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# The Patriot Act: Violating the First and Fourth Amendments

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“The Patriot Act: Violating the First and Fourth Amendments”

by

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A Thesis

Presented to the Graduate and Research Committee

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## ABSTRACT

Throughout American history national security has been valued more than civil liberties. In the twenty first century the Patriot Act was implemented to increase national security. However, this legislation violates the First and Fourth Amendments of the Bill of rights. The argument put forward is that the Patriot Act signing and the technological advancements of the twenty-first century have depleted privacy rights of American citizens and increased the government's ability to spy on their own citizens. As a consequence people have been less inclined to utilize their First Amendment right especially if they feel they could be deemed a terrorist. The Patriot Act is not the first legislation created to protect national security and past precedence demonstrates that national security outweighs civil liberties especially in wartime.

On September 11, 2001, the United States of America was attacked. Four airplanes were hijacked by terrorists. Two planes crashed into the Twin Towers in New York City, another plane crashed into the Pentagon, and the fourth plane crashed near a field in Shankstown, Pennsylvania.<sup>1</sup> Shock, fear, and uncertainty swept the nation. Within a few hours of the attack the minds of most Americans changed. People no longer felt safe and they worried about another attack. Travelers were afraid to fly; even greater than the fear of flying was the fear of biological weapons. In this frenzy of emotion many Americans looked to the government for answers. The attacks on 9/11 were not the first act of aggression made by an outside force on the United States. It was however, the first time the United States government rapidly passed legislation which restricted the rights of American born citizens. The passage of the Patriot Act was the first act passed during the Bush administration that increased the government's ability to drastically increase surveillance within the United States.

The area of the constitution that I am concerned with is the First and Fourth Amendment violations encompassed in the implementation of the Patriot Act. The objective of the Patriot Act is to protect national security; however, the basic rights protected by these constitutional amendments have been neglected due to the new standards of surveillance techniques being used against US citizens.

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<sup>1</sup> Mitch Frank, *Understanding September 11<sup>th</sup>: Answering Questions About the Attacks on America*. New York: Viking, 2002

The United States has had, and still has, an unfortunate history of overreacting to perceived dangers in wartime. Administrations have learned how to utilize the general public's previous wartime experiences to suppress possible future dissent, beginning with President John Adams' signing of the Alien and Sedition Act of 1798, which made it a crime for any individual residing in the United States to make any statement against the President, Congress, and the government; specifically, statements that reveal the "intent to bring them into contempt or disrepute."<sup>2</sup> A little more than half a century later, during the Civil War, President Lincoln suspended the Writ of Habeas Corpus. By doing so, he prohibited "judges from reviewing the legality of an individual's detention;" thus leading to tens of thousands of Americans becoming imprisoned by military authorities.<sup>3</sup> World War I brought the Espionage Act, created by Woodrow Wilson's administration, which led to the prosecution of thousands of people. Typically those who were imprisoned were incarcerated for expressing their opposition to the war or the draft. World War II led President Roosevelt and his administration to "order the internment of more than 110,000 individuals of Japanese descent, two-thirds of who were American citizens...locked away in detention camps for the better part of three years, for no reason other than their race."<sup>4</sup> In the late 1940's and early 1950's, McCarthyism swept the nation. Prosecuting individuals suspected of disloyalty. McCarthyism was followed by the Johnson and Nixon administration's COINTELPRO program of surveillance and infiltration. The Bush administration and the "War on Terrorism" led the secret detention of thousands of citizens and non-citizens. Under the Bush administration the deportation process was

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<sup>2</sup> Stone, *War and Liberty*, 26.

<sup>3</sup> Stone, *War and Liberty*, 32.

<sup>4</sup> Stone, *War and Liberty*, 36.

done quickly and secretly. The authorization of surveillance tactics under the “War on Terror” is more invasive, than the surveillance methods that were used during the Nixon and Johnson administration. After 9/11 part of the Bush administration goal was to rule out any one who could be viewed as an “unlawful enemy combatant.”

As Geoffrey R. Stone, wrote in *War and Liberty*:

A theme that recurs throughout the history of the United States in wartime is the status of aliens. After all, who is more likely to be ‘disloyal’ than a non-citizen—a person with no formal allegiance to the nation? With fears about the French in 1798, the Germans in World War I, the Japanese in World War II, and foreign-born Muslims in the war on Terrorism, the United States has a long wrestled with the question of whether and to what extent noncitizens have constitutional rights.<sup>5</sup>

A related theme that runs through the course of American history is the government’s ability to manipulate fear in the citizens and noncitizens residing in the United States. They reinforce the public’s belief that acts signed by the President are intended to protect them. Though in a certain aspect the Patriot Act does increase national security (this will be addressed later), the act allows for extreme abuse by intelligence organizations.

The purpose of this paper is to examine past unconstitutional actions made by a President and how the current administrations utilize aspects of previous administrations to suppress dissent. Technology has benefited the government’s ability to track suspected “terrorists.” Databases, warrantless searches, and surveillance techniques are only a few areas of concern for the future of American civil liberties, regardless of whether the United States is at war. Unlike the press during World War I, the media outlets in the aftermath of 9/11 immediately appeared to have aligned themselves with the president. As time has passed media outlets have become more responsive to coverage pertaining to

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<sup>5</sup> Stone, *War and Liberty*, 5.

civil rights and national security. The Patriot Act's signing and the technological advancements of the twenty-first century have depleted privacy rights of American citizens and increased the government's ability to spy on their own citizens. As a result, people are less inclined to utilize their First Amendment rights especially if they feel they could be deemed a terrorist.

### **Wilson and the First and Fourth Amendments**

Prior to the United States entrance into World War I, the carnage in Europe was devastating; however, a majority of Americans believed that the war was Europe's war, and the United States should refrain from intervening in what they saw as a purely European conflict. The slogan, "kept America out of war," was used by Wilson in his 1916 reelection, but it disappeared when the United States entered World War I.<sup>6</sup> When Wilson was seeking his declaration of war, "he cautioned that 'if there should be disloyalty, it will be dealt with, with a firm hand of stern repression.'<sup>7</sup> These disloyal individuals according to Wilson "had sacrificed their right to civil liberties" as a result of their opposition to the United States entrance into World War I.<sup>8</sup> Wilson believed that if opposition to the entrance of World War I was allowed to fester, it would undermine the nation's morale "and make it more difficult to prosecute the war."<sup>9</sup> Wilson did not want to hear or to see dissent directed towards his administration. More importantly, Wilson believed any disloyalty "must be crushed out of existence."<sup>10</sup>

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<sup>6</sup> Stone, *War and Liberty*, 42.

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Ibid

The Socialist Party openly protested America's entrance into World War I. The leader of the Socialist Party, Eugene V. Debs argued that the war was "a capitalist tool contrived by industrialists to boost armament sales and enforce social order, while bringing only misery, demoralization, and death to the working class."<sup>11</sup> Emma Goldman was another outspoken critic of the American entrance into World War I. She expressed in her essay "The Promoters of the War Mania:"

At this critical moment it becomes imperative for every liberty-loving person to voice a fiery protest against the participation of this country in the European mass murder. [It] is unthinkable that the American people should really want war. During the last thirty months they have had ample opportunity to watch the frightful carnage in the warring countries...

We are told that the 'freedom of the seas' is at stake and that 'American honor' demands that we protect that precious freedom. What a farce!...The only ones that have benefited by the 'freedom of the seas' are the exploiters, the dealers in munitions and food supplies...Out of international carnage they have made billions...

Militarism and reaction are now more rampant in Europe than ever before. Conscription and censorship have destroyed every vestige of liberty...The same is bound to take place in America should the dogs of war be let loose here...<sup>12</sup>

The Wilson administration introduced a form of censorship, the Espionage Act of 1917. Though the administration was primarily concerned with protecting military secrets, the bill included sections which referred to the public's freedom of speech and the freedom of the press. "The American Newspaper Publishers Association" protested that this provision 'strikes at the fundamental rights of the people, not only assailing their freedom of speech, but also seeking to deprive them of the means of forming intelligent

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<sup>11</sup> Stone, *War and Liberty*, 44.

<sup>12</sup> Stone, *War and Liberty*, 44-45.

opinion.’ ‘In war, the press should be free, vigilant, and unfettered.’”<sup>13</sup> When the Espionage Bill went to Congress, Senator Lee Overman of North Carolina commented, “the good of society is superior to the right of the press.”<sup>14</sup> On the other hand, Representative William Wood of Indiana characterized the bill as “an instrument of tyranny.”<sup>15</sup> “On May 31, 1917, the House defeated the provision by a vote of 184 to 144,” deleting the section pertaining to the censorship of the press.<sup>16</sup> The Wilson administration attempted to censor what could be presented to the public. However, when Congress passed the Espionage Act, Wilson still needed to create a patriotic fervor supporting the United States entry into the war. As mentioned by Geoffrey Stone, “Wilson established the Committee on Public Information (CPI), under the direction of George Creel. Creel’s task was to generate enthusiasm for war;” pamphlets, speeches, and, newspaper editorials were used to sway the American public.<sup>17</sup> The objective was to promote “hatred of the enemy and a suspicion of anyone who might be disloyal,” but in this situation, the “disloyal” individuals were primarily, U.S citizens and not foreigners.<sup>18</sup> The CPI created an atmosphere of accusation and suspicion. This ultimately led to a “federal judge [being] called upon to interpret and apply the Espionage Act of 1917.”<sup>19</sup>

During the war, the United States prosecuted more than 2,000 dissenters.

According to Stone, people were “targeted because of their political views, were arrested,

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<sup>13</sup> Stone, *War and Liberty*, 46.

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Stone, *War and Liberty*, 49.

<sup>17</sup> Stone, *War and Liberty*, 49.

<sup>18</sup> Stone, *War and Liberty*, 50.

<sup>19</sup> Ibid.

interrogated, jailed, and beaten to force them to sign confessions.”<sup>20</sup> These raids were carried out across the United States and over 500 people were deported. A few of the most notable dissenters were Charles Schenck, Jacob Frohwerk, and Eugene V. Debs. Schenck was charged with attempting to obstruct the recruiting and enlistment services by circulating pamphlets stating that the draft was unconstitutional. The pamphlets also encouraged individuals to join the Socialist Party. In this case, the very conservative Supreme Court upheld the guilty conviction, with Justice Oliver Wendell Holmes writing the opinion of the court. The following statement from Holmes became a guiding principle in the protection of free speech:

We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstance in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic...

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.<sup>21</sup>

In the case of Schenck, the Supreme Court interpretation of the First Amendment ruled it did not protect speech encouraging insubordination. According to Geoffrey Stone, the clear- and present- danger standard, “requires only a remote connection between speech and the harm,” thus under the Holmes test speech can be constitutionally restricted.<sup>22</sup> Therefore, the Espionage Act of 1917 was upheld, narrowing “the freedom of speech or of the press.”<sup>23</sup> Schenck, Frohwerk, and Debs were found guilty of violating

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<sup>20</sup> Jim Cornehl, "The USA Patriot Act: The Assault on Civil Liberties," *The Patriot Act: opposing viewpoints*, (Detroit: Greenhaven Press, 2005), 84.

<sup>21</sup> Stone, *War and Liberty*, 58.

<sup>22</sup> Stone, *War and Liberty*, 59.

<sup>23</sup> Stone, *War and Liberty*, 60.

the Espionage Act and their First Amendment rights were disallowed. Debs was sentenced to ten years in prison for his speech questioning the morality of the draft for World War I.

It was not until the fall of 1919 when the Supreme Court modified their ruling of the Schenk case with its decision in *Abrams v. United States*. In this case, the defendants a “group of young Russian- Jewish émigrés, distributed several thousand copies of each of two leaflets, one in English, the other in Yiddish. The leaflets called for a general strike to protest the sending of American troops into Russia.”<sup>24</sup> However, in this case Justice Holmes concluded that “nobody can suppose the distribution of leaflets presented any immediate danger that its opinions would hinder the success of the government’s arms.”<sup>25</sup> Thus the defendants “had as much right to publish their leaflets ‘as the Government had to publish the Constitution of the United States.’”<sup>26</sup> In his conclusion, Holmes offered this rationale for the freedom of speech:

Persecution for the expression of opinions seems perfectly logical. If you have no doubt of your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition...But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment...While the experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with lawful and pressing purposes of the law that an immediate check is required to save the country.<sup>27</sup>

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<sup>24</sup> Stone, *War and Liberty*, 60.

<sup>25</sup> Stone, *War and Liberty*, 60-61.

<sup>26</sup> Stone, *War and Liberty*, 61.

<sup>27</sup> Stone, *War and Liberty*, 60.

However, in most cases involving the freedom of speech and the First Amendment rights of citizens, the courts upheld the convictions under the Espionage Act. With the court concluding at times, when the nation is at war “serious, abrasive criticism” was not protected constitutionally.<sup>28</sup> According to Stone, in the aftermath of these trials and the in the aftermath of World War I, a vast portion of the American population was shocked at what had occurred in the name of national security and patriotism.

### **Surveillance and National Security**

National security has always been important and the emphasis on national security was increased in the late 1930’s and early 1940’s due to increasing tension between Japan and the United States. It was “exacerbated by Japanese assault on Nanking and other acts of overt territorial aggression, and led the president to economic sanctions and diplomatic measures against Japan. During this period, the government stepped up its security efforts against aliens and Japanese Americans.”<sup>29</sup> By December of 1941, J. Edgar Hoover and the Office of Naval Intelligence (ONI) believed “they had identified all persons of Japanese descent who could pose a threat to national security.”<sup>30</sup> The FBI compiled information on people of Japanese ancestry. The list was referred to as the ABC list, “those on the A list were immediately dangerous, those on the B list were potentially dangerous, and those on the C list were suspect of harboring pro- Japan views.”<sup>31</sup> However, while these potential risk lists were being created, Eleanor Roosevelt announced on December 4, 1941 that “no law-abiding aliens of any nationality would be

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<sup>28</sup> Stone, *War and Liberty*, 62.

<sup>29</sup> Stone, *Perilous Times*, 288.

<sup>30</sup> Stone, *Perilous Times*, 289.

<sup>31</sup> Stone, *Perilous Times*, 288.

discriminated against by the government.”<sup>32</sup> Shortly after her speech, the attack on Pearl Harbor occurred, “on December 10, [1941], FBI Director Hoover reported that almost all of the persons the FBI intended to arrest had already been taken into custody.”<sup>33</sup>

On February 19, 1942, President Roosevelt signed Executive Order No. 9066, which authorized the Army “to designate...military areas from which any or all persons may be excluded.”<sup>34</sup> Over the next eight months after the signing of #9066, over 120,000 people of Japanese ancestry were sent to “detention camps” they were “surrounded by barbed wire and military police” and remained in detention camps for approximately three years.<sup>35</sup> According to Stone, the Japanese detention camps were an extreme measure to protect national security. However, the imprisonment of over one hundred thousand people did not assist the United States in protecting national security.

For a decade prior to the United States entering World War II and for many years after, Hoover implemented techniques for collecting material pertinent to national security; however, his methods were not always legal or constitutional. Hoover established “a procedure that provided for systematic collection and reporting of data, and he emphasized the importance of secrecy.”<sup>36</sup> Hoover was particularly “wary of the legislative branch. Consequently, it would seem undesirable to seek any special legislation which would draw attention to the fact that it was proposed to develop a special counter-espionage drive of any great magnitude.”<sup>37</sup> However, concerns with his approach to collecting data became scrutinized. “Public concern about the executive

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<sup>32</sup> Stone, *Perilous Times*, 289.

<sup>33</sup> Stone, *Perilous Times*, 290.

<sup>34</sup> Stone, *War and Liberty*, 66.

<sup>35</sup> Stone, *War and Liberty*, 67.

<sup>36</sup> Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty*. Cambridge: Cambridge UP, 2008. P 219.

<sup>37</sup> Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty*, 219.

branch surveillance of law-abiding citizens spurred a series of hearings.”<sup>38</sup> However, the Church Committee was approximately a quarter of a century away before the invasiveness of the surveillance techniques was revealed.

Between 1945 and 1975, surveillance became an instrument of political power: the NSA’s operation SHAMROCK and Project MINARET, the FBI’s COINTELPRO; the CIA’s operation CHAOS, and the US Army’s operation CONUS.<sup>39</sup> “Each operation began as a limited inquiry and gradually extended to capture more information from a broader range of individuals and organizations. Each targeted American citizens.”<sup>40</sup> In the Senate hearings of 1975, the Church Committee found that the executive branch of government had undertaken covert surveillance of “citizens” purely on the basis of political beliefs, even when such ideas posed no threat of violence or illegal actions.”<sup>41</sup> As a result of this finding government actions were implemented to curb surveillance. In 1976, President Ford “banned the NSA from intercepting telegraphs and also forbade the CIA from conducting electronic or physical surveillance of American citizens.”<sup>42</sup> Clarence Kelly, whom took over the FBI after Hoover’s death in 1972, “publicly apologized for the Hoover era” and he implemented new guidelines that required the FBI to have “specific and articulable facts indicating criminal activity before opening an investigation.”<sup>43</sup> Although it appeared that the government was taking action to protect privacy, the legislation created “lacked teeth” and privacy remained vulnerable.<sup>44</sup>

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<sup>38</sup> Ibid

<sup>39</sup> Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty*, 216.

<sup>40</sup> Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty*, 223.

<sup>41</sup> Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty*, 228.

<sup>42</sup> Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty*, 229.

<sup>43</sup> Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty* 229.

<sup>44</sup> Ibid.

Legislation introduced during the Nixon administration specifically the Privacy Act regulated the “collection, maintenance, use, and dissemination of citizens’ personal data.”<sup>45</sup> Yet, it allowed the CIA to exempt files from any legal requirement to provide citizens access to them. “Any national security information held by any agency could be exempted, as well as any Secret Service files or law enforcement material.”<sup>46</sup> The Privacy Act did not function in a way that protected privacy, the act was manipulated due to the construction of its “language.”<sup>47</sup> More than “twenty-five years of administrative and judicial analysis, numerous Privacy Act issues [still] remain unresolved or unexplored.”<sup>48</sup> Congress attempted to reform domestic surveillance with the creation of the 1978 Foreign Intelligence Surveillance Act (FISA). The FISA was created to “scale back the executive’s power while allowing for flexibility to address national security threats.”<sup>49</sup> Congress distinguished between “US and non-US persons [and] creat[ed] tougher standards,” for conducting surveillance on American citizens.<sup>50</sup> FISA “consent had to be given by the target. Otherwise, the individual would have a reasonable expectation of privacy, and under ordinary circumstances, the Fourth Amendment would require a warrant.”<sup>51</sup> The FISA provided three ways to initiate surveillance: “Attorney General Certification, application to the Foreign Intelligence Surveillance Court (FISC), and emergency powers.”<sup>52</sup>

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<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Laura K. Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty*, 230.

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Ibid.

Following the 9/11 attacks, Congress relaxed the requirements for surveillance. Previously the FISA application required that the gathering of foreign intelligence be the sole reason for search or surveillance the “new legislation allowed for applications when foreign intelligence provided merely a significant reason.”<sup>53</sup> The Attorney General issued guidelines that said such authorization could be sought “even if the primary ends of surveillance relates to ordinary crime thus effectively collapsing” the wall between the “FBI’s prosecution and intelligence functions.”<sup>54</sup>

### **The Problem of Collapsing Walls**

Though national security was the main focal point for the passage of the Patriot Act, prior to the terrorist attack of 9/11, the Bush administration had “discounted the Clinton’s administration’s severe and substantial warnings about terrorist activities. More significantly, the Bush administration in the months leading up to the 9/11 [attacks] had substantial warnings about the probability that al-Qaeda would use commercial airplanes to conduct terrorist activities.”<sup>55</sup> In the aftermath of 9/11 the National Commission on Terrorist Attacks Upon the United States (more commonly known as the 9/11 commission), concluded that 9/11 could have been prevented. Thomas H. Keane, the commission chair acknowledged “the system was blinking red,” and that “it was obvious an imminent threat to the country existed.”<sup>56</sup> The 9/11 commission concluded in its final report that there were “substantial errors made by the Federal Aviation Administration, the Department of Defense, and the Bush administration the day of the attack, and that

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<sup>53</sup> Laura K. Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty* 233.

<sup>54</sup> *Ibid.*

<sup>55</sup> Brasch, Walter M. *America's Unpatriotic Acts: The Federal Government's Violation of Constitutional and Civil Rights*. New York: Peter Lang, 2005. P 2.

<sup>56</sup> Brasch, Walter M. *America's Unpatriotic Acts: The Federal Government's Violation of Constitutional and Civil Rights*, 2.

much of the delay in response was because of long-standing bureaucratic structure.”<sup>57</sup>

The Patriot Act does recognize the bureaucracy and it allows information to be shared more easily and more accessibly. The problem is the manner in which information is acquired. The collection methods are constitutionally questionable due to privacy concerns.

Most Americans were not aware of the threat level leading up to September 11, 2001. Specifically, prior to the September 11 terrorist attacks the CIA and other national security divisions were aware that an attack was pending. “As 2001 began, counterterrorism officials were receiving frequent but fragmented reports about threats,” yet according to the commission the counterterrorist organizations possessed the tools they needed to combat terrorism.<sup>58</sup> The Director of Central Intelligence was regularly briefed on the “operational information” relating to Osama Bin Laden.<sup>59</sup> Between January 20 and September 10, 2001, President George W. Bush received “more than 40 intelligence articles relating to Osama Bin Laden.”<sup>60</sup> The threat level increased over the months by “June 28 Al-Qaeda intelligence report warned that something ‘very, very, very, very’ big was about to happen, and most of Bin Laden’s network was reportedly anticipating the attack.”<sup>61</sup> The headline of a June 30 briefing “to top officials was stark: ‘Bin Laden Planning High- Profile Attacks,’” and as the weeks and months passed “the

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<sup>57</sup> Brasch, Walter M. *America's Unpatriotic Acts: The Federal Government's Violation of Constitutional and Civil Rights*, 3.

<sup>58</sup> Kean, Thomas H., and Lee H. Hamilton. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, 253.

<sup>59</sup> Kean, Thomas H., and Lee H. Hamilton. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, 254.

<sup>60</sup> Ibid.

<sup>61</sup> Kean, Thomas H., and Lee H. Hamilton. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*. 257.

system was blinking red.”<sup>62</sup> Following the attack of 9/11 the top priority of the Bush administration was national security. A small, but profound aspect of preserving national security was the creation and implementation of the Patriot Act. The collapsing of the wall between intelligence organizations occurred quickly.

In Nancy Chang’s view the USA Patriot Act or as she called it, the “Orwellian acronym for the Uniting and Strengthening America by Providing Appropriate Tools Required to Incept and Obstruct Terrorism Act of 2001,” comprised a long-standing executive branch wish list of aggressive law enforcement tools.<sup>63</sup> The “342-page USA Patriot Act was drafted and passed by Congress with breathtaking speed.”<sup>64</sup> Even though legislators maintained they did not have enough time to read the act, they voted to pass it.<sup>65</sup> John Ashcroft the Attorney General in 2001 proposed the law that became the Patriot Act only a few days after the terrorist attacks of September 11, 2001. The Bush administration submitted its statutory antiterrorism package to congressional leaders on September 19, 2001. By October 1<sup>st</sup>, a much expanded version of legislation was introduced to the House and a comparable bill was introduced to the Senate on October 4<sup>th</sup>.

Typically, in the course of legislation, House and Senate conferees meet in an attempt to resolve differences about the legislation in what is called a ‘conference committee.’ [But], House and Senate office buildings had been temporarily shut down due to the anthrax found in the mail. So, what few negotiations there were took place at House and Senate leadership meetings and informal meetings and through informal agreements among House and Senate negotiators. There were no

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<sup>62</sup> Kean, Thomas H., and Lee H. Hamilton. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*. 259.

<sup>63</sup> Nancy Chang 2003, “How Democracy Dies: The War on Our Civil Liberties.” *Lost Liberties: Ashcroft and the Assault on Personal Freedom*, 33.

<sup>64</sup> Chang, “How Democracy Dies: The war on Our Civil Liberties,” 33.

<sup>65</sup> Ibid

hearings scheduled, little debate, and no opportunity for negotiating amendments.<sup>66</sup>

By mid-October of 2001 the House passed the initial version of the Patriot Act, by a vote of 357-66, and on October 26, 2001 the Senate passed the bill 98-1, permitting the limitedly debated bill to be signed into law.<sup>67</sup> The only attempted safe-guards or compromises to the legislation were the sunset provisions. The sunset provisions which were set to automatically expire in 2005 remain in place today (2012).

The Patriot Act gives law enforcement officials broader authority to conduct electronic surveillance and wiretaps. It also gives the President the authority “when the nation is under attack by a foreign entity, to confiscate any property within the U.S. jurisdiction of anyone believed to be engaged in such attacks.”<sup>68</sup> On the surface these components might appear to be harmless and an actual contribution to enhancing national security. When surveillance techniques are examined more closely the powers of law enforcement resembles those of a police state. For example, the FBI needs only one warrant to follow a person across state lines and trace their telephone and computer usage. Previously if a suspect moved between states the FBI would need to acquire additional warrants in each state. The FBI can now monitor and tape conversations between an attorney and his/her client (when the client is in federal custody) regardless of whether or not the suspect has been charged, convicted, or is a material witness.<sup>69</sup>

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<sup>66</sup> Cassel, *The war on civil liberties: how Bush and Ashcroft have dismantled the Bill of Rights*, 16.

<sup>67</sup> Cassel, *The war on civil liberties: how Bush and Ashcroft have dismantled the Bill of Rights*, 18.

<sup>68</sup> Cassel, *The war on civil liberties: how Bush and Ashcroft have dismantled the Bill of Rights*, 12.

<sup>69</sup> Ibid

“Sneak-and-peaks” are searches into either personal information or entering into an individual’s home without notifying the individual.<sup>70</sup> The Constitution is supposed to protect individual rights from unlawful search and seizures, but that concept “is expunged as a result, of the secret warrant—the ‘sneak-and peak,’ which gives no advanced warning to the individual whose home or possessions are searched.<sup>71</sup> In a “standard criminal search [a] warrant gives notice to the owner of the premises to be searched and provides a statement of probable cause for the search (i.e., based on “reliable” information, there is reason to believe a certain crime has been committed) before the search is conducted.”<sup>72</sup> Prior to the passing of the Patriot Act a warrant was served to the person, if the person were at home. If the person were not home the warrant was placed on the premises and the search was carried out at a later time. Warrants utilized to conduct widespread surveillance on any American citizen “thought to be associated with terrorist activities can be obtained from a secret panel of judges on the special Foreign Intelligence Surveillance Act (FISA) warrant could not be obtained to target an American citizen;” prior to the Patriot Act the FISA warrant was only used to gather counterintelligence.<sup>73</sup>

In 2011 “two United States senators...accused the Justice Department of making misleading statements about the legal justification of secret domestic surveillance activities that the government is apparently carrying out under the Patriot Act.”<sup>74</sup> The secrecy that surrounds the government actions allotted by the Patriot Act have been

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<sup>70</sup> Cassel, *The war on civil liberties: how Bush and Ashcroft have dismantled the Bill of Rights*, 13.

<sup>71</sup> Cassel, *The war on civil liberties: how Bush and Ashcroft have dismantled the Bill of Rights*, 13.

<sup>72</sup> Ibid

<sup>73</sup> Cassel, *The war on civil liberties: how Bush and Ashcroft have dismantled the Bill of Rights*, 15.

<sup>74</sup> Savage, "Patriot Act Battle Could Hinder Investigators." 1.

classified and censored from the general public and lawmakers. “The Justice Department denied being misleading about the Patriot Act, saying it has acknowledged that a secret sensitive intelligence program is based on the law.”<sup>75</sup> Though some lawmakers believe that they are “allowing the Federal Bureau of Investigation to conduct some kind of unspecified domestic surveillance” on US citizens.<sup>76</sup> Specifically, these senators are concerned about section 215 which allows the government to “obtain private information about people who have no link to terrorism or espionage.”<sup>77</sup>

The Obama administration petitioned the “Supreme Court to allow GPS tracking of vehicles without judicial permission...the Supreme Court [also] ruled that the police could break into a house without a search warrant.”<sup>78</sup> The Breakthrough Institute “found only two cases that benefitted from the secret warrants made easier by the Patriot Act.”<sup>79</sup> This means that after a decade two out the surplus of secret warrants benefitted from the Patriot Act.<sup>80</sup> However, those two cases occurred in 2001 it is now 2012 and the remaining instances in which law enforcement obtained any leads were a direct result of undercover agents or “old-fashioned tips” which were tools applicable prior to 9/11.<sup>81</sup> Prior to 9/11 these methods of undercover agents and tips were used—without having to ‘collapse a wall’ between the intelligence agencies.

As the government continues to push for more restrictions on civil liberties more concerns arise. In the aftermath of the Patriot Act the broad definition of terrorism creates

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<sup>75</sup> Savage, "Patriot Act Battle Could Hinder Investigators." 1.

<sup>76</sup> Ibid

<sup>77</sup> Savage, "Patriot Act Battle Could Hinder Investigators." 2.

<sup>78</sup> David K. Shipler, "Free to Search and Seize." *The New York Times*, June 22, 2011, accessed July 2, 2011, <http://nytimes.com/2011/06/23/politics/23shipler.html>, 1.

<sup>79</sup> Shipler, "Free to Search and Seize." 2.

<sup>80</sup> Shipler, "Free to Search and Seize." 2.

<sup>81</sup> Ibid

tension between citizens and law enforcement, specifically regarding the concept of domestic terrorism. The Patriot Act does not clearly define what constitutes a terrorist or terrorism; instead it leaves the term loosely defined open to interpretation. The broad definition of a terrorist and terrorism creates a large opening for the amount of people who could be prosecuted as a terrorist. Therefore, the new surveillance techniques and databases assist to suppress dissent and identify those who are viewed to be terrorists.

Section 802 states that a person engages in domestic terrorism if they do any act 'dangerous to human life' that is a violation of the criminal laws of state or the United States, if that action appears to be intended to: (i) influence the policy of government or coerce a civilian population; (ii) influence the policy of government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping. Further, the act or acts must take place primarily within the territorial jurisdiction of the United States.<sup>82</sup>

What this very broad definition does is it encompasses many organizations and activists that "influence the policy of the government, or coerce a population."<sup>83</sup> Organizations such as Greenpeace, the Sierra Club, Labor organizations, as well as many other groups could be considered domestic terrorist organizations.<sup>84</sup> "Civil disobedience, such as disrupt[ing] a meeting or procession of vehicles as a means of drawing attention to or attempting to influence an unwanted government policy" could be considered acts of terrorism.<sup>85</sup> The constructed definition of domestic terrorism "grant(s) the government license to lump nonviolent civil disobedience in the tradition of Henry David Thoreau, Ghandi, and Martin Luther King Jr., together with the Al Qaeda network."<sup>86</sup> The article, "The Patriot Act Violates Civil Liberties" was published a year before the 2004

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<sup>82</sup> Jim Cornehl, "The USA Patriot Act: The Assault on Civil Liberties," In *The Patriot Act: opposing viewpoints*. (Detroit: Greenhaven Press, 2005), 77.

<sup>83</sup> Jim Cornehl, "The USA Patriot Act: The Assault on Civil Liberties," 79.

<sup>84</sup> Jim Cornehl, "The USA Patriot Act: The Assault on Civil Liberties," 79.

<sup>85</sup> Ibid.

<sup>86</sup> Chang, "How Democracy Dies: The war on Our Civil Liberties," 40.

Republican National Convention. Jim Cornehl was correct when he wrote that the Patriot Act, “grants broad new powers to law enforcement and permits law enforcement officials to sidestep or avoid entirely many traditional controls.”<sup>87</sup> This is what occurred during the 2004 Republican National Convention where protesters were treated as terrorists. Protesters were held and fingerprinted. Law enforcement sidestepped the pervious protocol and they treated protesters as they pleased.

Guilt by association also plays a part in who can be accused of being a terrorist.<sup>88</sup> The guilt by association endemic in McCarthyism and the actions of J. Edgar Hoover are still effective today. “The most tenuous connection of an individual to a ‘terrorist organization’ (as designated by secretary of state) or ‘terrorist state’ can now lead to serious federal charges.”<sup>89</sup> However, an ironic twist to the swift passage of the Patriot Act is the previous ideology held by John Ashcroft prior to becoming the Attorney General. The “wall” that needed to be torn down contradicted his previous belief of spying held by Attorney General John Ashcroft. In 1997 Ashcroft’s opinion of the government’s spying on American citizens was expressed in the *USLA Electronic Journal*. In the article, he criticized the Clinton Administration for requesting the government’s right to monitor e-mail. Ashcroft pre-9/11 wrote:

The Clinton administration would like the Federal government to have the capability to read any international or domestic computer communication. The FBI wants access to decode, digest, and discuss financial transactions, personal e-mail, and propriety information sent abroad—all in the name of national security. To accomplish this, President Clinton would like the government agencies to have keys for decoding all exported U.S. software and internet communications.

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<sup>87</sup> Jim Cornehl, "The USA Patriot Act: The Assault on Civil Liberties," 79.

<sup>88</sup> Jim Cornehl, "The USA Patriot Act: The Assault on Civil Liberties," 79.

<sup>89</sup> Cassel, *The war on civil liberties: how Bush and Ashcroft have dismantled the Bill of Rights*, 16.

This proposed policy raises obvious concerns about Americans' privacy, in addition to tampering with the competitive advantage that our U.S. software companies currently enjoy in the field of encryption technology. Not only would Bib Brother be looming over the shoulders of international cyber-surfers.... Why, then, should we grant government the Orwellian capability to listen at will and real time to our communications across the web?

The protections of the Fourth Amendment are clear. The right to protect from unlawful searches is an indivisible American value. Two hundred years of court decisions have stood in defense of this fundamental right. The state's interest in effective crime-fighting should never vitiate the citizens' Bill of Rights.<sup>90</sup>

In the above passage, Ashcroft contradicts his opinion relating to the Bill of Rights as a member of the Bush administration he personally pushed for the passing of the Patriot Act. His previous opinion of surveillance shifted and rhetoric became an important tool when convincing the public of the significance of national security.

### **Propaganda, Rhetoric, and the Media**

The passage of the USA Patriot Act of 2001 reflected the Bush administration's successful use of rhetoric. The rhetoric played on the American public's fear of a potential attack against the United States. Both the Bush and Obama administrations have argued that the Act safeguards the United States from another attack. *Bushspeak and the Politics of Lying: Presidential Rhetoric in the "War on Terror,"* Douglass Kellner presents the use of rhetoric to sway a country to believe that war was the solution to the 9/11 terrorist attack. In this article, Kellner plays with Orwellian ideas "deconstruct[ing] Bush's rhetoric as an instrument of 'Bushspeak' and the politics of lying and shows the dangers and limitations of the politics of lying, which can be

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<sup>90</sup> Brasch, Walter M. *America's Unpatriotic Acts: The Federal Government's Violation of Constitutional and Civil Rights*, 12.

reversed and undermined.”<sup>91</sup> The Bush administration continuously utilized the media, specifically the television, to present their necessity for war. The passage of the USA Patriot Act unfolded similarly to the invasion of Iraq, or the Iraq and Afghanistan Wars. In both situations the media was not objective. Instead the media outlets aligned with the Bush administration and assisted in creating American patriotism.

The Bush administration conveyed to the American public the necessity for war. The public was aware of the President’s publicly broadcasted objective to invade a country that harbored terrorists. Congress debated the invasions of Afghanistan and Iraq. There was some form of discussion pertaining to the question of going to war, but in the case of the Patriot Act there was limited debate. The similarity between convincing the general public of the importance of the “War on Terror” and of the USA Patriot Act is the continuous repetition of the necessity of national security; though neither the “War on Terror” nor the Patriot Act have been proven conclusively effective in enhancing national security. In the early stages of “The War on Terror” and of the USA Patriot Act the majority of the general public were in support of the Bush administration’s agenda to safeguard national security.<sup>92</sup> A portion of the general population in the United States still believes that in order to maintain national security and be safe they need to give up some of their rights. A large portion of the public’s notion that they needed to give up their liberties stems from the fear percolating in the minds of citizens who were affected by September 11, 2001. The visual images of airplanes crashing into buildings would have

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<sup>91</sup> Douglas Kellner, "Bushspeak and the Politics of Lying: Presidential Rhetoric in the "War on Terror"." *Presidential Studies Quarterly* 37, no. 4 (2007): 623.

<sup>92</sup> "Expansion of the War on Terror Favored, Poll Finds." *The Washington Post*, December 21, 2001. Accessed October 5, 2011. <http://www.washingtonpost.com/wp-srv/politics/polls/vault/stories/data122101.htm>.

provided any administration powerful grounds to emphasize the importance of national security.

The rhetoric used by the Bush administration to initiate the “War on Terror” and word choice resonates with George Orwell’s *1984*. According to Kellner in terms of rhetoric:

Underlying the Bush-Cheney administration rhetoric were fundamental American political mythologies. The civilization discourse built on Ronald Reagan’s favorite rhetoric of ‘the city on the hill,’ whereby the destiny of the United States was established a site of freedom and civilization in the wilderness. Bush’s discourse in particular evoked the frontier mentality whereby the sheriff defends the good citizen’s against evil outlaws and savages. As Ivie and Giner put it, “after 9/11 terrorism became the threatening face of savagery in democracy’s troubled empire.’ Bush’s ‘savages’ were the ‘evil doers’ associated with Islamic Terrorism, against whom he declared war.”<sup>93</sup>

Bush and his administration utilized simple language and concepts such as using the term “evil doers” to name the enemy. Kellner believes the simplicity of the language used by members of the Bush administration is “grounded in anti-intellectualism and contempt for democracy and rational argument. [President Bush] displayed the complete poverty of his case to go to war against Iraq: he had no convincing argument and just repeated the same tired clichés over and over.”<sup>94</sup> A similar tactic was used by Attorney General John Ashcroft, but his repetition pertaining to the Patriot Act was utilized in the aftermath of its passage in Congress and to the American public. That is after the American public became concerned with the implications of the Patriot Act and its impact on their lives.

“In the strictest sense, civil liberties are liberties inherent in our bodies, our homes, our minds, our churches, our travel, and our associations.”<sup>95</sup> The Bill of Rights

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<sup>93</sup> Kellner, "Bushspeak and the Politics of Lying: Presidential Rhetoric in the "War on Terror," 629.

<sup>94</sup> Kellner, "Bushspeak and the Politics of Lying: Presidential Rhetoric in the "War on Terror," 636.

<sup>95</sup> Cassel, *The war on civil liberties: how Bush and Ashcroft have dismantled the Bill of Rights*, 3.

grants these basic freedoms to the citizens. The Bill of Rights has been trampled on in the name of security, allegedly in the name of fighting terror. In *The War on Civil Liberties*, Cassell explains that the Bush administration, with Congress, and the courts “have trampled on the Bill of Rights, particularly the first, fourth, fifth, sixth, and eighth amendments, and curtailed many of the freedom it granted.”<sup>96</sup> For the purpose of this paper the First and Fourth amendments are the primary concern. The First Amendment protects our right to speak freely, to publish freely, to follow any religion freely, to peacefully assemble, and to petition our government. The Fourth Amendment protects us against unreasonable government searches of homes, businesses, personal effects, and of our person. As a result of the Patriot Act, people have been investigated and arrested for protesting government policies pertaining to the Iraq and or Afghanistan Wars, or assembling in disagreement with any other dissent toward the current government structure of policies.

Part of searching for “possible terrorist suspects” involves searching through our computers, phones, and email correspondence, allegedly to protect national security. But, a vast portion of individuals deemed to be possible “suspects” have been involved in protests. They are people who are detained by police authorities; often being figure printed and questioned. Part of the problem is that none of the individuals arrested are provided information pertaining to where that information is being stored. Since, the FBI and CIA share information with police authorities, those who have been finger printed experience problems as a result of their assembling in opposition to the government and exercising their First Amendment Right.

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<sup>96</sup> Cassel, *The war on civil liberties: how Bush and Ashcroft have dismantled the Bill of Rights*, 4.

## **Smaller Demonstrations and the 2004 Republican National Convention**

“So it has come down to this: You are at liberty to exercise your First Amendment right to assemble and protest, so long as you do so from behind chain-link fences and razor wire, or miles from the audience you seek to address,” was the introduction to a newspaper article, “Tyranny In the Name of Freedom” in which the political protesters and terrorists were placed on the same level.<sup>97</sup> As Attorney John Ashcroft stated “to those who scare peace-loving people with phantoms of lost liberty, my message is this, your tactics only aid terrorists.”<sup>98</sup> The article discusses’ domestic terrorism which is defined as “activities that ‘involve acts dangerous to human life, if a person’s intent is to ‘influence the policy of a government by intimidation or coercion.’”<sup>99</sup> The example given in the article was “Brett Bursey a South Carolinian [who was] arrested for holding a ‘No War for Oil’ sign” and in West Virginia the state police reported that “the Secret Service had directed them to arrest a couple sporting anti-Bush T-shirt.”<sup>100</sup> In these two situations (which are only two of many cases) it was the Secret Security who made the decision for law enforcement to act. However, there is a large distinction between political expression and terrorist activity. Those two individuals are not domestic terrorists though law enforcement viewed them to be a threat. In the aftermath of the 2004 Republican National Convention in 2004 the police activity demonstrated that the political demonstrations were in a way a form of terrorist activity.

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<sup>97</sup> Dahlia Lithwick, "Tyranny In the Name of Freedom." *The New York Times*, August 12, 2004, accessed October 5, 2011, <http://www.nytimes.com/2004/08/12/opinion/tyranny-in-the-name-of-freedom.html>.

<sup>98</sup> Lithwick, "Tyranny In the Name of Freedom," 1.

<sup>99</sup> Lithwick, "Tyranny In the Name of Freedom," 1.

<sup>100</sup> Lithwick, "Tyranny In the Name of Freedom," 2.

Donna Lieberman, the Director of the ACLU in New York, believes “in a democracy you have protest lawful protest instead of terrorism it’s the safety valve for democracy.”<sup>101</sup> The problem she addresses is law enforcement on duty during the 2004 Republican National convention and law enforcement throughout the United States, view “lawful legitimate protest as part of a continuum of terrorist activity” instead of people exercising their rights.<sup>102</sup> Thus, when protesters were arrested by police they were finger printed and their prints were entered into federal database, thus classifying political protesters who were only expressing their First Amendment rights as criminals. What becomes more significant about the finger prints is the fact that after the individuals were fingerprinted for protesting at the Republican National Convention, their fingerprints were allegedly destroyed, but there is no definitive proof that the protesters did not enter into the database. “Blanket fingerprinting of people arrested at demonstrations [is] troubling because ‘the entry of fingerprints into law enforcement databases can have lifelong consequences...deeply troubled by the notion that the New York Police Department (NYPD) may have forced hundreds of political activists’ as well as ‘a number of innocent bystanders arrested during the convention, to surrender their fingerprints for entry into state and federal databases.’”<sup>103</sup> According to John Feinblatt, the criminal justice coordinator for the Bloomberg administration, the “fingerprints were automatically destroyed and therefore could not pose a threat to those arrested.”<sup>104</sup> But there is no sure way to know if those prints were destroyed. Instead, those fingerprinted

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<sup>101</sup> Donna Lieberman, *Shouting Fire: Stories from the Edge of Free Speech*. Film. Directed by Liz Garbus. Brooklyn: Moxie Firecracker Films, 2009.

<sup>102</sup> *Shouting Fire: Stories from the Edge of Free Speech*. Film. Directed by Liz Garbus. Brooklyn: Moxie Firecracker Films, 2009.

<sup>103</sup> Diane Cardwell, "City Challenged on Fingerprinting Protesters," *The New York Times*, October 5, 2004, accessed October 12, 2011, <http://www.nytimes.com/2004/10/05/ntregion/05prints.html>, 1.

<sup>104</sup> Cardwell, "City Challenged on Fingerprinting Protesters,"2.

can only hope that their fingerprints were destroyed. Those who were fingerprinted as well as their attorneys do not possess the clearance to view the names in the databases. The number of people who were arrested at the 2004 Republican National Convention totaled 1,801.<sup>105</sup> Yet, over 90% of the cases of those arrested during the Republican National Convention were “ultimately dismissed or ended in acquittal.”<sup>106</sup> While political protesters were arrested during the Republican National Convention over a year prior, law enforcement intensified their surveillance on those they believed would be demonstrating in New York.

“For more than a year before the convention the Police department monitored Web sites and sent undercover detectives around the nation to collect information on Bush opponents planning to demonstrate in New York.”<sup>107</sup> This tactic of infiltrating an organization is not unusual, but the policing “was larger than previously disclosed.”<sup>108</sup> The NYPD with help from other law enforcement groups “tracked the political views” of organizations that were planning on protesting.<sup>109</sup> The War Resisters League, “America’s oldest secular pacifist organization” planned a march from the World Trade Center site to the Convention Center.<sup>110</sup> They were surrounded with orange netting and handcuffed with zip ties. This pacifist organization was deemed to be a threat by the NYPD due to the possibility that their walk “could get out of hand,” as police officials proclaimed.<sup>111</sup> Those who protested were not permitted to express their right to peaceably assemble

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<sup>105</sup> *Shouting Fire: Stories from the Edge of Free Speech*. Film. Directed by Liz Garbus. Brooklyn: Moxie Firecracker Films, 2009.

<sup>106</sup> *Shouting Fire: Stories from the Edge of Free Speech*. Film. Directed by Liz Garbus. Brooklyn: Moxie Firecracker Films, 2009.

<sup>107</sup> *Ibid*

<sup>108</sup> *Ibid*

<sup>109</sup> *Ibid*

<sup>110</sup> *Ibid*

<sup>111</sup> *Ibid*

because they *might* pose a threat to national security.<sup>112</sup> While National security appears to be the main concern events like the 2004 Republican National Convention occurred leading to media outlets questioning the tactics of law enforcement.

In 2011 the argument on the Senate floor regarded the importance of the re-authorization of the Patriot Act. An argument was that without the re-authorization of the bill Congressional members would be hindering FBI investigations. “If there is a lapse, a senior administration official said, ‘the F.B.I. would be able to continue using orders it had already obtained, but it would not be able to apply for new ones if further tips and leads came in about a possible terrorist operation. The official, who spoke on the condition of anonymity, reacted with alarm to that prospect, saying no one could predict what the consequences of a temporary lapse might be.’”<sup>113</sup>

### **Terrorism is the Modern Communism**

During the “War on Terror” and the silencing of political dissent the Patriot Act is an efficient tool for administrations for suppressing dissent and enhancing their agenda. The Patriot Act possesses elements of the previous administrations attempts and success of suppressing dissent. Individuals have been detained and questioned by the FBI “In San Francisco, a 60-year old retiree” stated that in his opinion, the war with Iraq was about increasing corporate profits and oil, not about fighting terrorism.<sup>114</sup> “He promptly received a visit at home from the FBI with questions about his political beliefs.”<sup>115</sup>

Federal agents have also visited art museums in Houston, Texas and in New York City

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<sup>112</sup> *Ibid*

<sup>113</sup> Charlie Savage, "Patriot Act Battle Could Hinder Investigators." *The New York Times*, May 25, 2011, accessed June 15, 2011, <http://www.nytimes.com/2011/05/26/us/politics/26patriot.html>, 1.

<sup>114</sup> Charlie Savage, "Patriot Act Battle Could Hinder Investigators," 1.

<sup>115</sup> Jim Cornells, "The USA Patriot Act: The Assault on Civil Liberties," 83.

regarding art work considered to be “of a nature threatening to the president;” the painting in New York City was a painting of George W. Bush with a target in front of him.<sup>116</sup> Average Americans have been encouraged to tip off the local law enforcement of suspicious or questionable actions of fellow citizens. The present situation is similar to the age of McCarthyism when the nation was experiencing another great witch hunt—only this “witch hunt” has to do with political ideology and terrorism:

During the Cold War, in the late 1940’s and early 1950’s, when fears of communism were fueled by certain U.S. political leaders and anti-communist hysteria was rampant, leaders of the American Communist Party were criminally prosecuted and imprisoned...for their political beliefs...Thousands of Americans were subpoenaed and called to testify about their own and other Americans political afflictions and activities. Those who refused to testify were held in contempt and imprisoned. In other instances, college professors and other employees were forced to sign so-called loyalty oaths or lose their jobs.<sup>117</sup>

### **Technological Advancement and Monitoring Citizens**

The Patriot Act might not have encouraged the public witch hunt of the Cold War era, but in this technologically advanced society a “DNA data bank based solely on unconfirmed executive suspicion” has been established and there is a push for “national identity cards.”<sup>118</sup> The cards would allegedly be implemented for immigration reasons, but would serve to monitor citizens. It is the collection of genetic information that hindered efforts to create the Patriot II Bill. But the government still attempted to create a “Terrorist Identification Database. It would contain information not only for proven terrorists, but also [to] include protesters, or anyone else the government dislikes.”<sup>119</sup>

Though the Patriot Act does not include the DNA mandate, members of the Bush

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<sup>116</sup> Jim Cornehl, "The USA Patriot Act: The Assault on Civil Liberties," 83.

<sup>117</sup> Jim Cornehl, "The USA Patriot Act: The Assault on Civil Liberties," 85.

<sup>118</sup> Jim Cornehl, "The USA Patriot Act: The Assault on Civil Liberties," 86.

<sup>119</sup> Anita Ramasastry, "'Patriot II: The Sequel, Why It's even Scariest than the First Patriot Act," *The Patriot Act: opposing viewpoints*, (Detroit: Greenhaven Press, 2005), 140.

administration attempted to enforce the DNA mandate through the Patriot II, luckily it was never passed. Meanwhile there are individuals who believe the governing body with help from the Patriot Act and any other law they can pass are a necessity for national security. Attempting to mandate DNA samples to be stored in a database for suspected terrorist activity would create issues for those that participated in acts of civil disobedience or individuals who reside in the United States. Political protesters would eventually find themselves in a terrorist database.

The antiterrorism measures threaten the privacy of all Americans “and not just those who have come to attention of the government because of their political association or dissident viewpoints, or because they are suspected of criminal or terrorist activity.”<sup>120</sup> These new technologies have exponentially increased the government’s ability to monitor everyday life. Obtaining information concerning the use of the government’s surveillance ability has been very difficult to obtain; “court orders demanding the production of third-party records routinely include “gag-orders” threatening their recipients with being in contempt, if they disclose the order’s existence or its contents.”<sup>121</sup> What is limitedly known is the persistence of federal government in collecting as much information about its citizens and monitoring their actions as possible.

The Defense Department...established an Information Awareness Office that took for its emblem the all-seeing eye of God and recruited a synod of high-speed computers capable of sifting through ‘ultra-large’ data warehouses stocked with every electronic proof of human movement in the wilderness of cyberspace— bank records, medical, and divorce records; credit card transactions; email (interoffice and extraterritorial); college transcripts; surveillance photographs; driver’s license and passport applications; bookstore purchases; Web site visits; traffic violations. Connect all the names and places to all the dates, and once the system becomes fully operational...the protectors of public health and safety hope

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<sup>120</sup> Chang, “How Democracy Dies: The war on Our Civil Liberties,” 42.

<sup>121</sup> Chang, “How Democracy Dies: The war on Our Civil Liberties,” 42.

to reach beyond ‘truth maintenance’ and ‘biologically inspired algorithms for agent control’ to the construction of ‘Future Map’—that is, a set of fiber optic equivalent of a crystal ball that modifies ‘market based techniques for avoiding surprise’ in such a way that next week’s nuclear explosion can be seen as clearly as last week’s pornographic movie.<sup>122</sup>

Though the idea of this “Future Map” might seem a little extreme and even Orwellian like, but as of 2011 the City of New York uses a system like the one mentioned above (just not as extreme). Operating only in New York City it is a surveillance database center where an individual can monitor all activity occurring in the city. Ray Kelly is the NYPD commissioner who monitors the huge computer system. For example, on a CBS 60 Minutes Special, if you work for the surveillance group of the NYPD and you want to zoom in on a specific person (in the 60 minute special it was a girl in a red shirt) you are able to.<sup>123</sup> The controller was able to eliminate all people not wearing red from their view and then continue to narrow it down. According to Ray Kelly, if a terrorist act occurs or if there is a person that is exuding suspicious behavior that ‘suspicious’ individual is focused in on by the computer and the computer is able to notify police in the area. Cameras are able to detect packages and people that have not moved in a normal time period and the computer alerts the people working in the control room. The cameras detect the difference between a person setting down a bag and picking it up or a person either accidentally or deliberately leaving their briefcase/ lunch bag/ purse for a longer time period (around 3-5 minutes).<sup>124</sup> The camera notifies the people in the office and then those individuals notify the police and/or the bomb squad. According to the 60 Minutes

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<sup>122</sup> Lewis H. Lapham, *Gag rule: on the suppression of dissent and the stifling of democracy*, (New York: Penguin Press, 2004), 87-88.

<sup>123</sup> CBS News Online, "Fighting terrorism in New York City – YouTube," YouTube, accessed November 7, 2011, [http://www.youtube.com/watch?v=Nf\\_PzCfpPug](http://www.youtube.com/watch?v=Nf_PzCfpPug),

<sup>124</sup> CBS News Online, "Fighting terrorism in New York City – YouTube," YouTube, accessed November 7, 2011, [http://www.youtube.com/watch?v=Nf\\_PzCfpPug](http://www.youtube.com/watch?v=Nf_PzCfpPug),

special it takes very little time (a few minutes) to detain someone who committed a crime, or looks suspicious.

This abnormally advanced computerized technology used to monitor New York City does not appear to be assisting in decreasing crime. Yet, one could sit in the control room and view every area of New York City. It's as though this computerized room was what Reg Whitaker was concerned in his essay "After 9/11: A Surveillance State?" However, with it being "ten years after 9/11 and three billion dollars later" the New York City has a phenomenal Counter Terrorism Bureau with "1,000 officers armed like soldiers," "two thousand cameras, but by next year three thousand," and on top of that, there are "50,000 people working" for the NYPD the movement toward a security state is here with New York City serving as the catalyst.<sup>125</sup> In the control room there are representatives from "all branches of the military, FBI, federal emergency management, state and local first responders," if there was an attack New York State and specifically New York City would be prepared.<sup>126</sup> The surveillance methods of previous administrations and the probability that future administrations will continue to advance surveillance throughout the United States as the concept of privacy is depleting. Another concern is the uncertainty of the government's capability and capacity to monitor citizens.

Though New York City uses an advanced surveillance system which can literally monitor peoples' movements and zoom in on them computers and new television computers could possibly become the new method of surveillance. Hackers are currently

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<sup>125</sup> CBS News Online, "Fighting terrorism in New York City – YouTube," YouTube, accessed November 7, 2011, [http://www.youtube.com/watch?v=Nf\\_PzCfpPug](http://www.youtube.com/watch?v=Nf_PzCfpPug),

<sup>126</sup> CBS News Online, "Fighting terrorism in New York City – YouTube," YouTube, accessed November 7, 2011, [http://www.youtube.com/watch?v=Nf\\_PzCfpPug](http://www.youtube.com/watch?v=Nf_PzCfpPug),

able to tap into computers. Future surveillance methods could utilize televisions as the means to monitor 'suspicious' people. "Sneak and peeks" via the home television could be the new method of the intelligence community. In my opinion, that type of invasive surveillance would be a clear violation of the Fourth Amendment but, due to the Patriot Act as long as the monitoring correlates to protecting national security it is legal.

Throughout American history when national security is the primary concern civil liberties are typical less important to an administration. World War I, World War II, and the Vietnam War created the foundation for different surveillance and infiltration techniques. Building on past events the Patriot Act is constructed to protect national security, but aspects of the Patriot Act directly violate the Constitution. The Patriot Act eliminates the bureaucracy that existed between government agencies specifically in the intelligence community, but it allows sneak and peeks and warrantless searches which could become detrimental to privacy rights. The loosely constructed definitions of terrorism and terrorists places more people as potential terrorists. The Patriot Act assists with the governments monitoring of the public and creates atmosphere where people are less likely inclined to engage in acts of civil disobedience. This assists any administration's and law enforcement agencies' ability to suppress dissent, but more importantly the Patriot Act offers the tools needed to remove the dissenters: by incarcerating an individual for being a terrorist, thus removing that individual, or groups, from possibly affecting the general population's opinion of an issue. The Patriot Act was created to aid the government in maintaining national security, but in the future the Patriot Act could be used to allow for greater infringements on the civil liberties of US citizens.

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