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AMERICA AFTER 9/11 – HOME OF THE FREE?

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WASHINGTON - Since the tragedies of Sept. 11, the subject of national security vs. civil liberties has been a touchy one. Civil rights advocates have compared the mood in the country to McCarthy-era paranoia, while those concerned with national security are saying that in this time of crisis, the government must do everything possible to ensure the safety of its citizens. The question remains: will security come at the expense of civil liberties?

Of those groups who are critical of increased security measures, Amnesty International has spoken out about its concerns. "Despite repeated statements since Sept. 11 that it remains committed to international law and standards, the U.S. government is failing to match its actions to this rhetoric following the attacks on New York and Washington last year," the organization stated in a press release in April.

In defense of the government's actions, President Bush declared to the American people that, "We are today a nation at risk to a new and changing threat...The U.S. government has no more important mission than protecting the homeland from terrorist attacks." He views increased security measures as necessary and practical adjustments to the post-9/11 world.

One such adjustment the administration has made to protect the homeland is the USA Patriot Act, a controversial new initiative backed by President Bush. According to one of this new Patriot Act's chief critics, the American Civil Liberties Union (ACLU), the act cuts back on traditional checks and balances that ensure individual liberty and vastly extends law enforcement officials' powers. The ACLU points out that it also gives the government authority to detain -- in some cases indefinitely -- non-citizens based on visa violations. While this might sound logical to some, the ACLU claims that the Act would most likely not have led to arrests before Sept. 11.

In response to critics, the administration argues that new rules are needed to protect freedom in the United States. The White House has released descriptions of the Patriot Act that outline its intended effect. They contend, among other things, that the Act will simply "[update] federal laws to reflect the rapid and dramatic changes what have taken place in recent years in communications technology," and that those people who are detained under suspicion of terrorist activity are "certif[ed] as threats to national security" by the Attorney General of the United States.

Civil-rights groups retort that the act has created two forms of

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justice, one for American citizens and one for non-citizens, who can now be denied constitutional rights. These groups stress the fact that people who are in this country are supposed to be entitled to certain rights, such as due process, whether or not they are legal citizens.

The USA Patriot Act does expand law enforcement agencies' ability to conduct secret searches. Normally, people are informed when a search is conducted, but in some cases regarding electronic information, law enforcement officials can now get court permission to delay notification of a search warrant. Government officials say delaying disclosure of searches is important when it comes to computer records because this kind of evidence can easily and quickly be destroyed. However, the ACLU complains that keeping such searches secret prevents people from contesting them.

In a blow to the government's position, the Foreign Intelligence Surveillance Court spoke for the first time in 25 years last month, releasing an opinion against secret searches. It placed limits on the Justice Department's methods of conducting foreign intelligence searches on U.S. soil. The court explained that it was important to comply with statutes and to protect Americans' privacy against "highly intrusive surveillances and searches." The Justice Department sticks by its original position and is currently appealing the court's ruling.

Also under the Act, law enforcement officials are able to gain greater access to people's personal financial information. Financial institutions are required to monitor daily financial transactions even more closely and are required to share suspicious information with federal agencies, including the CIA. The law also allows law enforcement to get easy access to individual credit reports without informing the person whose records are being viewed. The government points out that "suspicious transactions" which might suggest terrorist activities need to be addressed, asserting that all of these new regulations are building "the foundation for a stronger, more secure America." The ACLU says that the secret viewing of financial data is particularly disturbing because a person is unable to clarify or correct the information if there is a mistake. People could get thus in trouble for misinformation on their credit reports.

Under the heading of "domestic terrorism," the Act now gives the Attorney General and the Secretary of Defense the power to designate domestic groups as terrorist organizations, provoking an outcry from groups like the ACLU. According to an ACLU legal analysis of the Act, this threatens to transform protestors into terrorists if they engage in conduct that "involves acts dangerous to human life." The group worries that this could result in activists who use confrontational tactics, such as Greenpeace or People for the Ethical Treatment of Animals (PETA), being classified as terrorists. The regular anti-globalization protests that began in Seattle could also be branded terrorist acts. Even those who provide lodging or other assistance to "domestic terrorists" could have their homes wiretapped and could be prosecuted, the ACLU says. The government, on the other hand, sees this as a simple case of protecting the U.S. from further attacks, only acting against official "threats to national security."

Controversial new rules also minimize the role of a judge in conducting searches. The court still has to issue an order, but the law enforcement official does not have to tell the court the location being searched. Thus, the judge is unable to monitor the extent to which the order is being followed. While some civil rights groups object, President Bush sees this as a simple streamlining of investigative procedures. [As of September of 2001,] "Law enforcement agencies have to get a new warrant for each new district they investigate, even when they're after the same suspect. Under this new law, warrants are valid across all districts and across all states." After certifying to a court that the records it seeks may be relevant and obtaining an order, the

government can now force businesses to turn over a person's educational, medical, financial, mental health and travel records. This is a simple investigative procedure, according to the administration, but the ACLU claims that orders may be based on a "very low standard of proof and without meaningful judicial oversight."

The Act also allows intelligence agencies such as the CIA, the Immigration and Naturalization Service (INS) and others to share sensitive information in criminal cases. Once the agency explains what kind of information it seeks, law enforcement agencies can use tools like wiretaps and intelligence searches to provide data to the CIA. According to the ACLU, this "effectively puts the CIA back into business of spying on Americans." The President, however, justifies this new information consolidation as a vital step in preventing attacks. In a public address given when he signed the Patriot Act last year, Bush stated that "it gives intelligence operations and criminal operations the chance to operate not on separate tracks, but to share vital information so necessary to disrupt a terrorist attack before it occurs."

Although the Patriot Act passed through the Senate by a vote of 98-1 last October, more recently not everyone in the government has been supporting the new approach to security post-Sept. 11. Several members of Congress, including Sen. Russ Feingold (D-Wis.), and House Majority Leader Dick Armey (R-Tex.) have voiced their growing discontent about these measures. Indeed, some have come out strongly against them.

"Are we doomed to be a police state?" asks Rep. Ron Paul, a Republican from Bush's home state of Texas. He adds, "America is not now a ruthless authoritarian police state. But our concerns ought to be whether we have laid the foundation of a more docile police state." Paul says that video cameras monitoring American's every move, barricades, metal detectors and police at many governmental buildings are meant to strengthen national security but they also limit civil liberties. This is a concern to him because it "eliminates the enjoyment of privacy that a free society holds dear."

And the USA Patriot Act is not the only controversial aspect of the post-9/11 war on terrorism. As of last November, 1,147 people were being held in connection with terrorism investigations, according to the ACLU. In many cases, these detainees did not know why they were being held or how long they would have to stay in jail.

That same month, Attorney General John Ashcroft unveiled plans to interview some 5,000 men who had entered the United States within the past two years from specified countries. In March, he extended the program to 3,000 more Middle Eastern and South Asian immigrants who had recently entered the country. He asserts that such investigations explore very real and very imminent threats of danger, but civil rights groups point out that, by his own admission, the list of subjects was compiled without particularized suspicion of any of these men -- it was solely based on their country of origin. The threat may be real, but so are some poignant testimonials:

"I have now been in solitary confinement for three-and-a-half months and by the time of the next hearing I will have been here for four months," wrote one detainee from Metropolitan Detention Center in Brooklyn, NY, in a letter to the ACLU. "Why am I imprisoned? Why in solitary confinement? And why under maximum-security measure? I have many questions and no answers. What are they accusing me of? Nobody knows."

Also in November, the president issued an order in his capacity as Commander-in-Chief investing himself with the authority to try individuals suspected of terror-related activities in military tribunals rather than a civilian court. The government cites the increased effectiveness of such tribunals in forwarding their anti-

terrorist actions, while Amnesty International has called them "second class justice" for non-citizens because only foreign nationals can be tried in them, even when U.S.-citizens are accused of the same crime.

At these tribunals, evidence standards are lower -- hearsay is admissible, for instance -- and a convicted person has no right to appeal to an independent and impartial court. Instead, appeals must be made to a three-member panel appointed by the Secretary of Defense.

The Department of Defense is quick to point out that it is drawing up rules providing for presumption of innocence, permitting conviction only after proving guilt beyond a reasonable doubt, guaranteeing a right to counsel and requiring unanimity in decisions to impose the death penalty. At the moment, however, such rules have not been published, prompting the ACLU to speak out.

"Congress must take the responsibility for ensuring that America not forget its founding ideals of justice and fairness, principles that could be utterly absent from one of these tribunals," proclaims an ACLU press release.

Amnesty International also questions the constitutionality of military tribunals, warning that the president effectively decides who is entitled to constitutional rights and who is not, a concept that might not sit well with the 20 million non-citizens living in this country.

"If I'm here legally, I should be treated equally," says Glen Fernandes, a Kuwait-born Indian who has lived in the United States for five years on student and working visas. "I don't think people who are here legally should be tried in front of a military tribunal." Fernandes adds, though, that people with visa violations should be reviewed carefully to determine whether it's justified to try them in front of a military tribunal.

Another point of contention for civil rights groups is the apparent disparity between new airport security measures and those new rules dealing with non-citizens civil rights. In contrast to the quick tightening of restrictions on foreigners, the government has granted airports extra time to implement new security measures. The House of Representatives has passed legislation extending the bag-screening deadline to December 31, 2003, and the government is debating a further extension.

This shows that U.S. officials are not being consistent in their efforts to improve national security, according to some civil rights advocates. But in fact, managers at 133 of the nation's 429 airports say the deadline to screen all bags for explosives is still unrealistic and should be extended because it could cause havoc for passengers. As far as the government is concerned, this is a question of reasonable reaction time and not discrimination at all.

Meanwhile, though, cries of racial profiling are also being made under tightened airport security measures. Although the security checks at airports are supposed to be "random," some people who look "foreign" or carry foreign passports complain that they are deliberately being singled out, prompting protestations of governmental discrimination from the ACLU. Glen Fernandes, for one, disagrees with that assessment, though.

"I don't really buy that people get deliberately picked," says Fernandes, who looks distinctly Indian. "When I flew last time, I didn't get checked at all." He adds that he used to think he was deliberately picked in the past, but the fact that he wasn't checked when he flew into and out of Ronald Reagan National Airport in Augusts made him reconsider.

"I think there is some profiling done by individual people, but not the system," he says, adding that he has even caught himself

evaluating people based on their looks.

Looking towards the future, President Bush recently proposed creating new Department of Homeland Security. Under Bush's proposal, 22 government agencies would be fully or partially pulled together into one. The Department of Homeland Security would have about 170,000 employees and a budget of \$37.4 billion. Not surprisingly, this issue continues to generate much controversy and concern. Bush's proposal will be voted on in Congress later this month.



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