
The Patriot Act Is Your Friend

By Kim Zetter

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Viet Dinh has been called a "political pit bull" and "a foot soldier" for Attorney General John Ashcroft. But the 36-year-old author of the Patriot Act prefers to be called an "attendant of freedom."

In May 2001, the professor of law at Georgetown University was tapped by the Justice Department to work for two years as an assistant attorney general, working primarily on judicial nominations for the department. But three months later the World Trade Center towers collapsed, and Dinh was drafted to work on the USA Patriot Act, a bill that would give the government some of its most controversial surveillance powers. The bill, coupled with the government's subsequent treatment of immigrants and native-born citizens, prompted critics to charge the administration with overthrowing "800 years of democratic tradition."

Ironically, Dinh is an immigrant himself. The youngest of seven children born in Vietnam, he was 7 years old when communists took over the country and imprisoned his father, a city councilman, for "reeducation." Three years later, Dinh's mother escaped with him and five of his siblings to the United States. His father arrived eight years later.

Dinh graduated from Harvard Law School and clerked for Justice Sandra Day O'Connor. He has had a hand in many high-profile issues, including the Whitewater investigation and the impeachment trial of former President Clinton. In 2000, he also wrote a friend-of-the-court brief for the Supreme Court on behalf of Florida voters who favored George W. Bush's win in the contested presidential election.

He once said that he was drawn to study the government because he "had seen government that did not work," and he was drawn to the Republican Party because of his hatred for communism.

Wired News spoke to Dinh about the Patriot Act and its effect on the liberties of American citizens.

Wired News: The Patriot Act was drafted and passed quite hastily in response to the crisis of 9/11. Do we still need it?

Viet Dinh: There is no question that the last 28 months of peace in America, where not another life has been lost on American soil to terrorism, would have been much more difficult without the USA Patriot Act. I do think we still need it. The terrorists are out there trying to reinvent themselves. It behooves us all to think about how we (could) better do our job to close the barn door for the next horse, not just for the last one, and to be proactive about ways to combat terrorism.

WN: An estimated 5,000 people have been subjected to detention since 9/11. Of those, only five -- three noncitizens and two citizens -- were charged with terrorism-related crimes and one was convicted. How do we justify such broad-sweeping legislation that has resulted in very few terrorist-related convictions?

Dinh: I've heard the 5,000 number. The official numbers released from the Department of Justice indicate approximately 500 persons have been charged with immigration violations and have been deported who have been of interest to the 9/11 investigation. Also, approximately 300 individuals have been criminally charged who are of interest to the 9/11 investigation. Of the persons criminally charged, approximately half have either pled guilty or been convicted after trial.

It may well be that a number of citizens were not charged with terrorism-related crimes, but they need not be. Where the department has suspected people of terrorism it will prosecute those persons for other violations of law, rather than wait for a terrorist conspiracy to fully develop and risk the potential that that conspiracy will be missed and thereby sacrificing innocent American lives in the process.

WN: In his recent State of the Union address President Bush pushed to have parts of the Patriot Act, such as section 215, renewed when their sunset clause kicks in next year. Did you intend for these sweeping laws and other powers granted in the Patriot Act to be remedial measures or long-standing legislation?

Dinh: I did not intend any of these provisions, nor did Congress intend the provisions, to be having such wide-sweeping effect that your characterization would make it out to be. I think that is a fundamental mischaracterization of both the meaning, the effect and the operation of the law and the interpretation of the law.

Section 215 only follows the long-standing practice of (allowing) criminal investigators to be able to seek business records that are relevant to criminal investigations. Section 215 gives the same power to national security investigators in order to seek the same records with very important safeguards. First, a judge has to approve such orders, not simply a clerk of the court, as in ordinary criminal investigations. Second, the Department of Justice is under a statutory obligation in section 215 to report to Congress once every six months on the manner and the number of times it has used that section. And third, it calls for special protection by requiring that the FBI not target an investigation based solely on First Amendment activities.

There has been a lot of hue and cry regarding specific provisions with USA Patriot Act that is predicated upon a misunderstanding. Once we engage in this national conversation that the president has called for, all the facts will come out, and we will see that the fears are unfounded.

WN: Hasn't a national conversation been lacking until now? The act was passed very quickly. There hasn't really been any national debate or any willingness by the government to debate this issue.

Dinh: The USA Patriot Act was passed after six weeks of deliberation by Congress. That is a very quick process in the normal legislative agenda, but then again the six weeks following Sept. 11 was a very unique time in our national history and also in the legislative process. For those six weeks, key members of Congress, including the members of the Senate and House judiciary committees, sat down and rolled up their sleeves. And while the process was very quick, it was also the most deliberate process that I have seen in Washington, D.C.

With respect to the ongoing national conversation, I think it should be noted that the administration and the Department of Justice has, within the last six months to a year, given incredible amounts of information to Congress regarding how the USA Patriot Act has been implemented, to provide to Congress the information that Congress needs in order to do the proper oversight and debate for the next level -- that is, the reauthorization debate in 2005.

WN: In October 2002 you told *The Washington Post* that civil liberties were not being compromised. Do you still feel that way even after the Jose Padilla case?

Dinh: I do feel that way. I think right now at this time and this place the greatest threat to American liberty comes from al-Qaida and their sympathizers rather than from the men and women of law enforcement and national security who seek to defend America and her people against that threat. That doesn't mean that each and every single one of us agrees with everything that is done in the name of the fight against terror. While I would do things somewhat differently in minor aspects in the war on terror, I do recognize that our Defense Department officials have an awesome responsibility to play in not only prosecuting the war in Afghanistan and Iraq but also continuing to protect the American homeland.

WN: Is there anything that you would change about the Patriot Act in light of how it's been implemented?

Dinh: I think the overall answer is generally no. I do, however, recognize that the act has been mischaracterized and misunderstood and has engendered a lot of well-meaning and genuine fear, even if that fear is unfounded. The issue is not one of substance but one of perception. But perception is also very important because we do not want the people, however many of them, to fear the government when that fear is unfounded.

WN: But the government has mischaracterized how the Patriot Act can be interpreted. For instance, the government has told the American people that in many cases these laws cannot be applied to citizens and in fact some of them have been applied to U.S. citizens.

Dinh: There are a number of provisions within the USA Patriot Act that have a tremendous effect on our war against terror. However, they are tools that can be used in general criminal investigations as well. At no time do I think that anybody intentionally sought to elide the difference between the two. The reason why you need tools of general applicability is that terrorists do not go around wearing an "I am a terrorist" T-shirt, and these normal investigative tools are the ones that allow us not only to deter terrorism but also to investigate crimes.

WN: Some critics have called you the purveyor of the most sweeping curtailment of freedom since the McCarthy era. Is that an exaggeration?

Dinh: I think it is very easy to employ sweeping rhetoric and personal denunciations. I think it is much harder to back it up with facts and concrete examples. I seek to engage in this conversation by giving as much facts as I can and letting the efforts of the Department of Justice, the administration and my own to be judged by the people, by history and by eternity. Where I err, I obviously am not hesitant in recognizing my mistakes. I wish people who criticize me would just pick up the phone and ask me specific questions, like we are engaging right now, so that we can isolate the issues of difference, so that we can engage in a constructive dialogue rather than a destructive dialogue.

WN: Some Asian Americans have accused you of dishonoring your own struggle and background as a refugee and immigrant. What do you say to charges that the law you wrote is hostile to immigrants and noncitizens?

Dinh: I come to this country having known government that does not work, either through the chaos of war or through the repression of totalitarian communism. In each and every thing that I do in my life -- in the law and as my life as a public official -- I ask myself how can I better serve the cause of freedom and the cause of good government. And while some may disagree with the decisions I make, just as some may disagree with the overall strategy on terror, I hope that people will recognize that there is no dishonor, there is no disconnect, there is no irony -- just an honest effort of a person trying to serve his country at her time of greatest need according to his best ability, however limited that may be.

WN: You once wrote that the rule of government was to maximize the zone of liberty around each person. You said, "Security without liberty -- it's not an America I would want to live in."

Dinh: I firmly believe that liberty should not be traded off for some sense of security. I think the harder task is to determine our best tools we can have in order to protect our security, while at the same time ascertain the safeguards that will be necessary in order to protect against abuse of that tool and misuse of it at the expense of privacy or liberty.

WN: So what do you say to Americans who feel that the Patriot Act has shrunk their zone of liberty?

Dinh: If indeed that is your fear or that is your perception then engage in the democratic process. Back up your argument, back up your belief with facts, marshal evidence in order to convince those who are engaged in the process of governance.

I have the utmost respect for those who engage in this (national conversation), even when I am unfairly maligned because those persons are willing to engage in order to advance the national conversation and contribute meaningfully to our process of governance. Somebody once said that democracy is not a spectator sport. We should all applaud each other for getting into the game and risking injury because of it, because at the end of the day we all win if we do engage.