

# **The USA Patriot Act and Censorship**

*A Focus on Faculty Lecture*

**By Dr. Jim Cornehlis**

Director of the Law and Public Policy Graduate Certificate Program at  
UTA's School of Urban and Public Affairs

**Sponsored by the University of Texas at Arlington Libraries**

**Sept. 24, 2003**

# The USA Patriot Act and Censorship

Dr. Jim Cornehlis

When asked to give this talk, my first thought was to do it extemporaneously, a sort of conversational dialogue with the audience. Then I had two other thoughts. What if there is no audience, or just one or two people? The full house here today answers my first thought. But, I also thought this is too important a topic not to treat it with the seriousness it deserves. And what if I left out something really important? So I prepared my remarks today in written form. Copies are available for anyone who wants to take one with you. But be careful, there might be someone here today watching you.

When I took public speaking in high school, my teacher emphasized what she called the three “tellums.” Tell ‘em what you’re going to tell ‘em; tell ‘em; and then tell ‘em what you told ‘em. I’m not going to do that because it takes too much time and I have another idea on how to get you interested and keep your attention. My teacher also said always introduce a note of levity, no matter how serious the topic. In other words, make them smile. To try to do that I want to invoke the image of a great American patriot and ardent defender of the First Amendment, Richard Pryor. You all know Richard Pryor don’t you? One of America’s greatest comedians and a man who wasn’t afraid to talk about any subject, anywhere, anytime. He could shock Howard Stern. He wasn’t about to tolerate censorship.

I wish Richard Pryor could be here to introduce the subject today. But he is very ill now with MS, a terrible disease, and I wish him well. But I like to think this is how Richard would begin.

I can’t do a good job of imitating Richard Pryor. I tried this out on my daughter, who told me, “Dad you are never going to sound like Richard Pryor. But it’s okay, they will get the idea.” Then I tried it on my secretary, who is African American, and she said I did okay. I told my daughter what my secretary said, and she said, “Your secretary lied.” When I told my secretary what my daughter said, she said, “Your daughter is right.” Anyway here goes.

“I was born in Peoria, Illinois. Thas right. Ahh....Ladies and Gentlemens: We are gathered here today to celebrate National Book Banning and Spying Week. I don’t believe you heard me. I said, we are gathered here today to celebrate National Book Banning and Spying Week. We call this National Book Banning and Spying Week because it is about book banning and spying. In other words we talking censorship here. Now some of you amongst us may be spies. Some of you may be book banners. Some of you may be dope dealers. Some of you may be. . .well, let’s move on. . .”

## ***Banned Books Week***

Folks, this is Banned Books Week; I just added the spying part. Isn’t it amazing that in a country that prides itself on civil liberties, especially freedom of speech, we need to have a Banned Books Week? But this week is not about celebrating the banning of books; it is about mourning the banning of books and celebrating the right of free speech. It is about lamenting the suppression of ideas that, because they offend some people or groups, those people or groups seek to ban them from the rest of us. They believe others cannot be trusted to read or hear about these ideas, because they offend someone’s notions about what is right and good and acceptable. Preventing this is one of the main things the 1<sup>st</sup> Amendment is all about.

Kurt Vonnegut, the eminent American author of such classics as Slaughterhouse-Five, Cat’s Cradle, and Palm Sunday, may be the most censored author in American history. More school boards, citizens advisory committees, library boards, and other groups have banned or sought to ban his books than probably any other American author. A local school committee in Drake, North Dakota, ordered the janitor to burn Slaughterhouse-Five in the school furnace because they didn’t want their children reading it, even though they themselves had never read it. Mr. Vonnegut once proposed a test for any person who wanted to be on a school board. They should be hooked up to a lie detector and asked if they have ever read a book from cover to cover. If they cannot truthfully answer yes, they should be disqualified from service.

Mr. Vonnegut also received a lot of hate mail from people who not only had never read one of his books, but wanted his books burned and wanted him personally extinguished. He tried to answer a lot of this mail and respond to his critics. But in 1981, he finally stated that from then

on he intended to limit his discourse with these people to the following advice: “Have somebody read the First Amendment to the United States Constitution to you, you God-damned fool!” But of course, they never asked anyone to read them the First Amendment. They just got angrier. As Vonnegut grew older and more mellow, he began answering the vitriol of his critics with a milder response, which was: “You know, you may be right.” But they were not right.

Thirteen days ago marked the second anniversary of September 11, 2001. We all honor and respect those who lost their lives on that fateful day, and their families and friends who mourn them. It is even more important that their lives not be sacrificed in vain. Because, while they died, they did so with the freedom to read and discuss anything they wanted to and to be relatively free of spying and government intrusion into their private lives and their homes. As the eminent jurist, Supreme Court Justice William O. Douglas, once wrote, “The right to be let alone is indeed the beginning of all freedom.”

### ***September 11 and Its Aftermath***

September 11 also marked the beginning of an assault on the civil rights and freedoms of Americans, immigrants, and prospective immigrants to this country. Only 45 days after the destruction of the World Trade Center, a wing of the Pentagon, and another plane full of people over Pennsylvania, the United States enacted one of the most sweeping measures that has been enacted in the history of this country, affecting the civil rights of every person living in the United States, and many not living here.

The Act is called the USA Patriot Act. That stands for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.” Someone burned a lot of midnight oil coming up with that catchy title, because its acronym, USA Patriot, evokes all the patriotic sentiments and symbols of the nation. Who can be opposed to patriotism? But titles can be misleading and frequently are intended to be misleading. A good

example is the President's Clear Skies program, which is really a deliberately misnamed measure designed to allow more air pollution and was originally opposed by the Environmental Protection Agency.

Likewise, the Patriot Act is not about patriotism, that's just its clever acronym. Go back and look at the actual words. It is about government, law enforcement, and military intrusion into our lives. It is about granting to law enforcement the ability to ignore some of the basic constitutional guarantees we all take for granted. I want to rename it the Secret, Unconstitutional, Personal Intrusion Act (SUPIA).

We are told the act is supposed to provide greater security for us all. Setting aside for the moment whether or not it really does provide greater security, at what cost is this alleged security bought? Is it worth the price? Do many Americans know what the real costs are? If they were clearly and honestly explained to them by the President or the Attorney General, would they still support them? Ninety-one per cent of registered voters in the United States are unaware of the Act's encroachment on civil liberties. They have only a vague idea that it somehow or another is supposed to provide them greater security against terrorists. And this is all the administration wants them to know.

Absolute security is, of course, a pipe dream. Neither our government nor anyone else can provide such security because to do so would make life not worth living. Even with the most Draconian measures imaginable, there still would be ample opportunity for persons with bad intentions to commit acts of unbelievable barbarism. That is because we live in a country that, until recently, enjoyed a large degree of personal freedom without fear of spying or arrest, on the

basis of someone's misguided suspicions. Israel, by all accounts, has developed the world's most sophisticated security system. Yet almost daily we hear of terrorist acts being committed openly there in public places.

So what does the Patriot Act sacrifice in order to provide us this alleged security? Well, it potentially violates at least 6 of the 10 original Bill of Rights, the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Amendments to the United States Constitution. Others would include the 13<sup>th</sup> and 14<sup>th</sup> as well. Can anyone tell me how something that drastic was rushed through Congress, with only one day of debate, on near unanimous votes in both houses, only 45 days after 9/11?

Here's how. After 9/11, Americans were frightened, and so were the members of Congress. The Justice Department was ready and willing to capitalize on this fear, with legislation that was a virtual wish list of everything law enforcement had been seeking for years. Most of that list had been rejected by Congress when it passed earlier antiterrorist legislation. Many of the members of Congress and their staffs had not even read the Patriot Act, all 342 pages of it, before the vote on it was taken.

Law enforcement agencies, perhaps understandably, want all the advantages they can get to fight crime, terrorism or any other threat. That's what they do. As institutions, though not necessarily as individuals, they often see the Bill of Rights as an impediment to doing their job efficiently. They want to go after the bad guys full tilt. The problem is who decides who the bad guys are, and, more importantly, what is bad?

## ***Here Are Some of the Things the Government Can Do That It Couldn't Do Before the Patriot Act Was Passed***

1. The FBI can enter your home, search through your personal effects, and confiscate your personal property without informing you, sometimes as much as 20 days after the fact. This is the so-called “sneak and peek” provision of the law. It is so odious that in late August, the House of Representatives voted to repeal that provision of the act.
2. The FBI can come to your place of employment and demand personal records for you. It can question your supervisors and fellow employees about you, without notifying you and without telling anyone what information they seek or why. Further, the people they talk to will be informed that they are prohibited, under penalty of law, from telling you about it or even mentioning it to anyone else! This already occurred on the UTA campus and in hundreds of universities nationwide.
3. The government can obtain access to your personal medical records, your school records, and practically every personal record about you, because some unnamed source thinks you might have some connection with terrorists or terrorist plots.
4. On mere designation by the Attorney General, you can be detained and questioned without the government having to show probable cause that you have committed any illegal act.
5. The government, by simply informing a magistrate that you are part of an ongoing intelligence investigation, can obtain a warrant giving them access to any personal record that ever existed concerning you. Magistrates are required to sign the warrant.
6. The government can designate a United States citizen an “enemy combatant” and then incarcerate him or her indefinitely, without right to an attorney, without their family members having any idea of where they are being held, and unable to visit them if they did know.
7. The government can secretly demand to see records of books or magazines you have checked out or read in any public library, including this university library, and of Internet

sites you have visited while using a computer. It also can demand the same information about you from private booksellers. There were at least 545 libraries that received such demands in the first year following passage of the Patriot Act, according to a survey of libraries conducted at the University of Illinois, Urbana-Champaign. Recently, the Assistant Attorney General, Viet Dinh, claimed there were only 50 such requests. Later, the Attorney General claimed there had been no requests at all. Someone is lying, and I don't think it's the libraries themselves.

8. The government can investigate the activities of anyone who uses the Internet and intercept their email, but supposedly not its content, on mere suspicion of a connection with terrorism. Does anyone really believe that if the FBI intercepts your email they are not going to read its contents?
9. The Patriot Act redefines terrorism very broadly to include a new "domestic terrorism." As a result, many non-terrorist political protest activities such as those of Greenpeace, the Environmental Liberation Front, Operation Rescue, protest marches or demonstrations, and civil disobedience can be considered a terrorist act under this definition. Just a day or two ago in California, the government labeled an attack on a goose farm by animal rights groups an act of domestic terrorism under the Patriot Act.
10. Persons of Arab descent, especially, and others who are here on immigrant visas, can be summarily arrested and incarcerated, sometimes for many months, and held in secret locations on mere suspicion by someone in law enforcement that they might have some terrorism connection. They can be summarily deported, after secret hearings. People can and have literally disappeared.
11. Law enforcement agencies now can share information obtained via a limited wiretap in an unrelated investigation with any other law enforcement agency, something formerly strictly limited to the specific purposes of the wiretap.
12. Grand jury testimony, long considered inviolable and not subject to subpoena, now can be obtained by the government on a claim it may be useful in an intelligence investigation.

13. The CIA which, because of past abuses, had been banned from spying on Americans in the United States, now again can do many of the same things done by the FBI and share information obtained by other law enforcement agencies.
14. The scope and power of a secret court, originally created in 1978 to hear matters pertaining to foreign intelligence, has been expanded to include domestic investigations the government claims are related to terrorist activities.

And the list goes on. The Patriot Act itself is so complex, with so many references to and incorporations of provisions found in other statutes such as the Foreign Intelligence Surveillance Act and the Antiterrorism and Effective Death Penalty Act (how's that for a title?), that an intelligent college graduate with some legal training would find it virtually impossible to read and comprehend.

***Here Are Some Things the Justice Department, Law Enforcement, and Quasi-Law Enforcement Have Done or Tried to Do Since Enactment of the Act***

1. Secretly arrested and jailed more than 1200 persons, mainly immigrants of Arab descent, in connection with the investigation of the events of September 11.
2. Subsequently refused to release the names of those arrested and held in jail, despite a United States District Court order and congressional demands to do so.
3. Conducted more than 600 secret deportation hearings based on the Attorney General's assertion that those held for deportation proceedings were suspected of having links to terrorism.
4. Tried to institute a nationwide system TIPS, also known as RATS, that encouraged relatives, friends, and neighbors to spy on their neighbors, friends and family and report any suspicious activity.
5. Created a huge new Department of Homeland Security, encompassing dozens of formerly independent federal agencies that had some connection with law enforcement and security.

6. Vastly expanded the scope of airline and airport security, including the posting of young, green National Guardsmen, in battle gear, armed with rifles, at airport security check points.
7. Posted armed military personnel or guards and instituted highly restrictive security measures at all major national monuments.
8. Instituted an airline passenger data collection and information system, CAPPS II, in cooperation with national airlines to track the credit and banking records and other personal information of airline passengers, cross check them against a list of names on a government watch list compiled by undisclosed passenger profiling techniques, and assign every passenger a threat level of red, yellow or green. Ask for your color code the next time you fly!
9. Floated the idea of introducing a national identity card for everyone living in the United States.
10. Made secret visits, seeking information about untold numbers of individuals at hundreds of United States universities.
11. Declared two United States citizens to be enemy combatants, José Padilla, a former Chicago gang member, and Yaser Hamdi, an American born Saudi from Louisiana, and confined them in military prisons without right to a lawyer and without access to friends or relatives. By declaring a U.S. citizen to be an enemy combatant, the government may strip them of their citizenship and deport them.
12. Floated the idea of establishing a futures market in betting on when and where the next terrorist attack in the United States would occur.
13. Augmented and strengthened the powers granted law enforcement under the Patriot Act by the issuance of eleven new executive orders by the President, ten new interim agency regulations, and two final regulations of the Justice Department, thus side-stepping the legislative process.

14. Ordered the immediate deportation of a Jordanian exchange student studying at the University of Texas - Arlington on a student immigrant visa, who admitted to having once had thoughts about being a terrorist martyr but had since renounced those ideas, three months shy of earning his Master's degree in software engineering.
15. Mandated that some 6,000 United States universities assist the government in maintaining surveillance of foreign students residing in the United States (SEVIS). The universities must gather and forward information about foreign students to a national data bank, under penalty of not being permitted to enroll foreign students for failure to comply.
16. Attempted to institute a national data bank to compile, in one central location, detailed personal data about every person residing in the United States, the so-called TIAS plan.
17. Sent two FBI agents to the home of Barry Reingold, a retired telephone company worker in San Francisco, to ask questions about his political beliefs because he mentioned in the locker room of his local gym that he thought the proposed war against Iraq was as much about oil as about terrorism.
18. Father and son, Steve and Roger Downs, entered the Crossgates Mall in Albany, New York, wearing shirts that read "Peace On Earth" and "Give Peace a Chance." Informed by mall security guards that they could not remain in the mall without removing the offending shirts, the son removed his, but his lawyer father refused. He was arrested for trespass.
19. Sent FBI agents to investigate and question A. J. Brown, a 19-year-old college freshman at Durham Tech in North Carolina, who had a poster on her bedroom wall at her home that was critical of George Bush because of his stance on capital punishment while governor of Texas. While there, the agents asked if she also had any pro-Taliban materials.
20. The FBI received a tip that the Houston Art Car Museum was displaying works of art that could be considered threatening to the President. On visiting the museum for an hour, the two agents sent to investigate found no such art, but they nevertheless questioned a docent about the artists, who funded the museum, and who had visited the exhibit.

And there are numerous other examples.

### ***Have You Been Investigated?***

None of us really know if we have been investigated because most investigations are conducted under a shroud of secrecy. I can speculate that I might have been the target of an investigation but I can't be certain and can't find out. And, if any of my co-workers were questioned about me, they would be breaking the law if they told me. If the FBI is concerned enough to visit a man for voicing his opinion about the real purpose of the war against Iraq in his gym, I would not be surprised to find a couple of agents here today. If so, and if you are here, is this the kind of country you want your family to live in?

But the Bush administration and the Justice Department want even more. The Department of Justice now is floating an even broader and more intrusive version of the Patriot Act dubbed Patriot II, but probably destined to be called "Victory." Victory over what, the Constitution? It would further expand the already vast powers of the government under Patriot I.

The U.S. Attorney General just completed a series of speeches across the nation, not open to the public (remember 91% of registered voters still don't know what the Patriot Act's about). He spoke only to small but influential private groups already supportive of the administration's policies. He did this to try to shore up support for the Patriot Act and to explain why it should be expanded. The proposed additional legislation seeks the power to permit any law enforcement agent to serve a search warrant without the need for a magistrate's signature and to expand the use of the death penalty, among other new powers.

### ***Censorship***

Perhaps some of you are wondering what all this has to do with censorship and book banning? The answer is, a great deal. Not so much in a direct way, (although the Dixie Chicks had their albums smashed in the parking lots of radio stations all across the country because their lead singer spoke out against the war on Iraq), but in a more subtle way. (Those radio stations, incidentally, are mainly owned by Clear Channel of San Antonio, whose vice chairman is Tom Hicks. Hicks is one of the administration's biggest supporters and the president's former partner

in the Texas Rangers baseball franchise. The same man who, in effect, “gave” the President, then Governor, \$15 million. Mr. Hicks is known for making shrewd investments.)

When people become too frightened to speak up and out, because they fear their name may go on some government list of suspicious persons, that’s censorship. When people become too frightened to oppose policies antithetical to democracy, they are being censored, just as surely as if books written by them were being burned. When people become concerned that what they read in libraries, or what magazines they subscribe to, or what Internet sites they frequent, may be used against them by an administration that has little regard for their civil liberties, then censorship is at work. I want to tell you a personal story.

Like many other patriotic Americans who admire what this nation once stood for, I opposed the war against Afghanistan. It isn’t important why I opposed it for the purposes of what I am going to relate. But it is important to realize that opposition to a controversial war can lead to the censorship of honest, open criticism of that war and the reasons that support that criticism.

In late 2001 or early 2002, a local newspaper published an op-ed piece written by a professor at a mid-western university, the name of which I no longer recall. In it, he launched a tirade against professors in American universities. He accused them of maintaining an across-the-board, monolithic posture in opposition to war against terrorists and opposing the defense of the United States. He said these professors were unpatriotic, a source of support for world-wide terrorism, and were part of a left wing intellectual conspiracy that dominated United States universities except, apparently, his own.

I decided to reply to this one-sided attack on all American university professors. I pointed out that he was not familiar with the countless professors I knew who supported the war, or were ambivalent about it. I also went on to argue that terrorism, practiced against the United States, had its roots in long-standing United States policies that were deeply resented in other parts of the world.

I talked about the United States’ role in supporting many dictators in various parts of the world, solely because they were “friendly” to the United States. I pointed out that we didn’t seem

to care that these despots persecuted, imprisoned, tortured, butchered and murdered thousands of their own citizens, so long as they supported our policies. I said I thought that this created a great deal of resentment toward the United States, not so much by the have nots, who generally are not that well-informed, but by the well-educated sons and daughters of the middle and upper classes. It is these groups, we now know, who are the foot soldiers of international terrorism.

I sent my reply to the editor of the newspaper. A few days later I received a call from one of the editors, who is a personal friend of mine. He said he had read my essay and thought it was well-reasoned and provided an important other dimension to the discussion. He said he had showed it to his managing editor, who agreed, and was ready to run it the following Sunday. Then he asked me a question that took me off guard. He asked if I had heard about the firestorm in Austin over a journalism professor who had written an article opposing the war and published it on the Internet. I told him I had not and asked what it was about.

When word of the UT professor's online comments were publicized, there was an immediate outcry from conservative community groups in Austin, and even from some within the university, who demanded that the university fire him for his unpatriotic remarks, his insensitivity to the families of those who died on 9/11, and his failure to support our troops and our foreign policy in Afghanistan. To its credit, the university ultimately did not fire him, but I am confident the furor created some very anxious moments for him.

My friend, with the best intentions and my interests at heart, suggested that as close as I was to retirement, I might want to carefully consider the possible repercussions of publishing my essay. He thought it probably wouldn't change many minds, might make some people even more angry, and might cause me a lot of personal and professional problems.

To my astonishment, I found myself thinking about what he said and asked him to let me consider it for a day or two. I didn't know at the time what the outcome of the protest against the UT professor was. I, myself, was coming up for post tenure review that year. And I was mindful of the numerous witch-hunts that have been conducted in American universities against professors with radical or liberal ideas.

During the Red Scare of the late 1940s and early 1950s, tenured professors known or suspected of being members of the Communist Party (which was not illegal) were fired because they were considered unfit to teach in United States institutions of higher education. The President of the University of Washington wrote a so-called scholarly article, published in Educational Forum in 1949, titled “Communists Should Not Teach in American Colleges.” In it he defended the firing of several tenured professors who were accused of being members of the Communist Party.

During this same period, the University of Texas required all its professors to sign so-called loyalty oaths, on penalty of being dismissed. What a farce. Would anyone who was disloyal admit to it? It is those who refused to sign on principle who suffered the consequences.

So I did think about it, and I decided not to publish the essay. Now some might say this was not censorship, but self-censorship. I could have gone ahead and published the essay and let the chips fall where they may. I since have regretted not doing so. But it seems to me that this is one of the worst forms of censorship because it is censorship by intimidation. You can judge for yourself.

### ***Misinformation–Disinformation***

There is a great deal of misinformation about the Patriot Act, some of it deliberate. The administration has informed the American people the act is necessary to protect them and provide them security. It also has informed them that they can trust the government not to infringe unnecessarily on their own civil liberties. They are told that those innocent of terrorist connections have no need for concern. Tell that to the thousands of innocents who have been interrogated and/or locked up for months before being released or deported, and to countless others we don't know about.

Further, we are told that failure to support the Patriot Act and its infringement on our civil liberties, and failure to support our troops fighting in foreign lands is unpatriotic. But what if the act itself is an assault on cherished civil liberties and personal freedom? And what if our troops are fighting an unjust war, fabricated by an administration concerned only with its own

perpetuation? What if what our government and our troops are doing is morally wrong? Didn't we condemn Nazi soldiers for carrying out the unjust orders of their superiors? We can support our troops, and should as fellow citizens, while not supporting the war they did not themselves start. Or can we, without fear of retribution?

Thomas Paine once wrote of patriotism that: "It is the responsibility of the patriot to protect his country from its government." This can only be accomplished when the government itself is not secretive and punitive, and when people are not afraid to speak. We presently have one of the most secretive and vengeful administrations in American history.

The Patriot Act does not, in specific terms, ban books. That is a function usually reserved for local school boards or overly zealous religious groups. But it may effectively ban them in a more subtle way. When the government, under the guise of making us more secure, begins tracking what we read or what web sites we look at so some "analyst" can determine if we are a security risk, most of us cannot avoid thinking twice about what we read, do, or say. That's censorship and can be as effective as banning books outright. When the government begins censoring its critics and locking up so-called security threats, we need to start worrying. That and the major provisions of the Patriot Act have all the trappings of a modern police state.

There are a few glimmering beacons of growing opposition to the Patriot Act. To date, 152 local governments and three states have passed resolutions condemning the act, with some vowing to refuse to follow it. This is a real role reversal in the United States. The Federal government customarily has been thought of as protecting individual liberties against state and local infringement. Now it's communities and states fighting against Federal oppression. Nonetheless, you just can't ignore the fact that 91% of registered voters don't understand what the Patriot Act is all about. How can we inform them more effectively? One way is by what the UTA Library is doing here today. I applaud it for its courage.

Needless to say, I don't advocate the violent overthrow of the United States government or the unlawful removal of the President. I believe in the democratic political process and the rule of law. And because of this I agree with former Attorney General Ramsey Clark, and many

others, that Mr. Bush, Mr. Cheney, Mr. Rumsfeld and Mr. Ashcroft all should be impeached. That is the democratic process at work. They have compromised the trust placed in them and endangered United States democracy. If they get another four years in office there may be no democracy left to defend.