

**Ground Laid for Historic Presidential Powers Push
Bracing for Bush's War at Home**

by Chisun Lee

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An ugly theory popped up in the nation's capital several weeks ago. The Bush administration would wait until war began, and worry gripped the homeland, to ram a staggering package of domestic security measures through a Congress silenced by fears of seeming unpatriotic. Such measures would radically expand the executive branch powers already inflated by the 2001 USA Patriot Act.

On Friday-as the U.S. began suffering combat fatalities, and the terror alert on whitehouse.gov glared orange for "high" -- Justice Department spokesperson Mark Corallo confirmed to the *Voice* that such measures were coming soon. Exact details are confined to "internal deliberations," he said, but the proposals "will be filling in the holes" of the Patriot Act, "refining things that will enable us to do our job."

But a new, comprehensive review of Bush's growing presidential power hardly reveals any "holes." Rather -- using court positions, internal policy changes, and secret decisions as bricks -- the administration has built the executive branch into a fortress, nearly invulnerable to the checks of the judiciary and Congress. Most alarming, according to the watchdog authors of the 96-page report, "Imbalance of Powers," the complexity of this historic expansion continues to mask its true proportions.

"You have to connect the dots," said Elisa Massimino, Washington, D.C., director of the Lawyers Committee for Human Rights (LCHR), a 25-year nonprofit defender of civil liberties and humane policy. LCHR analyzed hundreds of pages of legislation, policy directives, and congressional records, plus a spate of major court cases such as the suit challenging the indefinite detention, without representation, of accused American "dirty bomber" Jose Padilla. The big picture shows an "executive branch amassing so much more power," said Massimino, even in the past six months alone. But since many developments have occurred "under the radar," she said, few members of Congress, let alone of the public, could easily map out such a blueprint on their own.

Briefly, the dots connect like this:

The administration's refusal to release Patriot Act-related records to Congress, the refusal to release the names of detainees and open their court hearings to the public, and the Freedom of Information Act exemptions under the Homeland Security Act add up to a secretive government, acting outside the scrutiny of the public and its representatives.

The development of the Total Information Awareness program, the mining of individuals' shopping and library records, and the melding of spy and arrest functions add up to government invasion of privacy and restriction of expression.

The indefinite detention of U.S. citizens deemed by Bush to be "enemy combatants," the secret detention and deportation of immigrants not charged with a crime, and the tracking and questioning of nationals from particular countries add up to unilateral executive power to deprive people of their physical liberty.

Even with the existing behemoth, Massimino said, a "quantum leap" in executive branch authority is possible. She referred to the recently leaked Justice Department draft bill, the Domestic Security Enhancement Act of 2003, commonly known as Patriot Act II. "It would make over 100 changes to existing law," she said. But as recently as March 4, Attorney General John Ashcroft was being coy about it, refusing to discuss any of the 86-page draft at a Senate hearing.

Among the more extreme powers Patriot Act II would grant the executive branch: The ability to strip citizenship from an American who supports a group the feds label as terrorist. Secret arrests -- the government could avoid revealing the location of, charges against, and evidence on someone it was holding. Far looser checks on search-and-seizure activities of law enforcement. And a DNA database for people deemed to be terrorist suspects.

Yale Law School professor Jack Balkin was among the first constitutional experts to condemn Patriot Act II as "a new assault on our civil liberties." Last week he told the *Voice*, "What we're really worried about here is something being proposed while all eyes are on Iraq. People are whipped up into a frenzy. The executive will propose what, at a certain time, it thinks it can get away with." That, he said, could be the draft bill "in its most virulent form."

Before the war began, there were signs that Congress might fight future presidential power-hogging and bring more heft to the legislative branch. Some Democrats excoriated Ashcroft for his furtiveness on Patriot Act II. Some Republicans were talking about subpoenaing records that the Justice Department refused to release on its use of Patriot Act I powers.

Yet wartime has traditionally meant deferring to the executive. The entire post-September 11 period may have seemed like one big state of war, with the Justice Department successfully skirting Congress and pushing every constitutional challenge to higher, more administration-friendly courts. But given the actual war in Iraq, Supreme Court Justice Antonin Scalia said last week, Americans can expect that "protections [of their individual rights] will be ratcheted right down to the constitutional minimum."

Ashcroft deflected angry Senate queries on Patriot Act II, saying "it would be the height of absurdity" to imagine the administration's hustling through a law without congressional review. Yet on October 25, 2001, 98 out of 99 voting senators hurriedly passed the 342-page Patriot Act I -- without any public debate and before most of them had read it. The White House made clear their votes would be spun as a test of their patriotism. Votes on Patriot Act II could also be a test -- of who has the patriotism to right democracy's severely lopsided structure of checks and balances.