

Dispelling the Myths

(prepared by DOJ)

Dispelling Some of the Major Myths about the USA PATRIOT Act

Myth: The ACLU claims that the Patriot Act "expands terrorism laws to include 'domestic terrorism' which could subject political organizations to surveillance, wiretapping, harassment, and criminal action for political advocacy." They also claim that it includes a "provision that might allow the actions of peaceful groups that dissent from government policy, such as Greenpeace, to be treated as 'domestic terrorism.'" (ACLU, February 11, 2003; ACLU fundraising letter, cited by Stuart Taylor in "UnPATRIOTic," *National Journal*, August 4, 2003)

Reality: The Patriot Act limits domestic terrorism to conduct that breaks criminal laws, endangering human life. "Peaceful groups that dissent from government policy" without breaking laws cannot be targeted. Peaceful political discourse and dissent is one of America's most cherished freedoms, and is not subject to investigation as domestic terrorism. Under the Patriot Act, the definition of "domestic terrorism" is limited to conduct that (1) violates federal or state criminal law and (2) is dangerous to human life. Therefore, peaceful political organizations engaging in political advocacy will obviously not come under this definition. (Patriot Act, Section 802)

Myth: The ACLU has claimed that "Many [people] are unaware that their library habits could become the target of government surveillance. In a free society, such monitoring is odious and unnecessary. . . The secrecy that surrounds section 215 leads us to a society where the 'thought police' can target us for what we choose to read or what Websites we visit." (ACLU, July 22, 2003)

Reality: The Patriot Act specifically protects Americans' First Amendment rights, and terrorism investigators have no interest in the library habits of ordinary Americans. Historically, terrorists and spies have used libraries to plan and carry out activities that threaten our national security. If terrorists or spies use libraries, we should not allow them to become safe havens for their terrorist or clandestine activities. The Patriot Act ensures that business records — whether from a library or any other business — can be obtained in national security investigations with the permission of a federal judge.

Examining business records often provides the key that investigators are looking for to solve a wide range of crimes. Investigators might seek select records from hardware stores or chemical plants, for example, to find out who bought materials to make a bomb, or bank records to see who's sending money to terrorists. Law enforcement authorities have always been able to obtain business records in criminal cases through grand jury subpoenas, and continue to do so in national security cases where appropriate. In a recent domestic terrorism case, for example, a grand jury served a subpoena on a bookseller to obtain records showing that a suspect had purchased a book giving instructions on how to build a particularly unusual detonator that had been used in several bombings. This was important evidence identifying the suspect as the bomber.

In national security cases where use of the grand jury process was not appropriate, investigators previously had limited tools at their disposal to obtain certain business records. Under the Patriot Act, the government can now ask a federal court (the Foreign Intelligence Surveillance Court), if needed to aid an investigation, to order production of the same type of records available through grand jury subpoenas. This federal court, however, can issue these orders only after the government demonstrates the records concerned are sought for an authorized investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely on the basis of activities protected by the First Amendment.

Congress reviews the government's use of business records under the Act. Every six months, the Attorney General must "fully inform" Congress on how it has been implemented. On October 17, 2002, the House Judiciary Committee issued a press release indicating it is satisfied with the Department's use

of section 215: "The Committee's review of classified information related to FISA orders for tangible records, such as library records, has not given rise to any concern that the authority is being misused or abused."

Myth: The ACLU claims that the Patriot Act provision about delayed notification search warrants "would allow law enforcement agencies to delay giving notice when they conduct a search. . . . This provision would mark a sea change in the way search warrants are executed in the United States." (ACLU, October 23, 2001)

Reality: Delayed notification search warrants are a long-existing, crime-fighting tool upheld by courts nationwide for decades in organized crime, drug cases and child pornography. The Patriot Act simply codified the authority law enforcement had already had for decades. This tool is a vital aspect of our strategy of prevention – detecting and incapacitating terrorists *before* they are able to strike.

In some cases if criminals are tipped off too early to an investigation, they might flee, destroy evidence, intimidate or kill witnesses, cut off contact with associates, or take other action to evade arrest. Therefore, federal courts in narrow circumstances long have allowed law enforcement to delay for a limited time when the subject is told that a judicially-approved search warrant has been executed. This tool can be used only with a court order, in extremely narrow circumstances when immediate notification may result in death or physical harm to an individual, flight from prosecution, evidence tampering, witness intimidation, or serious jeopardy to an investigation. The reasonable delay gives law enforcement time to identify the criminal's associates, eliminate immediate threats to our communities, and coordinate the arrests of multiple individuals without tipping them off beforehand. In all cases, law enforcement must give notice that property has been searched or seized.

The Supreme Court has held the Fourth Amendment does not require law enforcement to give immediate notice of the execution of a search warrant. The Supreme Court emphasized "that covert entries are constitutional in some circumstances, at least if they are made pursuant to a warrant." In fact, the Court stated that an argument to the contrary was "frivolous." *Dalia v. U.S.*, 441 U.S. 238 (1979)