

The following is mirrored from its source at: <http://www.fairfieldweekly.com/gbase/News/content?oid=oid:2870> and quotes the Feb 7th Center for Public Integrity article at <http://www.public-i.org/dtaweb/report.asp?ReportID=502&L1=10&L2=10&L3=0&L4=0&L5=0&Task=Print>

Son of the Patriot Act

We have to destroy this village to save it

by Charles Lewis and Adam Mayle

with followup by Robert Masterson

20 February 2003

Center for Public Integrity

and

Fairfield County Weekly

The Bush Administration is preparing a bold, comprehensive sequel to the USA Patriot Act passed in the wake of September 11, 2001, which will give the government broad, sweeping new powers to increase domestic intelligence-gathering, surveillance and law enforcement prerogatives, and simultaneously decrease judicial review and public access to information.

The Center for Public Integrity has obtained a draft, dated January 9, 2003, of this previously undisclosed legislation and is making it available in full text [formats: PDF, HTML, text-only].

The bill, drafted by the staff of Attorney General John Ashcroft and entitled the Domestic Security Enhancement Act of 2003, has not been officially released by the Department of Justice, although rumors of its development have circulated around the Capitol for the last few months under the name of "the Patriot Act II" in legislative parlance.

"We haven't heard anything from the Justice Department on updating the Patriot Act," House Judiciary Committee spokesman Jeff Lungren told the Center. "They haven't shared their thoughts on that. Obviously, we'd be interested, but we haven't heard anything at this point."

Senior members of the Senate Judiciary Committee minority staff have inquired about Patriot II for months and have been told as recently as this week that there is no such legislation being planned.

Mark Corallo, deputy director of Justice's Office of Public Affairs, told the Center his office was unaware of the draft. "I have heard people talking about revising the Patriot Act, we are looking to work on things the way we would do with any law," he said. "We may work to make modifications to protect Americans," he added. When told that the Center had a copy of the draft legislation, he said, "This is all news to me. I have never heard of this."

After the Center posted this story, Barbara Comstock, director of public affairs for the Justice Dept., released a statement saying that, "Department staff have not presented any final proposals to either the Attorney General or the White House. It would be premature to speculate on any future decisions, particularly ideas or proposals that are still being discussed at staff levels."

An Office of Legislative Affairs "control sheet" that was obtained by the PBS program "Now With Bill Moyers" seems to indicate that a copy of the bill was sent to Speaker of the House Dennis Hastert and Vice President Richard Cheney on Jan. 10, 2003. "Attached for your review and comment is a draft legislative proposal entitled the ' Domestic Security Enhancement Act of 2003,'" the memo, sent from "OLP" or Office of Legal Policy, says.

Comstock later told the Center that the draft "is an early discussion draft and it has not been sent to either the Vice President or the Speaker of the House."

Dr. David Cole, Georgetown University Law professor and author of *Terrorism and the Constitution*, reviewed the draft legislation at the request of the Center, and said that the legislation "raises a lot of serious concerns. It's troubling that they have gotten this far along and they've been telling people there is nothing in the works." This proposed law, he added, "would radically expand law enforcement and intelligence gathering authorities, reduce or eliminate judicial oversight over surveillance, authorize secret arrests, create a DNA database based on unchecked executive 'suspicion,' create new death penalties, and even seek to take American citizenship away from persons who belong to or support disfavored political groups."

Some of the key provision of the Domestic Security Enhancement Act of 2003 include:

- **Section 201 , "Prohibition of Disclosure of Terrorism Investigation Detainee Information":** Safeguarding the dissemination of information related to national security has been a hallmark of Ashcroft's first two years in office, and the Domestic Security Enhancement Act of 2003 follows in the footsteps of his October 2001 directive to carefully consider such interest when granting Freedom of Information Act [FOIA] requests. While the October memo simply encouraged FOIA officers to take national security, "protecting sensitive business information and, not least, preserving personal privacy" into account while deciding on requests, the proposed legislation would enhance the department's ability to deny releasing material on suspected terrorists in government custody through FOIA.
- **Section 202, "Distribution of 'Worst Case Scenario' Information":** This would introduce new FOIA restrictions with regard to the Environmental Protection Agency. As provided for in the Clean Air Act, the EPA requires that private companies using potentially dangerous chemicals must produce a "worst case scenario" report detailing the effect that the release of these controlled substances would have on the surrounding community. Section 202 of this Act would, however, restrict FOIA requests to these reports, which the bill's drafters refer to as "a roadmap for terrorists." By reducing public access to "read-only" methods for only those persons "who live and work in the geographical area likely to be affected by a worst-case scenario," this subtitle would obfuscate an established level of transparency between private industry and the public.
- **Section 301-306, "Terrorist Identification Database":** These sections would authorize creation of a DNA database on "suspected terrorists," expansively defined to include association with suspected terrorist groups, and noncitizens suspected of certain crimes or of having supported any group designated as terrorist.

- **Section 312, "Appropriate Remedies with Respect to Law Enforcement Surveillance Activities":** This section would terminate all state law enforcement consent decrees before Sept. 11, 2001, not related to racial profiling or other civil rights violations, that limit such agencies from gathering information about individuals and organizations. The authors of this statute claim that these consent orders, which were passed as a result of police spying abuses, could impede current terrorism investigations. It would also place substantial restrictions on future court injunctions.
- **Section 405, "Presumption for Pretrial Detention in Cases Involving Terrorism":** While many people charged with drug offenses punishable by prison terms of 10 years or more are held before their trial without bail, this provision would create a comparable statute for those suspected of terrorist activity. The reasons for presumptively holding suspected terrorists before trial, the Justice Department summary memo states, are clear. "This presumption is warranted because of the unparalleled magnitude of the danger to the United States and its people posed by acts of terrorism, and because terrorism is typically engaged in by groups -- many with international connections -- that are often in a position to help their members flee or go into hiding."
- **Section 501, "Expatriation of Terrorists":** This provision, the drafters say, would establish that an American citizen could be expatriated "if, with the intent to relinquish his nationality, he becomes a member of, or provides material support to, a group that the United States has designated as a 'terrorist organization'." But whereas a citizen formerly had to state his intent to relinquish his citizenship, the new law affirms that his intent can be "inferred from conduct." Thus, engaging in the lawful activities of a group designated as a "terrorist organization" by the Attorney General could be presumptive grounds for expatriation.

The Domestic Security Enhancement Act is the latest development in an 18-month trend in which the Bush Administration has sought expanded powers and responsibilities for law enforcement bodies to help counter the threat of terrorism.

The USA Patriot Act, signed into law by President Bush on Oct. 26, 2001, gave law enforcement officials broader authority to conduct electronic surveillance and wiretaps, and gives the president the authority, when the nation is under attack, to confiscate any property within U.S. jurisdiction of anyone believed to be engaging in such attacks. The measure also tightened oversight of financial activities to prevent money laundering and diminish bank secrecy in an effort to disrupt terrorist finances.

It also changed provisions of Foreign Intelligence Surveillance Act [FISA], which was passed in 1978 during the Cold War. FISA established a different standard of government oversight and judicial review for "foreign intelligence" surveillance than that applied to traditional domestic law enforcement surveillance.

The USA Patriot Act allowed the Federal Bureau of Investigation to share information gathered in terrorism investigations under the "foreign intelligence" standard with local law enforcement agencies, in essence nullifying the higher standard of oversight that applied to domestic investigations. The USA Patriot Act also amended FISA to permit surveillance under the less rigorous standard whenever "foreign intelligence" was a "significant purpose" rather than the "primary purpose" of an investigation.

The draft legislation goes further in that direction. "In the [USA Patriot Act] we have to break down the wall of foreign intelligence and law enforcement," Cole said. "Now they want to break down the wall between international terrorism and domestic terrorism."

In an Oct. 9, 2002, hearing of the Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information, Deputy Assistant Attorney General Alice Fisher testified that Justice had been, "looking at potential proposals on following up on the PATRIOT Act for new tools and we have also been working with different agencies within the government and they are still studying that and hopefully we will continue to work with this committee in the future on new tools that we believe are necessary in the war on terrorism."

Asked by Sen. Russ Feingold (D-Wis.) whether she could inform the committee of what specific areas Justice was looking at, Fisher replied, "At this point I can't, I'm sorry. They're studying a lot of different ideas and a lot of different tools that follow up on information sharing and other aspects."

Assistant Attorney General for Legal Policy Viet Dinh, who was the principal author of the first Patriot Act, told *Legal Times* last October that there was "an ongoing process to continue evaluating and re-evaluating authorities we have with respect to counterterrorism," but declined to say whether a new bill was forthcoming.

Former FBI Director William Sessions, who urged caution while Congress considered the USA Patriot Act, did not want to enter the fray concerning a possible successor bill. "I hate to jump into it, because it's a very delicate thing," Sessions told the Center, without acknowledging whether he knew of any proposed additions or revisions to the additional Patriot bill.

When the first bill was nearing passage in the Congress in late 2001, however, Sessions told Internet site *NewsMax.Com* that the balance between civil liberties and sufficient intelligence gathering was a difficult one. "First of all, the Attorney General has to justify fully what he's asking for," Sessions, who served presidents Reagan and George H.W. Bush as FBI Director from 1987 until 1993, said at the time. "We need to be sure that we provide an effective means to deal with criminality." At the same time, he said, "we need to be sure that we are mindful of the Constitution, mindful of privacy considerations, but also meet the technological needs we have" to gather intelligence.

Cole found it disturbing that there have been no consultations with Congress on the draft legislation. "It raises a lot of serious concerns and is troubling as a generic matter that they have gotten this far along and tell people that there is nothing in the works. What that suggests is that they're waiting for a propitious time to introduce it, which might well be when a war is begun. At that time there would be less opportunity for discussion and they'll have a much stronger hand in saying that they need these right away."

But Is It News?

Following the revelations presented by Charles Lewis and Adam Mayle, there has been a remarkable dearth of reporting on the draft proposal for the Domestic Security Enhancement Act in the mainstream media.

As of this writing and while the television networks, cable news programs and print media have featured in-depth coverage of this year's Academy Award nominations and the recent

blizzard, there has been relatively little coverage of this new assault on Americans' basic freedoms.

A quick, informal survey of people not associated with either politics or the news media indicated that few Americans are aware of these new encroachments on their civil liberties.

On Feb. 8, the nation's "paper of record," *The New York Times*, published a brief news story (500 words) describing critical reaction to the Domestic Security Enhancement Act while all but ignoring the act itself. On Feb. 12, however, that paper devoted a quarter page to the story, "Polish Tale of Bribery and/or Politics and/or Journalism" with the subhead "Poland's top newspaper delayed a big story. Why?"

Why, indeed. Apparently, *Times* prefers to point fingers at a formerly communist country's press rather than fulfill its own obligations here at home. While the Internet and alternative news sources buzzed with Domestic Security Enhancement Act news, mainstream news sources have remained mute on the issue and its repercussions for ordinary citizens and dissidents alike.

If a tree falls in the forest and no one is there, does it make a sound? The answer, of course, is "no" for the simple fact that sound is a human perception, an interpretation of excitement in the atmosphere. Without ears present, nothing is perceived as sound.

The same can be said for this new effort to curtail the messy freedoms and rights that have made this country such a difficult place for any single person or group to govern. Those same freedoms, the only real protection this nation has against losing its democracy, are in serious danger of being felled within a vacuum of media silence and the public's lack of information.

Beyond the danger and arrogance behind the Domestic Security Enhancement Act lies the passive complicity of the American press, which feeds the citizens dependent upon it for crucial knowledge a steady diet of sensationalism and diet tips. These stories all have merit, interest and importance, but only in a context secondary to crucial news. The press is supposed to be the country's ears in the forest. Now, when trees are falling all around us, we can only wonder why it doesn't seem to hear the sound of democracy crashing down.

-Robert Masterson

Copyright © 2003 The Center for Public Integrity
Copyright © 2003 New Mass Media
Reprinted for Fair Use Only.