



ROBERT GROSSMAN

THE USA UN-PATRIOT ACT

BY LOUIS ALVIS

I was pleased when The Editor asked me if I was interested in submitting an article about how our rights have changed since the institution of the so-called USA Patriot Act. Considering myself a son of Liberty, I enthusiastically took the bait, and delved into the smoky darkness that is the USAPA. I ran headfirst into a wall, a wall designed to discourage. It is a wall of elite language, an obfuscating fog of legalese and political cross-reference, a dense thicket of distractions.

The act is formally called "The Uniting & Strengthening of America by Providing Appropriate Tools Required to Intercept & Obstruct Terrorism Act of 2001". It is, depending on format, 320-350 pages long and is quite frankly unreadable by anyone without enormous experience in legal and political writing, and a lot of time on their hands. My first thought on seeing this entire document was skepticism that such an enormous document was assembled in just the six weeks following the atrocity of the Twin Towers. Further research has shown that many parts of this act were already written, and in many cases had been rejected by the legislatures they were presented to. Much of this legislation dates back to the bombing of Alfred P. Murrah Federal Building in Oklahoma City in 1995. In the first flush of horror, many persons and authorities assumed this was the work of a foreign power, most likely Islamist, and the seeds of the USAPA were planted then, only to wither on the thin soil of evidence that told us this terrorist was an American citizen and veteran of the armed forces. But vigilance can be long lived, and with the terror of 9/11 many parts of the USAPA were already researched, written and waiting for the day when a hostile Islamic enemy threatened us.

The language of the USAPA did not really surprise me. The language of law as it exists in America today is dynamically similar to the use of Latin in the medieval church. In both cases the language used to describe and justify the actions of the rulers of these periods is not the language of the governed but a specialized jargon, kept secret except to its privileged and ordained elite. In those dark centuries, illiteracy served to keep the ruled ignorant of any idea except that of submission to the status quo. It spread and preserved the idea that the governed were there due to divine selection and that a person's station in life was immutable. Our modern "Lingua Cathedra" is also unintelligible to the average citizen, rendering him/her functionally illiterate as regard the very laws s/he is supposed to rely on for safety and security. This illiteracy serves to keep the citizen ignorant of his/her true rights and usages and support submission to the status quo. It spreads and preserves the idea that our governors are there because we ordinary people are ignorant in the face of this body of impenetrable language, language that is the private domain of our legal and political betters.

However, unlike the submissive medieval peasant, there are many in our country that DO have access to, and use of, this specialized cant. It is through the efforts of these persons and organizations that I have been able to find out some of what has changed, and how some of those changes will affect us. (see sidebar on this page)

One of the more clever methods in use by our new big brother USAPA is to take advantage of the fact that the framers of the Constitution never heard of telephones, computers, the internet, etc. So many of USAPA's expanded powers focus on information flow. Just as freedom of movement now relies almost exclusively on the use of automobiles, so our freedom to communicate relies on many electronic media. In the case of cars on roads we are told that driving is not a right but a privilege. Could such an argument be used against the internet? Already application from USAPA and associated executive orders suggest that computer uses may be labeled as terrorist if they suggest coercion against the government of the United States or in any way impedes interstate commerce. In this light a suggestion to mass e-mail a federal office or boycott a transnational corporation may be declared a terrorist act.

In addition to Constitutional violations the USAPA modifies at least 18 other federal laws. Most of these modifications specify that the executive branch make adjustments to these laws without either judicial review or legislative action. In the name of security from our terrorist enemies, the traditional checks and balances of our government are overridden, often

allowing low level federal functionaries to act without any responsibility to our legally constituted laws.

My personal attention is drawn to usages that suggest that these structures are temporary, only existing "for the Duration of the Emergency", but this emergency is so very adjustable. So long as there might be a few disgruntled persons with a gripe about American foreign policy, the emergency continues. Many politicians and members of the military industrial complex have been looking for something to replace the "Evil Empire" of the old Soviet Union. The drug war has not been good enough, peace keeping in war torn Somalia was at best a brief window for imperial expansion; Noriega, Grenada, Haiti and even the Balkans were not long lived enough or pervasive enough to justify a permanently enlarged military. But we have seen now that the war against al-Qaida has been expanded into conquest and puppet rule in Afghanistan, and as of this writing the same process is aimed at Iraq. It has been said that "war is the health of the state," and with a nebulous enemy such as militant Islam as the boogymen, we can be assured of years of profitable business for the arms industry, the petroleum industry, and of course the further expansion of the Pax Americana.

It is also pertinent to note, when we ask ourselves if we are to worry about being the focus of these acts and edicts, of the statements of U.S. attorney general John Ashcroft. He was asked what the innocent American had to fear from increased security measures. His reply was "the innocent are not suspects." As an attorney trained in logic he must realize this statement is the equivalent of saying, "If you are a suspect then you must be guilty."

But there is some good news. There is a sunset clause in this legislation that expires in 2005. It is not a repeal of the entire act or all the executive emergency orders but at least

gives a brief window of opportunity to review some of these new legal constructs at that time. Better still, the TIPS program, designed to turn Americans into voluntary spies on their friends, neighbors and coworkers has been stalled by legislation and outrage of the public.

And acting on proposals by Oregon's own Ron Wyden, the Senate has put on hold the Total Information Act. This act if ever initiated would create an enormous national data base wherein any transaction of any kind would be collected into a giant information bank to be used to detect patterns of terrorism or criminality. Every credit or debit card use, airline ticket, traffic summons, bills paid or unpaid, credit history, school record, birth certificate, Social Security account, employment record and anything else you care to imagine may be grist for this Brobdingagian mill's work of making every act by every American part of a permanent criminal investigation.

When 9/11 occurred, a wise man I know said that this may actually be the chance the USA has needed to waken the rank and file American from the dark slumber of complacency. If any good can come of this tangle of imperial aggression and violent response, then it may be that the U.S. citizen will be roused to attention and action, and that once more we can be a leader of world peace rather than the newest in a string of aggressor powers.

Louis Alvis lives on a fish boat in Astoria. A few years back, before moving to Portland for awhile, he was renowned as "The Volunteer" on KMUN-FM. He wishes to thank the Electronic Freedom Foundation, the American Civil Liberties Union, the Bill of Rights Defense Committee, Fairness & Accuracy in Media, "and the very good folks at the Astoria Public Library for all their help and support."

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

Article 802 of the USA Patriot Act creates the new crime of "Domestic Terrorism". This definition is so broad it can be used against persons trying to exercise their right to public demonstration if it "appear(s) to be intended...to influence the policy of Government by intimidation or coercion." The Seattle World Trade Center protests, if held today, could be grounds to claim all participants are domestic terrorists. The same holds true for any public demonstration that does anything that might interfere with business as usual.

Article 215 of the USAPA allows the FBI and/or "duly constituted agencies" of the law to seek records from bookstores and libraries regarding the reading or computer habits of persons suspected (or claimed to be suspected) of terrorism. It also gags persons who have asked to turn over said documents, making it illegal to mention they have been forced to comply.

An Attorney General edict now allows for surveillance of persons and organizations of a political or religious nature without any evidence of wrongdoing. It also lifts the restrictions against COINTELPRO-style operations such as were used in the past for harassment or intimidation. Such operations are also permitted to set agents to infiltrate such gatherings and incite criminal behaviors.

Another Attorney General edict now states that Freedom of Information requests may be denied even in the case of unclassified information. Don't ask, they won't tell. (But they might be interested in who asks.)

A Bureau of Prisons emergency surveillance order allows for the authorities to listen in on the privileged conversations between a lawyer and client without having to get judicial approval. This holds true even in cases where there has been no finding of guilt.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 203 of the USAPA allows the CIA to access information gathered by domestic law enforcement, including wire taps and electronic media without need of court orders or warrants. It can share that information with any other government agency and those of other countries. It is important to note that the CIA was established to operate extranationally and had to refrain from operations in the United States. Now they are able to use other law enforcement as proxy.

USAPA 218: The Foreign Intelligence Surveillance Act is changed to all the FBI to conduct secret searches and surveillance without probable cause so long as an agent says foreign intelligence

is relevant or plays a part in an investigation. No evidence of a crime is necessary.

USAPA 206 allows the Foreign Intelligence Surveillance Court (did you know we had one? Since 1978) to secretly authorize taps of any device suspected of ever being used by a terrorist even if now in use by another person. Public phones, library computers, internet hubs — if a terrorist might have used it, it can be searched or tapped without court order or warrant.

USAPA 213: Your home may now be searched without your knowledge. Also the government does not have to let you look at any warrant it may have. Previously, search warrants were to be shown to a householder before a search was under-taken. Now law enforcement agents do not even have to let you know that a search has taken place.

USAPA 215 allows any FBI agent down to Assistant Special Agent in Charge to request any item or information deemed relevant to an investigation. Judges may not refuse such requests. This effectively transfers power from the judicial branch of government to the executive branch in clear violation of Constitutional checks and balances.

USAPA 411: This lets the U.S. Attorney General to declare any foreign or domestic group that has used violence as "terrorist". At first glance this seems reasonable but would include any protest that harms property as violence. This would have allowed the entire WTO protest operation to be declared a terrorist organization because of the reprehensible acts against property by a few persons. Those who loose animals from tests and experiments? Terrorist. This and other sections could even consider graffiti as terrorist violence under the vague usages that are suggested.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

USAPA 412: reduces the standard of "probable cause" as regards foreign nationals overriding *habeus corpus* or judicial review. Most of us are not foreign nationals, but it does open the door, providing legal precedence for the reductions of previous standards.

A presidential order allows the attorney general, defense secretary and CIA director to label citizens and non-citizens as "enemy combatants," placing them in military custody, holding them in detention indefinitely, interrogating them and denying them communication with outsiders or judicial review. "Due Process" is overridden for such persons. The same presidential order allows military tribunals at the president's discretion.

As noted in paragraphs above, Bureau of Prisons Emergency Surveillance order allows confidential communications between attorney and client are liable to be tapped, taped and used as evidence even when no guilt has been established.

~Louis Alvis

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