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Dust-Up

The Patriot Act: Does it actually work?

Jena Baker McNeill says the law has facilitated the foiling of numerous terrorist plots. Julian Sanchez says some common-sense safeguards for civil liberties need to be adopted.

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Today's topic: Where can you point to the Patriot Act's success in stopping terrorists? Wednesday through Friday, Jena Baker McNeill and Julian Sanchez discuss the Patriot Act, portions of which Congress is considering reauthorizing.



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Point: Jena Baker McNeill

Three alleged terrorist plots have been foiled in recent weeks in three U.S. cities: Dallas, New York and Springfield, Ill. Officials say the cases involved men who, in separate plots, wanted to bomb a federal building, a subway and a skyscraper. Failure to prevent these alleged plots could have had catastrophic results.



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But these alleged plots are not the only ones foiled since the 9/11 attacks. In fact, authorities have stopped at least 26 others since Sept. 11, 2001 (and perhaps many more that aren't publicly known). Numerous operatives have been arrested and convicted.

Much of the credit should go to the Patriot Act.

Take, for example, the [Lackawanna Six](#) plot that was foiled in 2002. Thanks to certain provisions of the Patriot Act, drug and counter-terrorism investigators were able to share information, a practice that would not have occurred before the law was passed in 2001. Without the Patriot Act, the plot may well have resulted in another 9/11.

These plots weren't foiled thanks to happenstance or sheer luck. While the U.S. does have world-class law enforcement capabilities, investigators can only perform as well as the tools at their disposal allow. One such tool is the Patriot Act.

The Patriot Act has helped law enforcement officials apprehend hundreds of suspects, and it isn't just one provision of the act that has proved useful. For instance, the surveillance provision was used successfully in the [Portland Seven](#) investigation, which may well have prevented an attack on synagogues and Jewish schools. And while new information is still coming to light about the three recent alleged plots, it is very likely

that Patriot Act provisions played major roles stopping at least one of the plans.

Perhaps to the shock of some, the Obama administration has been cool to the idea of repealing the Patriot Act. It may even support keeping key provisions intact. The likely cause of this support: The law works. It's tough to argue with results, especially when American lives are at stake.

There are many misconceptions about what the act actually does. Simply put, it modernizes existing law enforcement tools and practices that existed before the act was passed in 2001. It makes it more difficult for terrorists to stay a step ahead of the law by switching cellphone or e-mail accounts. Its provisions free investigators to stop plots in their earliest stages, decreasing the likelihood that a plan would mature and become unstoppable. It also outlines methods for handling intelligence and investigations in areas the law did not adequately provide for, such as in cyberspace and cellphone communications.

In short, the Patriot Act recognizes that terrorists don't work within bureaucratic flow charts or definitions. Terrorists seek to evade the law, not follow it, and are very creative in their attempts to do so. Law enforcement officials must be able to be dynamic in the face of changing threats while respecting the Constitution. The Patriot Act provides them this capability.

Jena Baker McNeill is a homeland security policy analyst for the Heritage Foundation.

Counterpoint: Julian Sanchez

Well, I'm convinced: Terrorists are bad, wiretapping them is good, and catching them is better still. The Patriot Act should not be "repealed," which I suppose makes it a good thing that nobody is seriously proposing to do so. But as I'd hate to disappoint readers with such a speedy acquiescence, perhaps we should make the debate a little more granular.

The Patriot Act is not really a "tool"; it's a toolbox. And the debate currently unfolding in Congress is not over whether to take the box away; it's about whether and how particular tools can be improved to safeguard civil liberties without unduly burdening terror investigations.

One specific tool you mention is roving wiretap authority. We know these taps were indeed used in the recent investigation of alleged bomb plotter Najibullah Zazi. Fortunately, there is more or less unanimous agreement that investigators should continue to be able to use this authority. But there are a slew of important differences between the roving taps long available in criminal cases and those authorized under the framework of the Foreign Intelligence Surveillance Act -- differences I laid out in some detail in a [post](#) at the Cato Institute's website last week. Roving FISA warrants, for instance, may merely describe a target, rather than identifying one, as would be required in the criminal context. Given that FISA collection is already substantially broader than criminal taps, some have argued that the requirements should be tightened to preclude "John Doe" warrants that identify neither the target nor a specific communications facility. Since news reports [indicate](#) that Zazi was named as a potential Al Qaeda operative by a tip from Pakistani intelligence, there is no reason to think this kind of common-sense protection would have impeded his capture.

Equally common-sense checks have been proposed for other Patriot Act powers. All seek to protect the privacy of innocent Americans by strengthening oversight of these broad surveillance tools, and to foreclose indiscriminate [dragnet collection of data](#) by requiring some minimal rational grounds for believing that the information sought is linked to terror. What I'd like to hear, but never seem to, is some explanation of how such protections will put us at greater risk.

Instead, I mostly hear about the extent of the risk -- which is real enough that it doesn't need embellishment.

One of those 26 disrupted "plots" you specifically discuss, Jena, involved the so-called Lackawanna Six. Though they had indeed trained in Afghanistan before 9/11, it is [not remotely clear](#) that they had any "plot" to "foil," and there is precious little evidence that they had any intention of carrying out attacks on U.S. soil, let alone that they were preparing to launch "another 9/11." Investigators pounced when one suspect made ominous reference to a "big meal" at an upcoming "wedding." This appears to have been code for ... [a big meal at his wedding](#).

Nor is it obvious that new legislation was needed to allow sharing of information about the case between investigators. As the Office of Legal Counsel's own internal memorandums make clear, the regulations imposed in the 1990s establishing a "wall" between criminal and intelligence investigations went "beyond what is legally required." The problem, of course, is how to best permit information sharing without letting FISA be used as a pretext to evade the more stringent standards for criminal wiretaps. The Patriot Act struck one balance, which may or may not be the best one -- but this seems an odd point to focus on so centrally in your argument, since it's not among the Patriot Act changes targeted by any reform legislation I've seen.

Civil libertarians have some specific concerns about how particular Patriot Act powers are too broad or open to misuse, and propose specific changes that would address these concerns. It is no response to assert that the Patriot Act has been useful; what you need to explain is how any particular safeguard would have so diluted investigative powers that it would have frustrated an investigation and created a security harm outweighing the benefit to civil liberties. If you'd rather trade scary stories, that's fine too -- just let me know so I can buy a bag of marshmallows before our next round.

Julian Sanchez is a research fellow at the Cato Institute.

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