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Renewed Controversy Over Patriot Act



Posted by KATHY KATTENBURG in [Politics](#), [Society](#), [War](#).
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I have a blog post up at [Comments from Left Field](#) on the upcoming battle over reauthorization of three provisions of the Patriot Act.

Charlie Savage has an [article about the reauthorization](#) in the *New York Times* in which he provides details about the three provisions that are expiring:

The first such provision allows investigators to get “roving wiretap” court orders authorizing them to follow a target who switches phone numbers or phone companies, rather than having to apply for a new warrant each time.

From 2004 to 2009, the Federal Bureau of Investigation applied for such an order about 140 times, Robert S. Mueller, the F.B.I. director, said at a Senate Judiciary Committee hearing last week.

The second such provision allows the F.B.I. to get a court order to seize “any tangible things” deemed relevant to a terrorism investigation — like a business’s customer records, a diary or a computer.

From 2004 to 2009, the bureau used that authority more than 250 times, Mr. Mueller said.

The final provision set to expire is called the “lone wolf” provision. It allows the F.B.I. to get a court order to wiretap a terrorism suspect who is not connected to any foreign terrorist group or foreign government.

Mr. Mueller said this authority had never been used, but the bureau still wanted Congress to extend it.

Russ Feingold and seven other senators are sponsoring [legislation](#) (h/t [Julian Sanchez](#), via [Thoreau at Unqualified Offerings](#)) to correct the most egregious excesses in these three provisions. The legislation, titled The Judicious Use of Surveillance Tools in Counterterrorism Efforts (JUSTICE) Act, would in addition [eliminate the telecom immunity provision in the 2008 FISA legislation](#), and limit the scope of the government's ability (now practically unlimited) to issue National Security Letters.

Julian has a [longer article](#) about the three contested provisions at the Cato Institute's blog.

The Investigative Project on Terrorism, writing at Counterterrorism Blog, would prefer to keep the Patriot Act just the way it is — especially the provision that allows the feds to go after anyone who provides “material support” to a terrorist organization, without having to demonstrate that said support was given knowingly; i.e., [knowing that the money was going to a terrorist organization](#):

Under current law, federal prosecutors must show that an individual provided financial, logistical, or other resources to a terrorist organization, whether or not they intended the donation to support violence. In announcing this change, Senator Feingold [explained](#) that the revision would require “that a person must know or intend that support provided will be used for terrorist activity.” In reality, this amendment would eviscerate the statute—stripping the government of a valuable tool in the fight against the support structure of international terrorist organizations. The fact is that the italicized portion above is a tremendous departure from Congressional intent, long standing judicial precedent, and common sense.

Supporters of this type of amendment often argue that terrorist groups are also engaged in charitable, humanitarian, educational, and political activities, and that donors should be able to promote these lawful activities. Each time this argument has been put forth in a federal court, it has been quickly dismissed. As the Court of Appeals for the Ninth Circuit explained in *Humanitarian Law Project v. Reno*:

"all material support given to such organizations aids their unlawful goals. Money is fungible; giving support intended to aid an organization's peaceful activities frees up resources that can be used for terrorist acts."

The argument that there are multiple “wings” in terrorist organizations has been repeatedly rejected. When it was enacted, the material support statute was intended to make these groups radioactive—in the [words](#) of Andrew McCarthy—“an entity that merits only our contempt, not our contributions.” Senator Feingold and any other members who would support the proposed amendment to Section 2339B must remember that any support given to a terrorist organization furthers their violent acts. Requiring federal prosecutors to show that a defendant specifically intended to support acts of terrorism would make it almost impossible to shut down networks of individuals who are complicit in these acts of violence.

The other side of that argument is that criminalizing charitable donations that end up in the hands of terrorists would make it unacceptably difficult for humanitarian organizations to do their work — and although the IPT does not mention it, this argument [has been upheld in court](#):

In yet another ruling striking down a provision of the Patriot Act as unconstitutional, a federal appeals court ruled Monday that some portions of the act that criminalize support of blacklisted foreign organizations are unconstitutionally vague. Yesterday's ruling in the United States Court of Appeals for the 9th Circuit upholds a 2005 decision by U.S. District Judge Audrey Collins.

The ACLU filed an amicus brief in 2006 on behalf of humanitarian organizations including Oxfam, Operation USA, and the Unitarian Universalist Service Committee, all of which are concerned that the law interferes with their ability to provide humanitarian aid to desperately needy civilian populations. In the brief, the ACLU argued that sweeping provisions of the Patriot Act barring "expert advice or assistance" or "training" to groups considered terrorist organizations by the State Department prevented humanitarian groups from providing aid in war-torn areas, because in those areas it is sometimes impossible to provide aid without working with or through organizations that engage in both lawful and unlawful activity.

The ACLU charged that the law pertaining to providing "material support" to groups would allow a humanitarian organization to be prosecuted for providing support after a natural disaster, even if the organization's goals were entirely laudable and even if the donations were used only for legitimate humanitarian purposes.

Via [Memeorandum](#) and [Blogrunner](#).

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Let's hope the good guys like Feingold win this round in Washington. It would be a very positive step toward restoring our civil liberties.

Kathy, please let me know when/if you find out where to donate to support the passage of the Justice Act. I want to add that information to [my blog](#).