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## Human Rights and the War on Terror: The USA PATRIOT Act

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## The USA PATRIOT Act

by Toni Panetta

*The PATRIOT Act had lofty aspirations, for it was designed to correct five perceived weaknesses, or failures, of the national government to prevent the 9/11 atrocity. It sought 1) to improve sharing of information between law enforcement and foreign intelligence agencies; 2) to gather antiterrorism intelligence by taking advantage of the flexible warrants requirement of the Foreign Intelligence Surveillance Act (FISA); 3) to expand wiretap authority over electronic communications; 4) to seize funding utilized in terrorist activities; and 5) to impose mandatory detention and deportation of non-U. S. citizens who are suspected of having links to terrorist organization (Christopher P. Banks. 2004. "Protecting (or Destroying) Freedom through Law: The USA PATRIOT Act's Constitutional Implications." *American National Security and Civil Liberties in an Era of Terrorism*. David B. Cohen and John W. Wells. New York: Palgrave MacMillan).*

The events of September 11, 2001 serve as the origin of the United States' War on Terror as popularized by the Bush administration. Previously, American strategies to combat terrorism focused on attacks against its interests abroad, and support for other governments' efforts to curb terrorist acts within their own boundaries. However, September 11 revealed vulnerability to violence by non-state actors within U.S. borders. In response, the United States reshaped its anti-terrorist strategies to prevent future attacks by targeting terrorists, foreign and domestic, known and potential.

To facilitate the prosecution of terrorists, the United States Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, commonly referred to as the USA PATRIOT ACT. Signed into law on October 26, 2001, the Act was enacted to eliminate anachronistic laws that obstructed surveillance and intelligence-gathering activities by government agencies. Since its adoption, debate has raged over how expanded surveillance and intelligence-gathering powers conflict with civil liberties, both in theory and in practice.

Much of the literature contained in this bibliography examines the repercussions of the USA PATRIOT Act through the analysis of civil liberties. This reflects the American emphasis on civil and political rights, rather than the compendium of rights recognized by international human rights doctrines. The growing bodies of legal and academic literature on the Act and its implementation reflect this bias.

### What's Missing

It is worth noting that due to the complexity and scope of U.S. law dealing with the War on Terror, the PATRIOT Act is just one legal element affecting human rights in the United States. The literature referenced here does not address the issues of executive authority and judicial review, both of which have profound consequences on the legal limits of government behavior and the protection of civil liberties.

Moreover, a number of closely related topics have been excluded from this bibliography because they do not relate directly to international human rights doctrines. That said, substantial literature

exists (and continues to grow) in the areas of immigration law and non-citizen detention policies following September 11 that are separate from the PATRIOT Act; financial privacy concerns raised by U.S. investigation and prosecution of international money-laundering activities; bioterrorism; and the general conflict between national security and civil liberties. While these topics are referenced in literature included in this bibliography, the resources cited focus specifically on human rights-based civil rights concerns and/or constitutional discussions of the PATRIOT Act. In addition, technical discussions about provisions of the Act dealing with electronic surveillance have been excluded. Literature about electronic surveillance is included to the extent that it contributes to an understanding of constitutional challenges to the Act.

## Background and Context

*They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety*  
(Benjamin Franklin).

The debate between national security and citizens' liberties is centuries old; in America, the most recent iteration of that debate came with the enactment of the USA PATRIOT Act following the terrorist attacks of September 11. This section presents an historical and contextual understanding of the USA PATRIOT Act, with the available literature providing a cohesive foundation to investigate how the Act factors into the debate between security and liberty. Specifically, literature falls into the categories of the PATRIOT act itself, including neutral explanation of the provisions of the Act; historical context of the debate between national security and civil liberties in America; recent U.S. anti-terrorism initiatives; human rights concerns within the context of the debate; and foundations for constitutional challenges to the Act.

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### *The PATRIOT Act*

Full and complete text of the USA PATRIOT Act of 2001: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf)

Howard Ball. 2004. The U.S. A. Patriot Act of 2001: Balancing Civil Liberties and National Security: A Reference Handbook. Santa Barbara, Calif. : Abc-Clio.

Discusses terrorist actions against Americans and government efforts to protect national security before September 11, 2001; passage of the U.S. A. PATRIOT Act of 2001; debate over civil liberties' endangerment by Act and national security strategies; Bush administration's defense of the Act; and introduction of PATRIOT II.

Christopher P. Banks. 2004. "Protecting (or Destroying) Freedom through Law: The USA Patriot Act's Constitutional Implications." American National Security and Civil Liberties in an Era of Terrorism. David B. Cohen and John W. Wells. New York: Palgrave MacMillan.

Provides clear, concise context for passage of the PATRIOT Act, including related legislation and case law upon which provisions of the Act expanded. Provides framework to understand challenges to the Act on First (freedom of association and speech), Fourth (search and seizure),

Fifth (due process and grand jury), Sixth (right to counsel), Eighth (cruel and unusual punishment), and Fourteenth (due process, privacy, and equal protection) amendment grounds.

Barbara Dority. 2004. "Your Every Move". *Humanist*. 64(1): 14.

Charles Doyle. 2001. *Terrorism: Section by Section Analysis of the USA Patriot Act*. Washington, D. C. : Congressional Research Service.

Provides an easy-to-understand description of the USA PATRIOT Act and how it amended pre-existing laws dealing with terrorism, executive authority, financing, and surveillance and investigatory powers. Essential to understand provisions of the PATRIOT Act.

Michael T. McCarthy. 2002. "Recent Developments: USA Patriot Act". *Harvard Journal on Legislation*. 39(Summer 2002): 435-6.

This neutral legal analysis provides a detailed interpretation of the PATRIOT Act and how U.S. law changed as a result of its enactment. This well-reasoned piece provides a useful source to understand the Act and criticisms raised by civil libertarians.

2001. *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001*.

John W. Whitehead and Steven H. Aden. 2002. "Forfeiting Enduring Freedom" for "Homeland Security": A Constitutional Analysis of the USA Patriot Act and the Justice Department's Anti-Terrorism Initiatives". *The American University Law Review*. 51(August, 2002).

This well-written constitutional analysis of the PATRIOT Act provides intelligible interpretation of how particular provisions of the Act changed U.S. law. The article focuses on Fourth, Fifth, and Sixth amendment concerns with the PATRIOT Act and provides a nice background to understand constitutional challenges to the Act.

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### *Historical Context of the Debate*

Richard C. Leone and Jr. Greg Anrig. 2003. *The War on Our Freedoms: Civil Liberties in an Age of Terrorism*. New York: The Century Foundation.

*ABSTRACT: A collection of 13 contributed essays that examine the lack of political discourse in America about preserving and protecting civil liberties and questioning government's authority and enactment of various policies under the guise of national security, including the USA PATRIOT Act. Essays of interest discuss historical instances of tensions between liberty and national security; lack of checks on government authority; Guantanamo Bay detainees and detention policies; incursions onto personal privacy; changes in immigration policies and the use of racial profiling following 9/11; increased governmental use of secrecy and reduction in availability of publicly accessible information; the Freedom of Information Act (FOIA) and decline in media coverage and scrutiny of government actions; and attempts to protect individual rights in America via a constitutional challenge to the PATRIOT Act.*

Paul Rosenzweig. 2004. "Civil Liberty and the Response to Terrorism". *Duquesne University Law Review*. 42(Summer 2004).

Provides a nice summation of the historical tension between civil liberties and security while addressing concerns specific to the PATRIOT Act. Attempts to provide pros and cons of the Act; discussion of the most controversial provisions of the Act, particularly sections 213 and 215; and an understanding of First Amendment challenges to provisions through which the government has identified certain donors as potential terrorists.

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*Recent U.S. Anti-Terrorism Initiatives*

1996. Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). <http://www.fas.org/irp/crs/96-499.htm>.

Passed in response to the domestic terrorism incident of the Oklahoma City bombing, this legislation added or amended laws regulating anti-terrorism efforts. Title IV specifically deals with deportation of non-citizens.

Elaine Cassell. 2004. *The War on Civil Liberties: How Bush and Ashcroft Have Dismantled the Bill of Rights*. Lawrence Hill Books.

*ABSTRACT: Examining the legal foundations of the war on terror, this book investigates the loss of the civil liberties of American citizens and legal immigrants. In a detailed look at bills such as the 1996 Antiterrorism and Effective Death Penalty Act, the USA PATRIOT Act, and the Homeland Security Act, and executive orders, it provides a comprehensive picture of the war on terror and explores the claimed victories by the Bush administration. Chronicling the major battles with Muslim charities, immigrants, lawyers, and "enemy combatants," this exposé reveals how the values and freedoms of all Americans are at risk or have already been destroyed. Also surveyed is the growing grassroots dissent by groups such as the ACLU and the resistance movement against the policies and major figures of the Bush administration.*

Jennifer C. Evans. 2002. "Hijacking Civil Liberties: The USA Patriot Act of 2001". *Loyola University Chicago Law Journal*. 33(Summer 2002).

*ABSTRACT: This legal article presents the case for Fourth Amendment challenges to the PATRIOT Act. Includes a history of anti-terrorism legislation, primarily Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (OCCSSA), the Foreign Intelligence Surveillance Act of 1978 (FISA), and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).*

Emanuel Gross. 2002. "The Influence of Terrorist Attacks on Human Rights in the United States: The Aftermath of September 11, 2001". *North Carolina Journal of International Law & Commercial Regulation*. 28(1).

Discusses balance between human rights and U.S. security needs post September 11. Relevant discussion examines protections given to human rights prior to PATRIOT Act and popular knowledge or perceived understanding of international terrorism, legislation enacted after September 11 (esp. U.S. A. PATRIOT Act), and comparison of U.S. anti-terrorism measures to British and Israeli efforts.

Vijay Sekhon. 2003. "The Civil Rights of "Others": Antiterrorism, the Patriot Act, and Arab and South Asian American Rights in Post-9/11 American Society". *Texas Journal On Civil Liberties & Civil Rights*. 8(1): 117.

Frames concerns about the PATRIOT Act's incursion on First, Fourth, Fifth and Sixth amendment guarantees within the context of the Arab and Southern Asian populace. While the focus is on ethnocentric limits of liberties, the first section of the article provides a concise overview of particular provisions of the PATRIOT Act that conflict with constitutional rights.

John W. Whitehead and Steven H. Aden. 2002. "Forfeiting Enduring Freedom" for "Homeland Security": A Constitutional Analysis of the USA Patriot Act and the Justice Department's Anti-Terrorism Initiatives". *The American University Law Review*. 51(August, 2002).

This well-written constitutional analysis of the PATRIOT Act provides intelligible interpretation of how particular provisions of the Act changed U.S. law. The article focuses on Fourth, Fifth, and Sixth amendment concerns with the PATRIOT Act and provides a nice background to understand constitutional challenges to the Act.

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### *Human Rights Concerns*

Emanuel Gross. 2002. "The Influence of Terrorist Attacks on Human Rights in the United States: The Aftermath of September 11, 2001". *North Carolina Journal of International Law & Commercial Regulation*. 28(1).

Discusses balance between human rights and U.S. security needs post September 11. Relevant discussion examines protections given to human rights prior to PATRIOT Act and popular knowledge or perceived understanding of international terrorism, legislation enacted after September 11 (esp. U.S. A. PATRIOT Act), and comparison of U.S. anti-terrorism measures to British and Israeli efforts.

Neil Hicks and Michael McClintock. 2004. Defending Security: The Right to Defend Rights in an Age of Terrorism. New York: Human Rights First.

ABSTRACT: *This Human Rights First report raises alarm over the new global emphasis on counter-terrorism and its implications on human rights. "Defending Security" provides insight from human rights activists around the world about the impact of the new security situation on their work. This insight offers a vital perspective on the security challenges facing the international community in the first decade of the twenty-first century.*

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### *Foundations for Constitutional Challenges to the Act*

Christopher P. Banks. 2004. "Protecting (or Destroying) Freedom through Law: The USA Patriot Act's Constitutional Implications." American National Security and Civil Liberties in an Era of Terrorism. David B. Cohen and John W. Wells. New York: Palgrave MacMillan.

Provides clear, concise context for passage of the PATRIOT Act, including related legislation and case law upon which provisions of the Act expanded. Provides framework to understand challenges to the Act on First (freedom of association and speech), Fourth (search and seizure), Fifth (due process and grand jury), Sixth (right to counsel), Eighth (cruel and unusual punishment), and Fourteenth (due process, privacy, and equal protection) amendment grounds.

David B. Cohen and John W. Wells. 2004. *American National Security and Civil Liberties in an Era of Terrorism*. New York: Palgrave Macmillan.

Collection of essays examines the tensions between civil liberties and national security; relevant essay by Christopher Banks analyzes the PATRIOT Act's constitutional implications.

David Cole; James X. Dempsey and Carole Goldberg. 2002. *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*. New York: New Press.

This easy-to-read book chronicles the tension between civil liberties and national security policy in America during the 20th century. The 2nd edition of the text adds reference to the September 11 attacks and the USA PATRIOT Act. Useful for contextual understanding of the delicate balance between civil liberties and national security, but does not provide exhaustive analysis of PATRIOT's impact.

Susan Hansen. 2004. *The USA Patriot Act: The Basics*. The Century Foundation. <http://www.tcf.org/Publications/HomelandSecurity/USAPatAct.pdf>.

Provides an overview of the USA PATRIOT Act and those provisions deemed most dangerous to civil liberties. Good resource to use to obtain a basic understanding of the Act and the conflict with civil libertarians and constitutional scholars.

Lindsay N. Kendrick. 2004. "Alienable Rights and Unalienable Wrongs: Fighting the "War on Terror" through the Fourth Amendment". *Howard Law Journal*. 47(Spring 2004).

*ABSTRACT: This legal article argues for the creation of a Fourth Amendment challenge on claims of racial profiling for people who believe they were unconstitutionally targeted by law enforcement for committing acts of terrorism under the USA PATRIOT Act because of their race, ethnicity, national origin, or religion. Argues that the USA PATRIOT Act is a broad and vague criminal law that grants law enforcement wide latitude in investigating crime, arresting suspects, and charging the accused with crimes that require harsh sentences.*

Richard C. Leone and Jr. Greg Anrig. 2003. *The War on Our Freedoms: Civil Liberties in an Age of Terrorism*. New York: The Century Foundation.

*ABSTRACT: A collection of 13 contributed essays that examine the lack of political discourse in America about preserving and protecting civil liberties and questioning government's authority and enactment of various policies under the guise of national security, including the USA PATRIOT Act. Essays of interest discuss historical instances of tensions between liberty and national security; lack of checks on government authority; Guantanamo Bay detainees and detention policies; incursions onto personal privacy; changes in immigration policies and the use of racial profiling following 9/11; increased governmental use of secrecy and reduction in availability of publicly accessible information; the Freedom of Information Act (FOIA) and decline in media coverage and scrutiny of government actions; and attempts to protect individual rights in America via a constitutional challenge to the PATRIOT Act.*

Stephen J. Schulhofer. 2003. "No Checks, No Balances: Discarding Bedrock Constitutional Principles." *The War on Our Freedoms*. Richard C. Leone and Jr. Greg Anrig. New York: The Century Foundation.

Argues that in the wake of legislation enacted following the September 11 attacks, long-held checks on government authority have been suspended, both knowingly and unwittingly. First

half focuses on PATRIOT Act's expansion of surveillance capabilities and the relation to existing Foreign Intelligence Surveillance Act (FISA); additional discussions devoted to new FBI policing guidelines, detention of foreign nationals, and detention and designation of enemy combatants.

Vijay Sekhon. 2003. "The Civil Rights of "Others": Antiterrorism, the Patriot Act, and Arab and South Asian American Rights in Post-9/11 American Society". *Texas Journal On Civil Liberties & Civil Rights*. 8(1): 117.

Frames concerns about the PATRIOT Act's incursion on First, Fourth, Fifth and Sixth amendment guarantees within the context of the Arab and Southern Asian populace. While the focus is on ethnocentric limits of liberties, the first section of the article provides a concise overview of particular provisions of the PATRIOT Act that conflict with constitutional rights.

William J. Stuntz. 2002. "Local Policing after the Terror". *Yale Law Journal*. 111(June 2002):

This legal article proposes policies to balance between constitutional rights guaranteed by the Fourth and Fifth Amendments while meeting the needs of homeland security and policing activities, especially in the age of terrorism. Discusses provisions of the PATRIOT Act specific to these issues.

John W. Whitehead and Steven H. Aden. 2002. "Forfeiting "Enduring Freedom" for "Homeland Security": A Constitutional Analysis of the USA Patriot Act and the Justice Department's Anti-Terrorism Initiatives". *The American University Law Review*. 51(August, 2002).

This well-written constitutional analysis of the PATRIOT Act provides intelligible interpretation of how particular provisions of the Act changed U.S. law. The article focuses on Fourth, Fifth, and Sixth amendment concerns with the PATRIOT Act and provides a nice background to understand constitutional challenges to the Act.

### **Issues Relating to Information-Sharing and Expanded Surveillance Capabilities**

*The right of the people to be secure on their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (Fourth Amendment of the United States Constitution).*

The bulk of the literature challenging the PATRIOT Act's constitutionality focuses on Fourth Amendment protections against unreasonable search and seizures. These challenges stem from the expanded surveillance and intelligence-gathering powers codified in Title II of the Act. Of particular note are the Act's amendment of the Foreign Intelligence Surveillance Act (FISA) and the extension of electronic surveillance techniques to Internet Communications.

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*Amendment of the Foreign Intelligence Surveillance Act (FISA)*

Nola K. Breglio. 2003. "Leaving FISA Behind: The Need to Return to Warrantless Foreign Intelligence Surveillance". *Yale Law Journal*. 113(1): 179.

*ABSTRACT: Discusses history of the Foreign Intelligence Surveillance Act (FISA) and the establishment of the Foreign Intelligence Surveillance Court (FISC), explains how the PATRIOT Act and In re Sealed Case damaged the usefulness and legitimacy of FISA and the FISC. Argues for the abolition of FISA and the appropriateness of warrantless searches as the standard in foreign intelligence cases.*

Michael J. Bulzomi. 2003. "Foreign Intelligence Surveillance Act: Before and after the USA Patriot Act". *FBI Law Enforcement Bulletin*. (June).

Rebecca A. Copeland. 2004. "War on Terrorism or War on Constitutional Rights? Blurring the Lines of Intelligence Gathering in Post-September 11 America". *Texas Tech Law Review*. 35(2004):

This paper analyzes the potential impact the combined powers of the FISA, the USA PATRIOT Act, and the Department of Homeland Security have on the constitutional rights of American citizens, particularly Fourth Amendment rights. Includes a brief history of foreign intelligence surveillance and how the PATRIOT Act changed FISA regulations. A good background piece on foreign intelligence surveillance law in the U.S. and FISA in particular; useful primer to understand the constitutional challenges to PATRIOT that cite FISA precedents.

Heath H. Galloway. 2002. "Don't Forget What We're Fighting For: Will the Fourth Amendment Be a Casualty of the War on Terror?" *Washington & Lee Law Review*. 59(Summer 2002):

This highly legal analysis examines provisions of the PATRIOT Act the challenge the Fourth Amendment. Particular focus is paid to the Foreign Intelligence Surveillance Act (FISA), its history and its balance with constitutional rights, and whether the PATRIOT Act provides government agencies with too much authority at the expense of constitutional rights.

Paul T. Jaeger. 2003. "The Impact of the USA Patriot Act on the Collection and Analysis of Personal Information under the Foreign Intelligence Surveillance Act". *Government Information Quarterly*. 20(July 2003).

Kathleen Sullivan. 2003. "Under a Watchful Eye: Incursions on Personal Privacy." *The War on Our Freedoms*. Richard C. Leone and Greg Anrig Jr. New York: The Century Foundation.

Explores issues of personal rights to privacy in America and how those rights have been imposed upon following September 11. Relevant discussion related to PATRIOT Act addresses PATRIOT Act's expansion of surveillance capabilities with respect to Foreign Intelligence Surveillance Act (FISA); additional discussion addresses failed proposed Total Information Awareness (TIA) and Terrorism Information and Prevention Systems (TIPS) programs.

George P. Varghese. 2003. "A Sense of Purpose: The Role of Law Enforcement in Foreign Intelligence Surveillance". *University of Pennsylvania Law Review*. 152(1): 385.

Criticizes the U.S. Foreign Intelligence Surveillance Court of Review opinion in cases which allow law enforcement to invoke a foreign intelligence purpose as a pretext to obtain a FISA warrant for use in a criminal investigation. Questions the constitutionality of the PATRIOT Act's relaxing of barriers between law enforcement and intelligence investigations. Provides

background about the foreign intelligence exception to the Fourth Amendment warrant requirement; evolution of the interpretation of the Foreign Intelligence Surveillance Act of 1978 by the courts and the executive branch.

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*Internet Communications*

Joshua L. Dratel. 2002. "Fourth Amendment Implications of the USA Patriot Act". *The Champion*. 26.

Provides a concise summary of provisions of the PATRIOT Act that incur on Fourth Amendment rights, particularly those amending electronic surveillance regulations, jurisdictional authority, "sneak and peak" search authority, the Foreign Intelligence Surveillance Act (FISA), and regulations permitting disclosure of grand jury and other information.

Orin S. Kerr. 2003. "Internet Surveillance Law after the USA Patriot Act: The Big Brother That Isn't". *Northwestern University Law Review*. 97(Winter 2003).

*ABSTRACT: Argues that claims of the PATRIOT Act broadly enhancing government surveillance capabilities are incorrect. Includes technical discussion about what Internet surveillance is and how it works, analysis of three major criticisms of the Act, and an examination of FBI's "Carnivore" Internet surveillance software. Major point of argument claims Internet surveillance is not a matter of Fourth Amendment guarantees but is statutorily regulated.*

Peter G. Madrinan. 2003. "Devil in the Details: Constitutional Problems Inherent in the Internet Surveillance Provisions of the USA Patriot Act of 2001". *University of Pittsburgh Law Review*. 64(Summer 2003).

This highly technical article discusses the history of electronic surveillance law in the U.S. and the impact of changes in technology on surveillance law and techniques, specifically pen/trap device law. Included is a brief history of those sections of the PATRIOT Act dealing with electronic surveillance, as well as a discussion about the consequences of the Act on Fourth Amendment protections against unreasonable searches and seizures.

Stephen W. Tountas. 2003. "Carnivore: Is the Regulation of Wireless Technology a Legally Viable Option to Curtail the Growth of Cybercrime?" *Washington University Journal of Law & Policy*. 11(2003).

Discusses history of case and statutory law relating to surveillance and Fourth Amendment rights to privacy. Specific analysis pertains to FBI's "Carnivore" Internet surveillance software; PATRIOT Act is discussed within this general framework. Worth reading are case laws on surveillance and PATRIOT Act's contribution to surveillance powers.

### **Issues Relating to Immigration Policy, Detention & Deportation**

*Many aspects of the PATRIOT Act unfairly target immigrants. The attorney general has the ability to 'certify' that the government has 'reasonable grounds to believe that an alien is a terrorist or is engaged in*

*other activity that endangers the national security of the United States . ' Once that certification is made and someone is labeled a potential threat, the government may detain him or her indefinitely--based on secret evidence it isn't required to share with anyone* (Barbara Dority. 2004. "Your Every Move". *Humanist*. 64(1): 14).

Title IV, Subtitle B of the USA PATRIOT Act has particular consequences for immigrants, resident aliens, and other non-U. S. citizens. In examining these issues existing literature tends to divide itself into two categories: discussion of general immigration law and examination of U.S. detention and deportation policies. In the former category, legal analyses trace the evolution of immigration law in the United States, with the PATRIOT Act largely referenced as another (though not the most important or only) legislative attempt by the United States government to limit immigrants' rights. Rather, the PATRIOT Act often is described as the inevitable consequence of a series of laws enacted under the auspices of improving national security at the expense of the rights of non-U. S. citizens. Discussion about U.S. detention and deportation policies regarding non-citizens is much more specific in its examination of the PATRIOT Act. Overall, the literature suggests the Act places non-citizens' liberty in jeopardy by creating statutory precedence for the detention and deportation of non-U. S. citizens. Relevant literature has been broken into the following sections: immigration policy and national security, detention and deportation of non-citizens, and implications for refugees and asylum seekers.

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#### *Immigration Policy and National Security*

Adrienne R. Bellino. 2002. "Changing Immigration for Arabs with Anti-Terrorism Legislation: September 11th Was Not the Catalyst". *Temple International and Comparative Law Journal*. 16(Spring 2002).

Karen Engle. 2004. "Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(Ism)". *Colorado Law Review*. 75(Winter 2004).

While lacking in discussion about the PATRIOT Act in particular, this article provides a thorough, legal analysis of how the U.S. government has distinguished between "bad" aliens and "good" aliens in the past. Includes a history of U.S. immigration law and policy; discussion of how some of the same demarcations were used to distinguish good from bad citizens based on presumed affiliations with bad aliens or enemy states; and analysis of how this practice is used in times of threat, particularly the post-September 11 era.

Catherine Etheridge Otto. 2002. "Tracking Immigrants in the United States: Proposed and Perceived Needs to Protect the Borders of the United States". *North Carolina Journal of International Law & Commercial Regulation*. 28(Winter 2002):

This article reviews U.S. immigration policy, with discussion of the PATRIOT Act in this context. Little discussion of individual rights.

1996. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIA). <http://uscis.gov/graphics/publicaffairs/factsheets/948.htm>.

*ABSTRACT: Legislation amending the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and other purposes.*

Ruchir Patel. 2003. "Immigration Legislation Pursuant to Threats to Us National Security". *Denver Journal of International Law and Policy*. 32(Winter 2003).

Examines U.S. immigration legislation in the face of threats to national security from World War I to present. Evaluates the PATRIOT Act's adequacy in resolving the present threat to national security, with specific attention paid to immigration policies, and proposes reforms to certain immigration provisions of the PATRIOT Act.

U. S. Department of Justice. 1997. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Grounds of Inadmissibility Fact Sheet. <http://uscis.gov/graphics/publicaffairs/factsheets/950.htm>.

Provides a brief summary of the salient points of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) that make non-citizens inadmissible to the United States.

Quinn H. Vandenberg. 2004. "How Can the United States Rectify Its Post-9/11 Stance on Noncitizens' Rights?" *Notre Dame Journal of Law, Ethics & Public Policy*. 18(2004).

*ABSTRACT: Establishes an overview of constitutional and critical issues concerning U.S. immigration law and argues that the U.S. Congress' procedural and substantive changes to crime-related deportation by the Anti-terrorism and Effective Death Penalty Act (AEDPA), Immigration Reform and Death Immigrant Responsibility Act (IIRIRA), and the USA PATRIOT Act lead to a "rights-deprived" environment for immigrants in the United States.*

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### *Detention and Deportation of Non-Citizens*

David Cole. 2002. "Enemy Aliens". *Stanford Law Review*. 54(May 2002).

Cole provides an extensive evaluation of non-citizen detention policies in the U.S. pre- and post-September 11, with particular emphasis paid to the further erosion of non-citizen rights following the enactment of the PATRIOT Act. Piece provides strong background understanding to detention policies and argues that human rights concerns stem from U.S. obligations to non-citizens, both on constitutional grounds and as a matter of international legitimacy.

Whitney D. Frazier. 2001. "The Constitutionality of Detainment in the Wake of September 11th". *Kentucky Law Journal*. 90(2001/2002).

Provides a collection of reports related to individuals detained by the U.S. during the war on terrorism, including some designated as enemy combatants or others held at Guantanamo Bay.

Human Rights Watch. 2002. Human Rights Watch World Report 2002: United States: Anti-Terrorism Measures in the United States. Human Rights Watch. <http://www.hrw.org/wr2k2/us.html>.

In its annual world report, Human Rights Watch provides discussion about the detention of 1,000+ predominantly Arab and Muslim individuals within the U.S. Minimal discussion of the USA PATRIOT Act; focus is on U.S. detention policies.

Human Rights Watch. August 2002. Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees. <http://www.hrw.org/reports/2002/us911/>.

Human Rights Watch. United States: Detainees and Other U.S. Post 9/11 Policies.

Collection of letters, press releases, and reports issued by Human Rights Watch regarding the United States' detention policies following September 11. With a strong focus on detention policies as defined by the U.S. Department of Justice and Executive Authority, this resource provides limited information specific to the USA PATRIOT Act. [http://hrw.org/doc/?t=usa\\_detentions&document\\_limit=0,20](http://hrw.org/doc/?t=usa_detentions&document_limit=0,20).

Dana Keith. 2004. "In the Name of National Security or Insecurity? The Potential Indefinite Detention of Noncitizen". Florida Journal of International Law. 16(June 2004).

This article examines sections 411 and 412 of the PATRIOT Act, which allows for the detention of non-citizen terrorism suspects, and the British counterparts in the U. K. Anti-Terrorism, Crime and Security Act 2001 (ATCSA). Examines theories of mandatory detention and conjectures whether the non-citizen detention provisions would be upheld as constitutional by the U.S. Supreme Court and in keeping with human rights obligations by the European Court of Human Rights. Argues that PATRIOT Act is an appropriate domestic security law, whereas ATCSA is flawed.

Office of the Inspector General U.S. Department of Justice. 2003. The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks. U.S. Department of Justice.

While not an analysis of the PATRIOT Act in particular, this report reviewed the treatment of those detained in the aftermath of the September 11 attacks in accordance with select provisions of the Act. In particular, the report criticized unusual or harsh treatment of prisoners, their lack of access to counsel, and the length of their detentions.

Shirin Sinnar. 2003. "Patriotic or Unconstitutional? The Mandatory Detention of Aliens under the USA Patriot Act". Stanford Law Review. 55(April 2003).

Provides a fairly comprehensive overview of the history of non-citizen detentions, detentions during "times of emergency" and non-citizen detentions following the enactment of the PATRIOT Act. Closely analyzes mandatory detention provisions of the PATRIOT Act and subjects them to detailed constitutional scrutiny, with particular emphasis paid to Fifth Amendment guarantees of due process of law.

U. S. State Department. Civil Liberties & Terrorism. [http://usinfo.state.gov/dhr/human\\_rights/war\\_on\\_terrorism.html](http://usinfo.state.gov/dhr/human_rights/war_on_terrorism.html).

Dana B. Weiss. 2002. "Protecting America First: Deporting Aliens Associated with Designated Terrorist Organizations That Have Committed Terrorism in America in the Face of Actual Threats to National Security". *Cleveland State Law Review*. 50(2002-2003).

*ABSTRACT: Presents a provocative counter-argument to claims of rights violations in instances of non-citizen deportations. Proposes legislation that would provide for removal of aliens who are merely associated with a known terrorist organization that has committed acts of terrorism in the U.S., arguing that such legislation is necessary to uphold the interest of national security in the face of actual, imminent threats of more terrorist acts against this country.*

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#### *Implications for Refugees and Asylum Seekers*

Regina Germain. 2002. "Rushing to Judgment: The Unintended Consequences of the USA Patriot Act for Bona Fide Refugees". *Georgetown Immigration Law Journal*. 16(2): 505.

Discusses the implications of the USA PATRIOT Act for asylum-seekers and refugees. Presents a history of immigration law as it pertains to refugees and asylum seekers and offers proposals to implement the Act to ensure that bona fide refugees receive the protections they are entitled to under U.S. law. Contends that overly cautious adjudicators may deny refugees' claims based on little if any evidence of wrongdoing and argues that any individual who has received a final grant of asylum should not be certified or detained as a suspected terrorist.

Inna Nazarova. 2002. "Alienating "Human" from "Right": U.S. And UK Non-Compliance with Asylum Obligations under International Human Rights Law". *Fordham International Law Journal*. 25(June 2002):

In this article about international refugee and asylum law, the repercussions of the PATRIOT Act on asylum seekers and immigrants are examined. Explores U.S. and U. K. human rights obligations with respect to asylum-seekers.

Marie A. Taylor. 2002. "Immigration Enforcement Post-September 11: Safeguarding the Civil Rights of Middle Eastern-American and Immigrant Communities". *Georgetown Immigration Law Journal*. 17(Fall 2002):

*ABSTRACT: Examines some of the implications of post-September 11 immigration policies, practices, and laws for non-citizens and Middle Eastern-American immigrant communities, including the PATRIOT Act. Addresses some of the constitutional challenges raised by civil rights advocates and proposes mechanisms for data collection and monitoring of the most troublesome aspects of current immigration enforcement activities by the Immigration & Naturalization Service and the Justice Department.*

#### **Additional Constitutional Challenges to the PATRIOT Act**

Although not as broad as the other categories presented in this bibliography, this literature exists to challenge aspects of the PATRIOT Act on First Amendment bases. Specifically, these authors have challenged assertions of expanded executive authority, *de facto* reinterpretations of the principle

of judicial review, and the way government has suppressed political dissent and curtailed the principle of open government following the attacks of September 11.

S. S. Beale and J. E. Felman. 2002. "The Consequences of Enlisting Federal Grand Juries in the War on Terrorism: Assessing the USA PATRIOT Act's Changes to Grand Jury Secrecy." *Harvard Journal of Law & Public Policy* 25(2): 699.

N. Chang. 2003. "How Democracy Dies: The War on Our Civil Liberties". *Lost Liberties: Ashcroft and the Assault on Personal Freedom*. C. Brown. New York: The New Press.

N. Chang. and H. Zinn. 2002. *Silencing Political Dissent: How Post-September 11 Anti-Terrorism Measures Threaten Our Civil Liberties*. New York: Seven Stories Press.

J. M. Collins. 2002. "And the Walls Came Tumbling Down: Sharing Grand Jury Information with the Intelligence Community Under the USA PATRIOT Act." *American Criminal Law Review* 39(3): 1261.

Discusses provisions of the PATRIOT Act regarding the disclosure of grand jury material that contains foreign intelligence or counterintelligence information. Presents overview of the tradition of grand jury secrecy codified by Rule 6(e) of the Federal Rules of Criminal Procedure; changes to Rule 6(e) adopted in the USA PATRIOT Act; and analysis of the grand jury secrecy exception of the law in light of traditional concerns that have animated the policy of grand jury secrecy.

C. A. Flint. 2004. "CHALLENGING THE LEGALITY OF SECTION 106 OF THE USA PATRIOT ACT." *Albany Law Review* 67.

ABSTRACT: *This article explores to what extent section 106 of the PATRIOT Act conflicts with Brown v. United States, in which the Supreme Court outlined a two-step procedure for the government to confiscate enemy property found within its jurisdiction. Examines how a court would resolve conflicts by examining definitions of enemy and states of warfare, the doctrine of military necessity, international law regarding unlawful expropriations, the application of customary international law in American jurisprudence, and the evolution of the International Emergency Economic Powers Act (IEEPA).*

International Emergency Economic Powers Act (IEEPA). 1977. 50 U.S. C. 35.

ABSTRACT: *U.S. law enacted in 1977 that extends the president's emergency powers by enabling the president, after declaring that a national emergency exists because of a threat from a source outside the United States, to investigate, regulate, compel or prohibit virtually any economic transaction involving property in which a foreign country or national has an interest.*

S. H. Rackow. 2002. "How the USA PATRIOT Act Will Permit Governmental Infringement upon the Privacy of Americans in the Name of 'Intelligence' Investigations." *University of Pennsylvania Law Review* 150(5): 1651.

S. D. Ross. 2004. "SECRECY'S ASSAULT ON THE CONSTITUTIONAL RIGHT TO OPEN TRIALS." *Idaho Law Review* 40(2004).

N. T. Saito. 2002. "Whose Liberty? Whose Security? The USA PATRIOT Act in the Context of COINTELPRO and the Unlawful Repression of Political Dissent." *Oregon Law Review* 81(Winter).

S. A. Scheindlin and M. L. Schwartz. 2004. "With All Due Deference: Judicial Responsibility In A Time Of Crisis." *Hofstra Law Review* 32(Spring).

## Political Responses

In addition to attorneys and scholars, private citizens, organizations, and government entities have weighed in about the Act's consequences for civil liberties in America . The resources below represent individuals and organizations from both sides of the debate that have advocated for either repeal or expansion of the Act, as well as legislative responses calling for restrictions on or expansion of provisions of the Act.

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American Civil Liberties Union (ACLU). Patriot Act Resource Page of the American Civil Liberties Union. <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12126&c=207>.

Presents comprehensive resources related to civil rights in light of the USA PATRIOT Act, including analyses of PATRIOT 1 & 2, fact sheets, advocacy tools, details about lawsuits filed to request information about the consequences of the Act, and more.

American Library Association. American Library Association USA Patriot Act Page. <http://www.ala.org/ala/oif/ifissues/usapatriotact.htm>.

Comprehensive information about the organization's interpretation of provisions of the PATRIOT Act relating to libraries' obligations to comply with investigations and requests for patrons' lending records.

John Ashcroft. 2002. Remarks to U.S. Attorneys Conference. U.S. Attorneys Conference. New York: October 1.

U. S. Attorney General John Ashcroft's remarks to the U.S. Attorneys Conference in 2002 defending USA PATRIOT Act and other legislation empowering the U.S. government to enhance its antiterrorism activities. Counters charges that civil liberties are at risk and outlines successful prosecution of terrorist suspects. <http://www.usdoj.gov/ag/speeches/2002/100102agremarkstousattorneysconference.htm>

Bill of Rights Defense Committee. Civil Liberties Groups & Information About Incursions on Civil Liberties. <http://www.bordc.org/links.html>.

Fairly comprehensive collection of links to organizations devoted to protection or maintenance of civil rights in America, especially freedom of expression and thought, and legislation described as threatening to the U.S. Bill of Rights.

Bill of Rights Defense Committee. Local Efforts to Oppose Patriot Act. <http://www.bordc.org/OtherLocalEfforts.htm>.

Comprehensive list of U.S. cities, communities and states that have passed resolutions opposing parts of the PATRIOT Act.

Coalition for Civil Liberties. Defending Our Rights and Freedoms against Attacks by the USA Patriot Act and Other Government Actions. [http://ccl-foothills.org/CCL\\_InfoPacket\\_9.12.03-Pas.pdf](http://ccl-foothills.org/CCL_InfoPacket_9.12.03-Pas.pdf).

Resource packet aimed at groups advocating against the USA PATRIOT Act. Includes analysis of the Act and its implications for civil liberties, collection of resolutions and letters opposing the Act, books, and other resources.

Coalition for Civil Liberties. Useful Resources for Efforts to Oppose or Limit the Scope of the USA Patriot Act. <http://ccl-foothills.org/resources.html>.

Collection of resources aimed at advocacy groups opposing the USA PATRIOT Act. Includes links to anti-PATRIOT resolutions, fact sheets, books, and advocacy organizations such as the American Civil Liberties Union (ACLU).

2003. Domestic Security Enhancement Act of 2003 (A. K. A. Patriot II) (Draft).

Text of proposed PATRIOT II legislation calling for the expansion of the PATRIOT Act's scope, particularly with respect to domestic intelligence-gathering, surveillance and law-enforcement activities. [http://www.publicintegrity.org/docs/PatriotAct/story\\_01\\_020703\\_doc\\_1.pdf](http://www.publicintegrity.org/docs/PatriotAct/story_01_020703_doc_1.pdf)

Human Rights Watch Et Al. 2004. Asking Congress to Support the Civil Liberties Restoration Act. <http://www.hrw.org/english/docs/2004/06/16/usdom8771.htm>.

This letter to the U.S. Congress advocates for the passage of the Civil Liberties Restoration Act of 2004 in an effort to secure individual rights in the U.S. to offset rights-incursive policies and procedures implemented after September 11, 2001. Signatories include both international non-governmental organizations (NGOs) such as Human Rights Watch and U.S. organizations.

U. S. Senator Edward Kennedy. 2004. "Civil Liberties Restoration Act of 2004." Legislative S. 2528, related to H. R. 4591. Body

Legislation introduced to amend federal immigration law to increase civil liberties in immigration proceedings. Also includes provisions requiring data entered into the National Crime Information Center database to meet Privacy Act accuracy requirements; amending the Foreign Intelligence Surveillance Act of 1978 (FISA) to authorize (currently, require) courts to review in camera and ex parte materials relating to, or information derived from, electronic surveillance, physical searches, business records, and pen registers or trap and trace devices under FISA where the Attorney General asserts that disclosure implicates national security; and requiring federal agencies to report datamining activities to Congress.

Charles Lewis and Adam Mayle. 2003. Justice Dept. Drafts Sweeping Expansion of Anti-Terrorism Act. <http://www.publicintegrity.org/report.aspx?aid=94&sid=200>.

Article detailing efforts to expand scope of PATRIOT Act to expand “domestic intelligence-gathering, surveillance and law-enforcement prerogatives, and simultaneously decrease judicial review and public access to information” through failed legislation dubbed PATRIOT II.

U. S. Representative Charlie Norwood. 2003. “Clear Law Enforcement for Criminal Alien Removal Act of 2003 (Clear Act).” Legislative H. R. 2671. Body

Seeks to further reform U.S. immigration law regarding detention and deportation policies by, among other things, establishing criminal penalties and forfeiture for non-citizens illegally present in the United States; providing for the listing of immigration violators in the National Crime Information Center database; and requiring states and localities to provide the Department of Homeland Security with specified information about apprehended illegal aliens.

Alison Parker and Wendy Patten. Letter to U.S. Senate and House of Representatives Regarding the “Clear Law Enforcement for Criminal Alien Removal Act of 2003” (CLEAR) and the “Homeland Security Enhancement Act of 2003” (HSEA).

Outlines Human Rights Watch’s opposition to the CLEAR and HSEA acts of 2003. Includes rights-based analysis of the acts. <http://hrw.org/english/docs/2004/04/21/usdom8473.htm>

Jesselyn A. Radack. 2003. “United States Citizens Detained as “Enemy Combatants”: The Right to Counsel as a Matter of Ethics”. William & Mary Bill of Rights Journal. 12(December).

Discusses implications for provision of PATRIOT II that would allow for U.S. citizens to be labeled as “enemy combatants,” and therefore potentially denied right of counsel.

Natsu Taylor Saito. 2004. “Civil Liberties Post-September 11: For “Our” Security: Who Is an “American” and What Is Protected by Enhanced Law Enforcement and Intelligence Powers?” Seattle Journal for Social Justice. 2(Fall 2003 / Winter 2004):

Provides an overview of the PATRIOT Act and discussion of PATRIOT II. Particularly relevant is suggestion that provisions of PATRIOT II would allow government to label certain U.S. citizens as “non-citizens,” thereby curtailing the rights afforded to them by U.S. law.

U. S. Representative Bernard Sanders. 2003. “Freedom to Read Protection Act of 2003.” Legislative H. R. 1157.

Library of Congress record for the Freedom to Read Protection Act of 2003, which calls for exemptions for bookstores and libraries to produce items for certain investigations, contrary to popular interpretation of certain provisions of the USA PATRIOT Act.

Nikki Swartz. 2004. “Patriot Act’s Reach Expanded Despite Part Being Struck Down”. The Information Management Journal. (March/April):

Provides update about the status of some provisions of PATRIOT II that were enacted with the 2003 passage of the Intelligence Authorization Act for Fiscal Year 2004, specifically, provisions allowing FBI to obtain records from financial institutions without a court order through the issuance of National Security Letters. Discusses District Court ruling striking down sections of PATRIOT Act that prohibit provision of expert advice or assistance as violations of First and Fifth amendments.

U. S. Justice Department. Preserving Life & Liberty. <http://www.lifeandliberty.gov/>.

A public relations effort created by the U.S. Justice Department to act as an educational resource about the USA PATRIOT Act. Includes counter-arguments to ACLU analysis of the Act, articles in support of the Act, and highlights of the Act's scope and function.

### **Issues Relating to the International Money Laundering Abatement and Antiterrorist Financing Act Of 2001**

Anti-money-laundering legislation for the purpose of fighting terrorism had already been drafted prior to the events of September 11. As the USA PATRIOT Act legislation evolved into a comprehensive measure to combat terrorist activities, the existing anti-money-laundering provisions were incorporated into the omnibus measure. Much of the literature about Title III relates to technical and procedural changes to financial regulations, so the business implications for financial industries are not included here. Some scholars have suggested that individuals targeted under Title III--those identified by the U.S. government as terrorists or terrorist financiers--may be at risk of losing their First Amendment guarantees of freedom of speech and association. Also included are Congressional hearings reflecting Senatorial and House oversight of anti-money-laundering initiatives related to the PATRIOT Act.

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2003. [Anti-Terrorism Investigations and the Fourth Amendment after September 11: Where and When Can the Government Go to Prevent Terrorist Attacks?](http://www.heritage.org/Research/HomelandDefense/test052103b.cfm) Washington, D. C. <http://www.heritage.org/Research/HomelandDefense/test052103b.cfm>.

*ABSTRACT: Congressional oversight hearing to consider the extent to which the implementation of the USA PATRIOT Act and other recent changes to the FBI's investigative guidelines comport with the Fourth Amendment and Fourth Amendment values. Examines where and when the federal government can go to search the addressing information of electronic communications, library records, and public settings in order to prevent terrorist attacks.*

Nola K. Breglio. 2003. "Leaving FISA Behind: The Need to Return to Warrantless Foreign Intelligence Surveillance". *Yale Law Journal*. 113(1): 179.

*ABSTRACT: Discusses history of the Foreign Intelligence Surveillance Act (FISA) and the establishment of the Foreign Intelligence Surveillance Court (FISC), explains how the PATRIOT Act and In re Sealed Case damaged the usefulness and legitimacy of FISA and the FISC. Argues for the abolition of FISA and the appropriateness of warrantless searches as the standard in foreign intelligence cases.*

Michael J. Bulzomi. 2003. "Foreign Intelligence Surveillance Act: Before and after the USA Patriot Act". *FBI Law Enforcement Bulletin*. (June 1).

Rebecca A. Copeland. 2004. "War on Terrorism or War on Constitutional Rights? Blurring the Lines of Intelligence Gathering in Post-September 11 America". *Texas Tech Law Review*. 35(2004).

This paper analyzes the potential impact the combined powers of the FISA, the USA PATRIOT Act, and the Department of Homeland Security have on the constitutional rights of American citizens, particularly Fourth Amendment rights. Includes a brief history of foreign intelligence surveillance and how the PATRIOT Act changed FISA regulations. A good background piece

on foreign intelligence surveillance law in the U.S. and FISA in particular; useful primer to understand the constitutional challenges to PATRIOT that cite FISA precedents.

Joshua L. Dratel. 2002. "Fourth Amendment Implications of the USA Patriot Act". *The Champion*. 26.

Provides a concise summary of provisions of the PATRIOT Act that incur on Fourth Amendment rights, particularly those amending electronic surveillance regulations, jurisdictional authority, "sneak and peak" search authority, the Foreign Intelligence Surveillance Act (FISA), and regulations permitting disclosure of grand jury and other information.

Heath H. Galloway. 2002. "Don't Forget What We're Fighting For: Will the Fourth Amendment Be a Casualty of the War on Terror?" *Washington & Lee Law Review*. 59(Summer).

This highly legal analysis examines provisions of the PATRIOT Act the challenge the Fourth Amendment. Particular focus is paid to the Foreign Intelligence Surveillance Act (FISA), its history and its balance with constitutional rights, and whether the PATRIOT Act provides government agencies with too much authority at the expense of constitutional rights.

Paul T. Jaeger. 2003. "The Impact of the USA Patriot Act on the Collection and Analysis of Personal Information under the Foreign Intelligence Surveillance Act". *Government Information Quarterly*. 20(July).

Orin S. Kerr. 2003. "Internet Surveillance Law after the USA Patriot Act: The Big Brother That Isn't". *Northwestern University Law Review*. 97(Winter).

ABSTRACT: Argues that claims of the PATRIOT Act broadly enhancing government surveillance capabilities are incorrect. Includes technical discussion about what Internet surveillance is and how it works, analysis of three major criticisms of the Act, and an examination of FBI's "Carnivore" Internet surveillance software. Major point of argument claims Internet surveillance is not a matter of Fourth Amendment guarantees but is statutorily regulated.

Peter G. Madrinan. 2003. "Devil in the Details: Constitutional Problems Inherent in the Internet Surveillance Provisions of the USA Patriot Act of 2001". *University of Pittsburgh Law Review*. 64(Summer 2003).

This highly technical article discusses the history of electronic surveillance law in the U.S. and the impact of changes in technology on surveillance law and techniques, specifically pen/trap device law. Included is a brief history of those sections of the PATRIOT Act dealing with electronic surveillance, as well as a discussion about the consequences of the Act on Fourth Amendment protections against unreasonable searches and seizures.

Susan Nevelow Mart. 2004. "Protecting the Lady from Toledo: Post-USA Patriot Act Electronic Surveillance at the Library". *Law Library Journal*. 96(Summer 2004).

Examines impact of PATRIOT Act on individuals' privacy within context of library usage, with specific discussion about sections 206, 214, 215, 216, 218, and 505.

Stephen J. Schulhofer. 2002. *The Enemy Within: Intelligence Gathering, Law Enforcement, and Civil Liberties in the Wake of September 11*. Century Foundation Press.

*ABSTRACT: Schulhofer reviews comprehensive new powers extended to the federal executive branch, in the name of fighting a war on terrorism, particularly with respect to spying electronically, obtaining access to previously confidential financial and educational records, detaining without charge, precluding public hearings, and restricting access to counsel for both foreigners and citizens, in both military and civilian systems. Schulhofer also assesses the need for the new federal powers, their combined effects, and the dangers they may pose.*

Kathleen Sullivan. 2003. "Under a Watchful Eye: Incursions on Personal Privacy." *The War on Our Freedoms*. Richard C. Leone and Greg Anrig Jr. New York: The Century Foundation.

Explores issues of personal rights to privacy in America and how those rights have been imposed upon following September 11. Relevant discussion related to PATRIOT Act addresses PATRIOT Act's expansion of surveillance capabilities with respect to Foreign Intelligence Surveillance Act (FISA); additional discussion addresses failed proposed Total Information Awareness (TIA) and Terrorism Information and Prevention Systems (TIPS) programs.

Stephen W. Tountas. 2003. "Carnivore: Is the Regulation of Wireless Technology a Legally Viable Option to Curtail the Growth of Cybercrime?" *Washington University Journal of Law & Policy*. 11(2003).

Discusses history of case and statutory law relating to surveillance and Fourth Amendment rights to privacy. Specific analysis pertains to FBI's "Carnivore" Internet surveillance software; PATRIOT Act is discussed within this general framework. Worth reading are case laws on surveillance and PATRIOT Act's contribution to surveillance powers.

Gregory F. Treverton. 2003. "Terrorism, Intelligence and Law Enforcement: Learning the Right Lessons". *Intelligence & National Security*. 18(4): 121.

*ABSTRACT: Focuses on the reshaping of intelligence and law enforcement in the U.S. ; examines distinctions between the intelligence service and law enforcement; analyzes misdealings between the U.S. Central Intelligence Agency and the Federal Bureau of Investigation over Al-Qaeda-affiliated terrorists; explores limited cooperation between intelligence and law enforcement; and explores the PATRIOT Act in this context.*

George P. Varghese. 2003. "A Sense of Purpose: The Role of Law Enforcement in Foreign Intelligence Surveillance". *University of Pennsylvania Law Review*. 152(1): 385.

Criticizes the U.S. Foreign Intelligence Surveillance Court of Review opinion in *In re Sealed Case*, which allows law enforcement to invoke a foreign intelligence purpose as a pretext to obtain a FISA warrant for use in a criminal investigation. Questions the constitutionality of the PATRIOT Act's relaxing of barriers between law enforcement and intelligence investigations. Provides background about the foreign intelligence exception to the Fourth Amendment warrant requirement; evolution of the interpretation of the Foreign Intelligence Surveillance Act of 1978 by the courts and the executive branch.