

Police State

by Kelly Patricia O.Meara

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Insight on the News

If the United States is at war against terrorism to preserve freedom, a new coalition of conservatives and liberals is asking, why is it doing so by wholesale abrogation of civil liberties? They cite the Halloween-week passage of the antiterrorism bill -- a new law that carries the almost preposterously gimmicky title: "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act" (USA PATRIOT Act). Critics both left and right are saying it not only strips Americans of fundamental rights but does little or nothing to secure the nation from terrorist attacks.

Rep. Ron Paul of Texas, one of only three Republican lawmakers to buck the House leadership and the Bush administration to vote against this legislation, is outraged not only by what is contained in the antiterrorism bill but also by the effort to stigmatize opponents. Paul tells Insight, "The insult is to call this a 'patriot bill' and suggest I'm not patriotic because I insisted upon finding out what is in it and voting no. I thought it was undermining the Constitution, so I didn't vote for it -- and therefore I'm somehow not a patriot. That's insulting."

Paul confirms rumors circulating in Washington that this sweeping new law, with serious implications for each and every American, was not made available to members of Congress for review before the vote. "It's my understanding the bill wasn't printed before the vote -- at least I couldn't get it. They played all kinds of games, kept the House in session all night, and it was a very complicated bill. Maybe a handful of staffers actually read it, but the bill definitely was not available to members before the vote."

And why would that be? "This is a very bad bill," explains Paul, "and I think the people who voted for it knew it and that's why they said, 'Well, we know it's bad, but we need it under these conditions.'" Meanwhile, efforts to obtain copies of the new law were stonewalled even by the committee that wrote it.

What is so bad about the new law? "Generally," says Paul, "the worst part of this so-called antiterrorism bill is the increased ability of the federal government to commit surveillance on all of us without proper search warrants." He is referring to Section 213 (Authority for Delaying Notice of the Execution of a Warrant), also known as the "sneak-and-peek" provision, which effectively allows police to avoid giving prior warning when searches of personal property are conducted. Before the USA PATRIOT Act, the government had to

obtain a warrant and give notice to the person whose property was to be searched. With one vote by Congress and the sweep of the president's pen, say critics, the right of every American fully to be protected under the Fourth Amendment against unreasonable searches and seizures was abrogated.

The Fourth Amendment states: "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."

According to the American Civil Liberties Union (ACLU), which is joining with conservatives as critics of the legislation, the rationale for the Fourth Amendment protection always has been to provide the person targeted for search with the opportunity to "point out irregularities in the warrant, such as the fact that the police may be at the wrong address or that the warrant is limited to a search of a stolen car, so the police have no authority to be looking into dresser drawers." Likely bad scenarios involving the midnight knock at the door are not hard to imagine.

Paul, a strict constructionist (see Picture Profile, Sept. 3), has a pretty good idea of what Americans may anticipate. "I don't like the sneak-and-peek provision because you have to ask yourself what happens if the person is home, doesn't know that law enforcement is coming to search his home, hasn't a clue as to who's coming in unannounced) and he shoots them. This law clearly authorizes illegal search and seizure, and anyone who thinks of this as antiterrorism needs to consider its application to every American citizen."

The only independent in the House, Rep. Bernie Sanders from Vermont, couldn't support the bill for similar reasons: "I took an oath to support and defend the Constitution of the United States, and I'm concerned that voting for this legislation fundamentally violates that oath. And the contents of the legislation have not been subjected to serious hearings or searching examination."

Nadine Strossen, president of the ACLU and professor of law at New York University, tells Insight, "The sneak-and-peek provision is just one that will be challenged in the courts. We're not only talking about the sanctity of the home, but this includes searches of offices and other places. It is a violation of the Fourth Amendment and poses tremendous problems with due process. By not notifying someone about a search, they don't have the opportunity to raise a constitutional challenge to the search."

Even before the ink on the president's signature had dried, the FBI began to take advantage of the new search-and-seizure provisions. A handful of companies have reported visits from federal agents demanding private business records. C.L. "Butch" Otter (R-Idaho), another of the three GOP lawmakers who found the legislation unconstitutional, says he knew this provision would be a problem. "Section 215 authorizes the FBI to acquire any business records whatsoever by order of a secret U.S. court. The recipient of such a search order is forbidden from telling any person that he has received such a request. This is a violation of the First Amendment right to free speech and the Fourth Amendment protection of private property."

Otter added that "some of these provisions place more power in the hands of law enforcement than our Founding Fathers could have dreamt and severely compromises the civil liberties of law-abiding Americans. This bill, while crafted with good intentions, is rife with constitutional infringements I could not support."

Like most who actually have read and analyzed the new law, Strossen disagrees with several provisions not only because they appear to her to be unconstitutional but also because the sweeping changes it codifies have little or nothing to do with fighting terrorism. "There is no connection," insists Strossen, "between the Sept. 11 attacks and what is in this legislation. Most of the provisions relate not just to terrorist crimes but to criminal activity generally. This happened, too, with the 1996 antiterrorism legislation where most of the surveillance laws have been used for drug enforcement, gambling and prostitution."

"I like to refer to this legislation," continues Strossen, "as the 'so-called antiterrorism law,' because on its face the provisions are written to deal with any crime, and the definition of terrorism under the new law is so severely broad that it applies far beyond what most people think of as terrorism." A similar propensity of governments to slide down the slippery slope recently was reported in England by The Guardian newspaper. Under a law passed last year by the British Parliament, investigators can get information from Internet-service providers about their subscribers without a warrant. Supposedly an antiterrorist measure, the British law will be applied to minor crimes, tax collection and public-health purposes.

Under the USA PATRIOT Act in this country, Section 802 defines domestic terrorism as engaging in "activity that involves acts dangerous to human life that violate the laws of the United States or any state and appear to be intended: (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping."

The ACLU has posted on its Website, www.aclu.org, a comprehensive list of the provisions and summarizes the increased powers for federal spying. The following are a sample of some of the changes as a result of the so-called USA PATRIOT Act. The legislation:

- minimizes judicial supervision of federal telephone and Internet surveillance by law-enforcement authorities.
- expands the ability of the government to conduct secret searches.
- gives the attorney general and the secretary of state the power to designate domestic groups as terrorist organizations and deport any noncitizen who belongs to them.
- grants the FBI broad access to sensitive business records about individuals without having to show evidence of a crime.
- leads to large-scale investigations of American citizens for "intelligence" purposes.

More specifically, Section 203 (Authority to Share Criminal Investigative Information) allows information gathered in criminal proceedings to be shared with intelligence agencies, including but not limited to the CIA -- in effect, say critics, creating a political secret police.

No court order is necessary for law enforcement to provide untested information gleaned from otherwise secret grand-jury proceedings, and the information is not limited to the person being investigated.

Furthermore, this section allows law enforcement to share intercepted telephone and Internet conversations with intelligence agencies. No court order is necessary to authorize the sharing of this information, and the CIA is not prohibited from giving this information to foreign-intelligence operations -- in effect, say critics, creating an international political secret police.

According to Strossen, "The concern here is about the third branch of government. One of the overarching problems that pervades so many of these provisions is reduction of the role of judicial oversight. The executive branch is running roughshod over both of the other branches of government. I find it very bothersome that the government is going to have more widespread access to e-mail and Websites and that information can be shared with other law-enforcement and even intelligence agencies. So, again, we're going to have the CIA in the business of spying on Americans -- something that certainly hasn't gone on since the 1970s."

Strossen is referring to the illegal investigations of thousands of Americans under Operation CHAOS, spying carried out by the CIA and National Security Agency against U.S. activists and opponents of the war in Southeast Asia.

Nor do the invasion-of-privacy provisions of the new law end with law enforcement illegally searching homes and offices, say critics. Under Section 216 of the USA PATRIOT Act (Modification of Authorities Relating to Use of Pen Registers and Trap and Trace Devices), investigators freely can obtain access to "dialing, routing and signaling information." While the bill provides no definition of "dialing, routing and signaling information," the ACLU says this means they even would "apply law-enforcement efforts to determine what Websites a person visits." The police need only certify the information they are in search of is "relevant to an ongoing criminal investigation."

This does not meet probable-cause standards -- that a crime has occurred, is occurring or will occur. Furthermore, regardless of whether a judge believes the request is without merit, the order must be given to the requesting law-enforcement agency, a veritable rubber stamp and potential carte blanche for fishing exhibitions.

Additionally, under Section 216, law enforcement now will have unbridled access to Internet communications. The contents of e-mail messages are supposed to be separated from the e-mail addresses, which presumably is what interests law enforcement. To conduct this process of separation, however, Congress is relying on the FBI to separate the content from the addresses and disregard the communications.

In other words, the presumption is that law enforcement is only interested in who is being communicated with and not what is said, which critics say is unlikely. Citing political implications they note this is the same FBI that during the Clinton administration could not adequately explain how hundreds of personal FBI files of Clinton political opponents found their way from the FBI to the Clinton White House.

And these are just a few of the provisions and problems. While critics doubt it will help in the tracking of would-be terrorists, the certainty is that homes and places of business will be searched without prior notice. And telephone and Internet communications will be recorded and shared among law-enforcement and intelligence agencies, all in the name of making America safe from terrorism.

Strossen understands the desire of lawmakers to respond forcefully to the Sept. 11 attacks but complains that this is more of the same old same old. "Government has the tendency," she explains, "to want to proliferate during times of crisis, and that's why we have to constantly fight against it. It's a natural impulse and, in many ways, I don't fault it. In some ways they're just doing their job by aggressively seeking as much law-enforcement power as possible, but that's why we have checks and balances in our system of government, and that's why I'm upset that Congress just rolled and played dead on this one."

Paul agrees: "This legislation wouldn't have made any difference in stopping the Sept. 11 attacks," he says. "Therefore, giving up our freedoms to get more security when they can't prove it will do so makes no sense. I seriously believe this is a violation of our liberties. After all, a lot of this stuff in the bill has to do with finances, search warrants and arrests."

For the most part, continues Paul, "our rights have been eroded as much by our courts as they have been by Congress. Whether it's Congress being willing to give up its prerogatives on just about everything to deliver them to an administration that develops new and bigger agencies, or whether it's the courts, there's not enough wariness of the slippery slope and insufficient respect and love of liberty."

What does Paul believe the nation's Founding Fathers would think of this law? "Our forefathers would think it's time for a revolution. This is why they revolted in the first place." Says Paul with a laugh, "They revolted against much more mild oppression."

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