Piecemeal enactment of “Patriot II”

Bush administration expands police spying powers

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The Bush administration has signed into law an act that grants new powers to US intelligence agencies to spy on the public, and expands the controversial Patriot Act. In a highly unusual move, Bush signed the legislation into law on a Saturday—December 13—the same day US forces captured Saddam Hussein.

The White House was obviously seeking to avoid media coverage of the new legislation—and the print and broadcast media dutifully obliged, caught up in the hoopla over the capture of the former Iraqi leader.

Although White House spokesmen claimed “the president signs bills seven days a week,” the last time he did so on a Saturday was more than a year ago when he signed legislation to prevent the shutdown of the federal government the following Monday.

While passed under the Intelligence Authorization Act for Fiscal Year 2004, the legislation essentially contains elements of the previously-proposed “Patriot II Act” in repackaged form. In particular, it increases the powers of the FBI to probe the financial records of citizens without their knowledge—whether or not they are suspected of any connection to terrorism, or indeed any crime at all.

The original Patriot Act was signed into law in October 2001 in the wake of the September 11 terrorist attacks, acted upon by Congress in a record five weeks. In the name of combating terrorism, it marked a major escalation in the assault on civil liberties and democratic rights, giving unprecedented powers to US police and intelligence agencies to spy on citizens and non-citizens alike.

Early last year, news leaked that Attorney General John Ashcroft’s staff had drafted an expansion of the police powers of the Patriot Act, dubbed “Patriot II.” The *San Antonio Current* (December 24, 2003) wrote: “[T]he 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.”

In response to the ensuing public criticism of the Bush administration efforts to expand its police-state powers, “Patriot II” was shelved, and elements of it incorporated into other legislation. The administration thereby avoided public hearings and congressional debate on the expansion of the Patriot Act. Because the Intelligence Authorization Act pertains to intelligence agency funding, it was promoted as “must-pass” legislation.

Congress approved the legislation in late November. The Senate passed the legislation with a unanimous voice vote, thereby avoiding individual public accountability for senators—Republican and Democratic—who supported the bill. The House version passed with overwhelming Democratic support. Those Democratic members of Congress who earlier criticized the Patriot Act kept quiet this time around.

The most sinister element of the new legislation is the redefinition of those “financial institutions” that can be compelled by the FBI to turn over information during the investigation of individuals. While in the past, “financial institution” referred solely to banks and credit unions, this has now been expanded to include credit card companies, insurance agencies, stockbrokers, car dealerships, casinos, jewelers, airlines, the United States Post Office and any other concern “whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.”

By this vague definition, the government could also

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demand the turnover of school transcripts, medical records, and real estate records—in fact, the financial accounts of virtually any "institution" involved in dealings that the government deems to have a "high degree of usefulness" in its investigation.

To obtain the records, the FBI is not required to appear before a judge, or show "probable cause"—reason to suspect the individual is involved in criminal or terrorist activity. It only has to request the records in a "National Security Letter." Financial institutions served with these National Security Letters will be barred from informing individuals that information on them has been turned over to the FBI. If this gag order is violated, the institution faces criminal penalties. Furthermore, the FBI is not required to report to Congress how often these National Security Letters are used.

Under the Patriot Act, the FBI was required to submit subpoena requests to a federal judge, and intelligence agencies could compel some institutions to turn over financial data without a court order or grand jury subpoena if they had the approval of a senior government official. Under the new legislation, an FBI field agent merely needs to draft a National Security Letter.

The section of the Intelligence Authorization Act entitled "Improvement of Information Sharing Among Federal, State, and Local Government Officials" outlines new methods to coordinate police activities to gather information on individuals. It calls for special training projects at the state and local level to "encourage officials of State and local government, as well as representatives of industries that comprise the critical infrastructure in those cities to lawfully collect and to pass on to the appropriate Federal officials information vital for the prevention of terrorist attacks against the United States."

Local and state authorities will be trained to "assure that all reported information is systematically submitted to and passed on by the Department [of Homeland Security] for use by appropriate agencies." One of these "appropriate agencies" is the Central Intelligence Agency, which is legally barred from spying on American citizens and is supposedly restricted to the collection of "foreign" intelligence.

The new act also provides $4 million to underwrite "living quarters for certain students in cooperative and summer education programs of the National Security Agencies." Republican Senator Pat Roberts (Kansas)—an enthusiastic supporter of the new legislation—described this as "an ROTC-like program to encourage college students to pursue careers as intelligence analysts"—i.e., spies in training.

These new powers granted to intelligence agencies are part of the Bush administration's bid to concentrate increasing power in the hands of the executive, while at the same time diminishing judicial and congressional oversight of its operations. Using 9/11 as a pretext, the basic democratic rights of the population have been undermined, in particular the right to privacy and protection against unlawful search and seizure.

This effort has proceeded with virtually no opposition by Democrats in Congress. The major dailies have remained virtually silent on the provisions of the Intelligence Authorization Act for Fiscal Year 2004. A search of the *New York Times* on the topic turned up empty. Nothing appeared in the *Washington Post* until January 4, when the paper commented glibly that "Last-minute efforts to modify the provision in conference committee failed, unfortunately."

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