

# Secret Draft Leaked of the Patriot Act II

By Charles Lewis and Adam Mayle

The Bush Administration is preparing a bold, comprehensive sequel to the Patriot Act that was passed after September 11, 2001. The proposed sequel will give the government broad, sweeping new powers to increase domestic intelligence-gathering, surveillance and law enforcement prerogatives, and simultaneously decrease judicial review and public access to information.

The Center for Public Integrity (CPI) obtained a draft, dated January 9, 2003, of this previously undisclosed legislation and has made it available in full text (See the end of this article). The bill, drafted by the staff of Attorney General John Ashcroft and entitled the Domestic Security Enhancement Act of 2003, was not officially released by the Department of Justice. Rumors of its development were circulating around the Capitol for a few months, under the name of "Patriot Act II."

At the request of the CPI, Dr. David Cole, Georgetown University Law professor and author of *Terrorism and the Constitution*, reviewed the draft legislation and said it "raises a lot of serious concerns. It's troubling that they have gotten this far along and they've been telling people there is nothing in the works." He added that it "would radically expand law enforcement and intelligence gathering au-

thorities, reduce or eliminate judicial oversight over surveillance, authorize secret arrests, create a DNA database based on unchecked executive 'suspicion,' create new death penalties, and even seek to take American citizenship away from persons who belong to or support disfavored political groups."

Some of the key provisions of the 'Domestic Security Enhancement

for in the Clean Air Act, the Environmental Protection Agency requires private companies that use potentially dangerous chemicals must produce a "worst case scenario" report detailing the effect that the release of these controlled substances would have on the surrounding community. Section 202 of this Act would, however, restrict FOIA requests to these reports, which

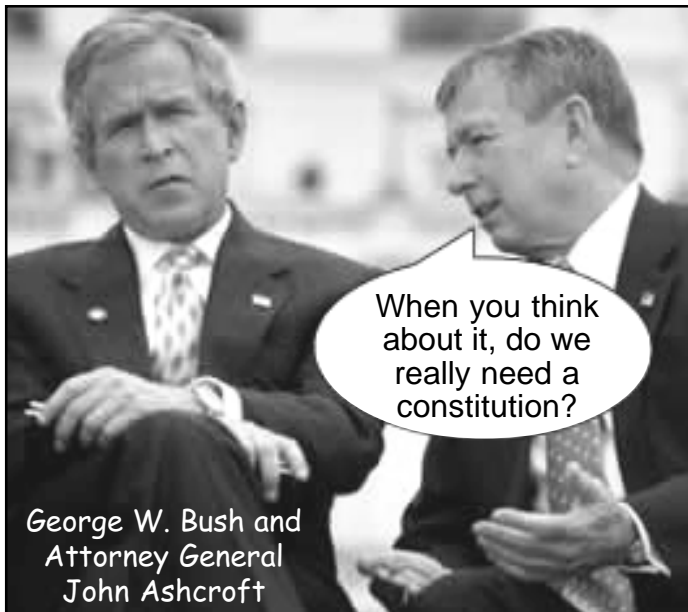
the bill's drafters refer to as "a roadmap for terrorists." By reducing public access to "read-only" methods for only those persons "who live and work in the geographical area likely to be affected by a worst-case scenario," this subtitle would obfuscate an established level of transparency between private industry and the public.

**Section 301-306, "Terrorist Identification Database":** These sections would authorize creation of a DNA database on "suspected terrorists," expansively defined to include

association with suspected terrorist groups and non-citizens suspected of certain crimes or of supporting any group designated as terrorist.

**Section 312, "Appropriate Remedies with Respect to Law Enforcement Surveillance Activities":** This section would terminate all state law enforcement consent decrees before September 11, 2001, not related to racial profiling or other civil rights violations, that limit such agencies from gathering information about individuals and organizations. The authors of this statute claim that these consent orders, which were passed as a result of police spying abuses, could impede current terrorism investigations. It would also place substantial restrictions on future court injunctions.

**Section 405, "Presumption for Pretrial Detention in Cases Involving Terrorism":** While many people charged with drug offenses punishable by prison terms of 10 years or more are held before their trial without bail, this provision would create a comparable statute for those suspected of ter-



George W. Bush and Attorney General John Ashcroft

Act of 2003' include:

**Section 201, "Prohibition of Disclosure of Terrorism Investigation Detainee Information":** Safeguarding the dissemination of information related to national security has been a hallmark of Ashcroft's first two years in office, and the Domestic Security Enhancement Act of 2003 follows in the footsteps of his October 2001 directive to carefully consider such interest when granting Freedom of Information Act (FOIA) requests. While the October memo simply encouraged FOIA officers to take national security, "protecting sensitive business information and, not least, preserving personal privacy" into account while deciding on requests, the proposed legislation would enhance the department's ability to deny releasing material on suspected terrorists in government custody through FOIA.

**Section 202, "Distribution of 'Worst Case Scenario' Information":** This would introduce new FOIA restrictions with regard to the Environmental Protection Agency. As provided

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rorist activity. The reasons for presumptively holding suspected terrorists before trial, the Justice Department summary memo states, are clear. "This presumption is warranted because of the unparalleled magnitude of the danger to the U.S. and its people posed by acts of terrorism, and because terrorism is typically engaged in by groups many with international connections that are often in a position to help their members flee or go into hiding."

**Section 501, "Expatriation of Terrorists":** This provision, the drafters say, would establish that a U.S. citizen could be expatriated "if, with the intent to relinquish his nationality, he becomes a member of, or provides material support to, a group that the U.S. has designated as a 'terrorist organization.'" But whereas a citizen formerly had to state his intent to relinquish his citizenship, the new law affirms that his intent can be "inferred from conduct." Thus, engaging in the lawful activities of a group designated as a "terrorist organization" by the Attorney General could be presumptive grounds for expatriation.

The draft legislation for the Domestic Security Enhancement Act goes beyond the Patriot Act. "In the [Patriot Act] we have to break down the wall of foreign intelligence and law enforcement," Dr. Cole said. "Now they want to break down the wall between international terrorism and domestic terrorism."

Cole found it disturbing that there had been no consultations with Congress on the draft legislation. "It raises a lot of serious concerns and is troubling...that they have gotten this far along and [yet] tell people that there is nothing in the works. What that suggests is that they're waiting for a propitious time to introduce it, which might well be when a war is begun. At that time there would be less opportunity for discussion and they'll have a much stronger hand in saying that they need these right away."

**Source:** "Justice Department Drafts Sweeping Expansion of Anti-Terrorism Act," Center for Public Integrity, February 7, 2003. Read the full text of the leaked Patriot Act II <[www.publicintegrity.org/docs/PatriotAct/story\\_01\\_020703\\_doc\\_1.pdf](http://www.publicintegrity.org/docs/PatriotAct/story_01_020703_doc_1.pdf)>

## Homeland Security Threatens Civil Liberty

By Frank Morales

To further prepare for new "law enforcement" missions for the military within America, overseen by the Northern Command, the Center for Law and Military Operations, based in Charlottesville, Virginia, recently published the legal rationale for these developments. Entitled, *Domestic Operational Law Handbook for Judge Advocates*, the document reflects the growing momentum towards the repeal of the *Posse Comitatus Act*. [Editor's Note: This 1878 law restricts military enforcement of domestic laws.]

Virtually unreported in any media, and published prior to 911, the document states that although "the

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Founding Fathers' hesitancy to raise a standing army and their desire to render the military subordinate to civilian authority" is "rooted in the Constitution," "exceptions to the restrictions on employment of federal armed forces to assist state and local civil authorities are also grounded in the Constitution, which provides the basis for federal legislation allowing military assistance for civil disturbances." The Judge Advocate General (JAG) handbook attempts to solidify, from a legal standpoint, Pentagon penetration of America and its "operations other than war." It essentially provides the U.S. corporate elite with lawful justification for its class war against the American people, specifically those that resist the "new world law and order" agenda.

The handbook notes that "the Department of Defense Civil Disturbance Plan, named Garden Plot, provides guidance and direction for planning, coordination and executing military operations during domestic civil disturbances." Operation Garden Plot, originating in 1968 and continually updated, is – according to the JAG handbook – tasked with conducting "civil disturbance operations throughout the U.S.," providing "wide latitude

to a commander to use federal forces to assist civil law enforcement in restoring law and order." It is exactly this type of "wide latitude" that was witnessed at recent protests.

U.S. Army Field Manual 19-15, entitled *Civil Disturbances*, issued in 1985, is designed to equip soldiers with the "tactics, techniques and procedures" necessary to suppress dissent. The manual states that "crowd control formations may be employed to disperse, contain or block a crowd. When employed to disperse a crowd, they are particularly effective in urban areas because they enable the control force to split a crowd into smaller segments." If you were [among the 500,000] at the February 15 [2004] NYC Peace Rally, this will sound familiar. The manual states: "if the crowd refuses to move, the control force may have to employ other techniques, such as riot control

agents or apprehension." The Army "civil disturbance" manual also makes the point that "civil disturbances include acts of terrorism" which "may be organized by disaffected groups" who hope to "embarrass the government" and who may in fact "demonstrate as a cover for terrorism."

The sophistry involved in turning a peace rally into a pro-al Qaeda rally is precisely the logic operating in Pentagon-driven civil disturbance planning, within the broader context of so-called "homeland defense." Rather than protest being the occasion of "terrorism," the "war on terrorism" is the cover for the war on dissent. Here is what the California Anti-Terrorism Information Center spokesman Mike Van Winkle said to the *Oakland Tribune* (May 18, 2003): "You can make an easy kind of link that, if you have a protest group protesting a war where the cause that's being fought against is international terrorism, you might have terrorism at that protest... You can almost argue that a protest against that is a terrorist act."

**Source:** *Censored 2004: The Top 25 Censored Media Stories of 2002-2003*. <[www.projectcensored.org/publications/2004/2.html](http://www.projectcensored.org/publications/2004/2.html)>