

## Challenges to the First Amendment in the 21<sup>st</sup> Century: The USA Patriot Act

### Purpose:

One of the recurring questions in U. S. History in times of national and international conflict has been, "What is the proper balance between national security and individual rights?" The first challenge to the freedoms of speech and the press came in 1798 with the passage of the Alien and Sedition Acts. The latest challenge has come with the passage of the **U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism Act of 2001, better known as the Patriot Act. In this lesson students will review some past challenges to freedom of speech and press in times of national emergency, research what the Patriot Act of 2003 says, how it is implemented, and how it impacts freedoms stated in the Bill of Rights. Finally, students will debate the issue – What is the proper balance between national security and individual rights in today's national emergency?

### Procedure:

1. Review with students what the First Amendment says: "Congress shall make no law... abridging the freedom of speech, or of the press..."
2. Remind students that in the past during times of national emergency, laws have been passed that restricted individual rights, especially those enumerated in the First Amendment of the Bill of Rights.
3. Tell students we are going to look at quotations from Americans who have been for and against measures taken in time of national emergency in American history.
4. Begin the quotation activity by copying and cutting up the 12 quotations in **Attachment 1**, and giving them to students. Depending on the size of your class, two or three students should have the same quotation. Ask students to find the other students who have the same quotation. These students should then get together and decide whether their quotation supports special measures in times of national emergency, does not support special measures, or is neutral. Next, have all the students who think their quotation supports special measures stand on one side of the room; those who think their quotation does not support special measures stand on the other side of the room; those who think their quotation is neutral stand in the middle. Students in each of the three groups should get together to discuss their quotations, and then be able to tell why they think their quotations support or do not support special measures or are neutral. *(Although there may be some difference of opinion, Quotations 1, 5, 6, 10, and 12 support special measures; Quotations 2, 3, 4, 8, 9 oppose special measures; and Quotations 7 and 11 are more neutral, although they could be used against special measures.*

Do not reveal the identity of the authors at this time. For your information the authors of the quotations are:

1. *The Massachusetts Legislature, 1798.*
2. *Eugene Debs, in a 1918 statement as he was being sentenced to ten years in prison for an anti-war speech.*
3. *Thomas Jefferson, 1801 Inaugural Address.*
4. *Emma Goldman, magazine publisher and founder of the No Conscription League who was sentenced to two years in prison under the Sedition Act 1918.*
5. *President Woodrow Wilson, in a 1915 Speech to Congress.*
6. *Justice John H. Clarke, on the conviction of five people for violating the Espionage Act of 1918.*
7. *Associate Justice of the Supreme Court Sandra Day O Connor, 2003.*
8. *Associate Justice of the Supreme Court Stephen Breyer, April 14, 2003*
9. *Retired General of the Army Colin Powell.*
10. *Judge sentencing World War I protestor Kate Richards O'Hare to prison in July, 1917.*
11. *Historian David McCollough, in his biography of John Adams, 2008.*
12. *Attorney General John Ashcroft*

5. Read aloud to the class, "Historic Challenges to Freedom of Speech and Press in Times of National Emergency" (**Attachment 2**). When you come to appropriate times in the narrative, have one of the students who has the appropriate quotation read it aloud to the class, then that student and all of the students who also have that quotation sit down. Attachment 2 tells you when the quotations should be read. When you have finished, all students should be seated. Have students discuss what the pros and cons for and against special measures in times of national emergency have been. Inform students that we will begin to discuss the **U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism Act of 2001, better known as the Patriot Act. First, review with students the events which led to the passage of the Patriot Act, and the major areas which it covers. Since this a 342 page law, we will only deal with the parts of the Patriot Act that pertain to freedom of speech and press. (**Attachment 3**)

Questions for discussion:

- a. How does the Patriot Act define "domestic terrorism"? (*The Patriot Act defines "domestic terrorism" as activities within the United States that...involve acts dangerous to human life that...appear to be intended- to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping...*)
- b. Do you think participants in public protests could ever be accused of "domestic terrorism" under this definition? Why or why not?

c. Should information that is a threat to national security be banned from the Internet? Using the "You Decide" strategy in the Glossary, have students debate the issue, "Does the Patriot Act strike the proper balance between national security and individual freedom in this time of national emergency? Research materials for and against the Patriot Act are listed below.

### **For Further Reading:**

*USA Patriot Act* (PDF) Aug. 12, 2003 American Library Association

*USA Patriot Act Overview*, United States Department of Justice, July30, 2003.

### **Resources for the Debate:**

#### **Critics of the Patriot Act**

*What's So Patriotic About Trampling on the Bill of Rights?* Nancy Chang, Center for Constitutional Rights, November 2001.

ACLU: *USA Patriot Act*

American Library Association: *USA Patriot Act*

Electronic Frontier Foundation: *USA Patriot Act*

Electronic Privacy Information Center: *The USA Patriot Act*

*USA Patriot Act & Intellectual Freedom* – A Power Point presentation by Carrie Lybecker, Liza Rognas, and Carlos Diaz of Evergreen State College.

#### **Defenders of the Patriot Act**

*The Proven Tactics in the Fight against Crime*, A September 2003 speech by Attorney General John Ashcroft defending the Patriot Act from its critics.

*Questions and Answers About the USA Patriot Act*, the U. S. Department of Justice

*Preserving Life and Liberty*: A Justice Department defense of the Patriot Act

*In Defense of the Patriot Act*, by Heather MacDonald, a fellow at the Manhattan Institute

*In Defense of the Patriot Act* by Orin Hatch, U. S. Senator from Utah

*A Letter to Congress; The Patriot Act Is Vital to Protecting National Security*, Americans for Victory over Terrorism

## Attachment 1

1. "This Law is "wise and necessary" to defend against secret attacks by foreign or domestic enemies."	2. "I look upon this Law as a despotic enactment in flagrant conflict with democratic principles and with the spirit of free institutions."
3. "The definition of free speech and press is the right of Americans to think freely and to speak and write what they think."	4. "The free expression of the hopes and aspirations of a people is the greatest and only safety in a sane society."
5. "There are citizens of the United States, I blush to admit, born under other flags but welcomed under our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the very arteries of our national life."	6. "The plain purpose of their propaganda was to excite, at the supreme crisis of the war, disaffection, sedition, riots. . . The language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war..."
7. "We are likely to experience more restrictions on personal freedom than has ever been the case in this country."	8. "The Constitution applies even in times of dire emergency. Emergency or no emergency it typically defines basic liberties in terms of equilibrium...And a proper equilibrium requires courts to learn from past mistakes."
9. "Free speech is intended to protect the controversial and even outrageous word, and not just comforting platitudes too mundane to need protection."	10. "This is a nation of free speech; but this is a time for sacrifice, when mothers are sacrificing their sons. Is it too much to ask that for the time being men shall suppress any desire which they may have to utter words which may tend to weaken the spirit, or destroy the faith of confidence of the people?"
11. "The infamous ... Act must be seen in the context of the time, and the context was tumult and fear."	12. This Act provides "new tools to fight the present danger...a threat like no other our Nation has ever faced. It upholds and respects the civil liberties guaranteed by our Constitution."

## Attachment 2

### Some Historic Challenges to Freedom of Speech and Press in Times of National Emergency

One of the recurring issues in American history has been challenges to freedom of speech and press in times of national emergency. The new country faced its first challenge to freedom of speech and press in 1798 when it was only 10 years old. Caught between two European superpowers who were struggling for supremacy, England and France, the young republic tried to remain neutral. However, two American groups, one led by Washington and Adams called Federalists, and the other called Republicans, led by Madison and Jefferson took opposing views. Neither side wanted war, but the Federalists were more sympathetic to England, while the Democrat-Republicans sided with the French. By 1798 the country was in an uproar over the issue. In response, Federalists led by President John Adams passed the Alien and Sedition Acts over the objections of the Republicans. **Attachment I, Quote # 1.** Fifteen indictments were brought under the Sedition Act, mostly against Republican publishers, editors of newspapers, and even a congressman. **Attachment I, Quote # 11.** The Acts expired in 1800, the same year that Republican Thomas Jefferson was elected to the presidency, largely due to the Federalists support of the Alien and Sedition Acts. **Attachment I, Quote # 3.**

The next important challenge to freedom of speech and press in a time of emergency was during World War I. **Attachment I, Quotes # 5 and 10.** In an effort to suppress dissent Congress in 1917 passed the Espionage Act which made it a crime to aid enemy nations or to interfere with the recruiting of soldiers. **Attachment I, Quote # 6.** The United States had instituted a military draft during the war. More than 24 million men registered for the draft, and over 2.5 million men were actually drafted into the military. Not all Americans supported the war. **Attachment I, Quote # 4.** A significant pacifist movement developed in opposition to the war. The Espionage Act also allowed the Postmaster General to censor mail.

The next year a much stronger law, the Sedition Act, cracked down on expressions of opinion. Heavy fines and prison sentences of up to 20 years could be imposed on persons who spoke or wrote anything critical of the government, the army or navy, or even the uniforms worn by soldiers and sailors. Because the Socialist party opposed the war, many of its members who had been duly elected to offices were expelled from state legislatures. Its leader, Eugene Debs, was jailed for a speech opposing the draft. **Attachment I, Quote # 2.** Another Socialist, Charles Schenck distributed leaflets urging recently drafted men to resist the draft, and condemned the federal government, the war and the draft with very strong language, but he advocated only peaceful resistance. He was charged with and convicted of violating the Sedition Act of 1918. His case went to the Supreme Court which had to consider if freedom of speech is an absolute right and, if not, under what circumstances it may be limited. The Court unanimously upheld Schenck's conviction, ruling that certain kinds of expression, which

would be protected in peace time, can be punishable when the nation is at war In 1919, a sensible limit on freedom of speech in wartime was finally set by the Supreme Court in Schenck v. United States. More than 2000 people were prosecuted under the Sedition Act of 1918, though many were later pardoned or had their sentences commuted. The Espionage and Sedition Acts were repealed in 1921.

There were further challenges to First Amendment rights during World War II, the civil rights era in the 1960's, and the Vietnam War. However, the most recent and broad-reaching challenge has come from the Patriot Act of 2003. **Attachment I, Quotes # 7, 8, 9, and 12.**

## **Attachment 3**

### **Domestic Terrorism in the 21<sup>st</sup> Century**

On September 11, 2001, terrorists working out of Al Qaeda cells operating in the United States, hijacked four civilian airplanes. The terrorists flew two planes into the World Trade Center towers in New York City and another into the Pentagon in Washington. The fourth plane crashed in Pennsylvania before it reached its target in Washington – the Pentagon. Within two hours, both of the massive 110 story twin towers in New York City had collapsed. More than 3,000 people died in the attacks. Two days later, the White House identified the culprits as members of Al Qaeda, an Islamic fundamentalist terrorist group based in Afghanistan but with terrorist cells throughout the world. No one knew whether more terrorist attacks were coming.

Soon after, U.S. Attorney General John Ashcroft brought before Congress a list of recommended changes in the law to combat terrorism. The U.S. Senate quickly passed the USA Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism). Only one senator voted against it. The next day, the House of Representatives passed the bill 357-66. The final bill was 342 pages long and changed more than 15 existing laws.

On October 26, President George W. Bush signed the Patriot Act into law. He praised “new tools to fight the present danger...a threat like no other our Nation has ever faced.” He also said that the Patriot Act “upholds and respects the civil liberties guaranteed by our Constitution.”

The Patriot Act defines “domestic terrorism” as activities within the United States that involve acts dangerous to human life that...appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping.”

One of the major concerns among critics of the Patriot Act is Section 215 which permits the FBI to search for “any tangible things” connected to any U. S. citizen who the FBI believes may be involved in terrorist activities. Such activities may even involve First Amendment protected acts such as participating in non-violent public protests.

“Any tangible things” may include almost any kind of property, such as books, documents, and computers. The FBI may also monitor or seize personal records held by public libraries, bookstores, medical offices, Internet providers, churches, political groups, universities, and other businesses and institutions. Further, it prohibits Internet providers and public librarians to inform anyone that the FBI has conducted a search of their records.

Attorney General Ashcroft and other Americans defended the Patriot Act. "We are at war," Ashcroft says, "and we have to do things differently than we did before." He says that the only purpose of the Patriot Act is "to prevent terrorists from unleashing more death and destruction." He also argues that the courts and Congress still safeguard the constitutional rights of Americans.

The courts are beginning to review the constitutionality of the Patriot Act. The American Civil Liberties Union (ACLU) brought the first major legal challenge in 2003 against unreasonable searches and seizures as well as First Amendment freedoms of speech and association.

Cases are beginning to come before the U. S. Supreme Court. And it will have to answer the basic question: What is the proper balance between national security and protecting individual rights?