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Museletter: November/December 2005

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Museletter

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Thanksgiving Break (11/22 to 11/26)

11/22 and 23
7:30 a.m. to 6:00 p.m.
11/24 and 25
Closed
11/26
1:00 p.m. to 6:00 p.m.

Exams (12/2 to 12/15)

Sunday
10:00 a.m. to 1:00 a.m.
Monday to Thursday
7:30 a.m. to 1:00 a.m.
Friday
7:30 a.m. to midnight
Saturday
9:00 a.m. to midnight

Christmas Break (12/16 to 1/14)

12/16
7:30 a.m. to 6:00 p.m.
12/17 and 18
Closed
12/19 to 12/22
7:30 a.m. to 6:00 p.m.
12/23 to 1/2
Closed
1/3 to 1/6
7:30 a.m. to 6:00 p.m.
1/7 and 1/8
Closed
1/9 to 1/13
7:30 a.m. to 6:00 p.m.
1/14
Closed

The Patriot Act

Joyce Manna Janto

On September 11, 2001 the United States suffered the most severe attack on domestic soil since the raid on Pearl Harbor in 1941. A scant month later, on October 23d HB3162, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act was introduced. This act is more familiarly known as the USA Patriot Act. The Act was introduced and passed by the House on the 23d. It was considered and passed by the Senate on October 24th and signed into law by the president on October 26th. What must be kept in mind is that, for the most part, the Patriot Act did not create new law. What it did do was amend dozens of already existing federal statutes. Most of the provisions of the Patriot Act affected Title 12 (Banking); Title 18 (Criminal Law), Title 31 (Money and Finance); and the Federal Rules of Evidence.

It is also important to realize what the Patriot Act did *not* do. Many people assume it is the Patriot Act that that allows the federal government to require libraries to turn over circulation records. This is not quite accurate. While all 50 states have rules that relate to the confidentiality of library records, that protection is not absolute. The states and the federal government have always acknowledged other legal claims to the information that libraries hold in confidence. Subpoenas and search warrants have long been used to obtain library circulation records.

The other thing the Patriot Act did *not* do was to make the proceedings of the FISA Court secret. The FISA court was created in 1978 with the passage of the Foreign Intelligence Surveillance Act. As the court was created to deal with matters of foreign intelligence and national security, it was thought necessary to keep the decisions secret. Warrants issued by the FISA court were also to be kept secret, this gag provision dates from 1978, not from the Patriot Act.

So what did the Patriot Act do? The most sweeping provisions of the Act were the amendments to FISA. Previously the provisions of FISA were limited to common carriers, businesses that provided public accommodations, storage locker facilities, and car rental agencies. The Patriot Act now applies FISA to all businesses. Not only to libraries and bookstores but also to hospitals, doctor's offices, credit bureaus, and banks. Any business is now a legitimate target of a

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FISA warrant. You might ask why the necessity of bringing these businesses under the umbrella of FISA. Could not the FBI still obtain the needed information with a regular warrant? The big difference is the standard of required for a warrant to be issued. Under federal law, the standard for a search warrant is "probable cause." The standard for a FISA warrant is "mere suspicion." Another change made by the Patriot Act deals with the reach of warrants. Previously a warrant had to be signed by a judge or magistrate in the jurisdiction where the search was to take place. Now the warrant may be signed in the jurisdiction where the investigation is centered. This allows a judge in an Iowa court to sign a warrant allowing for the search of AOL offices in Arlington, Virginia.

Another large change the Patriot Act made to the federal criminal law concerned the execution of search warrants. Previously, officers had to "knock and announce" prior to executing the warrant. There had been judicial exceptions carved out to allow for a "no knock" warrant. These exceptions generally were limited to those situations where it would be dangerous for the agents to knock and announce or in cases where evidence might be destroyed. Now federal agents are allowed to use what are known as "sneak and peek" warrants. These warrants allow officers to surreptitiously enter a building and photograph what they find. Notice of the search can be delayed indefinitely. While the statute does say that notice must be given within a reasonable time, the notification can be delayed with good cause. Furthermore, this provision applies to all criminal investigations. This further extension of intelligence standards to the criminal sphere is echoed in changes to the FISA wiretap provisions. Previously the standard for a FISA wiretap was "[t]he purpose of the wiretap is to gather foreign intelligence information." This was changed to "[a] purpose of the wiretap is to gather foreign intelligence information.

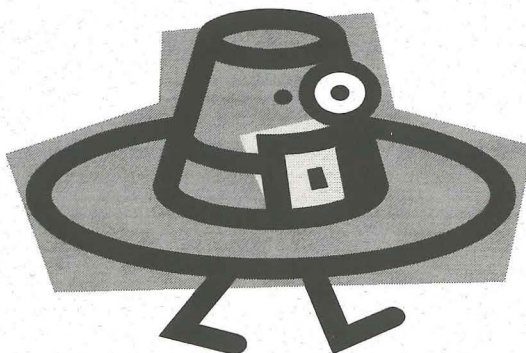
Another significant change made by the Patriot Act was the change in the definition of "communications" as applied to pen registers and trap and trace devices. Formerly these devices were used for telephones to collect phone numbers. Since no content is recorded by these devices they were not considered searches and no warrant was required. Now these devices may be used on any electronic communication. Information that may be obtained by these devices include IP addresses, port numbers and email headers.

Many of the provisions of the Patriot Act were designed to sunset in December, 2005. In July, 2005 the House passed HR3199, the USA Patriot and Terrorism Prevention Reauthorization Act. This act would permanently extend the 16 provisions of the Patriot Act due to sunset in December. The only exceptions are the provisions for sections 206 (which provides for roving wiretaps) and 215 (which extends FISA authority to all business records). These sections would sunset in 10 years. Also in July, the Senate passed S1389, the USA Patriot Improvement and Reauthorization Act. This act makes the same 16 sections permanent and extends sections 206 and 215 for four years. The two bills are now in conference. The Senate has appointed members to the conference committee, but the House has yet to do so.

TEN TRIED AND TRUE TIPS FOR EXAMS

1. Location, location, location. Panic can be contagious; so consider if the library is the best place for you to study. Headphones are an asset to help you concentrate.
2. Answer the question asked. Read the call of the question first and the fact pattern second. It can help you to spot the issues and answer the question posed.
3. Practice exams are a must. The library maintains a selection of past exams donated by professors at their discretion. Some are available via the web to students with a valid University of Richmond Internet connection at <http://lobo.richmond.edu/examfile>. Additional exams are on reserve.
4. Outline your answer. Organized and clear answers are appreciated. Outlines also permit you to prioritize your answers.
5. Get a good night's sleep and eat before your exam.
6. Manage your time. There are only so many hours in a day and sleep is a must. See tip #5.
7. Outlines can be helpful; the rule of thumb is ten pages for every course hour. Reduce the larger outline to a checklist that can be memorized. The goal is to structure information and knowledge into a usable format. Remember the purpose of the outline is to jog your memory not be a substitute for the text.
8. Study groups can be helpful.
9. Relax, it is only a few hours of your life.
10. Become familiar with examnesia. In other words do not talk about an exam as most often you only psych yourself out.

Happy Holidays



Law at the Movies: Separate Lies

By Gail Zwirner

This well-cast British flick starring Tom Wilkinson (best known for his role in *The Full Monty*), Emily Watson (*Gosford Park*) and Rupert Everett (he's recast as the upper crust playboy) presents a "sticky wicket" legal ethics issue for the Barrister husband (Wilkinson) and his wife (Watson). Wilkinson is brilliant in this film. He carries off well split-second decisions, particularly when they are ethical decisions affecting his personal and professional life.

It was heart-wrenching for him when he discovers Watson's and Everett's infidelity. To really put his "knickers in a twist," she also admits that she was driving Everett's car which was seen in a hit-and-run accident. Wilkinson hoped to ruin Everett by turning him in as the driver, only to have Watson admit she was the offender. He wanted to cover it up at that point. Watson questioned his motive and she wanted to admit to the wrongdoing. He would not allow her to turn herself in, and that created a string of lies, including those of the victim's widow.

Wilkinson's role proved his ability to succeed in diverse roles. The scenes of London and the countryside were beautiful, adding another good reason to see this film. -gfz

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