



Trading Freedom for Security

“They that can give up essential liberty to obtain a little temporary safety,” observed Benjamin Franklin, “deserve neither liberty nor safety.” The harsh verdict of history sustains the bitter truth of Dr. Franklin’s observation. Those who give up essential liberty to obtain a little temporary safety end up trading freedom for security. The present moment calls for sober reflection on that grim warning. Are we giving up essential liberties in the war on terror for the promise of safety? In the name of security are we concentrating and institutionalizing power in such ways that we are inviting terror far beyond what any terrorist group could ever hope to inflict on us?

Recall that throughout history — and particularly in the past century — governments have been by far the primary and most lethal instruments of terror. Lenin, Hitler, Stalin, Mao, Pol Pot, Saddam Hussein, and their fellow dictators have proven the most efficient terrorists. Wielding unbridled power, they have turned the state into an instrument of terror, death, and destruction. In our stampede to safety after the 9-11 attacks, have we been rushing headlong into a deadly trap?

We have already allowed an incredible and unprecedented concentration of power, threatening to destroy all constitutional protections. The new Department of Homeland Security and the USA Patriot Act represent an enormous restructuring and centralizing of power. These radical innovations’ full impact has not even begun to be told. Yet each day brings word of new proposals calling for the federal government to usurp more power, and for the states and the people to surrender more of their rights, freedoms, and responsibilities. Projecting the lines of trajectory from current trends, we could soon be living in an Orwellian police state

Patriot Act II

Over the past few months, a staggering array of truly alarming programs, policies, and legislative proposals has come to light: conducting searches without warrants; military tribunals for U.S. citizens; dispensing with habeas corpus; increased wiretapping and electronic eavesdropping; video surveillance; see-through-clothing x-ray machines; “data mining” of financial transactions and virtually all electronic databases; national identification cards; and biometric identification. Some of these schemes have been scuttled (temporarily) by exposure; others have been adopted or await legislative action.

One of the most frightening proposals to be leaked to the public is a piece of draft legislation crafted by activists at the U.S. Justice Department. Officially entitled the Domestic Security Enhancement Act of 2003 (DSEA), the legislation has been dubbed “Patriot Act II” by opponents, since it appears to be a follow-up punch to the USA Patriot Act of 2001, passed in the wake of 9-11. The Justice Department originally denied that the draft legislation existed, even though it had provided copies of the bill — marked “CONFIDENTIAL — NOT FOR DISTRIBUTION” and dated January 9 — to Speaker of the House Dennis Hastert and Vice President Richard Cheney.

As we write, almost none of the 535 members of Congress have received official copies of the draft legislation, including members of the Judiciary Committees of the House and Senate, who normally would be expected to have early access to the proposed law. A whistleblower within Justice leaked the draft, however, and it is now publicly available. (See [here](#).)

Rep. Ron Paul (R-Texas), a leading voice in Congress for preserving constitutional restraints on government, finds the bill’s provisions very alarming. “Rather than effectively fight threats to our



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national security and safety,” he said in a statement issued by his office, “Patriot Two would endanger the liberty of every American citizen and destroy what remains of America’s constitutional republic. This proposal gives the Federal Government expanded power to snoop into the private affairs of American citizens without acquiring a warrant or meeting the constitutional standards of probable cause. However, perhaps the most disturbing portion of the draft is the provision that would give the government the power to revoke United States citizenship for engaging in political activity.”

According to Dr. David Cole, Georgetown University Law professor and author of *Terrorism and the Constitution*, 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,” he said, referring to the Justice Department’s secrecy and deception in dealing with Congress. Patriot II, says Professor Cole, “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 disturbing provisions of the 86-page Patriot Act II draft include:

- *Definition of “suspected terrorist”*: Section 304 states that the term “‘suspected terrorist’ means any person as to whom the Attorney General or the Secretary of Defense ... has determined that there is reason to believe” has engaged in terrorism as defined in various sections of the United States Code, or who falls into a number of other broad categories, or “is a member of a terrorist organization designated as such.”
- *Definition of “designated terrorist organization”*: According to Section 423, “the term ‘designated terrorist organization’ means an organization which ... is designated as a terrorist organization by an Executive Order” or under the authority of the Immigration and Nationality Act, the International Emergency Economic Powers Act, or section 5 of the United Nations Participation Act. A “designated terrorist organization” can also be a single person “listed in or designated by an Executive Order as supporting terrorist activity....”
- *Presumptive pre-trial detention*: Section 405 would “presumptively deny release to persons charged with crimes listed” in title 18 of the U.S. Code “which contains a standard list of offenses that are likely to be committed by terrorists.” While it would seem sensible to deny bail and release to members of al-Qaeda, Hezbollah, and other violent terrorist groups, the open-ended definition of terrorist groups provided in the law, as we will show below, would make it possible for the government similarly to deny bail to political opponents not even remotely connected to terrorism.
- *Expatriation*: Section 501, one of DSEA’s most radical sections, provides that an American citizen may be stripped of his citizenship — and the constitutionally protected rights that go with citizenship — if charged with “joining or serving in, or providing material support ... to, a terrorist organization ... if the organization is engaged in hostilities against the United States, its people, or its national security interests.”

Patriot II would also provide frightening powers to the executive branch in its sections concerning secret arrests, warrantless searches, and electronic surveillance. Those who think that these powers would never be abused by President George W. Bush, or that they would be directed solely at the likes of al-Qaeda, Hezbollah, or Islamic Jihad, should be reminded that administrations come and go and that these powers would be wielded not only by President Bush but by his successors.



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Only a short time ago, President Clinton and Attorney General Reno were building the case for labeling as terrorists peaceful pro-life activists and other law-abiding citizens who opposed big government and the United Nations. One can easily imagine a future administration that would resume these efforts — and add other targeted groups as well. Such as gun owners. Or property owners along our southern border trying to stem the invasion of illegal immigrants across their property. Or supposedly intolerant pro-family activists who have taken on the militant homosexual lobby. All of these groups have been branded as terrorists or potential terrorists by the radical left and their allies in Congress and the media.

Growing Opposition

Fortunately, the many blatantly unconstitutional features of the Patriot II legislation have already stirred bipartisan opposition.

Senators Russ Feingold (D-Wis.), Patrick Leahy (D-Vt.), and Charles Grassley (R-Iowa) are among those who have registered concern. “As recently as just last week, Justice Department officials have denied to ... the Judiciary Committee that they were drafting another anti-terrorism package,” said Senator Leahy in a written statement in early February. “There is bipartisan concern ... about the administration’s lack of responsiveness to congressional oversight.” Senator Feingold, the only senator to vote against Patriot Act I, said, “I have serious concerns ... and hope the Senate will give this bill more scrutiny than the first USA Patriot Act.”

Senator Grassley said of Patriot II in an interview with PBS: “I’m going to be very cautious about that legislation. Quite frankly I’m not going to be for dramatic expansion of it even knowing the environment of terrorism I know is now a threat to Americans. I think we need to move very cautiously. And I think we’ve had about enough expansion as we should have for a while.”

However, stopping Patriot Act II will not, by itself, stop the emerging police state; there are still many hidden trap doors to Patriot Act I that could hold very unpleasant surprises. Senator Grassley says that before the Senate can even consider further “anti-terror” legislation, Attorney General Ashcroft must answer key questions they have been asking for months concerning Patriot Act I. According to Grassley, Ashcroft has refused to answer repeated congressional inquiries. Many senators are becoming impatient with the continued stalling. “You know, it’s just like pulling teeth to get information out of a lot of bureaucracy,” Grassley said in a PBS interview. “But when it comes to this issue the Justice Department has been very difficult.”

“We really do want answers to the requests that we send,” Senator Leahy said in the same PBS program. “We have 23 outstanding requests to various parts of the Department of Justice dating back a year, July of last year.” Congressman Dan Burton (R-Ind.), chairman of the House Committee on Government Reform, experienced an inordinate amount of stonewalling from the Clinton White House and the Janet Reno Justice Department. Like the senators, Rep. Burton has run into the same problem when he has tried to get information concerning the federal government’s use of powers already put in place under Patriot I and other legislation. “An iron veil is descending over the executive branch,” he said earlier this year, after being rebuffed once again in oversight requests for information.

Of course, many of those members of Congress now complaining about the executive branch’s cooperation have only themselves to blame. In the wake of the September 11 terrorist attacks, they rushed to show the American public that they were looking out for our national security — by passing the Bush administration’s USA Patriot Act virtually sight unseen. “It’s my understanding the bill wasn’t



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printed before the vote — at least I couldn't get it," said Rep. Ron Paul, one of only three members of the House to vote against the act. "They played all kinds of games, kept the House in session all night, and it was a very complicated bill," he said in an interview with *Insight* magazine. "Maybe a handful of staffers actually read it, but the bill definitely was not available to members before the vote."

As *The New American* previously noted in reference to this mad rush toward dictatorship, "in the heat of crisis, the restraints on government power evaporate — and the chains of slavery can be forged. The Patriot Act I can definitely be viewed as a major link in the chains of slavery; Patriot II would go a long way toward finishing the task.

Congressman Paul's suspicions that Patriot I was "a very bad bill" were amply confirmed once he obtained a copy. He quickly recognized that it threatens constitutionally protected rights while doing little to protect against terrorism. "This law clearly authorizes illegal search and seizure, and anyone who thinks of this as anti-terrorism needs to consider its application to every American citizen," he said.

Unfortunately, Rep. Paul could not stop the stampede. However, Congress did include "sunset" provisions in the legislation. These provisions make some of the key powers expire at the end of 2005 unless Congress reauthorizes them. The administration and some congressional Republicans are now trying to make the temporary powers permanent by removing the sunset clauses. The *New York Times* reported on April 8 that Senator Orrin G. Hatch (R-Utah) is leading the effort to lock in the new fedgov police powers.

Der Führerland Security

Not satisfied with having abdicated their responsibility to read Patriot Act I before passing the radical bill, House and Senate members then recklessly created the Department of Homeland Security. Combining dozens of federal law enforcement, emergency, and security agencies into a gargantuan bureaucracy, this massive restructuring represents an unprecedented concentration and expansion of federal police powers. It also vastly extends federal authority (unconstitutionally) over state and local police and emergency services, thus striking down many vital checks and balances the Founding Fathers wisely devised to prevent a centralized, all-powerful leviathan.

No evidence has been forthcoming to show that the new Cabinet-level Homeland Security Department will provide us any added security against terrorist attacks, but it plainly presents us with the danger of a huge political monstrosity that could certainly morph into a deadly Gestapo. The known facts concerning the 9-11 attacks argue strongly for less centralization, not greater. It was local FBI agents in the field, lower-level agents at CIA and INS, and local police who uncovered various parts of the hijackers' plans and tried to do something about it. It was high-level political operatives and bureaucrats in Washington who repeatedly stymied the men and women in the field and kept them from thwarting the terror conspiracy.

Now the new Department of Homeland Security is extending its tentacles into state and local governments in a multitude of ways. Besides claiming jurisdiction over matters for which it has no constitutional authority, the department is lavishing on communities billions of dollars in grants, equipment, and training. Former federal officials are also popping up as the administrators of new state and city counter-terrorism agencies. With this crossbreeding increasing, the natural resistance to top-down orders from Washington is decreasing; and state and local agencies are becoming merely administrative units of the federal government, rather than independent entities beholden to their state and local constituencies.



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Sid Caspersen typifies this new breed. A former FBI official from New York City, Caspersen was hired last year by New Jersey Governor James E. McGreevey to head the Garden State's new office of counter-terrorism. At a March 14 press conference, Caspersen explained his view of how New Jersey's counter-terrorism office would operate if the Department of Homeland Security issues a "red alert," the highest in the federal government's color-coded terror alert system.

According to the former G-Man, red alert can mean a virtual lockdown of all citizens. "You literally are staying home," Caspersen said. He continued: "What we're saying is, 'Everybody sit down.' If you are left standing, you are probably a terrorist.... That's how we're going to catch you." Caspersen told reporters, "Red means all noncritical functions cease." "Noncritical would be almost all businesses, except health-related," he said. Most government agencies "would run at a very low threshold," he stated, and "state police and the emergency management people would take control over the highways."

As might be imagined, some New Jersey citizens took alarm at Caspersen's extreme views. What if they happened to be out grocery shopping, driving to work, or dropping the kids off at a Little League game unaware that a "red alert" had been issued? Would they suddenly be considered fair game in the cross hairs of an anti-terror SWAT team? Such a worry might have been thought ridiculous months ago, but not now when public authorities are openly extolling the most totalitarian measures as necessary to the common safety.

Roger Schatzkin, Caspersen's press officer, told *The New American* that "the director's remarks were taken out of context." But he did not dispute the accuracy of the above quotations, which various media had reported. New Jersey's implementation of a federal red alert would likely be much less draconian and pervasive than Caspersen's "infelicitous remarks" indicated, Schatzkin said. "The director was thinking in the context of 9-11 in New York City," Schatzkin explained. "He was at ground zero right after the attacks and the first thing you have to do is secure the area. Every car or truck left on the street is a potential bomb that has to be checked out. Individuals in the area have to be considered potential suspects. He was not referring to a statewide lockdown but [to] appropriate restrictions within a more limited locale where a terrorist attack has occurred," or where authorities have information that one may be imminent.

Such explanations might be more reassuring if they were not being made amidst an avalanche of new restrictions on movement, privacy, and the exercise of virtually every basic right, as well as amidst a steady din of plans and proposals for even more severe assaults on the Constitution. Consider these schemes already in various stages of implementation:

- *Total Information Awareness (TIA)*: The TIA program aspires to outdo the Big Brother invasiveness depicted in Orwell's 1984. TIA is a project of the Information Awareness Office (IAO) run by Admiral John Poindexter in the Pentagon's Defense Advanced Research Projects Agency (DARPA). Under TIA, Poindexter's office is developing advanced technologies for "data mining," surveillance, and biometric identification. It envisions a "virtual, centralized, grand database," a vast repository of financial records, medical records, telecommunication records, travel records, criminal records, educational records, etc. on every individual — all in the name of protecting us against terrorists.

- *Operation TIPS (Terrorism Information & Prevention System)*: This Bush-Ashcroft plan envisioned a national neighborhood spy system "for reporting suspicious and potentially terrorist-related activity." The TIPS goal was to enlist "millions of American workers," such as postal employees, truck drivers, utility workers, delivery drivers, and others. Widespread public opposition to this chilling mimicry of



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Nazi and Communist police-state practices caused the administration formally to drop this program. However, postal employees and other federal workers say that their management has still encouraged them to carry out the spirit of the program.

- *Transportation Security Administration (TSA)*: Prior to the 9-11 attacks, the security personnel and baggage screeners at U.S. airports were provided by the airlines themselves, private security companies, local police and sheriff departments, and specially created local airport police units. Responding to the attacks, Congress created the TSA, which, virtually overnight, nationalized security functions at all U.S. airports and established one of the world's largest police forces, with 58,000 officers.
- *Computer Assisted Passenger Prescreening System (CAPPS II)*: Citing the laudable goal of airline safety, this TSA program seeks to employ data-mining methods and technology to obtain detailed private information on airline passengers for so-called "risk assessment." No studies have been produced to show that this invasive program will be at all effective in contributing to airline security, or how constitutional and privacy issues can be reconciled with the program.
- *Digital Eye Scans*: In February, the London Heathrow Airport launched a program using iris recognition stations that check passenger identification based on a digital eye scan. Although it is a voluntary program involving passengers on Virgin Atlantic and British Airways transatlantic flights, Britain's Home Office Minister Lord Rooker said: "These are unprecedented steps. Biometric technology offers many new possibilities." According to news reports, there are also plans to install iris scan technology at New York's JFK airport and Washington's Dulles Airport. Over the past two years there has been a growing chorus advocating mandatory use of biometrics in government identification documents.
- *Virtual Strip Searches*: In March 2002, a new whole-body-scan x-ray system was installed at Orlando International Airport in Florida. The new system, which sees through clothing, is a prototype being tested for possible use throughout the country. The x-ray machines, marketed under the name Rapiscan 1000, are supposed to speed passengers through security check points. However, critics are calling the devices Rape-a-Scan because the see-through images leave nothing to the imagination. Although still a voluntary procedure, pressures are certain to mount to make it mandatory — after a few more terrorist attacks. Rep. John Mica (R-Fla.), a proponent of the body scans, has argued that concerns about privacy and embarrassment are trumped by the security imperative. "We're facing a new type of terrorist: they're willing to blow themselves up and they can conceal explosives even within body cavities," he said.
- *Military Terror Tribunals*: By a November 13, 2001 emergency executive order, President Bush established military tribunals to try accused foreign terrorists. But for these so-called courts to pass constitutional muster, Congress must declare war; Congress must create these tribunals; and these tribunals must be made subject to the appellate jurisdiction of the Supreme Court. While many Americans may not think such technicalities are important to protect the rights of Taliban and al-Qaeda terrorists, they are very important to protecting the rights of American citizens. Prominent jurist Robert Bork has advocated expanding the tribunals' jurisdiction to American citizens, and President Bush has already done so in the case of Yasser Esam Hamdi. Hamdi, a U.S. citizen, was captured by U.S. forces in Afghanistan. Although not formally charged, he was brought to the U.S. and has been held incommunicado without access to legal counsel. Under the Patriot Act II, many loyal, law-abiding U.S. citizens stand vulnerable to being charged as terrorists, stripped of their citizenship, and subjected to



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these tribunals, which lack the constitutional safeguards of the American judicial system.



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