

B441. "Keep an Eye on Liberty" National Law Journal (December 15, 2003) p. 35.

Attorney general John Ashcroft, this time, is truly going too far. Congress should immediately ban the use of the special powers, granted to the government to fight terrorism, against those suspected of having committed other crimes.

The U.S. Department of Justice (DOJ) is abusing the special powers encompassed in the USA Patriot Act, using them to pursue individuals suspected of distributing drugs and stealing identities, among other crimes.

And consider this: The same powers also landed a lovelorn 20-year-old woman in a federal prison for two years for threatening a "mass transit system" because she sent a note to a cruise ship, demanding that it bring home a boyfriend.

Some fair measures

I am far from an Ashcroft basher. Because I firmly believe that the nation will face more terrorist attacks-and much more severe ones, at that-I have written in support of quite a few new security measures, including the removal of the firewall between the CIA and the FBI, enabling the agencies to collaborate in the pursuit of terrorists; the right of the government to wiretap (subject to a court order) all the phones of a terrorist suspect rather than requiring a separate court order for each instrument (called "roving" wire taps); and allowing national traces of Internet messages in homeland protection cases.

I also noted with some satisfaction when other measures were scaled back and so far not used (for instance, military tribunals) and still others banned by Congress, including the Terrorism Information and Prevention System.

However, the recent move by the DOJ is alarming even to centrists like myself, because, in effect, it treats all Americans as if they were terrorist suspects.

It is well known that treating various kinds of offenses differently, according to their severity, is at the foundation of our legal and moral code and is a guiding principle that governs all civil societies. We do not condemn people for a lifetime in jail for jaywalking. We also calibrate the powers that we grant the government in dealing with suspects not yet convicted of anything, according to the same code.

For example, those who are suspected of major crimes are often denied bail; at the same time, those who are suspected of having committed lesser crimes are free to wait at home until their case is heard (even if they are as likely to flee as the first group).

One can argue that some of these categories need to be updated, but to undermine them all by treating almost everybody as if he or she were a terrorist suspect, is utterly unacceptable.

Take, for example, what is arguably the most bitter pill we have had to swallow to better protect ourselves from future attacks. Following instructions from the Bush administration, the FBI is transforming itself from a law enforcement agency that basically seeks to bring to justice those who have already committed crimes into an agency whose task it is to prevent terrorism from occurring in the first place.

The price of investigations

Prevention entails, I hate to acknowledge, disturbing the lives of innocent people on the assumption that, by investigating them, one may ferret out some information and disturb

attacks that are being planned-even when there is no specific reason to believe that those who are questioned are out to do anything.

In line with this new approach, in late 2001 the FBI "invited" more than 5,000 men from countries in which al-Queda is active, for interviews in its offices.

Similarly, the FBI interviewed almost 10,000 Iraqis residing in the United States, prior to the 2003 invasion of Iraq. One may argue whether interrogation of people not suspected of anything is a legitimate way to fight terrorism. But most would readily agree that, if such sweeping measures are used to try to prevent other, garden-variety crimes from occurring, then we all might find ourselves being investigated.

Some feel-myself not included-that the government went too far by acquiring a legal right to search all records (including library ones) of terrorist suspects. But surely no one would agree to subject everyone who is suspected of having smoked a joint to such searches.

We tend to swing wildly from being too permissive in our law enforcement to being too strict. It is high time to rein in Ashcroft, not so much when he is fighting terrorists but when he no longer can see a difference between terrorists and garden-variety criminals.

Special to The National Law Journal; Amitai Etzioni's latest book is *My Brother's Keeper: A Memoir and a Message* (Rowman and Littlefield, 2003). For more discussion on communitarian themes, visit www.amitai-notes.com.