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The USA Patriot Act: Impact on Freedoms and Civil Liberties

by Sunya Kashan

(English 1102)

Despite being the super-power of the world, the United States of America does not enjoy any exception from the global threats and challenges. The people in denial of such global threats finally woke up to the reality on the dawn of September 11th, 2001, when terrorists struck American financial hub in the city of New York. A badly shaken nation shocked by the magnitude of brutality quickly assembled behind its president to pass a legislation, known as the USA Patriot Act, to tackle internal and external threats to this nation on a war footing basis. The haste with which this legislation was passed made it controversial almost immediately. No doubt, the intent was valid and there was an absolute need to tackle threats to the homeland, however, this law has unfairly targeted U.S. residents since its passage. The USA Patriot Act of 2001 clearly violates the constitutionally guaranteed rights of the residents of the United States, and the time has come for everyone to be united in raising awareness of such violations by questioning the actions of the government under the disguise of the Patriot Act.

After the terrorist attacks of September 11th, 2001, there was a strong need to quickly come up with measures to make America safer, but the approach to adopt and devise a strategy was deeply flawed. The Bush administration urged the lawmakers to pass such a measure quickly for the sake of national security. According to Kam C. Wong, Chair, Department of Criminal Justice at Xavier University, “The USA PATRIOT Act was ‘rushed’ passed Congress by the Bush administration without following the usual legislative procedure, i.e., agency review, public hearings, mark up, floor debate, and conference report, in both chambers. More significantly, throughout the entire USA PATRIOT Act legislative process, neither the Congress nor the Administration has systematically investigated, judiciously examined, openly debated, and comprehensively considered the relative merits” (181-182). Additionally, Attorney General John Ashcroft’s continuous terrorism threat warnings forced the dissenting lawmakers to stay silent and follow the Administration’s line in fear of being labeled as disloyal and unpatriotic. The Attorney General presented the draft of the Patriot Act to the House and Senate on September 19th, 2001 (199). The draft legislation enhanced and modified a number of existing federal criminal statutes such as the Pen Register, Trap and Trace Statute, the Bank Secrecy Act, the Money Laundering Act, the Immigration and Nationality Act, and the Foreign Intelligence Surveillance Act. On October 25th, 2001, both houses of the Congress passed the final bill to President Bush, who signed it into law the next day (207). As a result of expedited proceedings, the opposing viewpoints were not given a chance to be heard, which gave birth to many debates and controversies soon after the passage of the law, making it one of the most controversial legislations passed in the history of this nation.

Some of the measures included in the Patriot Act are necessary to prevent further terrorist attacks. However, if this legislation had been properly debated, with consideration of all the points of view, it could have served as a source of national unity, goodwill, strength, and bipartisanship among members of all religious, political, social, and ethnic backgrounds, instead of creating deep divisions. The Patriot Act enhanced the domestic security by establishing a counter-terrorism fund and provided more resources to the Federal Bureau of Investigation (FBI) (Foerstel 47). It also gave authority to the Attorney General to acquire assistance from the Secretary of Defense in case of an emergency. The Patriot Act permitted information collection procedures through enhanced surveillance and reinforced federal anti-money-laundering laws, making it a crime for anyone to

support the activities of a group on the State Department's terrorist watch list. The immigration provisions were reformed to monitor the entry and exit of visa applicants, and foreign students were required to report extensive information to immigration authorities. The law also targeted people harboring aliens and expanded regional information sharing system to facilitate coordination between federal, state, and local law enforcement agencies in the event of a terrorist attack. It also developed an intelligence sharing mechanism to allow the CIA director to assist the Attorney General in the generation and dissemination of any information regarding terrorism. It created an independent agency to provide oversight to the matters related to homeland security. Sections 203(b) and 203(d) of the Patriot Act are at the heart of the effort to break down the "wall" that used to separate criminal and intelligence investigations (Goody and Abramson). The majority Americans want to make their homeland safe, however, given that the legislation was passed without much discussion, the Patriot Act, for the most part, reflected the views of President Bush, Attorney General Ashcroft, and the members of the Department of Justice.

Certain provisions of the Patriot Act, including better information sharing and coordination among intelligence agencies to strengthen the security of the nation from any future terrorist attacks are important for counter-terrorism efforts. However, the proponents of the Patriot Act are in favor of targeting the freedom of other people, notably minorities and immigrants, in exchange for their own security. According to Nadine Strossen, the former president of the American Civil Liberties Union (ACLU), "The proponents of government security measures rightly note that life and safety are prerequisites for enjoying liberty, it is also true that liberty is a prerequisite for enjoying life and safety" (367). The proponents favor the current powers granted to the executive branch under the cover of the Patriot Act and argue that the First Amendment goes too far in granting freedoms to everyone. The people, who favor the current state of the Patriot Act, have completely failed to realize that the strength of the US democracy lies in the unique system of the checks and balances that exist between different branches of the government. Secondly, it is through the rights provided in the First Amendment that both proponents and opponents are able to express their views in support or opposition freely (Foerstel 8). We need to ask ourselves as a nation whether we need to give up the principles of governance on which this nation was founded. It is through these guiding principles that the United States became a leading power, champion of hope, freedom, and a leading democracy, and giving them up should not even be an option.

One of the hidden consequences of the Patriot Act is the unprecedented and dangerous expansion of the presidential powers. According to attorney Joseph Margulies, who successfully led *Rasul vs Bush* in the Supreme Court, "The president has treated the war on terror as an armed conflict and has invoked his constitutional power as commander in chief. The precise scope of president's war power is ill defined and subject of endless constitutional debate" (11). In *How Would A Patriot Act?*, Glenn Greenwald argues that it was through President Bush's authorization that the National Security Agency started eavesdropping on Americans without court approved warrants, in violation of the constitutional laws (14). Similarly, President Bush also created a controversy when his administration kept an American born citizen, Jose Padilla, accused of making a bomb plot, locked away in solitary confinement for more than three years as an enemy combatant, without right to trial (47). These presidential actions only show us a glimpse of the absolute authority at the disposal of the president and a complete disregard to the existing laws, *habeas corpus*, and constitutional rights of all residents of this country.

The abuse of prisoners at the Guantanamo Bay prison at the hands of the Bush Administration has made a mockery of this great nation, which preaches human rights and values on one hand and then flips around to violate them. The administration's legal position has been that these prisoners have no rights and protections guaranteed by Geneva Conventions as detained individuals are foreign nationals in custody outside the sovereign territory of the United States, which basically means indefinite detention without charges (Margulies 11). Besides inhumane treatment

and torture of prisoners, the Muslim holy book, the Quran, was also handled disrespectfully as a means to torture and tease the inmates. This treatment prompted a bipartisan protest with former President Bill Clinton calling for the closure of the Guantanamo prison in 2005, and Republican Senator Chuck Hagel famously declaring, “This is not how you win the people of the world over to our side, especially in the Muslim world.” (237-238). The tactics adopted at Guantanamo not only inflame sentiments against us in the rest of the world, but they may also inspire more terror attacks rather than preventing them, thus defeating the purpose of the Patriot Act.

Besides tarnishing the reputation of the United States as a champion of human rights, the passage of the Patriot Act had an adverse impact on the freedom and civil liberties of the people residing in the United States as well. In *Refuge of a Scoundrel*, Herbert Foerstel, who has authored nine books on topics related to the First Amendment, has argued that the Patriot Act’s provisions go too far into the civil liberties of all people living in the United States, given the amendments made to dozens of the existing laws (10). It particularly allowed interference into the rights protected by the First, Fourth, Fifth and Sixth amendments of the Bill of Rights, directly threatening the freedom of association, information, speech, and the right to legal representation as well as the right to liberty. For instance, in clear violation of the Fourth amendment, the library surveillance introduced by the Patriot Act allowed monitoring of library’s public computer terminals and use of secret search warrants to seize any tangible thing in a library without probable cause and court procedure. It also imposed a gag order on booksellers and librarians to prevent them from disclosing details of surveillance. The extent of surveillance in libraries is just another reason Americans need to realize that their privacy rights have been snatched from them under the disguise of the Patriot Act.

It is important to realize that the surveillance does not stop at the district or township libraries. It has reached our residential doorsteps without us realizing it. In this era of digital communication, most people rely on technology to stay connected with the rest of the world. According to Laurie Thomas Lee, professor of broadcasting at University of Nebraska-Lincoln:

Many of the new provisions pertaining to telecommunications users and providers are also potentially unconstitutional, in that they violate Fourth Amendment rights. Although the Act was designed to address terrorist activity, many of the overly broad provisions may result in surveillance powers applied to large numbers of innocent people. The Act effectively snubs the judicial system in favor of executive power, bypassing the role of the courts in providing an adequate system of checks and balances.

The Patriot Act allowed federal agents to monitor electronic communications, which includes wireless phones, email, and internet, without much oversight. It also allowed the government to seize business records of telecom companies as well as customer records from the Internet Service Providers. Besides internet, any subscriber records from the television cable company, including programming details, can also be confiscated. Most importantly, the surveillance does not even stop at the telecom companies or state borders. The FBI was given authority to obtain warrants that followed a person across state borders, as well as to trace any telephone or computer usage. Under expanded FISA (Foreign Intelligence Surveillance Act) authority, the government was allowed to set up wiretaps at anyone’s residence and to search the premises without notification. The FBI was even permitted to monitor and tape conversations, as well as meetings, between an attorney and the client in federal custody. The complete loss of privacy in violation of the constitution is another important reason for the residents of this nation to mobilize their support for the review and revision of key provisions of the Patriot Act.

Immediately after the passage of the Patriot Act, a number of pressure groups disapproved the law because of its ability to diminish civil liberties in the name of national security against

terrorism. Legislators, individuals, representatives of the press, local communities, and even the Inspector General's Office issued reports, and many appeared before the Congress and expressed their concern about the Patriot Act's potential to diminish the civil rights and liberties of all Americans (Greenwald, 114). A number of organizations opposed to the Patriot Act have asked the federal courts to review the Patriot Act constitutionally. In late 2003, the American Civil Liberties Union (ACLU) came forward to educate the media about the serious danger to civil liberty posed by the act. It also went to the federal court to challenge some of the provisions of the Act. The ACLU has openly expressed concern about the loss of liberties and focused on the unfair treatment of the aliens by the Department of Justice. It also filed lawsuits challenging the Patriot Act and the executive orders regarding the treatment of the alleged terrorist detainees at Guantanamo Bay (ACLU). The persuasive voice of ACLU and other organizations fighting for freedom are dominating forces in mobilizing masses to raise their voice or at least to realize the hidden and obvious costs of giving up freedom.

The opponents are critical of the Congress's inability to revise some of the provisions of the Patriot Act and the weakening of the separation of powers, checks and balances, and judicial review. The Department of Justice and the Immigration and Naturalization Service have also been severely criticized for detaining and harassing hundreds of people of Arab and Asian origin by unfairly utilizing the federal immigration statutes and the Patriot Act (Strossen 370). Despite the secrecy imposed during the tenure of Attorney General Ashcroft, there is mounting evidence that the Justice department put hundreds of harmless Muslim men from abroad behind bars, treating them worse than convicted criminals, without finding enough evidence to charge them with a single crime. The individual and media criticism forced the investigative agencies of the federal government to carefully examine the actions of the Department of Justice and Immigration and Naturalization Service. Our constitution is broad enough to provide freedom and rights to people of all backgrounds, religions and colors. The citizens of the United States should object to any violation of rights based upon ethnic or religious background.

In addition to the organizations that have openly attacked the Bush administration's policies in the name of the war on terrorism, many Congressional legislators are now also viewing the Patriot Act as a law that threatens basic liberties of all people residing in the United States. The biggest concern stems from the vastly expanded police power to obtain information about Americans with little proof that the information is relevant to America's war on terror. Several lawmakers now believe that the act failed to maintain a proper balance between protecting the American people from terrorism and preserving their freedom. These sentiments are also reflected in the comments of Democratic Senator Dick Durbin, who states: "I believe it is possible to combat terrorism and preserve our individual freedoms at the same time. The Patriot Act crossed the line on several key areas of civil liberties" (Margulies 82). As a result of growing support for a review of the controversial provisions of the Patriot Act, the legislators and elected officials are now openly questioning the motives behind certain provisions of the Act. With enough awareness and support at the grass roots level, the legislators would be forced to do the right thing for the nation by repelling the controversial articles of the Patriot Act.

The nations all over the world face countless challenging moments that force them to make tough, bold, and important decisions in response to the internal and external challenges. Sometimes such challenges need to be handled on an urgent basis as a matter of survival. There is no doubt that ground realities in the United States have changed since the tragic events of September 11th, 2001. The US Patriot Act was designed with the intention to mobilize all resources to prevent such terrorist attacks in future. The critics of this law have pointed out many flaws in its implementation. Despite agreeing with its intention, the critics have demanded that this law must be re-examined to address its interference with the freedoms that the people of this nation have always enjoyed. The Obama administration has already announced closure of Guantanamo Bay prison through an executive order.

In the current ongoing economic turmoil, it remains to be seen if the newly elected government will act to further strengthen the homeland security and address the controversies surrounding the Patriot Act by promoting respect of individual rights and revoking controversial articles of the Patriot Act. It still remains the duty of all the Americans to know their constitutional rights and to raise awareness regarding any violations at each and every available platform.

Works Cited

- Abramson, Larry and Maria Goody. "The Patriot Act: Key Controversies." 14 Feb. 2006. *NPR*. 28 Feb. 2009 <<http://www.npr.org/news/specials/patriotact/patriotactprovisions.html>>.
- American Civil Liberties Union. "The Patriot Act: Where it stands." *ACLU*. 03 Mar. 2009 <<http://action.aclu.org/reformthepatriotact/whereitstands.html>>.
- Foerstel, Herbert N. *Refuge of a Scoundrel*. Westport: Libraries Unlimited, 2004.
- Greenwald, Glenn. *How would a Patriot Act*. San Francisco: Working Assets Publishing, 2006.
- Lee, Laurie Thomas. "The USA PATRIOT Act and telecommunications: privacy under attack." *Rutgers Computer & Technology Law Journal* 29.2 (Summer 2003): 371(33). Academic OneFile. Gale. College of DuPage (all subscribed dbs). 2 Mar. 2009.
- Margulies, Joseph. *Guantanamo and the abuse of Presidential Power*. New York: Simon & Schuster, 2006.
- Strossen, Nadine. "Terrorism's Toll on Civil Liberties." *Journal of Aggression, Maltreatment & Trauma* 9.75 (2004): 365- 377. *Academic Search Premier*. EBSCO. Coll. of DuPage Lib., Glen Ellyn, IL. 01 Mar. 2009.
- "The Constitution of the United States of America." *Cornell University Law School*. 25 Feb. 2009. <<http://www.law.cornell.edu/constitution/constitution.overview.html>>.
- Wong, Kam C. "The making of the USA Patriot Act I: the legislative process and dynamics." *International Journal of the Sociology of Law* 34.3 (Sept 2006): 179-219. *Academic OneFile*. Gale. College of DuPage (all subscribed dbs). 2 Mar. 2009.