

The Guide

A Theatergoer's Resource

Edited by Collin Lawson & Ryan Mooney for the Education & Community Programs department at Portland Center Stage

The North Plan

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A Table of Contents

Political Collapse in the Not-Too-Distant Future. . . . 2

The JAW Festival 2

About the Playwright 3

Interview with Jason Wells 3

Provisional Governments in Oregon. 4

Torture in America. 4

The Patriot Act, Two Looks. 7

Glossary 13

Further Reading. 13

Discussion Questions and Group Activities 13

The North Plan includes harsh language and scenes of violence, including gunshots discharged on stage. Parents of younger audience members are thus gently forewarned.

Political Collapse in the Not-Too-Distant Future

Portland Center Stage is proud to present the world premiere of Jason Wells's dark comedy, *The North Plan*, fresh out of the 2010 JAW playwright's festival. Set just a nudge into the future, *The North Plan* imagines the possible perversion of the constitution and the collapse of government in a world where American citizens can be arrested and tortured for no reason. It takes only a passing familiarity with history to wonder if Wells's political satire is really all that far-fetched; *The North Plan* draws haunting associations with Guantanamo Bay and suspension of the Geneva Convention, the Patriot Act, and provisional governments around the world. Revolution is also at the heart of this play, and the great responsibility of an ordinary citizen to see that her government does not run amok with her freedoms. 🏠



The JAW Festival

“One thing that I love about this process is that there are no stupid questions, there are no bad questions, there are no irrelevant questions—it’s just a matter of exploring every possibility to see if maybe something can’t be added that can deepen the work a bit that isn’t there now.”

—Playwright Jason Wells on work-shopping *The North Plan* at PCS’s JAW Playwrights festival 2010

Founded in 1998, the JAW festival (an acronym for Just Add Water) is an invite-only bash for playwrights to develop new plays at Portland Center Stage. With the help of an eager gathering of directors, actors, stage managers and producers, plays are honed to a razor edge and then presented as staged readings at the end of two crazy weeks. No wonder JAW’s motto is “We.Play.Rough.”

Though the plays are the focus of the festival, JAW features a number of additional events, including community artists labs, readings of plays written in Oregon, and recognition of young promising playwrights.

Artists have described JAW as “Collaborative, Expansive, Intensive, Impressive, Without a Net, Exhausting, Bone Crushing, and Life Changing.” Reflecting on JAW’s 10-year anniversary in 2008, festival director Rose Riordan recalled, “When the Festival started we had no idea what it was going to



become. That first year was magical—something happened that week that was so inspiring and fun we were nervous that perhaps it wouldn’t ever happen again. As this year’s JAW came to an end, it was gratifying to realize that it has maintained its specialness and continues to be a highlight.”

In 12 years of JAW, 28 plays featured in the festival have gone on to be professionally produced. 🏠

About the Playwright

Jason Wells

Jason Wells is the winner of the Elizabeth Osborn New Play Award for an emerging playwright from the American Theatre Critics Association. He is the author of *Men of Tortuga*, *Perfect Mendacity*, and numerous plays and has participated in Portland Center Stage's JAW festival.



Interview with Jason Wells

PCS: What were your inspirations for creating *The North Plan*?

Wells: I had been thinking a lot about the hyperbolic political climate of recent years, and wondering how long it's been since Americans have really had to think about what revolution means, or what tyranny really is. I sometimes hear that a political coup couldn't happen here, for one reason or another, but I think those who say this are imagining something direct and unequivocal — a cartoon dictator, perhaps, with an evil army. But I think if we had such a coup, it would come clothed in a “re-interpreted” legality, and adorned with talking points. With the help of the media, it would be vague and confusing, at once oversimplified and riddled with impenetrable contradictions, and the great majority of us will be assured that there is nothing we need do but get on with our lives. Such a scenario seems not only possible to me, but plausible. It isn't hard, unfortunately, to imagine the national tragedy that could ignite it.

PCS: What sort of research did you do to prepare for the writing process?

Wells: I began reading about “Continuity of Government” scenarios, developed by previous White House administrations, specifically directed toward suspending the Constitution and imposing martial law in the wake of an undefined “national emergency.” A particularly chilling element of those plans is Main Core, a database system containing information on millions of American citizens marked for surveillance or detention. Evidence suggests that Main Core has been used often for unwarranted surveillance in the last decade or longer, suggesting that a “national emergency” is even more nebulous than most of us would have supposed. The more I read about Main Core, the more it looked like the central prop in the play I wanted to write.

PCS: What was your experience developing *The North Plan* at the JAW festival?

Wells: There's no better test of a play's promise than to put it on its feet with a good cast and director. At JAW, the actors took the characters to themselves. Each became a specialist on that character. Being able to talk to the actors about where the characters might be going and how they might connect, is a huge leap forward in terms of being able to build the reality of the play. The director at JAW was Rose Riordan, and the dramaturg was Joy Meads, and even in that relatively short time, they were able to give the work a shape that will help define it permanently, and answer some of the play's questions in ways that I can now consider settled. That's extremely satisfying for an author, to work with people who create a forward momentum, not just for a single production, but for the future life of the play itself.

PCS: What do you hope audiences will walk away with after watching *The North Plan*?

Wells: I very much hope that they will consider their evening well spent.

PCS: How has the play changed in your mind since you began writing it?

Wells: I was conscious of trying to write it with a great deal of energy and a minimum of fussiness, which I still think was a good idea, but I've benefited greatly from working with people who have approached the work with real seriousness. With their help, I've been able to see where I might have been too glib, sold a character short, or tried to skate over a logic-hole. Through the development process, I've managed to deepen the work, I think, and become more respectful of the characters. Also I find, as I get to know the play, that I become more assured in my sense of where the comedy and the drama meet, separate, and overlap. With this play, that's a constant process. 🍷

Provisional Governments in Oregon

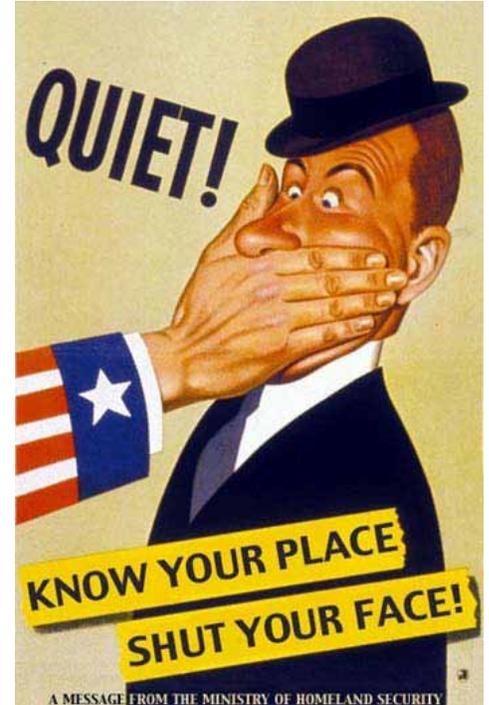
The North Plan *makes numerous references to a provisional US government. While the play is not set in Oregon, the state has an interesting history of provisional governance*

OREGON'S PROVISIONAL GOVERNMENT, 1843-49

by Leslie M. Scott

Excerpt, from Oregon Historical Quarterly, Vol. 30, No. 3 (Sep., 1929), pp. 207-217

For six years, 1843 to 1849, the provisional government served as the first civil organization of American settlement in Oregon; preceded by the rule of the British Hudson's Bay Company and of Canadian laws applying to British subjects; followed by a territorial government of the United States. The provisional government marked the end of British control which had lasted thirty years after the sale of Astoria to the British in 1813; also, signaled the domination of Oregon by American settlers who began in 1842 the great migration on the Oregon Trail. There is evidence that the provisional government and the migration thereby symbolized, brought the British suddenly in 1846 to the cession of Oregon, south of the present boundary of British Columbia. In those six years, the white population grew from 325 to more than 9000, the increase being virtually all American. The American population, which after the Astor failure consisted of trappers, was enlarged in the time of Jason Lee and Marcus Whitman by missionaries, and after them by settlers, who soon dominated the community. The provisional government was controlled from the first by Americans. It balanced rival factions, both American and British, with substantial justice; protected life, liberty and property; laid the civil foundations of the later Oregon state in legislation, jurisprudence and institutional progress; fought the Cayuse War at heavy financial cost, and, through representatives at the national capital, influenced the creation of Oregon territory by act of Congress of 1848. 🏠



HABEAS CORPUS

While the phrase never used in the play, the right of Habeas Corpus plays a significant role in the central action of the play.

Habeas Corpus, literally in Latin "you have the body" is a term that represents an important right granted to individuals in America. Basically, a writ of habeas corpus is a judicial mandate requiring that a prisoner be brought before the court to determine whether the government has the right to continue detaining them. The individual being held or their representative can petition the court for such a writ.

Article 1 section 9 of the US Constitution gives Congress the power to suspend Habeas Corpus; It says that, "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

Torture in America

In The North Plan, torture has been deemed constitutionally sound due to a ruling by the Supreme Court based on a small technicality. The actual history of the legality of torture involves a series of international laws followed by perversions of those laws, beginning most notably with The Geneva Convention, which denotes the fundamental international agreement on the use of torture.

“Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall, at all times, be humanely treated, and shall be protected, especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.”

– Article 27, Fourth Geneva Convention (1949)



Beginning in 2002, the US administration contended that the Geneva Conventions would be respected as a matter of policy but that they would not apply by law to terrorism suspects held at Guantanamo Bay, Cuba, or in U.S. military custody elsewhere. This decision was met with a good deal of controversy. The following is an article published in 2006 by the American Civil Liberties Union. It describes the efforts of the ACLU to hold Donald Rumsfeld and other US government officials responsible for the unlawful torture of military detainees. The constitutional viability of torture is a central topic in The North Plan.

“In Torture Case Against Rumsfeld, Lawyers Cite ‘Widespread Pattern’ of Abuse, Need for Accountability”

WASHINGTON - The American Civil Liberties Union and Human Rights First today argued before a federal court that Secretary of Defense Donald Rumsfeld should be held accountable for the torture and abuse of detainees in U.S. military custody.

Today’s hearing marked the first time a federal court has considered whether top U.S.

(continued on page 6)

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officials can be held legally accountable for the torture scandal in Iraq and Afghanistan.

“There must be legal accountability in a court of law for high-ranking government officials who order or allow torture in violation of the most fundamental legal norms that govern our society,” said ACLU attorney Lucas Guttentag, who is lead counsel in the case. “Torture is universally prohibited but Secretary Rumsfeld and the other defendants have not been held responsible for the orders they gave and the abuse they permitted.”

The ACLU and Human Rights First filed the lawsuit in March 2005 on behalf of nine innocent civilians who were detained by the United States military in Iraq and Afghanistan. While in U.S. custody, the men were subjected to abuse, torture and other cruel and degrading treatment, including severe and repeated

beatings, cutting with knives, sexual humiliation and assault, mock executions, death threats, and restraint in contorted and excruciating positions. All of the men were released without charge.

“Our clients’ case is about ensuring that there’s meaningful accountability, to create

an effective deterrent against future violations and to ensure the courts’ ongoing role in enforcing the law against torture,” said Deborah Pearlstein, director of Human Rights First’s Law and Security program. “The Supreme Court has made it clear that wartime does not create a law-free zone.”

The ACLU also brought three related lawsuits against Lt. General Ricardo Sanchez, former Brigadier General

Janis Karpinski and Colonel Thomas Pappas. The four cases were consolidated and transferred to Chief Judge Thomas F. Hogan of the U.S. District Court for the District of Columbia. All of the defendants have moved to dismiss the suits in their entirety. The lawsuit is seeking compensatory damages for the plaintiffs and a court order declaring that the actions of Secretary Rumsfeld and the other officers violated the U.S. Constitution, federal statutes and international law.

Today’s hearing addressed the defendants’ claim that they cannot be held legally liable for the torture of civilians in U.S. custody. The ACLU and Human Rights First argued that the Constitution and international law clearly prohibit torture and require commanders to act when they know or should have known of abuses. In addition to the orders they gave directly, Secretary Rumsfeld and the other defendants were repeatedly notified of abuse and torture at detention facilities in Iraq and Afghanistan by military reports, the International Red Cross and other reports and complaints by human rights organizations.

The groups further charge in the lawsuit that Secretary Rumsfeld personally approved brutal and illegal interrogation techniques in December 2002. Those techniques included the use of “stress positions,” the removal of clothing, the use of dogs, and isolation and sensory deprivation.

Retired military officers and military legal experts have filed a legal brief in support of the lawsuit. According to the military law experts, “It was the essence of Secretary Rumsfeld and other defendants’ scope of employment to educate and train those within their command responsibility to adhere to domestic and international standards and to do everything within their power to prevent and punish deviations from them.” The experts urged that allowing the federal case to proceed would not intrude into matters of military decision-making, but would reinforce the military’s interest in command responsibility.

December 8, 2006

TIMELINE OF REBELLION WITHIN THE US

- 1776–1783 Residents of the colonies rebel against the British in the war of American Independence
- 1847 The Taos Revolt in New Mexico, against the United States
- 1861–1865 The American Civil War
- 1899–1902 The Phillipines rebellion against the US
- 1927–1933 Rebellion against the US presence in Nicaragua
- 1950 The Puerto Rican nationalist revolts

The Patriot Act, Two Looks

In The North Plan, civil liberties are suspended for the purpose of general safety. This political strategy is a direct reference to The US Patriot Act, one of the most controversial legal documents of the last decade. Here are two perspectives on the implications and intentions of the Act

The following is an outline of the Patriot Act from the US Department of Justice

THE USA PATRIOT ACT: PRESERVING LIFE AND LIBERTY

*Uniting and Strengthening America by
Providing Appropriate Tools Required to
Intercept and Obstruct Terrorism*

Congress enacted the Patriot Act by overwhelming, bipartisan margins, arming law enforcement with new tools to detect and prevent terrorism: The USA Patriot Act was passed nearly unanimously by the Senate 98-1, and 357-66 in the House, with the support of members from across the political spectrum.

The Act Improves Our Counter-Terrorism
Efforts in Several Significant Ways:

1. The Patriot Act allows investigators to use the tools that were already available to investigate organized crime and drug trafficking. Many of the tools the Act provides to law enforcement to fight terrorism have been used for decades to fight organized crime and drug dealers, and have been reviewed and approved by the courts. As Sen. Joe Biden (D-DE) explained during the floor debate about the Act, “the FBI could get a wiretap to investigate the mafia, but they could not get one to investigate terrorists. To put it bluntly, that was crazy! What’s good for the mob should be good for terrorists.” (Cong. Rec., 10/25/01)

- Allows law enforcement to use surveillance against more crimes of terror. Before the Patriot Act, courts could permit law enforcement to conduct electronic surveillance to investigate many ordinary, non-terrorism crimes, such as drug crimes, mail fraud, and passport fraud. Agents also could obtain wiretaps to investigate some, but not all, of the crimes that terrorists often commit. The Act enabled investigators to gather information when looking into the full range of terrorism-related crimes, including: chemical-weapons offenses, the use of weapons of mass destruction, killing Americans abroad, and terrorism financing.

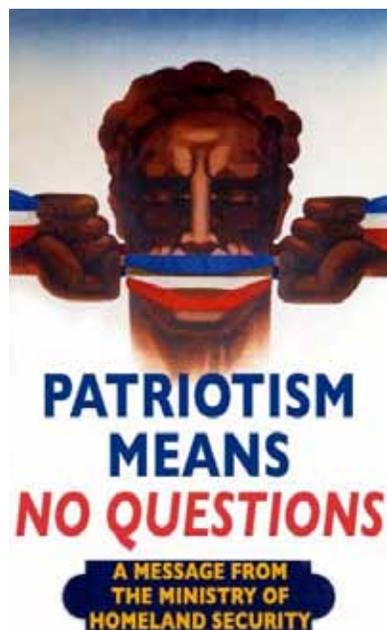


- Allows federal agents to follow sophisticated terrorists trained to evade detection. For years, law enforcement has been able to use “roving wiretaps” to investigate ordinary crimes, including drug offenses and racketeering. A roving wiretap can be authorized by a federal judge to apply to a particular suspect, rather than a particular phone or communications device. Because international terrorists are sophisticated and trained to thwart surveillance by rapidly changing locations and communication devices such as cell phones, the Act authorized agents to seek court permission to use the same techniques in national security investigations to track terrorists.
- Allows law enforcement to conduct investigations without tipping off terrorists. In some cases if criminals are tipped off too early to an investigation, they might flee, destroy evidence, intimidate or kill witnesses, cut off contact with associates, or take other action to evade arrest. Therefore, federal courts in narrow circumstances long have allowed law enforcement to delay for a limited time when the subject is told that a judicially-approved search warrant has been executed. Notice is always provided, but the reasonable delay gives law enforcement time to identify the criminal’s associates, eliminate immediate threats to our communities, and coordinate the arrests of multiple individuals without tipping them off beforehand. These delayed notification search warrants have been used for decades, have proven crucial in drug and organized crime cases, and have been upheld by courts as fully constitutional.

(continued on page 8)

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- Allows federal agents to ask a court for an order to obtain business records in national security terrorism cases. Examining business records often provides the key that investigators are looking for to solve a wide range of crimes. Investigators might seek select records from hardware stores or chemical plants, for example, to find out who bought materials to make a bomb, or bank records to see who's sending money to terrorists. Law enforcement authorities have always been able to obtain business records in criminal cases through grand jury subpoenas, and continue to do so in national security cases where appropriate. These records were sought in criminal cases such as the investigation of the Zodiac gunman, where police suspected the gunman was inspired by a Scottish occult poet, and wanted to learn who had checked the poet's books out of the library. In national security cases where use of the grand jury process was not appropriate, investigators previously had limited tools at their disposal to obtain certain business records. Under the Patriot Act, the government can now ask a federal court (the Foreign Intelligence Surveillance Court), if needed to aid an investigation, to order production of the same type of records available through grand jury subpoenas. This federal court, however, can issue these orders only after the government demonstrates the records concerned are sought for an authorized investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against



international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely on the basis of activities protected by the First Amendment.

2. The Patriot Act facilitated information sharing and cooperation among government agencies so that they can better “connect the dots.” The Act removed the major legal barriers that prevented the law enforcement, intelligence, and national defense communities from talking and coordinating their work to protect the American people and our national security. The government’s prevention efforts should not be restricted by boxes on an organizational chart. Now 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. As Sen. John Edwards (D-N.C.) said about the Patriot Act, “we simply cannot prevail in the battle against terrorism if the right hand of our government has no idea what the left hand is doing” (Press release, 10/26/01)

- Prosecutors and investigators used information shared pursuant to section 218 in investigating the defendants in the so-called “Virginia Jihad” case. This prosecution involved members of the Dar al-Arqam Islamic Center, who trained for jihad in Northern Virginia by participating in paintball and paramilitary training, including eight individuals who traveled to terrorist training camps in Pakistan or Afghanistan between 1999 and 2001. These individuals are associates of a violent Islamic extremist group known as Lashkar-e-Taiba (LET), which operates in Pakistan and Kashmir, and that has ties to the al Qaeda terrorist network. As the result of an investigation that included the use of information obtained through FISA, prosecutors were able to bring charges against these individuals. Six of the defendants have pleaded guilty, and three were convicted in March 2004 of charges including conspiracy to levy war against the United States and conspiracy to provide material support to the Taliban. These nine defendants received sentences ranging from a prison term of four years to life imprisonment.

3. The Patriot Act updated the law to reflect new technologies and new threats. The Act brought the law up to date with current technology, so we no longer have to fight a digital-age battle with antique weapons-legal authorities leftover from

the era of rotary telephones. When investigating the murder of Wall Street Journal reporter Daniel Pearl, for example, law enforcement used one of the Act's new authorities to use high-tech means to identify and locate some of the killers.

- Allows law enforcement officials to obtain a search warrant anywhere a terrorist-related activity occurred. Before the Patriot Act, law enforcement personnel were required to obtain a search warrant in the district where they intended to conduct a search. However, modern terrorism investigations often span a number of districts, and officers therefore had to obtain multiple warrants in multiple jurisdictions, creating unnecessary delays. The Act provides that warrants can be obtained in any district in which terrorism-related activities occurred, regardless of where they will be executed. This provision does not change the standards governing the availability of a search warrant, but streamlines the search-warrant process.

- Allows victims of computer hacking to request law enforcement assistance in monitoring the “trespassers” on their computers. This change made the law technology-neutral; it placed electronic trespassers on the same footing as physical trespassers. Now, hacking victims can seek law enforcement assistance to combat hackers, just as burglary victims have been able to invite officers into their homes to catch burglars.

4. The Patriot Act increased the penalties for those who commit terrorist crimes. Americans are threatened as much by the terrorist who pays for a bomb as by the one who pushes the button. That's why the Patriot Act imposed tough new penalties on those who commit and support terrorist operations, both at home and abroad. In particular, the Act:

- Prohibits the harboring of terrorists. The Act created a new offense that prohibits knowingly harboring persons who have committed or are about to commit a variety of terrorist offenses, such as: destruction of aircraft; use of nuclear, chemical, or biological weapons; use of weapons of mass destruction; bombing of government property; sabotage of nuclear facilities; and aircraft piracy.
- Enhanced the inadequate maximum penalties for various crimes likely to be committed



by terrorists: including arson, destruction of energy facilities, material support to terrorists and terrorist organizations, and destruction of national-defense materials.

- Enhanced a number of conspiracy penalties, including for arson, killings in federal facilities, attacking communications systems, material support to terrorists, sabotage of nuclear facilities, and interference with flight crew members. Under previous law, many terrorism statutes did not specifically prohibit engaging in conspiracies to commit the underlying offenses. In such cases, the government could only bring prosecutions under the general federal conspiracy provision, which carries a maximum penalty of only five years in prison.
- Punishes terrorist attacks on mass transit systems.
- Punishes bioterrorists.
- Eliminates the statutes of limitations for certain terrorism crimes and lengthens them for other terrorist crimes.

The government's success in preventing another catastrophic attack on the American homeland since September 11, 2001, would have been much more difficult, if not impossible, without the USA Patriot Act. The authorities Congress provided have substantially enhanced our ability to prevent, investigate, and prosecute acts of terror.

(continued on page 10)

(continued from page9)

The following rebuttal is from
Jurist Legal News and Research.

PATRIOT GAMES: TERRORISM LAW AND EXECUTIVE POWER

by
Susan Herman

The acronym USA PATRIOT turns out to be an apt name for the anti-terrorism legislation passed in October 2001: the Act has become a crucible for intense debate about what it means to be a patriot – i.e., how to protect and defend the Constitution in a time of turmoil.

Critics of the Act initially focused on the question of whether the Patriot Act sacrificed constitutional protections of liberty and privacy. In a 2001 JURIST Forum essay, I argued that the real problem with the Patriot Act was its impact on the checks and balances among the branches of the federal government (The USA Patriot Act and the USA Department of Justice: Losing Our Balances?, JURIST, Dec. 4, 2001). In a number of ways, the Act increased executive authority at the expense of judicial second opinions about when searches and seizures are reasonable. As is so often the case, what may appear to be questions about rights are, at bottom, questions about constitutional structures and powers. Who are the patriots who get to decide how we should be striking the balance between the liberty we expect and the security we desire? Is it the President alone, Congress, or some combination of the three branches of the federal government, including the courts?

By creating a bicameral legislature, the Constitution created two different legislative voices. The House of Representatives is elected frequently, mirroring state population, and is expected to be close to the people. The Senate is more stable, equally divided among the states no matter what their population, and expected to be more deliberative because of its insulation from popular opinion. During the sunset debates, the House, true to its stereotype, was wildly partisan and raucous. At the end of July, the House passed a bill called the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005, which lifted the sunsets from almost all of the controversial provisions and provided for only small amendments of a few provisions (like modifying the gag order on the custodians of records far enough to allow those individuals to consult counsel or go to court to challenge a demand for records). Some of the changes proposed, like the

limit on the so-called “sneak and peek” authority sponsored by Republican Butch Otter of Idaho and the bill to protect library records endorsed by Independent Bernie Sanders of Vermont, had previously garnered the support of a majority of the House. During the sunset debates, the House leadership used every partisan procedural maneuver at its disposal to prevent amendments like these from reaching a vote on the floor. Votes on what did reach the floor split the House down the middle. (A motion to recommit the bill to committee to reconsider some of the sunset provisions, for example, lost by a vote of 209 to 218.)

The Senate showed greater decorum, taking the high, bipartisan road. On the same day the House passed its divisive bill, the Senate Judiciary Committee hashed out a compromise bill that included some amendments – more than the House bill; fewer than critics would have preferred. In contrast to the House bill, the Senate bill was called the USA PATRIOT Improvement and Reauthorization Act of 2005. Evidently recognizing that it was likely to split just as evenly and noisily as the House if they debated the bill, the full Senate then adopted the committee’s bipartisan proposal by unanimous consent. As its title suggests, the bill provided for more amendments than the House bill, and a few longer sunsets.

It was not until the end of November that a draft conference report reconciled the two bills, which differed only on a handful of provisions. The differences, like whether the so-called “library provision” should be amended to allow a court to





consider whether there is a basis for requiring a custodian to turn over records instead of allowing the government officials seeking records to decide for themselves whether information obtained might be “relevant” to a terrorism investigation, were narrow but of some significance. It remains to be seen whether the Patriot Act will survive in a version closer to that proposed by the House or by the Senate. But it does seem clear that the Patriot Act will survive: the House and Senate each had decided to extend and make permanent the great bulk of the Patriot Act provisions.

And then the New York Times broke the news that the administration had been helping itself to surveillance powers beyond anything contemplated by the Patriot Act. This revelation led to a series of peculiar instances of individual legislators wielding the powers of Congress. The President had quietly notified some selected legislators about his National Security Agency program, perhaps hoping to deflect criticism for ignoring legislation that limited his surveillance powers, even though these individual conversations could not function as congressional approval. After the program and this selective notification process were made public, individual legislators then explained their acquiescence or objections in interviews with the press instead of in the Congressional Record. California Democrat Nancy Pelosi said that she had written a letter objecting to the program, but could not share the letter with her constituents unless the administration whose actions she was criticizing declassified it.

A minority group of Senators took the gloves off and filibustered to prevent the enactment of a Patriot

Act renewal bill until further debate. Before the New York Times story, the President and Republican congressional leaders had opposed the idea of a three month extension of the Act to allow the reconciliation process to play out; on December 21, after the story, the Senate voted to extend the Patriot Act for six months to allow further debate. This arrangement was single handedly derailed by Representative James Sensenbrenner. (Evidently approval would have had to be unanimous in the House.) A counterproposal for a five week extension was single handedly approved by Senator John Warner, evidently the only Senator who had not yet taken off to celebrate the holidays.

So Congress enters the New Year with questions about whether to amend or sunset Patriot Act provisions unresolved. But more members of Congress may now be resolved to play their constitutional function of checking the Executive Branch instead of simply writing it a blank check allowing government surveillance. The Executive Branch has amply demonstrated why some check is needed. The administration has used its Patriot Act powers to the hilt, employing over 30,000 National Security Letters (which demand records without any court order) and increasing the pace of applications to the Foreign Intelligence Surveillance Court. But even that was not enough. Whether the President also has inherent constitutional authority to conduct surveillance beyond what Congress has authorized is a question that will be debated in Congress and in the press.

But where are the courts? If the subject of current debate is the extent of the President’s inherent Article II authority, might it not be time for another judicial decision like the Steel Seizure Case or *United States v. United States District Court* identifying the boundaries of Article II? It is notable that so few of the Patriot Act surveillance provisions have been the subject of litigation. This is because the targets of the information the government seeks to obtain do not know that they are targets, and the custodians who are asked for information are under a gag order prohibiting them from telling anyone. With all the secrecy surrounding the government’s surveillance activities, those who would have standing to challenge government actions don’t know it. The administration has resisted releasing even the most skeletal numerical information about how it has used its Patriot Act powers. The courts considering Freedom of Information Act claims brought by the ACLU and other groups have yielded

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mixed results, sometimes ordering the government to release some rudimentary information, and sometimes accepting the government's claim that even statistical information about surveillance should be exempt for national security reasons. It is difficult to think of anyone who would have standing to challenge the President's recently revealed surveillance program in court, unless and until the government decides to use information obtained as evidence in a criminal prosecution. In other words, decisions about whether the legality of the executive branch use of its powers will be litigated, like the use of those powers and the flow of information about the use of those powers, are within the control of the executive branch.

This is a dangerous lack of balance. The President is determined to take any actions he deems necessary, in his own unilateral judgment, to protect us from terrorist attacks. His oath, however, is to "preserve, protect and defend the Constitution." Congress has been distressingly passive; the courts remarkably uninvolved. So we the people have to be the patriots. None of our constitutional structures can work in the absence of political accountability, which requires an informed and active constituency. The Patriot Act debates show that we can influence our representatives through our actions as well as our votes. Bill of Rights Defense Committee resolutions expressing concern about various aspects of the Patriot Act have been enacted by seven states and about 400 cities, towns and



villages. The sections of the Patriot Act the public has found most troubling (albeit sometimes on the basis of misinformation), like the "sneak and peek" and "library" provisions, are the very provisions Congress has considered amending. If we want to preserve our Constitution, which contemplates an Executive Branch operating as one of three coequal branches, we have to follow through on those resolutions, insisting that Congress take a more active role in checking the executive branch, and that the courts be afforded a proper role in evaluating the balance of legislative and executive power. The decisions we confront are difficult and require the balance and wisdom of all three branches as well as the attention of an informed public.

Instead of talking about recent legislation in which Congress is considering narrowing the role of the courts even further (the Graham-Levin amendment, which is a frightening and terrible mistake in my view), I will end on a more personal note. I have been writing about the Patriot Act in a rather lengthy law review article ("The USA PATRIOT Act and the Submajoritarian Fourth Amendment") scheduled to appear in the Harvard Civil Rights Civil Liberties Law Review in January. My article was accepted in the spring, and thus had to be rewritten after the summer sunset debates, and then reedited after the November draft conference report, as the content of the Act was a moving target. Along with everyone else, I had expected that the Patriot Act legislation would be settled by the end of the year, whatever its content. Instead, my article is going to press before the legislative process is complete. This is frustrating and might even qualify as living an academic nightmare. But if all this legislative activity means that Congress is in the process of waking up, I am certainly enough of a patriot to be glad.

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Glossary

Martial Law the imposition of military rule by military authorities when the government fails to function effectively. In America, Congress passed the Posse Comitatus Act in 1878, which forbids military involvement in domestic law enforcement without congressional approval

DHS the Department of Homeland Security, billed as “Preserving our Freedoms, Protecting America”

APB all-points bulletin, a broadcast issued from one US law enforcement agency to another, typically containing information about a wanted person

Franz Kafka a turn-of-the-century German-language novelist most famously known for his surreal and eerie opus *Metamorphosis*.

Patty Hearst the granddaughter of publishing magnate William Randolph Hearst and great-granddaughter of millionaire George Hearst, she gained notoriety in 1974 when, following her kidnapping by the Symbionese Liberation Army (SLA), she ultimately joined her captors in furthering their cause. Apprehended after having taking part in a bank robbery with other SLA members, Hearst was imprisoned for almost two years before her sentence was commuted by President Jimmy Carter.[1] She was later granted a presidential pardon by President Bill Clinton in his last official act before leaving office.

Hoosier originally designating a resident of the state of Indiana, hoosier has come to be a derogatory term used in a fashion similar to “hick” or “white trash.”

Oliver North a retired U.S. Marine Corps officer, political commentator, host of War Stories with Oliver North on Fox News Channel, a military historian, and a New York Times best-selling author. North is infamous for his role in the clandestine sale of weapons to Iraq in the late 80s, when he was a National Security staff member.

Antonin Scalia the longest-serving Supreme Court justice, having been appointed by President Ronald Reagan in 1986. Scalia is among the most outspoken and forceful of the conservative justices.

Further Reading

1984 by George Orwell

Interested in political dystopia? Orwell’s classic delves into the world of political speech and government restrictions.

The Pillowman by Martin McDonagh

A play set in a fictional fascist dictatorship, complete with a suspension of prisoners rights

V for Vendetta by Alan Moore

A graphic novel about revolution and oppression.

Discussion Questions

What is the significance of the final image of Tanya at the end of the play?

What role should government ideally perform in society?

What aspects of our modern society is Jason Wells commenting upon in this play? Where does he make criticisms? Where does he express hope?

What function does comedy serve in *The North Plan*?

Is the future imagined in this play believable? Could you see such a world actually taking place?

Group Activities

1. Pretend you are the military, and you have just seized control of your country’s government. Discuss with your group members which parties pose the most threat to you. Create a list of names. Share your list with the other groups and discuss why you picked the parties you did.
2. Pretend you are a group of political dissidents, and you have just been arrested for no crime. Your captors will be coming to your cell in ten minutes. Create with your group a series of arguments as to why you should be released. Share your arguments with other groups and discuss how you think they will be effective.