

The Patriot Act Ten Years Later: 9/11's Dubious Legacy



By Charles R. Gallagher III

While most anniversaries are marked with celebration, this year marks an altogether different milestone. This September represents the ten year anniversary of the terrorist attacks on September 11, 2001. Thousands tragically lost their lives in an event that galvanized the world. America's response was swift and included both a military response and the enactment of The Patriot Act.

On October 26, 2001, President George W. Bush signed The Patriot Act into law. The act is formally titled Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Prior to its final approval by the President, the bill quickly made its way through Congress without traditional deliberation and review. The final version was 342 pages long and delivered the morning of the vote, making it impossible for legislators to read the entire bill. On May 26, 2011 President Barack Obama signed a 4-year extension of The Patriot Act. Prior to the current reauthorization, it was extended in 2010, 2006 and 2005, each including some revisions to the act.

Controversy surrounded The Patriot Act from the outset. While the goal of the Patriot Act was to arm the government with tools to fight terrorism, it resulted in the loss of civil liberties to all Americans. The Act dramatically reduced restrictions on law enforcement's ability to search telephone, e-mail communications, medical, financial, and other records, eased restrictions on foreign intelligence gathering within the United States, expanded government authority to regulate financial transactions, and permitted law enforcement and immigration authorities to detain and deport immigrants suspected

of terrorism-related acts. The act also expanded the definition of terrorism to include domestic terrorism.

Specific provisions of the act drew concern from legal experts. For instance, the act provided for "National Security Letters" (NSL), a form of administrative subpoena used by the FBI, CIA, Department of Defense and other government agencies, which is issued to a particular entity or organization to turn over various records and data pertaining to individuals. They required no probable cause or judicial oversight and also contained a gag order, preventing the recipient of the letter from disclosing that the letter was ever issued. This provision has been found unconstitutional in *ACLU v. Department of Justice*, 321 F. Supp. 2d 24 (D.C. Cir. 2004). Here the ACLU argued that the National Security Letters violated the First and Fourth Amendments of the U.S. Constitution because the Act failed to spell out any legal process whereby a telephone or Internet company could try to oppose an NSL subpoena in court. The court agreed, and found that because the recipient of the subpoena could not challenge it in court it was unconstitutional.

The Patriot Act provided for other controversial practices including: indefinite detentions of immigrants, "sneak and peek" warrants, roving wiretaps and the ability of the FBI to gain access to documents that reveal the patterns of U.S. citizens, including library records and internet search history. "Sneak and peek" warrants allowed for delayed notification of the execution of search warrants. These sneak and peek provisions were struck down by *Mayfield v. United States*, 504 F. Supp. 2d 1023 (M.D. Oregon 2007) after an attorney, was wrongly jailed because of the searches. The court found the searches

to violate the provision that prohibits unreasonable searches in the Fourth Amendment to the U.S. Constitution. Roving wiretaps are wiretap orders that do not need to specify all common carriers and third parties in a surveillance court order, meaning that the government can tap into all communication methods of the suspect. Yet another highly controversial provision allows the FBI to make an order "requiring the production of any tangible things for an investigation to protect against international terrorism or clandestine intelligence activities." Most concerning to lawyers nationwide was the provision of the Patriot Act that authorized eavesdropping on confidential communications between lawyers and their clients in federal custody.

Dissent opposing The Patriot Act was both wide and diverse. Civil rights groups and commentators were vocal in their opposition and elected officials throughout the country denounced the act. In fact, the City of St Petersburg adopted a resolution on May 20, 2004 opposing the Patriot Act.

This year as we pause to honor the memory of those lost in 9/11, consider the lasting effect of the Patriot Act on the rights of all Americans.

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