



How the Anti-Terrorism Bill Puts CIA Back in the Business of Spying on Americans

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The final version of the anti-terrorism legislation, the *Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism* (H.R. 3162, the "USA PATRIOT Act,") puts the Central Intelligence Agency back in the business of spying on Americans. It permits a vast array of information gathering on U.S. citizens from school records, financial transactions*, Internet activity, telephone conversations, information gleaned from grand jury proceedings and criminal investigations to be shared with the CIA (and other non-law enforcement officials) even if it pertains to Americans. The information would be shared without a court order. The bill also gives the Director of the Central Intelligence Agency, acting in his capacity as head of the Intelligence Community, enormous power to manage the collection and dissemination of intelligence information gathered in the U.S. This new authority supercedes existing guidelines issued to protect Americans from unwarranted surveillance by U.S. agencies such as the FBI.

To Appreciate the Dangers of the USA PATRIOT Act, We Should Take a Moment to Revisit One of the Shameful Chapters in Recent History that Led to Restrictions on the CIA.

Until the mid-1970's, both the CIA and the National Security Agency ("NSA") illegally investigated Americans. Despite the statutory provision in its charter prohibiting the CIA from engaging in law enforcement or internal security functions (50 U.S.C. 403-3(d)(1)), the CIA spied on as many as seven thousand Americans in Operation CHAOS. This operation in the 1960's and early 1970's involved spying on people who opposed the war in Vietnam, or who were student activists or were so-called black nationalists. Operation CHAOS involved an extensive program of information sharing from the FBI and other agencies to the CIA. The CIA received all of the FBI's reports on the American peace movement, which numbered over 1,000/month by June of 1970, according to a Senate report issued by the Senate Select Committee to Study Governmental Operations With Respect To Intelligence Activities ("Church Committee Report"). The Church Committee Report revealed how simple passive information sharing from other agencies to the CIA became authorized spying and data collection on lawful American political activity protected by the First Amendment. Once CIA officials expressed interest in particular types of information on American individuals and groups, other federal and local agencies were persuaded to covertly spy on citizens at the CIA's behest. The Church Committee reported:

The mechanics of the CHAOS operation, both in performing the mission undertaken by the CIA and in servicing the FBI's needs, involved the establishment of files and retention of information on thousands of Americans.

To the extent that [the] information related to domestic activity, its maintenance by the CIA, although perhaps not itself the performance of an internal security function, is a step toward the dangers of a domestic secret police against which the prohibition of the charter sought to guard.

After these abuses were exposed, the CIA's domestic surveillance activities and collection of information about Americans were greatly curtailed. For example, the Foreign Intelligence Surveillance Act made it clear that the Department of Justice would have the leading role in gathering foreign intelligence in the United States. The USA PATRIOT Act would tear down these safeguards and once again permit the CIA to create dossiers on constitutionally protected activities of Americans and eliminate judicial review of such practices.

Sharing Information Developed in Criminal Proceedings about Americans with the CIA.

The "USA PATRIOT Act" permits the wide sharing of sensitive information gathered in criminal investigations by law enforcement agencies with intelligence agencies including the CIA and the NSA, and other federal agencies including the INS, Secret Service, and Department of Defense.

For example, Section 203(a) of the bill would permit law enforcement agents to provide to the CIA foreign intelligence and counterintelligence information revealed to a grand jury. No court order would be required. In authorizing this flow of sensitive information, Section 203(a) would re-define "foreign intelligence information" for purposes of this section to permit more liberal sharing of information about U.S. persons - citizens and lawful permanent residents of the United States.

As a result, the foreign intelligence information about Americans that could be shared with the CIA need not be information that is necessary to protect against attacks, or is necessary to the national defense or security of the United States. This "necessity" requirement of the Foreign Intelligence Surveillance Act effectively operates to protect Americans from unwarranted surveillance for "intelligence" as opposed to criminal purposes. This requirement is eviscerated under the information sharing provisions of the USA PATRIOT Act. In addition, the sharing of grand jury information authorized by Section 203(a) is not limited to information about the person being investigated. Thus, a witness called before the grand jury to provide evidence against the person being investigated, or about others, might be less forthcoming if it is known that the supposedly secret information could be shared with the CIA.

Section 203(b) would permit law enforcement officers to share with the CIA intercepts of telephone and Internet conversations. No court order would be necessary to authorize the sharing of this sensitive information. This section also broadens the definition of foreign intelligence information to include more information about Americans. It includes no meaningful restrictions on subsequent use of the recorded conversations. For example, there is nothing in the bill that prevents this information from being used to screen candidates who apply for government jobs. Also, Section 203(b) does not prohibit the CIA from sharing with foreign governments surveillance information gleaned from a criminal investigation, even if sharing that information that could put at risk members of a person's family who live abroad.

Section 203(d) broadly permits the sharing of any foreign intelligence or counterintelligence information obtained as part of a criminal investigation to be disclosed to the CIA and other intelligence, defense and immigration authorities. No court order would be required, and for purposes of this information sharing, "foreign intelligence information" would be re-defined to permit more sharing of information about Americans. Section 905 of the bill mandates disclosure to the CIA of foreign intelligence information obtained in connection with a criminal investigation, but this section does not re-define "foreign intelligence information." These proposals represent extraordinary extensions of the current authorities of the foreign intelligence agencies, including the CIA, to obtain information about Americans.

While some sharing of information may be appropriate in some limited circumstances, it should only be done with strict safeguards. These safeguards include protecting information about U.S. persons from disclosure to the CIA, requiring court approval for disclosure, limiting disclosure to foreign intelligence information as defined in the Foreign Intelligence Surveillance Act, limiting disclosure to foreign governments, and requiring that disclosed information be marked to indicate how it was obtained and how it can and cannot be used or disseminated. The bill lacks all of these safeguards. As a result it may lead to the very abuses that the Church Committee exposed decades ago.

Empowering the Director of Central Intelligence To Manage Domestic Intelligence Gathering.

Section 901 of the USA PATRIOT Act would empower the Director of the Central Intelligence Agency ("DCI"), to establish the priorities for the collection and dissemination of intelligence information gathered in the U.S. He would exercise this power while acting in his capacity as head of the intelligence community. The Attorney General currently performs this function.

Though this provision includes language purporting to prohibit the DCI from directing or undertaking electronic surveillance operations, it includes no similar prohibition relating to physical searches for intelligence purposes. More importantly, Section 901 appears to contemplate that the DCI would be empowered to identify to the Department of Justice and to the FBI potential targets of intelligence surveillance in the United States, including particular people and groups to be surveilled. Such a power would be inherent to the ability to "establish requirements and priorities" for the collection of foreign intelligence information under the Foreign Intelligence Surveillance Act.

It amounts to a rather clear case of giving the CIA an enhanced role in domestic intelligence gathering - including the gathering of intelligence about United States citizens - in the U.S. It also runs directly contrary to the statutory prohibition in the CIA's charter barring it from engaging in internal security functions (50 U.S.C. 403-3(d)(1)).

*For more information on how the USA PATRIOT Act permits the seizure of confidential student records and personal financial information, See ACLU Fact Sheets entitled: "[How the Anti-Terrorism Bill Puts Student Privacy at Risk](#)" and "[How the Anti-Terrorism Bill Puts Financial Privacy at Risk](#)".

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