

Justice Department Evasions on 'Patriot II'

by Edward Spannaus

In early February, someone from within the U.S. Department of Justice (DOJ) took the risk of leaking a highly secret draft for a new anti-terrorist bill, which would give the Federal government sweeping expanded powers for secret investigations, detentions, and trials of suspected "terrorists"—and which would enable the government to target U.S. citizens the same way that foreign nationals have been targeted since Sept. 11, 2001.

The leaking of the new bill—quickly dubbed "Patriot II" by many and "Himmler II" by Lyndon LaRouche (see *EIR*, March 28)—intensified the debate around the first USA/Patriot bill, which was rushed through Congress in the wake of the Sept. 11 attacks.

To date, 89 towns and cities have passed resolutions condemning the USA/Patriot Act, and resolutions are also winding their way through at least two state legislatures. Librarians and bookstore owners are especially upset about the law's provisions that can require them to turn over to the FBI information on a patron's reading habits or Internet use.

Meanwhile, Attorney General John Ashcroft's DOJ is already moving ahead to implement some of the provisions of "Patriot II" in a piecemeal fashion, with the help of its allies in Congress, while other Congressmen and Senators are vowing to oppose any extension of the present bill, or expansion of its powers.

DOJ Evasions

Ashcroft's Department has so far refused to admit what is obvious: that the "Patriot II" bill was fully drafted at the point it was leaked, and was ready to be jammed through Congress at the first opportune moment.

At a hearing of the Senate Judiciary Committee on March 4, Democratic Senators went after Ashcroft regarding the DOJ's secrecy and deception around the "Patriot II" bill.

Sen. Patrick Leahy (D-Vt.) told Ashcroft at the beginning of that hearing: "I'm glad you're here, because last month a secret draft bill entitled 'The Domestic Security Enhancement Act of 2003' was leaked to the press as a sequel to the USA/Patriot Act."

"In fact," Leahy continued, "a member of my staff called the Department just five days, just five days before this bill was leaked to the press. She was told point-blank there was

no bill in the works. Five days later we have an 86-page bill and a 33-page textual analysis.”

“I know they’re good down at the Department of Justice, but neither this administration nor anybody else could put together an 86-page bill of this complexity with a 33-page textual analysis in five days,” Leahy said. “Somebody lied to a member of my staff—not you, Mr. Attorney General, I want to hasten to add. But somebody who reports directly to you, lied to her.”

Leahy also noted that it had only been a year since the passage of the first Patriot Act, and the Congress has been unable to get information from the Justice Department as to how it is being used. “But this leaked proposal would go much further in granting the government more surveillance powers over American citizens, while drastically curtailing the ability of Congress, the courts, and the American people to find out what the government is doing,” Leahy said.

Ashcroft’s lame response was to deny that there was any “proposal,” declaring: “No final discussion has been made with the Attorney General about proposals. No final discussion has been made with the administration about proposals.”

(It reminds one of the repeated statements from Administration officials prior to the Iraq War, that “there is no war plan on the President’s desk.”)

Ashcroft went on to explain that “we constantly are thinking of things that ought to be considered. . . . So if someone leaks the fact that there are items under consideration, or that there is a matter of discussion, that doesn’t mean anything out of the ordinary.”

“I want to assure you that there has been no bill decided on, no proposal decided on,” Ashcroft said, going on to a *reductio ad absurdum*: “I am keenly aware that the administration cannot pass legislation. . . . It would be the height of absurdity for me to have a secret matter that I hoped to make a law without telling Congress.”

A Finished Product?

This writer had the opportunity to publicly question the Justice Department official known as “the architect of the Patriot Act,” at two events on April 24, which were sponsored by the American Bar Association (ABA). The official is Assistant Attorney General Viet D. Dinh, who heads the Office of Legal Policy, which produced the USA/Patriot Act and then the draft of Patriot II.

In the first meeting, sponsored by the ABA Standing Committee on Law and National Security, the author noted Senator Leahy’s comments about his inquiries about Patriot II and the Department’s denials—five days before the document was leaked. “To the naked eye, it looks like a finished product. Some observers have speculated that the Department was waiting for some new catastrophe, like Sept. 11, to introduce it. Is that accurate? What was the Department waiting for?”

Dinh danced around the question in a lengthy non-an-

swer, never even acknowledging whether the draft came out of his office, or was being prepared for introduction in the Congress. Until there is a Presidential sign-off, and an Attorney General sign-off, nothing is final, Dinh said, going on to describe an extensive process of inter-agency review, etc. “We’re always thinking about how to improve things, what we can do better, and always asking for suggestions,” Dinh said. “In this day and age of computers and technology, it’s easy to make everything look very professional.”

The second meeting, sponsored by the ABA Section on Administrative Law, was in the format of a debate, in which a number of speakers were quite critical of what the DOJ has done since Sept. 11.

The author again asked Dinh about Patriot II, referring to the exchanges that had taken place earlier in the day, where Dinh had basically described the draft as a “suggestion box,” and come near to denying any knowledge of it at all. The question was broadened to include any of the other panelists who had read the draft, asking them to say whether it looked like a finished product to them.

Viet Dinh jumped in first, not to challenge any part of the question, but to say, “I expect a standard of professionalism and of quality of work product, from people, certainly in the Office of Legal Policy and throughout the Department of Justice. . . . We demand a very high standard, especially in this day of easy word-processing. . . . You would have to be a nincompoop not to make something look good. Just because it looks good, it doesn’t mean it is good, or that it’s been substantively vetted, or that it’s final.”

Dinh then talked about the need for deliberation and “adult supervision of half-baked ideas,” but he added “that process of deliberation was somewhat short-circuited by an unauthorized disclosure” to what he called “the rather ironically named” Center for Public Integrity.

Marc Rotenberg, the Executive Director of the Electronic Privacy Information Center (EPIC), responded, in a somewhat bewildered fashion: “It’s not clear to me, exactly what Professor Dinh just said.” He said he himself had worked as counsel for the Senate Judiciary Committee, and had extensive interaction with the DOJ. Referring to the Patriot II draft, he stated: “This was a very refined legislative proposal . . . essentially ready to be delivered to potential sponsors.” He also noted that some of the provisions in the draft are already being circulated as legislative proposals in Congress.

“There is a type of communication taking place here, regarding legislative proposals, which requires much greater scrutiny,” Rotenberg said.

But in late March, the Justice Department clamped down on a different kind of communication, that is, any unmonitored contacts between DOJ employees and Congress, by directing that other DOJ officials would accompany staffers on most meetings—a move described by Congressional leaders as an attempt to “muzzle” whistle-blowers.