

## **The Police State Enhancement Act of 2003**

**Bush Administration begins work on secretive sequel to the USA PATRIOT Act**

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Last Friday night, PBS's "Bill Moyers: Now" program aired a report on a leak, to a D.C. nonpartisan, public service journalism nonprofit called the Center for Public Integrity (CPI), of a closely held Justice Department secret: the draft language of proposed legislation that would update and sharply expand 2001's USA PATRIOT Act.

It is one of the most horrifying documents ever to come out of a city and a government numbed to horrifying documents. Every American should read it, and get angry. While it's still not a crime to do so.

The full, 120-page "not for circulation" text of the proposed Domestic Security Enhancement Act of 2003 (DSEA), dated January 9, 2003, is available online at the CPI website, or at Moyers' website. [local formats: HTML, text-only].

According to both CPI and the Moyers report, while existence of the draft was widely rumored in the capitol for months, even the heads of relevant Congressional committees had not seen details before CPI's publication of the whole draft. Only Vice President Cheney and Speaker of the House Dennis Hastert are known (through Moyers' scrutiny of the control sheets at the Office of Legislative Affairs) to have been sent advance copies of the draft. Staff members of the Senate Judiciary Committee had been told by the Justice Department, as recently as last week, that no such bill was in the works.

It's easy to understand why the Justice Department would want this legislation to have as little time for exposure to Congressional and public scrutiny as possible before it is rammed into law. Exposed to sunlight, this thing starts stinking in a hurry. Like the USA PATRIOT and the Homeland Security bills before it, the Domestic Security Enhancement Act of 2003 is packed, in virtually every paragraph, with repugnant and terrifying details that would have the Founding Fathers spinning in their graves. Among the lowlights:

- **The ability by the federal government to declare *individuals*, whether or not they are citizens, to be official enemies with whom the United States is at war.** Among other things, this extension of the logic of the War On Terror -- which made the absurdist leap of declaring the U.S. to be at war against terrorist groups rather than nation states or their militaries -- enables the U.S., using the logic already established in the precedent of declaring Jose Padilla and Yasser Esam Hamdi to be "enemy combatants," to hold *any* citizen indefinitely, without criminal charges, judicial review, or access to an attorney or any other outside party. All the government must do is declare that individual to be someone with whom the United States is (knowingly or not) at war.

As a side note, a whole section of new law also allows the government to strip American citizens of their citizenship, on the basis of engaging in any activity, *even if it is lawful*, if it is in support of a group the U.S. deems to be terrorist. This, again, also allows use on the new ex-citizen the same sort of kangaroo court proceedings now inflicted on non-citizens.

- **Expanding the definition of espionage or "enemy" activity to include otherwise lawful activity**, as well as activity that *knowingly or not* assists a foreign "power." And that power, of course, can now be a "terrorist cell" or even an individual. From section 102: *"Showing that the intelligence gathering violates the laws of the United States is both unnecessary and counterproductive."* Especially since searching the Internet at your local library is not, as of yet, otherwise illegal.
- **Prohibition of the publicizing of information on who the government "detains."** Not only will citizens and non-citizens alike be subjected to these perversions of justice, but any publicity given to them or their cases will now be illegal. FOIA requests will be denied, leaks will be crimes, and publication of that leaked information will also be criminal. This is essentially the legalization of secret arrests, no different in form or impact than Stalin's goons taking people away in the dead of night.
- **Creation of a DNA database of suspected "terrorists."** Because all persons detained by a federal agency would be included regardless of whether they have been convicted of any crime; because the barriers between individuals and terrorist groups and between foreign and domestic terrorists have been erased; and because there will be no outside check on this secret information; anyone and everyone could be included in this "terrorist" database.
- **Superseding all state-level bans on types of law enforcement surveillance activity.** This would, with one stroke, take out dozens of laws around the country which courageous local citizens fought for decades to implement in order to curb law enforcement abuses. Courts would also be limited in their ability to issue injunctions against such activities.
- **The creation of several new crimes eligible for the federal death penalty.** DSEA also vastly expands penalties for "terrorism"- and "espionage"-related offenses, and also *dramatically toughens criminal penalties for even routine immigration violations.*

There's more; much more. Read it yourself, and share copies with friends and with public officials and your local media outlets.

Any proposed legislation of this type is likely to undergo changes -- often worsening ones -- as it chugs through Congress. But what this draft makes clear is that the wide variety of Bush Administration assaults on civil liberties over the past 16 months have been part of a carefully crafted strategy, with each outrage -- once judicial challenges and public indignation dies away -- laying the groundwork, through precedent, for the next, more extreme measure.

The overall thrust of that strategy is to:

- broaden the definition of terrorist activity and crime;
- broaden the ability of law enforcement to investigate such activity, whether the activity is lawful or not;
- suspend due process and impose extreme penalties for persons suspected of such activity, short-circuit the entire U.S. Constitution and legal system by eliminating due process;
- increase the penalties for persons, with or without conviction or trial, that are imprisoned for such activity;
- and bar publication of information relating to these practices.

At no point in this sequence is the Bush/Ashcroft notion of legal process distinguishable from Hitler, Stalin, Mao, Saddam, or any other despot one cares to name. The only difference is the frequency of usage, and that's the next step: particularly given the bellicosity of Bush foreign policy, soon to be on display in Iraq and Palestine, future major terrorist crimes on American soil are a virtual certainty. Israel, a much smaller, much more militarized, and far more experienced country, cannot prevent them; there is no reason to expect the U.S. can, either.

When that happens, the public and political outrage will be the impetus that allows these sweeping measures to be implemented more broadly. The laws will already be on the books and found meritorious, more often than not, by 20 years of conservative court appointees.

In some dictatorships, people are simply taken out back and shot. Under the Police State Enhancement Act of 2003, people can be taken, and shot, but may have to wait a while before their bullet arrives because of all the paperwork involved. That will probably be the next bill: "The Terrorist Execution Paperwork Reduction Act of 2004."

All in all, the only individuals whose behavior is earning them the title of people officially at war with the United States -- and all it has stood for -- work in the Bush Administration itself. The Congressional Republicans, and Democrats, who might well support such legislation deserve to be deluged by public outcry. Tell them it's an affront to liberty and democracy. Tell them it's unpatriotic. Tell them the Domestic Surveillance Enhancement Act of 2003 is positively Un-American.

Call and tell them that if they pass this legislation, and then say something critical or vote the "wrong" way on some future day, it could just as easily be them who are taken out back and shot.

And hope your phone's not tapped.

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