


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

  
AMERICAN CIVIL LIBERTIES UNION,  
and AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION;

Plaintiffs,

v.

JOHN ASHCROFT, in his official capacity as  
Attorney General of the United States;  
ROBERT MUELLER, in his official  
capacity as Director of the Federal Bureau of  
Investigation; and MARION E. BOWMAN,  
in his official capacity as Senior Counsel to  
the Federal Bureau of Investigation,

Defendants.

04 Civ. 2614 (VM)

**SEALED**

**DECLARATION OF ANTHONY D. ROMERO**

I, Anthony D. Romero, of New York, New York, do declare:

1. I am the Executive Director of the American Civil Liberties Union ("ACLU") and the American Civil Liberties Union Foundation ("ACLU Foundation" or "ACLUF").
2. The ACLU is a nationwide, non-profit, non-partisan organization with over 400,000 members dedicated to the constitutional principles of liberty and equality. The primary mission of the ACLU, which is a 501(c)(4) organization, is to educate the public about the civil liberties implications of pending and proposed legislation in Congress and in state and local legislatures; to directly lobby legislators and to provide analyses of such pending or proposed legislation; and to mobilize our members and other activists to lobby their legislators.

3. The ACLU Foundation is a separate 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil liberties cases, and educates the public about civil liberties issues. Lawyers at the ACLUF represent individuals and organizations in numerous civil liberties cases in federal and state courts around the country. ACLUF lawyers routinely litigate before the United States Supreme Court and have filed more briefs in the Supreme Court than any organization other than the Department of Justice.
4. The ACLU and the ACLUF are funded through a combination of donations from ACLU members and other individuals, foundation and corporate grants, and attorneys' fees generated from successful lawsuits.
5. All of the ACLU and the ACLUF's fundraising efforts depend on our ability to discuss and describe our current work, including active litigation. We routinely raise money by publicizing our work in a particular case or on a particular set of civil liberties issues. We publicize our work in newsletters to members and donors, on our web site, in paid advertisements, in donor visits and briefings, at fundraising events, and through direct mail campaigns.
6. The communications departments of the ACLU and the ACLUF educate the public about civil liberties through a variety of means. We provide detailed information about legislative advocacy and litigation impacting civil liberties to the print and broadcast media, through media releases, live briefings, and media interviews with staff and clients. We also place paid and public service advertisements on current civil liberties issues in print and broadcast media. We publish in-depth public education reports on specific issues, and prepare and distribute brochures to inform individuals of

specific rights. ACLU and ACLUF staff routinely speak in public forums and at community meetings on a wide range of civil liberties issues. The ACLU and ACLUF host a web site that provides extensive information to the public about civil liberties, offers online newsletters and action alerts regarding current issues, and hosts interactive forums to engage the public in debate about constitutional rights. We also distribute print newsletters and action alerts to activists and ACLU members.

7. In the past two years, one of the core priorities of the ACLU and the ACLUF has been to stem the backlash on civil liberties that has taken place in the name of national security. In particular, the ACLU and the ACLUF have been at the forefront of opposition to certain provisions of the USA PATRIOT ACT ("Patriot Act"). Many of these provisions vastly expand the federal government's ability to spy on innocent people.

8. The ACLU and ACLUF communications departments have launched a national multi-million dollar campaign, called "Safe & Free," to inform the public about the erosion of rights after September 11. This multi-faceted campaign includes a special Safe & Free web site that offers extensive information about our ongoing advocacy in courts, in Congress, and in local communities, and includes frequent action alerts to mobilize the public on key issues.

9. As part of the Safe & Free campaign, the ACLU and ACLUF have also published and distributed a number of public education reports, including *Unpatriotic Acts: The FBI's Power to Rifle Through Your Records and Personal Belongings Without Telling You* (which describes how Section 215 violates the First and Fourth Amendments); *Seeking Truth From Justice* (which highlights a misinformation campaign by the

Ashcroft Department of Justice and its allies about the Patriot Act); *A New Era of Discrimination: Why African-Americans Should Be Alarmed About the Ashcroft Terrorism Laws* (which compares past government actions against African-Americans with current government actions that unfairly target individuals based on race and ethnicity); and *Independence Day 2003: Main Street America Fights the Federal Government's Insatiable Appetite for New Law Enforcement Powers* (which documents the growing movement to pass local community resolutions in opposition to the Patriot Act).

10. As part of the Safe & Free Campaign, the ACLU and ACLUF have also placed paid advertising in targeted media featuring renowned actors, authors, musicians, and directors. Pictured with the provocative headline "I Am Not An American Who . . .," each celebrity describes a civil rights issue and cites the ACLU's commitment to defend civil rights. Participants have included Al Pacino, Martin Sheen, Holly Hunter, Kristin Davis, Kurt Vonnegut, Samuel L. Jackson, and Jake Gyllenhaal.

11. Lawyers for the ACLUF have also litigated a number of cases involving the Patriot Act. For example, we filed two lawsuits under the Freedom of Information Act to obtain information about the government's use of the Patriot Act. In federal court in Michigan, we have also challenged the constitutionality of Section 215 of the Act, a provision that allows the FBI to obtain an order from the Foreign Intelligence Surveillance Court ordering any organization to disclose records or "tangible things" without first establishing probable cause or providing any opportunity to challenge the demand before compliance. In addition, we filed an amicus brief in the first case ever considered by the Foreign Intelligence Surveillance Court of Review, in which we argued

that the Patriot Act's expansion of the FBI's intelligence wiretap authority is unconstitutional.

12. The ACLU has also lobbied Congress to repeal or amend numerous provisions of the Patriot Act and has worked with community groups around the country to pass more than two hundred local resolutions opposing the Patriot Act.

13. Through our combined public education, litigation, and lobbying efforts, the ACLU and the ACLUF have played a critical role in influencing the public debate over the Patriot Act. Both presidential candidates in the 2004 presidential election have made their position on the Patriot Act an important issue in their campaigns. Members of Congress have now introduced numerous bills to amend provisions of the Patriot Act. Americans around the country are actively opposing the Patriot Act by lobbying their local, state, and federal legislators.

14. The staff of the ACLU and the ACLUF have repeatedly criticized the Patriot Act's expansion of the National Security Letter (NSL) power, the legal authority at issue in this case. We have argued that the Patriot Act authorizes the FBI to demand the disclosure of constitutionally protected and other sensitive information held by "electronic communication service providers" without requiring the FBI to satisfy constitutional requirements. 18 U.S.C. 2709.

15. To educate the public about the NSL power, we developed a special feature on the ACLU web site that explains the law and provides copies of documents that we obtained through the FOIA. One such document, titled "Transactional Records NSLs Since 10/26/2001," appears to list the NSLs issued between October 26, 2001, and January 21, 2003. The five-page list is almost entirely redacted.

16. We have highlighted our work on the Patriot Act, and on NSLs in particular, through our web site, direct mail, online newsletters, and paid advertisements. Our work opposing the Patriot Act has led to a significant increase in new members and donations.

17. Lawyers employed by the ACLUF represent [REDACTED] in this lawsuit, which challenges the constitutionality of the NSL power.

Because the NSL served on our client contains a gag provision, the ACLUF is gagged from disclosing to any other person that the FBI sought information from our client through an NSL. The gag is preventing us from communicating information that is relevant to the public debate about the Patriot Act. But for the gag provision, we would provide this information to the press and the public, to Congress, and to ACLU and ACLUF staff, members and donors.

18. The gag is preventing the ACLU and the ACLUF from educating the public about the government's use of new powers under the Patriot Act generally, and the NSL power in particular. The gag prevents us from informing the public of the mere fact that the FBI has used the NSL power, from disclosing the general categories of information sought in an NSL, and from disclosing numerous other non-sensitive facts about this lawsuit. But for the gag, we would disclose this information. Thus, as the public debate over the Patriot Act continues, the public does not have the benefit of all the facts.

19. Ironically, the ACLU and ACLUF are gagged from stating a fact that any other member of the public can state – that lawyers for the ACLUF represent a client served with an NSL. It is clear from the redacted Complaint, which the government agreed to file publicly, that the ACLUF represents another plaintiff in this case. It is clear from the redacted Complaint that our client received an NSL. After all, the gag provision applies

only to those served with an NSL (and their agents). If our client had not been served with an NSL, there would be no need for any redactions in the Complaint. A number of reporters have deduced these precise facts, and reported them in news articles, merely from reading the redacted Complaint and other publicly available documents in the case. See Exh. 1. The government has nevertheless insisted that we would be in violation of the gag if we state publicly that we represent a client served with an NSL, even if we do not identify the name of our client, the subject of the NSL, or any other details about the specific NSL served.

20. The gag has also prevented me from providing non-sensitive information about the case to journalists. For example, at a recent function, a journalist asked me about our clients in this challenge to the NSL power. I told him that the ACLU was a client, and that I could not confirm or deny whether we represented any other client in the case. He then asked what type of client we might represent in such a challenge. I told him that, due to the lack of clarity about the extent of the gag, I could not respond. I felt that my limited responses came across as cagey, and frustrated a reporter who wanted to provide more information to the public on the government's use of NSLs.

21. The gag is also preventing lawyers and staff of the ACLUF from providing relevant information to members of Congress. For example, legislation was recently introduced (H.R. 3179) that would amend the NSL power to clarify the penalties for failing to comply with NSLs and for violating the nondisclosure provisions. The ACLU has information that would help Congress evaluate the wisdom of this legislation. But for the gag, we would disclose to members of Congress the kinds of information sought by the NSL that was served on our client. We would also tell members of Congress that

the Justice Department is relying on the gag provision to forbid disclosure of non-sensitive information. If a member of Congress knew that an NSL recipient could be jailed for up to five years for merely confirming that an NSL had been served, or for disclosing the general categories of information sought, that member might be disinclined to approve the legislation. Because of the gag provision, Congress is considering new legislation without the benefit of all the facts. The gag provision is also limiting our ability to mobilize ACLU members and other activists in opposition to the expansion of the NSL power.

22. Other new powers under the Patriot Act have gag provisions that are similar or identical to the NSL gag provision. Information about the government's application of the gag provision in this case would also inform the ongoing debate about those provisions. But for the gag, the ACLU and the ACLUF would disclose this information to the public.

23. The gag is also creating potential liability for ACLU and ACLUF staff who are not even privy to the sensitive information in this case. Because these staff members work for or are associated with an organization that represents the client served with the NSL, they could risk penalties if they state publicly, that we represent a client served with an NSL. To avoid this risk, I reviewed and approved a memo that was distributed to all staff of the ACLU, the ACLUF, and our state affiliate offices. See Exh. 2. ACLU and ACLUF staff around the country were understandably confused by the memo because they did not understand how they could be gagged from stating a fact that is evident from the redacted Complaint.

24. The gag has also prevented me from providing non-sensitive information about the case to ACLU board members. For example, at a meeting with two board members, I was discussing the case, and was impeded from telling them about the litigation or our client. I told them that I did not feel comfortable disclosing the information to them given the lack of clarity about the scope of the gag. Both board members expressed surprise at my response. As Executive Director, I am employed at will by the ACLU board, which consists of over eighty board members. Open and honest communications are an essential ingredient of my relationship with the ACLU board. The gag is impeding that relationship.

25. The gag has also impeded my discussions with donors. In one discussion about this lawsuit, a donor asked follow-up questions, and I told him that I could not confirm or deny that we represented any party other than the ACLU. He then asked me, theoretically, whether we could challenge the NSL power at all if we did not represent an entity that had already been served with one. He also asked me why there would be any gag on the case if we did not represent an entity that had already been served with an NSL. I told him that I could not answer these questions due to the gag. He persisted with similar questions for several minutes. This cat-and-mouse game has been repeated with at least five other donors and ACLU members since then.

26. The ACLU and ACLUF recognize that limited secrecy may sometimes be necessary if justified by the government in a particular case. But the scope of the gag in this case, and the refusal of the government to clarify what is prohibited, is intolerable. The gag has severely disrupted our ordinary course of business, and has straitjacketed our ability to inform the press, the public, and Congress about the government's use of a

dangerous new power. More importantly, the public and even members of Congress are denied non-sensitive information essential to the public and legislative debate that is at the heart of democratic self-governance.

27. It is particularly troubling that, while the ACLU and ACLUF have been gagged from discussing the government's use of the NSL power, President Bush and representatives of the FBI and Justice Department are engaged in a public campaign in support of the Patriot Act. See Exh. 3. The gag provision silences those who are most likely to oppose the Patriot Act – those who know from first-hand experience exactly how the Act is being used. The ACLU and ACLUF believe we have the right to inform the public of a great deal of the information that the gag is suppressing.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this day, May 15, 2004.

A handwritten signature in black ink, appearing to read "Anthony D. Romero", written over a horizontal line.

Anthony D. Romero

Romero  
Declaration  
Exhibit 1

16 of 100 DOCUMENTS

Copyright 2004 Copley News Service  
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May 12, 2004 Wednesday

**SECTION:** EDITS; EDITORIAL WEEKLY FEATURE

**LENGTH:** 278 words

**HEADLINE:** DAILY EDITORIALS  
05,12,04, edit2 ,Daily Editorials Case questions gag orders

**BYLINE:** the Omaha World-Herald Copley News Service

**BODY:**

The appropriateness of some parts of the Patriot Act has been under debate since its passage. The law to expand government powers was adopted shortly after the Sept. 11, 2001, terrorist attacks.

The American Civil Liberties Union has filed a lawsuit challenging the constitutionality of those powers. And in a supremely ironic twist, those same powers have suppressed news of the lawsuit for a month. The case, filed April 6 in U.S. District Court in New York, was made public just last week.

The lawsuit challenges a type of national security letter, an order for information that doesn't require a judge's approval in terrorism and espionage cases. In the case in question, the FBI used the national security letter to demand that an Internet service provider turn over customer records, which can be highly personal.

Those who receive the letters are prohibited from disclosing to anyone that they received them, thus preventing recipients from challenging their validity.

It's that legal gag order that is also hindering publicity about the ACLU's lawsuit. Only after the group reached an agreement with the Justice Department was a heavily edited version of the lawsuit unsealed.

FBI agents and others charged with protecting the United States understandably need some degree of latitude and confidentiality in conducting investigations. But our nation's prized freedoms rest on openness in government, as a preventative against abuse of government powers.

That conflict makes the ACLU case worthy of public attention - and rightly puts pressure on the government to be easing its gag on the case.

Reprinted from the Omaha World-Herald.

**LOAD-DATE:** May 13, 2004

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The Commercial Appeal (Memphis, TN)

May 2, 2004 Sunday Final Edition

**SECTION:** VIEWPOINT; Pg. B6

**LENGTH:** 441 words

**HEADLINE:** SECRECY GONE AMOK

**BODY:**

TO NO ONE'S surprise, the American Civil Liberties Union filed suit challenging the constitutionality of parts of the USA Patriot Act, the sweeping security law passed in the immediate aftermath of 9/11.

To what should be everyone's shock, the mere fact of the lawsuit was kept secret under provisions of the act.

The Bush administration insists that the Patriot Act is vital to fighting terrorism, but, aside from Attorney General John Ashcroft's sheltered and uninformative tour before screened audiences, refuses to say precisely how.

One of the disturbing aspects of this administration is that it seems to believe that how it manages the people's business is none of the people's business.

The lawsuit was sealed for more than three weeks while the ACLU and the government haggled over what the ACLU could and could not say publicly about its lawsuit. The lawsuit was filed in New York on April 6, and a heavily edited version was released on April 28.

One of the secrets is the other plaintiff in the case, identified only as an "Internet access business." The FBI, through a National Security Letter, apparently was seeking from an Internet service provider a client's billing information, online purchases and E-mail addresses.

National Security Letters are a kind of subpoena that doesn't require a judge's approval, only the FBI's say-so, to covertly obtain personal information from banks, telephone companies, Internet providers, libraries, credit bureaus, etc.

Recipients of NSLs are barred by a gag order from disclosing that they have received one. The Patriot Act greatly eased the restrictions on NSLs so that the FBI could act quickly in national security cases.

But the ACLU contends, "As a result of the Patriot Act, the FBI may now use NSLs to obtain sensitive information about innocent individuals who have no connection to espionage or terrorism."

No one wants to tip off the target of a valid investigation, but given the past misuse of the FBI for political purposes this is not an unrealistic fear.

The ACLU argues that the expanded National Security Letter power is unconstitutional because the recipient has no way of challenging the validity of the NSL and the government doesn't have to justify not informing the target of an NSL.

The ACLU also believes the gag order is unconstitutional. And it does seem to raise issues about freedom of speech.

The Bush administration is demanding that the Patriot Act not only be renewed but expanded when it expires next year. Congress rushed initial passage of the Patriot Act; it should be in no rush to renew it. This law demands a hard second look.

NOTES:  
Editorial

LOAD-DATE: May 4, 2004

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Copyright 2004 Warren Publishing, Inc.  
Communications Daily

April 30, 2004, Friday

SECTION: TODAY'S NEWS

LENGTH: 599 words

HEADLINE: ACLU SUES ASHCROFT, FBI ON PATRIOT ACT PROVISION

BODY:

A lawsuit filed by the ACLU to contest part of the USA Patriot Act wasn't made public for 3 weeks because of concerns the release might violate the Act, the civil liberties group says. The suit lists the ACLU and another, redacted, plaintiff v. John Ashcroft, Robert Mueller and Marion Bowman in their official positions at the Dept. of Justice and FBI, and alleges that 2 elements of the Patriot Act that allow the FBI to obtain information from "electronic communication service providers" are unconstitutional. The suit was filed under seal nearly 3 weeks ago, an ACLU lawyer said, and the group didn't announce it until it reached an agreement with the govt. on which sections of the document -- and which components of the case -- could be made public.

The suit alleges that the Patriot Act extends FBI power unconstitutionally with respect to their ability to issue National Security Letters (NSLs). The FBI originally gained the ability to issue NSLs, which require ISPs and telecom carriers to submit the personal information of those suspected of espionage or terrorism without judicial oversight, in 1993. The Patriot Act extended the FBI's ability to issue NSLs to all citizens, which is the crux of the ACLU's challenge. The govt. has compared NSLs to subpoena power, but citizens can challenge subpoenas in court before they disclose information, according to ACLU lawyer Jameel Jaffer. "The government has to go to a judge and explain why there's a compelling need" for the information, Jaffer explained.

NSLs also gag those served from disclosing to any other person that the FBI sought or obtained information from them, and the suit alleges this clause is a fundamental First Amendment violation. The irony that a First Amendment case was held under seal for 3 weeks wasn't lost on the ACLU. "There's a lot of information in the complaint that we think should be disclosed to the public," Jaffer said. "A major provision of the Patriot Act has been under constitutional challenge for weeks, while, during the same time" President Bush and other Administration officials "have been publically campaigning to renew it." Jaffer said alleged FBI abuse of NSLs under the Patriot Act "is not a left-right issue. It's not about what kind of information the FBI can get, it's about how they get it."

"The case demonstrates why it's so difficult to challenge the over-broad powers of the Patriot Act," said Lara Flint, counsel for the Center for Democracy & Technology (CDT). Several of the new govt. powers added or bolstered by the Patriot Act have gag rules similar to those that accompany NSLs, she said, "and we have expressed repeatedly serious concerns about the NSL authority" with respect to ISPs. Under the pre-Patriot Act legislation, Flint said, "the FBI used to have to link an NSL to a specific person," who can demonstrably be shown to have links to foreign govts. or terrorist organizations. Under the Patriot Act, NSL requirements are so vague, and the gag order against ISPs so stringent, that "the person never knows that they're being investigated."

"Reading between the redacted lines, it looks like the ACLU's got the goods," said a spokesman for the Electronic Frontier Foundation (EFF). EFF and the ACLU have worked jointly before, most notably on the Communications Online Decency Case. "If ACLU needs our help we'll be happy to help them," the spokesman said, saying the FBI's expanded use of NSLs violates both the 4th (probable cause) and 5th (due process) Amendments. The Dept. of Justice didn't comment. -- Ian Martinez

LOAD-DATE: April 29, 2004

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The Washington Post

May 13, 2004 Thursday  
Final Edition

SECTION: A Section; A27

LENGTH: 505 words

HEADLINE: ACLU Was Forced To Revise Release On Patriot Act Suit;  
Justice Dept. Cited Secrecy Rules

BYLINE: Dan Eggen, Washington Post Staff Writer

**BODY:**

When a federal judge ruled two weeks ago that the American Civil Liberties Union could finally reveal the existence of a lawsuit challenging the USA Patriot Act, the group issued a news release.

But the next day, according to new documents released yesterday, the ACLU was forced to remove two paragraphs from the release posted on its Web site, after the Justice Department complained that the group had violated court secrecy rules.

One paragraph described the type of information that FBI agents could request under the law, while another merely listed the briefing schedule in the case, according to court documents and the original news release.

The dispute set off a furious round of court filings in a case that serves as both a challenge to, and an illustration of, the far-reaching power of the Patriot Act. Approved by Congress in the wake of the Sept. 11, 2001, attacks, the law gives the government greater latitude and secrecy in counterterrorism investigations and includes a provision allowing the FBI to secretly demand customer records from Internet providers and other businesses without a court order.

The ACLU first filed its lawsuit challenging the constitutionality of such demands, known as national security letters, on April 6, but the secrecy rules of the Patriot Act required the challenge to be filed under seal. A ruling April 28 allowed the release of a heavily censored version of the complaint, but the ACLU is still forbidden from revealing many details of the case, including the identity of another plaintiff who has joined in the lawsuit. The law forbids targets of national security letters to disclose that they have received one.

ACLU lawyer Ann Beeson said the court order also means that she "cannot confirm or deny" whether the ACLU is representing the second plaintiff. The group is the only counsel listed in court documents.

The dispute over the ACLU's April 28 news release centered on two paragraphs. The first laid out the court's schedule for receiving legal briefs and noted the name of the New York-based judge in the case, U.S. District Judge Victor Marrero.

The second paragraph read, "The provision under challenge allows an FBI agent to write a letter demanding the disclosure of the name, screen names, addresses, e-mail header information, and other sensitive information held by 'electronic communication service providers.' "

Justice lawyers said that both paragraphs violated a secrecy order and that the ACLU should be required to seek an exemption to publicize the information, court records show. Justice spokesman Charles Miller declined to comment yesterday.

"It simply never occurred to us that this information would be covered by the sealing order, because it's completely non-sensitive, generic information," Beeson said.

The dispute was partly resolved yesterday. Marrero ruled that the briefing schedule could be publicized, along with edited versions of other court filings. But the paragraph describing the information that can be sought remains absent.

LOAD-DATE: May 13, 2004

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The New York Times

May 13, 2004 Thursday  
Late Edition - Final

SECTION: Section A; Column 1; National Desk; Pg. 18

LENGTH: 631 words

HEADLINE: Judge Allows Peek into Challenge to Antiterrorism Law

BYLINE: By JULIA PRESTON

**BODY:**

In a ruling Wednesday, a federal judge in Manhattan widened the public's glimpse into a lawsuit by the American Civil Liberties Union challenging some terms of the antiterrorism law known as the USA Patriot Act, after the government sought to keep virtually every detail of the case under a court seal, or secrecy order.

The A.C.L.U. is contesting a provision of the law that allows the Federal Bureau of Investigation to require telephone, Internet and other communications companies to provide basic information about their customers, including addresses and call records. The F.B.I. sends a subpoena, known as a national security letter, which includes an order barring the company from informing the customer of the investigation or discussing it with anyone.

The F.B.I. can acquire data on customers even if they are not suspected of terrorist activity.

In a switch that A.C.L.U. lawyers described as an awkward change from their usual practice and philosophy, they filed the suit April 6 under seal, concluding that otherwise they would be in violation of the law the case was devised to contest. The group then quickly asked the judge to lift the seal from the whole case.

The suit is brought by the civil liberties group and another plaintiff described only as a recipient of an antiterrorism letter. The A.C.L.U. said it was barred from providing any other information about the other plaintiff.

"It isn't even clear that a recipient can speak to a lawyer," said Ann Beeson, the associate legal director at the A.C.L.U. who is handling the case.

Justice Department officials have argued that the national security letters are vital in the search for terror suspects, providing information that can help trace their movements and identify where their phone calls and e-mail messages are going. The subpoenas do not allow the government to listen to phone conversations or read e-mail messages.

In his decision, Judge Victor Marrero of Federal District Court in Manhattan declined to unseal the case, but set some guidelines for the two sides to agree on editing the case documents so that "nonsensitive information" could be released. Material in the documents that relates directly to terrorism investigations will be blacked out. Judge Marrero made it clear that his ruling had no bearing on how he might rule later on the larger issues in the case.

In recent days, President Bush and Attorney General John Ashcroft have vigorously defended the antiterrorism law, which was enacted in October 2001.

Almost nothing is known about the F.B.I.'s use of the subpoenas. The bureau has not said how many letters it sent or what the results were.

The A.C.L.U. argues that the F.B.I. letters are unconstitutional because they violate the due process rights of the businesses and people who receive them, and because the order prohibiting discussion of the investigation violates free

expression rights. The group contends that the government should be required to seek approval from a judge before issuing a letter and recipients should have a way to question the order.

One flashpoint came after the A.C.L.U. put out a press release on April 28 describing the case in general terms and including details of the schedule set by the judge for hearing the case. The group was ordered by the government to remove the schedule information from the release on its Web site.

Meredith B. Kotler, an assistant United States attorney, told the judge that even though the scheduling information was not sensitive, it should not be published because the entire case had been officially sealed.

After the judge issued an order releasing some documents on May 7, the A.C.L.U. restored the paragraph to its press release saying that the judge would probably hear the case at the end of the summer.

URL: <http://www.nytimes.com>

LOAD-DATE: May 14, 2004

Romero  
Declaration  
Exhibit 2

*Ann Beeson, Associate Legal Director*  
**AMERICAN CIVIL LIBERTIES UNION**  
125 Broad Street, New York, New York 10004  
(212) 549-2601 ph; (212) 549-2629 fax  
abeeson@aclu.org

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**TO:** All ACLU, ACLU Foundation and ACLU Affiliate Staff  
**FROM:** Ann Beeson  
**DATE:** April 28, 2004  
**RE:** **URGENT:** Restrictions on Information Regarding *ACLU v. Ashcroft*,  
Our Legal Challenge to the National Security Letter Power in the  
Patriot Act

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The ACLU National Legal Department, along with the New York Civil Liberties Union, has filed a challenge to one of the National Security Letter provisions of the USA Patriot Act. The statute under challenge includes a strict gag provision, 18 U.S.C. 2709(c). We filed the case under seal to avoid violating the gag provision. The ACLU is now able to disclose certain redacted documents in the case because, after negotiations, the government has agreed it will not prosecute us for doing so. That is why we have finally been able to go public with the case today (it was filed in the Southern District of New York on April 5). See the attached memo from Media Relations for more details.

However, there are still certain questions about the case that the ACLU cannot answer due to the remaining gag. It is imperative that you review this memo closely and use only the scripted answers below in responding to these questions (or similar questions on the same issue). Failure to abide by the script below could put you, as well as National staff, at risk of criminal prosecution for violating the gag. Obviously, we are extremely unhappy to have to urge you to restrict your answers. Our lawsuit challenges the constitutionality of the remaining gag, so we hope this will be a short-term restriction.

We also strongly urge you to distribute this memo broadly to all of your staff as well as to ACLU board members who speak publicly and to the press about the Patriot Act. Affiliate staff and ACLU board members may believe that they cannot be held liable for violating the gag because they are not technically "agents" of the ACLU National Office. Though that may be true, we believe the far safer course is abundant caution. Judging from their actions so far in this case, the Justice Department is construing the gag provision extremely broadly.

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Of course, if you prefer not to put yourself at risk at all, you can simply refer all

questions about the case to Tanya Domi in the National Media Relations Department at 212-519-7829. If you have any questions about this memo, please also feel free to contact me at 212-549-2601, or Jameel Jaffer at 212-519-7814. Because of security issues, please call rather than e-mail questions to us.

**Q: Who is the ACLU representing in this case?**

**A:** The ACLU is representing itself (the ACLU and the ACLU Foundation). Because of the gag provision, we cannot confirm or deny that we are representing any other entity in this case. We believe this gag is irrational and unnecessary and are challenging it on First Amendment grounds in this case.

**Q: Do you represent a business that was actually served with an NSL?**

**A:** Because of the gag provision, we cannot confirm or deny that we are representing any entity other than the ACLU in this case. We believe this gag is irrational and unnecessary and are challenging it on First Amendment grounds in this case.

**Q: Why did you have to file the case under seal?**

**A:** To avoid violating the gag provision.

**Q: Was the ACLU itself served with an NSL in this case?**

**A:** No.

**Q: Then how could you be held liable under the gag?**

**A:** Because of the gag provision, we cannot provide you with any additional information. We believe this gag is irrational and unnecessary and we are challenging it on First Amendment grounds in this case.

Romero  
Declaration  
Exhibit 3

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Sunday, April 18, 2004

A SECTION

BUSH: LET'S KEEP ANTI-TERROR TOOLS CRITICS SAY THE PATRIOT ACT WAS ENACTED  
HASTILY AND TOOK AWAY TOO MANY RIGHTS.

Richard W. Stevenson and Eric Lichtblau, the New York Times

WASHINGTON -- President Bush kicked off a concerted effort Saturday to press Congress into extending expiring provisions of the anti-terrorism law passed after the attacks of Sept. 11, 2001, saying that failing to keep them in force would leave the nation vulnerable. Bush used his weekly radio address to renew and amplify a demand he first made in his State of the Union address in January, calling on the House and Senate to act to extend provisions of the USA Patriot Act that will otherwise expire at the end of next year.

The provisions include making it easier for law enforcement and intelligence agencies to share information about suspected terrorists, expanding the use of wiretaps and search warrants and allowing the government to track who is sending e-mail to or receiving it from suspected terrorists.

"To abandon the Patriot Act would deprive law enforcement and intelligence officers of needed tools in the war on terror and demonstrate willful blindness to a continuing threat," Bush said.

The White House's renewed focus on the issue comes after weeks in which the independent commission investigating the Sept. 11 attacks assailed the FBI and CIA -- and to some degree the Bush administration -- for failing to do more to identify and head off the terrorist threat.

In raising the issue again now, Bush is hoping to emphasize to the nation the steps he took after the attacks to ensure that terrorists could never again operate so freely within the United States, administration officials said.

Although the Patriot Act passed Congress with broad bipartisan support soon after the attacks, it has subsequently become hotly debated.

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Civil-libertarians in particular have fought hard to have it scaled back or repealed, asserting that it went too far in sacrificing individual rights in a rush to ensure that law enforcement had broad powers to identify and track potential terrorists. Neither the House nor the Senate is scheduled to consider extending the expiring provisions any time soon.

But Bush suggested Saturday that opponents of the bill were deluding themselves about the degree of the terrorist threat and risked leaving law-enforcement and intelligence officials handcuffed in their ability to thwart terrorists.

"Key elements of the Patriot Act are set to expire next year," Bush said. "Some politicians in Washington act as if the threat to America will also expire on that schedule."

Among those members of Congress critical of the act has been Sen. John Kerry, D-Mass., Bush's rival in the presidential race. While supporting some of the act's main provisions, including sharing of intelligence and law-enforcement information, Kerry has criticized the administration for using the legislation to limit civil liberties.

Kerry has called in particular for putting additional restrictions on some types of searches and wiretaps and for reining in the ability to gain access to library and business records.

Anthony Romero, executive director of the American Civil Liberties Union, a leading opponent of the legislation, said: "President Bush is clearly fighting a defensive battle for the Patriot Act. This comes on the heels of the 9-11 commission and on the heels of progress seen in Congress by Republicans and Democrats who say that the Patriot Act went too far."

---- INDEX REFERENCES ----

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Tuesday, April 20, 2004

A Section

President Campaigns to Make Patriot Act Permanent  
Mike Allen  
Washington Post Staff Writer

President Bush said Monday that he considers it vital to national security for Congress to pass a permanent version of the USA Patriot Act, which has been criticized by some liberals and conservatives as giving the federal government too much power in the name of fighting terrorism. Bush told a convention of Pennsylvania township officials that those lawmakers concerned about the expanded wiretapping and surveillance powers provided by the act are laboring under a "false hope" about safety from terrorism.

"The Patriot Act defends our liberty," Bush said, thumping the podium. "The Patriot Act makes it able for those of us in positions of responsibility to defend the liberty of the American people. It's essential law."

Bush made the case during his 27th visit to a swing state he lost by 4 percentage points in 2000 and has labored to capture in 2004. House Republican leaders have said they do not plan to take up the Patriot Act until next year. The law was enacted after the Sept. 11, 2001, attacks, and its most controversial portions are scheduled to expire in 2005.

Presidents usually stay out of state primary fights, but Bush made an unusual appearance Monday evening at a Pittsburgh fundraiser for Sen. Arlen Specter (R-Pa.), a 24-year Senate veteran who faces a competitive Republican primary April 27 against conservative Rep. Pat Toomey. Specter, a moderate, has questioned the administration's use of the Patriot Act and has said the Justice Department needs more congressional oversight.

Sen. John F. Kerry (Mass.), the presumed Democratic nominee, voted for the measure but now says the law "needs to be fixed." He has said the administration has "used the Patriot Act in ways that were never intended and for reasons that have nothing to do with terrorism."

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In an ad, the Bush campaign has already attacked Kerry for questioning the Patriot Act. Republican officials said that Bush plans to make the Patriot Act a central theme of his campaign to show his plan to combat terrorism and that he took specific action after the attacks.

Bush has used the vote to portray Kerry as a waffler. At the Specter fundraiser, Bush said of Kerry: "If he could find a third side to an issue, I'm confident he'd take it."

Lawmakers of both parties, including Kerry, said at the time the Patriot Act passed that the sunset provision would allow Congress to ensure that the administration did not abuse its new power. But Bush asserted that by including an expiration date, Congress was saying that "maybe the war on terror won't go on very long." He called on lawmakers "to renew the Patriot Act and to make all of its provisions permanent."

Under the law, the government's expanded ability to monitor and search the belongings of people targeted in terrorism investigations includes conducting secret searches and seizing records from banks, libraries and other businesses without disclosing that it has done so.

Bush said that the Patriot Act had solved an important problem identified last week by the commission investigating the Sept. 11 attacks: that intelligence and criminal investigators believed they were prohibited from sharing some information, causing missed opportunities to unravel the plot.

"Different people had a piece of the puzzle. But because of law, they couldn't get all the pieces in the same place," he said.

Kerry's campaign said in a statement that Bush was trying to "rewrite history to show that the Patriot Act has been a cure-all for the intelligence failures that were exposed by the 9/11 attacks."

The Specter fundraising reception generated \$400,000. Republican officials said that because of the importance of independent voters in Pennsylvania, Bush would have a better chance on a ticket with Specter than with Toomey.

Specter, who supports abortion rights, has occasionally differed publicly with the White House. But the president listed areas of agreement, saying, "I'm here to say it as plainly as I can: Arlen Specter is the right man for the United States Senate."

"Arlen and I will leave no doubt where we stand," Bush added. "We will win in

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Pennsylvania, and I'm going to win all across the country on November the 2nd."

Toomey said in a telephone interview that Bush's appearance showed Specter's weakness, because he needed the president "to carry him over the goal line." But he added that he understands Bush's political obligations.

"I'm confident that on the day after the primary, the president's going to be supporting me," Toomey said.

Bush's support for Specter has engendered grumbling among some conservatives. Karl Rove, Bush's senior adviser, traveled on Air Force One on Monday and told reporters, "We're supporting the Senate Republican majority. We're a big party."

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USA Today

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Tuesday, April 20, 2004

NEWS

Bush defends Patriot Act as 'making America safer' ; Urges renewal, expansion of anti-terror law during Pa. visit  
Judy Keen

HERSHEY, Pa. -- President Bush defended the USA Patriot Act on Monday and said none of the controversial anti-terror law's provisions should be allowed to expire. "The Patriot Act defends our liberty," he said at a convention of township supervisors and emergency service personnel. "It's essential law."

Bush said the legislation should be expanded to allow subpoenas in terrorism cases to be issued without approval of a judge or grand jury, to allow terror suspects to be held without bail and to make sabotage of defense or nuclear facilities that results in loss of life punishable by death.

Critics say the law encroaches on civil liberties, but Bush called it necessary to prevent future attacks. "It's a law that is making America safer. . . . It doesn't make any sense" to scale it back, he said.

The law was passed 45 days after the Sept. 11 attacks. It gives federal agents more power to spy on U.S. citizens and non-citizens while hunting terrorists. It expanded federal law enforcement power by permitting the CIA and FBI to share evidence. It also gives terrorism investigators evidence-gathering tools that have long been used in criminal probes.

"The best way to secure our homeland is to stay on the offensive against the terrorist network," Bush said.

Sixteen sections of the law that expand law enforcement's surveillance powers will expire on Dec. 31, 2005, unless Congress votes to renew them. Republicans think that prospect is an issue that will help them win the support of voters who worry about future terrorist attacks. Bush will talk about the issue again today in Buffalo.

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Massachusetts Sen. John Kerry, the likely Democratic presidential nominee, voted for the Patriot Act. But he now says the Bush administration has misused it. He says he would change it to eliminate "fishing expeditions into people's library and business records."

Kerry spokesman Phil Singer accused Bush on Monday of "playing election-year politics with the Patriot Act." Kerry, he said, would expand the law to ensure that all financial institutions are subject to money-laundering regulations and to freeze assets of foreign banks known to hold terrorist groups' funds.

In Pittsburgh, where Bush raised \$400,000 in campaign cash for Republican Sen. Arlen Specter, the president noted Kerry's Patriot Act vote, as well as his votes for the war with Iraq and Bush's education reforms. Kerry now criticizes the conduct of the war and wants to change the education reforms.

"If he can find a third side to an issue, I'm confident he'd take it," Bush said.

The legislatures of Alaska, Hawaii, Vermont and Maine have passed resolutions calling for changes to the Patriot Act. Laura Murphy, director of the American Civil Liberties Union's legislative office, says it "went too far, too fast."

A USA TODAY/CNN/Gallup Poll taken in February found that 71% of Americans disapprove of a section that allows agents to delay telling people that their homes have been searched secretly. About half said they were uneasy about a provision that allows the FBI to obtain records from hospitals, bookstores and libraries and another that allows agents to ask banks whether terrorism suspects have accounts with them.

Monday's trip was Bush's 27th visit to Pennsylvania. He lost the state to Democrat Al Gore in 2000 and hopes to win the state's 21 Electoral College votes this fall. It takes 270 electoral votes to win the presidency. State polls show Bush has a slight lead over Kerry.

TEXT OF INFO BOX BEGINS HERE

The USA Patriot Act

Congress passed the USA Patriot Act in October 2001. It:

\* Allows the FBI and the CIA to share evidence.

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\* Permits the FBI to ask federal judges on the secret Foreign Intelligence Surveillance Act court for orders to force businesses to turn over records in terrorism or intelligence probes. Under the Patriot Act, agents must say only that the business records they want are sought in a terrorism or intelligence probe. Businesses may not tell anyone about such orders.

To get FISA orders allowing other types of searches and surveillance, agents must show "probable cause" that the subject of such a probe is "an agent of a foreign power."

\* Allows prosecutors to ask judges to delay "for a reasonable period" telling people that their homes or offices have been secretly searched in a criminal probe.

\* Allows U.S. agents in terrorism and intelligence probes to get court orders for "roving" wiretaps, which involve surveillance of various electronic devices a subject uses.

: Nation

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PHOTO, B/W, Luke Frazza, AFP/Getty Images; Caption: Campaign swing: President Bush addresses convention-goers in Hershey, Pa., on Monday during his 27th visit to the electorally important state.

---- INDEX REFERENCES ----

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## Buffalo News

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Tuesday, April 20, 2004

## NEWS

BUSH, VISITING BUFFALO, APPLAUDS PATRIOT ACT IN WAR ON TERROR ; CITES IMPACT IN  
CONVICTING LACKAWANNA 6  
ROBERT J. MCCARTHY and PHIL FAIREBANKS  
News Staff Reporters

President Bush traveled to the Lackawanna Six's back yard today to preach the benefits of the 2-year-old Patriot Act and offer an election-year defense of his record on battling domestic terrorism. Bush, in a talk billed as a "Conversation on the USA Patriot Act," spoke about the importance of cracking the Lackawanna "sleeper cell" and the role the Patriot Act played in the arrest and conviction of six local men of Yemeni descent who trained at Osama bin Laden's camps in Afghanistan.

Inside Kleinhans Music Hall, about 540 people, most of them law enforcement and emergency management officials, listened as Bush made his pitch for renewing the Patriot Act, the controversial post- 9/11 law due to expire at the end of next year.

"It shouldn't expire," Bush said to applause. "It shouldn't expire for the security of our country."

For the second time in as many days, Bush traveled to the Northeast to protest proposed erosions in a law he considers crucial to fighting terrorism. He made a similar pitch in Pennsylvania on Monday.

"The first thing we do is find killers before they find us," the president said today in Buffalo. "The message should be clear to them. There is no cave or hole deep enough to hide from the justice of the United States of America and our coalition partners."

Outside Kleinhans, about 400 protesters stood behind makeshift fences, sang songs, shouted anti-Bush slogans and carried signs that said, "Bush lies, people die" and "No more blood on Cheney's oil."

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Roger Cook, 60, an anti-war protester from Grand Island, said he was angry at being confined to a fenced-in area at Symphony Circle.

"This is something entirely new, and it doesn't feel good," he said. "They're basically trying to restrict our ability to exercise our First Amendment rights. What will stop them from moving the pen a mile away the next time? Where will this all end?"

By making the Patriot Act a theme in his campaign to win a second term, the president is trying to energize his Republican and conservative base by stressing his role as a wartime leader and a foe of terrorists, foreign and domestic.

Critics, including many Democrats, have complained about the wide-ranging legal powers the Patriot Act gives the FBI and other law enforcement agencies. They claim the law has weakened the nation's civil liberties by giving government the power to eavesdrop and spy on citizens and aliens.

Bush disagrees the law goes too far and, in fact, called for expanding its powers to improve government's ability to investigate and arrest potential terrorists.

"The Patriot Act needs to be renewed, and it needs to be enhanced," he said. "That's what we're talking about."

The president said one of the goals behind the law was to improve communication among federal, state and local law enforcement agencies, a goal that was legally impossible before the Patriot Act.

"They can talk about Buffalo Bills football, but they can't talk about securing the homeland," he told the audience. "I hope the average citizen sees the dilemma."

The president came to Buffalo to meet with local "first responders" and the Western New York Joint Anti-Terrorism Task Force, the multi-agency group that investigated the Lackawanna Six case.

"I think the Patriot Act is good for the country," said Bob Carncross, president of the Town Fire Chiefs Association, a coalition of 13 fire companies in the Northtowns. "There's a lot going on in this country that we don't know about."

Inside Kleinhans, local organizers converted the Mary Seaton Room into an intimate auditorium setting with a large-screen TV serving as a backdrop to the presidential podium.

Rows of chairs filled the room, and reporters were clustered onto a set of bleachers at the back of the auditorium.

When the president arrived at about 9:35 a.m., he found a largely sympathetic audience, many of them in full uniform. While on stage, he sat on a stool with several other officials at his side: former Deputy Attorney General Larry D. Thompson; U.S. Attorney Michael A. Battle; Peter Ahern, special agent in charge of the Buffalo FBI Office; former State Police Superintendent James McMahon; and Amherst Police Chief John Moslow.

"They (the Bush administration) want the nation to understand that this is serious," said Michael V. Walters, Erie County's commissioner of emergency services.

Walters said most of the county's law enforcement personnel support the Patriot Act because it puts into place important deterrents to terrorism. He said first responders also realize their jobs are connected to the effectiveness of federal laws like the Patriot Act.

The Kleinhans crowd also included dozens of Republican allies, most notably Gov. George E. Pataki, Erie County Executive Joel A. Giambra and Reps. Thomas M. Reynolds and Jack F. Quinn. People entering the music hall were greeted by State Supreme Court Justice Sharon Townsend.

"I just think it's exciting that he's here," Townsend said. "I've never met a president before. I think this is so exciting to meet him and actually shake his hand."

Bush arrived in Erie County at about 9:06 a.m. aboard Air Force One, a Boeing 747 jet, and was greeted by a small group of local Republicans. Not far away, a police helicopter monitored the skies and police snipers watched from a nearby rooftop.

Officials at the Buffalo Niagara International Airport said it was the first time a 747 had landed at the airport.

From the airport, Bush traveled by motorcade to Kleinhans. The motorcade included about 25 cars and a dozen motorcycle escorts.

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Bush's visit here came just days after his administration was battered by testimony before the 9/11 commission and a new book by Washington Post reporter Bob Woodward detailing Bush's early preparations for war with Iraq.

"He's clearly making a concerted effort to reposition the public's view of what's going on," said Lee M. Miringoff, director of the Marist College Institute of Public Opinion in Poughkeepsie. "It's not to put New York in play; it's to make national points. If he talks about something in homeland security working well, that's good news for him."

Bush is considered the underdog in the November election in heavily Democratic Erie County and New York State. Indeed, the latest Marist poll released Monday has Sen. John F. Kerry leading Bush in New York by a whopping 56 percent to 38 percent.

But Michael J. Hook, a Lancaster native and Republican political consultant based in Washington, said he believes the GOP still has hopes for New York. And he said Bush is attempting to return to what had always been considered a strong point.

"Since Sept. 11, 2001, the world is a different place," he said. "I would imagine the president is going to talk about those initiatives he's undertaken to ensure it will never happen again."

Despite the significant "armchair quarterbacking" stemming from the 9/11 commission hearings, the president can come to Buffalo and emphasize that tools like the Patriot Act have prevented more attacks like those that destroyed the World Trade Center, said Hook, who is not directly connected to the administration.

"Certainly, if I were helping design the message, it would be that the president has acted in kind since then," Hook said. "It's all about keeping us and our families safe."

But Democrats were quick to criticize the president's homeland security record in anticipation of his visit. Assembly Speaker Sheldon Silver of Manhattan called on Pataki to lobby Bush to put an end to New York being "shortchanged" in federal funding for lower Manhattan rebuilding and security efforts across the state.

Silver noted that federal homeland grants for Wyoming County have totaled \$38.31 per capita, compared to \$5.47 in New York State.

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"Washington must design a system that directs funds based on threat and need," Silver said.

And State Democratic Chairman Herman D. Farrell, another Manhattan assemblyman, said since all of Bush's new troubles stem from his war on terrorism, the president is now attempting to return to his "glory days of October 2001."

"Every time they raise an issue, it's shown they're wrong on the issue," Farrell said. "So he's running as the mighty warrior who stands tall."

One local official not in attendance was Mayor Anthony M. Masiello, a Democrat. Masiello said he wasn't invited and wouldn't attend anyway.

"I respect the office and the person," he said, "but even if I were invited, I'm just not happy with the state of our economy, with the exodus of our jobs to foreign countries, and with the lack of any agenda for cities. I wouldn't want to be a hypocrite."

The mayor added, however, that the city and its Police Department will do its utmost to host the president and protect him.

Bush's appearance is the second in five years that a president has staged an event in Buffalo. In January 1999, President Bill Clinton was given a rousing reception in HSBC Arena.

Like the Clinton appearance where local Democrats worked to limit attendees to party loyalists, invitations to Tuesday's meeting were handled by the White House. After appearing in Buffalo on Tuesday, Bush will go to New York City for a political fund-raiser sponsored by Victory 2004, a financial arm of the Republican National Committee.

News Staff Reporters Charity Vogel, Brian Meyer, Gene Warner and Tom Precious contributed to this article.

e-mail: rmcCarthy@buffnews.com and pfairbanks@buffnews.com

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Main News; National Desk

The Nation; Politics of Patriot Act Turn Right for Bush  
Peter Wallsten  
Times Staff Writer

WASHINGTON Only months ago, Democrats were targeting the controversial USA Patriot Act as an ideal issue to use in their campaign against President Bush, assailing the law as an intrusion on civil rights. But in a turnabout, the act has suddenly emerged as a cornerstone of Bush's reelection campaign, while Democratic rival Sen. John F. Kerry and others have toned down their criticism.

The Patriot Act is proving to be more popular in opinion polls than once expected, given its diverse range of critics. Also, both Democratic and Republican strategists now believe that public debate over the Patriot Act and other aspects of the nation's response to terrorism only enhance Bush's national security credentials, while threatening to paint Kerry as soft on terrorism.

The result is that the Democrats have lost what once seemed like a useful tool for rallying opposition to the president.

"There's a dangerous trap here for Democrats," said Jim Mulhall, a Democratic strategist working with independent groups targeting Bush. "It's a terribly unfair characterization, but ... if Democrats are not careful, they will sound more like they're worried about technical concerns than they are about locking up terrorists."

Kerry, the presumptive Democratic presidential nominee, has recently been couching his positions on the law as "fixes," whereas in December the Massachusetts senator called for "replacing the Patriot Act with a new law that protects our people and our liberties at the same time." Kerry has even argued that his ideas would make the law, bashed repeatedly last year by nearly all the Democratic presidential contenders, tougher than it is currently.

Bush showcased his aggressive support for the Patriot Act last week, appearing

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in Buffalo, N.Y., with the federal prosecutor who uncovered a suspected terrorist cell dubbed the Lackawanna Six after the 2001 terrorist attacks in New York and on the Pentagon.

Bush argued that the law "defends our liberty" against terrorists and should be strengthened. He said terrorists had been caught in part because of the new law, drawing applause from a crowd of invited guests.

"The true threat to the 21st century is the fact somebody is trying to come back into our country and hurt us," Bush said. "And we ought to be able to at least send a signal through law that says we're going to treat you equally as tough as we do mobsters and drug lords."

Passed with overwhelming support from lawmakers and signed by Bush within two months of the Sept. 11 attacks, the Patriot Act gives officials more powers in conducting searches and seizures and in sharing information.

It allows the government to cite terrorism and computer fraud as the basis for requesting wiretaps; allows roving wiretaps to follow suspects, no matter what telephones they use; and allows secret searches in which the authorities delay notifying a suspect.

Among other provisions, it allows the attorney general to detain any noncitizen believed to be a national security risk, in some cases for long periods of time.

One key provision aims to remove a legal "wall" that limited the sharing of information between criminal and intelligence investigators. Testimony before the independent Sept. 11 commission has suggested that the barrier inhibited authorities from learning more about the Sept. 11 hijackers before the attacks.

The Patriot Act has been an awkward issue at times for Bush, drawing heat from some in his own conservative base. Critics have included not only the Democratic presidential candidates and the American Civil Liberties Union, but also libertarians, advocates for smaller government and members of the National Rifle Assn.

#### Critics Versus the Polls

Many critics denounced the act as an intrusion on privacy rights and civil liberties.

Last fall, the very mention of Atty. Gen. John Ashcroft's name and his link to promoting the Patriot Act was easily the biggest applause-getter in Democratic rallies. When Ashcroft embarked on a national tour to highlight the law's benefits, he was greeted at nearly every stop by protesters.

But a series of new polls published last week have led strategists to conclude that the deftly named Patriot Act is a winner for Bush.

Those polls also gave the president a lead over Kerry, despite weeks of potentially damaging footage of deadly chaos in Iraq, tough questions about Bush's leadership on terrorism by the Sept. 11 commission and a new book suggesting Bush was intent on invading Iraq far earlier than was initially believed.

While the president's numbers have sagged on issues such as the economy and the war in Iraq, a Washington Post/ABC News survey found that 63% approved of the president's handling of the war on terrorism. In a Gallup Poll conducted for CNN and USA Today, more than twice as many respondents said they thought Bush would do a "good job" on terrorism as thought Kerry would.

And though polls have shown that certain aspects of the Patriot Act are unpopular when they are explained to voters, responses to broader questions suggest general support for the law.

More than six in 10 respondents to a February Gallup/CNN/USA Today survey said the law is just about right or does not go far enough, though only about one-fourth said it goes too far.

Experts think the law will grow in popularity, at least in the short term, as dramatic pictures of bomb blasts in Iraq, Spain and Saudi Arabia heighten fear that an attack could happen in the U.S. again.

Administration officials have even speculated openly in recent days, without revealing any evidence to back up their claims, that terrorists could be planning attacks to coincide with the presidential election in November.

"It's the only area where Bush gets positive numbers, and his strategy is to find every way to talk about the war on terror, whether it's the Patriot Act or Iraq," said Steve Murphy, a Democratic strategist who managed the unsuccessful presidential campaign this year of Rep. Dick Gephardt of Missouri.

The change in tone is evident in the words of Kerry. In December, weeks before the critical Iowa caucuses, Kerry delivered a blistering speech railing against

key elements of the Patriot Act and chiding Ashcroft, telling a partisan crowd that the law should be replaced.

"At this very moment, an FBI agent could be rifling through every website you've ever visited, and you would never know it," Kerry said in his Iowa City speech.

"A Justice Department official in Washington could be reading every e-mail you've sent in the last few months -- and they wouldn't need a judge's permission or even a reason to do so," he added.

"Federal investigators could be demanding and receiving upon request your private hospital medical records," Kerry said. "Law enforcement officers could be entering your house while you are gone -- rifling through your possessions -- and leaving without even letting you know they had been there."

At the time, Kerry was struggling to explain why he voted for the law, parts of which are set to expire in 2005. He said it contained "good ideas," even taking credit for writing part of it, but that Bush and Ashcroft abused their new investigating powers for purposes beyond fighting terrorism.

"It clearly wasn't a perfect bill -- and it had a number of flaws -- but this wasn't the time to haggle. It was the time to act," Kerry said in December.

In recent days, though, Kerry's assessment has been delivered in a far more positive context.

#### Kerry's Message

After Bush used his weekend radio address recently to urge a continuation of the Patriot Act, Kerry issued a written statement listing ideas for "improving" and "fixing" the law by strengthening provisions on money laundering, cracking down on terrorists' assets, improving information-sharing policies and enhancing other sections that specifically target terrorists.

A Kerry spokesman insisted later that the candidate's message has not changed, arguing that it is the challenger, not the president, who brings the most muscular view of the Patriot Act to the race.

"The president is misleading America into thinking that the current law is doing all it needs to do," said Phil Singer, a Kerry spokesman. "The fact is that it's failed to address many of the problems that were exposed by 9/11,

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including the intelligence sharing problems that continue to plague the FBI, CIA and other security agencies."

Some who agreed with Kerry's early tough stands against the law's potential intrusions on civil liberties now say they are not quite sure where the senator stands.

"I'm concerned where Kerry will ultimately come down," said Laura Murphy, director of the Washington office of the American Civil Liberties Union. "There's going to be a bump in support [for the Patriot Act], and Kerry needs to come out informed and swinging the way he did in December."

\*

Times staff writers James Rainey in Washington, Maria L. La Ganga in San Francisco and Matea Gold in New York contributed to this report.

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NATIONAL

PATRIOT ACT MAY SEE REVISIONS  
ANN MCFEATHERS AND KAREN MACPHERSON, POST-GAZETTE NATIONAL BUREAU

WASHINGTON A month and a half after the Sept. 11, 2001 attacks on New York Washington and Pennsylvania, Congress approved the USA Patriot Act to give law enforcement officials new tools to fight terrorism.

The vote was overwhelming in both chambers. The House approved it 357-66; the Senate 98-1.

The consensus didn't last long, as the Patriot Act soon began to spark impassioned debate about whether its potential damage to civil liberties was worth its added protections against terrorists.

Now, a new consensus appears to be emerging, despite the heated rhetoric of this presidential election year, that would scale back some of the act's more controversial provisions -- or at least require more judicial oversight as authorities apply the act's broad surveillance powers -- while institutionalizing the ability of law enforcement and intelligence agencies to share information.

At least four states and 270 communities officially have called for limiting law enforcement access to personal information, including library and medical records. Also drawing fire have been provisions of the Patriot Act that allow authorities to search property without telling the owner, to conduct "roving wiretaps" and to pursue nationwide search warrants.

A recent poll by the nonpartisan Council for Excellence in Government found that most Americans, 56 percent, considered the Patriot Act a net plus for the country. But half also expressed concern about how the act is being applied and wanted Congress to examine it carefully before deciding whether to renew its key provisions.

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President George Bush is taking his case for renewing the act on the campaign trail. He told supporters at a recent rally in Hershey, Pa., that "the Patriot Act makes it able for those of us in positions of responsibility to defend the liberty of the American people. It's essential law."

Sen. John Kerry, D-Mass., the presumptive Democratic candidate, voted for the Patriot Act in 2001 and still supports major parts of it. But Kerry now charges that the Bush administration has misused aspect of the law. He has promised to eliminate "sneak and peek" searches and "fishing expeditions into people's library and business records."

Major parts of the Patriot Act don't expire until the end of next year, but Bush wants Congress to make them permanent right away. That's unlikely because Rep. James Sensenbrenner, the Wisconsin Republican who chairs the House Judiciary Committee, has stated categorically that his panel won't take up the issue until next spring.

Whatever the outcome of the Nov. 2 election, most lawmakers expect Congress to hold hearings on the Patriot Act before deciding whether to renew, expand or curtail it. Nobody, at this point, expects it will be repealed.

"It is important to provide a balance between security and civil liberties," said Sen. Mike DeWine, R-Ohio, a member of both the Senate Intelligence Committee and the Senate Judiciary Committee.

Signed into law by Bush on Oct. 26, 2001, the Patriot Act contains 153 separate provisions in 300 pages. Many have little impact on the daily lives of most Americans.

For example, the law allows money to be spent to re-establish a government office destroyed by terrorists. It condemns discrimination against Arab or Muslim Americans. It permits the FBI to hire more translators.

Most important, Patriot Act supporters say, the law tore down the legal wall that prevented federal law enforcement and intelligence agencies from sharing domestic intelligence with each other and local officials. The wall had been erected in the 1970s after revelations that the FBI had been spying on nonviolent social and political movements.

"[The Patriot Act] changed our world and has made us immeasurably safer," U.S. Deputy Attorney General James B. Comey testified at a recent Senate Judiciary Committee hearing.

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Comey cited the Justice Department's "successful dismantling" of a Portland, Oregon terror cell. Using the Patriot Act's expanded surveillance and intelligence-sharing provisions, the FBI exchanged information with local officials, which "gave prosecutors the confidence not to arrest the suspect prematurely," Comey said. "Ultimately, prosecutors were able to collect sufficient evidence to charge seven defendants and then to secure prison sentences for the six defendants taken into custody."

But David Harris, a professor at the University of Toledo and an expert on criminal justice, argues that the Patriot Act "is more far-reaching than people seem to realize."

While "sold" to lawmakers as a way to fight terrorism in the wake of Sept. 11, the Bush Administration "now is making the case for it by saying they're using it to fight all kinds of crime," Harris said.

"If they had gone to Congress and said they needed some of these changes for crime fighting, it's a solid bet that it would never have passed. Many of the things in the Patriot Act have been on the FBI wish list for years and years. This was an opportunity to get them into law."

The Patriot Act was in the spotlight during recent hearings of the 9/11 commission, which is investigating whether the Sept. 11, 2001 attacks in New York, Washington and Pennsylvania could have been prevented. The commission is expected to release a final report by July 26.

In preliminary findings, commission staff noted that the Patriot Act "provided additional tools and has lowered or removed legal hurdles that were widely believed to have hindered the FBI's intelligence investigations." But, the staff noted, "there appears to be widespread confusion -- even among (Department of Justice) and FBI personnel -- over what the Patriot Act actually allows."

During its public hearings, the 9/11 commissioners have appeared to be leaning towards recommending the creation of a new domestic intelligence agency. Another suggestion is to create a director of national intelligence with a 10-year term who would coordinate activities of existing agencies.

Such proposals have prompted considerable pre-emptive opposition.

CIA Director George Tenet said a intelligence czar floating about without an agency would last "about 10 minutes" in the territorial climate of the Washington bureaucracy. FBI Director Robert Mueller said many people would fear

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a domestic intelligence agency would trample on civil liberties. Former Attorney General Janet Reno said setting up yet another organization would make it that much harder for agencies to coordinate activities.

Meanwhile, Attorney General John Ashcroft is leading the charge to strengthen the Patriot Act. The Justice Department, which has created a Web site on the Patriot Act, [www.lifeandliberty.gov](http://www.lifeandliberty.gov), wants the power to issue administrative subpoenas instead of having to go to a judge or grand jury for authorization. The department also wants to hold terrorism suspects in jail without bail, and to make more terrorist crimes subject to the death penalty.

On the other side, an unusual political coalition -- comprised of Democrats and Republicans, liberals and conservatives -- has joined to push for weakening the Patriot Act. Members include the American Civil Liberties Union, the American Conservative Union, the American Library Association and Gun Owners of America.

The first legislative action on the law since it was passed in 2001 took place last July when the House voted 309-118 for an amendment, sponsored by Rep. C.L. Otter, R-Idaho, that would cut off funds needed to implement the Patriot Act's "sneak and peek" provision. The amendment eventually was dropped in negotiations with the Senate, but its approval in the House was considered an important show of strength by those who wish to repeal parts of the Patriot Act.

Separate legislation has been introduced by Sen. Larry Craig, R-Idaho, Sen. Dick Durbin, D-Ill., and Otter that would revamp the "sneak and peek" provision and other parts of the Patriot Act in ways opposed by the Bush Administration.

Called the "Security and Freedom Enhancement" or SAFE Act, the legislation would end nationwide search warrants, limit roving wiretaps and require law enforcement officials to justify secret surveillance of a suspect every seven days to a federal judge. It also would require the FBI to state its reasons for suspecting someone of terrorist activities before seizing his or her library or medical records.

"I believe the SAFE Act is a measured, reasonable, and appropriate response to concerns we have with the USA PATRIOT Act," Craig said. "This legislation intends to ensure the liberties of law-abiding individuals are protected in our nation's fight against terrorism, without in any way impeding that fight."

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