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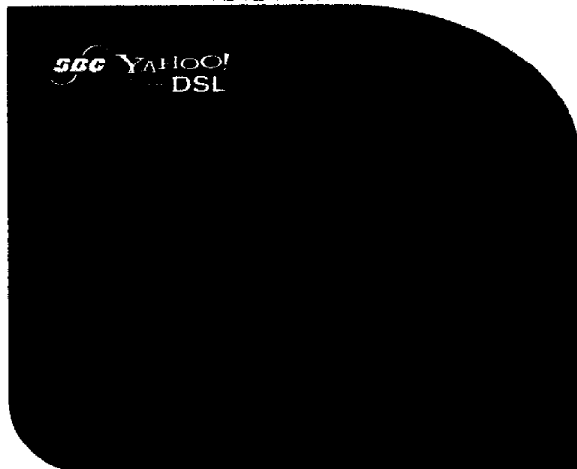
An Act Gone Too Far?

Thursday January 29, 1:57 am ET

John Caher, New York Law Journal

When law school dean and former Court of Appeals Judge Joseph W. Bellacosa on Wednesday opened a New York State Bar Association summit on the USA Patriot Act, he expected an academic discourse far removed from the "blather and the decibels and the rhetoric" that has so accentuated the security versus freedom debate.

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That opening led naturally, or not, to G-strings. Shortly after Bellacosa, dean at St. John's University School of Law, initiated the panel discussion, Manhattan defense attorney Gerald B. Lefcourt launched into an energetic, nuts-and-bolts criticism of the post-9/11 anti-terrorism laws. Lefcourt described how in real life the laws can be and are exploited by law enforcement for investigations that have nothing at all to do with terrorism. Like the Nevada G-string case.

Lefcourt said that in a recent investigation the owner of a Las Vegas strip club was suspected of improperly reaching out to city council members in hopes of thwarting legislation that would prohibit his patrons from touching lap dancers.

"The FBI used provisions of the United States Patriot Act and authority they recently got to go to the Treasury Department to put out an all-points bulletin fishing expedition and got the financial records of every city councilman and some of their spouses," Lefcourt said. "That is what happens when we give government unlimited power. Before you know it, it's all over the place. ... This is a very scary time."

Lefcourt said there have been dozens of cases where the Patriot Act is "used to go after American citizens in new and creative ways."

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"We are now living in an America where one can have their dwelling entered surreptitiously, a secret search conducted without notification or with delayed notice, where they can obtain all documents related to your being, rummage through your financial records without court order, where they can listen to every conversation by going to a secret court and providing information that will never be known to anyone," said Lefcourt, former president of the National Association of Criminal Defense Lawyers.

"Worse, people can be and have been picked up off the street ... not provided access to a lawyer [and subjected to wiretapping if they are provided with a lawyer]," Lefcourt said.

Robert J. Cleary, who was U.S. Attorney in New Jersey on Sept. 11, 2001, countered Lefcourt's real-life G-string story with an example of his own. After the attacks, Cleary said, authorities were "gripped with an all-consuming, ever-present fear" that another assault was imminent and worked feverishly to dismantle any terrorist plot before it could be carried out.

"Speed and efficiency became the watchwords of our command post," said Cleary, now a litigation partner at Proskauer Rose in Manhattan.

"But as we soon found out, the speed and efficiency we so valued was compromised by administrative impediments imposed by antiquated laws. The Patriot Act removed those impediments."

For instance, Cleary said, authorities know that e-mail is the preferred method of communication among terrorists. However, to obtain the content of an e-mail, a search warrant pre-Patriot Act had to be secured in the district of the Internet service provider.

"What that meant as a practical matter is that our New Jersey search warrant, seeking e-mails of a terrorist who lived in New Jersey and sent e-mails from New Jersey concerning a crime committed in New Jersey with other people who also resided in New Jersey ... had to be filed in San Francisco," Cleary said.

"This created an enormous and unnecessary bottle neck. The Patriot Act has removed that bottleneck. ... Is the act perfect? Of course it's not. But let's not throw the baby out with the bathwater. The act accomplishes an enormous amount of good. It provides the tools that law enforcement needs to protect us."

PRIMARY AUTHOR

Viet D. Dinh, a former top assistant to Attorney General John Ashcroft and primary author of the Patriot Act, acknowledged that the statute is broad, but said it is also measured and appropriate. Dinh, now a professor at Georgetown University Law Center, rejects the contention that enhanced security necessarily means diminished freedoms, and urged against that sort of "lazy and unproductive" examination of a 342-page bill with 157 sections that alter in big ways and small some 15 statutes.

He said the act is sweeping, but not excessive, and, while it may need some refinement, remains a functional and valid instrument in the war against terror.

"It is a mistake to think of the Patriot Act as an overwhelming or Orwellian [expansion] of government authority," Dinh said, participating by telephone.

Wednesday's summit, "Let Freedom Ring: The Protections and Real Life Impact of Anti-Terrorism Legislation -- An Examination of USA Patriot Acts I and II," was called by State Bar President A. Thomas Levin and highlighted activities at the organization's

annual meeting. Two panels, both moderated by Bellacosa, debated the pros, cons and unknowns of the law.

Nadine Strossen, president of the American Civil Liberties Union and a persistent critic of the act, stressed that neither she nor any responsible critic is advocating repeal of the Patriot Act or even any of its provisions.

Rather, she has urged Congress to fine-tune a law that was rushed through just weeks after the Sept. 11 attacks. Strossen said just a handful of changes would make the law far less violative of civil liberties and no less effective as a tool against terrorism.

Brooklyn Law School professor Susan N. Herman reminded the audience that the reach of the Patriot Act is far beyond criminal law and involves financial security law, education law, immigration law and several other practice areas.

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Article Published: Wednesday, January 21, 2004 - 12:01:31 AM PST

Bush resolute despite terror, war

By AP

WASHINGTON - President Bush, wrapping the themes of his re-election campaign in his State of the Union address, asserted Tuesday night that America is strengthening its economy and successfully combating terrorism. "We have not come all this way — through tragedy and trial and war — only to falter and leave our work unfinished," he said.

In a stay-the-course speech to a joint session of Congress, Bush said the nation faced important challenges and choices and adamantly defended his actions as president.

He said it was tempting — but wrong — to think the danger of terrorist attacks had passed even though it has been more than two years since America was attacked.

"We have come through recession and terrorist attack and corporate scandals and the uncertainties of war," the president told lawmakers at the opening of a campaign year. "And because you acted to stimulate our economy with tax relief, this economy is strong and growing stronger."

Democrats were quick to take issue, noting that 2.3 million jobs have been lost under Bush, that deficits are soaring and casualties are climbing in Iraq. Democrats sat silently through most of Bush's 54-minute speech while Republicans applauded repeatedly.

Bush's speech was designed to cast him as the commander in chief, grappling with the nation's problems and above politics while Democratic rivals for his office race around the campaign trail trading charges.

Bush was combative at times, challenging opponents of the Iraq war — particularly those who complained he lacked international backing.

"America will never seek a permission slip to defend the security of our people," he said.

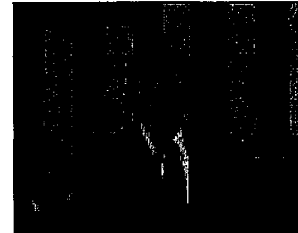
With a \$500 billion budget deficit limiting his options, Bush offered a handful of modest initiatives: a \$23 million pilot plan to encourage student drug testing in public schools and a \$300 million training and placement program to help newly released prisoners find jobs.

He urged major league sports leagues and athletes to end the use of performance-enhancing drugs. Their use by even a minority of elite athletes sets a dangerous example for the millions of young Americans, encouraging them to take dangerous risks with their health and safety, Bush said. He also proposed doubling federal spending on programs to promote sexual abstinence among teenagers.

Touching on a politically sensitive issue, he said he would support a constitutional amendment banning same-sex marriages if the courts struck down a law saying marriage should be between a man and woman.

The speech fell one day after the one-two finish of Sens. John Kerry and John Edwards in the Iowa caucuses threw the Democrats' race into a wide-open contest going into next week's New Hampshire primary.

"America this evening is a nation called to great responsibilities," the president said. "And we are rising to meet them. ... We have not come all this way — through tragedy and trial and war — only to falter and leave our work unfinished."



President Bush delivers the State of the Union speech to a joint session of Congress at the Capitol Tuesday as Vice President Dick Cheney, left, and Speaker of the House Dennis Hastert of Ill. look on. (AP)

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"Our greatest responsibility is the active defense of the American people," he said. "Twenty-eight months have passed since Sept. 11, 2001 — over two years without an attack on American soil — and it is tempting to believe that the danger is behind us. That hope is understandable, comforting and false."

Campaigning in New Hampshire, Democratic candidates struck back.

"He's not making America safer," said Kerry. "Hardworking Americans will see through this president's effort to wrap his radical agenda with a compassionate ribbon," said former Vermont Gov. Howard Dean, the third-place finisher in Iowa. "It's all smoke and mirrors designed to hide the stark fact that he has no real plan for our future," said retired Gen. Wesley Clark.

Bush faced an electorate closely divided over the nation's direction. Americans are evenly split on his handling of domestic issues such as education, health care and energy, and just over half approve of his handling of the economy, polls suggest. His strong suit remains foreign policy, especially his handling of terrorism. Bush's job approval among voters in an AP-Ipsos poll early this month was 56 percent, a relatively strong position at this stage of a re-election campaign.

Bush said his administration was confronting nations that harbor and support terrorists and can supply them with nuclear, chemical or biological weapons. "Because of American leadership and resolve, the world is changing for the better," Bush said.

He said the United States has captured or killed two-thirds of the leadership of the al-Qaida network — although Osama bin Laden remains at large. He called on Congress to renew key portions of the Patriot Act that the administration says has given law enforcement officials the tools they need to combat terrorists.

The president defended his decisions to go to war in Afghanistan and Iraq. Of the top 55 officials of Saddam Hussein's regime, 45 have been captured or killed, Bush said.

Of Saddam, Bush said, "The once all-powerful ruler of Iraq was found in a hole and now sits in a prison cell."

Bush acknowledged that some Americans opposed his decision to go to war in Iraq. But he said, "Had we failed to act, the dictator's weapons of mass destruction programs would continue to this day." His words served as a reminder that the United States has not been able to find any banned weapons in Iraq, which was Bush's justification for going to war.

With more than 500 American troops killed in Iraq, Bush said, "The work of building a new Iraq is hard, and it is right."

On the domestic front, Bush said America's economy was being transformed by technology that makes workers more productive but requires new skills. He called for new job-training grants totaling \$250 million channeled through community colleges.

Bush urged Congress to address the rising costs of health care with tax-free savings accounts for medical expenses, tax credits to pay for insurance and ceilings on medical malpractice damage awards.

Reviving an old proposal, Bush called on Congress to overhaul Social Security to allow workers to invest some of their payroll taxes in private retirement accounts. He also renewed proposals to help Americans cope with the rising costs of health care and to make tax cuts enacted in 2001 and 2003 permanent.

Bush revived his push to steer federal money to religious groups that provide social services.

Information

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Pasadena Star-News

U.S. says it found Saddam's funds

Syria, Switzerland: Evidence insufficient to hand over \$300 million

By Dafna Linzer

Associated Press

Sunday, February 08, 2004 - The United States believes it has found at least \$300 million Saddam Hussein hid in banks, yet does not have enough evidence to get countries such as Syria and Switzerland to hand over the money, U.S. and European officials told The Associated Press.

The funds at stake could go to the Iraq insurgency or the country's reconstruction depending on who gets to them first. What troubles investigators more is that much of Saddam's cash already may be gone.

The weak U.S. intelligence and the slow-moving investigation, now in its 11th month, have given suspects more than enough time to empty accounts and possibly transfer some funds to Iraq's insurgency, which has cost hundreds of American lives, officials involved in the search said.

Treasury investigators have been quick to identify leads in the hunt but have been scrambling to come up with solid evidence that could hold up in a court or get the approval of a U.N. sanctions committee.

Much to the frustration of the Bush administration, countries that acted quickly on relatively weak evidence involving al-Qaida funds have been unwilling to do the same on Iraq, partly because of growing doubts about the quality of U.S. intelligence.

For months, Swiss officials have asked Washington to provide more information on an account belonging to a Panamanian-registered front company that U.S. officials believe is tied to the former Iraqi regime. The account contains the equivalent of \$80 million and U.S. officials still are trying to gather enough information for the Swiss to act.

Were the account held in a U.S. bank, federal authorities would not need any more evidence than they already have because the Patriot Act, passed after Sept. 11, 2001, gives them expanded powers of search and seizure.

"We know a lot of countries cannot use intelligence information the way we can use it now after Sept. 11," said Juan Zarate, the Treasury Department's deputy assistant secretary for terrorist financing and financial crimes. "It's not a complete hindrance but we have to provide the right information."

Swiss officials put a temporary hold on the Montana Management account but will not hand over the money to an Iraqi reconstruction fund, as the Bush administration wants, unless it gets more details and none were forthcoming during a recent meeting between U.S. and Swiss treasury officials in Washington.

Zarate told AP his office would target new individuals "in the next few weeks,' and submit the names to the U.N. sanctions committee, where approval is assured, giving European countries a legal basis to act.

"The reality is, we want to be sure about cases when we go to the U.N. since we're basically marking an individual or a company or an entity. We do have to present some sort of basis for it,' Zarate said.

But he said, "when you work bilaterally, things don't necessarily have to be that formal or that definitive.'

So far, Zarate's office has given the United Nations the names of five Iraqi entities the Central Bank of Iraq, Iraq Reinsurance Company, Rafidain Bank, Rasheed Bank and Iraqi Airways Company plus the list of the 55 Most-Wanted Iraqis that the military presented as a deck of cards in the early days of last year's war.

European and Middle Eastern officials, who spoke on condition of anonymity, said they had peeked into accounts held by children of the 55 and found almost no money. Saddam's daughters, who are living comfortably in Jordan, remain under scrutiny, officials said.

The investigation relies solely on interrogations and information U.S. officials are getting in Iraq. Zarate wouldn't say whether Saddam was cooperating.

No other countries not even coalition partners have offered names to the U.N. list.

"The onus falls mostly on us to produce lists and to produce leads,' Zarate said. The interagency investigation has been "overwhelmed' by documents and CD ROMs collected in Iraq, he said.

So far, the amount of money identified by U.S. investigators is nowhere near prewar estimates of \$40 billion stashed away by Saddam.

"We don't know where it is,' said Pierre de Bousquet de Florian, the head of France's domestic intelligence agency.

The largest sums uncovered so far are in Middle East banks. U.S. officials are hoping Syrian officials will be encouraged to hand over money once the Swiss do. But there are also concerns that pressuring the Syrians, without sufficient evidence, could hamper important cooperation on Iraq and the war on terrorism.

In October, U.S. investigators went to the Syrian capital, Damascus, and Amman, Jordan, looking for hidden Iraqi accounts. Syria has frozen about \$250 million but will not give the money to the Iraq fund because it cannot be sure it belonged to the regime.

The Swiss face similar issues.

In some cases, Swiss investigators have been unable to find evidence that would corroborate the information the United States has provided on accounts. In others, they are having trouble establishing whether a crime has been committed by bank clients. The largest accounts may already be emptied out, according to European, Middle Eastern and American officials.

One Swiss official noted that in 1992, Libya managed to pull 425 million Swiss Francs or about \$300 million then from Switzerland after it was given two weeks to cooperate with the United Nations or face sanctions for its role in the bombing of a Pan Am flight.

For U.S. investigators tracing Saddam's money, early efforts focused on retrieving close to \$1 billion stolen from the Iraqi Central Bank, including money taken by Saddam's sons. More than \$100 million still is missing and some is thought to be in the hands of insurgents.

The interagency investigation, which includes Treasury, the FBI, the CIA and Immigration and Customs Enforcement, is still tracing the serial numbers on \$750,000 cash found in Saddam's possession when he was captured nearly two months ago.

Hundreds of millions of Iraqi dollars that were in accounts before the 1991 Gulf War are being turned over to the reconstruction fund. The United States also has asked countries owed money by Iraq to forgive the debt. Most have agreed to forgive most, but not all, of the billions Iraq owes.

Pasadena Star-News

Country in a mess

Friday, February 20, 2004 - Our country is in a combination of hysteria, paranoia and schizophrenia. I believe that two kinds of "terrorists" are winning the assault on our way of life.

They are people from other countries or regions that hate the United States. Those terrorists are causing us to spend millions of dollars on ill defined or nonexistent threats. My second concern is with the Patriot Act and its spawn, Homeland Security, that were set up hastily in an emotional burst of paranoia.

Since it has been instituted it has eroded our rights and civil liberties. In some ways I feel it is a threat to our society and therefore another kind of "terrorists" that is sabotaging our way of life. On top of that, the multicolored alerts have us spending millions of dollars chasing phantoms.

The idea of libraries having to report on the books that people read reminds me of Big Brother. Multiple computer files and surveillance systems intruding on our everyday life sounds like the Gestapo in action.

Have we become so paranoid that we end up spying on each other? Shades of Orwell! Why isn't the vaunted ACLU concerned and doing something about it or are they just hunkering down afraid of political repercussions?

*R.C. Day
Monrovia*

Mexico to blame

It was most refreshing to read the comments ("Candidate puts blame on Mexico") by former U.S. Treasurer, Rosario Marin, a legal immigrant from Mexico. It is high time that the media reflect the opinions of the legal immigrant population who have met the federal requirements for immigration, i.e. Application, U.S. Citizen Sponsorship (with responsibility of financial support), waiting period, background checks, and willingness to assimilate into American society with all that goes with it and without special treatment.

The illegal immigrant population in cities around the country is out of control and the impact on resources cuts across every segment of our society from welfare, health care, education, housing, crime, security, jobs, etc.

Mexico has no use for its poor. Mexico is rich in natural resources, but those riches don't filter down to its poor a system of government that hasn't changed since the days of Poncho Villa.

Mexico would rather allow its population to cross our borders and receive billions of dollars each year from illegal residents (the second highest source of income for Mexico).

It is time for Mexico to do what is necessary to bring its poor into the mainstream of society and become a "good neighbor" to us. Of course the way things are going here at home we may soon face a similar situation except we can't just cross the border into Canada!

We take advantage of "cheap labor;" politicians see a substantial voter resource; and we make half-hearted attempts to stem the problem by "rearranging the deck chairs on the Titanic"! It's time to act and enforce the laws!

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Foreign Tax Claims in U.S. Are Dismissed

Thursday January 15, 1:58 am ET

Mark Hamblett, New York Law Journal

The legislative history of the USA Patriot Act does not show clear intent by Congress to abrogate a rule barring suits in the United States to enforce foreign tax judgments, the 2nd U.S. Circuit Court of Appeals ruled Wednesday.

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In a case brought by several foreign nations charging major tobacco companies with smuggling or abetting the smuggling of cigarettes, the 2nd Circuit upheld the bulk of the rulings made by an Eastern District of New York judge.

The ruling in *The European Community v. RJR Nabisco Inc.* was one of three related cases before U.S. District Judge Nicholas Garaufis.

Garaufis had dismissed claims brought against RJR Nabisco Inc. and Philip

Morris International Inc. and the affiliates of both companies. Plaintiffs charged that the tobacco companies' alleged complicity in cigarette smuggling was undermining tax collections and driving up law enforcement expenditures for the member states of the European Community.

Before Garaufis' ruling, the 2nd Circuit in 2001 had reaffirmed the validity of the "revenue rule," the common law principle that the courts of one sovereign will not enforce the final tax judgments or unadjudicated tax claims of other sovereigns. The reaffirmation of that principle came in *Attorney General of Canada v. R.J. Reynolds Tobacco Holdings Inc.*

Following the *Canada* case, and in response to the Sept. 11, 2001, terror attacks, Congress passed the USA Patriot Act. Section 315 of the act amended and expanded 1956(c)(7) of the Racketeer Influenced and Corrupt Organizations Act, or RICO, which established money laundering as a predicate act for purposes of proving racketeering.

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Judge Garaufis, after examining the legislative history and the reasons behind the revenue rule, said that Congress did not intend to erase the rule when it passed the Patriot Act.

On appeal, the European Community and other plaintiffs claimed that legislative history behind amendments to RICO adding several money laundering crimes as predicate offenses meant that the decision in the *Canada* case was no longer good law.

Writing for the 2nd Circuit, Judge Sonia Sotomayor said the reason behind the revenue rule is that "claims by foreign sovereigns invoking their tax statutes may embroil the courts in an evaluation of the foreign nation's social policies, an enquiry that can be embarrassing to that nation and damaging to the forum state."

"In *Canada*, we undertook an extensive examination of the tax treaties in effect between the United States and other nations, and concluded that their grant of only limited reciprocal tax enforcement assistance reflected the political branches' continuing recognition of the revenue rule," she said.

But while the revenue rule is not "absolute," the judge said, clear consent by the political branches in accepting adjudication by the courts is needed to abrogate the rule. And that clear intent, she said, was not present here.

"The Patriot Act did not change the structure or focus of RICO; it simply added additional offenses to those that constitute predicate acts of racketeering," Sotomayor said.

"Because *Canada* holds that the operation of the rule does not depend on the type of conduct alleged, but rather on the substance of the relief sought, the foreign policy concerns raised by the suit, and the identity of the plaintiffs, a mere showing that the plaintiffs' suit will further the policies embodied in the statute at issue is not sufficient to abrogate the rule," she said.

Judges James L. Oakes and Guido Calabresi joined in the opinion.

COMPANION CASES

The circuit court also upheld the dismissal of a companion case, *Department of Amazonas v. Philip Morris Companies*. And it vacated the dismissal of a third action, *European Community v. Japan Tobacco Inc.*, saying that the district court did not have jurisdiction over the action because of a lack of service on defendants when the case was dismissed.

Krupnick Campbell Malone Roselli Buser Slama Hancock McNelis Liberman & McKee in Fort Lauderdale, Fla., and Speiser Krause Nolan & Granito in New York represented the European Community.

Arnold & Porter; Cravath Swaine & Moore; and Jones Day represented the tobacco companies.

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