

Testimony of

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April 14, 2004

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Testimony at a Field Hearing On

"Preventing and Responding to Acts of Terrorism:  
A Review of Current Law"

Before the

United States Senate  
Committee on the Judiciary

Submitted by  
Nanette Benowitz  
President

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Written Statement of Nanette Benowitz  
President of the League of Women Voters of Utah  
Submitted to the Committee on the Judiciary  
United States Senate  
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"Preventing and Responding to Acts of Terrorism: A Review of Current Law."

Chairman Hatch and Members of the Committee, thank you for the opportunity to testify at this hearing on 'Preventing and Responding to Acts of Terrorism: A Review of Current Law.'

I share the views of many Americans that it is vital to take new measures to protect against terrorism, while maintaining fundamental protections of democratic society. As president of the League of Women Voters of Utah, I welcome the opportunity to share our organization's thoughts with you because our membership expressed concerns about the USA PATRIOT Act at our State Convention last May. Many also have chosen to study this issue either in general meetings open to the public or at smaller more intimate gatherings.

Our members, along with members of the League of Women Voters all over the United States, have been steadfast in their conviction that the need to protect against threats to America must be balanced with the need to preserve the liberties that are the very foundation of this country. Fundamental principles of checks and balances and open government, including independent judicial review of law enforcement actions and limits on secret indiscriminate searches, are essential to guarding our liberty.

## Introduction

With that introduction, let me start by saying that we support the overall intent of the USA PATRIOT Act because we recognize the need for law enforcement to be able to address new forms of terrorism. However, we urge the Congress to perform the review and oversight they did not have the luxury of performing in September and October of 2001. We urge you to review exactly what the PATRIOT Act has accomplished and to revise some of the provisions that have unnecessarily infringed upon our civil liberties.

1. Citizens fear that by supporting laws that were designed to protect them they have given up many of their basic civil liberties.

Senator Hatch, your constituents are concerned that in stunned shock the country went too far too quickly. Our country has survived the Cold War and other serious dangers to our national security. Throughout those difficult times, all three branches of our government have examined and refined the protections afforded to all under the Fourth Amendment. This careful constitutional balance should not be set aside without concrete evidence that new powers have prevented or would have prevented attacks.

Revelations about abuses of surveillance and detention powers have created a climate of distrust between the citizenry and law enforcement that we simply cannot afford at this time. We have heard a wide variety of commentary on secret searches with delayed notification; even gag orders on third parties who hold information that should by right remain private. We also have read with concern the report of the Inspector General of the Department of Justice, released last summer, which included revelations about significant and lengthy wrongful detentions.

As an example of my concern about the growing sense of distrust that is developing even among league members, I would like to paraphrase a Salt Lake League unit discussion scribe's report from a league discussion following the viewing of video of a League-sponsored public meeting on the PATRIOT Act.

? Old Farm Unit 3/29/04 Subject: Patriot Act  
9 Members Present 2 Guests  
Member reporting: Bonnie Fernandez

#1 What are the tradeoffs between security and civil liberties?

? There is a general sense of skepticism in the country.

? Our liberties are so precious; they need to be protected.

? The Patriot Act wouldn't necessarily have prevented 9/11.

? We fear the return to "witch-hunts."

#3 Do you think we can trust the government?

? "If you've done nothing wrong, you have nothing to fear".

? "You can't have your activities, memberships, associations be targeted and your name can end up on a list - therefore stifling what you do".

? Trust is hard because of abuses. There were split opinions about trusting government. We are wary because they've proven untrustworthy.

? Media plays an important role in this regard.

I would also like to include some of the comments that have been made to me by league members since they became aware of our testifying at this hearing.

? Bonnie Fernandez, member of the Salt Lake League: There is no valid reason to abrogate the constitutional protections of civil liberties, even in the name of national security. When national security supersedes the Constitution, we are in greater danger than any danger terrorists might present.

? Joyce Davis, President of LWV Cache County. [O]ur greatest objection to the Act is the FEAR that becomes part of our lives and the way that it tends to separate us from people who might look a little different or even worse some who look just like us.

? Marilyn Odell, the President of Weber League. Personally, I have neighbors who have had a very sad experience. According to them, their son-in-law who is a Kuwaiti citizen but lives with his family in Ogden and has applied for U.S. citizenship was arrested and held from Friday to Monday by the INS because they claimed there was an error in his papers. When his lawyer, who had been out of town, showed up, the INS said it was all a mistake and he was released. However, when he went back to his job at AOL and explained his absence he was immediately laid off in spite of the fact that he had previously had awards for his good work. It took him several months to find a new job.

We know this young man and his family so we believe his version. He fought against the Iraqis in Kuwait during the first Gulf War and was educated at Weber State. I don't know if his detention was under the provision of the Patriot Act allowing extended detention of aliens pending a determination of whether a person is connected to terrorist activities or not but I think detention of aliens without due process should be a concern as well as the privacy of U.S. citizens' records which seems to be the overriding concern of the League position.

2. The League supports the SAFE Act, S. 1709, because it addresses some of the problematic provisions of the PATRIOT Act

The League supports the provision in the new legislation that would limit so-called "sneak and peek" searches, which now allow secret warrants without notifying the subject of the search for an unspecified length of time. Under SAFE, delayed notification would be allowed only when the government could show that secrecy was needed to prevent flight, destruction of evidence or danger to life or physical safety. Delays would be limited to renewable seven-day periods. This more meaningful judicial oversight would reassure citizens who value their Fourth Amendment protection against unreasonable searches and seizures.

In addition, S. 1709 would limit law enforcement requests for business records by requiring evidence that the records relate to a spy, terrorist or other foreign agent, and are not merely part of a "fishing expedition." Businesses include banks, doctors, employers, universities, libraries and bookstores, which hold sensitive information about our private lives, and most importantly our private thoughts including political thoughts. This information should not be available to the government without cause.

Finally, we support SAFE Act provisions that would extend the sunset provisions of the PATRIOT Act to include the sections on "sneak and peek" warrants and national security letters.

These are challenging times for all Americans. We recognize that there are real and serious terrorist threats. The League believes that the SAFE Act would preserve broad authority for law enforcement officials to combat terrorism. At the same time, it would protect innocent Americans from unrestricted government surveillance.

3. As the League has studied this issue, it seems clear that what is needed is not more powers but better use of existing powers.

The PATRIOT Act and subsequent bills have called for revisions to the Foreign Intelligence Surveillance Act ("FISA"). As we have studied these issues, we have become increasingly concerned about the risk of FISA warrants issued by a court that sits in secret becoming the warrant of choice for law enforcement officials because it is simply easier to secure a FISA warrant than a traditional warrant. It is not clear to us why FISA standards should be becoming more and more lax when it was not FISA restrictions that kept law enforcement from learning more about the 9/11 hijackers, including Moussaoui, but the failure of officials to seek a warrant at all. Simply put, relaxed warrant requirements make it easier to add hay to the pile, but not any easier to find the needle.

We ask that you give law enforcement the resources they need to communicate with each other and do their job better, not undermine laws that hold those officers to higher standards. FISA was enacted to curb government abuses in the 50's and the 60's, specifically to restrict the use of these powers for domestic criminal investigations and prosecutions. The potential chilling effect of excessive surveillance and detention powers on both healthy political debate and effective cooperation between citizens and law enforcement is simply too great.

Conclusion

In conclusion, I would ask this committee to address all of the provisions of the PATRIOT Act, not just the sunset provisions. We feel strongly that this Act is too important not to be given the attention it deserves. We ask you to support the SAFE Act that adds oversight and review to the PATRIOT Act to provide the appropriate protection for innocent Americans from unrestricted government surveillance. And finally we encourage law-enforcement to more effectively coordinate and implement the use of the information they already have.

I would like to thank Senator Hatch and this committee for holding this hearing and giving all of us the opportunity to express our thoughts on this Act. The League was eager to participate in the diverse coalition that was formed to encourage open dialogue on the PATRIOT Act. This hearing has been a very educational process and an important step in educating Utahans about the steps our government is taking to review the USA PATRIOT ACT.

Thank you,

Nanette Benowitz  
President, League of Women Voters of Utah