PATRIOT ACT EDITORIALS AND RESPONSES

Editorials (as published in respective publications) followed by original (un-edited) response submitted for publication

- *Seattle Post-Intelligencer*
- *Long Island Newsday*
- *New York Times*
- *Washington Post*

EDITORIAL

The Seattle Post-Intelligencer

August 21, 2003, Thursday

PATRIOT Act Ready to be Rolled Back

The USA Patriot Act is in trouble in Washington, D.C. That's because the law is in trouble in Oklahoma City, Philadelphia, Detroit, Seattle and even Tonasket.

Their heads cleared by civil rights alarms and their hearts hardened by chaos in Afghanistan and Iraq, members of both parties in Congress want to take back some of the sweeping powers temporarily given federal law enforcement in the post-9/11 panic.

Last month, the House balked at funding the law's "sneak-and-peek" searches, conducted without the property owner's or resident's knowledge - with warrants delivered later. When Congress returns after the Labor Day holiday, the calls for reform will only increase. Some state and local governments aren't waiting for Congress. In various ways and degrees, three states and more than 150 local governments have passed measures opposing or rejecting the act. They represent some 16 million people, including Tonasket's 1,000 citizens.

Attorney General John Ashcroft's promotional tour in defense of the tainted anti-terrorism act is a sure measure of the dissent, which spans the ideological spectrum from the American Civil Liberties Union to the American Conservative Union.

Throughout our history, crisis has brought sacrifice of individual liberties in the name of national security. Once the crisis was ended, the liberties were restored, often thanks to the perseverance of real patriots. But the fight against terrorism may have no marked end, and so must the fight for individual liberty.

On the Net: Justice Department Tuesday launched a Web site in defense of the act: www.lifeandliberty.gov

NOTES:

p.1

P-I OPINION
"It was built in one day, but we're going to have to tear it down piece by piece." - Rep. Butch Otter, R-Idaho, who voted against the Patriot Act

RESPONSE

To *Seattle Post-Intelligencer*

Dear Editor:

Contrary to your editorial of August 21, 2003, the Patriot Act is not "in trouble in Washington, D.C." In fact, the Patriot Act was supported by both Senators from the state of Washington and passed in the Senate by a vote of 98-1 and a House vote of 357-66. The same small, but vocal minority that opposed the Patriot Act when it passed overwhelmingly in October 2001, is opposing it now. These are also mostly the same groups that opposed the 1996 Anti-Terrorism Act signed by then President Clinton. In other words, these opponents not only think we are doing too much now to fight terrorism; they thought we were doing too much on September 11th.

Fortunately the American people - by a 2-1 majority in a recent poll - understand that the Patriot Act supplies the tools we need to fight terrorism. These tools allow us to share information and prevent acts of terror; they update our laws to keep up with the changing technologies terrorists use; and they allow us to use the same crime-fighting tools against terrorists that we have used successfully for years against drug dealers and the Mafia.

As for the recent House of Representatives vote on delayed notification searches, if the amendment were to become law it would have the potential to tip off terrorists or dangerous criminals before we could neutralize the threats they pose, and could threaten our safety. Delayed notification search warrants are a long-existing crime fighting tool upheld by courts nationwide for decades - including the 9th circuit and the Supreme Court. The provision in the Patriot Act, drafted by Senator Patrick Leahy (D-VT) and Senator Orrin Hatch (R-UT), simply codified a long-existing tool that has proven essential to the fight against drug dealers for many years. These warrants are provided by federal judges in extremely narrow circumstances, such as cases where immediate notification may result in death or physical harm to an individual, flight from prosecution or witness intimidation. If the next Mohammed Atta were to be in Seattle, I doubt the citizens of Seattle would want law enforcement to inform him that we were on to him before we could be sure we had obtained all the information we could, such as who else might be working with him and the details of the plot he was involved in. While we are doing everything under the law to make sure that there is no future Muhammad Atta, if one were to appear, a lawfully authorized warrant to search his computer or hotel room could be the key to protecting the lives and civil liberties of the citizens of Seattle.

We welcome the debate about the Patriot Act and invite all Americans to log on to our website at www.lifeandliberty.gov. It includes an overview of the law, its entire text,

statements of Members of Congress explaining the act, factual information dispelling some of the major myths perpetuated as part of the disinformation campaign, as well as other information.

EDITORIAL

The Washington Post

August 21, 2003, Thursday

Mr. Ashcroft's Roadshow

ATTORNEY GENERAL John D. Ashcroft is hitting the campaign trail this week -- not on behalf of a candidate but in defense of the USA Patriot Act, the anti-terrorism legislation enacted in the aftermath of 9/11. It speaks volumes about the administration's assessment of public sentiment that Mr. Ashcroft feels the need to go on the road -- and to presidential battleground states such as Ohio, Michigan and Pennsylvania -- to defend a statute that was, after all, approved overwhelmingly in Congress. The House voted last month to repeal the law's "sneak-and-peak" provision that permits the government to delay notifying suspects that their homes or workplaces have been searched. Communities across the country, and three states, have passed resolutions condemning the law, and they're joined by such surprising allies as the American Conservative Union.

Yet the Patriot Act is neither the dangerously authoritarian threat its critics suggest nor the magic (and painless) bullet Mr. Ashcroft and other cheerleaders would have you believe. It reflects an imperfect compromise between the need to safeguard civil liberties and new challenges posed by domestic terrorism. And it is, appropriately, a temporary measure; over the administration's vociferous objections, some critical provisions expire after 2005. Much of the criticism of the law has been shrill and ill-informed. It doesn't, as former vice president Al Gore suggested in a recent speech, let federal agents troop "into every public library in America and secretly monitor what the rest of us are reading." Such information can be gathered only in cases of national security, and with a warrant. Similarly, despite the Sturm und Drang over sneak-and-peak, such searches with delayed notification have been approved by judges for years.

But if people are worried about how the Justice Department is wielding its authority under the Patriot Act, a big piece of the blame lies with Mr. Ashcroft himself. Muscular congressional oversight of this new law is critical, but the department has until recently balked at answering reasonable questions from lawmakers. At one point last fall, House Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.) was so exasperated he was threatening to issue a subpoena to get the information. This is no way to make the public feel better about how the department is handling sweeping new powers.

More important, it strikes us that a great measure of the public's "unease" over the law, as Sen. Patrick J. Leahy (D-Vt.) put it, is in fact discomfort -- legitimate discomfort -- over

the administration's broader disregard for civil liberties: its insistence that American citizens can be held for months without access to lawyers simply by designating them "enemy combatants"; its sweeping roundup of non-citizens in the days after 9/11; and its unapologetic stance toward the treatment of detainees who had nothing to do with terrorism but were held for months. Technically, these are separate matters from the Patriot Act. In reality, the Patriot Act has become something of a repository in the public mind for wider worries about Mr. Ashcroft's Justice Department. As the attorney general barnstorms the country, he might do a little less preaching to the already converted and a little more listening to the legitimate concerns of the American public.

RESPONSE

To the Editor

Washington Post

We appreciate that your editorial of August 21, 2003 acknowledges "much of the criticism of the law [the Patriot Act] has been shrill and ill-informed." As you noted, business records can only be obtained in national security terrorism cases with a judicially-issued order. However, that particular provision of the Patriot Act also is subject to congressional oversight. The Department reports twice a year on how often this provision is utilized. After reviewing the Department's oversight response this summer, the House Judiciary Committee stated, "[t]he Committee's review of classified information related to FISA orders for tangible records, such as library records, has not given rise to any concern that the authority is being misused or abused."

Furthermore, the Attorney General and the Department have answered extensive questions from Congress about the Patriot Act - most recently in a hearing before the House Judiciary Committee this summer and before the Senate earlier this Spring, as well as having provided 60 pages of answers to detailed questions about the use of the Act earlier this summer.

As to non-Patriot Act terrorism related issues, there was not a "sweeping roundup of non-citizens in the days after 9/11." FBI investigators conducted standard investigatory procedures in areas where the 19 hijackers had lived and worked, as well as the sites of the attacks. This accounts for the fact that approximately 75% of the detainees were in the metropolitan New York area. In the course of this investigation when the FBI encountered individuals who were in the country illegally, such individuals were detained due to immigration law violations. Detainees were provided access to lawyers. Those who could not afford a lawyer were given lists of lawyers who could provide free legal services.

Regarding "enemy combatants," the Supreme Court stated unanimously in 1942 that both lawful and unlawful combatants are "subject to capture and detention." Military detention should not be confused with the criminal justice system, which exists for

different reasons and requires different procedures. Only two U.S. citizens are being held as enemy combatants. Yaser Hamdi was captured in Afghanistan with a Taliban unit, armed with an AK-47. Jose Padilla traveled to Afghanistan and Pakistan, trained with al-Qaeda, then returned to the USA to explore plans to detonate a "dirty bomb." Both fall within the traditional definition of enemy combatants.

Even lawful POWs have no right to lawyers to challenge their military detention. The 1880 Oxford "Laws of War on Land" states, "the confinement of prisoners of war is not in the nature of a penalty for crime. . . . It is a temporary detention only." Still, some armchair editorial-page generals now suggest that we accord unprecedented rights -- over and above those provided to POWs -- to unlawful enemy combatants who happen to be U.S. citizens.

EDITORIAL

The New York Times

August 10, 2003, Sunday

"Blacklisting Judges"

The founding fathers, whose brilliant design for the federal government was based on three coequal branches, would be horrified to learn of Attorney General John Ashcroft's latest idea for improving the American justice system. Mr. Ashcroft has ordered federal prosecutors to start collecting information on federal judges who give sentences that are lighter than those suggested by federal guidelines. Critics are right when they say this has the potential to create a "blacklist" of judges who could then be subjected to intimidation.

Congress established the United States Sentencing Commission in the mid-1980's, and charged it with developing guidelines to bring greater uniformity to sentences handed down by federal courts. The guidelines provide a range of sentences a judge can hand down for particular crimes. But they also permit judges discretion to impose a more lenient sentence, known as a "downward departure," if they can justify the decision. Judges frequently depart downward at the urging of the government, to reward defendants who cooperate with prosecutors.

But the administration and its allies in Congress have made no secret of their unhappiness with judges who impose more lenient sentences than guidelines call for. They have tried a variety of methods of pressuring judges to see things their way, including starting a Congressional investigation into the sentencing practices of James Rosenbaum, a United States District Court judge in Minnesota.

Mr. Ashcroft's latest initiative raises these pressures to a new level. Under the new policy, federal prosecutors will be required in many cases to report when a judge departs downward from the sentence recommended by the federal guidelines. The Justice

Department has said it intends to use the data to identify how often particular judges depart downward. Obviously, judges are going to be worried about coming in high on the list, and those who do will wonder if they will be subject to intimidation, as Judge Rosenbaum was.

At the very least, the Ashcroft plan would subject federal prosecutors to an unusual, and undesirable, degree of top-down management. Right now, individual prosecutors decide when to appeal a judge's sentence. Mr. Ashcroft seems to want that decision to be made after a review from Washington. A prosecutor who feels a given judge is consistently handing down sentences that are too mild can certainly let his or her feelings be known to superiors. But this new, rigorous and rigid reporting system seems to treat prosecutors as lackeys, and judges as some kind of minor civil servants who can be ordered around by the president and his appointees.

By trying to make federal judges yield to political pressure from Washington, the Bush administration is engaging in a radical attack on our constitutional system. Even Chief Justice William Rehnquist, whose conservative credentials are unassailable, has warned that collecting data on judges' sentencing practices "could amount to an unwarranted and ill-considered effort to intimidate individual judges." Mr. Ashcroft should heed these words, and abandon his dangerous war on the judicial branch.

RESPONSE

New York Times

To the Editor:

"Blacklisting Judges" (editorial, Aug. 10) contains multiple factual errors about the Attorney General's July 28 memorandum regarding criminal sentences. What was characterized as a "radical attack on our constitutional system" is in fact a fairly modest set of reforms that the Attorney General was required to implement under the PROTECT Act, a landmark law passed this spring by a unanimous vote in the Senate and a 400-25 vote in the House.

In addition to providing new tools to fight child pornography and child sexual abuse, the PROTECT Act significantly expanded appellate review of sentences that are more lenient than those mandated by federal sentencing guidelines. The sole purpose of the Attorney General's memorandum is to establish appropriate mechanisms to assist the Department in determining whether to use this new law to appeal a light sentence to a higher court. Your editorial wrongly asserts that these appellate reporting procedures will create a "blacklist of judges who could then be subjected to intimidation." The notion that trial judges will be intimidated by having appellate judges review their sentences is absurd. Trial judges live with that reality every day.

Your editorial also fails to note that the Attorney General was compelled by Congress to take these measures. When the House of Representatives initially passed the PROTECT Act, it would have required the Justice Department to submit a report to Congress every time a judge gave a below-guidelines sentence, with few exceptions. The Department actually opposed this particular provision as unwarranted. As a compromise, the final Act provided that this reporting obligation would not take effect if the Attorney General made specified changes in sentencing appeals policies within 90 days. Therefore, the Attorney General's memorandum was designed to avoid triggering the harsher provision in the bill passed by Congress.

Contrary to your assertion that this new policy creates an "unusual, and undesirable, degree of top-down management," the Department's long-standing policy is that no appeal may be pursued unless authorized by the Solicitor General. As to sentencing appeals, this policy is mandated by law. For decades, Department procedures have required reporting of adverse decisions in most civil and criminal cases, and we have simply extend this well-established mandatory reporting process to certain sentencing guidelines cases.

The Justice Department's revised procedures are intended to ensure that the sentencing laws adopted by Congress are properly enforced. Some do not like those laws and clearly think the courts and Congress should go easier on convicted criminals. The overwhelming bipartisan support for the PROTECT Act shows that the people's elected representatives do not agree.

EDITORIAL

New York Newsday

Post 9/11, U.S. Needs Debate on Security vs. Freedom

August 20, 2003

Going on the offensive against critics of the USA Patriot Act, Attorney General John Ashcroft yesterday turned up the heat on a debate the nation needs to have.

Ashcroft said the law's post-9/11 expansion of police powers swept away "a culture of law enforcement inhibition" by authorizing more aggressive surveillance and better cooperation between law enforcement and the intelligence community. He credited those changes for some successes in the war on terrorism.

But what Ashcroft disparaged as a culture of inhibition is the very lattice of laws, and checks and balances, that preserve the nation's singular tradition of respect for privacy and individual rights. That's why some provisions of the Patriot Act have drawn fire from people on both the left and right for sacrificing too much freedom in the name of security.

A provision making it easier for authorities to use sneak-and-peek warrants, where a

householder may never know his home has been searched, has met strong opposition in the Republican-controlled House, which voted not to fund their expanded use. And the American Civil Liberties Union is challenging in court a section of the law that gave officials broader authority to search library, bookstore and office records and conceal from the targeted person that a search took place. That robust pursuit of a sound balance between security and freedom is a healthy exercise in a democracy.

Ashcroft took the high road yesterday, sounding grand themes of saving American lives while safeguarding the Constitution and protecting American freedoms. He and President George W. Bush have not always been so high-minded. In the past they outrageously accused elected officials who disagreed with them of aiding terrorists and of not being interested in the security of the American people.

Going forward, the administration should avoid such ad hominem attacks and engage with their critics in an honest debate about how best to ensure both security and freedom.
August 20, 2003

Going on the offensive against critics of the USA Patriot Act, Attorney General John Ashcroft yesterday turned up the heat on a debate the nation needs to have.

Ashcroft said the law's post-9/11 expansion of police powers swept away "a culture of law enforcement inhibition" by authorizing more aggressive surveillance and better cooperation between law enforcement and the intelligence community. He credited those changes for some successes in the war on terrorism.

But what Ashcroft disparaged as a culture of inhibition is the very lattice of laws, and checks and balances, that preserve the nation's singular tradition of respect for privacy and individual rights. That's why some provisions of the Patriot Act have drawn fire from people on both the left and right for sacrificing too much freedom in the name of security.

A provision making it easier for authorities to use sneak-and-peek warrants, where a householder may never know his home has been searched, has met strong opposition in the Republican-controlled House, which voted not to fund their expanded use. And the American Civil Liberties Union is challenging in court a section of the law that gave officials broader authority to search library, bookstore and office records and conceal from the targeted person that a search took place. That robust pursuit of a sound balance between security and freedom is a healthy exercise in a democracy.

Ashcroft took the high road yesterday, sounding grand themes of saving American lives while safeguarding the Constitution and protecting American freedoms. He and President George W. Bush have not always been so high-minded. In the past they outrageously accused elected officials who disagreed with them of aiding terrorists and of not being interested in the security of the American people.

Going forward, the administration should avoid such ad hominem attacks and engage with their critics in an honest debate about how best to ensure both security and freedom.

RESPONSE

Long Island Newsday

To the Editor:

We agree with the sentiment in your recent editorial in which you said the nation needs to have a debate about the Patriot Act. But we would like to remind your readers that there was a very extensive debate that involved the New York Senators who both voted for the Patriot Act and New York Representatives, most of whom voted for the measure.

Senator Schumer said of the Patriot Act: "If there is one key word that underscores this bill, it is 'balance.' . . . The balance between the need to update our laws given the new challenges and the need to maintain our basic freedoms which distinguish us from our enemies is real." Senator Schumer also pointed out that "when we are facing a war where it is more likely that more civilians will die than military personnel, the homefront is a warfront. The old high wall between foreign intelligence and domestic law enforcement has to be modified. The bill does a good job of that. . . . The other provisions in the bill are good as well."

As for the issue of delayed notification searches, if the recent "Otter Amendment" passed in the House were to become law it would have the potential to tip off terrorists or dangerous criminals before we could neutralize the threats they pose, and could threaten the safety of New Yorkers. Delayed notification search warrants are a long-existing crime fighting tool upheld by courts nationwide for decades - including the Supreme Court. The provision in the Patriot Act, drafted by Senator Patrick Leahy (D-VT) and Senator Orrin Hatch (R-UT), simply codified a long-existing tool that has proven essential to the fight against drug dealers for many years. These warrants are provided by federal judges in extremely narrow circumstances, such as cases where immediate notification may result in death or physical harm to an individual, flight from prosecution or witness intimidation.

If the next Mohammed Atta were to appear in New York, I doubt New Yorkers would want law enforcement to inform him that we were on to him before we could be sure we had obtained all the information we could, such as other terrorists who might be working with him and the details of their plot. While we are doing everything under the law to make sure that there is no future Muhammad Atta, if one were to appear, a lawfully authorized warrant to search his computer or hotel room could be the key to protecting the lives and civil liberties of the citizens of New York.

We welcome the debate about the Patriot Act and invite all Americans to log on to our website at www.lifeandliberty.gov. It includes an overview of the law, its entire text, statements of Members of Congress explaining the act, factual information dispelling

some of the major myths perpetuated as part of the disinformation campaign, as well as other information.