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Mike Israel, Editor: israelmike@crimeletter.net, December 13, 2004.

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The "Intel" Bill:

"Most intelligence is worthless, with the scant truthful stuff rapidly deep-sixed. Whatever makes its way onto the desks of Presidents or Congressional overseers is 100 percent 'political.' Anyone who wants to find out what's happening in the world would be better advised to ask a taxi driver."
Alexander Cockburn

The United States has never been very good at gathering intelligence of foreign threats, but on December 7, the anniversary of America's *other* great intelligence failure, Pearl Harbor, the House of Representatives passed The National Intelligence Reform Act (S-2845) which broke the Congressional logjam and at this writing it is on its way to the President's desk. Although President Bush has been ambivalent about it, he has not vetoed any bill yet and he isn't likely to start with a national security bill.

This sprawling, bloated 600 page bill is the third major piece of anti-terrorism legislation passed by Congress since 9-11-01, following the USA Patriot Act and The Homeland Security Act, and is a response to the 9-11 Commission's Report, completed last summer, which called for most of this bill's reorganization and initiatives, including centralizing the intelligence effort. The President was always cool to the idea of the 9-11 Commission, finally went along with it, gave it the appropriate words of praise, but until the last week of the 108th Congress there was some doubt whether he would negotiate the legislation through or let it die. He had instituted much of it on his own through executive orders. It was suspected that his reticence was because the Pentagon was reticent, unwilling to cede any of its budgetary authority to civilian agencies, but in the end Defense Secretary Donald Rumsfeld came on board. The families of the 9-11 victims were very effective with their pressure.

There are 15 different federal agencies that deal with foreign intelligence, and now they are under one cabinet level Director of National Intelligence (DNI). The F.B.I. (which, by the way, got a \$5.2 billion budget increase), the C.I.A (their agents got pay increases), and the other agencies now have some level of accountability to the new "Intel Czar." How this works out in

practice, however, remains to be seen. The legislative language is replete with many instructions that say: “report to,” and “monitor,” and “account to,” and “coordinate.” Hundreds of new agents, border guards, and analysts will be put on the ground, but the risk aversion culture that failed to reliably foresee the coming threats of fascism, communism, and terrorism for a century is a problem that this legislation is unlikely to solve.

The Price Tag:

The American intelligence budget is believed to be around \$40 billion. Wait, why is it *believed to be* \$40 billion! In a democratic republic, don't we know how much our government spends? Not on intelligence. The 9-11 Commission recommended that it be published, but they lost on that one. The money is buried in Pentagon and other budgets and only a few Congressional leaders have access to it. The Czar will have 80% budgetary authority—the military takes care of its own money—but no one will know how much and what he is doing with it. Even salaries are disguised. [I'd hate to be a C.I.A. agent's tax accountant.] The director will be reporting to Congress, but he won't be able to say much. Whenever there is an arrest, it will be trumpeted, but other than that, Congress and the press will know little, including about those detained.

The bill calls for opening a national counterintelligence center. Bush had done this by executive order, and it opened last Monday, for an undisclosed cost, in an undisclosed location in Northern Virginia. Accountability?

Some of the cost of anti terrorism will be in the fiscal 2005 budget which was finally passed by Congress with one foot out the door. There were some last minute cuts, without hearings or debates. Local police departments, now with more anti terrorism responsibilities, have declining resources in a number of ways. The Clinton era COPS program, once funded from \$9 to 10 billion, was already being phased out and has \$10 million this year compared to \$119 million last year. Project Safe Neighborhoods, a federal program aimed at gun prosecutions, although backed by the administration, was cut out.

Others cuts include: Community Development Block Grants cut \$200,million; public housing, housing for the elderly, housing for people with AIDS and the disabled, Pell Grants for college students (roughly \$300 million down), environmental protection, aid to education, Head Start, and the Small Business Administration was cut by nearly 20 %. These are just a few, but on the other hand, one estimate of pork barrel “earmarks” totaled \$16 billion. There were 14,000 such private pieces of legislation. “No bacon was left behind,” said a capital hill watchdog.

As budget lines go down, earmarks go up, more every year. Two examples: \$105 million for abstinence education, as part of violence against women policy; \$48.6 million for anti gang initiatives. The deficit is still \$413 billion.

The Politics:

Only a few weeks ago the Intel Bill was reported as being dead. The White House gave perfunctory verbal support but was never strongly behind it, and the Republicans, especially in the House, were divided. The Senate version, which was close to the 9-11 Commission recommendations, passed easily; but the House version, long on law enforcement surveillance powers, was in trouble, but it did pass 282-134, with all but two Republicans supporting it. It then went to a House-Senate Conference to find a middle ground, and then the Republican support evaporated.

There was a genuine Republican revolt in the House as the December lame duck session approached, which was inexplicable as an affront to the President fresh from his electoral triumph. Second term Presidents always experience a fall off in their influence over Congress (Reagan, Clinton, even Eisenhower in their second terms), but for this to happen within weeks of their re-election is incredible. It usually takes years.

As Congress re-convened in late November, clearly there were a majority of votes in the House to pass the conference report—a majority made up of most Democrats (who wanted the credit) and some Republicans—but Speaker Dennis Hastert (R-Ill) literally pulled the bill from the calendar and thus did not allow a vote. He said he didn't want it to pass without *a majority of the majority*, or for the Democrats to get any tribute. Congress left town without an Intel Bill which seemed to be an inexplicable defeat of Bush's leadership. Still, there was one last chance, for Congress had to return last week merely to finally pass the 2005 appropriations bill.

The leaders of the Republican opposition were Duncan Hunter (R-Calif), chair of the House Armed Services Committee, and James Sensenbrenner (R-Wisc), Chair of the House Judiciary Committee. These two powerful committee chairs had their own agendas and supporting a President who would never again run for re-election at the head of their party was not part of them. Hunter had concerns about a military chain of command, which were assuaged with some wording changed and he dropped his opposition. Sensenbrenner, on the other hand, held out and did not in the end support the bill. Still, Hastert and Majority Leader Tom Delay (R-Tex) counted votes in their caucus, and after the White House, Hunter, and the top generals were appeased, finally let the bill go to the floor and it passed by a wide margin.

The President received words of praise from his own party leadership giving him credit for pushing the bill through, but “push” and negotiate was what he had to do, for merely the prestige of his approval was not enough. In the end the powers of the NID have been somewhat weakened. The message that many observers read was: the President can't automatically deliver the votes of his own party, and he will need Democratic votes on controversial issues. Two conservative House chairmen were allowed by the leadership to block a bill endorsed by the President and headed for passage. And this happened before the ink was dry on the election results.

The message: there will be conservative disunity, and President Bush—who in his first term showed no interest in coalitions—will need bi-partisan compromises if he wants his ambitious legislative agenda to get through Congress, including foreign policy, social security reform, permanent tax cuts, funding Iraq, tort reform, renewing the Patriot Act, confirming judicial appointments, confirming cabinet appointments, to name a few. The Intel deal may have signaled the beginning of a negotiating culture in the Bush era.

Sensenbrenner, on Immigration:

The Chair of the House Judiciary Committee is one of the most powerful people in Congress on issues of crime policy, national security, and internal security. On the Intel Bill he was not a team player and in the next Congress he will be heard from. What he wanted, and did not get, and would not accept assurance that he would get, was stricter immigration policies. He wanted to be able to deny drivers licenses to undocumented aliens (as national policy—most states do it routinely), tougher rules on asylum, deportation without judicial review, tougher visa standards, and less restrictions on detentions.

He did get some language calling for a national standard for drivers' licenses, although not defined. Civil libertarians abhor the idea of a national drivers' license, and they say this is a

back door way to get a national identity card. They also say the whole “immigration” issue creates a climate conducive to racial profiling, this time of Middle East minorities, among their other Constitutional complaints.

Even though Sensenbrenner did not vote for the bill, his position is not one that the Republican leadership can afford to affront any more, so in January they promise a fast track immigration bill that Sensenbrenner will approve. They plan to attach it to a must pass bill, like the first supplemental Iraq military appropriations bill, at a time when they will have even bigger majorities in both houses.

Democrats say the bill is mostly an immigration bill as it is and Sensenbrenner got most of what he wanted (although much of it was slipped in last week, without debate). Still, immigration will be one of the first hot topics in the 109th Congress.

The National Intelligence Reform Act—A Summary:

- Creates a cabinet level National Intelligence Director, with budgetary control, except for the military. Accountable to the President, he will coordinate the 15 intelligence agencies. The budget is secret, and the NID can only re-allocate 5% of an agency’s budget. He will not oversee operations.
- Creates a National Counter Terrorism Center to coordinate missions and operations, but the director has no control over those missions, which is how the military commanders wanted it.
- There are 43 different immigration provisions, but not enough of what the House conservatives wanted. There will be a Human Smuggling and Trafficking Center to share intelligence on immigration violations, including illegal farm workers. Surveillance warrants and detention without bail of immigrants will be easier.
- States must follow uniform national standards for issuing drivers’ licenses.
- Advanced aviation security, including developing explosive detection screening.
- Border security, including 2,000 agents, and 8,000 more beds to detain terrorist suspects.
- Visa requirements upgraded to include an in-person interview.
- Creates a Privacy and Civil Liberties Oversight Board, requested by the 9-11 Commission, but without subpoena power. They serve at the pleasure of the President.
- Diplomatic reforms, including scholarships for Muslim students and more dialogue with Muslim countries. Also recommended by the 9-11 Commission. Efforts to promote democracy in the Muslim world. A “democracy caucus” within the United Nations.
- First responder funding is only a “sense of Congress” language that homeland security grants be distributed to cities and states based on threat of terrorism (the blue states). Congress was not going to tell 60 Senators from rural, inland (red) states that they were going to reduce their grants, which their police and fire communities have been using to replace cuts in law enforcement programs.
- Law enforcement now has broader wiretap authority, on so-called “lone wolf” suspects, without foreign ties. Formerly, suspects had to be linked to specific terrorist or national groups. Probable cause still needed. The definition of “material support” for terrorist groups is expanded, and secret Grand Jury information can be shared with both internal and foreign law enforcement.

Patriot II Reborn:

About a year ago the administration leaked to the press a draft of a bill that extended the law enforcement powers of the U.S.A. Patriot Act, which itself was being criticized not only by civil liberties groups but Senators on the Judiciary Committee. This draft was dubbed "Patriot II," but apparently because of the heat it was never introduced. It seemed that the administration would have its hands full with Patriot I, which will expire at the end of 2005, unless legislatively renewed. The law enforcement part of the National Intelligence Reform Act, it is said, is Patriot II, slipped in.

Will all this make a difference in national security in an age of terrorism? Some legislators thought it didn't go far enough, believing more control over immigration is the key to national security, with greater powers to detain and deport. Others, including some Republicans, thought the entire overhaul is useless (although most voted for it).

Experienced intelligence officials are wary. "It's a black hole we're looking into," said one. Many questions will have to be resolved in practice.

What's Ahead:

Early in the 109th Congress will be the confirmation battles, for judges and cabinet members. The Republican leadership, especially Senate Majority leader Bill Frist (R-Tenn), continues to threaten "the nuclear option," which is a maneuver to deny Democrats the 60-vote cloture rule that allows what has been called the filibuster to block President Bush's federal court nominees. Democrats will use the cloture rule sparingly, saving it for the likely Supreme Court nominees to come. If Frist tries to exercise the nuclear option, meaning end cloture by a majority vote, the Democrats, it is said, will try to prevent that with a real filibuster. That means one Senator will take the floor to speak against it and never relinquish it, except to Democratic allies, and that means cots in the hallways round the clock to prevent recess and everything else stops. That was what a filibuster meant half a century ago. There has never been a real one in the age of television. *What a media feast that would be!*

There will also be confirmation votes for new cabinet members. Nine cabinet members and five other Presidential appointees, since the election, have all resigned to spend more time with their families (sic). But cabinet members, unlike judges, do not have lifetime appointments, so the Senate tends to be more deferential.

Alberto Gonzales, for example, will be confirmed as the new Attorney General, but his confirmation hearing before the Senate Judiciary Committee will make him understand what it is like to be interrogated at Guantanamo. His will be in effect an Oversight Hearing on Justice Department policy, and there are more than a few interest group lawyers in this town who are at this moment compiling lists of questions to ask him about Abu Graib torture (remember, his memos justified it), his role in the death penalty in Texas where he was counsel to Governor George Bush (he cleared them all), human rights issues, the war on drugs task forces, racial disparities in the drug war (crack and powder cocaine), racial profiling in both terrorism and drug stops, prosecutorial misconduct, innocence protection, sentencing guidelines, closing federal halfway houses, and those are just a few. I have submitted a few myself.

The goal of this exercise is partly to try to put him on the record for future hearings, but also to remind the Republican majority and the White House that there still are checks and balances in this government. The CJWL will be watching.

Another DOJ Vacancy:

Deborah Daniels, a deputy attorney general well known to many criminologists in the Office of Justice Programs, is leaving her job in Washington February 1 and returning to her home state of Indiana where she will join a prominent Indianapolis law firm. Besides providing conventional legal services, her role at the firm will be as a consultant to those seeking government assistance in bolstering security and in regulatory compliance. “Ample resources” are available to businesses, she said. At DOJ she controlled a budget of over \$4 billion, and directed the research and grant making arm of the department. Her brother, Mitch Daniels, formerly President Bush’s budget director, was just elected governor of Indiana.

“There’s a lot of synergy between the public and private sectors,” she said to the Indianapolis Star. “We can help facilitate those relationships.”

The 109th Congress convenes January 4, and the second Bush term begins. Stay with us.