

September 14, 2003

DOMESTIC SECURITY

Bush Seeks to Expand Access to Private Data

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WASHINGTON, Sept. 13 — For months, President Bush's advisers have assured a skittish public that law-abiding Americans have no reason to fear the long reach of the antiterrorism law known as the Patriot Act because its most intrusive measures would require a judge's sign-off.

But in a plan announced this week to expand counterterrorism powers, President Bush adopted a very different tack. In a three-point presidential plan that critics are already dubbing Patriot Act II, Mr. Bush is seeking broad new authority to allow federal agents — without the approval of a judge or even a federal prosecutor — to demand private records and compel testimony.

Mr. Bush also wants to expand the use of the death penalty in crimes like terrorist financing, and he wants to make it tougher for defendants in such cases to be freed on bail before trial. These proposals are also sure to prompt sharp debate, even among Republicans.

Opponents say that the proposal to allow federal agents to issue subpoenas without the approval of a judge or grand jury will significantly expand the law enforcement powers granted by Congress after the attacks of Sept. 11, 2001. And they say it will also allow the Justice Department — after months of growing friction with some judges — to limit the role of the judiciary still further in terrorism cases.

Indeed, Senator Arlen Specter, Republican of Pennsylvania, who is sponsoring the measure to broaden the death penalty, said in an interview that he was troubled by the other elements of Mr. Bush's plan. He said he wanted to hold hearings on the president's call for strengthening the Justice Department's subpoena power "because I'm concerned that it may be too sweeping." The no-bail proposal concerns him too, the senator said, because "the Justice Department has gone too far. You have to have a reason to detain."

But administration officials defended Mr. Bush's plan. Even though the administration is confident that the United States is winning the war on terrorism, they said, they have run into legal obstacles that need to be addressed.

"We don't want to tie the hands of prosecutors behind their backs," said Mark Corallo, a Justice Department spokesman, "and it's our responsibility when we find weaknesses in the law to make suggestions to Congress on how to fix them."

In announcing his plan on Wednesday, Mr. Bush said one way to give authorities stronger tools to fight terrorists was to let agents demand records through what are known as administrative subpoenas, in order to move more quickly without waiting for a judge.

The president noted that the government already had the power to use such subpoenas without a judge's consent to catch "crooked doctors" in health care fraud cases and other investigations.

The analogy was accurate as far as it went, but what Mr. Bush did not mention, legal experts said, was that administrative subpoenas are authorized in health care investigations because they often begin as civil cases, where grand jury subpoenas cannot be issued.

The Justice Department used administrative subpoenas more than 3,900 times in a variety of cases in 2001, the last year for which data was available. The subpoenas are already authorized in more than 300 kinds of investigations, Mr. Corallo said.

"It's just common sense that we should be able to use this tool against terrorists too," he said. "It's not a matter of more power. It's the fact that time is of the essence and we may need to act quickly when a judge or a grand jury may not be available."

Officials could not cite specific examples in which difficulties in obtaining a subpoena had slowed a terrorism investigation.

But Mr. Corallo gave a hypothetical example in which the F.B.I. received a tip in the middle of the night that an unidentified terrorist had traveled to Boston. Under Mr. Bush's plan, the F.B.I., rather than waiting for a judicial order, could subpoena all the Boston hotels to get registries for each of their guests, then run those names against a terrorist database for a match, he said.

Attorney General John Ashcroft and other senior officials, defending the Patriot Act in recent speeches and interviews, have emphasized that judges must sign off on the investigative tools that have caused the most public protest, like searching library records or executing warrants without immediately notifying the target.

One section of the Justice Department's new Patriot Act Web site, lifeandliberty.gov, for instance, says the law "allows federal agents to ask a court for an order to obtain business records in national security terrorism cases."

The administration sought to expand the use of administrative subpoenas in the original Patriot Act in 2001, but Democrats protested and succeeded in killing it.

Civil rights lawyers, defense advocates and some former prosecutors say they see no need to broaden the Justice Department's powers so markedly. Under current law, they say, terrorism investigators can typically get a subpoena in a matter of hours or minutes by going through a judge or a grand jury.

"The fundamental issue here," Nicholas M. Gess, a former federal prosecutor and a senior aide to the former attorney general Janet Reno, said, "is that at a time of such concern over civil liberties, there's good reason to have a judge looking over the government's shoulder."

Mr. Bush's proposal, he said, "means that there are no effective checks and balances. It's very worrisome."

A second proposal by Mr. Bush would strengthen the government's hand in keeping defendants charged with terrorism-related crimes in jail pending trial.

But critics like Senator Edward M. Kennedy, Democrat of Massachusetts, said they believed the idea also posed risks of limiting the discretion of federal judges and giving the Justice Department too much power.

Mr. Bush's proposal would require judges to presume that defendants in terrorism-related offenses should not be allowed out on bail, unless the defense can persuade the judge otherwise. The proposal defines terrorism to mean acts like murder, kidnapping or computer attacks intended to "influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct."

Such no-bail restrictions, which effectively shift the burden of proof from prosecutors to the defense in determining whether a defendant should be locked up, are already in place for certain narcotics trafficking offenses and other charges.

"A suspected terrorist could be released, free to leave the country, or worse, before the trial," Mr. Bush said. "This disparity in the law makes no sense. If dangerous drug dealers can be held without bail in this way, Congress should allow for the same treatment for accused terrorists."

Justice Department officials were angered this summer when judges in Alexandria, Va., freed on bail four men who were charged with supporting Kashmir terrorists. The judges said they were not persuaded the men posed a clear danger or a flight risk.

Despite Mr. Bush's concerns, Justice Department officials said they knew of no specific instances in which a person charged in a terrorism case had fled after being granted bail. And critics said they were unconvinced the current laws needed fixing.

The third element of Mr. Bush's plan would expand the list of terrorism-related crimes eligible for death.

Suspects like Zacarias Moussaoui, accused of taking part in the 9/11 conspiracy, already face the prospect of the death penalty for the most serious terrorist offenses.

But Mr. Specter, who said he had worked on the issue for months before the White House asked him to sponsor legislation, said his measure would allow execution for "gateway" crimes like terrorist financing, even if the defendant does not carry out the attack.

"The financiers are really the principal culprits," he said.

The proposal would also extend the death penalty to a number of other criminal activities, including sabotage of a defense installation or a nuclear facility.