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The Washington Post

An Intelligence Giant in the Making; Anti-Terrorism Law Likely to Bring Domestic Apparatus of Unprecedented Scope:[FINAL Edition]

Jim McGee. **The Washington Post**. Washington, D.C.: Nov 4, 2001. pg. A.04

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Abstract (Article Summary)

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FISA allows the FBI to carry out wiretaps and searches that would otherwise be unconstitutional. Unlike regular FBI criminal wiretaps, known as Title IIIs, the goal is to gather intelligence, not evidence. To guard against abuse, the attorney general had to certify to a court that the "primary purpose" of the FISA wiretap was to listen in on a specific foreign spy or terrorist.

The new counterterrorism powers given to Treasury agencies breach another wall of the [Frank Church] reforms, which consolidated domestic intelligence-gathering inside the FBI to ensure accountability. Treasury's expanded domestic intelligence role concerns some officials.

Full Text (1167 words)

Copyright The Washington Post Company Nov 4, 2001

Molded by wartime politics and passed a week and a half ago in furious haste, the new anti-terrorism bill lays the foundation for a domestic intelligence-gathering system of unprecedented scale and technological prowess, according to both supporters and critics of the legislation.

Overshadowed by the public focus on new Internet surveillance and "roving wiretaps" were numerous obscure features in the bill that will enable the Bush administration to make fundamental changes at the Federal Bureau of Investigation, the Central Intelligence Agency and several Treasury Department law enforcement agencies.

Known as the **U.S.A. Patriot Act**, the law empowers the government to shift the primary mission of the FBI from solving crimes to gathering domestic intelligence. In addition, the Treasury Department has been charged with building a financial intelligence-gathering system whose data can be accessed by the CIA.

Most significantly, the CIA will have the authority for the first time to influence FBI surveillance operations inside the United States and to obtain evidence gathered by federal grand juries and criminal wiretaps.

"We are going to have to get used to a new way of thinking," Assistant Attorney General Michael Chertoff, who is overseeing the investigation of the Sept. 11 attacks, said in an interview. "What we are going to have is a Federal Bureau of Investigation that combines intelligence with effective law enforcement."

The new law reflects how profoundly the attacks changed the nation's thinking about the balance between domestic security and civil liberties. The bill effectively tears down legal fire walls erected 25 years ago during the Watergate era, when the nation was stunned by disclosures about presidential abuses of domestic intelligence-gathering against political activists.

The overwhelming support in Congress shows that the nation's political leadership was persuaded that intelligence-gathering can no longer be restricted by the reforms that emerged out of a landmark 1975 Senate investigation.

After wading through voluminous evidence of intelligence abuses, a committee led by Sen. Frank Church warned that domestic intelligence- gathering was a "new form of governmental power" that was unconstrained by law, often abused by presidents and always inclined to grow.

One reform that grew out of the Church hearings was the segregation within the FBI of the bureau's criminal investigation function and its intelligence-gathering against foreign spies and international terrorists.

The new anti-terrorism legislation foreshadows an end to that separation by making key changes to the law underpinning it, the Foreign Intelligence Surveillance Act (FISA) of 1978.

"They have had to divide the world into the intelligence side and law enforcement," Chertoff said. The new law "should be a big step forward in changing the culture."

FISA allows the FBI to carry out wiretaps and searches that would otherwise be unconstitutional. Unlike regular FBI criminal wiretaps, known as Title IIIs, the goal is to gather intelligence, not evidence. To guard against abuse, the attorney general had to certify to a court that the "primary purpose" of the FISA wiretap was to listen in on a specific foreign spy or terrorist.

In negotiating the new legislation, the Bush administration asked for a lower standard for approval -- changing the words "primary purpose" to "a purpose." This would allow people merely suspected of working with terrorists or spies to be wiretapped.

The debate over this wording was one of the fiercest surrounding the new anti-terrorism law. Senate negotiators settled on the phrase "a significant purpose," which will still allow the Bush administration the leeway it wants, according to Chertoff and others.

In passing the anti-terrorism law, congressional leaders were leery enough of the historical precedents to insist on a "sunset provision" that will cause the FISA amendment and other "enhanced surveillance" features to expire unless reenacted in 2005.

On the day the bill passed, Sen. Patrick Leahy (D-Vt.) the Senate negotiator of the bill, said on the Senate floor that he had reluctantly "acquiesced" to the Bush administration's demands for anti-terrorism powers that could be used to violate civil liberties.

"The bill enters new and uncharted territory by breaking down traditional barriers between law enforcement and foreign intelligence," said Leahy, who is chairman of the Senate Judiciary Committee.

Leahy said he expected the Justice Department to consult with the committee on any fundamental changes.

During the deliberations, Attorney General John D. Ashcroft characterized the anti-terrorism bill as a package of "tools" urgently needed to combat terrorism. The attorney general cut short his testimony before the Judiciary Committee, then declined to attend two additional Senate hearings for closer questioning.

Ashcroft declined to be interviewed for this story by The Washington Post.

The new law also gives the CIA unprecedented access to the most powerful investigative weapon in the federal law enforcement's arsenal: the federal grand jury. Grand juries have nearly unlimited power to gather evidence in secret, including testimony, wiretap transcripts, phone records, business records or medical records.

In the past, Rule 6(e) of the Rules of Federal Procedure required a court order whenever prosecutors shared federal grand jury evidence with other federal agencies.

The new law permits allows the FBI to give grand jury information to the CIA without a court order, as long as the information concerns foreign intelligence or international terrorism. The information can also be shared widely throughout the national security establishment.

"As long as the targets are non-Americans, they now can sweep up and distribute, without limitation, the information they gather about Americans," said Morton Halperin, a leading member of the civil liberties community and co-author of a legal text on national security law.

As a legal matter, the CIA is still prohibited from exercising domestic police powers or spying on U.S. citizens. However, its intelligence officers will work side by side with federal agents who do have arrest and domestic investigative authority.

Sen. Bob Graham (D-Fla.), chairman of the Senate Select Committee on Intelligence, said the changes are long overdue and necessary to address the new terrorist threat.

"We are dealing with the issue of the empowerment of the Director of Central Intelligence," said Graham, who said he will carefully monitor how the new powers are used.

The new counterterrorism powers given to Treasury agencies breach another wall of the Church reforms, which consolidated domestic intelligence-gathering inside the FBI to ensure accountability. Treasury's expanded domestic intelligence role concerns some officials.

"I don't see how that is going to work," a senior U.S. official said. "I am worried about it -- I think we are getting an overreaction."

Technology is the key to harnessing the last and largest piece of the new domestic intelligence-gathering system, the nation's 600,000 police officers and detectives. In the new terrorism bill, Congress authorized a secure, nationwide communications system for the sharing of terrorism-related information with local police.

"Terrorists are a hybrid between domestic criminals and international agents," Sen. Orrin Hatch (R-Utah), a strong proponent of the bill, said in floor debate on Oct. 11.

"We must lower the barriers that discourage our law enforcement and intelligence agencies from working together to stop these terrorists. These hybrid criminals call for new hybrid tools."

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