

Since 9/11, laws and executive orders threaten civil liberties*

by B.J. Weatherby

The USA PATRIOTS ACT** of 2001, passed in response to terrorist attacks of 9/11/01, already narrows civil liberties. The law “contains provisions on diverse topics such as: money laundering and bank reporting, domestic surveillance procedures, entry–exit procedures and immigration provisions, foreign student monitoring programs, information sharing between federal and local/state law enforcement and within agencies of the federal government, and definitions of new crimes involving terrorism and terrorist organizations” (FCNL).

Even worse, “after passage of the USA PATRIOT Act, the Bush Administration issued numerous other orders enhancing its powers to wage the ‘war on terrorism’ with disregard for legislative or judicial oversight.”

Now, the Justice Department is secretly drafting new legislation that “threatens to fundamentally alter the Constitutional protections that allow us to be both safe and free,” said Timothy H. Edgar, an ACLU legislative counsel. Although the administration denies its existence, the new “anti–terrorism” bill—the Domestic Security Enhancement Act of 2003—severely limits checks and balances on presidential power and contains multiple provisions that further erode civil liberties. Through sweeping law enforcement and intelligence gathering powers, it will encourage police spying on political and religious activities; it will allow government wiretapping without court permission; it will expand the death penalty under an overbroad definition of terrorism.

The ACLU has pointed out that, if signed into law, some troublesome provisions would:

- Permit, “without court order and at the sole discretion of the Attorney General, wiretapping of Americans for 15 days without a declaration of war by Congress, if the Executive Branch decides unilaterally that an attack has created an emergency. While the Justice Department would have to check in with a judge after the 15 days, the information gleaned during that period could still be retained and used against innocent Americans...” (sections 101,102 and 107).
- Shelter from prosecution federal agents who were engaged in illegal surveillance without a court order, if they were following orders of high Executive Branch officials (section 106).
- “Authorize, in statute, the Justice Department’s campaign of secret detentions, by including a provision that would preempt federal litigation challenging nondisclosure of basic information about detainees (section 201).
- “Threaten public health by severely restricting access to crucial information about environmental health risks posed by facilities that use dangerous chemicals (section 202).
- “Harm Americans’ [chance to receive] ... a fair trial by limiting

defense attorneys’ ... [ability to challenge] the use of secret evidence (section 204).

- “Reduce the ability of grand jury witnesses in terrorism investigations to defend themselves against public accusations by gagging them from discussing their testimony with the media or the general public (section 206).
- “Allow for the sampling and cataloguing of innocent Americans’ genetic information without court order and without consent (sections 301-306).
- “Permit, without any connection to anti–terrorism efforts, sensitive personal information about U.S. citizens to be shared with local and state law enforcement (section 311).
- “Undercut trust between police departments and immigrant communities by opening sensitive visa files to local police for the enforcement of complex immigration laws (section 311).
- “Terminate court–approved limits on police spying, which were initially put in place to prevent McCarthy–style law enforcement persecution based on political or religious affiliation (section 312).
- “Provide an incentive for neighbor to spy on neighbor and pose problems similar to those inherent in attorney General Ashcroft’s ‘Operation TIPS’ by granting blanket immunity to businesses that phone in false terrorism tips, even if their actions are taken with reckless disregard for the truth (section 313).
- “Further criminalize association—without any intent to commit acts of terrorism—with unpopular organizations labeled as terrorist by our government (section 402).
- “Under the pretext of fighting terrorism, unfairly target undocumented workers with extended jail terms for common immigration offenses (section 502).
- “Provide for summary deportations without evidence of crime or criminal intent, even of lawful permanent residents, whom the Attorney General says are a threat to national security (section 503).
- “Abolish fair hearings for lawful permanent residents convicted of criminal offenses through an ‘expedited removal’ procedure, and prevent any court from questioning the government’s unlawful actions by explicitly exempting these cases from habeas corpus. *Congress has not exempted any person from habeas corpus—a protection guaranteed by the Constitution—since the Civil War* (section 504).” [Emphasis mine.]

Feel safer? For me, less judicial oversight and less congressional oversight of Administration actions, fewer public hearings, and increased use of “emergency” legislation are issues of great concern. This draft legislation hasn’t made it to Congress yet. But my view is that we should do all we can to prevent its passage.

* This material comes from an ACLU document taken from its website. For more information, go to <http://www.aclu.org/news/NewsPrint.cfm?ID=11817&c=206>. A brochure prepared by the Friends Committee on National Legislation has also been quoted. It is called “Taking Freedom for Granted? Questions and Answers about the USA PATRIOT Act.” FCNL’S address and website are: 245 Second St., NE, Washington, DC 20002; www.fcnl.org.

** The name of this law is an acronym: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.