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LEGISLATIVE FOCUS

PATRIOT Act

by Mary Ellen Tsekos*

Since the September 11, 2001, attacks on the World Trade Center and the Pentagon, Congress has considered various pieces of legislation that would significantly expand the capacity of law enforcement to eliminate terrorist threats within the United States. The bill that President Bush signed into law on October 26, 2001, is called the Provide Appropriate Tools Required to Intercept and Obstruct Terrorism Act, or the PATRIOT Act. John Conyers, Jr. (D-MI) and F. James Sensenbrenner, Jr. (R-WI) introduced the bill in the House of Representatives. Although the final version of the bill limits law enforcement's new powers more than the administration originally requested, it continues to pose serious threats to the protection of civil liberties. The PATRIOT Act expands law enforcement personnel's authority in the areas of electronic intelligence gathering, foreign intelligence surveillance, detention and removal of aliens engaging in terrorist activity, substantive criminal law and criminal procedure, financial infrastructure, and general emergency authorization.

The issue of expanded electronic intelligence gathering received the most media coverage. Under the PATRIOT Act, law enforcement personnel are able to obtain warrants to wiretap the phones of a specific suspect rather than simply wiretapping a particular phone, which was the legal standard prior to the enactment of the PATRIOT Act. This element of the Act eliminates the need to obtain new warrants every time a suspect changes phones. Thus, if law enforcement officials can prove a legitimate concern about an individual's activities, they can acquire a virtually open-ended warrant to monitor that individual. Additionally, the PATRIOT Act allows law enforcement officials to track e-mail communications in the same way they monitor telephone conversations. Accordingly, law enforcement officials will have the authority to access the e-mail addresses of any suspect and check that suspect's e-mail without a search warrant.

In the area of foreign intelligence surveillance, the PATRIOT Act loosens standards for obtaining orders to engage in electronic surveillance of suspects overseas. Before passage of the PATRIOT Act, law enforcement officials seeking to obtain an order to electronically monitor a suspected terrorist overseas had to demonstrate that the collection of foreign intelligence information was the "sole or primary purpose" of the investigation. Under the new law, the collection of foreign intelligence information only needs to be "a significant purpose" of the investigation. Originally, Attorney General John Ashcroft requested an even looser standard, which required that the collection of foreign intelligence information need only be "a purpose" of the investigation.

The new law also dramatically expands law enforcement officials' authority to detain individuals suspected of conducting terrorist activity. Previously, when law enforcement officials suspected individuals of engaging in terrorism, they could detain suspects for only 48 hours without bringing charges against them. Under the PATRIOT Act officials can detain suspects for up to seven days without charging suspects with a crime. Attorney General Ashcroft originally requested

that law enforcement officials be able to detain individuals indefinitely without formal charges.

The extended time frame for detention without being charged is significant in light of the increasing use of Secretary of State Colin Powell's list of organizations and individuals considered to be terrorist or related to terrorist organizations. Secretary of State Powell created this list with virtually no oversight. Under the PATRIOT Act, the secretary of state has sole authority to add individuals and organizations to the list of suspected terrorists. The secretary of state is required to inform the speaker of the House of Representatives, the House minority leader, the president pro temp, the Senate majority leader, members of the relevant congressional committees, and the secretary of the Treasury Department seven days before publishing any additions in the *Federal Register*.

On September 24, 2001, President Bush announced Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism. Pursuant to this Executive Order, once an organization or individual is placed on the secretary of state's list, anyone associated with that individual in any way is potentially

subject to liability. Although it may not be immediately apparent how this provision could affect the general public, the Washington, D.C.-based law firm Arent Fox published a memorandum on October 1 explaining to their clients how they might be affected. The firm emphasized that compliance with the Executive Order "... would prove to be challenging" to their clients. They advised their clients to "... review their existing policies and procedures to ensure that they are taking due care to avoid transacting business with an individual or entity that appears on the various blocked persons lists applicable to a particular transaction." The Arent Fox memorandum noted the financial, transportation, telecommunications, and hospitality industries would be particularly affected because of the number of international transactions each industry handles in a given day.

The differences between the bill that Representatives Conyers and Sensenbrenner introduced and the version that President Bush signed into law indicate that Congress significantly altered the PATRIOT Act. Notably, Congress added a clause requiring that the provisions regarding electronic surveillance expire automatically in four years, unless renewed. The bill nonetheless contains provisions that do not expire. In the wake of the September 11th attacks, the country is grappling with ensuing events and endeavoring to develop effective means to protect Americans. It is critical that the government strike a delicate balance between maintaining citizens' physical safety and civil liberties. As Executive Director of Human Rights Watch Kenneth Roth observed, "[a]s the U.S. defends itself from terrorism it must also strengthen its defense of the freedoms that are the hallmark of the country." ☐

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