

Privacy and secrecy in the new intelligence act

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William Fisher

Many of the more draconian provisions adversely affecting privacy, secrecy and the rights of asylum-seekers, originally included in the "Intelligence Reform and Terrorism Prevention Act of 2004", were omitted in the final version of the law. But the compromise agreed to by the US House of Representatives and Senate continues to contain language that troubles human and civil rights organisations. For example, the House version of the bill would have allowed noncitizens - including those likely to face torture if returned to their home countries - to be deported without an immigration court hearing, made it much more difficult for genuine refugees to prove their asylum cases, and deprived judicial review to victims of torture and other forms of persecution.

This and similar provisions were removed under pressure from the White House, leaders of both political parties, the families of the victims of the Sept. 11, 2001 attacks, and members of the Sept. 11 Commission, on whose recommendations the intelligence overhaul is based.

"These provisions would have put the lives of refugees at real risk," said a statement from Human Rights First, an advocacy group. "The fact that they were dropped is a victory for America's commitment to protecting the persecuted," the organisation said. Under US law, both House and Senate must pass legislation separately. If the two versions contain disagreements, they are reconciled in a House-Senate Conference Committee. The Sept. 11 Commission did not recommend changes in US immigration law, and most observers found the Senate version much closer to the com-

other provisions, allowed both legislative bodies to pass a compromise bill for the president's signature. While the harshest refugee and immigration proposals were dropped from the final version, the bill now passed by both Houses of Congress includes a requirement that the General Accounting Office (GAO), Congress' investigative arm, conduct a study and report, "to evaluate the extent to which weaknesses in the United States asylum system and withholding of removal system have been or could be exploited by aliens connected to, charged in connection with, or tied to terrorist activity".

Under the new measure, people indicted on terror charges will find it much more difficult to gain their freedom on bail. A legal presumption would be established denying bail for anyone indicted by a grand jury on terrorism charges. Although the suspect could appeal to a judge, the burden of proof would be on the defendant rather than on the government. Previously, that stipulation applied to suspects in violent and drug crimes, but not to alleged terrorists. Sceptics say the provision has the potential to be abused, possibly resulting in long detentions for people ultimately found innocent.

According to the Associated Press, Sen. Russell Feingold, a Democrat from the state of Wisconsin, claims the current Justice Department "has a record of abusing its detention powers post-Sept. 11 and of making terrorism allegations that turn out to have no merit".

The new legislation also expands the FBI's ability to obtain eavesdropping warrants under the Foreign Intelligence Surveillance Act (FISA). Under current law, these secret

with a foreign power or international terrorist group, such as Al Qaeda. But the Department of Justice (DOJ), to which the FBI reports, has made it known that they would favour a "USA Patriot Act II" to expand their powers even further. Both Republican and Democratic civil libertarians have opposed such expansion.

The current USA Patriot Act, hurriedly passed by Congress weeks after the Sept. 11 attacks, gave the government broad powers to conduct secret searches, wiretaps and other forms of surveillance. Sections of it are scheduled to expire in 2005, and there has been heated debate about whether they should be extended.

The new intelligence legislation also broadens prohibitions against providing material support to terror groups, makes it a crime to visit a terror camp that provides military style training and allows the FBI to obtain secret surveillance warrants against "lone wolf" extremists not known to be tied to a specific terrorist group. It also makes terrorism hoaxes a federal crime and toughens penalties against people who possess weapons of mass destruction. "Overall, it's another threat to civil liberties in this country," a spokesman for the American Civil Liberties Union told the AP. "It's just a continuation of what the administration's been doing."

The final bill also presents problems relating to government secrecy policy. For example, the Senate version of the bill authorises disclosure of the gross amount of the nation's intelligence budget - reportedly now about \$40 billion annually. However, this disclosure was rejected by House negotiators, despite the unanimous recommendation of the Sept. 11 Commission and the endorse-

ment of the Federation of American Scientists (FAS), this "is a setback that tends to reinforce the arbitrary and excessive secrecy that the Sept. 11 Commission found in the intelligence bureaucracy". FAS adds: "Perhaps the most important secrecy-related feature of the Intelligence Reform Act is what is not in it: the authority to create an entirely autonomous new classification system for intelligence."

It notes that the act "revivifies the dormant Public Interest Declassification Board, formally established four years ago but never convened, and assigns it the additional task of 'reviewing' congressional requests for declassification of particular records". During the Bush administration, the number of documents designated as "classified" has increased dramatically, triggering a corresponding increase in the numbers of requests for information under the government's Freedom of Information Act (FOIA). The FOIA was signed by President Lyndon B. Johnson in 1968, and was designed to increase public access to government documents.

FAS notes that the final bill "does not expand authority under which information is classified... but rather directs the (new) National Intelligence Director (NID) to establish and implement guidelines for the intelligence community for the purpose of such classification of information". Human rights advocates are also concerned about what the American Civil Liberties Union (ACLU), a Washington-based advocacy group, calls the "fundamental tension between intelligence gathering and civil liberties."

Said a statement from the

Intelligence information not connected to specific criminal activity, there is a substantial risk of chilling lawful dissent. Such inquiries plainly have a chilling effect on constitutional rights."

It called for "specific safeguards for domestic collection of intelligence information that preserve the role of the Federal Bureau of Investigation (FBI) while ensuring against the use of spy tactics against Americans through strengthened guidelines and other checks and balances to bar political spying."

Civil liberties advocacy groups have been sharply critical of the FBI and immigration officials in the Department of Homeland Security (DHS) for detaining thousands of visitors to the US for immigration violations without access to legal counsel or appeal. The DHS is in charge of America's immigration prison system, from which many have of these detainees have been deported. Since the Sept. 11 attacks, the FBI has rounded up and detained several thousand US citizens and visitors - most of them Arabs or Muslims. However, no one has yet been convicted of a terror-related charge. Human rights organisations are also troubled by the mechanism the new law sets up to protect civil rights. While it establishes a Privacy and Civil Liberties Board to review federal policies and practices, it gives the president the authority to appoint its members and denies it subpoena powers. The FAS says that while the board will have little independent authority, it "may turn out to serve as a useful forum for adjudicating classification disputes".

The final version of the legislation stripped out a provision creating an inspector general position in the office of the National Intelligence Director.

tions of abuses within government departments. They are present in virtually all major departments, including the DOJ, the DHS, and the Central Intelligence Agency (CIA).

Other provisions of the new law criminals giving material support to suspected terrorists and provide new investigative authority to pursue "lone wolf" terror suspects not affiliated with other known groups or foreign powers; require extensive sharing of intelligence and law enforcement information among federal, state, local and private entities; directs the DHS to develop a national strategy for transportation security, and adds at least 2,000 border patrol agents and 800 customs agents each year for five years and 8,000 beds a year to house immigration detainees and people suspected of terrorism.

Supporters of stricter laws governing US immigration reform and border protection have promised a comprehensive debate in the new Congress, which convenes in January. The border protection and immigration issues have been championed by Representative James A. Sensenbrenner, a Republican from the state of Wisconsin, who is the powerful chairman of the House of Representatives Judiciary Committee. Rep. Sensenbrenner is responsible much of the anti-refugee language in the House version of the bill.

For this reason, few government-watchers expect the controversy over intelligence reform to end with the passage of the new law. As noted by Howard Fineman in Newsweek magazine, "the intraparty battle between the Bush White House and recalcitrant House Republicans over intelligence reform is just the overture to the opera, a discordant melody we're going to hear over and