

USA PATRIOT ACT: Protecting National Security or Violating Civil Liberties?

Historical Thinking Skills Assessed: Sourcing, Critical Reading, Corroboration

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Course: American Government/United States History

Level: High

Task Question: Is the USA Patriot Act necessary to protect national security or is it a violation of civil liberties?

Learning Outcome:

Students will be able to determine whether the USA Patriot Act is necessary to protect national security or a violation of civil liberties by analyzing multiple sources.

Standards Alignment:

[Common Core Standards for Literacy for History/Social Studies](#)

- RH.9-10.6: Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.
- RH.9-10.7: Integrate quantitative or technical analysis with qualitative analysis in print or digital text.
- WHST.9-10.1: Write arguments focused on discipline specific content.

[National History Standards](#)

Era 10: Contemporary United States (1968 to the Present)

Standard 1: Recent developments in foreign policy and domestic politics

[College, Career, and Civic Life \(C3\) Framework for Social Studies Standards](#)

- D2.Civ.4.9-12: Explain how the U.S. Constitution establishes a system of government that has powers, responsibilities, and limits that have changed over time and that are still contested.
- D4.1.9-12: Construct arguments using precise and knowledgeable claims, with evidence from multiple sources, while acknowledging counterclaims and evidentiary weaknesses.

Materials:

- RS#01: Document A – The U.S. Attorney General Reports on the Patriot Act's Successes (John Ashcroft)
- RS#02: Document B – Surveillance under the Patriot Act (ACLU) – infographic and plain text
- RS#03: Document C – Congressional Votes on the Patriot Act
- RS#04: Reflection Activity
- RS#05: ARCH Historical Thinking Skills Rubric – Secondary

Background for the Teacher:

The USA PATRIOT Act, which stands for “Uniting (and) Strengthening America (by) Providing Appropriate Tools Required (to) Intercept (and) Obstruct Terrorism” Act, passed overwhelmingly in 2001 in both the United States House and Senate in the wake of the September 11th terrorist attacks. The Act gives intelligence and law enforcement agencies extensive powers to track and intercept communications, search homes and seize private property and records, and to monitor political and financial activities.

In subsequent years the Act has become the subject of heated controversy. Its proponents claim that it has been necessary to protect national security by empowering law enforcement and intelligence agencies to share information and keep track of the activities of suspected terrorists and their supporters on U.S. soil. The defenders of the Act point to the fact that no significant act of terrorism has occurred on American soil since the 9/11 attacks.

Critics counter that the Act violates fundamental constitutional rights to free speech, privacy, and due process. Led by the American Civil Liberties Union, the opponents of the Act have challenged specific sections of this legislation. First, the ACLU argues that it violates the Fourth Amendment by allowing the FBI to search and seize records and personal information under the authority of “National Security Letters” (NSLs). The NSLs are administrative orders that require neither a warrant issued by a judge, nor that the authorities notify the people under investigation that they are subjects of surveillance or searches. The ACLU also maintains that the Act violates the First Amendment because it allows the FBI to obtain information about a person's reading habits, religious affiliations, Internet searches, and other expressive activities. The Act is furthermore said to violate the First Amendment by imposing a “nondisclosure order” that makes it a criminal offense by those served with “National Security Letters” to tell anyone that the FBI demanded information. Finally, the argument is that this major breach of constitutional rights has not been justified by its accomplishments in the war on terror. An ACLU study has concluded that in the first five years of the operation of the Act, the close to 200,000 NSLs issued had led to only one terror-related conviction, while all other criminal referrals for prosecution that stemmed from NSLs were for offenses unrelated to terrorism, such as money laundering (17), immigration (17), and fraud (19).

In response to such criticism, then Attorney General John Ashcroft argued in 2004 that the additional powers safeguarded the nation against further terrorist attacks: “[G]overnment's success in preventing another catastrophic attack on the American homeland since September 11, 2001, would have been much more difficult, if not impossible, without the USA Patriot Act.”

In March of 2006, the House Judiciary Committee Chairman James Sensenbrenner pointed out that no federal court had found that civil liberties violations occurred under the USA PATRIOT Act: “Zero. That's the number of substantiated USA PATRIOT Act civil liberties violations. Extensive congressional oversight found no violations. Six reports by the Justice Department's independent Inspector General, who is required to solicit and investigate any allegations of abuse, found no violations. Intense public scrutiny has yet to find a single civil liberty abuse. Despite many challenges, no federal court has declared unconstitutional any of the PATRIOT Act provisions Congress is renewing.”

Despite the fierce criticism of the Act, the legislation has been renewed multiple times and with overwhelming Congressional support and backing from two presidents from two different political parties – George W. Bush and Barack Obama. Supporters and critics of the law

continue to be at odds over what liberties we may need to curtail or sacrifice in order to secure our safety from terrorism.

Sources:

ACLU, "Surveillance under the Patriot Act." (2011), at <https://www.aclu.org/national-security/surveillance-under-patriot-act> (Accessed on Oct. 2, 2014)

U.S. Department of Justice, "*Preserving Life & Liberty*"

<http://www.justice.gov/archive/ll/archive.htm>> (Accessed on Feb. 3, 2014).

Procedure

Context Setting:

- Using "thumbs up" or "thumbs down," have students respond by agreeing or disagreeing to the following prompts:
 - Sometimes personal rights must be given up in order to protect people from those who could be a danger to all of us.
 - It is better to be safe than sorry when it comes to fighting terrorism.
 - The government should have the right to investigate to the fullest extent any suspicious person and their activities.
 - The fundamental civil liberties granted in the Bill of Rights constitute the heart of the U.S. Constitution and American society, and we cannot surrender without profoundly altering the nature of both.
 - We cannot secure our freedoms by subjecting ourselves to oppressive state control.
- After the initial activity is completed, have students discuss the following question: "What do you already know about the USA Patriot Act?"

Document Analysis:

- After sharing responses, tell students they will read arguments in support of and in opposition to the USA Patriot Act. Have students draw a T-chart where they will organize their evidence. This T-Chart will be used throughout the task to help them formulate their own argument.
- Distribute RS#01: Document A – The U.S. Attorney General Reports on the Patriot Act's Successes and RS#02: Document B – Surveillance under the Patriot Act
- Divide students into pairs and say that each student in the group will be assigned one of the two articles.
- Ask the students to think while they read: "How effective has the PATRIOT Act been in combating terrorism?" (*Note that the ACLU graphic shows that most of the searches and prosecutions under the PA have been in other areas of law enforcement, such as drug war or illegal immigration.*)
 - As the students read their assigned article, they should respond to the corresponding guiding questions.
 - When the students are finished answering the guiding questions, they should go back and add evidence to their T-Charts supporting and/or opposing the USA PATRIOT ACT.

Corroborating Evidence and Constructing Interpretations – *Close Analysis:*

- When the student pairs have completed the articles, they will discuss their documents with each other and continue to add information to their T-Chart. When discussing the two documents, the students should be thinking about which side of the debate they find makes the best argument and why. For example, which source is more reliable and which source provides the best evidence to support its claim.
- Distribute and have students now examine the Congressional votes on the USA Patriot Act in 2001, 2005-2006, and 2011 (RS#03). Ask them to consider why Congress is so ready to support legislation that promises security against terrorism at the expense of some very basic constitutional rights.

Thoughtful Application:

- Divide the class into two groups and say that after gathering their evidence, students will now hold a debate/discussion. Tell them that one group will defend the USA Patriot Act and one group will argue against it.
- Post the following question to the class: **Do you believe that the Act is a necessary tool for national security, or should it be repealed because it violates fundamental civil liberties?**
- Students should refer back to their T-Charts to prepare for their debate or discussion.
- Lead students in a whole-class debate or a Socratic Seminar. Have them use evidence from the sources to support their arguments.
- Afterward, have them consider their own personal opinions, after hearing both sides of the debate. For homework, students should complete the Reflection Activity (RS#04). Teachers can score this assignment using RS#05: ARCH Historical Thinking Skills Assessment Rubric – Secondary.

Resource Sheet #01

Document A The U.S. Attorney General Reports on the Patriot Act's Successes

John Ashcroft

In Afghanistan, our Special Operations Forces have deployed state-of-the-art weaponry and cutting edge tactics to hunt [the terrorist group] al Qaeda and destroy their safe haven. Here at home, our domestic warriors—federal, state and local law enforcement—have used the new legal tools and technology in the Patriot Act to hunt down al Qaeda, destroy their safe haven, and save American lives.

Let me be clear about something before I move on: Congress intended that the Patriot Act be used to save lives from terrorist attacks. In fact, there are a number of provisions that are only to be used to prevent terrorism or foreign spying. But other tools in the Patriot Act were developed to combat serious crime across the board, and we have used those general tools both in terrorism cases as well as in other cases, such as to catch predatory child molesters and pornographers.

We are a nation at war. That is a fact. Al Qaeda wants to hit us and hit us hard. We have to use every legal weapon available to protect the American people from terrorist attacks. Like the smart bombs, laser-guided missiles and predator drones employed by our armed forces to hunt and kill al Qaeda in Afghanistan, the Patriot Act is just as vital to targeting the terrorists who would kill our people and destroy our freedom here at home.

The Patriot Act's Success

I am pleased ... to have met with ... distinguished members of Congress and to have presented to them a report on how the Patriot Act has been our laser-guided weapon to prevent terrorist attacks. I have also been pleased to discuss how we have used the Patriot Act to save lives from violent criminals who prey on the vulnerable.

This report is an unprecedented compilation of dozens of real life cases from across the country in which the FBI and other law enforcement officials have used the tools of the Patriot Act to protect America's families and communities, and even to save lives. In fact, this report provides a mountain of evidence that the Patriot Act has saved lives. By tearing down the wall between law enforcement and the intelligence community, we have been able to share information in a way that was virtually impossible before the Patriot Act.

The removal of "The Wall" and the dramatic increase in information sharing allowed by the Patriot Act has enabled us to hunt down and dismantle terror cells in Portland, Oregon; Lackawanna, New York; and Northern Virginia. The information-sharing and coordination made possible by section 218 assisted the prosecution in San Diego of several persons involved in an al Qaeda drugs-for-weapons plot, which culminated in several guilty pleas. They admitted that they conspired to receive, as partial payment for heroin and hashish, four "Stinger" anti-aircraft missiles that they then intended to sell to the Taliban, an organization they knew at the time to be affiliated with al Qaeda.

Educational materials developed through the Howard County History Labs Program, a partnership between the Howard County Public School System and the UMBC Center for History Education.

The Patriot Act is al Qaeda's worst nightmare when it comes to disrupting and disabling their operations here in America. Our law enforcement and intelligence teams have never before been so integrated and coordinated, and technologically-equipped, to target the 21st Century threat of global terror.

This report will help reinforce what the majority of Americans already know: When it comes to saving lives and protecting freedom, we must use the Patriot Act and every legal means available to us.

Source: "Prepared Remarks of Attorney General John Ashcroft." *U.S. Department of Justice*. N.p., 13 July 2004. Web. 3 Feb. 2014. http://www.justice.gov/archive/ag/speeches/2004/071304_patriot_report_remarks.htm

GUIDING QUESTIONS:

1. **SOURCING:** Who is the author and why is he defending the USA PATRIOT Act?
2. **CRITICAL READING:** What claims does the author make about the Act and what evidence does he provide that support those claims?
3. **CRITICAL READING:** What words or phrases does the author use to convince the reader that his point of view is correct?

Resource Sheet #02

Document B – Surveillance under the Patriot Act American Civil Liberties Union (ACLU) - Infographic

SURVEILLANCE UNDER THE PATRIOT ACT

Hastily passed 45 days after 9/11 in the name of national security...

The Patriot Act was the first of many changes to surveillance laws that made it easier for the government to spy on ordinary Americans by expanding the authority to monitor phone and email communications, collect bank and credit reporting records, and track the activity of innocent Americans on the Internet. While most Americans think it was created to catch terrorists, the Patriot Act actually turns regular citizens into suspects.

"I want to deliver a warning... when the American people find out how their government has secretly interpreted the Patriot Act, they will be stunned and they will be angry."
Senator Ron Wyden (D-OR),
May 26, 2011
SOURCE: 1

National Security Letters (NSLs) are issued by FBI agents, without a judge's approval, to obtain personal information...

NSL

- Phone Records
- Computer Records
- Credit History
- Banking History

Between 2003 and 2006, the FBI issued **192,499 NSLs**

Which led to **1 terror-related conviction**

SOURCE: 2

The conviction would have occurred even without the Patriot Act.
SOURCE: 3

Abuse of Privacy: The Patriot Act does not require information obtained by NSLs to be destroyed – even if the information is determined to concern innocent Americans.

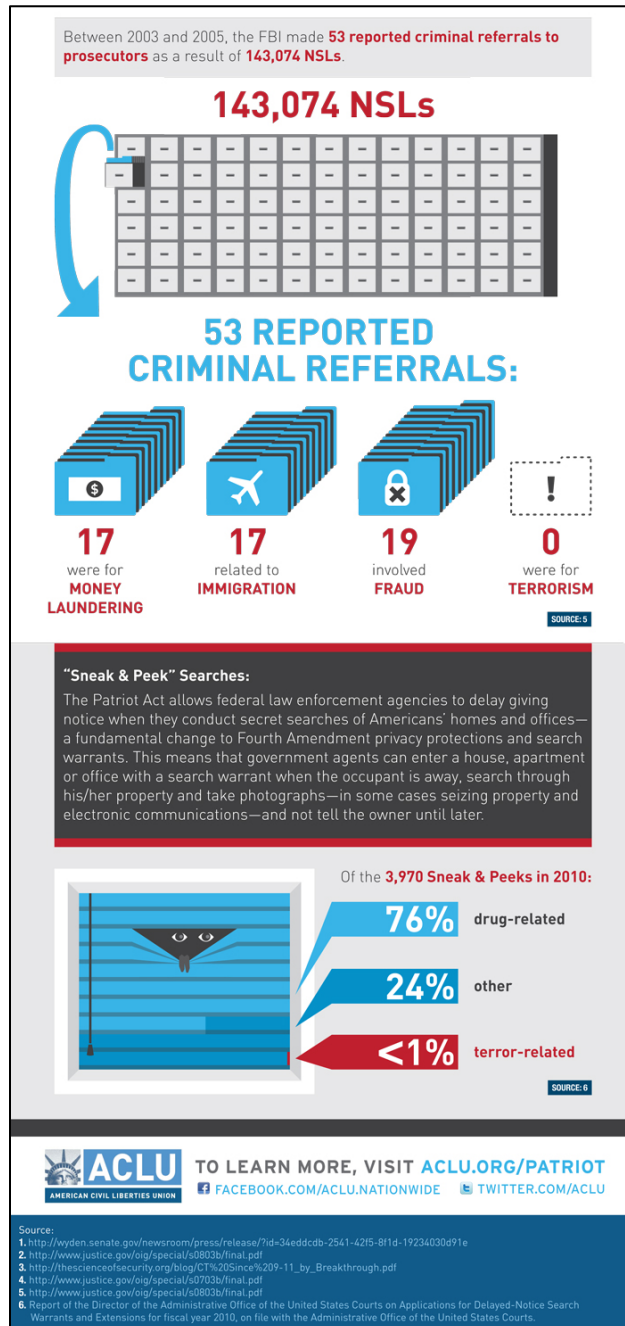
At least **34,000** law enforcement and intelligence agents have access to phone records collected through NSLs.

YOUR INFO: SAVED FOREVER

In response to **9 NSLs**, **11,100** Americans' telephone account records were turned over to the FBI.
SOURCE: 4

The Patriot Act prohibits Americans who receive NSLs from telling anyone. These "gag order" provisions have been held unconstitutional in several legal cases.

Educational materials developed through the Howard County History Labs Program, a partnership between the Howard County Public School System and the UMBC Center for History Education.



ACLU, “Surveillance under the Patriot Act.” (2011), at <https://www.aclu.org/national-security/surveillance-under-patriot-act> (Accessed on Oct. 2, 2014)

Document B

Surveillance Under The Patriot Act [Infographic Text]

American Civil Liberties Union (ACLU)

[View the Infographic.](#)

Hastily passed 45 days after 9/11 in the name of national security, the Patriot Act was the first of many changes to surveillance laws that made it easier for the government to spy on ordinary Americans by expanding the authority to monitor phone and email communications, collect bank and credit reporting records, and track the activity of innocent Americans on the Internet. While most Americans think it was created to catch terrorists, the Patriot Act actually turns regular citizens into suspects.

On May 26, 2011, Senator Ron Wyden (D-OR), said, "I want to deliver a warning ... when the American people find out how their government has secretly interpreted the Patriot Act, they will be stunned and they will be angry."

Under the Patriot Act, National Security Letters (NSLs) are issued by FBI agents, without a judge's approval, to obtain personal information, including phone records, computer records, credit history, and banking history.

Between 2003 and 2006, the FBI issued 192,499 NSLs, which led to one terror-related conviction. The conviction would have occurred even without the Patriot Act.

Abuse of Privacy: The Patriot Act does not require information obtained by NSLs to be destroyed - even if the information is determined to concern innocent Americans. Your info: Saved forever. At least 34,000 law enforcement and intelligence agents have access to phone records collected through NSLs. In response to 9 NSLs, 11,100 Americans' telephone account records were turned over to the FBI.

The Patriot Act prohibits Americans who receive NSLs from telling anyone. These gag order provisions have been held unconstitutional in several legal cases.

Between 2003 and 2005, the FBI made 53 reported criminal referrals to prosecutors as a result of 143,074 NSLs.

143,074 NSLs, 53 reported criminal referrals:

17 were for money laundering.

17 related to immigrations.

19 involved fraud.

0 were for terrorism.

"Sneak & Peek" Searches: The Patriot Act allows federal law enforcement agencies to delay giving notice when they conduct secret searches of Americans homes and offices—a fundamental change to Fourth Amendment privacy protections and search warrants. This means that government agents can enter a house, apartment or office with a search warrant when the occupant is away, search through his/her property and take photographs—in some cases seizing property and electronic communications—and not tell the owner until later.

Of the 3,970 Sneak & Peeks in 2010:

76% drug-related

24% other

1% terror-related

To learn more visit aclu.org/patriot.

Source

1. <http://wyden.senate.gov/newsroom/press/release/?id=34eddcdb-2541-42f5-8f1d-19234030d91e>
2. <http://www.justice.gov/oig/special/s0803b/final.pdf>
3. http://thescienceofsecurity.org/blog/CT%20Since%209-11_by_Breakthrough.pdf
4. <http://www.justice.gov/oig/special/s0703b/final.pdf>
5. <http://www.justice.gov/oig/special/s0803b/final.pdf>
6. Report of the Director of the Administrative Office of the United States Courts on Applications for Delayed-Notice Search Warrants and Extensions for fiscal year 2010, on file with the Administrative Office of the United States Courts.

Published on *American Civil Liberties Union* (<https://www.aclu.org>)

Source URL: <https://www.aclu.org/surveillance-under-patriot-act-infographic-text>

GUIDING QUESTIONS:

1. SOURCING: Who is the ACLU and why is it criticizing the USA PATRIOT Act?
2. CRITICAL READING: What claims does the ACLU make about the Act and what evidence does it provide that support its claims?
3. CRITICAL READING: What words or phrases does the ACLU use to convince the reader that its point of view is correct?

Resource Sheet #03

Document C Congressional Votes for the Patriot Act

The PATRIOT Act was passed by Congress with the following votes:

2001: The legislation passed the Senate 98 to 1, and the House 357 to 66.

2006: The legislation passed the Senate 89 to 10, and the House (in Dec. 2005) 251 to 174.

May 2011: The legislation passed the Senate, 72 to 23, and the House, 250 to 153.

GUIDING QUESTIONS:

1. What do the votes in favor of the PATRIOT Act suggest about Congressional attitudes to national security?

2. What do the votes in favor of the PATRIOT Act suggest about Congressional attitudes to civil rights?

ARCH Historical Thinking Skills Scoring Rubric – Secondary

	Strategies/Procedural Concepts	Procedural Concepts	
Criteria	Corroboration	Claim	Evidence
4	Constructs an interpretation of events using information and perspectives in multiple sources. Identifies consistencies and inconsistencies among various accounts.	Formulates a plausible interpretation, argument, or claim based on the evaluation of evidence found in a variety of primary and secondary sources.	Justifies claims using appropriate direct evidence from a variety of reliable sources.
3	Explains similarities and differences by comparing information and perspectives in multiple sources.	Generates a reasonable interpretation, argument, or claim based on an evaluation of the evidence found in selected primary and secondary sources.	Justifies claims using some appropriate direct evidence from a variety of reliable sources.
2	Identifies similarities and differences in information in multiple sources.	States an interpretation, argument, or claim that may or may not be based on evidence found in selected primary and secondary sources.	Justifies claims using generalizations or limited appropriate direct evidence.
1	Demonstrates little to no attempt to examine sources for corroborating or conflicting evidence.	Does not state an original claim, argument, or interpretation.	Does not justify or support claims using appropriate direct evidence.