

From: Alexander Avakov

To: A Lawyer

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## 1) SURVEILLANCE

Dear All,

**I am sending you this letter with the hope to get a lawyer. I have been subjected to surveillance by feds and third parties, but cannot do anything about it. NOBODY SHOULD BE DEPRIVED OF PRIVACY THE WAY I WAS.**

I was born in the U.S.S.R. in 1954 to the family of talented engineers. Since a young age I had been intellectually curious and interested in economics and philosophy. After completing a high school, I had been studying for five years in the Ural State University in Sverdlovsk (now Ekaterinburg), specializing in mathematical economics. In 1975, during the final year of university, I distributed pamphlets with a liberally-minded critique of the Soviet system. The pamphlets called for guarantees of constitutional rights, economic reforms, freedom for the Warsaw Pact members, and independence of the Soviet republics. As it was long before perestroika, in the depths of the Brezhnev era, I was arrested, accused of “Anti-Soviet Agitation and Propaganda” (which was a notorious article of the Criminal Code, in effect annulling freedom of speech guaranteed by the constitution) and sentenced to 1 and ½ years of hard labor.

My sentence was served in a KGB-run labor camp among other dissidents, including former journalists, historians, military people, and diplomats. After completing the sentence, I was subjected to extrajudicial punishment of “administrative supervision” for refusing to cooperate with the KGB. During my time in the prison camp and after it, using my chance to socialize with interesting people, I have expanded my education by including semiotics, anthropology, law, sociology, and history.

In 1981, when the country was “cleansed” of subversive elements, I was allowed to emigrate to the U.S. **Even though I was officially welcomed with my family in the United States, I have never been completely trusted by the U.S. authorities.**

In America, in the beginning for a short while I had been watched apparently by the CIA (such surveillance on the U.S. territory was allowed by the Executive Order 12333) and then for a few years by the FBI. I have hard documentary proof about the FBI surveillance in 1982-1988.

Surveillance by the FBI counter-intelligence had been conducted under the pretext (according to the FBI documents received under the Freedom of Information/Privacy Act) that I “had a solid educational background” and “was not Jewish”; I am in fact of Armenian-Russian descent, but the whole idea that if you are not of the “correct” identity (“not Jewish”) and have a good education, you should be subjected “national security investigation” and surveillance by the FBI, is absurd and discriminatory. With regard to “a solid educational background” I can only say that immigration law of the United States allows entrance into the country of exceptionally bright people (“exceptional ability” visas EB-2(B)). The more surprising is that the FBI can start an investigation once they realize that you are really not stupid. All this was accompanied by the commentaries of the FBI operatives that I was “too bright” and “wrong bright.”

Meanwhile, I have had a successful career as a computer programmer and have travelled extensively abroad at an international software company. During my travels, I have had episodic collisions with the CIA and other international intelligence organizations, and have been continuously watched domestically.

According to my observations, since the 1980s, feds have conducted their surveillance with the possible assistance of third parties. I am little bit uncertain about the exact actors conducting surveillance now. However, I can trace what looked like surveillance by non-FBI third parties dating from 1985. There are signs that I am still subject to persistent surveillance by an unrevealed yet tremendously sophisticated party; I suspect, in particular: wiretapping of my phone and home conversations, of conversations during walks and in my car, and electronic wiretapping of my computers.

Basically, there are two theories with regard to who may conduct this surveillance now: a private party (like an employer), or a public, government party (like the federal or New Jersey national security agencies). I would like to ask your advice and assistance regarding possible legal recourse concerning my suspicions. I would also be interested in discussing what additional research may be done to obtain documents or question potential witnesses to support my claim, and

- If this surveillance is conducted by a private party, open a question of a civil liability. By the law of New Jersey each day of wiretapping or other electronic surveillance without consent is punishable by 100 dollars penalty (for 37 years in my case it accrues to more than 1.3 million dollars). The next question is that of defamation (the penalty for which is difficult for me to estimate).
- Or, if the surveillance is conducted by the federal or New Jersey national security agencies, they probably are doing it according to a warrant (if they are not, it boils down to the previous point about a civil liability for electronic surveillance without a warrant). Even if they are doing with a warrant, they have a flimsy probable cause, in which case they have been misrepresenting the evidence for probable cause before the court, and are guilty of extreme professional malpractice by pushing the continuation of such intrusive surveillance for so many years; and the only reason they continue to do so is because they are unable to admit such an egregious mistake. Additionally, there are reasons to believe they may be engaged in some pretty nasty counterintelligence disruption behavior. All of which needs to stop; and people conducting these actions must be reprimanded and punished.

A few words about the FBI surveillance in particular.

My early encounters with the FBI surveillance are documented in my book. I found support for the idea that surveillance is practiced more or less routinely in America in the 1987 article "Hi, Spy" in *The New York Times* that wrote: **"Former F.B.I. chief and newly appointed Director of Central Intelligence, introduced a colorful new bit of spy-speak in a speech last December. Addressing the tricky problem of counterintelligence in our democratic society, he said: 'As our main tactic... we 'spiderweb' known or suspected intelligence operatives. Spinning our webs with physical and electronic surveillance... we weave a barrier between hostile agents and our citizens.'"**

There was one problem: I am a kind of person, for whom everything must be conceptually at its place. I bought books about the American constitutional law: in them, citing the decisions of the U.S. Supreme Court, it was written that only a court could order surveillance. So, I thought, there should have been court proceedings, charges of

a crime — but there was none of that. And, finally, in 1990, there came a publication in the *New York Times* about some secret “Foreign Intelligence Surveillance Court”. It was a bombshell: why secret, what crime, who made the accusations, where was the advocate? When I came to America, I expected the least to deal with such a Kafkaesque court. The big portion of the U.S. Constitution was suddenly in a garbage box.

What makes matters even worse is that surveillance ordered by this secret Court is fantastically total. In 2002, on a rare occasion, one decision of this Court became known to Congress. **In this decision the Court noted that after it grants a surveillance request, "the FBI will be authorized to conduct simultaneously, telephone, microphone, cell phone, e-mail and computer surveillance of the U.S. person target's home, workplace and vehicles. Similar breadth is accorded the FBI in physical searches of the target's residence, office, vehicles, computer, safe deposit box and U.S. mails where supported by probable cause."** (There is a recent, 2022, case of a man, a citizen of the U.S., charged with “disorderly conduct” — which is a Class D misdemeanor. This person was sentenced to 3 months of house arrest and 3 years of probation; also, and here it becomes interesting, he was sentenced to 3 years of government surveillance of his phone, computer, emails, bank accounts, and social media accounts. Surely, if the government can sentence you to this surveillance for 3 years for such minor violation as a Class D misdemeanor, one should consider plausible electronic surveillance for 40 years when — like my case — the government claims “national security interests”.)

The Constitution says that nobody should be deprived of life, liberty, or property without due process of law. The breadth and totality of surveillance employed against “foreign intelligence” amounts, as a minimum, to a deprivation of liberty; one can argue that what such surveillance affects also life and property. “Due process of law” is commonly understood as the right for “a day in court”, with all those procedural rights defined in the Bill of Rights (we should remind that four of the 10 amendments of the Bill of Rights deal exactly with these procedural rights: Fourth, Fifth, Sixth, and Eighth Amendments; and most of the specific “rights” enumerated in the Bill of Rights are described in these four amendments; also Fourteenth Amendment should be added to the list because of its importance with regard to due process). It seems, it was decided that — real or imaginary — “foreign intelligence” does not deserve the requirements of due process of the U.S. Constitution.

**One of the hallmarks of the existing Foreign Intelligence Court (FISC) procedure is that the target of surveillance cannot redress the injury caused by the FISC surveillance. In a recent critique of the Foreign Intelligence Surveillance Act (FISA) warrant-procedure as amended by the PATRIOT Act, a Note in the *Yale Law Journal* proposes that FISA be repealed and that the United States return to use of warrantless foreign intelligence surveillance in which “targets could challenge the reasonableness of the surveillance in an adversary proceeding in an Article III court after the surveillance was complete.”**

**For the Note, “the possibility of after-the-fact reasonableness review of the merits of their decision in Article III courts (in camera or not) would help guarantee careful and calm DOJ decisionmaking,” and would allow to redress the injury caused by this surveillance.**

That after-the-fact review, either instead of the Foreign Intelligence Surveillance Court (FISC) procedure or in addition it, makes sense. The existence of FISC does not change the nature of the decision to start surveillance as an executive discretion. FISC is a “court” only in name, as the lawyers for the target of surveillance do not take part in its proceedings, and FISC rubber-stamps decisions to start surveillance.

The situation with FISC surveillance illustrates that over decades the U.S. counterintelligence apparatus has created a legal system where all the usual judicial ways of achieving justice are blocked. You can spend all your life figuring out which of the many federal, state and local police and intelligence agencies do surveillance against you. History books tell us that intelligence operatives usually behave as a mafia in courts and engage in perjury when asked about national security surveillance. With nominal punishment of 100 per day for electronic surveillance without a

warrant, nosy policemen or individuals and corporations with motives and resources have a license for such warrantless electronic surveillance. And the U.S. intelligence community considers this situation normal.

**LET ME SHARE SOME OF MY EXPERIENCE AND MAKE EDUCATED GUESSES:** Intelligence services love to collect a compromising material (especially, if the targets of surveillance show some degree of political activity). The things they were looking for, however commonplace, would not be moral, and I would try to avoid them anyway. But they have added an additional determination not to give to them the compromising material. As the result they are unhappy with me and think I am too independent. My life experience in America has led me to perceive the “big world” according to the old Soviet habits: as living “not by truth”. I adapted as a non-conformist in America. The FBI complained that I had too many books (I have about 20,000 of them). Half of the library is in Russian, and that is “wrong culture” — sure, “we do not need Pushkin, Tolstoy, and Sakharov”! Another half is in English, and here many of the books are on the subject of surveillance and raise the alarm about a real danger of electronic totalitarianism in the U.S. — and that is “tantamount to espionage”! Oh, and you notice spectacular achievements of our propaganda — you are a real, real spy! On top of that the FBI profilers said that I had “the profile of a terrorist” and that our family was a “terrorist cell”. And I hear things like that from time to time from the FBI or police operatives: “You have to watch this dog 24 x 7. He is a dog.” In their slang “dog” is opposite to “god”, a bad person. I am in no way a God-maniac, but to be called a “bad person” is unpleasant and meaningful. To call somebody a “dog” is a language trick to justify continuing surveillance.

**I hope my “educated guesses” are not completely deprived of logic and make at least some sense to you.**

**People conducting surveillance do not do their job perfectly — they make mistakes and they talk. But they can afford to make mistakes and talk, because the American laws and judicial system are designed in such a way that it is very difficult to prove the fact of electronic surveillance in the court of law. At some point, the system of surveillance starts to resemble a system of harassment.**

**GENERALLY, MY ISSUES ARE AROUND THE LACK OF REDRESS AGAINST UNJUSTIFIED SURVEILLANCE BY THE GOVERNMENT OR A PRIVATE PARTY.**

**If, having been introduced to the depth of the problem, nevertheless, you think you can take the role of a human-rights lawyer in my case, you are welcome.**

Please find more documentation of my allegations, as described in more detail in my book “*Metafolklore*.” **You can download for free the pdf-files of all the Four Volumes of the Fifth Edition of this book, from the website: <https://metafolklore.ru>.**

These Four Volumes represent a collection of my life works, observations, and thoughts, which I consider interesting. **Please do not take these Four Volumes as an example of logorrhea — I try to show surveillance in the broad context of my life. Within the context, many of my observations and thoughts in these volumes are about the specific facts of intrusion into my private life and describe my search for protection against surveillance and violations of privacy — as such “*Metafolklore*” is directly related to the main topic of my letter to you and provides references to evidence, which you as a lawyer may need.**

## 2) ADDITIONAL CONCERNS REGARDING PUBLISHING MY BOOK

There are attempts to “suppress” my book “*Metafolklore*”. An archetypically hostile reaction to this book was expressed in *LA Times* about one of the contributing sources to “*Metafolklore*” by William Askins, ex-CIA Clandestine Service Senior Operations Officer: **"This book is chock full of secrets. The public doesn't need to know this stuff and it should be suppressed!"** These attempts have practical consequences.

For years they had prevented me from using an American website for the electronic version of my book and forced me to use a Russian one instead.

I also have the printed version of “*Metafolklore*,” which I self-publish. It also has encountered obstacles. I would like to underscore that *World Human Rights Guide*, published by *The Economist*, defines “independent book publishing” as one of 40 basic human rights and says that it is protected by Article 19 of the Universal Declaration of Human Rights. Nevertheless, one American self-publishing company, Xlibris, **blocked** the updates to my book over disagreement with the content of the book and returned my money. My current self-publisher, Amazon, has been **playing games** with the distribution of my book.

During the preparation of the publication of my book on Amazon, I specified search keywords: KGB, FBI, CIA, MI5, Mossad, NSA, privacy. I often buy a lot of books on Amazon specifying these keywords in Advanced Search — my book never appears in the search results. When I buy a single copy of some books of other authors, finding them by these keywords, they immediately jump in the search results to the first pages. I know for sure that dozens of copies of my book “*Metafolklore*” are being sold on Amazon each month, but my book never jumps to the first pages of the Amazon book search by these keywords. In fact, I have never seen my book in the Amazon search results by these keywords in the first few dozen pages of the search results.

**It proves that Amazon search keywords are a complete profanation, and that they have the ability to suppress undesirable books, and that they indeed use this suppression mechanism against my book.**

**I would not be surprised if the FBI is behind the efforts to suppress “*Metafolklore*”, but I am not necessarily blaming the government — it is more probably the result of actions of overcautious employees of Amazon who stumbled against a “subversive-looking” book. And even if the government is involved in some indirect way, I am not sure that the government would be liable in this case. This case is more about Amazon itself. I think, I have very concrete evidence of Amazon’s unjustified efforts to exclude my book from normal ranking algorithms.**

**THIS SITUATION WITH AMAZON RANKINGS CANNOT BE TOLERATED AND CAN OPEN THE DIRECTION OF AN ADDITIONAL LEGAL ACTION.**

Sincerely,

Alexander Avakov