

# **The USA PATRIOT Act: A Necessary Evil**

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## **ABSTRAKT**

Cílem této práce není ukázat USA PATRIOT Act ve špatném světle, ale zdůraznit potřebu tohoto dokumentu, i přes s ním spojenou řadu problémů. Patriot Act zlepšil protiteroristické postupy, které byly v devadesátých letech na velice nízké úrovni. Bylo potřeba 11. září 2001 aby vláda USA otevřela oči a začala jednat proti zjevné teroristické hrozbě. Přijetí Patriot Actu v říjnu 2001 přineslo federálním agenturám tolik potřebné pravomoci. Na druhou stranu vyvstaly otázky týkající se vlivu na osobní svobody, jejich záruky, skutečné a domnělé zneužití tohoto práva. Patriot Act byl a zůstává nezbytným dokumentem, avšak přinesl s sebou řadu problémů, které by měly být uváženy a se kterými se musí člověk potýkat.

Klíčová slova: the Patriot Act, the USA PATRIOT ACT, terorismus, 11. září 2001, občanské svobody, zásah do soukromí, Bush, Obama, Clinton, proti teroristická opatření, válka proti teroru.

## **ABSTRACT**

The aim of this work is not to portray the Patriot Act in a bad light but to highlight the need of this document, despite its problems. The Patriot Act improved counterterrorism policies that were very poor during the 90s. It took 9/11 for the U.S. government to open its eyes to the real threat of terrorism and to start to act against this threat. The passing of the Patriot Act into law in October 2001 provided federal agencies with much needed powers. On the other hand, it raised questions concerning its impact on civil liberties, their safeguards and real and perceived misuses of the law. The Patriot Act was and remains necessary, but it brought with it a number of problems that must still be considered and dealt with.

Keywords: the Patriot Act, the USA PATRIOT Act, terrorism, 11 September 2001, civil liberties, privacy violation, Bush, Obama, Clinton, counterterrorism, war on terror.

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## INTRODUCTION

Although seemingly an odd comparison, The United States of America and Spiderman have something in common besides color scheme. Each possesses powers that they attempt to use to help people, protect the innocent and banish evil. Although these powers might be used for good, in the case of Spiderman they do have the negative effect of ruining his personal life. It was Spiderman's uncle, Benjamin Parker, who once informed his nephew that "with great power comes great responsibility".<sup>1</sup> This quote can also be applied to the wide-ranging powers bestowed on the U.S. federal government in the wake of 11 September 2001 by Congress when it passed, at President Bush's urging, the USA PATRIOT Act. The stated purpose of this act, key aspects of which were just renewed by President Obama, is to better enable the federal government to protect its citizens and the world against acts of terrorism.

This act, although at first accepted without qualm, soon polarized American society, depending on priorities. Those who value safety over all else see little problem with the act, while those who value civil liberties complain that their rights are being taken away. The debate is simple: Is it better to be safe but unfree or unsafe and free? Both sides have their own unique viewpoints and reasonable objections. Clearly, the Patriot Act has changed life in the USA, safeguarding citizens through intrusion into their personal lives.

People are not superheroes. If they were, thousands of lives might have been saved on that fateful day over a decade ago. In the absence of such superheroes, the United States needs powerful tools to protect its citizens and to ensure that 11 September will not be repeated. Terrorism needs to be dealt with preemptively. Despite the fact that it violates civil liberties, the PATRIOT Act remains the best way to protect Americans.<sup>2</sup>

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<sup>1</sup> Sam Raimi, "*Spider-Man*," DVD, Sony Pictures Entertainment, 2002, Uncle Ben talks to Peter in the car, 35:36.

<sup>2</sup> Daily News Start, "Man's Death from World Trade Center Dust Brings Ground Zero Toll to 2,753," *New York News* (June 18, 2011). [http://articles.nydailynews.com/2011-06-18/local/29691833\\_1\\_world-trade-center-year-of-lung-disease-inflamed-cells](http://articles.nydailynews.com/2011-06-18/local/29691833_1_world-trade-center-year-of-lung-disease-inflamed-cells) (accessed January 20, 2012).

## 1 U.S. SECURITY BEFORE THE PATRIOT ACT

The security of the U.S. was in a very precarious position before the signing of the PATRIOT Act, especially in the 90s. The federal intelligence agencies were dealing with a number of problems created by the Clinton administration that prevented them from working efficiently on anti-terrorism tasks. Terrorism was still a relatively new concept to the American public, but the approach towards it started to change as the terrorist threat increased. It is important to understand why The PATRIOT Act was signed into law. For this reason, it is essential to understand events leading up to 11 September and also how agencies that were involved in counterterrorism dealt with threats, both real and perceived. Clearly, security was insufficient and changes were needed as to how terrorism was approached by the federal government and various federal agencies.<sup>3</sup>

### 1.1 Events leading up to 11 September 2001

The PATRIOT Act was in part the result of a number of previous attacks on American targets both home and abroad. Osama Bin Laden, the leader of Al-Qaeda, and Ayman al Zawahiri, the founder of the Egyptian Islamic Jihad, co-authored and published in February 1998 a treatise named “Fatwa Urging Jihad Against Americans”. In it they stated, “The ruling to kill the Americans and their allies--civilians and military--is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque and the holy mosque from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim.” They further state that “crimes and sins committed by the Americans are a clear declaration of war on God, his messenger, and Muslims.” The terrorist threat was clearly eminent even before releasing this fatwa and events before the attack on the World Trade Center (WTC) provide evidence that attacks against Americans were a real problem that needed to be dealt with but was largely ignored.<sup>4</sup>

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<sup>3</sup> Cary Stacy Smith and Li- Ching Hung, *The Patriot Act: Issues and Controversies*. (Springfield: Charles C. Thomas, 2010), 3-22.

<sup>4</sup> The Federal Bureau of Investigation, “Most Wanted Terrorists,” [http://www.fbi.gov/wanted/wanted\\_terrorists/ayman-al-zawahiri](http://www.fbi.gov/wanted/wanted_terrorists/ayman-al-zawahiri) (accessed March 3, 2012); BBC News, “Who is Osama Bin Laden?,” BBC News (December 6, 2009). [http://news.bbc.co.uk/2/hi/south\\_asia/1551100.stm](http://news.bbc.co.uk/2/hi/south_asia/1551100.stm) (accessed March 3, 2012); PBS Newshour, “Al Qaeda’s Fatwa,” (February 1998), [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1998.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1998.html) (accessed January 25, 2012); Smith and Hung, *The Patriot Act*, 3-22; Ibid, 6.

The first terrorist attack on the WTC in New York City took place in February 1993, when terrorists detonated a truck full of explosives inside the parking garage. The building of the North Tower was not destroyed but six people died during this attack and over thousand people were injured. Muslim extremist Ramzi Yousef was responsible for this attack. Yousef sent a letter to the *New York Times* in which the terrorists clarified their motives, saying, “We declare our responsibility for the explosion on the mentioned building. This action was done in response for the American political, economical, and military support to Israel the state of terrorism and to the rest of the dictator countries in the region.” The Clinton’s administration promised a response to this attack, and federal agencies started to search extensively for answers around the globe. This led to the arrest of Ramzi Yousef in Pakistan in 1995. The FBI took the bombing as an opportunity to formulate a plan as to how the U.S. government should proceed in the case of another terrorist incident. Federal agencies should have taken this attack as wake up call but they remained complacent and other terrorist attacks followed.<sup>5</sup>

Buildings located abroad and associated with the USA soon became targets of terrorist attacks. A car bomb killed five people in November 1995 outside the housing of the U.S. program director for the Saudi National Guard in Riyadh. A truck bomb destroyed the Khobar Towers in June 1996 which was home to U.S. soldiers in Dhahran, Saudi Arabia, killing nineteen. Jordanian police was able to uncover and abort a plan for bombing the Radisson SAS Hotel in Amman, a popular place for American tourists in Jordan in December 1999. The bombing of U.S. embassies in Kenya and Tanzania in August, 7 1998 were other important events. The attack resulted in 200 deaths and following cruise missile strike on compounds in Sudan and Afghanistan linked to Osama bin Laden who was responsible for this attack.<sup>6</sup>

There was also an attempt to sink the USS *Cole* with a boat filled with explosives in Yemen in October 2000. The warship did not sink but seventeen sailors were killed.

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<sup>5</sup> Cary Stacy Smith and Li- Ching Hung, *The Patriot Act: Issues and Controversies*. (Springfield: Charles C. Thomas, 2010): 3; Larry Neumeister, “1st Trade Center Attack: 10 Years Ago,” *CBSNEWS* (February 2009). [http://www.cbsnews.com/2100-500164\\_162-540376.html](http://www.cbsnews.com/2100-500164_162-540376.html) (accessed March 30, 2012); William Blum, *Rogue State: A Guide to the World's Only Superpower*. (London: Zed Books Ltd, 2002): 3; Cary Stacy Smith and Li- Ching Hung, *The Patriot Act: Issues and Controversies*. (Springfield: Charles C. Thomas, 2010): 5-7.

Terrorists also planned to destroy the Holland and Lincoln tunnels and other landmarks as symbols of America. These planned attacks did not happen because the terrorists were caught before any action.<sup>7</sup>

All these events paled in comparison to the attacks on the WTC and Pentagon in 2001 in which nearly three thousand died. The attacks were designed to kill as many people as possible and destroy American symbols. The “Fatwa Urging Jihad Against Americans” clearly stated the mission for extremists and declared a holy war against the USA. Leading up to this attack, the U.S. government might have predicted that similar attacks would continue and increase in scale and could have taken the necessary steps to effectively increase security on the borders and within the country, but it did not.

### 1.1.1 Attacks from within

Increasing the number of agents operating on the borders and improving the border security were some of the steps taken after the attack on the World Trade Center in 1993. The intention behind this step was to increase protection against terrorists entering the country. Few at that time considered the possibility of an attack from within, yet that is exactly what happened in Oklahoma City on 19 April 1995.

The attack, which echoed the attack on the WTC in 1993, was carried out by Timothy McVeigh and Terry Nichols. They strategically parked a van filled with explosives in front of the Alfred P. Murrah Federal Building in Oklahoma City. The subsequent explosion did huge material damage, destroying the federal building and damaging 324 nearby buildings. The bombing killed 168 people, including nineteen children in a daycare on the first floor, and more than 500 people were injured during this attack. It was the biggest terrorist attack in U.S. history to that point, only to be surpassed six years later by the second attack on World Trade Center. Oklahoma was payback for the 1993 federal siege on the Branch Davidian compound in Waco, Texas. The cult’s activities attracted the

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<sup>6</sup> Ibid., 4; Smith and Hung, *The Patriot Act*, 4; U.S. Department of State, “Bombing in Nairobi, Kenya and Dar es Salaam, Tanzania – August 7, 1998,” U.S. Department of State, [http://www.state.gov/www/regions/africa/kenya\\_tanzania.html](http://www.state.gov/www/regions/africa/kenya_tanzania.html) (accessed April 24, 2012).

<sup>7</sup> Smith and Hung, *The Patriot Act*, 4-5.

attention of the FBI and the subsequent siege took fifty-one days and ended with the destruction of the compound and human loses on both sides.<sup>8</sup>

The interesting thing about the Oklahoma City bombing is that it was not performed by some Islamic oriented group like Al-Qaeda. Instead, the terrorists were American citizens, former U.S. soldiers and members of a militia group. McVeigh's motivation for this attack was what went on in Waco and how the federal agents handled the situation. He was shocked how federal agents poorly handled the situation, which resulted in the deaths of eighty people, including twenty children. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) which was leading the siege on Waco was criticized for its ineffective approach. The goal of the raid was simply to arrest the leader of the cult, David Koresh, which most certainly could have been accomplished without laying siege to the compound. This crude approach is compared to a 1985 bombing in Philadelphia where police dropped a bomb on a house occupied by the MOVE organization. This reckless behavior led to death of six adults, five children and destruction of another sixty one houses of neighborhood. Officials apparently did not learn their lesson from this approach and followed the same radical ways in Waco, failing there too. The Oklahoma City bombing incident drew attention to extremist groups within the U.S. and showed that intelligence agencies dealing with counterterrorism had to take homegrown threats into account as well. Domestic terrorism came into the spotlight. The bombing highlighted the continuing unpreparedness of the U.S. to face terrorism and demonstrated that there was still room to develop counterterrorism policies.<sup>9</sup>

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<sup>8</sup> Economist, "In the Name of Liberty," *Economist* 335, no. 7912 (April 1995): 15. <http://ehis.ebscohost.com/eds/detail?sid=578f3242-a0c3-438f-846a-1890d6959ae3%40sessionmgr14&vid=1&hid=109&bdata=JnNpdGU9ZWRzLWxpdmU%3d#db=bth&AN=9505027556> (accessed March 5, 2012); BBC Home, "1995: Many Feared Dead in Oklahoma Bombing," (April 1995). [http://news.bbc.co.uk/onthisday/hi/dates/stories/april/19/newsid\\_2733000/2733321.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/april/19/newsid_2733000/2733321.stm) (accessed March 5, 2012); Richard Lacayo and Jordan Bonfare, "Cult of Death," *Time* 141, no. 11 (March 1993): 36. <http://ehis.ebscohost.com/eds/detail?sid=341dcdd6-7c70-4434-9c20-f664ebfed82%40sessionmgr110&vid=1&hid=109&bdata=JnNpdGU9ZWRzLWxpdmU%3d#db=bth&AN=9303100488> (accessed March 5, 2012).

<sup>9</sup> Justin Sturken and Mary Dore, "Remembering the Waco Siege," ABC News (February 2007): 1-2. <http://abcnews.go.com/US/Story?id=2908955&page=1#.T2Njk8U7ol8> (accessed March 5, 2012); BBC News, "Trying to Explain McVeigh," BBC News (May 2001). [http://news.bbc.co.uk/2/hi/programmes/from\\_our\\_own\\_correspondent/1325650.stm](http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/1325650.stm) (accessed March 5, 2012); Martha T. Moore, "1985 Bombing in Philadelphia Still Unsettled," *USA TODAY* (May 2005). [http://www.usatoday.com/news/nation/2005-05-11-philadelphia-bombing\\_x.htm](http://www.usatoday.com/news/nation/2005-05-11-philadelphia-bombing_x.htm) (accessed April 3, 2012);

### 1.1.2 The Centennial Olympic Park Bombing

The bombing in Atlanta, Georgia on July 27, 1996 during the Summer Olympics is another example of an act of terror performed by an American citizen on American soil. U.S. citizen Eric Rudolph planted a pipe bomb packed with nails in Centennial Olympic Park during a concert. The resulting explosion killed one person and wounded more than a hundred. This attack was followed by three other bombings in an abortion clinic and night club in Atlanta and another abortion clinic in Birmingham, Alabama.<sup>10</sup>

Rudolph claims that his motivation for the attacks was his belief against abortion and against homosexuality. He considers abortion as murder and homosexuality as a disturbing element and danger for the American society. There is a possibility that his actions were influenced by the radical Christian Identity movement.<sup>11</sup>

The Oklahoma City bombing and the Olympic Park Bombing were examples of a new kind of threat that the U.S. would have to face. Domestic terrorism was a new threat to security inside the country and something that few counted on. These attacks showed again that the U.S. still struggled with creating of effective counter terrorism strategy and pinpointed the need for a change.

## 1.2 Homeland security before the USA PATRIOT Act

The basic problem of fighting terrorism in the 90s was that counterterrorism experts were working as individuals, not knowing what the other investigators were doing. They did not cooperate together or share information. This situation developed after budget cuts made by the Clinton administration. The administration focused on domestic issues, and federal entities in charge of security went insufficiently funded. A classic example of how things worked in national security is the attack on the WTC in February 1993. The attack forced intelligence and law enforcement agencies to realize the true goals of Islamic

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Economist, "In the Name of Liberty," *Economist* 335, no. 7912 (April 1995): 15.

[http://ehis.ebscohost.com/eds/detail?sid=578f3242-a0c3-438f-846a-](http://ehis.ebscohost.com/eds/detail?sid=578f3242-a0c3-438f-846a-1890d6959ae3%40sessionmgr14&vid=1&hid=109&bdata=JnNpdGU9ZWRzLWxpdmU%3d#db=bth&AN=9505027556)

[1890d6959ae3%40sessionmgr14&vid=1&hid=109&bdata=JnNpdGU9ZWRzLWxpdmU%3d#db=bth&AN=9505027556](http://ehis.ebscohost.com/eds/detail?sid=578f3242-a0c3-438f-846a-1890d6959ae3%40sessionmgr14&vid=1&hid=109&bdata=JnNpdGU9ZWRzLWxpdmU%3d#db=bth&AN=9505027556) (accessed March 5, 2012).

<sup>10</sup> Michael Isikoff, "Flushed from the Woods," *Newsweek*, 141, no. 23 (June 2003): 35.

<http://search.proquest.com/docview/214295517?accountid=15518> (accessed March 5, 2012).

<sup>11</sup> Eric Rudolph, "Psalm 144:1 Blessed be the LORD my strength which teacheth my hands to war, and my fingers to fight," Army of God, <http://www.armyofgod.com/EricRudolphStatement.html> (accessed March 5, 2012); Alan Cooperman, "Is Terrorism Tied To Christian Sect?" *Washington Post* (June 2003): A.03. <http://www.rickross.com/reference/rudolph/rudolph4.html> (accessed March 7, 2012).

extremists, which were to kill Americans and destroy American symbols. The government responded quickly, and the people responsible for the attack were quickly caught and brought to justice, but few considered the possibility that this kind of event could be repeated in the future. According to Smith and Hung, “Before September 11, America had a paucity of trained analysts and consequently, few analytical reports existed. Up until 11 September, the Bureau had never seriously analyzed the terrorist menace facing America.”<sup>12</sup>

The problem of the lack of cooperation among federal entities and experts was that it prevented effective research that would help in identifying and investigating terrorist threats. This research could have provided necessary information about terrorist funding, terrorist cells operating in the USA and maybe much more. Actually there was little place in the American mentality for terrorism before 9/11. For most Americans, terrorism was something that happened elsewhere. Moreover terrorists were considered stupid, based largely on the fact that the terrorist involved in the Oklahoma City bombing were caught because, low on cash, they tried to get back the deposit for the truck they blew up in Oklahoma. As a result, Oklahoma City became somewhat of an anomaly in American minds, a lucky success by two extremists, and American society believed that terrorism could be dealt with within the existing framework.<sup>13</sup>

Counterterrorism issues were handled primary by the FBI. An Interesting aspect of the FBI was their task management, which had two key faults: first the performance of officers was judged according to charts depicting numbers of arrests, prosecutions, convictions etc. Counterterrorism was not popular because it was slow work with no results or belated results, and it did not interest those agents hungry for promotion based on their results. More popular work involved white-collar crimes, disbanding organized crime, drug cartels and gangs. Second, each of the fifty-six field offices could decide its own priorities. This opportunity resulted in a reality where most FBI agents were not even familiar with issues of counterterrorism and focused mainly or only on local problems.<sup>14</sup>

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<sup>12</sup> Cary Stacy Smith and Li- Ching Hung, *The Patriot Act: Issues and Controversies*. (Springfield: Charles C Thomas, 2010), 5-13; Edward V. Linden, ed., *Focus on Terrorism*, vol. 8 of *Focus on Terrorism* (New York: Nova Science Publishers, Inc., 2007), 179- 193.

<sup>13</sup> Cary Stacy Smith and Li- Ching Hung, *The Patriot Act: Issues and Controversies*. (Springfield: Charles C Thomas, 2010), 7-8.

<sup>14</sup> *Ibid*, 9.

First, a small change in the FBI's attitude towards counterterrorism came in 1993 when Louis Freeh became its director. He preferred a preemptive approach to terrorism. For this reason, he established the Counterterrorism Division which was allowed to cooperate with the CIA's Counterterrorist Center. Freeh stated, "Merely solving this type of crime is not enough; it is equally important that the FBI thwart terrorism before such acts can be perpetrated." The new strategy for fighting terrorism was dealing with many problems. There was not enough manpower to deal with this problem, analysis, translations, distribution of information; nor was there enough funding. Also the FBI established divisions that should recognize terrorist movements and provide proper analysis but they were not using analysts properly. They employed inexperienced analysts with insufficient background knowledge. Their work was made more difficult because they did not have security clearance to access the CIA's or FBI's file databases.<sup>15</sup>

Dale Watson, the head of the FBI Counterterrorism Division, introduced a plan called MAXCAP 05 in 2000. Its general idea was to raise efficiency in counterterrorism, but it failed. The plan lacked in various areas like analysts, agents, linguists etc. On the other hand, Watson affirmed that significant shift in federal agencies is needed to succeed in preventing terrorism.<sup>16</sup>

Besides the FBI there was another agency which could have played a key role in counterterrorism, the Immigration and Naturalization Service (INS). It had the funding and manpower that the FBI needed. The biggest problem with the INS was that counterterrorism was not its field of interest. The INS was dealing mainly with immigrants, criminal aliens, etc. It also used old and out of date equipment.<sup>17</sup>

After the WTC bombing in February 1993, the INS received funds and was told to assist the FBI. Its priorities at that time were increasing the numbers of agents on the Mexican border and creating a watchlist of alleged terrorists, a successful step that helped to prevent potentially dangerous people from entering the USA, although not the perpetrators of 9/11. On the other hand, the INS failed to effectively patrol Canadian

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<sup>15</sup> Ibid, 12-14.

<sup>16</sup> Cary Stacy Smith and Li- Ching Hung, *The Patriot Act: Issues and Controversies*. (Springfield: Charles C Thomas, 2010), 14; Mike German, "An FBI's Insider's Guide To The 9/11 Commission Report," <http://www.globalsecurity.org/security/library/report/2005/guide-iii.htm> (accessed March 3, 2012).

<sup>17</sup> Cary Stacy Smith and Li- Ching Hung, *The Patriot Act: Issues and Controversies*. (Springfield: Charles C Thomas, 2010), 17-19.



borders. The Treasury Department alongside with the Secret Service, the Customs Service, the Bureau of Alcohol, Tobacco and Firearms (ATF) were all federal agencies able to help the FBI in counterterrorism, but their assistance was neither offered nor requested. In short, there was little to no cooperation between the different federal agencies in terms of counterterrorism. Each worked on its own and did not communicate with the others, often leading to a duplication of efforts. In a time of decreased funding, efficiency was the key, and the federal agencies charged with counterterrorism were anything but efficient.<sup>18</sup>

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<sup>18</sup> Ibid, 18-19.

## 2 THE SLEEPING GIANT AWAKES

The United States of America was clearly dealing with two different enemies along two different lines. There were foreign Islamic-oriented terrorist groups behind borders waiting on their chance to strike and also homegrown terrorists, American citizens unhappy with the path that society had taken. It was a precarious position calling for a two-pronged approach for improving the security of the U.S.

The impact of terrorist attacks on the security in the U.S. in the 90s was the following. The Clinton administration was exposed to the problem of possible terrorist threats, especially after the attack on the WTC in 1993. The administration faced a problem of conflict of interests that was effectively preventing the development of homeland security. In response to terrorist attacks during this turbulent era, the administration implemented various strategies to improve the situation like increasing the budget of various agencies (FBI, CIA, ATF, etc.) dealing with homeland security, but federal bodies dealing with international issues were cut down. Clinton claimed that “the fight against terrorism must be both a national priority and a national security priority.” In the end, he failed in improving security. Administration officials strongly believed that Clinton’s popularity stemmed from his stance on domestic issues and not foreign policies. This belief led to insufficient funding of agencies that were dealing with foreign and defense policy and created a wall between federal agencies dealing with the security of the U.S. The Oklahoma City bombing incident was a very important moment for the Clinton administration. The attack showed that America was still unprepared to face terrorism, especially domestic terrorism. Although Clinton’s speeches to the public about the dangers of terrorism and that fighting it should be a priority looked like a policy change, it was not. The Clinton administration took one major step in counterterrorism, and it was backwards: cutting military spending to reduce the U.S. budget deficit. Counterterrorism as a whole needed more funding and cutting military spending weakened American security at a time when it needed to be strengthened. From this perspective the Clinton administration’s economic policy endangered national security.<sup>19</sup>

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<sup>19</sup> Edward V. Linden, ed., *Focus on Terrorism*, vol. 8 of *Focus on Terrorism* (New York: Nova Science Publishers, Inc., 2007), 179- 193.; Alvin S. Felzenberg and Alexander B. Gray, “Don’t Slash Defense Spending,” *National Review Online*, (July 2011): 1-2.  
<http://www.nationalreview.com/articles/272148/don-t-slash-defense-spending-alvin-s-felzenberg> (accessed

The Clinton administration clearly made a number of wrong decisions that negatively influenced the fight against terrorism. For example, in 1998 U.S. officials launched a missile strike on six targets in Afghanistan and Sudan that were supposed to part of a terrorist network linked to Osama bin Laden. Clinton obtained information about possible upcoming terrorist attacks involving chemical and conventional weapons and ordered this strike to avert them. This strike completely failed. It turned out that the attacked factory in Sudan was not producing any chemical weapons, just aspirin. These attacks made Sudan and Afghan officials angry. According to the U.S. Defense Secretary William Cohen the goal of these attacks was to destroy training facilities for terrorists and a chemical weapons factory. The missile strike did not hit the terrorist targets but clearly angered governments and Islamic militant groups.<sup>20</sup>

Clinton's presidency ended in January 2001. Historians have deemed his presidency a success in many ways, especially balancing the budget, but he should be blamed for inaction in regards to terrorism. These early attempts showed the whole world that the U.S. was an easy target, a paper tiger. Law enforcement agencies and intelligence agencies responded to these attacks and searched for answers on only a surface level. There was no great intent to create and implement a working strategy to improve the security situation both at home and abroad. It was only a matter of time before the sparks of terrorism in the 90s led to the conflagration of 11 September 2001, when hijacked planes crashed into the World Trade Center and Pentagon.

The attack on the WTC surpassed the Oklahoma City bombing which was to that point the biggest terrorist attack on American soil. The reaction to 9/11 was intense, and an immediate worldwide hunt for the perpetrators began. This event opened the eyes of the U.S. and placed a spotlight directly on its weak counterterrorism strategy. Changes in the approach to fighting terrorism started to be made so as to making sure that 9/11 would not be repeated. The promises of a more functional counterterrorism strategy became true when

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March 5, 2012); Bruce W. Nelan and Bruce van Voorst, "A Force for the Future," *Time* 140, no. 10 (September 1992): 26. <http://ehis.ebscohost.com/eds/detail?sid=9afa3d93-06c9-498b-bc62-f61b7871a8af%40sessionmgr110&vid=1&hid=101&bdata=JnNpdGU9ZWRzLWxpdmU%3d#db=bth&AN=9209070632> (accessed March 5, 2012); Robert L. Borosage, "The Kindest Cuts," *The Nation* 256, no. 13 (April 1993): 437. <http://ehis.ebscohost.com/eds/pdfviewer/pdfviewer?sid=bef4a88d-6a1c-4573-bf63-813d544dad1c%40sessionmgr12&vid=2&hid=22> (accessed April 3, 2012).

the USA PATRIOT Act was signed into law on 26 October 2001 by President George W. Bush. The Patriot Act was designed to provide the U.S. with the necessary legal tools to prevent and fight terrorism. The Act successfully fulfilled its purpose. It offered a number of approaches to dealing with terrorism. On the other hand, the signing of this document filled some members of society with doubts and fears of misuse.

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<sup>20</sup> CNN U.S., “U.S. Missiles Pound Targets in Afghanistan, Sudan,” *CNN U.S.* (August 1998): 1-2. [http://articles.cnn.com/1998-08-20/us/9808\\_20\\_us.strikes.01\\_1\\_sudanese-television-bin-mullah-abdullah?\\_s=PM:US](http://articles.cnn.com/1998-08-20/us/9808_20_us.strikes.01_1_sudanese-television-bin-mullah-abdullah?_s=PM:US) (accessed April 5, 2012).

### 3 THE USA PATRIOT ACT, A DEFINITION

To continue exploring the circumstances surrounding the Patriot Act controversy, it is essential to define what The USA PATRIOT Act is and what it offers. An explanation of its major premises will clarify the controversy concerning the execution of this law. The Patriot Act was brought into the spotlight by various groups that point at violations of their liberties and at the misuse of this law for different purposes than the deterrence and punishment of terrorist acts in the USA.<sup>21</sup>

The name USA PATRIOT Act is an acronym for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act. The document consists of ten titles and subtitles concerning various topics of domestic security, surveillance procedures, international money laundering, anti-terrorist financing, border protection, removal of obstacles in investigating terrorism, providing for victims, information sharing, infrastructure protection, strengthening the criminal laws against terrorism, improvement of the intelligence and other miscellaneous information.<sup>22</sup>

President George W. Bush signed The Patriot Act into law on 26 October 2001. The creation and signing of this act was in reaction to the terrorist attacks on 11 September 2001. The act was designed to provide the necessary tools for fighting terrorism effectively. The USA PATRIOT Act was originally approved to last for four years but could be extended, which has happened repeatedly, the last four year renewal taking place on 26 May, 2011.<sup>23</sup>

#### 3.1 Main points of the Patriot Act

The signing of the Patriot Act polarized American society. One group sees this document as a tool or weapon that is needed to effectively fight terrorism. The other group considers it as a curse hanging over their heads that violates their liberties, and they are calling for changes in the law. The document consists of ten provisions with a number of

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<sup>21</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, HR 3162, 107th Cong., 1st sess. (October 24, 2001). <http://epic.org/privacy/terrorism/hr3162.pdf>

<sup>22</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, HR 3162, 107th Cong., 1st sess. (October 24, 2001). <http://epic.org/privacy/terrorism/hr3162.pdf>

<sup>23</sup> FoxNews.com, "Obama Signs Last-Minute Patriot Act Extension." *FoxNews.com* (May 2011).

various sections dealing with topics related to the provisions. Understanding these provisions will help identify where the problems with this document are rooted. The following paragraph summarizes the different provisions of the Patriot Act.

The first part is called Enhancing Domestic Security against Terrorism. It contains provisions concerning counterterrorism funding, condemnation of discrimination of Arab and Muslim Americans, increases in FBI funding, broadening of Presidential powers in case of terrorism, expansion of the National Electronic Crime Task Force (NECTF) and the possibility of military help in cases involving weapons of mass destruction. Part two is called Enhanced Procedures. It grants power of surveillance of suspected terrorists to various agencies. The title also allows the gathering and sharing of information on U.S. and non-U.S. citizens. It also provides an expiration date or so called sunset clause for its provisions. And it also covers surveillance non-related topic as sanctions against countries that would support the terrorists. The third part is called the International Money Laundering Abatement and Financial Anti-Terrorism Act. This covers the prosecution of money laundering and possible financing of terrorist actions. Protecting the Border is name of the fourth part. As the name suggest it covers protecting the U.S. through immigration policies. These policies make it difficult for those who are suspected of terrorism to enter the U.S.A. Removing Obstacles to Investigating Terrorism is the fifth part of the Patriot Act. This part involves the opportunity to offer rewards for information that would help in a terrorist investigation. It also involves topics such as computer crimes, usage of information acquired via electronic surveillance and physical search, DNA identification, etc. The sixth part is called Providing for Victims of Terrorism, Public Safety Officers and their Families. This part concerns aid to families of Public Safety Officers who were killed or injured during a terrorist attack. Part seven, which is named Increased Information Sharing for Critical Infrastructure Protection, establishes and enhances the ability of law enforcement to act against any multi-jurisdictional activities or conspiracies. The eighth part is named Strengthening the Criminal Laws Against Terrorism. This part is important because it defines what terrorism is. The title also involves the topic of domestic terrorism, which gained on importance in the U.S. in the 90s. It also covers topics of various crimes like

supporting terrorism, harboring terrorists, penalties for terrorism and cyber-terrorism. The next to last part is called Improved Intelligence, and it covers the topic of establishing requirements of priorities for foreign intelligences and that information gathered during electronic and physical searches will be used effectively in other investigations. The final part is called Miscellaneous. It consists of sixteen sections covering various topics such as the body that deals with abuse claims, the definition of surveillance, prosecution of money laundering, money appropriated to grants covering terrorism prevention, a statement that participants in money laundering will be not able to enter the U.S., money to Turkey for chemical and drug controls, background checks to get a license to transport hazardous materials and other topic to support infrastructure and security in the U.S.<sup>24</sup>

### 3.2 Expiration and extension of the PATRIOT Act

The PATRIOT Act was made in a hurry to offer a legal means of dealing with terrorism. The document had not yet been signed into law before critics were already arguing about its negative impact on civil liberties. Therefore, the government placed an expiration date on key provisions to accommodate the critics. The first expiration date for sections related to surveillance was set for December 2005.<sup>25</sup>

President George W. Bush was the first president faced with the choice of extending sections and provisions of the PATRIOT Act or allowing them to expire. Not signing the extension would mean that these sections would cease to have effect. He decided in favor of extension. Fourteen of the sixteen sections related to surveillance of the second title were made permanent plus some sustained sections were modified. Sections involving obtaining library and business records were not made permanent but were extended until 2015. The sixteen sections covered topics like various offences for justification of wiretapping, sharing of information gathered via wiretaps among various agencies and law-enforcement, wiretaps in foreign intelligence investigation, duration of surveillance on non-U.S. citizens, warrant of seize justification, communication of service providers and police in case of danger of

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<sup>24</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, HR 3162, 107th Cong., 1st sess. (October 24, 2001). <http://epic.org/privacy/terrorism/hr3162.pdf>

<sup>25</sup> Washington Post Editorial Board, "Patriot Second Act," *Washington Post*, (June 2005): A.18. <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/12/AR2005061201436.html> (accessed March 20, 2012).

physical injury, usage of so called pen registers or “rap and trace” in investigation, bugging of electronic communication, immunity for people cooperating with wiretapping etc. Bush signed the second reauthorization of the PATRIOT Act in May 2006. This reauthorization extended again provision sections concerning roving wiretaps, searches of various records (business records, book records, etc.) and the so-called Lone Wolf (terrorists acting on their own behalf).<sup>26</sup>

Barrack Obama, Bush’s successor and the current president of the USA signed another extension of the Patriot Act for one year in 2010. He extended three provisions that were to expire. These provisions were concerning surveillance against non-American citizens involved in terrorist activity, court seizure of records and property and usage of roving wiretaps on multiple phones. The public for the most part was unhappy with this resolution because there were no modifications that would ensure that civil liberties will be not invaded by federal agencies using these provisions. Critics believed that these modifications for the USA PATRIOT Act are necessary to provide safeguards for civil liberties and make the document less abusive.<sup>27</sup>

Another and the latest and probably most criticized extension of the Patriot Act by President Obama happened in May 2011. The signing of the document just added fuel to the flames of criticism and doubts. He extended eleven expiring sections of provisions concerning wiretapping in surveillance. This reauthorization caused heated discussion. Besides the ever-lasting arguments like the government is spying on innocent people, some complained that there are no sufficient modifications for civil liberty safeguarding. President Obama was visiting France when he signed the extension of the Patriot Act. He did so by autopen machine, which of course led to discussion about whether the Patriot Act is legal or

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<sup>26</sup> National Public Radio, “The Patriot Act: Provisions Expiring Dec. 31,” *National Public Radio* (July 2005). <http://www.npr.org/templates/story/story.php?storyId=4754214> (accessed March 20, 2012); George Pike, “PATRIOT Summer: Extending the USA PATRIOT Act,” *Information Today* 22, no. 8 (September 2005): 1, 62. <http://search.proquest.com/docview/214813665/135967BFE9E3A771DDF/2?accountid=15518> (accessed March 20, 2012); Legislative Bulletin, “H.R. 514, Patriot Act Extension,” *Legislative Bulletin* (February 2011). [http://dpc.senate.gov/dpcdoc.cfm?doc\\_name=lb-112-1-7](http://dpc.senate.gov/dpcdoc.cfm?doc_name=lb-112-1-7) (accessed April 13, 2012).

<sup>27</sup> Julie Kent, “President Obama Signs One-Year Extension of Patriot Act,” *The Cleveland Leader* (February 2010). <http://www.clevelandleader.com/node/13183> (accessed March 20, 2012); Michael B. Farrel, “Obama Signs Patriot Act Extension without Reforms,” *The Christian Science Monitor* (March 2010). <http://www.csmonitor.com/USA/Politics/2010/0301/Obama-signs-Patriot-Act-extension-without-reforms> (accessed March 20, 2012).



not. Despite the legality of this issue, provisions of the Patriot Act are considered as legally signed and are still in use.<sup>28</sup>

The opposition to the Patriot Act has a right to be concerned about their civil liberties and the whole situation that surrounds the accepting of the Patriot Act, its provisions and the use of this document as a tool for fighting terrorism. The situation after 9/11 was calling for a quick response and there it was, the USA PATRIOT Act. The government's decision was not accepted very easily by the American people. Some consider this law as a violation of their liberties and they feel like victims. Politicians are trying to keep the Patriot Act and its provision alive in the name of the fight against terrorism and national security, and some citizens feel like victims of government's decisions.<sup>29</sup>

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<sup>28</sup> Michael Kelley, "Patriot Act Extended Without Reforms," *Library Journal* 136, no. 11 (June 2011): 15. <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=4&hid=106&sid=ba353cd3-b434-4c06-96aa-68db4f4e3d6b%40sessionmgr111> (accessed October 19, 2011); Jim Abrams, "Patriot Act Extension Signed by Obama." *The Huffington Post* (May 2011). [http://www.huffingtonpost.com/2011/05/27/patriot-act-extension-signed-obama-autopen\\_n\\_867851.html](http://www.huffingtonpost.com/2011/05/27/patriot-act-extension-signed-obama-autopen_n_867851.html) (accessed March 20, 2012).

<sup>29</sup> Earl Ofari Hutchinson, "Did Obama Break His Campaign Promise to Scrap the Patriot Act?" *The Huffington Post* (September 2009). [http://www.huffingtonpost.com/earl-ofari-hutchinson/did-obama-break-his-campa\\_b\\_288112.html](http://www.huffingtonpost.com/earl-ofari-hutchinson/did-obama-break-his-campa_b_288112.html) (accessed March 20, 2012).

## 4 THE USA PATRIOT ACT CONTROVERSY

Acceptance of the USA PATRIOT Act was a milestone in American history. The Patriot Act significantly changed the way of approaching terrorism in the U.S. The document is a declaration of war on terror, a declaration that the United States would no longer be an easy target for terrorists and their supporters. Although The Patriot Act improves counterterrorism, it is also a target of criticism. People are criticizing the shield that help keeps them and their land safe from terrorism, yet not without reason.

The Patriot Act was created and passed in a hurry, under pressure and fear. The U.S. needed to respond quickly to the current reality of a post-9/11 world. With the existing counterterrorism policies and strategies that allowed the attack on the WTC and Pentagon, there was still a strong possibility that attacks would continue on a similar scale. There existed a need to change the rules of the game so as to gain the upper hand. The USA PATRIOT Act was that game changer. The purpose of the document was and still is to provide the federal intelligence and law enforcement agencies with the necessary tools needed to deal with terrorism in such a way that the events of 11 September could not be repeated.

The aim of the document was to relax certain legal restrictions that hindered the fight against terrorism. The Patriot Act certainly improved the situation in terms of fighting terrorism, but the subsequent weakening of civil liberties became problematic for some, who started to question the rectitude and application of key provisions of the act. The public became polarized, with one group valuing security over freedom while the other group argued that the cost of security was too great if it came at the expense of freedom.

The USA PATRIOT Act is a powerful surveillance tool which can be used by government agencies to invade the privacy of people in the name of national security. Some question whether or not they can trust the government to only use their new powers, granted to them under the PATRIOT Act, for good. They worry that the unfettered power of the act may tempt government officials to use the act for unintended purposes. As a result, the government recognizes it needs to act responsibly to gain the people's trust. Unfortunately, it has not always done so. As will be demonstrated in this chapter, there have been instances of abuse. Furthermore, the usage of certain provisions of the PATRIOT Act is often secret, for security reasons, a fact that does not help build public trust or support for the act. In short, the government works in secret and asks for blind support from a

citizenry that was previously accustomed to complete governmental transparency, a fact which makes the act all the more controversial.

#### **4.1 The Patriot Act: Pros and Cons**

The PATRIOT Act is a unique document created at a unique time that led and continues to lead to opposing viewpoints and interpretations. Understanding these viewpoints is important in determining whether the PATRIOT Act was and is justified.

#### **4.2 A Critique of the Opposition**

The following chapter documents the scope of the problems and major arguments against the Patriot Act and its provisions. The scope should provide an idea of what concerns the public and what the public opinion is on the issue. The following offers the opinion that the USA PATRIOT Act makes George Orwell's novel *1984* come true and federal agencies in the role of Big Brother are watching every step of American citizens. It is a much exaggerated and one-sided statement, but the public can perceive the Patriot Act this way.

##### **4.2.1 Liberty Sacrifice**

Loss of liberty is one of the major criticisms against the Patriot Act. These claims are mainly connected with provisions concerning the usage of roving wiretaps and the demand for library or business records. The document allows federal bodies to use these provisions without any bigger reason or evidence than that the target person is connected with any terrorist group, ideology or acts without any affiliation. Some might say that this is enough for ensuring sufficient security, but the FBI wanted to push its rules for investigating to a new level during 2011. According to Eric Holder, the Attorney General of the U.S., the FBI was using guidelines from 1976 which were out of date and not suitable for the current era. The new guidelines should involve searching through the trash, computer databases searches and the usage of surveillance squads for tracking people based on any valid suspicion or court approval.<sup>30</sup>

The FBI is walking on thin ice with these new strategies. The case of Scott Crow is an example of such an investigation without insufficient reason. Crow was investigated by

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<sup>30</sup> David Cole, "The War on Civil Liberties," *The Nation* (July 2011): 6-8.

federal agents for at least three years until 2008, but there is still a chance that the investigation continues. The investigation documents include license plates of cars that were parked in front of his house, records of guests, monitored phone calls, e-mails, trash searches, bank records, investigation for tax evasion and records of political meetings Crow attended. He was never charged for any significant crime except being arrested at a number of demonstrations. The sole reason for the investigation of Crow was his political activism. He was meeting with reported skinheads and members of the Ku Klux Klan. Federal agencies were paying more attention to these groups in the name of fighting terrorism after the Oklahoma City bombing.<sup>31</sup>

The Crow case is one of many examples of how activism can be considered as potentially threatening. On September 24, 2010, the FBI invaded the lives of fourteen activists working on Palestinian and Colombian issues. These activists helped to organize a protest against the Republican National Convention in 2008. The agents were searching through their houses, securing their belongings as potential evidence. The purpose of these raids was to provide material support for classifying these groups as terrorist groups by the State Department.<sup>32</sup>

#### 4.2.2 Amendment violations

Violations of various constitutional amendments are another issue that provokes discussion in the public. Giving away rights in the name of fighting terrorism is a big responsibility. Congressmen Ron Paul and Dennis Kucinich are warning against the unfettered ability of federal agencies and intelligences to wiretap or do searches on subjects that are not even connected to terrorism. This process of obtaining information is connected with violating The Fourth Amendment to the United States Constitution. Gathering information under the Patriot Act should proceed for counterterrorism purposes only, but it is not so. According to figures from 2008, the USA PATRIOT Act was used 1,291 times and only five of those usages were related to terrorism. The Patriot Act might not be used mainly by federal agencies that are involved in counterterrorism, but it works well for

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<sup>31</sup> Colin Moynihan, "For Anarchist, Details of Life as F.B.I. Target," *The New York Times* (May 2011): 1-2. [http://www.nytimes.com/2011/05/29/us/29surveillance.html?\\_r=2](http://www.nytimes.com/2011/05/29/us/29surveillance.html?_r=2) (accessed March 29, 2012).

<sup>32</sup> Mathew Rotschild, "Obama Grabs Repressive Tools," *The Progressive* (February, 2011): 8-9. <http://ehis.ebscohost.com/eds/pdfviewer/pdfviewer?sid=b144a4bc-d6a3-41b3-ba0d-5859efa30760%40sessionmgr12&vid=2&hid=23> (accessed March 29, 2012).

agencies that are dealing with crimes, even related to drugs. The act was used 843 times for drug-related offences. The whole range of searches and gathering data by federal agencies lies in their power. The Patriot Act provisions ensure that a warrant signed by judge is not needed. This document, called a National Security Letter (NSL), is signed by a member of any federal agency. This document is commonly used for securing telephone and e-mail records, financial information and customer credit information from telephone companies, internet providers, financial institutions or consumer credit agencies. The NSL dodges the system of checks and balances, which in turn creates a precarious situation when it is questionably misused.<sup>33</sup>

The USA PATRIOT Act's aim is to protect order through law. Problems occur when the law starts to be violated and misused for other purposes than fighting terrorism. The act amends issues as immigration control, border protection, terrorist related criminality, surveillance and others. It is fine to prosecute people in the name of fighting terrorism, but the problem is that the majority of people arrested for crimes related to terrorism were actually guilty of less serious violations. According to the *Washington Post*, the convicts arrested for terrorism from 1996 to 2007 were violating the law by making false statements, violating travel documents laws, conspiracy, racketeering and immigration law violations. About 85 percent of these arrests were not related to terrorism in any way. The usage of the Patriot Act and the NSL resulted in over 12,000 complaints between 2001 to 2008. The public started to believe that the Patriot Act was really intended for ordinary criminal prosecutions targeting ordinary citizens that have nothing to do with terrorism, and this approach is widely considered wrong.<sup>34</sup>

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<sup>33</sup> Thomas Deusser, "USA PATRIOT Act Still Has Plenty of Support, Including Obama's," *examiner.com* (October 2009). <http://www.examiner.com/worcester-county-progressive-in-boston/usa-patriot-act-still-has-plenty-of-support-including-obama-s-part-2#ixzz1dlu2fhyT> (accessed March 29, 2012); Thomas R. Eddlem, "Anti-Fourth Amendment Patriot Act," *The New American* (April 2011): 17-19. <http://ehis.ebscohost.com/eds/pdfviewer/pdfviewer?sid=1d05d95f-b2ef-422c-b8e2-a69a70d8963e%40sessionmgr4&vid=2&hid=5> (accessed March 29, 2012); Christopher P. Banks, "Security and Freedom After September 11," *Public Integrity* 13, no. 1 (Winter 2010-2011): 6-20. <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=4&hid=18&sid=68995b96-82c5-43bf-8082-85164d0d822c%40sessionmgr15> (accessed March 29, 2012).

<sup>34</sup> Christopher P. Banks, "Security and Freedom After September 11," *Public Integrity* 13, no. 1 (Winter 2010-2011): 6-20. <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=4&hid=18&sid=68995b96-82c5-43bf-8082-85164d0d822c%40sessionmgr15> (accessed March 29, 2012).

Brandon Mayfield, a former U.S Army lieutenant, is maybe the most significant of the victims that were investigated and arrested under the provisions of the Patriot Act. The agents searched his house and consequently arrested him. The accusation was based on a material witness for participating in Madrid train bombings in 2004. He was accused of participating in this attack because his fingerprints were supposedly identified on a bag of bomb parts that was similar to those used in the Madrid attack. Mayfield was arrested even though he had not traveled to Europe since 1994, and Spanish investigators confirmed that his fingerprints did not match the day before his arrest. Despite being cleared by Spanish investigators, the FBI still considered him a suspected terrorist and held him for two weeks in a cell. The agency also pronounced him the Madrid bomber, proven via fingerprints, in the media and told his family that his crimes were punishable by the death penalty. After two weeks in confinement, the federal government admitted it made a mistake, and he was released.<sup>35</sup>

This is not the only example of how the federal government and its use of the Patriot Act have negatively influenced the lives of innocent citizens. Another example of unwarranted investigation is the case of Abdullah al-Kidd. His name might be misleading, but al-Kidd is a native-born U.S. citizen. Al-Kidd was arrested in 2002 based on the material witness provision of the Patriot Act. The accusation claimed that he bought a one-way airplane ticket to flee to Saudi Arabia, but the truth was that he bought a round trip ticket as part of a scholarship to study Islam at a Saudi college. His arrest was labeled by the federal government as a success in destroying terrorist cells. Al-Kidd spent sixteen days in prison in disturbing conditions where he was chained to the ground naked next to a toilet. After his release he was sentenced to three years of house arrest. This house arrest involved living in his father-in-law's house, not traveling out of the state and regular visits by a probation officer. The whole incident had severe consequences for al-Kidd's personal life. He lost his scholarship, job, his marriage broke up and he lost custody of his daughter. The ex-felon label prevented him from getting a job in the U.S. and in the end he decided to take a job as an English teacher in Saudi Arabia.<sup>36</sup>

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<sup>35</sup> Thomas R. Eddlem "Anti-Fourth Amendment Patriot Act" *The New American* (April 2011): 17. <http://ehis.ebscohost.com/eds/pdfviewer/pdfviewer?sid=1d05d95f-b2ef-422c-b8e2-a69a70d8963e%40sessionmgr4&vid=2&hid=5> (accessed March 29, 2012).

<sup>36</sup> *Ibid.*, 17-18.

The Fourth Amendment is not the only one violated by the USA PATRIOT Act. The American Library Association (ALA) is fighting for the basic civil rights that the First Amendment ensures to readers. Libraries and their reading records attract federal agencies. These agencies could request, and have requested, the reading records of library patrons to see their reading habits. The ALA is trying to ensure the high standard of service its member libraries provide and considers searching through library records as a privacy violation and contends that is necessary to provide proper court supervision over the NSL.<sup>37</sup>

#### 4.2.3 Civil liberties violations in U.S. history

The Patriot Act is certainly not the first U.S. law to violate civil liberties. History is replete with examples of similar decisions. For instance, President Franklin Delano Roosevelt, in response to the Japanese attack on Pearl Harbor on December 7, 1941, ordered the mass imprisonment of about 125,000 Japanese-Americans in the U.S. Roosevelt signed an executive order granting the military to arrest everyone with Japanese ancestry. People affected by this resolution lost their jobs, possession and freedom. This order was widely supported, and promoters of the program were claiming, “Japan and the United States were at war, hence persons of Japanese descent should be regarded as enemies even if they were citizens. To extremists, the Pacific war was a racial war, and so it followed that the Japanese together were an enemy race.” The position of Asians in American society was problematic even before this resolution. They were not considered as “free . . . persons” but just as “aliens ineligible to citizenship.” Their status influenced their possibilities like ownership of the real estate. The placement of Japanese Americans in camps evoked questions like how come Italian-Americans, German-Americans or even Japanese-Americans on Hawaii were not arrested. The resolution seemed racially oriented. The irony of this decision was that even though the U.S. was attacked by Japan, the Japanese-Americans were still loyal to the U.S.<sup>38</sup>

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<sup>37</sup> Newsletter on Intellectual Freedom, “Ashcroft Attacks Librarians Over Patriot Act,” *Newsletter on Intellectual Freedom* 52, no. 6 (November 2003): 258 – 259. <http://search.proquest.com/docview/217143526/fulltextPDF/135C2D5C2D27E19AE1D/2?accountid=15518> (accessed March 30, 2012).

<sup>38</sup> Frank H. Wu, “FDR New Deal Legacy Intact, but Internment of Japanese-Americans Lives in Infamy Too,” *U.S. News* (February 2009). <http://www.usnews.com/opinion/articles/2009/02/19/fdr-new-deal-legacy-intact-but-internment-of-japanese-americans-lives-in-infamy-too> (accessed March 30, 2012).

President Abraham Lincoln provided another significant example of a violation of civil liberties. Lincoln suspended the writ of habeas corpus during the Civil War. Habeas corpus says that if an imprisonment is based on insufficient evidence, then the prisoner must be immediately released. Because of the suspension of habeas corpus, nobody could dispute imprisonment. Take the case of John Merryman, for example. He tried to slow down Union troops when they were moving from Baltimore to Washington. Merryman expressed his dissatisfaction with Lincoln, recruited soldiers for the Confederate army and was consequently arrested on May 25, 1861. He was imprisoned for acts of treason. His counsel tried to use the writ of habeas corpus in belief that he was imprisoned without sufficient cause but failed to do so because of the suspension of the writ. The Constitution approves the suspension of the writ only in the case of rebellion and in the name of public safety. The question was, who could execute this suspension, Congress or the President? The problem was artificially solved in 1863 when Congress said that the President had the right to suspend the writ. Even so, this issue is still debated.<sup>39</sup>

### **4.3 The contribution of the Patriot Act for the U.S.**

Almost eleven years have passed since the attack on the World Trade Center in September 2001, and the USA PATRIOT Act is still in use. The opposition to the Patriot Act has argued that this law is a curse hanging over the nation's head, that the law only shifts power into hands of the federal intelligence and law enforcement agencies, which are using its provisions only to invade the privacy of innocent people and to fight regular crimes that have no relation to terrorism. However, this is just one opinion of the document. The USA PATRIOT Act deserves credit for at least a few things. Firstly, the act and situation why this document was signed into law changed the global perception of terrorism. The terrorist threat could no longer be ignored and the war on terror suddenly grew into a worldwide problem after September 11, 2001. People all around the world suddenly knew of Osama bin Laden and what he and his followers did to the U.S., and that practically anyone around the world could be in danger. Realization of this problem led to the second

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<sup>39</sup> Frank Williams, "Abraham Lincoln and Civil Liberties in Wartime," *The Heritage Foundation* (May 2004). <http://www.heritage.org/research/lecture/abraham-lincoln-and-civil-liberties-in-wartime> (accessed March 30, 2012).



major benefit of the act, which was the changing of counterterrorism policies and the creation of new strategies for fighting terrorism in the U.S.

The Patriot Act clearly changed the United States. Change was needed because the previous counterterrorism strategy was not working, allowing the attack on the WTC and others attacks that happened before 11 September 2001. After passing the act the U.S. created a strategy that led to a more effective approach in fighting terrorism. The U.S. became a safer place in many aspects. On the other hand there are still blank spots that the Patriot Act highlighted but did not fill, for example creating a nationwide radio network that would allow all public safety officers to communicate with each other.<sup>40</sup>

Another more likely negative aspect of the act involves the intense debate over throwing away liberty in exchange for security. This is the point where the Patriot Act fails to maintain its image of a law focused on fighting terrorism and providing the necessary tools needed to ensure the safety of Americans both at home and abroad. Republican Newt Gingrich, former U.S. Speaker of the House and current presidential candidate, insists on his claim that “You want to use every tool you can possibly use to gather intelligence” to prevent a terrorist act. Prevention of terrorist acts is the main aim of the act, not just responding after the fact to a successful attack. It is sensible that you need any form of intelligence to do so, but the Patriot Act’s provisions and its usage is considered as abusive and privacy violating, especially when the credibility of the act is shattered by a number of misuses in cases unrelated to terrorism. On the other hand, *The Heritage Foundation* claims that there were at least thirty attack attempts after the WTC attacks in 2001 that were successfully prevented by federal and state authorities, although there is the discussion over whether or not the Patriot Act was even used in some of these cases. For example, in February 2006, Mohammad Zaki Amawi, Marwan Othman El-Hindi, and Zand Wassim Mazloum were arrested for conspiracy and for providing material support to terrorist organizations. They were arrested thanks to the help of an informant working with law enforcement. On the other hand, there are also cases where the Patriot Act is blamed for not preventing an attack. An example of an attack which was not stopped is the shootout at

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<sup>40</sup> Nancy Benac, “National Security: Ten Years After September 11 Attacks, U.S. Is Safe But Not Safe Enough,” *The Huffington Post* (September 2011).  
[http://www.huffingtonpost.com/2011/09/03/promises-promises-us-safe\\_n\\_947688.html](http://www.huffingtonpost.com/2011/09/03/promises-promises-us-safe_n_947688.html) (accessed March 30, 2012).

Fort Hood on 5 November 2009. Major Nidal Malik Hasan, psychiatrist, shot dead thirteen people and wounded another thirty two. Another example where the Patriot Act failed is the case of so called Underwear Bomber, Umar Farouk Abdulmutallab. He was able to sneak a bomb in his underwear on board of a U.S. bound plane on Christmas Eve, 2009. The bomb malfunctioned upon detonation, however, resulting only in setting his pants on fire and badly burning him. Of course, surrounding passengers did their part, restraining him until the plane could land safely in Detroit. Such events call into question the contribution of the act for the U.S. But, absent of other solutions, the USA PATRIOT Act was and still is needed as a counterterrorism tool. The Patriot Act gave law enforcement and federal agencies the tools needed when they needed them to protect innocent citizens, albeit at the seemingly high price of a loss of civil liberties.<sup>41</sup>

The main point worth noting, however, and what this thesis has endeavored in part to prove, is that even though some Americans vehemently and justly complain that their civil liberties are being violated by certain provisions of the Patriot Act, they have not been able to offer a counter proposal that would maintain both security and liberty. In absence of a better alternative, the Patriot Act, which has proven itself successful in deterring terrorism, remains the best option for America.

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<sup>41</sup> Roxana Tiron, "Gingrich Supports Patriot Act Powers to Protect U.S. 'In Danger'," *Bloomberg Businessweek* (November 2011). <http://www.businessweek.com/news/2011-11-28/gingrich-supports-patriot-act-powers-to-protect-u-s-in-danger-.html> (accessed March 30, 2012); Jena Baker McNeill, James Jay Carafano and Jessica Zuckerman, "30 Terrorist Plots Foiled: How the System Worked," *The Heritage Foundation* (April 2010). [http://www.heritage.org/research/reports/2010/04/30-terrorist-plots-foiled-how-the-system-worked#\\_ftnref69](http://www.heritage.org/research/reports/2010/04/30-terrorist-plots-foiled-how-the-system-worked#_ftnref69) (accessed March 30, 2012); The Guardian, "Fort Hood Shooting Accused Faces Court Martial," *The Guardian* (July 2011). <http://www.guardian.co.uk/world/2011/jul/06/fort-hood-killings-court-martial?INTCMP=ILCNETTXT3487> (accessed March 29, 2012); Jason Ryan, "Underwear Bomber Abdulmutallab: 'Proud to Kill in the Name of God'," ABC News (February 2012): 1-4. <http://abcnews.go.com/Blotter/underwear-bomber-abdulmutallab-sentenced-life-prison/story?id=15681576#.T4BfqpnUMI8> (accessed April 4, 2012).

## CONCLUSION

Despite all the criticism and all the controversy concerning the violation of civil liberties, the USA PATRIOT Act is still the best way of protecting the U.S. against any terrorist threat. However, instead of spending time arguing whether this act is good or is bad, Americans should simply recognize the act as a necessity in a post 9/11 world. Out of fear and pressure in the wake of the 2001 attacks came a hurried solution in the form of the Patriot Act, a document which is disliked by some for its invasive tactics but probably necessary for maintaining national security. The signing of this document in October 2001 caused a significant change in American counterterrorism policies. Security in the U.S. during the 90s was poor, and as a result, terrorism in that decade increased in frequency and strength. The U.S. found itself in the crosshairs of both external Islamic terrorists and internal militant groups. The Clinton administration failed to deal effectively with the problem, seemingly unwilling to acknowledge the severity of the threat. Everything changed 11 September 2001. After the terrorist attacks, President Bush realized, better late than never, that the U.S.A. needed a new strategy for fighting terrorism and ensuring the safety of American citizens and property, both home and abroad. The signing of the Patriot Act into the law provided federal bodies (FBI, CIA, ATF, etc.) with the needed tools to fight terrorism, but also unleashed a healthy discussion over possible misuses of this act and the subsequent violations of civil liberties. Such misuses and violations have occurred, like in the cases of Brandon Mayfield, Scott Crow and Abdullah al-Kidd. Nor is the USA PATRIOT Act the only controversial legal decision made during wartime. The suspension of the writ of habeas corpus by Lincoln during the Civil War and the imprisonment of Japanese-Americans after the attack on Pearl Harbor by Roosevelt are two other examples from U.S. history of civil liberty violations. The canceling of the Patriot Act is not a solution for the U.S. at this time. The counterterrorist policies and strategies would revert back into those of the 90s and national security could once again be endangered. The U.S. federal agencies gained the power to fight terrorism. With that power came also the responsibility for the proper usage of the USA PATRIOT Act. The government has not always acted responsibly, as a number of misuses of the act demonstrate. The credibility of the act has been damaged because of this, and for this the government deserves some blame. U.S. government agencies should themselves be held responsible for violating if not the letter of the law then the intention of the act. If this slight adjustment is made, and agencies renew

their pledge to uphold civil liberties whenever possible, then complaints should die down. After all, the very fact that someone has the wherewithal to complain suggests that the government, thanks in part to the Patriot Act, is keeping them safe enough to do so.

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