

# Brief History of the USA PATRIOT Act of 2001

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## Keywords

civil liberties, conformity, dissent, hasty, history, hysteria, links, Patriot Act, quotations, terrorism, terrorists, USA PATRIOT Act, why

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## Introduction

In August 2007, I wrote an essay on the *Foreign Intelligence Surveillance Act* (FISA), which essay is posted at <http://www.rbs0.com/FISA.pdf>. In September 2007, I wrote an essay on *National Security Letters* (NSLs) in 18 U.S.C. § 2709, which essay is posted at <http://www.rbs2.com/NSL.pdf>. Each of these two federal statutes was amended in the USA PATRIOT Act that was hastily passed by Congress in October 2001. Those two essays criticize FISA and NSLs and explain why parts of these poorly drafted statutes are *unconstitutional*.

The present essay is a brief history of the USA PATRIOT Act that explains *why* these poorly drafted and sometimes *unconstitutional* statutes were passed by Congress and signed by President Bush. While this essay quotes some historical documents from Sep/Oct 2001, this essay does *not* attempt to be a complete factual history. Instead, the emphasis and focus is on *why* Congress hastily passed a poor drafted statute, so that the reader can understand *why* these mistakes happened.

To make this essay easier to read, first I give a terse history, my comments, and my interpretations. Then, beginning at page 7, I provide some quotations from the CONGRESSIONAL RECORD, the White House website, and newspapers, to collect some important historical material, so the reader can understand the mood during October 2001.

## What is the PATRIOT Act?

The name USA PATRIOT Act is actually an acronym for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism”.<sup>1</sup> The USA PATRIOT Act is a long<sup>2</sup> series of amendments to existing statutes, with a few new statutes, all of which were presented with the hope of preventing future terrorist attacks. The USA PATRIOT Act is also known as Public Law 107-56, printed at 115 Stat. 272-402.

The name “PATRIOT (Provide Appropriate Tools Required to Intercept and Obstruct Terrorism) Act” was attached to H.R. 2975, which was introduced in the House of Representatives on 2 Oct 2001. The name “USA (Uniting and Strengthening America) Act” was attached to S. 1510, which was introduced in the Senate on 4 Oct 2001. The final bill, H.R. 3162, which had the combined name “USA PATRIOT Act”, passed the House on 24 Oct, passed the Senate on 25 Oct, and was signed by the President on 26 Oct 2001. The final bill is now commonly known as the PATRIOT Act.

## Hasty Passage in Congress

In a meeting on 19 Sep 2001, Attorney General Ashcroft presented his proposed list of new and amended statutes to Congress and Ashcroft urged Congress to approve it by 21 Sep. Patrick Leahy (D-Vt.), the chairman of the Senate Judiciary Committee, and James Sensenbrenner (R-Wisc.), chairman of the House of Representatives Judiciary Committee, — together with many of their colleagues — then wrote their own versions of the bill, which became S. 1510 and H.R. 2975. H.R. 2975 was introduced on 2 Oct 2001 and passed by the House on 12 Oct 2001. S. 1510 was introduced on 4 Oct 2001 and passed the Senate on 11 Oct 2001 by a vote of 96 to 1. The final bill, H.R. 3162, was introduced in the House on 23 Oct, passed the House on 24 Oct (by a vote of 357 to 66)<sup>3</sup>, passed the Senate on 25 Oct (by a vote of 98 to 1)<sup>4</sup>, and was signed by the President on 26 Oct 2001.

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<sup>1</sup> If Representatives and Senators gave as much care to protection of civil liberties as they do to creating spiffy names for objectionable statutes, we would have a better nation.

<sup>2</sup> The official version in STATUTES-AT-LARGE has a length of 131 pages. 115 Stat. 272-402.

<sup>3</sup> U.S. House of Representatives Role Call Vote Nr. 398, 107<sup>th</sup> Congress (24 Oct 2001)  
<http://clerk.house.gov/cgi-bin/vote.asp?year=2001&rollnumber=398>

<sup>4</sup> Senate Role Call Vote Nr. 313, 107<sup>th</sup> Congress (25 Oct 2001)  
[http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=107&session=1&vote=00313](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00313)

Congress passed the requested amendments quickly<sup>5</sup> with little deliberation. Unlike a typical statute, neither the House of Representatives nor the Senate issued a report on the PATRIOT Act.<sup>6</sup> Most of the legislative history for the PATRIOT Act is in speeches on the floor, as recorded in the CONGRESSIONAL RECORD.

### Why the Hasty Passage?

#### Fear of More Attacks

Approximately 2750 people died in the attacks on the World Trade Center on 11 September 2001.<sup>7</sup> Another 189 people died in the attack on the Pentagon, when AA77 crashed there.<sup>8</sup> A further 45 people died in the crash of UA93 in Pennsylvania,<sup>9</sup> which airplane the terrorists had apparently intended to crash into either the U.S. Capitol or the White House. A more accurate measure of the mood immediately after 11 Sep 2001 is that New York City Mayor Rudolph Giuliani on 13 Sep “provided statistics that began to give some vague dimension to an American atrocity: 4763 people reported missing ... and 30,000 body bags available.”<sup>10</sup> In the days immediately after the terrorist attacks on 11 September 2001, no one in the U.S. government knew how many additional terrorists were already in the USA, waiting to attack.

By mid-October 2001, a month had passed without any additional terrorist attacks and fear began to abate. Then, on 15 Oct 2001, a letter containing anthrax was received by Senator Daschle, who was the Senate Majority Leader. Several of the buildings of the U.S. Congress were closed for testing for anthrax spores and decontamination. On 16 Nov 2001 — *after* the

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<sup>5</sup> The final bill was signed by the President on 26 Oct, just 37 days after Ashcroft’s proposal.

<sup>6</sup> See, e.g., *In re Sealed Case*, 310 F.3d 717, 734 (For.Intel.Surv.Rev. 2002) (“... the ACLU relies on a September 10, 2002 hearing of the Judiciary Committee (the day after the government’s oral presentation to this court) at which certain senators made statements — somewhat at odds with their floor statements prior to the passage of the Patriot Act — as to what they had intended the year before.”); *U.S. v. Talebnejad*, 342 F.Supp.2d 346, 349 (D.Md. 2004) (“Legislative history behind the amendment is scant, ...”); *In re Search Warrant*, 362 F.Supp.2d 1298, 1304 (M.D.Fla. 2003) (“What little legislative history exists behind the quickly-enacted USA PATRIOT Act does not suggest ...”).

<sup>7</sup> Total number is 2752, including the people aboard the two crashed airplanes, but *not* including the ten terrorists. <http://www.cnn.com/2003/US/Northeast/10/29/wtc.deaths/> (29 Oct 2003).

<sup>8</sup> <http://www.cnn.com/SPECIALS/2001/trade.center/victims/pentagon.victims.html>  
<http://www.cnn.com/SPECIALS/2001/trade.center/victims/AA77.victims.html>

<sup>9</sup> <http://www.cnn.com/SPECIALS/2001/trade.center/victims/ua93.victims.html>

<sup>10</sup> Dan Berry, “After the Attacks: The Scene; Normality Proves Elusive Amid Bomb Scares and Transit Woes,” *The New York Times*, (14 Sep 2001).

PATRIOT Act passed — an *unopened* letter containing anthrax was found in undelivered mail addressed to Senator Leahy, the chairman of the Senate Judiciary Committee.<sup>11</sup>

It was not just that the USA was attacked, but a sense that Congress itself might be the next target for terrorists.<sup>12</sup> There was an understandable sense of urgency in Congress to give additional legal tools to law enforcement and foreign intelligence, to help them *prevent* future terrorist attacks. Furthermore, there was intense political pressure from Attorney General Ashcroft for Congress to quickly pass new statutes in a matter of days.

Few representatives and few senators understood the complex law in surveillance for foreign intelligence or surveillance for law enforcement purposes. Worse, it seems that few people in Congress both understood and respected the First and Fourth Amendments to the U.S. Constitution. Because of this lack of Congressional legal expertise, the content of the new or amended statutes was a matter for lawyers in the executive branch (e.g., the CIA and FBI) to draft. The majority of Congress apparently wanted to immediately “do something” to prevent future terrorist attacks, and the details of the statute were a matter for experts in the executive branch.

After 11 Sep 2001, anyone in Congress who refused to vote for the amendments desired by the Justice Department could be branded as an enemy of American security.

#### Pretext

Another explanation is that allegedly preventing future terrorist attacks was a pretext for the Justice Department to obtain statutory amendments that it had wanted for years, but Congress had previously refused to pass because of concerns about civil liberties, etc. Hasty passage was essential, because if Senators like Leahy (D-Vt.), Feingold (D-Wisc.), and Specter (R-Penn.) were allowed to revise the text, they would reject many of the parts that the Justice Department wanted.

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<sup>11</sup> <http://www.fbi.gov/pressrel/pressrel01/leahy111601.htm> (16 Nov 2001). Leahy’s letter was postmarked 9 Oct, the same day as Daschle’s letter. See photographs at: <http://www.fbi.gov/pressrel/pressrel01/102301.htm>

<sup>12</sup> One airplane on 11 Sep 2001 crashed into the Pentagon, while terrorists intended to crash UA93 into either the Capitol building or the White House, but instead UA93 crashed in Pennsylvania after a revolt by passengers. And letters containing anthrax were mailed to both Senator Daschle and Senator Leahy.

## Congress failed

One could say that Congress had been derelict in its duty before 11 Sep 2001 — so that, after 11 Sep 2001, dozens of statutes were seen as obsolete and genuinely in need of amendment. Or one could politely say that the world somehow changed on 11 Sep 2001,<sup>13</sup> so that previously acceptable statutes were no longer adequate. Either way, Congress abdicated its duty, by not carefully considering the proposed text of the PATRIOT Act, and by passing some blatantly *unconstitutional* statutes.

An article<sup>14</sup> on the history of the PATRIOT Act clearly shows that many thoughtful people — both liberals and conservatives — opposed the hasty passage of the PATRIOT Act in October 2001. However, these thoughtful people were in the minority, and were unable to stop the hysterical mob of politicians who wanted to immediately “do something” to make it easier to prevent future terrorist attacks.

One law professor wrote:

In the rush to “do something” in response to September 11 and to accommodate the demands of the administration for greater authority, Congress passed the 352-page USA Patriot Act after only a few weeks of hearings and limited debate. ....

The imperative to act swiftly after September 11 meant that no one, and certainly not Congress, gave careful consideration to a comprehensive review of FISA or intelligence authorities generally. ....

William C. Banks, “And the Wall Came Tumbling Down: Secret Surveillance After the Terror,” 57 *University of Miami Law Review* 1147, 1166 (July 2003).

I was so appalled by the way Congress quickly agreed to the executive branch’s proposed PATRIOT Act that I wrote an essay *The Value of Dissent*, <http://www.rbs0.com/dissent.htm>, in November 2001.

More of my comments are in the conclusion of this essay, beginning at page 40.

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<sup>13</sup> Peter P. Swire, “The System of Foreign Intelligence Surveillance Law,” 72 *GEORGE WASHINGTON LAW REVIEW* 1306, 1344-1350 (Aug 2004) (Explaining in detail why “everything has likely *not* changed.”).

<sup>14</sup> Robert O’Harrow Jr., “Six Weeks in Autumn,” *The Washington Post Sunday Magazine*, p. W06, <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/09/AR2006050900961.html> (27 Oct 2002).

## Sunset Provision

One of the amendments included by Congress during October 2001 was a “sunset provision” in § 224 of the PATRIOT Act, which made some sections of the Act automatically expire on 31 Dec 2005. In my view, this sunset provision was an admission that the PATRIOT Act was poorly drafted, but that the representatives and senators did *not* want to take the time to carefully draft the legislation in Oct 2001. Instead, they would fix the problems at some later time.

When the revision was under reconsideration in Dec 2005, several Democrats in the Senate filibustered, and the sunset provision was extended to 3 Feb 2006. That was still not enough time for Congress to agree on a revised PATRIOT Act, so the sunset provision was extended again to 10 March 2006. The revised PATRIOT Act was signed into law by President Bush on 9 March 2006, one day before the third deadline.

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## Quotations

In the following pages of this essay, I quote from various sources to make important historical information readily available.

### Congressional Record

Sen. Leahy 25 Oct 2001

On the day the USA PATRIOT Act was approved by the Senate, Senator Leahy, Chairman of the Judiciary Committee, began a speech on the floor of the Senate by congratulating himself and his colleagues on their accomplishment:

Mr. LEAHY. After that terrible day of September 11, we began looking at our laws, and what we might do. Unfortunately, at first, rhetoric overcame reality. We had a proposal sent up, and we were asked to pass it within a day or so. Fortunately for the country, and actually ironically beneficial to both the President and the Attorney General who asked for such legislation, we took time to look at it, we took time to read it, and we took time to remove those parts that were unconstitutional and those parts that would have actually hurt liberties of all Americans.

I say that because I think of what Benjamin Franklin was quoted as saying at a time when he literally had his neck on the line, where he would have been hanged if our revolution had failed. He said: “A people who would give up their liberty for security deserve neither.”

What we have tried to do in this legislation is to balance the liberties we enjoy as Americans and those liberties that have made us the greatest democracy in history but at the same time to enhance our security so we can maintain that democracy and maintain the leadership we have given the rest of the world.

We completed our work 6 weeks after the September 11 attacks. I compare this to what happened after the bombing of the Federal Building in Oklahoma City in 1995. It took a year to complete the legislation after that. We have done this in 6 weeks. But there has been a lot of cooperation. There have been a lot of Senators and a lot of House Members in both parties and dedicated staff who have worked around the clock.

I think of my own staff—and this could be said of many others, including the Presiding Officer's staff and the ranking member's staff—who were forced out of their offices because of the recent scares on Capitol Hill, and they continue to work literally in phone booths and in hallways and from their homes and off laptops and cell phones.

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CONGRESSIONAL RECORD, p. S11014 (25 Oct 2001).

Senator Leahy concluded:

We wanted to find checks and balances. We wanted to make sure we could go after terrorism. We wanted to make sure we could go after those who would injure our society, those who would strike at the very democratic principles that ironically make us a target. But we wanted to do it with checks and balances against abuse. That is what we did. In provision after provision, we added those safeguards that were missing from the administration's plan.

By taking the time to read and improve the antiterrorism bill, Congress has done the administration a great favor in correcting the problems that were there. We have used the time wisely. We have produced a far better bill than the administration proposed. Actually, it is a better bill than either this body or the House initially proposed. The total is actually greater than the sum of the parts. We have done our utmost to protect Americans against abuse of these new law enforcement tools, and there are new law enforcement tools involved. In granting these new powers, the American people but also we, their representatives in Congress, grant the administration our trust that they are not going to be misused. It is a two-way street. We are giving powers to the administration; we will have to extend some trust that they are not going to be misused.

The way we guarantee that is congressional oversight. Congressional oversight is going to be crucial in enforcing this compact. If I might paraphrase former President Reagan: We will trust<sup>15</sup> but with oversight.

We will do this. The Republican chairman and his ranking member in the House of Representatives intend to have very close oversight. I can assure you that I and our ranking member will have tight oversight in the Senate.

Interestingly enough, the 4-year sunset provision included in this final agreement will be an enforcement mechanism for adequate oversight. We did not have a sunset provision in the Senate bill. The House included a 5-year provision. The administration wanted even 10 years. We compromised on 4. It makes sense. It makes sense because with everybody knowing there is that sunset provision, everybody knows they are going to have to use these powers carefully and in the best way. If they do that, then they can have extensions. If they don't, they won't. It also enhances our power for oversight.

This is not precisely the bill that Senator Hatch would have written. It is not precisely the bill I would have written, or not precisely the bill the Presiding Officer or others on the floor would have written. But it is a good bill. It is a balanced bill. It is a greatly improved piece of legislation. It is one that sets up the checks and balances necessary in a democratic society that allow us to protect and preserve our security but also protect and preserve our liberties.

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<sup>15</sup> The CONGRESSIONAL RECORD says "entrust", which is a typographical error.



I reserve the remainder of my time.  
CONGRESSIONAL RECORD, p. S11015 (25 Oct 2001).

Senator Leahy was wrong about congressional oversight. For example, when the Bush administration had an illegal Terrorist Surveillance Program during the years 2002-2006, the executive branch refused to provide relevant documents to the Senate Judiciary Committee's investigation.<sup>16</sup> Senator Leahy was also wrong about the sunset provision preventing abuse, because otherwise Congress would deny future extensions. In fact, the executive branch not only abused the existing statutes — including using *unconstitutional* statutes — but also the executive branch continued to demand that Congress pass even more intrusive statutes.

Sen. Feingold 25 Oct 2001

Russell Feingold (D-Wisc.) cast the only vote against the PATRIOT Act in the Senate. I have added footnotes to provide citations for Feingold's quotations and his mention of the Wisconsin Supreme Court case.

My first and most powerful emotion [after the 11 Sep 2001 attacks] was a solemn resolve to stop these terrorists. That remains my principal reaction to these events. But I also quickly realized, as many did, that two cautions were necessary. I raised them on the Senate floor the day after the attacks.

The first caution was that we must continue to respect our Constitution and protect our civil liberties in the wake of the attacks.

As the chairman of the Constitution subcommittee of the Judiciary Committee I recognize fully that this is a different world, with different technologies, different issues, and different threats.

Yet we must examine every item that is proposed in response to these events to be sure we are not rewarding these terrorists and weakening ourselves by giving up the cherished freedoms that they seek to destroy.

The second caution I issued was a warning against the mistreatment of Arab Americans, Muslim Americans, South Asians, or others in this country. Already, one day after the attacks, we were hearing news reports that misguided anger against people of these backgrounds had led to harassment, violence, and even death.

I suppose I was reacting instinctively to the unfolding events in the spirit of the Irish statesman John Philpot Curran, who said:

The condition upon which God hath given liberty to man is eternal vigilance.

During those first few hours after the attacks, I kept remembering a sentence from a case I had studied in law school. Not surprisingly, I didn't remember which case it was, who wrote the opinion, or what it was about, but I did remember these words:

While the Constitution protects against invasions of individual rights, it is not a suicide pact.<sup>17</sup>

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<sup>16</sup> See my essay at <http://www.rbs0.com/TSP.pdf> .

<sup>17</sup> The citation is 372 U.S. 144, 160 (1963).

I took these words as a challenge to my concerns about civil liberties at such a momentous time in our history; that we must be careful to not take civil liberties so literally that we allow ourselves to be destroyed.

But upon reviewing the case itself, *Kennedy v. Mendoza-Martinez*, I found that Justice Arthur Goldberg had made this statement but then ruled in favor of the civil liberties position in the case, which was about draft evasion. He elaborated:

It is fundamental that the great powers of Congress to conduct war and to regulate the Nation's foreign relations are subject to the constitutional requirements of due process. The imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action.

The Justice continued:

The Constitution of the United States is a law for rulers and people, equally in war and [in] peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. .... In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution.<sup>18</sup>

I have approached the events of the past month and my role in proposing and reviewing legislation relating to it in this spirit. I believe we must, we must, redouble our vigilance. We must redouble our vigilance to ensure our security and to prevent further acts of terror. But we must also redouble our vigilance to preserve our values and the basic rights that make us who we are.

The Founders who wrote our Constitution and Bill of Rights exercised that vigilance even though they had recently fought and won the Revolutionary War. They did not live in comfortable and easy times of hypothetical enemies. They wrote a Constitution of limited powers and an explicit Bill of Rights to protect liberty in times of war, as well as in times of peace.

Of course, there have been periods in our nation's history when civil liberties have taken a back seat to what appeared at the time to be the legitimate exigencies of war. Our national consciousness still bears the stain and the scars of those events: The Alien and Sedition Acts, the suspension of habeas corpus during the Civil War, the internment of Japanese-Americans, German-Americans, and Italian-Americans during World War II, the blacklisting of supposed communist sympathizers during the McCarthy era, and the surveillance and harassment of antiwar protesters, including Dr. Martin Luther King Jr., during the Vietnam War. We must not allow these pieces of our past to become prologue.

Even in our great land, wartime has sometimes brought us the greatest tests of our Bill of Rights. For example, during the Civil War, the Government arrested some 13,000 civilians, implementing a system akin to martial law. President Lincoln issued a proclamation ordering the arrest and military trial of any persons "discouraging volunteer enlistments, or resisting militia drafts." Wisconsin provided one of the first challenges of this order. Draft protests rose up in Milwaukee and Sheboygan. And an anti-draft riot broke out among Germans and Luxembourgers in Port Washington, WI. When the government arrested one of the leaders of the riot, his attorney sought a writ of habeas corpus. His military captors said that the

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<sup>18</sup> *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 165 (1963), first sentence quoted by Justice Goldberg from *Ex parte Milligan*, 71 U.S. 2, 120-121 (1866).

President had abolished the writ. The Wisconsin Supreme Court was among the first to rule that the President had exceeded his authority.<sup>19</sup>

In 1917, the Postmaster General revoked the mailing privileges of the newspaper the *Milwaukee Leader* because he felt that some of its articles impeded the war effort and the draft. Articles called the President an aristocrat and called the draft oppressive. Over dissents by Justices Brandeis and Holmes, the Supreme Court upheld the action.<sup>20</sup>

We all know during World War II, President Roosevelt signed orders to incarcerate more than 110,000 people of Japanese origin,<sup>21</sup> as well as some roughly 11,000 of German origin and 3,000 of Italian origin.

Earlier this year, I introduced legislation to set up a commission to review the wartime treatment of Germans, Italians, and other Europeans during that period. That bill came out of heartfelt meetings in which constituents told me their stories. They were German-Americans, who came to me with some trepidation. They had waited 50 years to raise the issue with a member of Congress. They did not want compensation. But they had seen the Government's commission on the wartime internment of people of Japanese origin, and they wanted their story to be told, and an official acknowledgment as well with regard to what had happened to them. I hope, that we will move to pass this important legislation early next year. We must deal with our nation's past, even as we move to ensure our nation's future.

Now some may say, indeed we may hope, that we have come a long way since those days of infringements on civil liberties. But there is ample reason for concern. And I have been troubled in the past 6 weeks by the potential loss of commitment in the Congress and the country to traditional civil liberties.

As it seeks to combat terrorism, the Justice Department is making extraordinary use of its power to arrest and detain individuals, jailing hundreds of people on immigration violations and arresting more than a dozen "material witnesses" not charged with any crime. Although the Government has used these authorities before, it has not done so on such a broad scale. Judging from Government announcements, the Government has not brought any criminal charges related to the attacks with regard to the overwhelming majority of these detainees.

For example, the FBI arrested as a material witness the San Antonio radiologist Albader Al-Hazmi, who has a name like two of the hijackers, and who tried to book a flight to San Diego for a medical conference. According to his lawyer, the Government held Al-Hazmi incommunicado after his arrest, and it took 6 days for lawyers to get access to him. After the FBI released him, his lawyer said:

This is a good lesson about how frail our processes are. It's how we treat people in difficult times like these that is the true test of the democracy and civil liberties that we brag so much about throughout the world.

I agree with those statements.

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<sup>19</sup> *In re Kemp*, 16 Wis. 359 (Wisc. 1863). See also *Ex parte Milligan*, 71 U.S. 2 (1866); *Ex parte Merryman*, 17 F.Cas. 144 (C.C.Md. 1861).

<sup>20</sup> *U.S. ex rel. Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U.S. 407 (1921).

<sup>21</sup> Upheld by the U.S. Supreme Court in an awful decision: *Korematsu v. United States*, 323 U.S. 214 (1944).

Of course, given the enormous anxiety and fears generated by the events of September 11, it would not have been difficult to anticipate some of these reactions, both by our government and some of our people. Some have said rather cavalierly that in these difficult times we must accept some reduction in our civil liberties in order to be secure.

Of course, there is no doubt that if we lived in a police state, it would be easier to catch terrorists. If we lived in a country that allowed the police to search your home at any time for any reason; if we lived in a country that allowed the government to open your mail, eavesdrop on your phone conversations, or intercept your email communications; if we lived in a country that allowed the government to hold people in jail indefinitely based on what they write or think, or based on mere suspicion that they are up to no good, then the government would no doubt discover and arrest more terrorists.

But that probably would not be a country in which we would want to live. And that would not be a country for which we could, in good conscience, ask our young people to fight and die. In short, that would not be America. Preserving our freedom is one of the main reasons we are now engaged in this new war on terrorism. We will lose that war without firing a shot if we sacrifice the liberties of the American people.

That is why I found the antiterrorism bill originally proposed by Attorney General Ashcroft and President Bush to be troubling.

The administration's proposed bill contained vast new powers for law enforcement, some seemingly drafted in haste and others that came from the FBI's wish list that Congress has rejected in the past. You may remember that the Attorney General announced his intention to introduce a bill shortly after the September 11 attacks. He provided the text of the bill the following Wednesday [19 Sep], and urged Congress to enact it by the end of the week. That was plainly impossible, but the pressure to move on this bill quickly, without deliberation and debate, has been relentless ever since.

It is one thing to shortcut the legislative process in order to get Federal financial aid to the cities hit by terrorism. We did that, and no one complained that we moved too quickly. It is quite another to press for the enactment of sweeping new powers for law enforcement that directly affect the civil liberties of the American people without due deliberation by the peoples' elected representatives.

Fortunately, cooler heads prevailed at least to some extent, and while this bill has been on a fast track, there has been time to make some changes and reach agreement on a bill that is less objectionable than the bill that the administration originally proposed.

As I will discuss in a moment, I have concluded that this bill still does not strike the right balance between empowering law enforcement and protecting civil liberties. But that does not mean that I oppose everything in the bill. By no means. Indeed many of its provisions are entirely reasonable, and I hope they will help law enforcement more effectively counter the threat of terrorism.

For example, it is entirely appropriate ....

In the end, however, my focus on this bill, as Chair of the Constitution Subcommittee of the Judiciary Committee in the Senate, was on those provisions that implicate our constitutional freedoms. And it was in reviewing those provisions that I came to feel that the administration's demand for haste was inappropriate; indeed, it was dangerous. Our process in the Senate, as truncated as it was, did lead to the elimination or significant rewriting of a number of audacious proposals that I and many other members found objectionable.

For example, the original administration proposal contained a provision that would have allowed the use in U.S. criminal proceedings against U.S. citizens of information obtained by foreign law enforcement agencies in wiretaps that would be illegal in this country. In other words, evidence obtained in an unconstitutional search overseas was to be allowed in a U.S. court.

Another provision would have broadened the criminal forfeiture laws to permit—prior to conviction—the freezing of assets entirely unrelated to an alleged crime. The Justice Department has wanted this authority for years, and Congress has never been willing to give it. For one thing, it touches on the right to counsel, since assets that are frozen cannot be used to pay a lawyer. The courts have almost uniformly rejected efforts to restrain assets before conviction unless they are assets gained in the alleged criminal enterprise. This proposal, in my view, was simply an effort on the part of the Department to take advantage of the emergency situation and get something that they've wanted to get for a long time.

As I have indicated, the foreign wiretap and criminal forfeiture provisions were dropped from the bill that we considered in the Senate. Other provisions were rewritten based on objections that I and others raised about them. For example, the original bill contained sweeping permission for the Attorney General to get copies of educational records without a court order. The final bill requires a court order and a certification by the Attorney General that he has reason to believe that the records contain information that is relevant to an investigation of terrorism.

So the bill before us is certainly improved from the bill that the administration sent to us on September 19, and wanted us to pass on September 21. But again, in my judgement, it does not strike the right balance between empowering law enforcement and protecting constitutional freedoms. Let me take a moment to discuss some of the shortcomings of the bill.

First, the bill contains some very significant changes in criminal procedure that will apply to every federal criminal investigation in this country, not just those involving terrorism. One provision would greatly expand the circumstances in which law enforcement agencies can search homes and offices without notifying the owner prior to the search. The longstanding practice under the fourth amendment of serving a warrant prior to executing a search could be easily avoided in virtually every case, because the government would simply have to show that it had “reasonable cause to believe” that providing notice ‘may’ seriously jeopardize an investigation.” This is a significant infringement on personal liberty.

Notice is a key element of fourth amendment protections. It allows a person to point out mistakes in a warrant and to make sure that a search is limited to the terms of a warrant. Just think about the possibility of the police showing up at your door with a warrant to search your house. You look at the warrant and say, “yes, that’s my address, but the name on the warrant isn’t me.” And the police realize a mistake has been made and go away. If you’re not home, and the police have received permission to do a “sneak and peek” search, they can come in your house, look around, and leave, and may never have to tell you that ever happened.

That bothers me. I bet it bothers most Americans.

Another very troubling provision has to do with the effort to combat computer crime. I want the effort to stop computer crime. The bill allows law enforcement to monitor a computer with the permission of its owner or operator, without the need to get a warrant or show probable cause.

I want to tell you, Madam President, I have been at pains to point out things I can support in this bill. I think that power is fine in a case of a so-called denial of service attack. What is that? That is plain old computer hacking.<sup>22</sup> You bet. We need to be able to get at that kind of crime.

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<sup>22</sup> Feingold is wrong: in a denial of service attacks, a group of computers send a series of pings to a website, causing the website’s computer to be overwhelmed and crash. In “plain old computer hacking”, a perpetrator acquires *un*authorized access to a computer’s files.

Computer owners should be able to give the police permission to monitor communications coming from what amounts to a trespasser on the computer, a real trespasser.

But we tried to point out as calmly and as constructively as possible on the floor that, as drafted in this bill, the provision might permit an employer to give permission to the police to monitor the e-mails of an employee who has used her computer at work to shop for Christmas gifts. She violated the rules of her employer regarding personal use of the computer. Or someone who uses a computer at a library or at a school and happens to go to a gambling or pornography site in violation of the Internet use policies of the library or the university might also be subjected to Government surveillance — without probable cause and without any time limit at all. With this one provision, fourth amendment protections are potentially eliminated for a broad spectrum of electronic communications.

I am also very troubled by the broad expansion of Government power under the Foreign Intelligence Surveillance Act, known as FISA. When Congress passed FISA in 1978, it granted to the executive branch the power to conduct surveillance in foreign intelligence investigations without having to meet the rigorous probable cause standard under the fourth amendment that is required for criminal investigations. There is a lower threshold for obtaining a wiretap order from the FISA court because the FBI is not investigating a crime, it is investigating foreign intelligence activities. But the law currently requires that intelligence gathering be the primary purpose of the investigation in order for this much lower standard to apply.

The bill changes that requirement. The Government now will only have to show that intelligence is a “significant purpose” of the investigation. So even if the primary purpose is a criminal investigation, the heightened protections of the fourth amendment will not apply.

It seems obvious that with this lower standard, the FBI will be able to try to use FISA as much as it can. And, of course, with terrorism investigations, that won't be difficult because the terrorists are apparently sponsored or at least supported by foreign governments. So this means the fourth amendment rights will be significantly curtailed in many investigations of terrorist acts.

The significance of the breakdown of the distinction between intelligence and criminal investigations becomes apparent when you see other expansions of Government power under FISA in this bill.

Another provision that troubles me a lot is one that permits the Government, under FISA, to compel the production of records from any business regarding any person if that information is sought in connection with an investigation of terrorism or espionage.

I want to be clear here, as well, we are not talking about travel records directly pertaining to a terrorist suspect, which we can all see obviously can be highly relevant to an investigation of a terrorist plot. FISA already gives the FBI the power to get airline, train, hotel, car rental, and other records of a suspect.

But this bill does much more. Under this bill, the Government can compel the disclosure of the personal records of anyone—perhaps someone who worked with, or lived next door to, or went to school with, or sat on an airplane with, or had been seen in the company of, or whose phone number was called by—the target of the investigation.

Under this new provision, all business records can be compelled, including those containing sensitive personal information, such as medical records from hospitals or doctors, or educational records, or records of what books somebody has taken out from the library. We are not talking about terrorist suspects, we are talking about people who just may have come into some kind of casual contact with the person in that situation. This is an enormous expansion of authority under a law that provides only minimal judicial supervision.

Under this provision, the Government can apparently go on a fishing expedition and collect information on virtually anyone. All it has to allege, in order to get an order for these records from the court, is that the information is sought for an investigation of international terrorism or clandestine intelligence gathering. That is it. They just have to say that. On that minimal showing, in an ex parte application to a secret court, with no showing even that the information is relevant to the investigation, the Government can lawfully compel a doctor or a hospital to release medical records or a library to release circulation records. This is truly a breathtaking expansion of police power.

Let me turn to a final area of real concern about this legislation, which I think brings us full circle to the cautions I expressed on the day after the attacks. These are two very troubling provisions dealing with our immigration laws in the bill.

First, the administration's original proposal would have granted the Attorney General extraordinary powers to detain immigrants indefinitely, including legal permanent residents.

....

Another provision in the bill that deeply troubles me allows the detention and deportation of people engaging in innocent associational activity. ....

The antiterrorism bill we consider in the Senate today, of course, highlights the march of technology and how that march cuts both for and against personal liberty. But Justice Brandeis foresaw some of the future in a 1928 dissent when he wrote:

The progress of science in furnishing the Government with means of espionage is not likely to stop with wire-tapping. Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home. .... Can it be that the Constitution affords no protection against such invasions of individual security?<sup>23</sup>

We must grant law enforcement the tools that it needs to stop this terrible threats, but we must give them only those extraordinary tools that they need and that relate specifically to the task at hand.

....

We must maintain our vigilance to preserve our laws and our basic rights. We in this body have a duty to analyze, to test, to weigh new laws that the zealous and often sincere advocates of security would suggest to us. That is what I have tried to do with the antiterrorism bill, and that is why I will vote against this bill when the roll is called.

Protecting the safety of the American people is a solemn duty of the Congress. We must work tirelessly to prevent more tragedies like the devastating attacks of September 11. We must prevent more children from losing their mothers, more wives from losing their husbands, and more firefighters from losing their heroic colleagues. But the Congress will fulfill its duty only when it protects both the American people and the freedoms at the foundation of American society.

So let us preserve our heritage of basic rights. Let us practice as well as preach that liberty, and let us fight to maintain that freedom that we call America.

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<sup>23</sup> *Olmstead v. U.S.*, 277 U.S. 438, 474 (1928) (Brandeis, J., dissenting). Quoted in Justice Douglas' dissent in *On Lee v. U.S.*, 343 U.S. 747, 763-764 (1952).

Madam President, I reserve the remainder of my time.  
CONGRESSIONAL RECORD, p. S11019-023 (25 Oct 2001).

The above text came from a cut-and-paste of the PDF version of the CONGRESSIONAL RECORD at:  
<http://www.gpoaccess.gov/crecord/index.html>

HTML versions are posted at:

<http://feingold.senate.gov/speeches/01/10/102501at.html>

<http://www.epic.org/privacy/terrorism/usapatriot/feingold.html>

I believe Senator Feingold was correct to vote against the PATRIOT Act. Not only were there numerous defects in the text (poorly written, and some *unconstitutional* provisions), but also one should protest pushing a long, complicated draft through Congress in six weeks. History should remember Feingold for his courage to do what he thought was right.

### **Bush & Ashcroft**

17 Sep 2001

On 17 Sep 2001, Attorney General Ashcroft gave a press briefing in which he remarked on new legislation that he was proposing. Note that Ashcroft had a rough draft on Monday, 17 Sep and he wanted Congress to pass the final legislation “this week” (i.e., by Friday, 21 Sep).

Yesterday I met with several members of the House and Senate leadership, including the leadership of the Intelligence and Judiciary Committees. FBI Director Mueller and I discussed with them the current threat assessment, including our believe that associates of the hijackers that have ties to terrorist organizations may be a continuing presence in the United States. This threat assessment has helped us to identify several areas where we should strengthen our laws to increase the ability of the Department of Justice and its component agencies to identify, prevent and punish terrorism.

The meetings we had were very productive. And I'm optimistic that we will be able to act quickly to provide law enforcement with the additional tools that are necessary to fight terrorism. I was encouraged by the members support and their pledge to work as members of the Congress with the Department of Justice to move this agenda of anti-terrorism legislation forward.

In the next few days, we intend to finalize a package of legislative measures that will be comprehensive. Areas covered include criminal justice, immigration, intelligence gathering and financial infrastructure. While the final details are still being discussed, I can highlight a few of the items that we will address in the proposal.

....

Now, we will be working diligently over the next day or maybe two to finalize this comprehensive proposal, and we will call upon the Congress of the United States to enact these important antiterrorism measures this week. We need these tools to fight the terrorism threat which exists in the United States, and we must meet that growing threat.

Attorney General Ashcroft, Press Briefing (17 Sep 2001)

<http://www.usdoj.gov/archive/ag/speeches/2001/0917pressbriefingfbi.htm>

20 Sep 2007



On 20 Sep 2001, President Bush gave a speech to a joint session of Congress. I quote only a few paragraphs, to show the mood at that time.

Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated. (Applause.)

Americans are asking, why do they hate us? They hate what we see right here in this chamber — a democratically elected government. Their leaders are self-appointed. They hate our freedoms — our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other.

....

These terrorists kill not merely to end lives, but to disrupt and end a way of life. With every atrocity, they hope that America grows fearful, retreating from the world and forsaking our friends. They stand against us, because we stand in their way.

....

Our response involves far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success. We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. **Either you are with us, or you are with the terrorists.**<sup>24</sup> (Applause.) From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.

....

We will come together to give law enforcement the additional tools it needs to track down terror here at home. (Applause.) We will come together to strengthen our intelligence capabilities to know the plans of terrorists before they act, and find them before they strike. (Applause.)

....

President Bush, “President Declares ‘Freedom at War with Fear’ ” (21:00 EDT 20 Sep 2001)

<http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>

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<sup>24</sup> Boldface added by Standler.

25 Sep 2001

On 25 Sep 2001, President Bush spoke at FBI headquarters and he said the following about the proposed legislation:

....

There are some other things we can do in the country, and our Congress needs to work with us. And I believe — I had breakfast this morning with Republican and Democrat leaders, and I will tell you, the spirit on Capitol Hill is good for America. It's a united spirit.

I want to thank the leaders from both parties, and both Houses for their willingness to listen to anybody who has got a good idea about how to fight terrorist activity in the country. And I believe the Attorney General has taken some good ideas to Capitol Hill, and I'd like to share some of them with you.

First, what we've seen is these terrorists are very sophisticated, and so are their communications. They must — their calls must be penetrated when we feel there's a threat to America. We've got to know what's on their mind. And so, therefore, we must give the FBI the ability to track calls when they make calls from different phones, for example.

Now, this is what we do for drug dealers and members of organized crime, and it seems like to make sense to me, if it's good enough for the FBI to use these techniques for facing down those threats to America, that now that we're at war, we ought to give the FBI the tools necessary to track down terrorists. And so I hope Congress will listen to the wisdom of the proposals that the Attorney General brought up, to give the tools necessary to our agents in the field to find those who may think they want to disrupt America again.

We're asking Congress for the authority to hold suspected terrorists who are in the process of being deported, until they're deported. That seems to make sense — (laughter) — that if a suspected terrorist is detained, and our nation has decided to deport the person, then they ought to be held in custody until the action actually takes place. We believe it's a necessary tool to make America a safe place.

Now, this would of course be closely supervised by an immigration judge. Now, the only alternative is to let suspected terrorists loose in our country. I don't think anybody wants to do that. (Laughter.) I certainly hope not. And we're asking for the authority to share information between intelligence operations and law enforcement, so we can direct the best of both in the critical effort. That, too, is a reasonable request to make of Congress.

I want you to know that every one of the proposals we've made on Capitol Hill, carried by the Attorney General, has been carefully reviewed. They are measured requests, they are responsible requests, they are constitutional requests. Ours is a land that values the constitutional rights of every citizen. And we will honor those rights, of course.

But we're at war, a war we're going to win. And in order to win the war, we must make sure that the law enforcement men and women have got the tools necessary, within the Constitution, to defeat the enemy.

And there's going to be one other thing that's required to defeat the enemy, and that's the will and determination of the American people. I believe the evildoers miscalculated when they struck America. They thought we would shy away. They thought their threats could hold this nation hostage. They must have felt like they could diminish our soul. But quite the opposite has taken place. They've strengthened the spirit of America. They have united their country. They have awoken a mighty nation that understands that freedom is under assault; a mighty nation that will not rest until those who think they can take freedom away from any citizen in the world are brought to justice.

They've got a problem on their hands. We're going to find them. And if they're hiding, we're going to smoke them out. And we'll bring them to justice. And not only will we bring them to justice, we will bring those who harbor them, who hide them, who feed them, who encourage them, to justice.

America is a nation built upon freedom, and the principles of freedom, the values of freedom. And this is a nation that will not — will not — blink from the fight. This is a nation that will stand strong for the great values that have made us unique.

I'm proud of the work of the FBI. I want to thank you all for your dedication. Stay at it. The nation is counting on you. You're making a great, great contribution for the country.

May God bless you all and your families, and may God continue to bless the United States of America. (Applause.)

George W. Bush, "President: FBI Needs Tools to Track Down Terrorists" (25 Sep 2001)

<http://www.whitehouse.gov/news/releases/2001/09/20010925-5.html>

12 Oct 2001

On 12 Oct 2001, President Bush issued the following terse message — quoted below in its entirety — commending the House of Representatives on passing H.R. 2975:

I commend the House for passing anti-terrorism legislation just one day after the Senate took action. The House and Senate bills are virtually identical. I urge the Congress to quickly get the bill to my desk. We must strengthen the hand of law enforcement to help safeguard America and prevent future attacks — and we must do it now.

George W. Bush, "President Commends House for Passing Anti-Terrorism Bill" (12 Oct 2001).

<http://www.whitehouse.gov/news/releases/2001/10/20011012-13.html>

24 Oct 2001

On 24 Oct 2001, President Bush issued the following terse message — quoted below in its entirety — commending the Congress on passing the USA PATRIOT Act:

I am pleased Congress has reached an agreement on counterterrorism legislation that will give our law enforcement officials the tools and resources necessary to disrupt, weaken, and defeat terrorists. I look forward to signing this strong bipartisan plan into law so that we can combat terrorism and prevent future attacks.

George W. Bush, "President Pleased with Agreement on Counterterrorism Legislation"

(24 Oct 2001). <http://www.whitehouse.gov/news/releases/2001/10/20011024-4.html>

## signs PATRIOT Act, 26 Oct 2001

On 26 Oct 2001, President Bush spoke before signing the USA PATRIOT Act:

Good morning and welcome to the White House. Today, we take an essential step in defeating terrorism, while protecting the constitutional rights of all Americans. With my signature, this law will give intelligence and law enforcement officials important new tools to fight a present danger.

I commend the House and Senate for the hard work they put into this legislation. Members of Congress and their staffs spent long nights and weekends to get this important bill to my desk. I appreciate their efforts, and bipartisanship, in passing this new law.

I want to thank the Vice President and his staff for working hard to make sure this law was passed. I want to thank the Secretary of State and the Secretary of Treasury for being here, both of whom lead important parts of our war against terrorism. I want to thank Attorney General John Ashcroft for spending a lot of time on the Hill to make the case for a balanced piece of legislation. I want to thank the Director of the FBI and the Director of the CIA for waging an incredibly important part on the two-front war — one overseas, and a front here at home.

I want to thank Governor Tom Ridge for his leadership. I want to thank the members of Congress who are here on the stage, the Leaders, on this impressive effort. Senator Hatch and Senator Leahy and Senator Sarbanes and Senator Graham and Senator Reid.

I also want to thank Representative Porter Goss, LaFalce, Oxley, and Sensenbrenner for their hard work. And I want to welcome the men and women of law enforcement who are here in the White House with us today, as well.

The changes, effective today, will help counter a threat like no other our nation has ever faced. We've seen the enemy, and the murder of thousands of innocent, unsuspecting people. They recognize no barrier of morality. They have no conscience. The terrorists cannot be reasoned with. Witness the recent anthrax attacks through our Postal Service.

Our country is grateful for the courage the Postal Service has shown during these difficult times. We mourn the loss of the lives of Thomas Morris and Joseph Curseen; postal workers who died in the line of duty. And our prayers go to their loved ones.

I want to assure postal workers that our government is testing more than 200 postal facilities along the entire Eastern corridor that may have been impacted. And we will move quickly to treat and protect workers where positive exposures are found.

But one thing is for certain: These terrorists must be pursued, they must be defeated, and they must be brought to justice. (Applause.) And that is the purpose of this legislation. Since the 11th of September, the men and women of our intelligence and law enforcement agencies have been relentless in their response to new and sudden challenges.

We have seen the horrors terrorists can inflict. We may never know what horrors our country was spared by the diligent and determined work of our police forces, the FBI, ATF agents, federal marshals, Custom officers, Secret Service, intelligence professionals and local law enforcement officials, under the most trying conditions. They are serving this country with excellence, and often with bravery.

They deserve our full support and every means of help that we can provide. We're dealing with terrorists who operate by highly sophisticated methods and technologies, some of which were not even available when our existing laws were written. The bill before me takes account of the new realities and dangers posed by modern terrorists. It will help law enforcement to identify, to dismantle, to disrupt, and to punish terrorists before they strike.

For example, this legislation gives law enforcement officials better tools to put an end to financial counterfeiting, smuggling and money-laundering. Secondly, it gives intelligence operations and criminal operations the chance to operate not on separate tracks, but to share vital information so necessary to disrupt a terrorist attack before it occurs.

As of today, we're changing the laws governing information-sharing. And as importantly, we're changing the culture of our various agencies that fight terrorism. Countering and investigating terrorist activity is the number one priority for both law enforcement and intelligence agencies.

Surveillance of communications is another essential tool to pursue and stop terrorists. The existing law was written in the era of rotary telephones. This new law that I sign today will allow surveillance of all communications used by terrorists, including e-mails, the Internet, and cell phones.

As of today, we'll be able to better meet the technological challenges posed by this proliferation of communications technology. Investigations are often slowed by limit on the reach of federal search warrants.

Law enforcement agencies have to get a new warrant for each new district they investigate, even when they're after the same suspect. Under this new law, warrants are valid across all districts and across all states. And, finally, the new legislation greatly enhances the penalties that will fall on terrorists or anyone who helps them.

Current statutes deal more severely with drug-traffickers than with terrorists. That changes today. We are enacting new and harsh penalties for possession of biological weapons. We're making it easier to seize the assets of groups and individuals involved in terrorism. The government will have wider latitude in deporting known terrorists and their supporters. The statute of limitations on terrorist acts will be lengthened, as will prison sentences for terrorists.

This bill was carefully drafted and considered. Led by the members of Congress on this stage, and those seated in the audience, it was crafted with skill and care, determination and a spirit of bipartisanship for which the entire nation is grateful. This bill met with an overwhelming — overwhelming agreement in Congress, because it upholds and respects the civil liberties guaranteed by our Constitution.

This legislation is essential not only to pursuing and punishing terrorists, but also preventing more atrocities in the hands of the evil ones. This government will enforce this law with all the urgency of a nation at war. The elected branches of our government, and both political parties, are united in our resolve to fight and stop and punish those who would do harm to the American people.

It is now my honor to sign into law the USA Patriot Act of 2001. (Applause.)  
George W. Bush, "President Signs Anti-Terrorism Bill" (26 Oct 2001).

<http://www.whitehouse.gov/news/releases/2001/10/20011026-5.html>

## News Sources

12 Sep 2001

*The Washington Post* reported the terrorist attacks:

Terrorists unleashed an astonishing air assault on America's military and financial power centers yesterday morning, hijacking four commercial jets and then crashing them into the World Trade Center in New York, the Pentagon and the Pennsylvania countryside.

There were no reliable estimates last night of how many people were killed in the most devastating terrorist operation in American history. The number was certainly in the hundreds and could be in the thousands.

It was the most dramatic attack on American soil since Pearl Harbor, and it created indelible scenes of carnage and chaos. The commandeered jets obliterated the World Trade Center's twin 110- story towers from their familiar perch above Manhattan's skyline and ripped a blazing swath through the Defense Department's imposing five- sided fortress, grounding the domestic air traffic system for the first time and plunging the entire nation into an unparalleled state of anxiety.

....

No one claimed responsibility for the attacks, but federal officials said they suspect the involvement of Islamic extremists with links to fugitive terrorist Osama bin Laden, who has been implicated in the 1998 bombings of two U.S. embassies in Africa and several other attacks. Law enforcement sources said there is already evidence implicating bin Laden's militant network in the attack, and politicians from both parties predicted a major and immediate escalation in America's worldwide war against terrorism.

In a grim address to the nation last night, President Bush denounced the attacks as a failed attempt to frighten the United States, and promised to hunt down those responsible. "We will make no distinction," he said, "between the terrorists who committed these acts and those who harbor them."

....

Many members of both parties declared that for all practical purposes, the nation is at war. At a briefing last night in the battered Pentagon, Defense Secretary Donald H. Rumsfeld warned that America's enemies should not rest easy.

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Michael Grunwald, "Terrorists Hijack 4 Airliners, Destroy World Trade Center, Hit Pentagon Hundreds Dead Bush Promises Retribution Military Put on Highest Alert," *The Washington Post*, p. A01 (12 Oct 2001).

The second paragraph of the *Post* article quoted above is professional: at that time, no one knew exactly how many people died in the attacks on the World Trade Center. The *Post* calmly and accurately said: "The number was certainly in the hundreds and could be in the thousands." Other news media were not as professional, and many of them reported speculation that *more* than four thousand people were dead in the World Trade Center buildings, possibly as many as

twenty thousand dead. These overestimates of the death toll are a better indicator of the mood in the USA during Sep/Oct 2001 than the accurate death tolls that came months later.

I searched the archives of *The Washington Post* newspaper from 15 Sep 2001 to 27 Oct 2001 for the following query:

Ashcroft AND anti-terrorism

*The Washington Post* is a morning newspaper, so news that occurs on N October is reported in the (N+1) October edition. What I regard as the most significant articles are quoted below.

16 Sep 2001

Only five days after the terrorist attacks, Attorney General Ashcroft had a proposal for new federal statutes. CNN reported:

U.S. Attorney General John Ashcroft and FBI Director Robert Mueller met Sunday [16 Sep] with congressional leaders to discuss a proposal to give federal investigators broader powers.

Ashcroft said earlier he would ask Congress to rewrite some laws to enhance anti-terrorist efforts, including granting investigative agencies greater surveillance authority.

"It's clear to me that we need to upgrade and strengthen a number of laws in the United States," Ashcroft said.

For example, under current law a court authorizes a wiretap for a particular phone, not a person.

"It doesn't make sense" in an age when multiple phones are common, Ashcroft said. Wiretaps, he said, should be focused on individuals, not the hardware.

The meeting with the congressional leaders was classified, but Sen. Patrick Leahy, D-Vermont, and Sen. Orrin Hatch, R-Utah, the ranking members of the Senate Judiciary Committee, said they would act on the proposal very quickly.

"In a digital age, we are using analog technology from a legal standpoint," Hatch said.

"We have to figure out how best to do this within the confines of the Constitution, and I think we can get that done.

Some privacy groups have quietly been raising concerns that the U.S. reaction to the terrorist assaults may lead to an erosion of civil liberties. They fear the Bush administration may seek broad new law enforcement powers that go beyond terrorism.

Hatch and Leahy said no one wants to trample on the Constitution.

"It doesn't do you any good to get convictions by violating the Constitution, because it's going to be overturned. You're going to lose all of your evidence and the person might get away. You do it right and you do it right the first time," Leahy said.

"I don't want a terrorist act to take away the Constitution for 260 million Americans."

CNN, "Ashcroft wants tougher anti-terrorism laws," (19:45 EDT 16 Sep 2001)

<http://archives.cnn.com/2001/US/09/16/inv.ashcroft.congress/index.html>

20 Sep 2001

Appealing for urgent action in the face of an undiminished terrorist threat, the Bush administration yesterday presented Congress with its proposed anti-terrorism package as lawmakers vowed to continue their bipartisan push for a swift response to last week's air assaults on New York and Washington.

Attorney General John D. Ashcroft met with key Democrats and Republicans at the Capitol yesterday afternoon to discuss the measures, which would greatly enhance the government's ability to conduct domestic surveillance and keep suspected terrorists from entering the country.

After the meeting, Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) said the proposals had been well received and promised to work through the weekend with the aim of producing a mutually acceptable bill by the time his panel holds hearings on the matter next Tuesday [25 Sep].

Leahy cautioned, however, that Congress would not rubber-stamp the anti-terrorism proposals, which have already sparked concern among civil liberties groups and others who fear the measures outlined in Ashcroft's 21-page document would undermine the Constitution, especially with regard to immigrants' rights.

"If the Constitution is shredded, the terrorists win," Leahy told reporters after the meeting. "We want to do this carefully."

Despite such concerns, Leahy indicated that Congress could send the anti-terrorism measure to President Bush within a few weeks — an expedited schedule that reflects the continuing sense of national emergency that has gripped the Capitol since the morning of Sept. 11. Besides the anti-terrorism package, lawmakers are scrambling to put together a multibillion-dollar bailout for the nation's airlines — most of which are hemorrhaging cash in the aftermath of the disaster — as well as an economic stimulus plan.

....

After meeting yesterday with Leahy and other key lawmakers, Ashcroft said there is "substantial agreement" between the Justice Department's proposals and a similar plan drafted by Leahy and his staff. Ashcroft said he had directed his legislative staff to work "round the clock" to close any gaps between the two versions by next Tuesday.

"I believe we need every tool that is available to us — tools that respect the Constitution of the United States and the rights of American citizens," Ashcroft said.

The proposed legislation would provide law enforcement with more tools in several areas, including expanded electronic surveillance and the ability to detain suspects and deport immigrants. It also broadens or changes criminal procedures in terrorism cases, involving — among other things — subpoenas, search warrants and seizure of assets.

**Some of the electronic surveillance provisions have been requested for years by law enforcement agencies, including the FBI during the Clinton administration, but met with congressional resistance and opposition in the technology community.<sup>25</sup>**

Privacy and civil liberties advocates from across the political spectrum say the bill has been sloppily put together and threatens long-established rights for American citizens. "It's almost McCarthyesque," said Shari Steele, executive director and president of the Electronic

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<sup>25</sup> Boldface added by Standler.



Frontier Foundation in San Francisco. "It appears the government is really afraid and opening up the ability to intrude into the private lives of American citizens."

Privacy advocates who read the draft were particularly alarmed at how the bill might lower the threshold for wiretaps and search orders for all cases, not just those involving terrorism. "They want [to] relax wiretap law generally, and this is a good opportunity," said Michael Godwin, a privacy expert at the Center for Democracy and Technology in Washington.

....

John Lancaster and Jonathan Krim, "Ashcroft Presents Anti-Terrorism Plan to Congress Lawmakers Promise Swift Action, Disagree on Extent of Measures," *The Washington Post*, p. A24 (20 Sep 2001).

22 Sep 2001

*The Washington Post* noted the sudden shift in President George W. Bush's political philosophy, from a small-government advocate, to a big-government advocate:

The twin demands of a sagging economy and an urgent new war on terrorism have transformed the philosophical heart of President Bush's agenda. A man who came to power offering himself as an ideological descendant of Ronald Reagan has emerged nine months later as something closer to an heir of Franklin D. Roosevelt.

The modern conservative movement, which provided the base of this president's support in the 2000 election, had several pillars. They included a distrust of centralized authority, an unyielding faith in free markets and a conviction that individuals should be left to succeed or fail on their own without the protection of a welfare state.

But Bush's words in recent days — and most powerfully in his speech to Congress on Thursday night — suggest he has concluded that few of the old faiths that animated the conservative agenda before Sept. 11 have much relevance in the current emergency. Suspicion of a powerful national government gave way to a massive federal commitment to rebuild New York City. Devotion to free markets has yielded to an expensive promise to rescue the failing airline industry with government subsidies.

And although conservatives once boasted of their determination to get government "off the backs" of the American people, Bush warned that individual convenience must be balanced anew against the collective need for tighter security. Attorney General John D. Ashcroft has proposed anti-terrorism measures that vastly increase the reach of the federal government into citizens' privacy — ideas that have caused activists at both ends of the ideological spectrum to warn about encroachments on liberty.

At the same time, Bush is working on a large economic stimulus package to stave off recession. He said a weak economy needs its pump primed by government with a big infusion of money — a basic precept of Keynesian economics that was at the heart of FDR's New Deal.

Finally, in a presidential debate last year, Bush warned that the critical point about the use of military force is that "the exit strategy needs to be well defined," and he said he was "concerned that we're overdeployed around the world." In his forceful vow to fight global terror Thursday night, Bush made clear there could be multiple venues for military action and

set no clear definition of how he will gauge whether the mission is adequately accomplished.<sup>26</sup>

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John F. Harris and Dana Milbank, "For Bush, New Emergencies Ushered in a New Agenda," *The Washington Post*, p. A03 (22 Sep 2001).

25 Sep 2001

The Bush administration's urgent quest for new anti-terrorism laws bogged down in Congress yesterday, as lawmakers from both parties expressed concern that the hastily prepared package could greatly expand police powers at the expense of privacy and other civil liberties.

At a hearing of the House Judiciary Committee, skeptical members confronted Attorney General John D. Ashcroft and other senior Justice Department officials on a number of administration proposals, including one that would permit the indefinite detention without trial of immigrants suspected of ties to terrorist groups.

They also complained that the administration is trying to force the package through Congress without giving lawmakers time to adequately digest proposals that could have serious, unforeseen consequences for rights that Americans now take for granted.

"Why is it necessary to rush this through?" asked Rep. Robert L. Barr Jr., the conservative Georgia Republican. **"Does it have anything to do with the fact that the department has sought many of these authorities on numerous other occasions, has been unsuccessful in obtaining them, and now seeks to take advantage of what is obviously an emergency situation to obtain authorities that it has been unable to obtain previously?"**<sup>27</sup>

At the Senate Select Committee on Intelligence, meanwhile, Ashcroft's proposed expansion of a provision of the Foreign Intelligence Surveillance Act (FISA), which governs wiretapping of non-Americans inside the United States, ran into trouble not only with Democrats and civil liberties advocates, but also with at least one Republican member, Sen. Mike DeWine (R-Ohio).

Notwithstanding their reservations, lawmakers emphasized their desire to work closely with the administration in the aftermath of the Sept. 11 terrorist attacks. There is already broad agreement, for example, on the need to strengthen criminal penalties for terrorism and to rewrite surveillance laws to take into account new technologies, such as e-mail.

In the Senate, Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) and members of his staff worked with administration officials last weekend as they raced to complete their anti-terrorism bill in advance of a hearing before Leahy's committee today.

At yesterday's House hearing, Ashcroft said the administration wants Congress to act now on its "modest set of proposals" in light of what he said was the very real possibility that terrorists are planning additional attacks. "Terrorism is a clear and present danger to Americans today," Ashcroft said.

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<sup>26</sup> These words are particularly true as I write this essay in September 2007, at a time when opinion polls show the majority of Americans want the U.S. military to leave Iraq, but neither political party has a plan to accomplish a withdrawal. In summary, we still have no exit strategy.

<sup>27</sup> Boldface added by Standler.

"Each day that so passes is a day that terrorists have an advantage," he added. "We are today sending our troops into the modern field of battle with antique weapons."

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Similar objections on the topic of wiretapping foreigners in the United States surfaced at the Senate intelligence committee. Currently, the FBI must show to a special court that collecting foreign intelligence is the "sole" or "primary" reason for seeking such wiretaps. For a wiretap to be installed in a criminal case, the courts require additional information indicating that a crime probably is involved. The change sought by Ashcroft would ease the way for the FBI to get authority by requiring certification only that foreign intelligence is "a" purpose of the tap.<sup>28</sup>

This new, lower requirement, combined with other provisions that open the way for complete FBI and CIA sharing of information gathered in terrorist cases, would permit criminal case investigators to obtain wiretaps more easily in terrorist cases using FISA than under normal criminal wiretap statutes.

DeWine said he believed the Justice approach could cause "real problems" if the wiretap information from a FISA tap was used in a criminal case. He questioned Associate Deputy Attorney General David S. Kris on the latter's contention that the changes being sought would not endanger the constitutionality of the entire FISA law.

"I hope you're right," DeWine said, "but I'm not sure you are right." Sens. Dianne Feinstein (D-Calif.) and John Edwards (D-N.C.) also questioned the constitutionality of the provision.

John Lancaster and Walter Pincus, "Proposed Anti-Terrorism Laws Draw Tough Questions Lawmakers Express Concerns to Ashcroft, Other Justice Officials About Threat to Civil Liberties," *The Washington Post*, p. A05 (25 Sep 2001).

26 Sep 2001

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During a lunch with Republican senators at the Capitol, Vice President Cheney asked the lawmakers to try to get the legislation through Congress no later than Oct. 5, a Republican leadership aide said.

Lawmakers generally share the desire for haste, and the tone of yesterday's hearing was cordial. Sen. Patrick J. Leahy (D-Vt.), the Judiciary Committee chairman, said he agrees with a number of administration requests, including one that would permit law enforcement agencies to monitor cell phone and e-mail communications among suspected terrorists, as well as those transmitted over ordinary telephones. Such "roving wiretaps" are currently permitted for investigations into certain kinds of criminal activity, but not terrorism.

Also at yesterday's hearing, senators questioned Ashcroft about bureaucratic missteps that may have played a role in the attacks. Noting that two of the 19 suspected hijackers had been placed on an FBI "watch list" of potential terrorists, Leahy asked whether their names had been shared with the Federal Aviation Administration. Ashcroft said the names had not been passed on.

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<sup>28</sup> For legal details, including citation to cases, see my essay <http://www.rbs0.com/FISA.pdf> in the section titled "Purpose of FISA".

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John Lancaster, "Senators Question an Anti-Terrorism Proposal," *The Washington Post*, p. A04 (26 Sep 2001).

2 Oct 2001

House negotiators yesterday agreed to give the government new authority to investigate and detain terrorist suspects, a bipartisan compromise that denied the Bush administration some powers it sought but that was assailed by civil libertarians as a blow to American values.

Under an agreement reached by Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.) and the ranking Democrat, Rep. John Conyers Jr. (Mich.), authorities would be able to hold any foreigner suspected of terrorist activity without charges for as long as a week. The anti-terrorism legislation would also expand the government's wiretapping and Internet surveillance powers in terrorism cases.

The 122-page House legislation, dubbed the "Patriot Act," is due to be considered by the committee Wednesday [3 Oct] and by the entire House next week.

The House compromise will become a framework for negotiations with the Senate and the administration over an expansion of police powers following the Sept. 11 attacks on the World Trade Center and the Pentagon. David Carle, spokesman for Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.), said the Senate and House bills "will largely complement each other."

He said Senate Democrats and Republicans "negotiated through the weekend and are close to an agreement over here."

White House press secretary Ari Fleischer said, "The administration has been working very closely with members of the House, as well as with Chairman Leahy and others in the Senate who have just jurisdiction over this."

The Bush administration sought new anti-terrorism legislation in the aftermath of the attacks, saying it was necessary because of what Attorney General John D. Ashcroft described as the "clear and present danger" of further terrorist attacks.

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It would also make it easier for law enforcement officials to obtain wiretaps. Under existing law, wiretaps can be obtained under the Foreign Intelligence Surveillance Act if the primary purpose for getting the information is intelligence, rather than criminal enforcement. Ashcroft had sought to use the FISA provision if intelligence gathering was merely "a purpose." The proposed House legislation would compromise with "a significant purpose."

The wiretap provision would expire in December 2003; renewing it would require congressional approval.

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Dana Milbank, "House Bill Would Expand Federal Detention Powers," *The Washington Post*, p. A01 (2 Oct 2001).

3 Oct 2001

The glow of bipartisanship faded a bit on Capitol Hill yesterday as negotiations on an anti-terrorism bill hit a last-minute snag and Attorney General John D. Ashcroft accused the Democratic-controlled Senate of delaying legislation that he says is urgently needed to thwart another terrorist attack.

One day after House negotiators reached a bipartisan compromise on the bill, talks between Bush administration officials and Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) stumbled on — among other things — a provision setting out rules under which law enforcement agencies could share wiretap and grand jury information with intelligence agencies.

Leahy accused the White House of renegeing on an agreement Sunday [30 Sep] settling the last significant differences between his committee and the administration on the final shape of the legislation to expand police powers in surveillance and other realms.

Ashcroft, though he did not comment directly on the dispute, complained that the Senate was not moving with sufficient speed given what he said was the urgent need for additional law enforcement tools with which to fight terrorism.

"Talk won't prevent terrorism," Ashcroft said after meeting with Leahy yesterday, adding that he was "deeply concerned about the rather slow pace" of the legislation.

The finger-pointing marked a breach in the facade of public unity that has governed relations between Congress and the administration — and Republicans and Democrats — since the Sept. 11 terrorist attacks.

On Monday [1 Oct], House Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.) reached agreement with Rep. John Conyers Jr. (Mich.), the committee's ranking Democrat, on a bipartisan compromise that incorporates many administration proposals. Among them are measures to expand police powers to install wiretaps, monitor Internet communications, and apprehend and prosecute suspected terrorists.

The House negotiators rejected the most controversial proposal, which would have permitted the indefinite jailing of noncitizens suspected of terrorism. Under their version of the bill, the attorney general could detain suspected terrorists for seven days, after which they would have to be charged or released.

While emphasizing the need to safeguard civil liberties, Leahy has also expressed his desire to get the bill done quickly. But Senate Majority Leader Thomas A. Daschle (D-S.D.) told reporters that he wanted an agreement on the bill in the next few days but that he doubted the Senate could take up the legislation before next week, as the administration had asked.

Some Republican lawmakers, notably Sen. Orrin G. Hatch (Utah), the ranking minority member of the judiciary panel, said they shared Ashcroft's frustration over the delay.

"It's a very dangerous thing," said Hatch, who attended the meeting late yesterday morning with Ashcroft, Leahy and White House Counsel Alberto R. Gonzales. "It's time to get off our duffs and do what's right."

Since the administration delivered its bill to Capitol Hill almost two weeks ago, negotiations between Senate Judiciary Committee staff and the Justice Department have proceeded at a fever pitch. According to participants in the discussions, both sides had narrowed their differences over the weekend to just a few issues. One of the most difficult involved an administration proposal that would allow the FBI and other law enforcement agencies to share wiretap and grand jury information with the CIA, the National Security Agency and other intelligence agencies.

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John Lancaster, "Anti-Terrorism Bill Hits Snag on the Hill Dispute Between Senate Democrats, White House Threatens Committee Approval," *The Washington Post*, p. A06 (3 Oct 2001).

*The New York Times* reported the same story, including threats by Republicans to blame Democrats if there was another terrorist attack:

The Bush administration and its Republican allies in the Senate sharply increased pressure today on Senate Democrats to act more quickly on antiterrorism legislation.

One day after a bipartisan agreement on the legislation was reached in the House, Attorney General John Ashcroft said he was "deeply concerned" with the pace of deliberations in the Senate.

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Senator Trent Lott of Mississippi, the Republican leader, said, "It's time we get on with it." If another attack occurs, he warned the Democrats, "people are going to wonder where have you been in giving the additional tools that are needed to, you know, find these terrorists and avoid plots that may be in place."

Neil A. Lewis and Robin Toner, "A NATION CHALLENGED: LEGISLATION; Democrats In Senate Are Pressured On Terror Bill," *The New York Times*, (3 Oct 2001).

<http://query.nytimes.com/gst/fullpage.html?res=9D04E6DC113DF930A35753C1A9679C8B63>

13 Oct 2001

The Senate passed S. 1510 on 11 Oct, and the House passed H.R. 2975 on 12 Oct. The two bills were then merged into H.R. 3162, which was the final USA PATRIOT Act.

The House yesterday approved a far-reaching anti-terrorism bill that in most respects mimics legislation that cleared the Senate late Thursday [11 Oct], conferring broad new powers on law enforcement and intelligence agencies to conduct domestic surveillance and share information with each other.

In contrast to the Senate version, several of the more controversial aspects of the House bill — relating to wiretapping and other forms of electronic surveillance — would expire after five years, at which time they would have to be renewed.

The Senate bill also includes a comprehensive set of money-laundering provisions that House leaders have elected to consider as separate legislation. Those and other, smaller differences will have to be reconciled in a conference committee before President Bush can sign the measure, although that could happen as early as next week.

The blistering pace of the legislation through Congress shows just how much the Sept. 11 attacks on the World Trade Center and the Pentagon have altered the political landscape in Washington. Many of the provisions contained in the House and Senate bills have been sought for years by prosecutors, but were rejected by Congress as overly intrusive and possibly unconstitutional. Now lawmakers are eager to accommodate the wishes of the FBI and CIA — alarming civil liberties advocates who warn that Congress is being stampeded into decisions it will later regret.

Bush commended the House's quick action. "I urge the Congress to quickly get the bill to my desk," Bush said. "We must strengthen the hand of law enforcement to help safeguard America and prevent future attacks — and we must do it now."

Despite the lopsided nature of yesterday's 337 to 79 vote, many lawmakers were less than thrilled with the process that led up to it. Democrats and some Republicans considered the Senate bill's safeguards on civil liberties inferior to those in a homegrown compromise version passed 36 to 0 last week by the House Judiciary Committee. But the Bush administration strongly preferred the Senate bill, which grew out of intensive negotiations led by Attorney General John D. Ashcroft and Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.).

On Thursday, House Speaker J. Dennis Hastert (R-Ill.) yielded to White House requests to substitute the Senate text for the House version, prompting Democrats to accuse Republican leaders of betraying the cooperative spirit that both say they want to preserve in the aftermath of the Sept. 11 attacks.

Rep. Barney Frank (D-Mass.), a member of the judiciary panel, denounced the maneuvering that led up to yesterday's vote as "the least democratic process for debating questions fundamental to democracy I have ever seen."

"What we decided to do in committee, correctly, was to give the law enforcement officials all the expanded powers they asked for," he added. "But we simultaneously tried to put into effect a full set of safeguards to minimize the chance that human beings . . . would abuse that power. The problem is that the bill before us today preserves the fullness of the powers but substantially weakens the safeguards."

House Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.) defended the decision to jettison the bill. The Senate bill, he noted, was a bipartisan measure that passed 96 to 1 and had been circulating in draft form for more than a week. "We're really not dealing with new ideas here," he said.<sup>29</sup>

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Unlike the Senate legislation, the House bill passed yesterday preserves the so-called sunset clause under which electronic surveillance provisions would expire after three years. The president could renew them for two more — in effect, a five-year option.

In any event, the point does not seem insurmountable. Leahy has said he would be open to adding a sunset clause in conference negotiations.

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John Lancaster, "Anti-Terrorism Bill Is Approved Bush Cheers House's Quick Action, but Civil Liberties Advocates Are Alarmed," *The Washington Post*, p. A01 (13 Oct 2001).

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<sup>29</sup> This is a strange statement, because the ideas were really new: Ashcroft proposed a *long* list of new or amended statutes on 19 Sep and a formal bill was introduced in the Senate on 4 Oct. I think Sensenbrenner meant to say that the Senate bill covered the same topics and same amended statutes as the now abandoned House bill.

## anthrax, 18 Oct 2001

As fear of terrorist attacks began to abate, on 15 Oct Senator Daschle received a letter containing anthrax. In response, the House of Representatives was not in session during 17-22 Oct and the Senate was not in session during 19-22 Oct (four-day weekend).

The House suspended work and three Senate office buildings were closed yesterday as congressional leaders announced that 26 Senate staffers and five police officers had been exposed to anthrax spores that arrived in the office mail of Senate Majority Leader Thomas A. Daschle (D-S.D.) on Monday [15 Oct].

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Although no one has fallen ill from the anthrax sent to Daschle's office, yesterday's disclosures about the number of people who have been exposed to the spores on Capitol Hill — a number that could grow with additional test results — deepened the sense of alarm in Washington and across the nation.

At a late-afternoon briefing yesterday, Senate leaders and officials responsible for the anthrax investigation said that nasal swabs had turned up evidence of the bacterium in 23 Daschle staffers, three aides to Sen. Russell Feingold (D-Wis.), whose office is next to Daschle's, and five law enforcement officers who responded to the initial report Monday morning.

For the second day, hundreds of jittery staffers lined up yesterday outside a hearing room to submit to nasal swabs and receive precautionary three-day supplies of Cipro. But Deputy Surgeon General Kenneth Moritsugu said at the briefing yesterday that no other positive tests had turned up during the day and expressed confidence that "we will not see large numbers" of new exposures, although some more positives were possible. No spores had turned up in the ventilation system, he added, although the Hart building's mailroom had yielded a single positive test.

News of the exposures caused some degree of confusion in the Capitol as well as a rift between House and Senate leaders who seemed to have a different take on the situation. House Speaker J. Dennis Hastert (R-Ill.) generated a wave of anxiety when he announced erroneously that investigators had found anthrax "in the ventilation system."

Then House leaders made the decision to adjourn through the weekend so their side of the Capitol could be checked for anthrax, while their counterparts in the Senate pointedly declared their intention to remain in session through today. "We don't believe there's a rationale to shut down," said Sen. John F. Kerry (D-Mass.). The three Senate office buildings were closed to allow for additional testing, however.

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John Lancaster and Susan Schmidt, "31 Exposed to Anthrax on Capitol Hill House Shuts Down Senate Offices Close Investigators See Tie in Letters In Fla., NBC and Daschle Cases," *The Washington Post*, p. A01 (18 Oct 2001).



anthrax, 22 Oct 2001

Congressional leaders decided yesterday to open the Capitol a day ahead of schedule, saying they were undeterred by the recent discovery of anthrax in a House office building.

Even though the Capitol will be open for business today, lawmakers from both chambers said the House was justified in recessing early last week. Both the House and the Senate will be in session Tuesday [23 Oct].

After consulting with public health officials and scientists, congressional leaders announced they would keep House and Senate office buildings closed today, "or until definitive results are received" about the extent of anthrax exposure.

Congressional aides said the Capitol will remain closed to tourists today.

House members were criticized for leaving town Wednesday while the Senate remained in session. But several lawmakers, including Senate Minority Leader Trent Lott (R-Miss.), said the discovery of anthrax on a mail bundling machine in the House's Ford Office Building demonstrates why House members chose to adjourn.

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Juliet Eilperin, "Capitol Reopening Ahead of Schedule Congressional Leaders Stress Importance of Returning to Work Despite Threat," *The Washington Post*, p.A08 (22 Oct 2001).

anthrax, 24 Oct 2001

Congress was in session again, beginning 23 Oct 2001, after the anthrax letter to Senator Daschle:

Expressing more frustration than fear, members of Congress returned to work yesterday, holing up in makeshift accommodations with skeletal staffs as environmental technicians continued to scour six House and Senate office buildings for anthrax contamination.

So far, authorities said, the contamination appears to be limited to four sites — none in the Capitol itself — and officials announced last night that the Russell Office Building will reopen today.

But with five new cases of inhalation anthrax among postal workers reported since Sunday, including two deaths, the mood was somber and restrained as the House dispensed with several noncontroversial matters and the Senate broke a logjam holding up action on spending bills. On the sidelines, the office shutdowns continued to create massive headaches for lawmakers and aides cut off from computer hard drives, important documents and normal contact with constituents and others.

While most senators worked out of the Capitol — some in their private "hideaways," others in the Democratic or Republican cloakrooms — many House members took temporary refuge in the imposing headquarters of the General Accounting Office at Fourth and G streets NW. The GAO cleared two entire floors, displacing 1,200 employees, to make way for all 435 members, each of whom was allotted two laptop computers and cramped space for three aides.

Hill leaders said the Cannon, Longworth and Rayburn buildings and two on the Senate side — the Dirksen and Hart buildings — will remain closed pending the results of environmental tests. The Hart building — where anthrax spores were released Oct. 15 when a staffer opened a letter to Senate Majority Leader Thomas A. Daschle (D-S.D.) — could remain closed for weeks.

"The Hart and Dirksen buildings will reopen as soon as environmental remediation to remove the evidence of anthrax spores is completed, or until those areas that have been tested positive have been sealed to allow for remediation without exposing other areas to contamination," Daschle and Senate Minority Leader Trent Lott (R- Miss.) said in a statement.

For all the inconveniences and anxiety, lawmakers expressed confidence in the decision by congressional leaders to call them back into session as well as the environmental measures that they say have sharply reduced the anthrax threat.

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John Lancaster and Helen Dewar, "Legislators, Aides Make Do in the Makeshift Halls of Congress," *The Washington Post*, p. A12 (24 Oct 2001).

26 Oct 2001

Attorney General John D. Ashcroft yesterday promised an aggressive campaign to detain and prosecute even minor lawbreakers in the Justice Department's fight against terrorism, comparing the effort to Robert F. Kennedy's campaign against organized crime in the 1960s.

In an unusually forceful speech to the U.S. Conference of Mayors here, Ashcroft said Justice Department prosecutors and FBI agents will use new anti-terrorism legislation to unleash broad surveillance and searches on suspected terrorists and their associates, and will not shrink from using minor crimes or immigration violations to jail or deport them.

"Let the terrorists among us be warned," Ashcroft said. "If you overstay your visas even by one day, we will arrest you. If you violate a local law, we will . . . work to make sure that you are put in jail and . . . kept in custody as long as possible. We will use every available statute. We will seek every prosecutorial advantage. We will use all our weapons within the law and under the Constitution to protect life and enhance security for America."

Though somewhat less far-reaching than the legislation Ashcroft had proposed, the landmark anti-terrorism bill would dramatically expand the FBI's wiretapping and electronic surveillance authority and impose stronger penalties for harboring or financing terrorists. It also redefines some terrorist acts and increases the punishment for them.

The bill, proposed five days after the Sept. 11 attacks in New York and Washington, was approved by the Senate yesterday, 98 to 1. The House overwhelmingly approved it Wednesday [24 Oct], and President Bush is expected to sign it today.

"These laws will help ensure that Americans will never be violated in the way we were on September 11," said Sen. Orrin G. Hatch (Utah), ranking Republican on the Judiciary Committee.

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But Ashcroft, in declaring "a new era in America's fight against terrorism," said the bill will allow "airtight surveillance" of terrorist networks and will enable U.S. authorities to disrupt plans for further attacks.

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Dan Eggen, "Tough Anti-Terror Campaign Pledged Ashcroft Tells Mayors He Will Use New Law to Fullest Extent," *The Washington Post*, p. A01 (26 Oct 2001).

27 Oct 2001 Feingold

In Congress, loyalty to the leadership of one's political party is conventionally more important than being correct. That's why many people in Washington, DC were astounded when Senator Feingold defied the wishes of the democratic party leadership and cast the only vote against S. 1510 and the only vote against the USA PATRIOT Act. The Washington Post newspaper published an article about Feingold's defiance.

Voting against the anti-terrorism bill wasn't even a close call for Sen. Russell Feingold (D-Wis.). It didn't matter that everyone else was voting for it, or that nine months ago he had voted to confirm the bill's prime advocate, Attorney General John D. Ashcroft. What mattered most, he says, were the freedoms that were being taken away.

So he cast the lone dissenting vote Thursday in the Senate. Passed 357 to 66 in the House, the bill was signed into law yesterday by President Bush.

In an interview yesterday, Feingold said that despite the lopsided margins, many of his fellow legislators voted for the measure only because they felt they had no choice. He said that even the bill's title — the "USA Patriot Act" — was part of the "relentless" pressure to move it swiftly.

"This is one of the ridiculous things they do in Washington," he said. "They want to intimidate people. . . . A number of my colleagues said they thought I was right on the merits but felt they had to vote for it anyway."

The vote was nothing unusual for Feingold, said Jeff Mayers, editor of WisPolitics.com. Mayers said Feingold made a name for himself by protesting bovine growth hormones — popular with farmers in this dairy-producing state because they increase milk production — and as a state senator often went against the wishes of Democratic Party leaders.

"This is what people have come to expect out of Feingold," Mayers said. "He's the Wisconsin maverick. He seems to score points for taking the stand and telling people what he thinks."

Feingold said what particularly troubled him on the anti- terrorism bill was the broader authority it gave in federal criminal investigations — not just those involving suspected terrorists — to secretly search homes and offices.

It was no small matter, he said, that police can compel the disclosure of medical or education records of anyone with even a casual knowledge of a suspected terrorist. "This is not a bill that is carefully tailored to the terrorism problem. The whole tenor of the debate was 'Let's grab as much as we can' given the fear of terrorism."

At 48, Feingold has been in politics for nearly two decades, winning a seat in the Wisconsin Senate on his first try at 29. He was elected to the U.S. Senate in 1992 and is in the middle of his second term. He is considered a progressive, sponsoring legislation to end racial profiling on the nation's roadways and to examine the role of racial discrimination in the application of capital punishment.

Earlier this year, he was taken to task by supporters who viewed his vote to confirm Ashcroft as a betrayal of those roots. Feingold said he just votes his conscience.

In this case, he said, there was no way in good conscience to support the anti-terrorism bill. He said he was also listening to his constituents, who understand that government should not be given too much power. Since the vote, he said, calls to his offices in Washington and Wisconsin have been evenly split between supporters and detractors.

Feingold, chairman of the Judiciary subcommittee on the Constitution, has posted a 10-page statement on his Web site outlining the reasons for his vote. But he said he does not believe that patriotism requires everyone to walk in lockstep. "Unity doesn't mean unanimity," he said.

Now that the bill is passed, Feingold said Congress is going to have to keep watch on how its provisions are enforced. He's not hopeful they can be overturned.

"The problem is that these things tend to go only in one direction."

Robert E. Pierre, "Wisconsin Senator Emerges as a Maverick Feingold, Who Did Not Back Anti-Terrorism Bill, Says He Just Votes His Conscience," *The Washington Post*, p.A08 (27 Oct 2001).

### Senator Leahy's Website

Senator Patrick Leahy, chairman of the Senate Judiciary Committee in 2001, has a particularly good website with a complete collection of his press releases since January 1997. I looked at his archives for Sep/Oct 2001 to collect his views on the USA PATRIOT Act. I hope that when Senator Leahy leaves office, his Senate website will be archived either by the U.S. government or by a university in his home state of Vermont, because many of the documents at Leahy's website are too lengthy to post here.

- Section by Section Analysis of Attorney General Ashcroft's proposed legislation. (20 Sep 2001) <http://leahy.senate.gov/press/200109/010920.html>
- Uniting and Strengthening America Act - *Senator Leahy's Anti-Terrorism Legislation* (21 Sep 2001) [http://leahy.senate.gov/press/200109/AYO01\\_714.pdf](http://leahy.senate.gov/press/200109/AYO01_714.pdf) This is an early draft of what became S. 1510, introduced on 4 Oct 2001.

3 Oct 2001

On 3 Oct 2001, Senator Feingold, chairman of the Constitution Subcommittee of the Judiciary Committee held hearings titled "**Protecting Constitutional Freedoms in the Face of Terrorism**". Here is Senator Leahy's statement there:

I am grateful to Senator Feingold for holding this timely hearing. Our history has taught us that in times of national crisis, we must cherish our constitutional freedoms all the more. We should bring that perspective to the ongoing negotiations over anti-terrorism legislation. We will receive advice today from witnesses with a long history of dedication to constitutional principles.

We have been discussing many constitutional issues in the wake of the terrorist attacks on America, from Fourth Amendment protections against unreasonable search and seizure to due process concerns about the treatment of legal permanent residents. These are important issues that our witnesses will discuss today. First, however, I would like to address the violence that has been directed against Arab, Muslim, and South Asian Americans over the last three weeks. In a time when Americans of every ethnic and religious background grieve for the loss to our neighbors and our nation, this prejudice – and the hate crimes it has spawned – is intolerable. The President, the Attorney General and the FBI Director have all

reiterated that fundamental precept. Americans treat their fellow men and women with dignity and respect, not prejudice and hate. Guilt by association and stereotyping have no place in American law or American life – indeed, individual accountability is at the core of our Constitution.

Our nation is united today against the terrorist threat, with greater strength and resolve than I have seen in my lifetime. More than that, however, I believe there is a broad consensus in our nation that we must battle terrorism without sacrificing that which makes our nation unique. Our constitutional values have united us for more than 200 years. We must improve our ability to find and punish the evildoers who attacked innocent people on September 11 and to prevent similar tragedies from occurring in the future. But we should not compromise the civil rights of our citizens in the process. We will protect our security. We will not give up our freedom. The values we hold dear are what define us as a nation. That commitment is what will allow our republic to remain strong.

The disastrous loss of life on September 11 will never be forgotten. Those losses and the damage to our economy and our great buildings – and our national psyche – cannot be minimized. But even if disaster were to strike our great Capitol or other precious monuments of marble and stone, we would rebuild and go on. Terrorists cannot take from us the ideals of Washington and Jefferson and Lincoln, or our fidelity to the Constitution.

We do not have to travel very far back into our history to find a time when we disregarded our principles in a time of crisis. Our internment of Japanese Americans in World War II was a shameful chapter in our history, and we should not repeat our mistake. The apologies we have made in recent years remind us of the long shadow cast by our worst acts, and serve as an important reminder of the dangers of overreaction.

Trial by fire can refine us or it can coarsen us. If we hold to our ideals and values, then it will strengthen us. Americans are united and all the free world, all civilized nations, all caring people join together with us. I trust that we will seek and serve justice and demonstrate to the world not only by our resolve but by our commitment to our constitutional principles that the United States remains strong even in the face of these terrorist atrocities.

Those who have attacked us hate what is best in America – our diversity and our freedom. Now more than ever, we must preserve and extend those values. Anything less would mark defeat and would dishonor those lost in the attacks and rescue efforts on September 11.

Leahy, <http://leahy.senate.gov/press/200110/100301.html> (3 Oct 2001).

11 Oct 2001

The first few paragraphs of a long speech on the Senate floor by Leahy on 11 Oct 2001, just before the Senate voted to approve S. 1510:

MR. LEAHY. Today we begin consideration of the "Uniting and Strengthening of America Act" or "USA Act of 2001," one month after the attacks and weeks ahead of Senate action following the destruction of the Federal Building in Oklahoma City in 1995. Working with Chairman Sensenbrenner, Congressman Conyers and the Republican and Democratic leaders in the House, Congress can and should act swiftly to enact this measure. Some may be concerned that if we go to conference it could take a year or more to resolve these issues. I will work to complete a conference in short order. The American people and the members of this body deserve fast and final action.

## PROCESS

Last Thursday, October 4, I was pleased to introduce with the Majority Leader, Senator Daschle, and the Chairmen of the Banking and Intelligence Committees, as well as the Minority Leader, Senator Lott, and Senator Hatch and Senator Shelby, the United and Strengthening America, or USA Act. This is not the bill that I, or any of the sponsors, would have written if compromise was unnecessary. Nor is the bill the Administration initially proposed and the Attorney General delivered to us on September 19, at a meeting in the Capitol.

We were able to refine and supplement the Administration's original proposal in a number of ways. The Administration accepted a number of the practical steps I had originally proposed on September 19 to improve our security on the Northern Border, assist our Federal, State and local law enforcement officers and provide compensation to the victims of terrorist acts and to the public safety officers who gave their lives to protect ours. This USA Act also provides important checks on the proposed expansion of government powers that were not contained in the Attorney General's initial proposal.

In negotiations with the Administration, I have done my best to strike a reasonable balance between the need to address the threat of terrorism, which we all keenly feel at the present time, and the need to protect our constitutional freedoms. Despite my misgivings, I have acquiesced in some of the Administration's proposals because it is important to preserve national unity in this time of crisis and to move the legislative process forward.

The result of our labors still leaves room for improvement. Even after the Senate passes judgment on this bill, the debate will not be finished. We will have to consider the important judgments made by the House Judiciary Committee in the version of the legislation making its way through the House. Moreover, I predict that some of these provisions will face difficult tests in the courts and that we in Congress will have to revisit these issues at some time in the future when, as we all devoutly hope, the present crisis has passed. I also intend as Chairman of the Judiciary Committee to exercise careful oversight of how the Department of Justice, the FBI and other executive branch agencies are using the newly-expanded powers that this bill will give them. I know that other members of the Judiciary Committee – including Senator Specter, Senator Grassley, and Senator Durbin – appreciate the importance of such oversight.

### Negotiations

The negotiations on this bill have not been easy. Within days of the September 11 attacks, I instructed my staff to begin work on legislation to address security needs on the Northern Border, the needs of victims and State and local law enforcement, and criminal law improvements. A week after the attack, on September 19, the Attorney General and I exchanged the outlines of the legislative proposals and pledged to work together towards our shared goal of putting tools in the hands of law enforcement that would help prevent another terrorist attack.

Let me be clear: No one can guarantee that Americans will be free from the threat of future terrorist attacks, and to suggest that this legislation – or any legislation – would or could provide such a guarantee would be a false promise. I will not engage in such false promises, and those who make such assertions do a disservice to the American people.

I have also heard claims that if certain powers had been previously authorized by the Congress, we could somehow have prevented the September 11 attacks. Given this rhetoric it may be instructive to review efforts that were made a few years ago in the Senate to provide

law enforcement with greater tools to conduct surveillance of terrorists and terrorist organizations. In May 1995, Senator Lieberman offered an amendment to the bill that became the Antiterrorism and Effective Death Penalty Act of 1996 that would have expanded the government's authority to conduct emergency wiretaps to cases of domestic or international terrorism and added a definition of domestic terrorism to include violent or illegal acts apparently intended to "intimidate, or coerce the civilian population." The consensus, bipartisan bill that we consider today contains a very similar definition of domestic terrorism.

In 1995, however, a motion to table Senator Lieberman's amendment was agreed to in a largely party-line vote, with Republicans voting against the measure. In fact, then Sen. Ashcroft voted to table that amendment, and my good friend from Utah, Senator Hatch, spoke against it and opined, "I do not think we should expand the wiretap laws any further." I recall Senator Hatch's concern then that "We must ensure that in our response to recent terrorist acts, we do not destroy the freedoms that we cherish." I have worked very hard to maintain that balance in negotiations concerning the current legislation.

Following the exchange on September 19 of our legislative proposals, we have worked over the last two weeks around the clock with the Administration to put together the best legislative package we could. I share the Administration's goal of providing promptly the legal tools necessary to deal with the current terrorist threat. While some have complained publicly that the negotiations have gone on for too long, the issues involved are of great importance, and we will have to live with the laws we enact for a long time to come. Demands for action are irresponsible when the road-map is pointed in the wrong direction. As Ben Franklin once noted, "if we surrender our liberty in the name of security, we shall have neither".

Moreover, our ability to make rapid progress was impeded because the negotiations with the Administration did not progress in a straight line. On several key issues that are of particular concern to me, we had reached an agreement with the Administration on Sunday, September 30. Unfortunately, within two days, the Administration announced that it was renegeing on the deal. I appreciate the complex task of considering the concerns and missions of multiple federal agencies, and that sometimes agreements must be modified as their implications are scrutinized by affected agencies. When agreements made by the Administration must be withdrawn and negotiations on resolved issues reopened, those in the Administration who blame the Congress for delay with what the New York Times described last week as "scurrilous remarks," do not help the process move forward.

### Hearings

We have expedited the legislative process in the Judiciary Committee to consider the Administration's proposals. In daily news conferences, the Attorney General has referred to the need for such prompt consideration. I commend him for making the time to appear before the Judiciary Committee at a hearing September 25 to respond to questions that Members from both parties have about the Administration's initial legislative proposals. I also thank the Attorney General for extending the hour and a half he was able to make in his schedule for the hearing for another fifteen minutes so that Senator Feinstein and Senator Specter were able to ask questions before his departure. I regret that the Attorney General did not have the time to respond to questions from all the Members of the Committee either on September 25 or last week, but again thank him for the attention he promised to give to the written questions Members submitted about the legislation. We have not received answers to those written questions yet, but I will make them a part of the hearing record whenever they are sent.

The Chairman of the Constitution Subcommittee, Senator Feingold, also held an important hearing on October 3 on the civil liberties ramifications of the expanded surveillance powers requested by the Administration. I thank him for his assistance in illuminating these critical issues for the Senate.

#### Rule 14.

To accede to the Administration's request for prompt consideration of this legislation, the Leaders decided to hold the USA Act at the desk rather than refer the bill to the Committee for mark-up, as is regular practice. Senator Hatch specifically urged that this occur, and I support this decision. Indeed, when the Senate considered the anti-terrorism act in 1995 after the Oklahoma City bombing, we bypassed Committee in order to deal with the legislation more promptly on the floor.

Given the expedited process that we have used to move this bill, I will take more time than usual to detail its provisions.

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Leahy, "On The Uniting And Strengthening of America Act Of 2001 ("USA ACT"),"  
<http://leahy.senate.gov/press/200110/101101a.html> (11 Oct 2001).

- Senator Leahy's 25 Oct speech on the floor of the Senate, just before the vote on H.R. 3162, is available at <http://leahy.senate.gov/press/200110/102501.html> or in the CONGRESSIONAL RECORD.

### Conclusion

With more than 500 people in Congress, it is *not* surprising that there is more than one reason why Congress hastily passed the USA PATRIOT Act. The content of the PATRIOT Act came mostly from Attorney General Ashcroft, who used the terrorist attacks as a pretext to obtain legislation that the FBI and CIA had wanted for many years. Congress hastily approved most of Ashcroft's proposals because of genuine fear of more terrorist attacks, as well as worry that Congress might be blamed for not helping the government prevent future attacks.

The hasty passage of the USA PATRIOT Act is a recent example of how democracy fails during a time of crisis, when the majority feels the need to immediately "do something" without regard to the technical details of what is done. As a result of poorly drafted statutes, millions of dollars in legal fees are wasted in interpreting the statute in courts and attempting to prove the statutes *unconstitutional*. Worse, U.S. citizens suffer invasions of privacy as a result of *unconstitutional* surveillance by the government.



An optimist might point to the absence of terrorist attacks in the USA since 11 Sep 2001 as proof that the PATRIOT Act was successful in preventing terrorism. I argue that terrorist attacks by Al-Qaeda against U.S. targets had been *infrequent*,<sup>30</sup> so we would need to wait tens of years to make a proper determination of whether the frequency of attacks changed. Furthermore, the U.S. invasion of Afghanistan in Oct 2001 and Iraq in 2003 gave Al-Qaeda the opportunity to focus their attacks on Americans in Afghanistan and Iraq — instead of attacking inside the USA and motivating the USA to retaliate further against Al-Qaeda — which is another reason that Al-Qaeda has not again attacked inside the USA.

The increased surveillance in the PATRIOT Act and subsequent amendments has apparently done nothing to find the perpetrator of the anthrax attacks in October 2001.<sup>31</sup> And, more than ten years after the attacks on the U.S. Embassies in Africa, we still have *not* captured Osama bin Laden. Clearly having more surveillance — even *unconstitutional* surveillance — does *not* guarantee success in either solving past crimes or preventing future crimes.

The quotations in this essay shows that some legislators — both liberals and conservatives — were concerned about the adverse impact of the draft PATRIOT Act on civil liberties, and they were concerned about being rushed into passing statutes that Attorney General Ashcroft desired. While these conscientious legislators removed some of the objectionable material from Ashcroft's proposals, the process was too hasty to do a good job. I conclude that the fear of being blamed for another attack motivated legislators to do a hasty and *unsatisfactory* job. Instead of being concerned about constitutional limits on government power, Ashcroft engaged in “the end justifies the means” reasoning and — a few weeks later — Congress agreed with that bogus philosophical position.

In domestic matters, there is generally some opposition in Congress. For a bill proposed by the majority party, the minority party in that chamber of Congress can debate and try to amend the proposal. For matters proposed by the executive branch, the party opposite the president's party can debate and try to amend. But when the USA is attacked by a foreign enemy, both the majority and minority parties in each chamber of Congress unite in a bipartisan spirit against the foreign enemy. That bipartisan conformity means there is little opposition in Congress to the executive

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<sup>30</sup> Al-Qaeda bombed the U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania on 7 August 1998. Approximately three years later, Al-Qaeda attacked the USA again on 11 Sep 2001.

<sup>31</sup> I am reminded of the perpetrator who put cyanide in Tylenol capsules in 1982 in the Chicago area, killing at least seven people, which is another famous unsolved crime. A suspect in the 2001 anthrax attacks committed suicide in July 2008, as the Justice Department was preparing to indict him.

branch's proposals in response to an attack by a foreign enemy. Congressional leaders can enforce this bipartisan conformity by condemning anyone who disagrees.<sup>32</sup>

Mature individual adults know *not* to make important decisions when they are in an emotional or impulsive state of mind. When groups of people, such as Congress, are in an emotional state, the group functions as a mob that squashes any opposition. Therefore, I have no hope that Congress will learn to avoid past mistakes, such as the poorly drafted and sometimes unconstitutional statutes in the USA PATRIOT Act. Indeed, as shown in my essay <http://www.rbs0.com/PAA.pdf>, the Protect America Act of 2007 was passed with even less deliberation than the PATRIOT Act. We are fortunate to have an independent judiciary who can declare statutes as unconstitutional and who can award damages to individuals who have been harmed by the government. But notice that when a courageous judge does declare a statute unconstitutional, politicians often unfairly criticize the judge with hyperbole and propaganda.

Finally, the spirit with which the PATRIOT Act was passed was duplicated in October 2002, when an overwhelming majority of the U.S. Congress voted to authorize military force in Iraq.<sup>33</sup> Five years later, the war in Iraq was generally recognized as a mistake that had wasted more than \$600 billion of taxpayers' money and killed more than 4000 American military personnel.

### Bibliography

Beryl A. Howell, "Seven Weeks: The Making of the USA PATRIOT Act," 72 *GEORGE WASHINGTON LAW REVIEW* 1145 (August 2004). Ms. Howell was the General Counsel of the Senate Judiciary Committee during 2001, which gave her an inside view of what happened.

Robert O'Harrow Jr., "Six Weeks in Autumn," *The Washington Post Sunday Magazine*, p. W06, <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/09/AR2006050900961.html> (27 Oct 2002).

"Patriot Act Primer," *The Washington Post*, (15 Mar 2006)  
<http://www.washingtonpost.com/wp-dyn/content/article/2005/11/03/AR2005110301390.html>

Library of Congress website with bills that were passed in October 2001 by the 107<sup>th</sup> Congress:  
<http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR02975>: (H.R. 2975, 12 Oct)  
<http://thomas.loc.gov/cgi-bin/bdquery/z?d107:SN01510>: (S. 1510, 11 Oct)  
<http://thomas.loc.gov/cgi-bin/bdquery/z?d107:h.r.03162>: (H.R. 3162, 24 Oct)  
H.R. 3162 passed the Senate on 25 Oct and was signed by the President on 26 Oct.

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<sup>32</sup> See my essay, *The Value of Dissent*, <http://www.rbs0.com/dissent.htm> (Nov 2001).

<sup>33</sup> House Joint Resolution 114, passed the House on a vote of 296 to 133 (10 Oct 2002), and passed the Senate on a vote of 77 to 23 (11 Oct 2002).

The USA PATRIOT Act of 2001 in plain ASCII text is available from:

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107)

#### collections of documents

Electronic Privacy Information Center, <http://www.epic.org/privacy/terrorism/usapatriot/>

Electronic Freedom Foundation, <http://www.eff.org/patriot/>

Yale University, Avalon Project, large collection of documents:

[http://www.yale.edu/lawweb/avalon/sept\\_11/sept\\_11.htm](http://www.yale.edu/lawweb/avalon/sept_11/sept_11.htm) (Attack on America)

#### collections of links

Center for Democracy and Technology, <http://www.cdt.org/security/usapatriot/history.shtml>

Collection of Links on History of PATRIOT Act.

Santa Clara County Library, California, [http://www.santaclaracountylib.org/about/patriot\\_act.html](http://www.santaclaracountylib.org/about/patriot_act.html)

#### links to effect on universities

The USA PATRIOT Act and subsequent legislation hit universities hard: (1) restrictions on visas for foreign students reduced tuition income to universities, (2) new restrictions on biological materials caused difficulties for research laboratories, and (3) less privacy for educational and library records. See the following webpages:

David Lombard Harrison, "Higher Education Issues After The USA Patriot Act,"

[http://www.nacua.org/documents/PatriotAct\\_Outline.pdf](http://www.nacua.org/documents/PatriotAct_Outline.pdf)

Mary Minow, "Library Records Post-Patriot Act (Federal Law)," (16 Sep 2002)

<http://www.llrx.com/features/libraryrecords.htm>

Catholic University of America, <http://counsel.cua.edu/fedlaw/Patriot.cfm>

Cornell University, <http://www.cit.cornell.edu/policy/PatriotAct/>

Dartmouth College Library, <http://library.dartmouth.edu/about/privacy.shtml>

North Carolina State Univ., [http://www.ncsu.edu/legal/recent\\_devs/patriot\\_act.php](http://www.ncsu.edu/legal/recent_devs/patriot_act.php)

Worcester Polytechnic Institute, <http://www.wpi.edu/Pubs/Policies/patriot.html>

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