

## WHAT CAN YOU DO?

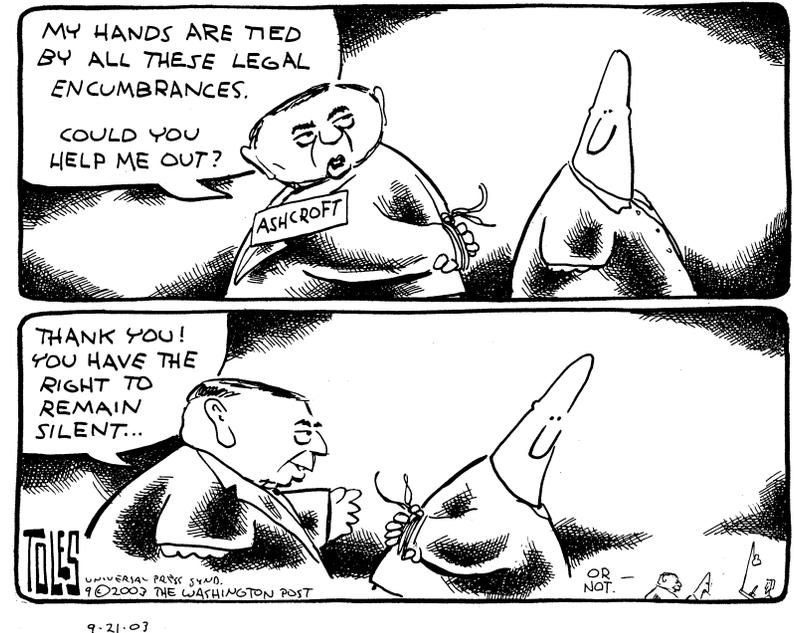
- **Call or write your U.S. Senators and U.S. Representative** and tell them that you are concerned that Congress went too far in some parts of the PATRIOT Act. Urge them to support legislative efforts – in the Senate, the Murkowski bill (S.1552) and the SAFE Act (S.1709), and in the House, the SAFE Act (H.R.3352) – to reinstate an appropriate level of judicial review and congressional oversight, and to ensure that the FBI is subject to checks and balances. To find the names and phone numbers of your Senators and your Representative, go to <http://www.cdt.org/action/safe/>.
- **Organize or get involved with local efforts to pass city council and county board resolutions** expressing concerns about the PATRIOT Act. To find out if people in your community are working on this or to find out how to get started on a new initiative, check out the Bill of Rights Defense Committee's website at <http://www.bordc.org>.
- **For information about pending legislation** that would correct overbroad parts of the PATRIOT Act, go to <http://www.cdt.org/security/usapatriot/fix.shtml>.

# CENTER FOR DEMOCRACY & TECHNOLOGY

1634 I Street, NW  
Washington DC 20006  
(202) 637-9800  
<http://www.cdt.org>

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## WHAT'S WRONG WITH THE PATRIOT ACT AND HOW TO FIX IT



Just six weeks after the terrorist attacks of September 11, 2001, Congress adopted the USA PATRIOT Act. Enacted with the best intentions and in response to a serious threat, the PATRIOT Act passed under intense time pressure and without serious debate.

Certainly, our government needs tools to prevent terrorism. And to the extent laws unduly tied the hands of those who protect us, those laws needed to be amended. But as so often happens in time of crisis, the pendulum swung too far. The PATRIOT Act didn't just encourage information sharing so intelligence agencies could "connect the dots" to prevent the next attack. The Act gave the Executive Branch broad discretionary powers that are not needed in the fight against terrorism and serve only to infringe on Americans' fundamental liberties.

# WHAT'S WRONG WITH THE PATRIOT ACT AND HOW TO FIX IT

*There has been a lot of confusing publicity about the PATRIOT Act.*

*Here we try to cut through the hype, describe plainly the biggest problems with the PATRIOT Act, and offer a roadmap for restoring the balance.*

**No Accountability** – The PATRIOT Act weakened key oversight and accountability checks on the powers of the Executive Branch, reducing judges to mere “rubber stamps” and leaving many decisions about investigative techniques to the discretion of FBI agents.

**Restoring the Balance:** Although the FBI should have the power it needs to investigate terrorism, the courts and Congress should have the authority to ensure that the FBI does not overreach.

**Sneak & Peek Searches** – The PATRIOT Act broadened the government’s power to search an individual’s home without telling her until weeks or months later, and to do so in any criminal case.

**Restoring the Balance:** Secret searches should be allowed only in special circumstances, such as if someone’s life is at stake or evidence will be destroyed. Otherwise, FBI agents should have to knock on a person’s door and announce that they have a search warrant, as intended by the Fourth Amendment.

**Access to Sensitive Business Records** – The PATRIOT Act gave the FBI nearly unlimited power to obtain business records, including sensitive files like medical, library and bookstore records, with a secret court order issued with no factual showing of need.

**Restoring the Balance:** The FBI should only be able to obtain files about people suspected of being terrorists or spies. It should not be able to get entire databases of information about innocent people.

**Broad Definition of Terrorism** – The PATRIOT Act contains a definition of “domestic terrorism” so broad that someone committing a misdemeanor could end up being dubbed a terrorist, thereby facing asset forfeiture and other serious consequences.

**Restoring the Balance:** Only the most serious crimes should be considered terrorism.

**Monitoring Computer “Trespassers” Without a Court Order** – The PATRIOT Act allows ISPs, universities and network administrators to authorize government surveillance of anyone they deem a “computer trespasser” without a court order, and with no notice to the person being monitored.

**Restoring the Balance:** Surveillance of computer users should occur with proper judicial review, not secretly with no judicial involvement.

**Secret Investigations** – The FBI’s domestic intelligence investigations under the Foreign Intelligence Surveillance Act (FISA), a statute that was expanded by the PATRIOT Act, occur in total secrecy, with almost no information released to the public.

**Restoring the Balance:** The FBI should do more public reporting, on a statistical basis, about the use of secret FISA investigative techniques so the public knows how much information is gathered about U.S. citizens and using what methods.

**Monitoring of Email and Web Surfing** – The PATRIOT Act extended to the Internet the already broad authority to monitor transactional (non-content) information about communications with very little justification. A record of every call you make and every email you receive offers a full picture of your life, even without the contents.

**Restoring the Balance:** Approval to monitor who is calling whom should be granted only when a judge finds there is reason to believe that a crime is being committed. And in the Internet context, there should be a bright-line distinction between monitoring transactional data and intercepting content.

**Expansive “Roving” Wiretap Authority** – The PATRIOT Act permitted the FBI to use “roving” wiretaps in intelligence investigations, but it did not include safeguards long used in criminal investigations to avoid recording the conversations of innocent people.

**Restoring the Balance:** The FBI should be granted wiretap orders only where it specifies either the name of the target or the telephone or computer to be tapped. And in carrying out a roving tap, an FBI agent should have to verify that the person named in the order is about to use a particular phone before the tap is turned on.

**End-Run Around Standard Criminal Procedures** – The PATRIOT Act authorized the FBI to use special intelligence investigative techniques under FISA, which has lower standards than regular criminal law, even where the primary purpose of the investigation is to obtain information for a criminal trial. This essentially permits the FBI to collect evidence for criminal cases under lower standards.

**Restoring the Balance:** The special intelligence standards should be used only where intelligence gathering is the primary purpose for the investigation.