

Jacob Wall

Professor Williamson

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Security and Privacy in the Post 9/11 World

John Pistole, the administrator of the Transportation Security Administration (TSA), while speaking to the senate about full-body scanners in November 2010 said, "I want to assure and reassure the public [that] we are concerned about your safety, your security, and your privacy. Let us work together in partnership to ensure that we can have the best way forward" (Pistole 1). Where has security and privacy gone in the years since 9/11? To understand this we must realize that we live in a world with an "enemy [that] is nameless, ... faceless, ... [and] has no specific borders. This enemy is terrorism whose front is here in America" (qtd. in Cutler 1). We are not defending against an enemy backed by a flag as we saw with the Cuban Missile Crisis, but rather on 9/11 we had passenger jets converted to missiles for Al Qaeda to use against us. The discussion of security and privacy in the post 9/11 world is nothing new; it is arguably one of the most talked about topics in the last decade namely due to the Patriot Act. The Patriot Act has been brought up nearly daily; even a decade later it is still a popular topic with Americans, especially when it comes to politics. There is no doubt that terrorism has decreased; however, due to the increase in security the privacy of Americans has been greatly reduced. There are a few questions that still remain: Was 9/11 the reason for the Patriot Act or was it a catalyst? Has the Patriot Act truly infringed on our rights as Americans? Finally, has the Patriot Act been successful at making Americans safer even with a reduced amount of privacy and increase in security?

Before examining the implications, one must understand at least the basics of the Patriot Act. The Patriot Act was divided into ten different titles. The first title increased the budget to prevent terrorism, established funds for counterterrorism, and expanded the FBI's Technical Support Center. The second title is where the controversy arises, allowing intelligence to be gathered without court orders – such as a person's telephone, email, and financial records, as well as have their property seized if believed to be connected to a terrorist organization. As the ACLU wrote, “this language is broad enough to authorize the government to seize any assets of any individuals involved in the Vieques Island protests or of any organization supporting the protests of which the person is a member, or from any individuals who were supporting the protesters in any way” (How the USA PATRIOT par. 6). The Patriot Act also redefined terrorism and created harsher punishments for those involved with cyber-terrorism.

The Patriot Act has been used to convict more than 400 individuals; however, there are many cases of the Patriot Act being used correctly and incorrectly (Holman). We can see examples of where the Patriot Act has worked with the cases of the Lackawanna Six, Portland Seven, and Hosam Smadi. In the case of the Lackawanna Six, it “became the hallmark [case] of the Bush administration's War on Terror” (Satkalmi 193). The Lackawanna Six were convicted for “providing material support to Al Qaeda” during the spring of 2001, just previous to the 9/11 attacks (Satkalmi 193). The Portland Seven were a group of individuals who were convicted of numerous charges, the most serious offense - “conspiracy to levy war against the United States” (United States. Dept. of Justice). One last example in where the Patriot Act has been successful at thwarting terrorist attacks was the planned bombing of a Dallas skyscraper by Hosam Smadi. While these examples offer evidence of where the Patriot Act has been helpful at preventing terrorist attacks, they do not provide conclusive evidence that without the Patriot Act these

threats would of gone undetected. As briefly explained earlier, there are drawbacks outlined by the ACLU that give examples of where the Patriot Act could be used in a way that one could find upsetting. One may find it upsetting to find out that not even six months after the Patriot Act was passed, “the Justice Department was conducting seminars on how to stretch the new wiretapping provisions to extend beyond terror cases” (Brasch 76). An example of where the Patriot Act has caused undue harm is the case of Brandon Mayfield who was jailed for two weeks without charges and labeled a terrorist on the basis of a misidentified fingerprint (Jacklet and Todd 3). Mayfield expressed after being released from prison, “within minutes of my arrest the allegations of my involvement in the Madrid bombing were being disseminated through the media” (Jacklet and Todd 3). The case involving Mayfield is one of many; another example can be demonstrated through the case of Albader al-Hazmi. He was arrested due to simply having his name match one of a hijacker. He was arrested and detained for six days before having access to a lawyer. Once released his lawyer said, “This is a good lesson about how frail our processes are” (Northouse 163). One must understand that in cases where the Patriot Act is used incorrectly that it can not only ruin the individual’s reputation but also undermine the confidence of Americans in their government.

Many have asked the question of whether 9/11 was the cause for the Patriot Act or merely sped up the process of redefining security and privacy in the post 9/11 world. In order to answer this question one has to take into account many variables of the time. The Internet had been invented, the crash of the dot-com bubble had started, corporate America was being investigated left and right for Securities and Exchange Commission (SEC) violations, America was in a mild recession, George W. Bush recently came into office, and a change from a democratically controlled to a republican controlled senate, all producing a change in our

economy, culture, and world as we knew it. We see one social change in the rise and fall of Napster, the start of peer-to-peer (P2P) filesharing. Napster launched in June 1999 and within less than a year had a user base of twenty-five million users, growing to fifty-seven million users by its fall in July 2001 (Greenfeld 4). We see another example of social change with Morpheus, the largest of all P2P networks, attaining over 100 million users in its lifetime (Bowles). The world was changing, one from honesty to one littered with piracy. One can deduce from this that America, arguably the whole world too, was having a shift in the way morality was viewed, contributing to the complexity of whether or not 9/11 was the catalyst or just a scapegoat for the Patriot Act.

How does a shift in how morality was viewed have to do with 9/11 and the change in security and privacy? It may not seem related, but if taken into account that the government had a certain amount of loss of control of its citizens, one can propose the idea that the government potentially may have been quicker to respond and restrict rights of Americans when related to online activities as seen in certain sections of the Patriot Act. These sections broadened the ability for the government to tap into Internet surveillance, but with the lack of oversight and requirements built into each section, the Patriot Act could potentially be used even if there is no evidence of terrorist connections (Terrell 4). At the end of the day however, the Patriot Act, even with all situations considered, can be reasonably agreed that it was created due to 9/11 even if certain acts reduced the privacy of individuals on the Internet.

There was a lack of oversight built into the Patriot Act making it hard to read, causing the debate of whether or not the Patriot Act infringes on our rights as Americans leading to, is it even constitutional? This question cannot be answered simply, much like the question of should we increase taxes? We all know that an increase in taxes will realistically bring our budget

deficit down, much like we know a decrease in privacy and an increase in security will likely increase our safety as Americans. However, like the tax question, do the benefits outweigh the cost? The Patriot Act and the answer to whether it infringes on our rights as Americans depends greatly on how one interprets the constitution; let us review three ways Justices' can interpret the constitution. Three current and past members of the Supreme Court of the United States, William J. Brennan Jr., Antonin Scalia, and David Souter each have different ways of interpreting the constitution. Using these three ways one can form an opinion on whether one believes that the Patriot Act infringes on their rights as Americans or not. William J. Brennan, Jr. believed that the law was made for the people and that Americans deserve greater individual autonomy. Brennan offered a clear-cut stance that anything infringing on individual autonomy should be stopped; proof of this is seen with his opposition of the death penalty and support of abortion. Brennan passed away prior to the enactment of the Patriot Act but was adamant in his belief that civil liberties are challenged tremendously during times of national crisis. Brennan also was known to show how basic constitutional rights in the name of protecting the public from perceived threats to security are truly in the end not worth it as they are often proven to be exaggerated in American history (Needle par. 1). If one took the stance that Justice Brennan had during his life, one could form an opinion that the Patriot Act is unconstitutional.

Whereas Justice Brennan believed in greater individual autonomy, Antonin Scalia practiced originalism, which is the view that judges are to uphold the law, not ratify it. Originalists view interpretations of the constitution by viewing it from the viewpoint of those who drafted. Scalia has yet to take a stance on whether he agrees with the Patriot Act; however in 2003 at John Carroll University, Scalia stated, "Most of the rights you enjoy go way beyond what the Constitution requires [because] the Constitution just sets minimums" (Hentoff 5). He

also followed up that during times of war, “the protections will be ratcheted down to the constitutional minimum.” Cecilia O’Leary and Tony Platt, professors at Cal State Monterey Bay and San Jose State University, wrote in the two years after the Patriot Act was enacted that detail “policies of repression in the name of national security during times of international crisis” (O’Leary and Platt par. 3). The two bring up examples of when in a stage of international crisis that the increase in security is nothing new, using World War II, the Vietnam War, and other wars in the last century as evidence. Since Justice Scalia has not taken a public stance, one can only interpret his position on the Patriot Act, one that will not be simply assumed in this paper. However, if originalism was used for one’s interpretation of the constitution one would find that, although history tells us that the government has on numerous occasions limited individual rights, that the Patriot Act is unconstitutional.

As a third position, David Souter believed that laws change as people change. As the public perception of something changes, if they want a law over it, he believed that they should do so. USA Today took a poll that asked, “Do you think the Patriot Act goes too far, is about right, or does not go far enough in restricting people’s civil liberties in order to fight terrorism?” They took this poll in August 2003, November 2003, and February 2004. In the poll taken in August 2003 they found that 69% of Americans felt that the Patriot Act was about right or did not go far enough in restricting people’s civil liberties. In November 2003 they found the same result except 65% of the time, and lastly in February of 2004 they found that 64% of Americans felt it was about right or did not go far enough. This poll reveals that the majority of Americans were indeed in support of the Patriot Act. If, as Souter believes, laws change as people change then Patriot Act as constitutional. Given that different justices read the constitution differently, it is difficult to pinpoint whether or not the Patriot Act infringes on our rights.

Taking the debate of whether the Patriot Act is constitutional or not aside, one last question remains, whether or not the Patriot Act been successful at making Americans safer even with a reduced amount of privacy and increase in security. The Patriot Act, while designed to prevent terrorism, has shown over the last decade that it is, more often than not, being used to convict individuals on non-terrorist related charges. During the first four years of the Patriot Act with its original provisions, the Patriot Act had “resulted in charges against more than 400 suspects, and more than half of those charged have been convicted” (Holman par. 4). However this is misleading; 39 of those 400 individuals have been convicted of crimes related to terrorism or national security (Eggen and Tate par. 5). That being said however, there are still many convictions that have come out of the Patriot Act. Whether someone is willing to sacrifice some of their privacy and deal with the increased security to capture these criminals is, more than likely, at the end of the day the determining factor of whether one is in favor or against the Patriot Act.

Despite the questions that still remain, the decrease in privacy and increase in security are not getting better, only worse. This is demonstrated through the new security measures that have taken effect years after the Patriot Act was enacted, such as the use of full body scanners and pat downs at airports. Whether in support of the Patriot Act or not, one thing is for certain – what is done is done. From this point forward society must accept what our government has enacted. One last question can be asked however; does society have the right to be upset considering the fact as a democratic nation society voted for their elected officials to represent them?

Works Cited

Bowles, Trey. "Developing Arts Venture Plan." Owen Fine Arts Center, Southern Methodist University. 27 Feb. 2012. Lecture.

Trey Bowles is a tech entrepreneur and an adjunct professor at Southern Methodist University. In his lecture titled "Developing Arts Venture Plan" Professor Bowles provided background on himself before, during, and after the dot-com bubble. He explained the rise and fall of his most influential company, Morpheus, and the fact that he created a product that he never expected to be used illegally. His application gained over 100 million users in its few year lifetime. He also explained how, because many users were using his application illegally, he was sued for every penny by every major record label. This applies to my paper because I will show how a change of morality was happening right before 9/11, tying into my paragraph about whether 9/11 was the catalyst or not.

Brasch, Walter M. *America's Unpatriotic Acts: The Federal Government's Violation of Constitutional and Civil Rights*. New York: Peter Lang, 2005. Print.

Walter M. Brasch is a syndicated columnist and book author, specializing in social issues. Brasch offers not just at "the effects of the Patriot Act upon the nation, but also at the innumerable civil rights violations conducted in the United States." This book offers the unique insight of the civil rights violations that do not compare to other sources within the research paper.

Cutler, Leonard. "Enemy Combatants and Guantanamo: The Rule of Law and Law of War of Post-9/11." *Peace & Change* 31.1 (2006): 35. Wiley. Web. 25 Apr. 2012.
<<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0130.2006.00341.x/full?globalMessage=0>>.

Leonard Cutler is a professor at Siena College. I will be using this source because the citation that was provided in this scholarly article is no longer active on Whitehouse.gov. George W. Bush stated that “enemy [that] is nameless, ... faceless, ... [and] has no specific borders. This enemy is terrorism whose front is here in America.” This can be tied into this research paper because it sets up the fact that al-Qaeda is an enemy unlike any the world has ever seen before.

" How the USA PATRIOT Act redefines Domestic Terrorism" *American Civil Liberties Union (ACLU)*. 6 Dec. 2002. Web. 26 Apr. 2012. <<http://www.aclu.org/national-security/how-usa-patriot-act-redefines-domestic-terrorism>>.

The ACLU is a respected organization dedicating "to defend[ing] and preserv[ing] the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States." Their clear stance on the Patriot Act can be used to show, through a respected source, the fact that the Patriot Act is so loosely written that government officials could abuse its provisions. This research paper can later incorporate another source to explain a situation in which the lose-ends of the Patriot Act allows injustice to occur.

Eggen, Dan, and Julie Tate. "U.S. Campaign Produces Few Convictions on Terrorism Charges." *Washington Post*. The Washington Post, 12 June 2005. Web. 26 Apr. 2012. <<http://www.washingtonpost.com/wp-dyn/content/article/2005/06/11/AR2005061100381.html>>.

Dan Eggen joined the Washington Post in 2001 to cover the Justice Department and national-security issues, later moving to cover news at the White House. Julie Tate is a Washington Post reporter who specializes in national security, intelligence and defense issues. This paper can

incorporate this source to show statistics on the number of convictions that have happened with the help of Patriot Act as well as explain that less than 10% of these convictions were terrorist related and how our government may be misleading Americans to believe the Patriot Act is more successful at thwarting terrorism than it really is.

Greenfeld, Karl T. "Meet the Napster." *CNN*. Cable News Network, 25 Sept. 2000. Web. 26 Apr. 2012. <<http://www.cnn.com/ALLPOLITICS/time/2000/10/02/napster.html>>.

Greenfeld is a reporter for CNN, a respected source for news. Greenfeld wrote an article back in 2001 about the rise of Napster and at the time allowing an unseen side of Napster. This article was published before the fall of Napster but shows the exponential growth of Napster over the time, relating back to the shift in morality that P2P created.

Hentoff, Nat. "Common Sense." *Common Sense*. University of Notre Dame, 23 Sept. 2003. Web. 26 Apr. 2012. <http://www.nd.edu/~com_sens/issues/v18/1/hentoff.html>.

Hentoff uses Justice Scalia's speech at John Carroll University in the article published by the University of Notre Dame. Scalia stated, "Most of the rights you enjoy go way beyond what the Constitution requires [because] the Constitution just sets minimums." This quotation can be incorporated into the research paper, strengthening the argument that what we have today are nowhere near the constitution minimums.

Holman, Kwame. "House Vote Drops Patriot Act Provision." *PBS*. Public Broadcasting Service, 16 June 2005. Web. 26 Apr. 2012. <http://www.pbs.org/newshour/bb/law/jan-june05/patriot_6-16.html>.

PBS, a well-respected source, published this commentary between Kwame Holman and numerous government officials. Using this source will allow a strengthening in the argument that the Patriot Act is more often than not being used in other ways that it was created for. The article brings up that the Patriot Act "resulted in charges against more than 400 suspects, and more than half of those charged have been convicted." This fact is counter-argued later in the research paper by another source to explain that the Patriot Act has only convicted 39 people on counts that were related to terrorism in the years since 9/11. This creation of a counter-argument will help develop later paragraphs in the examples of where the Patriot Act was used for good and bad.

Jacklet, Ben, and Todd Murphy. "Now free, attorney Brandon Mayfield turns furious." *Washington Report on Middle East Affairs* July-Aug. 2004: 68.
Academic OneFile. Web. 26 Apr. 2012.

This article is an explanation of Brandon Mayfield's reaction to being imprisoned for two weeks, withheld from speaking to a lawyer, and the implications it had on his life in the long-term. This article demonstrates that when the Patriot Act is used incorrectly, not only does it ruin the individuals' life, but it also undermines the societies confidence of the Government. This article will also serve as another scholarly article that is needed to meet the source count for the paper.

Needle, Jeffrey. "The Patriot Act: An Over Reaction to Terrorism." *Progressive Litigation*. Web. 26 Apr. 2012. <<http://jneedlel.home.mindspring.com/Brennen4.htm>>.

Jeffrey Needle is trial lawyer in Seattle, as well as the former Chair of the ATLA and WSTLA Civil Rights Section. This source is different than most since it is opinion based. Needle brings

up examples of cases where when the constitutional rights in the previous century have been sacrificed, they often were not in the end worth it. These examples strengthen the argument of Justice Brennan's stance on the legality of the Patriot Act, alongside with other sources based on fact and not just opinion.

Northouse, Clayton. *Protecting What Matters: Technology, Security, and Liberty since 9/11*. Baltimore: Brookings Institution Press, 2006. Print.

This book was published to reaffirm that we must protect technology, security, and liberty. Northouse takes the stance that the decrease in privacy and increase in security are going too far. Using this source in the paper will allow a stronger argument.

O'Leary, Cecilia, and Tony Platt. "Patriot Acts." *Social Justice* 30.1 (2003): 5+. *Academic OneFile*. Web. 26 Apr. 2012.

Cecilia O'Leary and Tony Platt are professors at Cal State Monterey Bay and San Jose State University respectively. Their article offers a variety of examples of when policies of repression were used in the name of national security during times of international crisis. This will be used with other sources to strengthen the credibility of Brennan's viewpoint.

Terrell, Emily E. "INTRODUCTION TO MODULE: THE USA PATRIOT ACT, FOREIGN INTELLIGENCE SURVEILLANCE and CYBERSPACE PRIVACY." *Harvard Law*. Harvard University, 2004. Web. 26 Apr. 2012.
<<http://cyber.law.harvard.edu/privacy/Introduction%20to%20Module%20V.htm>>.

This webpage is part 5 of 6 of a research paper of a Harvard student that has been uploaded on Harvard.edu. She argues the data collection techniques, its shortfalls, and the fear that

American's have. This article will represent a strong source in providing data collection understanding in a simpler way to the audience.

McCullagh, Declan. "Transcript: Senate Hearing on TSA, Full-body Scanners." *CNET News*.

CBS Interactive, 16 Nov. 2010. Web. 26 Apr. 2012. <http://news.cnet.com/8301-31921_3-20023038-281.html>.

John Pistole has been the administrator of the TSA since June 2010. Pistole has been under scrutiny not only for his actions, but the action of his predecessor as well. His comment, "I want to assure and reassure the public [that] we are concerned about your safety, your security, and your privacy. Let us work together in partnership to ensure that we can have the best way forward" has been taken negatively in the press, as demonstrated through this CNET article. Many do not understand why he publicly takes a stance that the TSA is concerned about an individual's privacy, yet under his command Pistole has expanded the use of full body scanners as well as intrusive pat downs. This comment can be a way to start off the research paper, strengthening the paper as a whole.

Satkalmi, Ravi. "Material Support: The United States V. The Lackawanna Six." *Studies In Conflict &*

Terrorism 28.3 (2005): 193-199. *Military & Government Collection*. Web. 26 Apr. 2012.

Ravi Satkalmi is a professor at Johns Hopkins University in the School of Advanced International Studies. Satkalmi dissects The United States V. The Lackawanna Six, one of the first few cases of which the Patriot Act helped gather intelligence while keeping the governments cover. This case also proved the individuals gave support to al-Qaeda in the few months prior to

9/11. This scholarly source shows where the Patriot Act has been a benefit in convicting those with terrorist connections.

United States. Dept. of Justice. *October Martinique Lewis Pleads Guilty to Money Laundering Charges in 'Portland Cell' Case*. 26 Sept. 2003. Web. 26 Apr. 2012.
<http://www.justice.gov/opa/pr/2003/September/03_crm_532.htm>.

This is a publication by the Department of Justice in regards to the *'Portland Cell'*, which was a group of individuals who were charged with “conspiracy to levy war against the United States.” This is the official publication, which provides hard evidence that the Patriot Act has helped in convicting terrorists.

“USAToday.com.” Editorial. *USA TODAY/CNN/Gallup Poll Results*. USA Today, 20 May 2005. Web. 16 Apr. 2012. <<http://www.usatoday.com/news/polls/tables/live/2004-02-25-patriot-act-poll.htm>>.

The poll created by USA Today helps indirectly illustrate how David Souters’ idea on how to interpret the constitution. Results of the poll show majority support from Americans around the time that the Patriot Act was enacted. There is a weakness within the poll since the poll has not been taken in many years, but the source is nonetheless relevant and accurate and thus appropriate to provide in the research paper.