



## TALKING POINTS: S. 1709, the Craig-Durbin Security and Freedom Enhanced (SAFE) Act of 2003

Two years after the passage of the PATRIOT Act, the movement to fix this broad and un-American piece of legislation is gaining incredible momentum. Following on the House's strong vote to ban "sneak and peek" searches, Sens. Larry Craig (R-ID) and Richard Durbin (D-IL) have now taken the lead in the Senate by introducing the bipartisan Security and Freedom Ensured (SAFE) Act of 2003 (S 1709). This legislation would represent a significant first step toward rolling back some of the PATRIOT Act's worse excesses.

**Passage of the SAFE Act would not take away any of the new powers granted to the Department of Justice in the USA PATRIOT Act. Instead, the SAFE Act would simply balance these new powers with sensible safeguards.**

**Senior Pennsylvania Senator Arlen Specter co-sponsored the SAFE Act 2004. In his new role as chair of the Senate Judiciary Committee, Senator Specter has the power to call for hearings on this bill.**

Specifically, the SAFE Act would:

- **Require individual suspicion for searches of library, bookstore or other sensitive records.** The USA PATRIOT Act expanded the Foreign Intelligence Surveillance Act (FISA) to allow the government to obtain library, bookstore or other personal records simply by saying to the Foreign Intelligence Surveillance Court or a federal magistrate that they are wanted for a counter-intelligence or counter-terrorism investigation. The SAFE Act protects the freedom to read and the privacy of other personal records maintained by universities, doctors, banks, travel agents and employers by requiring "specific and articulable facts" that the records belong to a spy, terrorist, or other foreign agent. The SAFE Act would also amend the law to clarify that federal agents may not use "national security letters" to get the records of users of a public library's computers without a court order.
- **Reasonable limits on "sneak and peek" searches.** The USA PATRIOT Act allows "sneak and peek" searches whenever the government shows notice might have an "adverse result" and permits delays for an unspecified "reasonable time." The SAFE Act requires the government to show one of three specific reasons – preserving life or physical safety, preventing flight from prosecution, or preventing destruction of evidence – to delay notice of a search warrant, and delays are limited to renewable seven-day periods.
- **Safeguards for "roving wiretaps" in foreign intelligence investigations.** The USA PATRIOT Act authorized roving wiretaps in foreign intelligence investigations, but did not include a sensible privacy safeguard that is required of roving wiretaps in criminal investigations. For criminal roving wiretaps, when federal agents place a wiretap and do not know what telephone or other device the target may use, they must "ascertain" that the target is using that telephone or device. The SAFE Act extends this safeguard to foreign intelligence investigations, helping to ensure the government does not eavesdrop on the conversations of innocent people. The USA PATRIOT Act also contained an apparent error in that it allows roving wiretaps even if federal agents do not know who the target is or what telephone or device is being used. The SAFE Act clarifies the law to require that federal agents know at least one of these two things to obtain a roving wiretap.
- **An expanded sunset, and additional reporting on USA PATRIOT Act powers.** The SAFE Act would cause four additional USA PATRIOT powers to expire at the end of 2005, allowing them to be reviewed when Congress considers whether to extend the sunset. These are "sneak and peek" delayed-notification searches (sec. 213), monitoring of detailed Internet and website addressing information without probable cause (sec. 216), nationwide search warrants (sec. 219), and expanded "national security letter" authority to obtain personal records without a court order (sec. 505). The SAFE Act also requires additional reporting on "sneak and peek" searches and FISA records searches.