

## IMPLEMENTATION OF THE USA PATRIOT ACT

At the urging of the administration, Congress enacted the USA PATRIOT Act less than six weeks after September 11.<sup>1</sup> Drafted primarily by the Department of Justice (DOJ), the Act grants unprecedented new surveillance and detention powers to law enforcement and intelligence agencies.<sup>2</sup> Despite the sweeping nature of the changes, it was passed with little opportunity for hearings or debate and many members of Congress did not even have time to read the final version of the bill before it came up for a vote.<sup>3</sup>

When Congress attempted to oversee the administration's use of its new powers, the DOJ initially failed to respond to congressional requests for information. It was only after Republican Representative James Sensenbrenner, chair of the House Judiciary Committee, publicly threatened to "blow a fuse" and start subpoenaing executive documents that the DOJ provided any response at all to many of the congressional questions posed.<sup>4</sup> The House Judiciary Committee had submitted a list of 50 questions to the Department of Justice on June 13, 2002, and on July 25, 2002, the Senate Judiciary Committee expanded upon this list, adding 43 questions of its own. In a July 26, 2002 letter to Representative Sensenbrenner, the Department of Justice included responses to 28 of the original 50 questions, in most of these answers indicating that the required information was classified.<sup>5</sup> The Senate Judiciary Committee has revealed that although the Department of Justice sent follow-up letters in August and December 2002, 37 of the 93 congressional questions remained unanswered in February 2003.<sup>6</sup> In an interim report, the Senate committee complained of its "disappointment with the non-responsiveness" of the Department of Justice.<sup>7</sup>

Meanwhile, in August 2002, the American Civil Liberties Union (ACLU) had filed an expedited request under the Freedom of Information Act (FOIA), seeking information on USA PATRIOT implementation.<sup>8</sup> The DOJ agreed that the FOIA request would be processed expeditiously, but it had not released any records by late October 2002. The ACLU was forced to file suit in Federal District Court, joined by the Electronic Privacy Information Center, the American Booksellers Foundation for Free

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<sup>1</sup> See "President Signs Anti-Terrorism Bill," White House Press Release, October 26, 2002, available at <http://www.whitehouse.gov/news/releases/2001/10/20011026-5.html> (accessed March 2, 2003).

<sup>2</sup> See Lawyers Committee for Human Rights, *A Year of Loss: Re-examining Civil Liberties since September 11*, pp.7-8, available at [http://www.lchr.org/us\\_law/loss/loss\\_main.htm](http://www.lchr.org/us_law/loss/loss_main.htm) (accessed March 2, 2003).

<sup>3</sup> Ibid.

<sup>4</sup> See Steve Schultze, "Sensenbrenner Wants Answers on Act," *Journal Sentinel*, August 19, 2002; "Justice: From the Ashes of 9/11: Big Bad John," *National Journal*, January 25, 2003.

<sup>5</sup> Letter of Daniel J. Bryant, Assistant Attorney General, to the Honorable F. James Sensenbrenner, Jr., July 26, 2002, enclosing "Questions Submitted by the House Judiciary Committee to the Attorney General on USA PATRIOT Act Implementation," available on <http://www.house.gov/judiciary/patriotresponses101702.pdf> (accessed February 20, 2003).

<sup>6</sup> Senators Patrick Leahy, Charles Grassley, and Arlen Specter, "Interim Report: FBI Oversight in the 107<sup>th</sup> Congress by the Senate Judiciary Committee: FISA Implementation Failures," p. 13, February 2003, available at <http://specter.senate.gov/files/specterspeaks/ACF6.pdf> (accessed March 5, 2003).

<sup>7</sup> Ibid.

<sup>8</sup> See "ACLU Seeks Information on Government's Use of Vast New Surveillance Powers," August 21, 2002, available at [http://archive.aclu.org/issues/privacy/USAPA\\_feature.html](http://archive.aclu.org/issues/privacy/USAPA_feature.html) (accessed March 2, 2003).

Expression, and the American Library Association's Freedom to Read Foundation (see chapter 2). The court ordered the DOJ to comply with the FOIA request by January 15, 2003. Although the government released more than 200 documents on January 15, the pages had been heavily redacted.<sup>9</sup> According to the ACLU, the documents are effectively "meaningless" and fail to address key civil liberties concerns such as the use of surveillance against U.S. citizens who are not suspected of criminal or terrorist activity.<sup>10</sup> The groups plan to return to court to seek more responsive disclosure.

The General Accounting Office (GAO) has been asked by Senator Russell Feingold (D-WI) and Representative John Conyers, Jr. (D-MI) to review various anti-terrorism measures and their potential impact on civil liberties. The GAO's investigation will examine the procedures proposed for military commissions, the use of authority to monitor attorney-client discussions, the criteria for and process of questioning non-citizens for information on terrorist activity, and the detention of non-citizens in connection with the Justice Department's post-September 11 investigation. The Lawyers Committee will continue to watch for developments in this investigation.<sup>11</sup>

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<sup>9</sup> See ACLU, "ACLU Presses for Full Disclosure on Government's New Snoop Powers," January 17, 2003, available at <http://www.aclu.org/NationalSecurity/NationalSecuritylist.cfm?c=107> (accessed March 2, 2003).

<sup>10</sup> See "Groups Hit DOJ's Data on Wiretap FOIA Request as 'Meaningless,'" *Washington Internet Daily*, January 21, 2003.

<sup>11</sup> Letter to David M. Walker, Comptroller General of the U.S., U.S. General Accounting Office, from U.S. House Representative John Conyers, Jr. and U.S. Senator Russell D. Feingold, dated January 28, 2002, available at [http://www.house.gov/judiciary\\_democrats/gaoantiterrorltr12802.pdf](http://www.house.gov/judiciary_democrats/gaoantiterrorltr12802.pdf) (accessed December 10, 2002).