

GOP Rams Through Police-State Bill

by Carl Osgood

The Intelligence Reform bill that passed the Congress on Dec. 7 and 8 is yet another textbook example of how the Republican leadership rams through legislation without giving members a chance to study it before the vote. Little notice was given to the police-state provisions in the bill until after it was passed. Instead, most of the attention was focussed on bickering over what authority the new Director of National Intelligence will have with respect to the intelligence agencies in the Pentagon. Once House Armed Services Committee chairman Duncan Hunter (R-Calif.) was satisfied on that question, the bill passed easily with too little debate.

Sen. Robert Byrd (D-W.Va.), fulfilling his role as the conscience of the Senate, warned his colleagues that the people are robbed of their voice and their government, when their elected representatives “allow themselves to be coerced into a process that encourages the abdication of our responsibility to understand and fully debate and thoroughly review legislation. . . .”

Clearly, no thorough debate happened, given that the Senate had received the 615-page conference report less than 24 hours before the vote. “We allow ourselves to be lulled into the fallacious belief that we must accept this bill or risk it not passing next year, with some even suggesting a terrorist attack could result from it,” Byrd said. He noted that although the bill was going to overwhelmingly pass the Senate, “nobody can say with any confidence or certainty as to how this new layer of bureaucracy will affect our intelligence agencies or the security of the country.” Nobody knows whether it will actually enable to government to better defend against terrorist attacks, he added. “We are failing, in yet another misguided rush to judgment, to take the time and effort to find out.” Byrd was one of only a handful of Democrats who were willing to challenge this freight train, however, as the bill passed the House 336 to 75, and the Senate 89 to 2.

The front end of the bill is the intelligence reforms, based on the recommendations of the 9/11 Commission. It gives the Director of National Intelligence policy and budget authority over all the intelligence agencies, except for command and control over those agencies in the Pentagon. It eliminates the wall between foreign and domestic intelligence, by defining “national intelligence” as any intelligence relating to national security, “regardless of the source from which derived and including information gathered within or outside the United States. . . .”

Rep. David Obey (D-Wisc.) argued that “in merging domestic and foreign surveillance operations, the bill does not sufficiently protect ordinary Americans from the mistakes of big government.” He said the privacy board created by the bill will do little to protect innocent citizens “or to address specific grievances that may arise. That will come back to haunt us, just as certain aspects of the Patriot Act have.”

Many observers have pointed out that a number of the police-state provisions in the bill were originally part of the draft Patriot II Act of 2003, which was buried in a blizzard of protest after the draft was leaked to the press. Many of those same police-state provisions were written into the Intelligence Reform bill to overcome problems that the Justice Department encountered in attempting to prosecute alleged terrorists. This includes a provision tightening the definition of “material support to terrorist groups,” after a Federal court in California found the existing statute unconstitutionally vague.

Sen. Russ Feingold (D-Wisc.) took issue with a number of the those provisions, although he wound up voting for the bill. One of those provisions amends the 1978 Foreign Intelligence Surveillance Act (FISA) by making subject to that act any non-American person “who engages in international terrorism or in activities in preparation therefore. . . .” Feingold warned that by allowing searches and surveillance under the lower standard of FISA of anyone merely “suspected” of engaging in terrorism, “the bill essentially eliminates the protections of the Fourth Amendment.” Under FISA, a Federal investigator doesn’t have to prove that a crime has been or is about to be committed in order to get a warrant.

Feingold also targeted two other provisions, one that expands the definition of “providing material support” to terrorist organizations, and the other that expands the presumption that bail will be denied in terrorism cases. He reminded the Senate that neither provision had been considered in the Senate, and that the Bush Administration had failed to show how current law is inadequate. Feingold noted that the Justice Department “has a record of abusing detention powers post-9/11 and of making terrorism allegations that turn out to have no merit.”

The bill also establishes national standards for driver licenses, birth certificates, and Social Security cards, which critics charge is tantamount to creating a national ID card system. Rep. Ron Paul (R-Tex.) compared it with the internal passport system of the old Soviet Union. “A national identification card, in whatever form it may take, will allow the Federal government to inappropriately monitor the movements and transactions of every American,” Paul said on Dec. 7. “Nationalizing standards for drivers’ licenses and birth certificates and linking them together via a national database, creates a national ID system pure and simple. . . . Those who allow the government to establish a Soviet-style internal passport system because they think it will make us safer, are terribly mistaken.”