATRIOT Act.

Second, the Justice Department also wants to expand the USA PATRIOT Act. The Center for Public Integrity obtained a draft of the Domestic Security Enhancement Act of 2003, dated January 9, 2003 and written by the staff of Attorney General John Ashcroft, which was never officially released nor proposed to Congress. The draft of the bill was called by most "PATRIOT II." The most controversial part of the law would have allowed American citizens to be expatriated if they were convicted of giving financial or material support to a group considered a "terrorist organization" by the federal government.

In fact, parts of PATRIOT II were signed into law as part of the Authorization Act for Fiscal Year 2004. The bill was signed into the law on December 13, 2003, the same day that Saddam Hussein was captured, after the Senate passed it on a voice vote only (Martin, 2003). The law allows the FBI to request of itself a National Security Letter (NSL), without judge approval, for the purpose of demanding business records of any kind. The law redefined "financial institution" to include not only banks but also stockbrokers, car dealerships, casinos, credit card companies, insurance agencies, jewelers, airlines, the US Post Office, and any other business "whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters" (Singel, 2003).

In President Bush's 2004 State of the Union address, he expressed his desire to see the USA PATRIOT Act made permanent law (January 20, 2004). During the speech, many members of Congress, both liberal and conservative, applauded when he noted parts of the law would sunset on December 31, 2005. Yet, given President George W. Bush's re-election and the gain of seats in Congress by members of his party, it is easy to see why both the House and Senate voted to renew the USA PATRIOT.

Interestingly, according to reports, Viet Dinh – the primary author of the USA PATRIOT Act – supports the USA PATRIOT Act but thinks parts need to be modified. Specifically, Dinh suggested that courts and Congress may have to clarify some aspects of the legislation, including parts pertaining to material support for terrorists and the use of evidence. Yet, Dinh

also defended the law, saying: "I think that we can all agree that there are certain core activities that constitute material support for terrorists, which should be prohibited, and others which would not be prohibited ... Congress needs to take a hard look and draw the lines very clearly to make sure that we do not throw out the baby with the bath water" (Falcon, 2004).

Note: The USA PATRIOT Act was renewed in March 2006. 14 of 16 provisions originally set to sunset are now permanent law, and 2 others were expanded for four years.

Click here for details:

- <http://www.cnn.com/2006/POLITICS/03/07/patriot.act/>
- <http://www.msnbc.msn.com/id/11638713/>

Implications for Criminal Justice as an Academic Discipline

What are the implications of the USA PATRIOT Act for the criminal justice discipline? Unfortunately, little emphasis has thus far been placed on the law within our academic discipline.

For example, at the most recent meeting of the Academy of Criminal Justice Sciences, only six papers explicitly addressed the USA PATRIOT Act, as determined by the title of the papers (Brodt and Byers, 2005; Klein, 2005; Kusha, 2005; Robinson, 2005; Ross, 2005; Skelton, 2005). Additionally, in the most recent meeting of the American Society of Criminology, only two papers explicitly addressed the USA PATRIOT Act, as determined by the title of the papers (Bakken, 2004; Hamm, 2004).

As for published articles about the law, I found only seven searching scholarly journals (including peer-reviewed) using Criminal Justice Periodicals Index. These included a special edition of the journal, *Criminal Justice*, which contained articles on grand jury secrecy (Beale and Felman, 2002); attorney-client monitoring, detainees, and military tribunals (Elwood, 2002); and computer crimes (Podgor, 2002). Also located were articles on information sharing between grand juries and intelligence agencies (Collins, 2002); a constitutional analysis of the law (Whitehead and Aden, 2002); and two critical articles about the law in the context of changes in American foreign and domestic policies since the attacks of 9/11 (Newman, 2003; Platt and O'Leary, 2003).

Given the importance of the law, it is probably fair to conclude that criminal justice professors and practitioners have been largely silent on the implications of the law for criminal justice and civil liberties. That is, we have not done our part to bring focus on this important law.

A survey by Wadsworth Publishing attempted to determine the sentiment of criminal justice experts in the United States. It found:

- 95% of the respondents feel that the USA PATRIOT Act was passed too quickly without considerable thought on how it may impact existing laws or public policy;
- About three-quarters (74%) of individuals feel that the USA PATRIOT Act violates individual rights;

- Most respondents (68%) believe that existing laws could be leveraged to protect the nation from terrorism; and
- All respondents (100%) believe that the federal government has a law enforcement/defense role in protecting the country against terrorism (Thompson Wadsworth, 2003).

Assuming these experts represent the field of criminal justice, it would appear that they both support the federal government's efforts to protect the country from terrorist attacks and feel threatened by the USA PATRIOT Act. A reasonable solution then might be to modify the law to remove the provisions that unnecessarily threaten civil liberties while keeping the parts that may make us safer.

Yet, criminal justice experts have shown little interest in the law, meaning they will not be able to influence any changes to the law, if needed. A survey by Finley (2005) of members of the American Society of Criminology showed that while virtually all of the respondents were either "Somewhat familiar" (61%) or "Very familiar" (32%) with the USA PATRIOT Act, only 38.5% were teaching about it. Although the primary reason respondents were not teaching about the law was because it did not fit their curriculum – 55% indicated this – 21.5% indicated they were not familiar enough with the law to teach about it.

Of those teaching about the law, their responses prove that the law "fits" into many appropriate areas/courses, including Introduction to Criminal Justice; Criminology; Police Procedures; Sociology of Law; Terrorism/Homeland Security; Introduction to Sociology; Social Problems; Sociology of Inequalities; Violence in Society; Victimology; White-Collar/Organized Crime; as well as courses about race, class, and ethnicity; social research; policy analysis; human rights/civil liberties; immigration; substance use and abuse; and police use of technology. Further, responses indicated many areas where the law fit into their courses, including: laws/policy-making; law enforcement/policing; construction of crime/role of media/fear of crime; human rights/civil liberties; government abuses/rule of law; computer or technology-related crimes and crime responses; the US as a surveillance society; "get tough" approaches to criminal justice; international law; state or political crime; gender; immigrations and detention; race; terrorism and counter-terrorism; and Radical/Conflict Criminology.

In short, the USA PATRIOT Act is well-suited for a large portion of courses and units taught in the discipline of Criminal Justice, as well as related areas such as Criminology, Sociology, Political Science, and so forth. Given the importance of the law for many of the issues we confront regularly in our work, there is no excuse for our discipline's ignorance of this important law. Further, given the sudden relevance of terrorism and war for American citizens (including our students), we are obliged to learn about this contemporary law and its relevance for the topics about which we teach and do research.

Laws such as the USA PATRIOT Act, and the reactions to them by American citizens, serve as a good example of the struggle to maintain a balance between security (responding to and preventing terrorism) and individual liberty (protecting due process). Reasonable people can disagree about the threats posed to civil liberties by laws such as the USA PATRIOT Act and by America's war on terror generally. At this current time, it is safe to conclude that efforts are being made by the US government to restrict the liberties of all Americans in order to prevent or reduce the threat of terrorism on our soil.

We may be wise, then, to carefully consider the admonition of Benjamin Franklin, who wrote

in 1755: "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety." A slightly altered version of this statement appears on a stairwell of the pedestal of the Statue of Liberty, in New York Harbor, overlooking the very city that suffered the worst of the terrorist attacks on September 11, 2001.

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