

Safety versus Freedom, the impact of the USA Patriot Act

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Introduction

America stands for liberty and freedom. However, there are times in history when safety and freedom have been challenged. At such times, the American people had to focus more on safety rather than freedom. Terrorist activity has increased profoundly in recent years. Because of this threat, more and more civil liberties have diminished. There are events such as the bombing of Pearl Harbor in Hawaii that set the American course for World War II. There have been social factors of illegality where laws were enacted to prevent a contamination in our society and to protect the better good of mankind. Such stringent laws related to search and seizure for drug trafficking (or the use of drugs near schools), stronger penalties for carjacking, three-strikes-and-you-are-out laws for career criminals and laws relative to civil rights are all laws implemented for the good of society and for the protection of the citizens of America.

The biggest event in modern history was the attack on the World Trade Center in New York, the Pentagon and the downing of a domestic airliner over Shanksville, Pennsylvania, that was headed towards Washington, D.C. on September 11, 2001. These airplanes became enemy missiles when they struck and killed over 3,000 people on American soil, something that had not occurred since the civil war. In order to avoid being attacked in the future, laws such as the USA Patriot Act set in motion a loss of liberties for American citizens in the name of protecting the citizens. For the sake of safety, freedoms such as airport searches, increased wiretaps, less protection for bank accounts, privacy, and freedom of speech are now limited in the name of safety.

September 11, 2001 (hereinafter “9/11”) became a day where many people had to stop and think about safety rather than the liberties afforded them though the United States Constitution. The Fourth Amendment reads in part: “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly *describing the place to be searched, and the persons or things to be seized.*”. Because of the events surrounding terrorist acts, liberty and the protection of the Fourth Amendment have been diminished.

9/11 would forever change the way Americans live and conduct business in the homeland. After this day, the shift from freedom and liberty to safety and protection became the focal point of the United States and its citizens. Never had there ever been such a time in the American history where a threat to the homeland was so prevalent.

President George W. Bush set in motion new changes in hopes of protecting the security of the nation after 9/11. Public opinion polls conducted in the immediate aftermath of 9/11 demonstrated broad support for these policies ...the introduction of a national identity card system, broader government powers to monitor Americans' phone and email—and a majority of Americans believed they would have to forego basic liberties to fight terrorism. (Hubby, 2011) Today, many people do not necessarily support the loss of liberties, but they understand that these policies and guidelines must be in place in order to protect the nation from future threats. It was imperative that new laws be enacted in order for the citizens to be safe.

In 2001, the United States Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act hereinafter “The Act”). The purpose of the law was to arm law enforcement with new tools to detect and prevent terrorism. (DOJ, 2001) Such tools include greater availability for gathering communication, better foreign intelligence investigations, availability to financial records or money laundering, retrieval of business records, forfeiture, investigate alien terrorists, enact new crimes related to terrorism, such as harboring or supporting terrorist and longer sentences for terrorist acts. (Congressional Digest, 2003) Because the local, state and federal law enforcement agencies were decentralized prior to 9/11, The Act included provisions for greater cohesiveness between governmental agencies. For example, police officers, FBI agents, federal prosecutors and intelligence officials can protect our communities by “connecting the dots” to uncover terrorist plots before they are completed. (DOJ, 2001) President George W. Bush also established the Department of Homeland Security (DHS). This governmental agency serves as a hub for all matters dealing with the homeland, including terrorist threats or acts, weather, fires or any major incidents in the homeland. The DHS created a better opportunity for all agencies to share information and intelligence. Other agencies were also created for the same purpose. Fusion Centers were set up as an effective and unified relationship between all sectors of emergency systems (including public sector, private sectors, local, state, federal agencies), as a means for a rapid response to any major incident. The National Incident Management System (NIMS) was also established and the DHS's Secretary is the leader in a time of national emergencies. “The idea behind NIMS is to provide a consistent nationwide template to enable all organizations to work together during a domestic incident.” This would include the coordination of first responders from local, state and federal emergency agencies, private sector entities, health professionals and more. Working closely with NIMS is the National Response Framework (NRF) which established a single, comprehensive approach to domestic incident management to prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. The NRF is an all-hazards plan. The NRF provides the structure and mechanisms for national-level policy and operational direction for domestic incident management. (EPA, 2012) All of these agencies were created for public safety. Perhaps, if such agencies had been in place prior to 9/11, the terrorist plot could have been diverted.

The core components of the criminal justice system include law enforcement, courts and corrections. Prior to 9/11, these components (especially law enforcement) were limited in their ability to effectively investigate potential terrorist threats. After The Act, law enforcement was given many provisions to help with investigations of such threats (all will not be discussed here). Specific provisions that are set forth include allowing law enforcement to use “roving wiretaps” (where the approval for a wiretap warrant “roves” with the officer instead of having to show probable cause to get a judge to sign the wiretap warrant for a longer period of time) to investigate matters of national security investigations to track terrorists (DOJ, 2001). The Act also allows law enforcement agencies to delay giving notice when a search is conducted. This means that the government can enter a house, apartment or office with a search warrant when the occupant is away, search through their property and take photographs, and in some cases seize physical property and electronic communications, and not tell the occupants until later. (ACLU, 2001) The purpose is to not tip off the suspect. According to the Act, this practice is called “sneak and peak.” This policy is controversial because it appears to be a violation of the 4th Amendment, specifically, “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly *describing the place to be searched, and the persons or things to be seized.*” (U.S. Const.) If a warrant is executed without the knowledge of the citizen knowing until after the warrant is served, how would the citizen be able to verify what the officers were searching for or what they took? The provision in The Act is for the purpose of eliminating “terrorist” attacks, but all citizens are subjected to this law. This is a civil liberty that is violated.

The real question is, “do Americans have to give up such liberties in order to ensure safety in the homeland?” Many would answer this question in the affirmative; even though they know there is a need for greater protection from potential threats are warranted. Thus, safety versus freedom is at issue when looking at the civil liberties that are diminished because of the provisions for law enforcement to protect citizens with additional surveillance techniques to fight terrorism.

Rationale

Howard High School of Technology is an urban school located in Wilmington, Delaware. As a vocational technical school, I teach students that are interested in pursuing a career in the legal field. I teach in the Legal Administrative Assisting career program. In teaching students about the legal system, it is important for them to understand how laws are made and sadly, how laws can be revoked for the sake of protecting the citizens. In taking the liberty seminar, I am better equipped to teach my students about in depth laws and legal case precedent related to the topic of liberty. The Act is a real issue when it comes to freedom of American citizens. Liberties have been (and still are being) diminished. In teaching about the safety of American society, it is important to

understand how the need for safety ultimately requires one to forfeit freedoms to be protected. The question must be answered, how much freedom must be given up in order to “feel”, or to be, “safe?”

The current curriculum consists of instruction in civil and criminal law. This program also maintains an articulation agreement with the local junior college. This articulation agreement affords students at the high school level the opportunity to earn 3 college credits for Introduction to Criminal Justice. This course revolves around many discussions related to the entire criminal justice system which includes law enforcement, courts and corrections. One unit that I teach is terrorism and homeland security. The students will have an opportunity to learn about terrorism, but more specific to terrorism, they will learn about counterterrorism measures that are taking place to protect the homeland. They will also learn about the provisions afforded them in the U.S. Constitution.

The Yale National Teaching Initiative at the Delaware Teaching Institute on the campus of the University of Delaware with Professor Eric Rise in “The Idea of Liberty in American History” seminar was very beneficial in learning more about liberty in a historical context and its application to American history. I received an enormous amount of information about the historical context when freedom and liberties were challenged for safety’s sake.

Objective and Strategies

Teacher and Student Objectives

The teacher’s objective is to teach a comprehensive unit on the issues associated with the idea of safety versus freedom as it relates to terrorism and the USA Patriot Act. The key factor at issue is how civil liberties are affected when law enforcement officers use surveillance techniques for counterterrorism that are viewed as a violation of privacy. This curriculum unit will focus on the elements of police investigation as it relates to search and seizure. Students will be exposed to local, state and federal law enforcement agencies, Constitutional provisions and criminal investigative techniques, ethnic and social perspectives in policing and cultural/subcultural norms. Ultimately, the protection of the homeland is at the forefront. The students will be able to give examples and analyze how safety can be compromised for the sake of liberty. They will also be able to identify the various civil liberties that have been affected or revised because of terrorist acts and threats.

The students’ objectives are to gain insight into police procedures as it relates to terrorism. They should be able to intelligently analyze both sides of the safety versus freedom dilemma. The student objective is also to be empowered with knowledge about the provisions set forth in the U.S. Constitution and the tools that are being used by law

enforcement agencies and the courts to fight terrorism. They will also be exposed to the new provisions of the USA Patriot Act. This act is vital in protecting the homeland. It affords police officers extra benefits with surveillance and other measures to seek out would be terrorists and stop plots from occurring.

The 4th Amendment of the United States Constitution

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Each citizen is afforded the protection under the 4th Amendment to be protected from unreasonable searches. This Amendment endeavors to protect two fundamental liberty interests - the right to privacy and freedom from arbitrary invasions (Cornell, n.d.) Many of the provisions stated and approved for practice by law enforcement in the name of protection from terrorist, as stated in the Act, appear to violate the protections given to citizens under the 4th Amendment. Those against the Act say it is unfair to the everyday citizen to have law enforcement or governmental freedom to review or search personal bank records, library accounts or homes and businesses without a valid and verified search warrant. The question of diminished civil liberties from a pro and con position is discussed in the ACLU website. You can access this website at <http://aclu.procon.org/view.answers.php?questionID=000716>. One view that the ACLU has against the USA Patriot Act is that they feel the powers given to the government goes beyond what is necessary to fight international terrorism. In an opposing position by Attorney General Alberto Gonzales, he states there were no abuses of civil liberties of citizens in the four years (at that time) that the Act was implemented.² As a discussion, the class can critically think about such questions as how much of their freedoms they are willing to give up for the sake of safety, or is there a good justification for warrantless searches? Should the government have the right to “sneak and peek” inside of a person’s home without their knowledge so that they don’t “tip off” the potential terrorist for safety’s sake? The real question to pose is how much liberty is enough to lose before we feel safe?

Teaching Strategy

The teaching strategies I will use are books, videos, cooperative learning, and project based assignments. I plan to invite a guest law enforcement officer to visit the class. The target group for this unit is 9-12 graders and the duration of the unit will be approximately 2-3 weeks.

The teaching strategies will include a combination of lecture, Learning Focused Strategies (LFS), PowerPoint slides, YouTube videos and discussion as a component of

my teaching plan. The instructional information would be comprised of my research and the required readings in the liberty seminar. The discussions will stimulate critical thinking and allow the students to connect the lecture content to everyday situations they may encounter. This could include personal situations or current events. I will also utilize the required class textbook on criminal justice with a worksheet for clarification of terms and pertinent information. Students will also read a supplemental handout related to police investigation or liberty. I will also allow for active learning with an opportunity for the students to devise a role-play of what they have learned. Students will prepare a project based assignment and work in a cooperative learning environment to show how the police investigative tools helped to stop a terror plot (this will be a case study). Lastly, I will also have a guest speaker from the local or federal law enforcement agency come to class. Students may also take a field trip to the police department or another law enforcement agency.

Classroom Activities

Activity No. 1 – Family Vacation

Students will participate in a cooperative learning project. The focus will be safety versus freedom. Students will develop a blog to determine how far people are willing to go to protect their safety. In looking at safety versus freedom, the question arises, how much is enough freedom to give up in order to be safe.

This classroom activity is entitled: “Did the Terrorist Win?” Students will conduct a web-based assignment and research on liberty and freedom in conjunction with the Department of Homeland Security (DHS) and the Transportation Safety Administrations (TSA). Students will visit the websites of the Department of Homeland Security, Transportation Safety Administration and the White House. In a collaborative assignment, (a compare and contrast graphic organizer can be supplied) groups of 3, students will research each of these governmental agencies. Students will look at the pre 9/11 policies versus the post 9/11 policies. On worksheets, compare and contrast the various aspects of a family that will travel to Washington, D.C. from Los Angeles, California. They will chart the path and look behind the scenes at the security aspects of the trip. Students must examine airport safety and procedures. What is and what is not allowed upon arrival at the airport. According to TSA guidelines, students will explain in detail the procedures necessary to board an airliner. The students will research the rules for FAA and how airplanes move from state to state and the requirements for Air Traffic Controllers. When the family arrives in Washington, D.C., what are the policies and procedures in order to visit the White House? (If the travelers are from abroad, select a departure airport and obtain the guidelines from that specific country to find out the requirements.) Access the White House website at <http://www.whitehouse.gov/about/tours-and-events>. Have students identify the security requirements to enter the White House? Discuss the requirements for identification,

prohibited items and search procedures. To contrast the information from the travels from Los Angeles, California to Washington, D.C., the students will now research information on pre 9/11 procedures to board an airliner and visit the White House. Students will then compare and contrast how terrorism has changed the way citizens travel. Included in the presentation would be a before and after photo (or YouTube.com for video footage) of the White House pre and post 9/11. This will help the students to see how security and protection of the White House has changed. For example, in years past, visitors could walk right up to the White House gate or cars could drive past the White House. Since 9/11, barricades prevent traffic from passing by the White House. Answer the question as to why terrorists seek to target the White House. In other words, why is it symbolic or what does it represent to America. (This may be a good discussion activity prior to the research or each presenter can include their findings in their presentations). To show how air flight has changed, students can access YouTube.com to look for 1950s through 1980s footage of how people travelled by air travel during that time and compare how it has changed today. They can compare this to what they learned about airline safety today. Encourage students to include their own personal flying experiences in their presentations.

Activity No. 2 - Averted or Foiled Terror Plot-Case Study

Students will conduct research and give an oral presentation on a terror plot that was averted or “foiled”. This will include research on the various types of covert means utilized by terrorist organizations to commit terrorist acts. The students will identify the types of police investigations used to stop the terror threat from occurring. This will include surveillance techniques in conjunction with those search and seizure tools discussed in class. Place students in pairs for research and presentation. The following websites will help you decide which terror plot you will assign to each pair. “The Daily Beast” website located at: <http://www.thedailybeast.com/articles/2011/09/08/9-11-anniversary-45-terror-plots-foiled-in-last-10-years.html>. The Heritage Foundation website is another site where students can go to obtain information about foiled terrorist plots. The site can be found at: <http://www.heritage.org/research/reports/2011/09/40-terror-plots-foiled-since-9-11-combating-complacency-in-the-long-war-on-terror>. (See Appendix A for the original Organization Chart composed by Dr. James Carafano, and Jessica Zuckerman). These websites will show 45 “foiled” terror plots. It will give the names of the terrorists and the tactics used to commit the foiled terrorist act. Have the students do additional research on these foiled plots. Locate the arrest information, communities and cities involved, court proceedings and sentencing of the terrorist. Students should include their opinion about the case and express their feelings about the final court proceeding. For example, do they feel the sentencing was appropriate? Students can determine if the plots were committed by *domestic terrorist* (a terrorist that seeks to commit a terrorist act against their own country), or an *international terrorist* (a

person that seeks to commit a terrorist act against a country other than their own). Students should discuss the how the plot was identified and the various law enforcement agencies involved in stopping the plot. When students read articles and the accounts of how the terrorist were stopped, have them identify the various law enforcement techniques used (as stated in the USA Patriot Act) that helped catch the would-be terrorist.

Activity No. 3 - Counterterrorism Career Opportunities

The students will also study the actual investigators involved in the interruption of the plots. In other words, the students will look at the requirements to be a federal investigator in the various agencies. Students must understand that with the Department of Homeland Security, there are many jobs that interconnect to stop terrorism. This would include Citizenship and Immigration Officers, Customs and Border Patrol, Transportation and Safety Administration, Federal Law Enforcement Officers, U.S. Coast Guards, U. S. Secret Service. Access the Department of Homeland Security Component Careers website at <http://www.dhs.gov/landing-page/component-careers>. Students can do a report on one of the jobs and discuss the various requirements for employment such as education, training, seminars and other aspects that are utilized in order to be qualified to work for the government to help protect America. Students can also discuss how law enforcement officers are often called as witnesses for the prosecution.

Activity No. 4 – Find the Law-Legal Research on the USA Patriot Act

The students will look at the federal statutes for the prosecution of terrorism offenses. Such laws can be found at the Library of Congress website: <http://www.loc.gov/law/help/guide/federal/terrorism.php>. Here you will find Executive, Judicial, Legislative, International, Legal Guides, Organizations, News and General Sources related to all types of terrorism information. This is a great source for students to look for information about the law and measures of counterterrorism. A copy of the USA Patriot Act can be found at <http://www.justice.gov/archive/ll/highlights.htm> on the Department of Justice website. Portions of the Act can be divided up between collaborative pairs or as a group project. Have each group (or pair) report on an aspect of the Act. They can consider the pros and cons of the Act. They can explain the impact of the components on every day citizens. For example, within the Act, law enforcement officers can access library data on a person without them knowing about it. Students can explain how this may be a violation of the right to privacy. For each group, the students would report out to the whole class. This could be in the form of posters, role play, PowerPoint presentations, and surveys to other students, teachers, family and friends.

When presenting their findings, encourage the students to include an interactive audience participation in their presentation. This will help to engage the entire class. It will also help to include all learning types.

Activity No. 5 - Guest Lecturer from Counterterrorism Agency

Invite a Guest Lecturer from a federal law enforcement agency. Let the students know prior to the visit that there are things that the guest speaker will be unable to discuss because of confidentiality. The law enforcement agency will discuss their career choice, including education, training and experience. They can talk about the types of cases they have investigated. The investigator can also talk about laws related to the USA Patriot Act and how it enhances their abilities for counterterrorism. This can include “sneak and peak”, roving wiretaps, etc. Allow time for the students to have a question and answer session. I suggest the students write out their questions and have the teacher collect them so there will be no redundant questions, along with avoiding any inappropriate questions, or questions that would place the speaker in a position where he or she would have to divulge confidential information. Writing questions also helps to avoid “what if” questions where the answer can be misinterpreted and the students use the answer to the question in the wrong way. This will also save time.

Materials I have reviewed:

ACLU, ProCon.org, "Does the USA PATRIOT Act diminish civil liberties?" Last modified 2008. Accessed February 12, 2013. <http://aclu.procon.org/view.answers.php?questionID=000716>.

American Civil Liberties Union (ACLU), "How the Anti Terrorism Bill Expands." Last modified 2001. Accessed February 12, 2013. <http://www.aclu.org/national-security/how-anti-terrorism-bill-expands-law-enforcement-sneak-and-peek-warrants>.

Avlon, John. The Daily Beast, "Forty-Five Foiled Terror Plots since 9-11." Last modified 2011. Accessed February 12, 2013. <http://www.thedailybeast.com/articles/2011/09/08/9-11-anniversary-45-terror-plots-foiled-in-last-10-years.html>.

Carafano, James Jay, and Jessica Zuckerman. The Heritage Foundation, "40 Terror Plots Foiled Since 9/11: Combating Complacency in the Long War on Terror." Last modified 2011. Accessed February 12, 2013. <http://www.heritage.org/research/reports/2011/09/40-terror-plots-foiled-since-9-11-combating-complacency-in-the-long-war-on-terror>.

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Department of Homeland Security, www.dhs.gov

Department of Justice, "The USA PATRIOT Act: Preserving Life and Liberty." Accessed February 12, 2013. <http://www.justice.gov/archive/ll/highlights.htm>.

Huddy, L., and S. Feldman. *American Psychologist* 66(6), 455-467, "Americans respond politically to 9/11: Understanding the impact of the terrorist attacks and their aftermath." Last modified 2011. Accessed February 12, 2013. doi:10.1037/a0024894.

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Swartz, N. *Information Management Journal*, 40(3), 7-7, "After close calls, PATRIOT Act Renewed." Last modified 2006. Accessed February 12, 2013.

<http://search.proquest.com/docview/227754313?accountid=27965>.

The White House, Tours and Events Accessed January 9, 2013,

<http://www.whitehouse.gov/about/tours-and-events>

Transportation Security Administration, "Layers of Security," Accessed December 19, 2012, http://www.tsa.gov/what_we_do/layers/index.shtm

United States Constitution- Fourth Amendment

United States Department of Justice, "The USA Patriot Act: Preserving Life and Liberty," Last Modified (2001), Accessed December 9, 2012

<http://www.justice.gov/archive/ll/highlights.htm>

United States Environmental Protection Agency, The National Response Framework, Emergency Management, <http://www.epa.gov/oem/content/nrs/nrp.htm>

"USA Patriot Act." *Congressional Digest*. 82. no. 4 (2003): 110.

Washington Post, "Patriot Second Act." Last modified 2005. Accessed November 23, 2012. http://www.washingtonpost.com/wp-dyn/content/article/2005/06/12/AR200561201436_pf.html.

Curriculum Standards and/or Task List

New Castle County Vocational Technical School District, Howard High School of Technology, Legal Administrative Assistant Career Program, Task List

This section of the Task List is a mandatory component for the curriculum standards in this career program. The following task will satisfy the tenth and eleventh grade requirement for Introduction to Criminal Justice:

- Task No. 1.0 Students will demonstrate an understanding of how criminal law is defined and the due process procedure.
- Task No. 1.1 Students will define criminal due process and will be able to explain how it relates to the Bill of Rights.
- Task No. 1.2 Students will differentiate between various types of criminal defenses.
- Task No. 1.3 Students will identify citizen rights protected under the Bill of Rights, especially relating to the first, fourth, fifth, sixth and eighth Amendments.
- Task No. 3.0 Students will demonstrate an understanding of how criminal law is defined and the due process procedure.
- Task No. 5.0 Students will describe the organization, role and function of police in society.
- Task No. 6.0 Students will analyze issues facing modern police organizations in America.
- Task No. 7.0 Students will be able to describe the implications of constitutional issues on police procedures.

Appendix A

The following is from James Jay Carafano, Ph.D and Jessica Zuckerman, (2011), the Heritage Foundation where the original can be found at, www.Heritage.org, The original chart can be retrieved from http://thf_media.s3.amazonaws.com/2011/pdf/b2604_chart1.pdf

Bibliography for teachers:

Fagin, James A., *Criminal Justice 2005 Update*, Allyn & Bacon, 2005

Internet Research:

Materials for classroom:

Internet access, SmartBoard, Learning Focused Strategies (LFS) Student Learning Map, and PowerPoint

Resources related to the above objective:

The resources stated above include a comprehensive overview of a question that deals with the balance of safety and freedom for the citizens in the United States. Information that pertains to laws regulating police procedure, search and seizure, and other investigative tools were addressed. These resources will enlighten both the educator and the students alike.

Student Learning Map Unit Topic:

Key Learning: The USA Patriot Act and Counterterrorism Techniques

Unit Essential Question: How has the USA Patriot impacted law enforcement surveillance techniques?

<u>Concept:</u> USA Patriot Act	<u>Concept:</u> Counterterrorism	<u>Concept:</u> Foiled Terrorist Plots
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<u>Lesson Essential Questions:</u> What is the USA Patriot Act? Why was the USA Patriot Act enacted? What are the pro viewpoints of the USA Patriot Act? What are the con viewpoints of the USA Patriot Act?	<u>Lesson Essential Questions:</u> What is counterterrorism? What provisions for surveillance is included in the USA Patriot Act? What are the rules for search and seizure in the USA Patriot Act? How will the counterterrorism tools help law enforcement?	<u>Lesson Essential Questions:</u> How are foiled terrorist plots stopped? How will the tools in the USA Patriot Act help stop terrorist?
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<u>Vocabulary:</u> USA Patriot Act Department of Homeland Security Law Enforcement Officer Transportation Safety Administration (TSA)	<u>Vocabulary:</u> Counterterrorism Sneak and peak Roving wiretaps National Incident Management System (NIMS)	<u>Vocabulary:</u> terrorism foiled terrorist plot
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Additional Information/Resources:

Notes

¹ National Incident Management System Retrieved from
<http://www.epa.gov/watersecurity/tools/trainingcd/trainers/NIMS.pdf>

² ProCon.org, ACLU