

We the People

SUPERIOR COURT OF NEW JERSEY

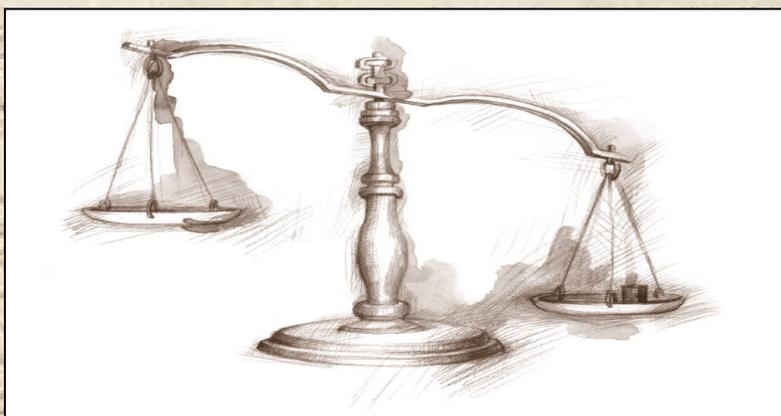


Law Day 2006

LIBERTY UNDER LAW:

SEPARATE BRANCHES,
BALANCED POWERS

Mock Trial Fact Pattern: Grades 7-12



Acknowledgments



The following individuals served on the
2006 Essex Vicinage Law Day Mock Trial Committee

The Honorable John C. Kennedy, J.S.C,
The Honorable Siobhan A. Teare, J.S.C., and
The Honorable Verna G. Leath, J.S.C,
Gerard V. Ross, Esq., teacher at Belleville High School

With the assistance of:
The members of their staff and the
2006 Law Day Planning Committee.

Table of Contents

Instructions For Teachers.....	Page 3
Instructions For Judges/Attorneys.....	Page 4
Introduction	Page 5
The Law.....	Page 6-7
The Facts.....	Page 8-9
Judges Instructions To Students Before Vote.....	Page 10
Glossary of Terms.....	Page 11-16

Instructions For Teachers

The Fact Pattern should be reviewed and discussed with your students prior to Law Day, Monday, May 1, 2006. The students should be familiar with the theme, **Liberty Under Law: Separate Branches, Balanced Powers.** Students should also be familiar with the Patriot Act and the facts of the case as outlined in the Fact Pattern. Particular attention should be paid to the Constitution and specifically to the idea of separation of powers and the 1st and 4th Amendments.

Teachers should select three to five students to prepare an oral argument in favor of the Patriot Act and three to five students to prepare an oral argument opposing the Patriot Act. Each group should select one representative who can articulate their group's argument.

On Law Day, two attorneys and a judge will visit your school. One attorney will be assisting the assigned student with the argument in favor of the Patriot Act and the other will be assisting the student arguing in opposition to the Patriot Act. The two student representatives will aid the visiting lawyers as co-counsel in presenting their arguments to the Judge and the remaining students.

Upon hearing oral arguments, the Judge will review the Patriot Act and the facts of the case with the remaining students. The judge along with the remaining students will then render a decision.

It is recommended that teachers contact their attorneys assigned to their school in advance of Law Day so they can meet with the assigned students in preparing their arguments.

Instructions For Judges / Attorneys

Students have received the fact pattern in advance. One group of students have prepared an oral argument in favor of the Patriot Act and another group have prepared an oral argument opposing the Patriot Act. Each group has selected a representative who will aid the visiting lawyers as co-counsel in presenting their arguments to the Judge and the remaining students.

On Law Day, a hearing for declaratory judgment and injunctive relief will be conducted by the visiting judge and attorneys. The Judge should initially review the facts of the case and the issue that is before the court. The Judge should also provide a brief description of what a declaratory judgment hearing is and the context in which this type of hearing takes place. The Judge should also review the 1st and 4th Amendments.

It is recommended that the Judge also distinguish between a Trial and an oral argument on a question of law. The judge should tell the students that if the factual record on which the oral argument is based is insufficient to support a ruling, the court may order the parties to present additional evidence.

Each attorney along with the assistance of the student representatives should make their arguments. The Judge along with the remaining students will then render a decision.

INTRODUCTION

“...Establish justice, insure domestic tranquility, provide for the common defence(sic)”. These principals are the foundation upon which this country was built and can be found in the pre-amble to the United States Constitution. Our country’s founding fathers thought it essential to create a government with a balance of power. Experience taught them that for the government to work properly, one person or group of people could not have all the power. To that end, a government of three separate branches, all having unique powers and each designed to limit the powers of the other, was created. The separation of powers devised by the framers of the Constitution was designed to do one primary thing: to prevent any branch of the new government from having too much power. The separation of powers provides a system of shared power known as [Checks and Balances](#).

The Constitution created three branches of government. **The Legislative**, composed of the House and Senate, is set up in [Article 1](#). **The Executive**, composed of the President, Vice-President, and various Departments and Agencies, such as the Department of Justice and the Federal Bureau of Investigation (FBI), is set up in [Article 2](#). **The Judicial**, composed of the federal courts and the Supreme Court, is set up in [Article 3](#). Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch.

The following are the powers of the Executive branch: *veto power over all bills; appointment of judges and other officials; make treaties; enforce federal law through the Department of Justice and the FBI; commander in chief of the military; pardon power.*

The following are the powers of the Legislative branch: *pass all federal laws; establishes all lower federal courts; can override a Presidential veto; can impeach the President or members of the federal judiciary; raise taxes and establish budgets.*

The following are the powers of the Judicial branch: *the power to try federal cases and interpret the laws of the nation in those cases; the power to declare any law or executive act unconstitutional.*

For example, the President appoints judges, but these appointments must be approved by the Senate. The Congress can pass a law, but the President can veto it. The Supreme Court can rule a law to be unconstitutional, but the Congress, with the States, can amend the Constitution. All of these checks and balances, however, are inefficient. They are inefficient by design, however, rather than by accident. By forcing the various branches to be accountable to the others, no one branch can usurp enough power to become dominant.

THE LAW

On Oct. 26 2001, just 45 days after the Sept. 11, 2001, attacks, Congress passed the Patriot Act which was designed to provide law enforcement with more efficient tools to detect and apprehend terrorists. The Patriot Act greatly expanded the power of the Executive Branch to require disclosure of and access to information and records about individuals and organizations, including telephone and internet usage records, in the interest of “national security.” Many people claim that the Executive’s expanded power to obtain private information about individuals and organizations without a search warrant or judicial review under the Fourth Amendment is unconstitutional. Others claim that the United States has been targeted by violent terrorists and that we must arm law enforcement with expanded power to thwart these new threats.

One of the most controversial provisions of the Patriot Act concerns the use of **National Security Letters** (“NSL’s”). **18 U.S.C. 2709** states that the FBI Director or the head of an FBI field office may require, among others, a telephone or internet service provider to divulge the names, addresses, usage records and billing information of users of telephone and internet services if the FBI “...certifies in writing...” that such records “...are relevant to an authorized investigation to protect against international terrorism or clandestine intelligent activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the United States Constitution ...”. The law adds that the telephone or internet service provider shall not disclose to any person that the FBI has sought or obtained access to such information or records.

The First Amendment to the Unites States Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridge the freedom or speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourth Amendment to the United States Constitution states:

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.

The Fourth Amendment has been interpreted to require the issuance of a warrant based upon probable cause to believe a crime is being committed or has been committed and that the person and place to be searched has evidence relevant thereto, before the executive branch may undertake a search of that person and place. A warrant is unnecessary, however, if the person to be searched can be said to have “no reasonable expectation of privacy” in the area or thing to be searched or if the executive has probable cause to search AND is faced with “exigent circumstances” requiring quick action which could not be taken if the executive had to await issuance of a warrant.

The Fourth Amendment has also been interpreted to allow various agencies within the Executive Branch to issue **administrative subpoenas** which are within the authority of the agency; not “too indefinite”, and seek information “reasonably relevant to a proper inquiry” of that agency. However, a subpoenaed party must be able to obtain judicial review of the reasonableness of the demand before he or she can be penalized for refusing to comply with such a subpoena.

The heart of the controversy over the Patriot Act is the issue of separation of powers. May the Legislature empower the Executive to conduct far-reaching investigations into records and information about individuals or groups in the name of “national security” without judicial review? Without a search warrant? Do such investigations impair First Amendment rights?

What follows is a hypothetical situation for your consideration testing the bounds of the Constitution’s separation of powers.

THE FACTS

On Jan. 15, 2006, Jefferson Toms, the CEO of United States Internet (USI), the country's largest internet service provider, received a National Security Letter (NSL) from the FBI. In the NSL the FBI demanded that USI turn over Internet usage records and the names of USI members that visited a particular web site. The web site was for a rock band called Arnold Benedict, a band with a growing popularity. The band's music plays on MTV and all major radio stations. Their first CD has sold over 1 million copies. The lyrics of most of the band's songs are very critical of the U.S. government and its policies and especially against the war in Iraq.

USI's attorneys have advised Mr. Toms that turning over any information to the FBI would violate their member's right to freedom of speech under the 1st Amendment and violate member's rights against warrantless searches under the 4th Amendment. The Fourth Amendment prohibits the Government from conducting "unreasonable searches and seizures" which generally means that any search and seizure must be performed pursuant to a valid warrant based upon probable cause. The Fourth Amendment does not prohibit warrantless searches based on probable cause if the Executive is faced with "exigent circumstances." Also, the Amendment does not proscribe Government Agencies from subpoenaing records provided the subpoena is within the authority of the issuing agency; fairly and definitely describes what is sought; and is reasonably relevant to a proper inquiry of the agency. In addition, the person or entity receiving the subpoena must have the right of access to the courts to challenge the subpoena before complying with it. In this case the attorneys for USI say that the FBI is just on a "fishing expedition" and has no proof that any USI member is a terrorist or in any way poses a threat to national security. USI further argues that the government is trying to intimidate the band to stop them from writing songs that attack the United States.

The FBI claims that an ongoing FBI investigation has revealed that an international terrorist group called the Fife and Drum Freedom Fighters uses the web site to identify people who share the same anti-American views and recruits these people to join the FDFFF. The FBI claims to have specific information about planned terrorist attacks involving the FDFFF, but refuse to give any details, as it might compromise their investigation. The attorneys for USI have vowed to fight the FBI and not turn over any information. The FBI has threatened to arrest Mr. Toms if he attempts to notify his members about the NSL. USI has filed a lawsuit asking the court to declare the Patriot Act

unconstitutional, as it violates the 1st and 4th Amendments of the Constitution, and not require USI to turn over any records.

ISSUE: Should the Executive branch of the Government be allowed to conduct searches under the Patriot Act to protect our country from terrorist attacks without a check of its power by the Judicial branch in the form of a probable cause hearing or right of access to the courts under the 4th Amendment? Does the Patriot Act violate the First Amendment?

Judge's Instructions To Students Before Student Vote

The issue for decision is whether the issuance of an National Security Letter (NSL) and the prohibition of disclosure under **18 U.S.C. 2709(c)** is unconstitutional as applied in this case such that enforcement of the NSL and the non-disclosure provision ought to be enjoined or prohibited pending resolution of the case on its merits. A preliminary injunction will not be issued unless the party seeking the injunction demonstrates irreparable injury if an injunction were not issued and a likelihood of success on the merits on the party's challenge to the law.

As to the First Amendment claim, the Patriot Act prohibits the recipient of an NSL from disclosing to anyone that the FBI has issued an NSL or sought information under the NSL. Such a prohibition can constitute a prior restraint on free speech under the First Amendment. Because of that, the Executive must demonstrate that such a restraint is justified by a compelling governmental interest and is narrowly tailored to support that interest. Here the Executive claims the compelling governmental interest is **[at this point, the judge should refer to the arguments, if any, that the students have prepared in advance]**. If the Government does not make such a showing, you may find that the Plaintiff (United States Internet) has suffered an irreparable injury.

As to the Fourth Amendment claim, the Executive Branch (FBI) must demonstrate that the NSL does not require the issuance of a search warrant because:

- 1) The records sought, having been publicly revealed on the internet, are not clothed with a "reasonable expectation of privacy" warranting Fourth Amendment protection or;
- 2) Disclosure is warranted by the presence of probable cause and exigent or emergent circumstances [define each briefly]; or
- 3) The NSL is not subject to the warrant requirement because it constitutes an administrative subpoena which is properly the subject of an FBI investigation and is narrowly tailored to a legitimate inquiry of the FBI. The Government must also show that the recipient had a right to seek judicial review of the subpoena before complying with it. *

May I have a show of hands by those who feel, after listening to the arguments, that the Court should enjoin the government from enforcing the NSL at this time.

May I have a show of hands of those who feel the Court should not issue an injunction?

[Note to Judges]

At the conclusion of the hearing and after the student vote, the judge and lawyers can conduct a Q & A with students. Judges should also question students about the rationale for their decisions.

After the hearing and initial ruling by the students, judges could introduce additional facts to see if students would change their minds. Facts such as the FDFP being linked to a plot to blow up the Statue of Liberty might sway students who ruled the Patriot Act unconstitutional, while students ruling in favor of the Patriot Act may wish to re-think their position if their cell phone conversations and text messages could be listened to and read.

* Question: If 2709(c) prohibits disclosure of the issuance of an NSL by the recipient, how can the recipient obtain judicial review without violating 2709(c)?

GLOSSARY OF TERMS

Administrative Subpoena: See page 6 of fact pattern.

Bill of Rights: The Bill of Rights, which is recognized as the first ten amendments to the Constitution, lists many rights of individuals. A bill of rights was not originally included in the Constitution. But the arguments of the people who supported a bill of rights eventually prevailed, and guarantees were added to the Constitution within a few years. It is also important to note that the Bill of Rights does not grant people the listed rights. The Bill of Rights simply guarantees that the government will not infringe upon those rights. It is assumed that the rights pre-exist. It is an important distinction.

Branches of Government: See *executive branch, legislative branch, judicial branch*.

Checks and Balances: See *separation of powers*.

Complaint: Papers filed with a court clerk by the plaintiff to initiate a lawsuit by setting out facts and legal claims. To complete the initial stage of a lawsuit, the plaintiff's complaint must be served on the [defendant](#), who then has the opportunity to respond by filing an [answer](#).

Constitution of the United States: Basically, the Constitution is the highest law in the United States. All other laws come from the Constitution in some way. The Constitution also provides a framework for the government of the United States. It creates things like the President, the Congress, and the Supreme Court. Each state has its own constitution that is the highest law for the state - but even then, the United States Constitution is higher. Over time, some things have been added to the Constitution. Called "amendments," these add-ons list some of the rights of the people. By listing these rights, they are made special, and it is illegal for the government to violate those rights. As of 2004, there are 27 amendments to the Constitution. Not all of them involve rights, but many do. The first ten amendments, in particular, have the special name of the Bill of Rights

Constitutional amendment: There are essentially two ways [spelled out](#) in the Constitution for how it can be amended. One has never been used.

The first method is for a bill to pass both halves of the legislature, by a two-thirds majority in each. Once the bill has passed both houses, it goes on to the states. This is the route taken by all current amendments. Because of some long outstanding amendments, such as [the 27th](#), Congress will normally put a time limit (typically seven years) for the bill to be approved as an amendment (for example, see the [21st](#) and [22nd](#)).

The second method prescribed is for a Constitutional Convention to be called by two-thirds of the legislatures of the States, and for that Convention to propose one or more amendments. These amendments are then sent to the states to be approved by three-fourths of the legislatures or conventions. This route has never been taken, and there is discussion in political science circles about just how such a convention would be convened, and what kind of changes it would bring about.

Regardless of which of the two proposal routes is taken, the amendment must be approved by three-fourths of states. The amendment as passed may specify whether the bill must be passed by the state legislatures or by a state convention. See the [Ratification Convention Page](#) for a discussion of the make up of a convention. Amendments are sent to the

legislatures of the states by default. Only one amendment, the [21st](#), specified a convention. In any case, passage by the legislature or convention is by simple majority.

Declaratory Judgment: A court decision in a [civil case](#) that tells the [parties](#) what their rights and responsibilities are, without awarding [damages](#) or ordering them to do anything. Unlike most court cases, where the [plaintiff](#) asks for damages or other court [orders](#), the plaintiff in a declaratory judgment case simply wants the court to resolve an uncertainty so that it can avoid serious legal trouble in the future. Courts are usually reluctant to hear declaratory judgment cases, preferring to wait until there has been a measurable loss. But especially in cases involving important constitutional rights, courts will step in to clarify the legal landscape. For example, many cities regulate the right to assemble by requiring permits to hold a parade. A disappointed applicant who thinks the decision-making process is unconstitutional might hold his parade anyway and challenge the [ordinance](#) after he's cited; or he might ask a court beforehand to rule on the constitutionality of the law. By going to court, the applicant may avoid a messy confrontation with the city -- and perhaps a citation, as well.

Defendant: The person against whom a lawsuit is [filed](#). In certain states, and in certain types of lawsuits, the defendant is called the [respondent](#). See also plaintiff.

Executive Branch: The duty of the Executive Branch is to enforce the laws of the United States. The branch is headed by the President. The Constitution sets out the qualifications for the President in [Article 2, Section 1](#):

- 35 years old or older
- Must be a native-born U.S. citizen
- Must have lived in the United States for fourteen years

Note that there is no restriction in terms of sex, race, class, social standing, or any other classification, for President or Vice President.

The other Constitutional members of the Executive are the Vice President, who, by virtue of the [12th Amendment](#) must have the exact same qualifications as the President in order to be VP; the Executive Departments (see [The Cabinet Topic](#) for details); the Military; various Agencies, Councils, Advisors, and Offices that work with and for the President; and Embassies, Missions, and Ambassadors to international organizations and foreign nations.

The President is restricted to two full elected terms in office by the [22nd Amendment](#). This is the only term limit in the Constitution. There is no restriction of term for the Vice President or any of the non-elected members of the Executive Branch. The longest serving President was Franklin Roosevelt, who, in a time of national emergency, overturned a traditional (but not legal) two-term limit first set by George Washington. Roosevelt was elected four times. The shortest serving President was William Harrison, who died after one month in office.

The President has several constitutional duties aside from the general "enforce the laws" duty. These are:

- To be Commander in Chief of the military
- To conduct foreign affairs
- To negotiate treaties with other nations
- To nominate members of the cabinet, judiciary, etc.

- To review and sign or veto bills
- To administer the laws of the nation
- To issue pardons as he sees fit
- To address the Congress from time to time to assess the state of the nation

See also judicial branch and legislative branch.

Exigent Circumstances: United States v. McConney, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984): “Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”

Exigent circumstances may make a warrantless search constitutional if probable cause exists. The existence of exigent circumstances is a mixed question of law and fact. United States v. Anderson, 154, F. 3d 1225 (10th Cir, 1998) cert. denied 119 s. Ct. 2048 (1991) (citations omitted). There is no absolute test for determining if exigent circumstances exist, but general factors have been identified. These include: clear evidence of probable cause; the seriousness of the offense and likelihood of destruction of evidence; limitations on the search to minimize the intrusion only to preventing destruction of evidence; and clear indications of exigency.

First Amendment to the Constitution: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a [redress](#) of grievances.

Fourth Amendment to the 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.

Injunctive relief: A situation in which a court grants an [order](#), called an injunction, telling a [party](#) to refrain from doing something--or in the case of a mandatory injunction, to carry out a particular action. Usually injunctive relief is granted only after a [hearing](#) at which both sides have an opportunity to present testimony and legal arguments

Judicial branch: The duty of the interpretation of the law rests in the Judiciary. The highest court in the United States, above all others, with the final say in the what laws are Constitutional and which aren't, is the Supreme Court.

There is actually very little said in the Constitution about the Supreme Court or any of the courts. [Article 3](#) is the shortest of the first three articles, and only the first two of the three sections have anything to do with the structure of the Judiciary. The Chief Justice is only mentioned in Article 2, concerning presidential impeachment. Judges have no Constitutionally mandated age, residency, or citizenship requirements.

Judges appointed to the bench under Article 3 courts serve their terms for as long as they wish, while in "good Behavior." Judges can be impeached by the Legislative branch.

Currently, there are nine justices of the Supreme Court. Since the Constitution does not specify the number, it has fluctuated, from as few as five to as many as ten. The Supreme Court is the highest appellate court, meaning that cases normally only come to the Court by way of appeal after appeal of the losing party. The Supreme Court does have original jurisdiction of a few types of cases, spelled out in [Section 2](#).

The Constitution also specifies that there will be courts inferior to the Supreme Court. These courts are federal in scope and are separate from similar court setups in each state. This dual-scope judicial system is quite uncommon through other governments in the world, but reflects the historical power of the states.

See also *executive branch* and *legislative branch*.

Legislative Branch: The duty of the Legislative Branch is to make the laws of the nation. It consists of two houses, the House of Representatives and the Senate. Members of either house are referred to as Congressmen, Congresswomen, or Congresspeople. Often, Congressperson is used as a synonym for Representative; this is not quite proper usage, however, as a Senator may properly be called a Congressperson, too.

The so-called Lower House is the House of Representatives, or simply the House. The House is made up of members called Representatives. The qualifications for House members are spelled out in [Article 1, Section 2](#):

- 25 years old or older
- Must have been a U.S. citizen for seven years
- Must live in the district he represents

Note that there is no restriction in terms of sex, race, class, social standing, or any other classification, for Representative.

Each state has a number of Representatives proportionate to the population of that state. Each state has at least one Representative, even if its population would not warrant one. The Constitution does not set a per-Representative ratio (except for the House's sessions up until the first census was taken), nor does it set a maximum limit to the number of Representatives. This number has been fixed by law, however, at 435. This number was set in 1911, and in current law, does not change even upon admission of new states (though the number can temporarily increase to accommodate new states until the next census). These 435 seats are divided among the states every ten years, following the Constitutionally-mandated decennial census. For details about how seats are apportioned, see the [U.S. Census Website](#).

If a Representative's seat becomes vacant for any reason, the governor of that state must provide for a new election to fill the seat. Representatives serve for two years at a time, with new elections coming every second November. The entire House can theoretically be replaced each election. Representatives are chosen by the people in a direct election.

The Constitution mandates that the House choose a Speaker for itself. The Speaker presides over the proceedings of the House and is the highest position in the House leadership. Other leadership positions are the Majority and Minority Leaders, and the Majority and Minority Whips. The Minority Leader would generally be the Speaker if his party were the majority. The whips act as an interface between the leadership and the rank-and-file members.

The Senate is the Upper House. Its members are called Senators. The qualifications for Senators are spelled out in [Article 1, Section 3](#):

- 30 years old or older
- Must have been a U.S. citizen for nine years
- Must live in the state he represents

Note that there is no restriction in terms of sex, race, class, social standing, or any other classification, for Senator.

Originally, Senators were appointed by the state legislatures. This method was chosen to allow the Senate to better offset the House, which the Framers felt would be impetuous, it being elected by the people. Senators are now chosen by the people in direct election; this provision was changed by the [17th Amendment](#).

Each state has two Senators, regardless of the size of the state. Currently, there are 100 Senators. A Senatorial term lasts six years; every second November, one third of the Senate comes up for reelection, leaving an experienced two-thirds in the Senate each time through the election cycle.

If a Senator's seat becomes vacant for any reason, the governor of that state must provide for a new election to fill the seat.

The Vice President of the United States is the President of the Senate. He is a non-voting member unless a vote of the Senate ends in a tie, in which case the Vice President casts the deciding vote. The Constitution understands that the Vice President will not always be available and provides for a President pro tempore (literally, a temporary president). Like the House, the Senate leadership also consists of Majority and Minority Leaders and Whips. In the Senate, the whips are officially known as the Assistant Leader.

See also *executive branch* and *judicial branch*.

National Security Letter (NSL): An administrative subpoena that can be used only in international counterterrorism or foreign counterintelligence investigations. An administrative subpoena allows the FBI to request documents or testimony without prior approval from a grand jury, court, or other judicial entity. NSLs cannot be used in criminal investigations unrelated to international terrorism or clandestine intelligence activities. (Definition provided by the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security).

Oral argument: A persuasive presentation of the law and facts of a case or particular issue within a [case](#) to the judge or [jury](#).

U.S.A. P.A.T.R.I.O.T. Act: The full title is the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Passed after the [September 11, 2001 attacks](#), the Act was formed in response to the terrorist attacks against the US, and dramatically expands the authority of U.S. law enforcement for the stated purpose of fighting [terrorist acts](#) in the United States and abroad. It is also used to detect and prosecute [other alleged potential crimes such as providing false information on terrorism](#). It was renewed on [March 2, 2006](#) with a vote of 89-11 in the Senate and on March 7 280-138 in the House. The renewal was signed into law by [President George W Bush](#) on [March 9, 2006](#). (Definition from wikipedia.com).

Plaintiff: The person, [corporation](#) or other legal entity that initiates a lawsuit. In certain states and for some types of lawsuits, the term [petitioner](#) is used instead of plaintiff. See also defendant.

Probable cause: The amount and quality of information police must have before they can arrest or search without a warrant or that a judge must have before she will sign a [search warrant](#) allowing the police to conduct a search or [arrest](#) a suspect. Reliable information must show that it's more likely than not that a [crime](#) has occurred and the suspect is involved.

Search warrant: An order signed by a judge that directs owners of private property to allow the police to enter and search for items named in the warrant. The judge won't issue the warrant unless she has been convinced that there is [probable cause](#) for the search -- that reliable evidence shows that it's more likely than not that a [crime](#) has occurred and that the items sought by the police are connected with it and will be found at the location named in the warrant. In limited situations the police may search without a warrant, but they cannot use what they find at trial if the defense can show that there was no probable cause for the search.

Separation of powers: The Separation of Powers devised by the framers of the Constitution was designed to do one primary thing: to prevent the majority from ruling with an iron fist. Based on their experience, the framers shied away from giving any branch of the new government too much power. The separation of powers provides a system of shared power known as [Checks and Balances](#).

Three branches are created in the Constitution. The Legislative, composed of the House and Senate, is set up in [Article 1](#). The Executive, composed of the President, Vice-President, and the Departments, is set up in [Article 2](#). The Judicial, composed of the federal courts and the Supreme Court, is set up in [Article 3](#).

Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch.

For example, the President appoints judges and departmental secretaries. But these appointments must be approved by the Senate. The Congress can pass a law, but the President can veto it. The Supreme Court can rule a law to be unconstitutional, but the Congress, with the States, can amend the Constitution.

All of these checks and balances, however, are inefficient. But that's by design rather than by accident. By forcing the various branches to be accountable to the others, no one branch can usurp enough power to become dominant.

The following are the powers of the Executive: veto power over all bills; appointment of judges and other officials; makes treaties; ensures all laws are carried out; commander in chief of the military; pardon power.

Warrantless search: *See search warrant.*

N.B. The definitions found in the glossary were taken from the following online sources, and other sources as noted.

Nolo Glossary

www.nolo.com

U.S. Constitution for Kids - Grades Eight through Twelve
www.usconstitution.net/constkids.html