

DEBATE IN THE HOUSE OF REPRESENTATIVES ON THE USA PATRIOT ACT OF 2001

[Selections from debate]

October 12, 2001

REP. JIM SENSENBRENNER (R-WI): Mr. Speaker, on September 11, 2001, a war was started on United States soil. It was not a war we voluntarily entered. It was not a war we started. We were not given a choice. We were dragged into a war that day, a war on terrorism.

Every day since September 11, we are reminded of these violent acts. The media reminds us daily with pictures of the missing, interviews with survivors, films of the many memorial services, and images of the massive destruction. We are constantly reminded that this is a war that is far from over. The rules of this war are vastly different from the wars that we have fought as a country in the past. We are uncertain who the enemy is. We are uncertain where the enemy is. We are more uncertain than ever before when and what the next move of the enemy will be.

Because of this uncertainty, we have had to change the way that we think about the safety and security of our country and its people. We must develop new weapons for protection against this new kind of war.

It is this new approach to safety and security that has required us to take action today. This bipartisan legislation will give law enforcement new weapons to fight this new kind of war. Terrorists have weapons that law enforcement cannot protect against right now. Technology has made extraordinary advances; but with these advances in the wrong hands, we are more vulnerable to attacks. [...]

Criminal provisions dealing with stored electronic communications will be updated to allow law enforcement to seize stored voice-mail messages the same way they can seize a taped answering machine message. Additionally, under this bill, a court may authorize a pen register or trap/trace order that follows the person from cell phone to cell phone rather than requiring law enforcement to return to court every time the person switches cell phones. The bill, consistent with our constitutional system of government, still requires a judge to approve wiretaps, search warrants, pen registers, and trap/trace devices. [...]

This new bill continues to provide for nationwide service of warrants for electronic evidence, such as content of e-mails, and search warrants for terrorism. Current rules require that a search warrant be issued from the judicial district in which the property to be searched is located. The bill would change this to permit the prosecutor to go to the judge in the district overseeing the investigation to issue the warrant, and in the case for search warrants for

terrorism offenses, in any district in which activities related to terrorism occurred. This will save valuable time.

It is clearly within the public interest and the Federal Government's mandate to keep out of the United States persons who are intent on inciting or engaging in terrorist activities. This bill furthers that goal by expanding the definitions related to terrorist organizations. [...]

Under the current regulatory regime, the INS can detain an alien for 48 hours before making a decision as to charging the alien with a crime or removable offense. The INS uses this time to establish an alien's true identity, to check foreign and domestic databases for information about the alien, and to liaise with law enforcement agencies. This act extends that time period to 7 days so that the INS is not forced to release a terrorist simply because it has not had adequate time to do a thorough investigation.

The substantive criminal law statutes are also toughened in order to treat crimes of terrorism with the same level of importance as the most serious crimes in our country. Some of these new provisions include no statutes of limitations for the most serious crimes of terrorism, allowing a judge to sentence a terrorist to prison for any number of years up to life for any offense that is defined as a "Federal terrorism offense," and subjecting persons convicted of conspiracy to commit terrorism to the same penalties as those who actually commit the offense. Any person convicted of a terrorism offense will now be under supervision for as long as the court determines is necessary, including up to life.

The act also expands the definition of support for terrorism for which a person can be prosecuted to include providing expert advice to terrorists and harboring or concealing a suspected terrorist.

This new bill also continues the compromise language between current law and the administration's initial proposal for the showing needed for FISA, the Foreign Intelligence Surveillance Act, investigations using wiretaps. Current FISA law requires that in order to obtain a FISA wiretap, the Attorney General must certify that the gathering of foreign intelligence is the purpose or a primary purpose of the investigation. [...]

Furthermore, this bill, like the Committee on the Judiciary reported bill, provides for roving wiretaps for FISA investigations. Currently under FISA, the government must identify and get a separate order for each phone to be tapped. This provision allows the government to make a showing to a court that the target is changing phones to thwart the tap, and to allow the court to authorize taps of any phones which the target may use. This provision is consistent with current criminal law.

Importantly, the bill does not do anything to take away the freedoms of innocent citizens. Of course we all recognize that the fourth amendment to the Constitution prevents the government from conducting unreasonable searches and seizures, and that is why this legislation does not change the United States

Constitution or the rights guaranteed to citizens of this country under the Bill of Rights.

We should keep in mind that the Preamble to the Constitution states that it was ordained to establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and to secure the blessings of liberty. Well, let me say, on September 11, our common defense was penetrated, and America's tranquility, welfare, and liberty were ruthlessly attacked. I urge the Members of this body to stand united together in recognition of the important purpose we must serve in preventing terrorist attacks in the future and prosecuting those who have already attacked us. [...]

Mr. Speaker, this has not been the ideal process, and the legislation before us now does not represent a perfect compromise. However, the work of the House Committee on the Judiciary over the past 3 weeks has greatly improved upon the original Justice Department proposal. I believe it now responsibly addresses many of the shortcomings of the current law and improves law enforcement's ability to prevent future terrorism activities and the preliminary crimes which further such activities while preserving the civil rights of our citizens.

REP. BARNEY FRANK(D-MA): Mr. Speaker, we recognize that the chairman of the full committee tried hard to preserve some of our process; but powers beyond, it seem to me, his control have given us the least democratic process for debating questions fundamental to democracy I have ever seen.

But I want to get to substance while continuing to deplore this outrageous and unfair procedure whereby the product that we voted on in committee cannot even be offered. No amendments. No amendments.

But I want to explain what the substantive problem is. What we decided to do in committee, correctly, was to give to the law enforcement officials all the expanded powers they asked for, because we want to be protected. And electronic evolution requires an evolution in the powers. But we simultaneously tried to put into effect a full set of safeguards to minimize the chance that human beings, fallible ones, would abuse the powers.

The problem is that the bill before us today preserves the fullness of the powers, but substantially weakens the safeguards against the misuse of the powers. The major safeguard was the sunset. Knowing that within 2 years they would have to come back for a renewal of these powers was the best way to build into the bureaucracy respect and avoid abuse. A 5-year sunset greatly diminishes that. [...]

We are trying to do something very delicate. We are trying to empower law enforcement and simultaneously put constraints on them. A bill that gives the full powers and weakens the constraints is an inadequate bill.

As we consider today the expansion of Federal law enforcement powers, I am reminded that as we redefine this often-delicate balance between our country's national defense and individual rights, we must be very careful.

I have over the years, though, become convinced that some adjustments are needed to our criminal law. Given the significantly greater ability of the criminal, particularly the terrorists, to freely operate worldwide, and given the advancing technology of communications, simply put, the laws that we have are no longer adequate for the good guys to keep up with the bad guys. At this time I think it is very appropriate that the good guys get the edge once again.

This PATRIOT bill, H.R. 2975, I believe is a balanced approach to our fight against terrorism. I believe it is an appropriate response to a very real problem. Neither our constitutional rights nor our fundamental rights of privacy are dismissed. Please keep in mind we are not waiving in any way or voiding the Constitution today. The provisions of this PATRIOT bill will undoubtedly be tested and must withstand challenge in a court of law. I believe they will meet the constitutional test. [...]

I close with a statement by Thomas Paine on another September 11, some 224 years ago, when he said, "Those who expect to reap the blessings of freedom, must, like men, undergo the fatigues of supporting it."

REP. BUTCH OTTER (R-ID): Mr. Speaker, I rise as many others have already said today to congratulate the chairman of the committee and the ranking member for the great work and the great task which they undertook. However, Mr. Speaker, I cannot support this effort. I do support Governor Ridge, and I do support Attorney General Ashcroft and the President of the United States. However, Mr. Speaker, I feel like this bill goes way too far.

Some of the provisions place more power in the hands of law enforcement than our Founding Fathers could have ever dreamt. Nationwide warrants and secret courts would have been familiar to the Founding Fathers, Mr. Speaker, because they fought against those very institutions when they fought the British.

This bill promises security, but Americans need to be secure with their liberties. This bill promises safety, but Americans are only safe if they are free.

Mr. Speaker, others have said it more eloquently than I. Patrick Henry, for instance, said it when he said, "I have but one lamp which guides my feet, and that is the lamp of experience. I know of no way of judging the future but by the past. And judging by the past, I wish to know what there has been in the conduct of the British ministry for the last ten years to justify those hopes which gentlemen now today are pleased to solace themselves."

John Stewart Mill said, "A people may prefer a free government, but if from indolence, or carelessness, or cowardice, or want of public spirit, they are unequal to the exertions necessary for preserving it; if they will not fight for it when it is directly attacked; if they can be deluded by the artifices used to cheat them out of their liberties; if by momentary discouragement or temporary panic or a fit of enthusiasm for an idea or an individual, they can be deluded to lay their liberties at the feet of even a great man, or trust him with powers which enable them to subvert their institutions, in all these cases they are more or less unfit for liberty."

I urge my colleagues to listen to the voices of these patriots and reject the so-called "PATRIOT" Act. I support my President, I support law enforcement, but I also support the fundamental rights and liberties of the American people.

REP. MAXINE WATERS (D-CA): Mr. Speaker, I rise in strong opposition to this bill. This is a Senate bill that was voted out at 3 a.m. this morning. This bill is quite different than the bill passed by the House Committee on the Judiciary. Under the rules of the House, the Committee on the Judiciary's bill should have been heard on this floor and the differences between this bill and the House bill should have been worked out in a conference committee.

Mr. Speaker, we had a bipartisan bill, and John Ashcroft destroyed it. The Attorney General has fired the first partisan shot since September 11. [...]

Mr. Speaker, I serve on the Committee on the Judiciary. I consented to some policies I did not particularly care for. For the good of the House I compromised. Some of the Republicans on that committee compromised also. We had a bipartisan bill.

The bill before us today is a faulty and irresponsible piece of legislation that undermines our civil liberties and disregards the Constitution of the United States of America.

This bill takes advantage of the trust that we have placed in this administration. Our law enforcement and intelligence community have all of the laws and all of the money that they need to do their job. Mr. Speaker, they failed us; and now this Attorney General is using this unfortunate situation to extract extraordinary powers to be used beyond dealing with terrorism, laws that he will place into the regular criminal justice system.

The question to be answered today is can we have good intelligence and investigations and maintain our civil liberties? This bill says no. I say yes. Let us not give away our privacy. Let us not undermine our constitutional rights.

The gentleman did not finish the quote by Patrick Henry. He said: "Give me liberty or give me death." I say the same today. Vote "no" on this bill.

REP. BOB BARR (R-GA): The terrorist attacks on this Nation that occurred on September 11 did not occur because of freedoms that we have in this country under our Constitution. They did not exist because our Constitution guarantees all of us the right to be free from unreasonable searches and seizures. [...]

I do not believe we ought to be in any rush to judgment to diminish our freedoms in the misguided conception that it is those freedoms that gave rise to the attacks on September 11. I commend the chairman of the Committee on the Judiciary and others who worked very hard to craft a very necessary and vitally important balance between giving law enforcement those narrowly crafted tools it needs and protecting the civil liberties, including the right to privacy, of American citizens.

Is this a perfect bill? No, it is not a perfect bill, and I know the distinguished chairman would be the first to admit that. Is there much further work that needs to be done? Yes, there is much further work that needs to be done. I think that all of this means that it is absolutely imperative that we take very seriously the sunset provision in this bill that at least gives us an opportunity to evaluate how these important, momentous provisions that we are granting Federal law enforcement will be used.

I also think it is important to realize that there were important concessions by the administration made in crafting this version of this bill. Am I happy with it? No, I do not think this is a happy piece of legislation. It is not a happy set of circumstances that brings us to the point where we have to consider amending our criminal laws and criminal procedures. But I do think on balance it is important to pass this piece of legislation, monitor it very carefully, and take seriously our responsibility to exercise the power that we are granting in the sunset provision.

Source: Yale Law School Avalon Project
http://avalon.law.yale.edu/sept11/hr2975_house_proc.asp