

U.S. Attorney Matthew Orwig's Statements (Largely From Ashcroft Talking Points) on Wed. 12/17/03:

The Facts

"Let me tell you what the Patriot Act does . . . "

1. "Number one, it **allows us** to share information between the intelligence community, and the law enforcement community." (This accords with what he told the public radio audience on Marla Crockett's KERA 90.1 "People's Agenda" show on Friday, December 12, 2003: "Prior to 9/11, we **did not have the ability** for the intelligence community to share information with the law enforcement community.")

Not true. They could share information before. More than legal obstacles, there were cultural, interpretive, and bureaucratic obstacles (turf wars between the FBI and CIA and within the organizations, e.g. central and field offices). See Joint Congressional Inquiry Report. The FBI and CIA met monthly. The much vaunted "wall" between intelligence and law enforcement always had a big door in it for probable cause or where the facts gave a basis for reasonable suspicion. The lack of limits in e.g. Patriot Act sec. 203, however, could lead to sharing that leads to inappropriate use of information in domestic criminal cases against U.S. citizens.

"We recognize now that those two are **inextricably intertwined**"

Yes -- perhaps too intertwined. While enhanced, fact-based cooperation is important for Dallas and U.S. security, excessive blurring of the lines and having prosecutors like Mr. Orwig direct foreign intelligence surveillance tools for domestic US purposes, casting aside classic constitutional protections, is inappropriate in light of the different functions of the two agencies, the history of abuses, constitutional rights, and security concerns properly viewed.

"In fact we've had **284 criminal indictments** which arise out of terrorism investigations." (This increased from the 252 he cited on the radio program we did together a few days earlier, on Dec. 12, 03).

Misleading. This figure bears uncanny resemblance to the 288 terrorist 'convictions' alleged by the DOJ, 75% of the 'international terrorism' cases of which were found by the GAO in January 2003<sup>1</sup> to have been misclassified, since the DOJ had "inadequate oversight and control mechanisms" to accurately compile terrorist statistics. In fact, as the GAO has reported, these are almost all minor immigration violations for overstaying visas, failing to file change of address forms, etc. This is akin to administration statements on the anniversary of September 11, 2001, reversing the presumption of innocence, that the U.S. has captured "2000 terrorists" (which presumably included the innocent Arabs and Muslims rounded up after 9/11 as detailed in Attorney General Ashcroft's own Department of Justice Inspector General's reports<sup>2</sup>), or that the people in Guantanamo are all "killers and terrorists" (despite the fact that many have already been released as clearly innocent, that none have had the hearings required under the Geneva Conventions, and that many remaining might have been coerced to fight with the Taliban, or humanitarian workers, or innocents picked up by Arab bounty hunters).

2. "The second thing that it does is that **it updates the technology** . . . from rotary phones [to] pagers, blackberries, cell phones . . . "

Misleading. While this is, indeed, a very small part of what the Patriot Act does, it is NOT something we or other civil libertarians are greatly concerned about. It is a straw man argument. The government actually had extensive roving wiretap authority even prior to the Patriot Act, as a result of laws such as the

<p>3. "Finally, it provides for some <b>penalties</b> and some charging instruments that were not available before."</p> <p><u>On new Patriot Act powers re libraries and records:</u></p> <p>"The library provision simply provides that in some <b>limited number of cases</b> we can use administrative subpoenas to get library records . . . the Patriot Act . . . just gives us the ability -- an additional tool -- to obtain library <b>records under very, very limited circumstances</b> . . . "</p> <p>"We were able to make the Unibomber case through library records . . . "</p> <p>"I'll say it again: that provision, in two years of the act, <b>has never been used a single time</b> by the Department."</p>	<p>Antiterrorism and Effective Death Penalty Act passed after the first WTC bombing and the OKC bombing. The residual concern is not that modern technology is taken into account, but that the standards for surveillance of innocents are loosened by the Patriot Act, so that YOUR telephone conversations, emails, and communications can be intercepted even if there's no evidence whatsoever or reason to suspect you of a crime.</p> <p>Another straw man argument. While this is true, and one can debate the value of providing even harsher death penalties and other penalties for suicide bombers, this is not addressed in our resolution nor has it been a big issue to other civil libertarians.</p> <p>Misleading. As you can see from the actual text of section 215 appended hereto, the only "limit" is that they unilaterally decide to launch an "investigation".<sup>3</sup> Other sections, like 218 (available in the end notes),<sup>4</sup> give additional powers but don't establish any additional limits. Section 505, which has recently been expanded to whole new categories of businesses, has no limits whatsoever and is wholly within the discretion of the FBI and DOJ.<sup>5</sup> The Patriot Act purports to <i>remove</i> constitutional limits that previously existed.<sup>6</sup></p> <p>Misleading. The primary testimony leading to identification of the Unibomber was from his brother, who turned him in.</p> <p>Misleading. Even if this were true, the existence of such a power that <b>could</b> be used would be an abuse, <b>but the evidence is that it has been used</b>. The Department of Justice at first refused to say how many times this was used, then gave out contradictory information, w/ Ass't AG Viet Dinh initially testifying before Congress that the provision had been used 47 times, which was publicly repeated by him and others as 'around 50' times; then others and he himself subsequently said it has never been used. The trick is that the FBI or joint FBI/local task forces will often request the records without formally invoking the act, and since librarians know of the law, they 'voluntarily' turn them over (and voluntary compliance of this sort is neither reported to Congress nor subject to Congressional oversight). An independent academic study by the University of Illinois found that despite the gag order, 564, or 10% of the nations libraries, reported they had been approached. Several local librarians, and others from outside the area, have risked jail by violating the Patriot Act's gag order to volunteer to us in confidence that <b>this has happened locally</b>. Moreover, the existence of the Patriot Act is already stimulating concerns about privacy of library and bookstore records, and chilling free inquiry, free</p>
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<p>Re resolution provision that until sec. 215 is amended, library patrons receive notice of the new federal access to their reading and websurfing records:] That . . . is a sign that could have been posted back in the days when they put the Beatles on TV . . . <b>We've always had the power to do that</b> [look at patrons' library records]."</p> <p>(Later, in response to a question from Ms. Greyson): "It's misleading, <b>and it's a power that's already existed.</b>"</p> <p>Q (Mr. Loza): "You mentioned that you, with the library records, you've always had the power to use a grand jury to subpoena those records; <b>what is the difference</b> between using the grand jury and using the process in the Patriot Act?"</p> <p>A (Mr. Orwig): "Probably in every case that I will ever encounter in my life as a prosecutor I will use a grand jury subpoena because there are numerous advantages to that. If it is a national investigation that involves issues of national security and there is good evidence that it involves foreign terrorist attacks, then under some very limited circumstances that power could be used. It's something that is there and may never be used but could be used if necessary."</p> <p>Q (Ms. Greyson): "Before, when the government had the ability to get library records, did the government have the ability to tell librarians they couldn't tell people that their records were being asked about? Is that new under the Patriot Act?"</p> <p>A (Mr. Orwig): "<b>That is not new under the Patriot Act</b>, and that's another thing that's misleading about that section of the resolution."</p> <p><u>Regarding probable cause as required by the fourth amendment:</u></p> <p>Q (Mr. Hill): "A statement that Mr. Pitts made a moment ago is a pretty powerful statement -- that there's no reference or no meaningful reference to the term 'probable cause' in the Patriot Act, which as we constitutional folks know is a fundamental element of our fourth amendment protection, so is that true? . . . .Have we not taken what was a probable cause standard and now made an exception to that?"</p> <p>A (Mr. Orwig): <b>We have not.</b> That's one of the things that's most misunderstood about the Patriot Act and repeated from time to time, that it does away with the requirement of probable cause. <b>In the provisions that he was mentioning [215, 505, 218], the searches, we still have to have a showing of probable cause."</b></p>	<p>speech, and community relations, as indicated by the numerous letters, emails, and testimony we have received.</p> <p>Not true. The prior power to look at library records upon demonstration of some individualized, fact-based suspicion, with probable cause and independent judicial review, is wholly distinguishable from the <b>broad new powers</b> granted by the Patriot Act. The reference to the 50's and 60's is revealing, however: are Dallas leaders not concerned about returning to the domestic spying and abuses of the J. Edgar Hoover era? These are the abuses that the reforms of the past half-century were meant to correct.</p> <p>Misleading. Though prosecutors admittedly have great powers over grand juries, the grand jury system at least some protections and checks against abuses -- the traditional protection of having a citizen jury of your peers involved, some judicial oversight, and all the protections of regular criminal due process including right to confront the evidence and ultimately the requirement of proof beyond a reasonable doubt if the evidence is actually used. The Patriot Act sec. 215 sidesteps these basic checks by requiring a secret court to do what the government wants and sec. 203 allows sharing the information gathered with the CIA even in non-terrorism cases without these basic protections. Another difference is that grand jury subpoenas could be publicly challenged, without risking jail or other penalty.</p> <p>Misleading. Grand jury subpoenas could always be publicly challenged. These secret processes to get personalized records without any showing of individualized suspicion did <b>not</b> previously exist. And the law has never subjected librarians, booksellers, and others to <b>jail</b> for disclosing such requests, as does Patriot Act sec. 215.</p> <p>Not true. See some of the above referenced sections of the law, reproduced in the endnotes. (This is not open to dispute.)</p> <p>Not true.</p>
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<p>"I want to make this point again . . . In section 215 . . . it's important that everyone here understands that <b>we still have to have and show a finding of probable cause in order to do the search in the first place.</b> So that has not changed. And that is very, very important."</p> <p>(Later, in response to a Q from Ms. Greyson):  Q (Ms. Greyson): "The standard to perform a search, which <b>now is given by a regular court</b> . . . so, if there is a determination made by the intelligence court, then that would be another case whereby it override the regular court system, correct?"  A (Mr. Orwig): "Well, to provide to do a search -- if you're talking about <i>any</i> search, that goes into an apartment, or computer, or anything else -- that <b>requires a finding of probable cause; we do that through the court.</b>"</p> <p>Q (Ms. Greyson): "And that continues to be the same through this Patriot Act as it's always been, there are no exceptions?"  A (Mr. Orwig): "<b>That continues to be the same; I know of no exceptions</b> . . ."  Q (Ms. Greyson): "Not known exceptions, but is it <b>possible</b> to have exceptions?"  A (Mr. Orwig): "<b>No, because it doesn't, the Act does not attempt to, it doesn't purport to, it just doesn't change that provision;</b> there are things after the search is done, such as the delayed notification . . . but <b>probable cause and judicial review are not altered.</b>"</p> <p>Q (Ms. Greyson): I guess I just want to know, who's giving that permission; <b>is it the same as it's always been, or through this Act is it the FISA court, or is it some other</b> . . .  A: (Mr. Orwig): <b>No.</b>  Q (Ms. Greyson): <b>It's the same as it's always been.</b>  A (Mr. Orwig): For every search conducted, it's still a standard of probable cause . . . <b>so yes, that is the same, that is not altered. And I think that's one of the common misperceptions about the Act.</b></p> <p>"There is independent review, that is not done away with, <b>so when the point is made that it gives us some big, broad power, it does not</b> . . ."</p> <p><b>"We still have to have independent judicial review in every single instance in which we needed it before."</b></p> <p>Q (Mr. Hill): Are you saying the law uses the same probable cause standard?  A (Mr. Orwig): "<b>The standard of review is not</b></p>	<p>Not true. See section 215, reproduced in the endnotes.<sup>7</sup></p> <p>Not true. The standard has lowered. Misleading., and the implication that the regular court remains involved is deceptive.</p> <p>Not true.  Not true.</p> <p>Not true.</p> <p>Not true.</p> <p>Not true.</p> <p>Not true.</p> <p>Not true.</p> <p>Not true. See the section of the law reproduced in endnote 3. A secret FISA court that is <b>required</b> by the law to approve law enforcement requests is hardly independent judicial review. It certainly <i>does</i> enhance prosecutorial and law enforcement power.</p> <p>Not true. See example sec. 505 in the endnotes, where no judicial review whatsoever is required, or sec. 218, which allows FISA powers to be used now in ordinary criminal cases, or 215, where a rubber stamp from a secret court is hardly independent judicial review.</p> <p>Not true. See, e.g., the various sections of the law</p>
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**lowered by the act" . . . "Let me give you a couple of examples . . . one in particular, section 215, which deals with libraries . . . the Patriot Act in that instance does not change that standard whatsoever, but it provides an additional tool in a very, very limited circumstances, and those circumstances are only in cases of foreign terrorists, to obtain foreign intelligence information, 'not concerning', as the statute says, 'a person of the United States" . . .**

Q (Mr. Hill, thinking based on this representation that the law only applied to non-citizens): Well, that doesn't give me a lot of comfort, particularly in a state like Texas and a city like Dallas where we've got people here from all over the world."

A (Mr. Orwig): . . . **it's not broadening it to . . . give us additional powers against a class of people; it's against particular conduct; it's foreign terrorism, it doesn't even include domestic terrorism."**

"It's important to know . . . the importance in the drawing of that provision for domestic terrorists, well, first of all, **it doesn't expand our powers . . . into domestic terrorism . . . "**

**"When domestic terrorism is used and defined its done so very narrowly and it's only** eligible for people who are engaged in criminal wrongdoing which could result in **death**, and the prior definition of foreign terrorists was just could result in serious bodily injury, so it's actually a narrower definition than the one that is used, been used, before."

Q (Mayor Miller): "So, what you're saying, is . . . you could use the extra tool if that person was *known* to have *committed* terrorist acts in another country?"

A (Mr. Orwig): Well, **let me just read from the statute exactly, because I want to make sure this is very clear. (Pretending to read from the statute but actually reading from the Ashcroft Talking Points): "It can only be used, one, to obtain foreign**

above and in the endnotes; the Justice Department and FBI's own internal memos on this; Dep. AG Larry D. Thompson's 12/02 letter to the Senate Judiciary Committee; & concession of this point by Ashcroft himself in 6/5/03 testimony.

Not true. See sec. 215 itself, & other sources above.

Not true. See immediately below.

Not true. The section, 215, expressly *does* contemplate investigations of 'United States' persons -- providing only the illusory 'protection' that such investigations not be conducted 'solely' on the basis of protected first amendment activities (which would be virtually never, since *some* additional basis for investigation can *always* be found or claimed).

Not true. See sec. 412, which allows potentially indefinite detention of foreigners based on the say-so of just one man: Attorney General Ashcroft.

Not true: See sec. 802, defining the crime of "domestic terrorism"

Not true. Sec. 802's **definition** of domestic terrorism is broadened to include actions which "**appear to be intended**" to coerce or intimidate government -- which undermines classic first amendment law even for speech advocating non-imminent violence, and would include classic civil disobedience of the sort that facilitated the social progress achieved by Ghandi, Thoreau, the womens' rights movement, the civil rights movement, the peace movement, etc. The rule of law is replaced by arbitrary human discretion with such broad definitions, including also the broad definition of "material support" (which doesn't require proof an individual intended to further terrorism), the unreviewable discretion in one person to designate terrorist groups, Ashcroft's ability under sec. 412 to lock up immigrants potentially indefinitely, and his new guidelines allowing domestic spying and investigations of groups the FBI unilaterally decides might engage in domestic terrorism.

Not true. On the contrary, anyone reading sec. 802 can see that the law clearly **expands** the definition of domestic terrorism. The language of sec. 802 includes acts 'dangerous to human life', but that's not necessarily the same thing as acts that involve death, because 'danger' or harm is a broader concept that could include, e.g., an anti-abortion (or pro-choice, or environmental, or other) protester swinging a sign that hits someone, or even perhaps climbing on a roof (as Greenpeace did at Exxon in Dallas earlier this year) and risking harm to themselves by falling off.

Not true. (He wasn't reading from the statute.)

**intelligence information not concerning a party of the United States**, or, two, to protect against international terrorism or clandestine intelligence activities. So . . . **it cannot be used to investigate ordinary crimes**, or even domestic crimes; it is only used to investigate foreign terrorists."

On secret home searches:

"The delayed notification is a power we've always had when investigating drug dealers and other types of crimes; **the same power we've always had** is extended to terrorism and other types of crimes."

(In contrast to the above, on the KERA Marla Crockett show 12/12/03, he stated this **not** the same power they've always had, but a **new power**: "Suppose hypothetically that we know someone is going to hijack an airplane and run it into a building. We have that information, we have probable cause to make a search of that apartment. **Under the old law, we would have to notify that terrorist** that we're doing a search, and they could accelerate the activity, they could hide records, they could flee the country -- any number of things. Under the law now, the court can give us permission to delay notification.")

Re new electronic surveillance powers:

"Drug dealers, for example, drug kingpins used to use telephones, dial telephones; we were able to tap those phones under limited circumstances -- **going to a court, showing that there's probable cause**, and then doing that investigation. **We still have to make that same finding; it has not changed.**"

"As people got cell phones, drug dealers learned that

Not true. See above, & sec. 215. It *expressly* contemplates getting records of or concerning U.S. persons.

Not true. As numerous mainstream reports have stated (see, e.g., NYT 9/27/03 and front page 9/28/03), the law has been used **mainly** and overwhelmingly to investigate ordinary, domestic crimes. The GOA in January 03 found that 75% of the cases using the Patriot Act were non-terrorist cases. AG Ashcroft's own guidelines say that these new powers can now "be used primarily for a law enforcement purpose." (See [www.fas.org/irp/agency/joj/fisa/ag030602.html](http://www.fas.org/irp/agency/joj/fisa/ag030602.html))

Not true. In *exceptional* circumstances (risk of flight, danger to life or limb, etc), courts had the power regardless of the type of case to delay notification. What sec. 213 does is compromise the traditional common law and core fourth amendment "knock and announce" rule (allowing correction of mistakes, monitoring the proper scope of the search, tracking property removed, confirmation the warrant is correct) by **institutionalizing what was an exception, and making it the rule**. The Patriot Act adds additional grounds that previously applied to much less intrusive searches of stored email, and applies them to homes (which were one's 'castle' at common law). These include not only threat to life or limb risk of flight, destruction of evidence, and intimidation of witnesses, but **also the catch-all of "otherwise seriously jeopardizing an investigation."** The government can of course **always** claim the latter, and judges will have a hard time objecting. These **new powers** aren't limited to terrorist investigations, but extend to **all criminal investigations** -- and do **not** sunset.

The FBI always had authority under FISA to conduct secret searches in international terrorism cases; what's new about this power is its institutionalization of the rule, and its extension to ordinary criminal cases.

Not true. Delayed searches were possible previously, under FISA or if the court were persuaded that there was *exceptional* cause therefor; but it wasn't a standardless standard as it arguably is due to the broad catch all in the Patriot Act (discussed above).

Not true. The extension of FISA surveillance powers into the domestic criminal cause in the various sections of the Patriot Act require no probable cause.

Misleading. Neither our group, our resolution, nor

they could take a cell phone, drop it, and pick up a new cell phone the next week. . . . We were always two phone numbers behind where they were . . . Because of that there's been legislation to give us a **roving wire**, what they call it, and it follows the person, as opposed to the different numbers. After 9/11, there was a recognition that **we had these tools to pursue drug dealers, but we don't even have the same tools to pursue terrorists, terroristist [sic] groups**; so that exact same power that we have always had was expanded to include that group so we can investigate a different set of crimes with it"

On Congressional role and whether Congress fully and carefully deliberated at length on the Patriot Act:

"Keep in mind that this was an Act that was considered by the entire House and entire Senate, and was passed by a three-to-one margin in the House and a 98 to 1 margin in the Senate."

"Also, a lot of the provisions that's important for us and the Department is that we have to do this, one of the safeguards that was written into the law, is that we do do this **reporting** . . . we report on a regular basis to Congress as to how the law's been used."

On sunsets of some provisions:

"Section 213, which is the delayed notification provision [sneak and peek provision allowing secret searches of homes] is a provision that is not sunsetted, and the reason for that is that it is recognized that that's a power we have had for many, many years, I think about twenty-five years, in other cases, in other words when we were doing drug investigations, but **we didn't have those same powers when doing**

civil libertarians generally object to *properly focused* roving wiretaps on suspected persons as opposed to devices; the only concern is the FISA *standard*, which allows listening in on innocent conversations since it doesn't require the FBI to show the target is using the device.

Not true. Despite this oft-repeated assertion, the Justice Department could always get wiretaps, including roving wiretaps, in *criminal* investigations of terrorism. As discussed above, extension of this power to the government's separate authority to investigate terrorism under FISA has not been a focus of objections from civil liberties groups.

Misleading. As countless Congressmembers have pointed out, and American Conservative Union President David Keene, who has "always considered John Ashcroft a friend", said in *The Hill* (9/13/03) that the recent Justice Department assertion that this was seriously debated and examined by Congress "is **laughable nonsense**." Republican Congressman Don Young of Alaska says "everybody voted for it, but it was stupid, it was what you call 'emotional voting' . . . because we didn't follow it through, we didn't study it. I say it's the worst piece of legislation we ever passed." Republican Congressman Ron Paul of Texas says "The Act contains over 500 pages of detailed legalese, the full text of which **was neither read nor made available** to Congress before it was voted on."

Misleading. The failure to cooperate with Congress has been so pronounced that the Republican Chair of the House Judiciary Committee had to threaten Attorney General Ashcroft with **subpoenas** in order to get questions answered; even then only about half the questions were answered. Former Republican Congressman and House Majority Leader Dick Armey said "If you talk with Sensenbrenner, he is furious with the Department of Justice's refusal to cooperate on oversight." (National Journal, Congress Daily, 3/14/03). Conservative columnist Robert Novak has said that "Ashcroft is even more intractable than his predecessor, Janet Reno, in refusing information to the executive branch." (Miami Herald, 9/10/02). Numerous members of Congress have complained about Ashcroft's refusal to show up at the most recent hearings.

**terrorism investigations**, so the fact **that it was not a new power** was the rationale for not sunseting that provision."

"Most of these provisions sunset" . . .

These assurances are reminiscent of his statements on the Dec. 12, 2003 KERA radio show that "the Act itself has a number of provisions which specifically relate to protecting civil liberties."

"Senator **Biden** has had many of these provisions since 1995 -- the ranking member of the Senate Judiciary Committee, a Democrat from Delaware, that he felt were very important. And so a lot of this -- if I could say that the Patriot Act reflects one Senator more than anyone else, it is probably Senator Biden's work from 1995 and beyond."

"What Senator **Biden** said last month, was that he thinks that on balance . . . when you look at the totality of the circumstances, it is on balance a very good law."

Misleading. (See above on sec. 213).  
Not true; as described above, it is a new power.

Misleading. Many of the most egregious provisions, e.g. secret home searches in 213, electronic surveillance provisions such as 214 and 216 extending pen register and trap and trace authorities to email and websurfing URL's of the sort patrons use in the Dallas public libraries, do not sunset. Aggressive efforts have already tried to remove the sunsets to make the law permanent, and history shows that these could likely succeed, especially in the case of national security legislation (see the article by Chris Mooney on this in the Jan/Feb 04 issue of *Legal Affairs*).  
Not true. The Patriot Act undermines civil liberties and does **not** have "a number of provisions which specifically relate to protecting civil liberties". The faux limit that investigations cannot be made "solely" on the basis of first amendment activities is addressed above and in endnote 3 below. The recent National Advisory Commission on Terrorism headed by former Republican Gov. Gilmore has thus joined the bipartisan clamor for more attention to civil liberties. See [www.rand.org/nsrd/terrpanel/](http://www.rand.org/nsrd/terrpanel/).

These quotes out of context from Senator Biden, implying that he's simply an uncritical supporter or the main author of many provisions of the Patriot Act, are highly misleading. The quote on the Department of Justice's website from Senator Biden on the day the Patriot Act was passed, to the effect that it gives the Department of Justice power to wiretap the mafia but not terrorists, was based on incorrect Department of Justice assertions regarding the law (see discussion of these points on pages 6 and 7 above), and was at a time before he or others in Congress had the chance for a thorough review. And while Biden called some of the Patriot Act criticism last month "ill-informed and overblown," he also said that "portions of the act are indeed sweeping and imperfect," and that if the Justice Department persisted in its "shroud of secrecy" -- the law could be repealed. Quoted by the conservative *Washington Times* as being "troubled by the Justice Department's lack of candor," he said "[a]t a time when government has increased authority to find out more information about individual citizens, the department has been less and less willing to share basic information about its activities." The Bill of Rights Defense Committee of Greater Dallas is also troubled by the lack of candor of the Justice Department as manifested in the misleading and inaccurate statements of U.S. Attorney Orwig to the Dallas City Council.

Comments of Republican Congressman Pete Sessions  
before the City Council's Public Safety Committee,  
January 5, 2004

In addition to repeating DOJ talking points similar to those made by Orwig and refuted above, Rep. Sessions alleged:

"[Former Texas Congressman] Dick Armev was one of the principal authors of the Patriot Act"

"We are finding that the feedback we are receiving from the Department of Justice on a case-by-case basis is enumerated . . ."

"I've not heard of one member of [Congress] think they made a mistake [in voting for the Patriot Act]"

"There are an incredible number of hooks, or balances within the system, which require the FBI or the Department of Justice to come to Congress and to notify us after they have received whatever judicial process was important or required by the law . . . before they could even invoke those provisions of the Patriot Act."

Highly misleading. Former Rep. Armev was one of the half-dozen or so most ardent advocates of reigning in powers sought by the government, and although he reluctantly joined the majority voting for the Patriot Act right after 9/11, he rapidly became one of the staunchest and most outspoken opponents of the Patriot Act and what he characterized as an "out-of-control" Justice Department.

Misleading. See endnote one and the other sources cited above calling into question the DOJ's impartiality and misuse of statistics and case information on these issues.

Highly misleading. Reiterated several times, this comment completely ignores the numerous conservatives voices (of which we have already informed the City Council in the two volumes provided) indicating second thoughts about the vote, not to mention the 15 or so bipartisan pieces of legislation calling into question all or part of the Patriot Act, including that already passed by his House colleagues against the sneak and peek provisions of the law.

Not true. Although patently absurd -- no prior Congressional authorization for invoking any Patriot Act powers is required -- this is frighteningly similar to what Dallas Police Department no. 2, Tom Ward, told us in a meeting: that it was his understanding after attending a recent DOJ training that the 'entire Congress' would have to 'individually approve' any FBI request for library records. Although some information is required to be reported to Congress post-hoc, as described above, the DOJ has been so uncooperative that the Republican Committee Chair has had to threaten them with subpoenas.

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<sup>1</sup> General Accounting Office, GAO-03-266, Better Management and Oversight Needed to Ensure Accuracy of Terrorism-Related Statistics (Jan. 17, 2003).

<sup>2</sup> See, e.g., U.S. Department of Justice, Office of the Inspector General, "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks," June 2003 (available at [www.usdoj.gov/oig/special/03-06/index.htm](http://www.usdoj.gov/oig/special/03-06/index.htm)).

<sup>3</sup> Section 215: This is the section that allows secret searches of your library and bookstore records, but also *any other tangible thing*, including your most intimate health records, university records, your computer hard drive, personal journals, and even (according to Attorney General Ashcroft's testimony this summer) your genetic information. Note that while the FBI can launch an investigation at will, and prevent anyone disclosing the records from telling anyone under criminal penalty, the only other party involved is the secret Foreign Intelligence Surveillance Court, which (i) was previously used only against *foreign spies and terrorists* and not U.S. citizens, (ii) has considered about 15,000 requests for such secret searches and has *never* refused a single one, and (iii) is *required* by the plain language of the law to grant the FBI's request! That's hardly meaningful judicial review or in compliance with the fourth amendment prohibition against unreasonable searches and requirement for a specific warrant issued by independent judges. Note also that the standard is NOT probable cause, but merely the fact that the FBI at its own discretion has launched an investigation (which COULD merely be a fishing expedition, because of the lack of true checks and balances). The text of the law itself reads:

215: "The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) **may make** an application for an order requiring the production of **any tangible things** (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution. . . . Each application under this section-- '(1) shall be made to-- '(A) a judge of the [secret FISA]court . . . [and] the judge **shall enter** an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section. . . . **No person shall disclose** to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section." (emphasis added)

Although the first amendment limitation might seem to offer some protection, notice that it is drafted to apply only to investigations *solely* on the basis of protected first amendment activities – which is illusory protection, because *any* additional reason to investigate would suffice, and such additional reasons can *always* be found.

<sup>4</sup> Section 218: This is the section that, while appearing to be murky legalese, in one short sentence imports *the entire intelligence regime* that used to apply only to foreign spies and terrorists, and *allows it to be used against U.S. citizens*. The text of the law reads:

218: Sections 104(a)(7)(B) and section 303(a)(7)(B) (50 U.S.C. 1804(a)(7)(B) and 1823(a)(7)(B)) of the Foreign Intelligence Surveillance Act of 1978 are each amended by striking 'the purpose' and inserting 'a significant purpose'.

Why is this significant? Because constitutional protections – like the requirement of probable cause -- didn't apply to foreign spies and terrorists, because the expansive government powers were only being used for information gathering, not criminal prosecution. Now, "the purpose" of the investigation no longer must be such foreign intelligence gathering; the government has asserted and is using the broad new technological and other powers of the USA Patriot Act against US citizens if they can merely assert that "a significant purpose" is national security, even if their primary purpose is preventative information gathering, domestic criminal prosecution, or even mere curiosity! Although the Patriot Act was sold as a vital anti-terrorist tool, as widely reported in the New York Times, the Dallas Morning News, and elsewhere, it has been used mainly for domestic prosecutions in routine drug, credit card, bank fraud, and other crimes.

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<sup>5</sup> Section 505: This is the provision allowing the FBI to acquire whole categories of records – telephone, financial, consumer reports, merely by sending an “administrative subpoena” or so-called “National Security Letter”, which requires *no probable cause of judicial review whatsoever*. This provision has recently and without attention (it was buried in the Intelligence Authorization Bill for 2003) been extended to many other categories of businesses, ranging beyond banks, brokers, and financial institutions to reach internet service providers, airlines, car dealers, travel agents, pawn shops, and others – new bureaucratic record-keeping and disclosure burdens without any clear corresponding security benefits.

<sup>6</sup> *Id.*

<sup>7</sup> See note 3, above.