

With a Whisper, Not a Bang
Bush signs parts of Patriot Act II into law -- stealthily
by David Martin

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On December 13, when U.S. forces captured Saddam Hussein, President George W. Bush not only celebrated with his national security team, but also pulled out his pen and signed into law a bill that grants the FBI sweeping new powers. A White House spokesperson explained the curious timing of the signing -- on a Saturday -- as "the President signs bills seven days a week." But the last time Bush signed a bill into law on a Saturday happened more than a year ago -- on a spending bill that the President needed to sign, to prevent shutting down the federal government the following Monday.

By signing the bill on the day of Hussein's capture, Bush effectively consigned a dramatic expansion of the USA Patriot Act to a mere footnote. Consequently, while most Americans watched as Hussein was probed for head lice, few were aware that the FBI had just obtained the power to probe their financial records, even if the feds don't suspect their involvement in crime or terrorism.

The Bush Administration and its Congressional allies tucked away these new executive powers in the Intelligence Authorization Act for Fiscal Year 2004 [H.R. 2417] [1], a legislative behemoth that funds all the intelligence activities of the federal government. The Act included a simple, yet insidious, redefinition of "financial institution," which previously referred to banks, but now includes stockbrokers, car dealerships, casinos, credit card companies, insurance agencies, jewelers, airlines, the U.S. Post Office, and any other business "whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters."

Congress passed the legislation around Thanksgiving. Except for U.S. Representative Charlie Gonzalez, all San Antonio's House members voted for the act. The Senate passed it with a voice vote to avoid individual accountability. While broadening the definition of "financial institution," the Bush administration is ramping up provisions within the 2001 USA Patriot Act, which granted the FBI the authority to obtain client records from banks by merely requesting the records in a "National Security Letter." To get the records, the FBI doesn't have to appear before a judge, nor demonstrate "probable cause" -- reason to believe that the targeted client is involved in criminal or terrorist activity. Moreover, the National Security Letters are attached with a gag order, preventing any financial institution from informing its clients that their records have been surrendered to the FBI. If a financial institution breaches the gag order, it faces criminal penalties. And finally, the FBI will no longer be required to report to Congress how often they have used the National Security Letters.

Supporters of expanding the Patriot Act claim that the new law is necessary to prevent future terrorist attacks on the U.S. The FBI needs these new powers to be "expeditious and efficient" in its response to these new threats. Robert Summers, professor of international

law and director of the new Center for Terrorism Law at St. Mary's University, explains, "We don't go to war with the terrorists as we went to war with the Germans or the North Vietnamese. If we apply old methods of following the money, we will not be successful. We need to meet them on an even playing field to avoid another disaster."

Opponents of the PATRIOT Act and its expansion claim that safeguards like judicial oversight and the Fourth Amendment, which prohibits unreasonable search and seizure, are essential to prevent abuses of power. "There's a reason these protections were put into place," says Chip Berlet, senior analyst at Political Research Associates, and a historian of U.S. political repression. "It has been shown that if you give [these agencies] this power they will abuse it. For any investigative agency, once you tell them that they must make sure that they protect the country from subversives, it inevitably gets translated into a program to silence dissent."

Opponents claim the FBI already has all the tools to stop crime and terrorism. Moreover, explains Patrick Filyk, an attorney and vice president of the local chapter of the ACLU, "The only thing the act accomplishes is the removal of judicial oversight and the transfer of more power to law enforcements agents."

This broadening of the Patriot Act represents a political victory for the Bush Administration's stealth legislative strategy to increase executive power. Last February, shortly before Bush launched the war on Iraq, the Center for Public Integrity obtained a draft of a comprehensive expansion of the Patriot Act, nicknamed Patriot Act II, written by Attorney General John Ashcroft's staff. Again, the timing was suspicious; it appeared that the Bush Administration was waiting for the start of the Iraq war to introduce Patriot Act II, and then exploit the crisis to ram it through Congress with little public debate.

The leak and ensuing public backlash frustrated the Bush administration's strategy, so Ashcroft and Co. disassembled Patriot Act II, then reassembled its parts into other legislation. By attaching the redefinition of "financial institution" to an Intelligence Authorization Act, the Bush Administration and its Congressional allies avoided public hearings and floor debates for the expansion of the Patriot Act.

Even proponents of this expansion have expressed concern about these legislative tactics. "It's a problem that some of these riders that are added on may not receive the scrutiny that we would like to see," says St. Mary's Professor Robert Summers.

The Bush Administration has yet to answer pivotal questions about its latest constitutional coup: If these new executive powers are necessary to protect United States citizens, then why would the legislation not withstand the test of public debate? If the new act's provisions are in the public interest, why use stealth in ramming them through the legislative process?

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1. The Intelligence Authorization Act for Fiscal Year 2004 is also called House Resolution (H.R.) 2417. There were 6 versions of H.R. 2417 in the 108th Congress. The copy on ratical is the one that was passed by both House and Senate (start at <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:h.r.02417:>).
See also Congressional Record: November 22, 2003, containing text of House Members Criticizing 2004 Intelligence Authorization Act.

<http://www.ratical.org/ratville/CAH/PA2goesLive.html>