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October 8, 2011

Sunday Dialogue: The State of Our Liberties

Debating the U.S. responses to the terror threat, including intelligence gathering, the watch list and targeted killings.

The Letter

To the Editor:

In recent weeks there has been much discussion about how to judge America's human rights record in the decade after 9/11, and the balance between civil liberties and security.

Could things have been worse? No doubt. We did not, for example, experience anything on the scale of the Japanese-American internment during World War II, and the government backed off some of its more Orwellian plans in the face of public opposition, including a huge database of personal information chillingly entitled the Total Information Awareness program.

But we should not underestimate the damage that has been done to our values, our reputation and the rule of law in the past decade.

The response to 9/11 included torture, extraordinary rendition, prolonged detention without charges or trial and secret imprisonment. Those grave abuses are an indelible part of our human rights legacy, even if they primarily occurred at Guantánamo and other overseas sites.

As recent events show, the government claims the unreviewable right to [kill American citizens](#) far from any battlefield based on uncertain standards and secret evidence.

Thousands of Americans now find themselves on government [watch lists](#) with no meaningful way to challenge their designation or have their names removed.

An enormous increase in government surveillance reaches far beyond those suspected of terrorism, inviting ethnic and religious profiling.

And, with each passing year, the risk increases that legal changes adopted after 9/11 that erode our civil liberties, like the [Patriot Act](#), will become permanent fixtures of our legal system.

Finally, 10 years after 9/11, we have yet to hold accountable those who violated human rights in

our name, or provide any meaningful remedy for those who suffered as a result.

STEVEN R. SHAPIRO

National Legal Director

American Civil Liberties Union

New York, Oct. 3, 2011

Readers React

The aggressive counterterrorism measures used by both the Bush and Obama administrations — renditions, warrantless surveillance, the Patriot Act — have certainly come with costs. But when considering the stakes involved with preventing further attacks, America's responses to 9/11 have been prudent and measured.

Actionable intelligence remains the only way to level the playing field with mass-casualty-seeking terrorists operating in the shadows.

Mr. Shapiro says that although things could "have been worse" with regard to sacrificing civil liberties in the name of national security since 9/11, we should not underestimate "the damage that has been done to our values, our reputation and the rule of law."

We should also not underestimate the far greater damage that would be done to America's values, reputation and rule of law should another major 9/11-style terrorist attack occur. We can all agree that the aftermath would be horrific, with civil liberties and rule of law suffering perhaps the greatest harm.

STUART GOTTLIEB

New York, Oct. 5, 2011

The writer, a former Senate foreign policy adviser and speechwriter (1999-2003), teaches foreign policy and national security at Columbia University.

The terrorist watch list is one of the most effective tools in national and homeland security, and, unfortunately, the threat is still real.

The New York Times ("[Antiterror Measures at Home](#)," editorial, Oct. 2) suggests that people should be notified if they are on the watch list. This would be shortsighted and dangerous. Under that approach, terrorists could learn their status and adapt their behavior to successfully carry out a terrorist attack and/or successfully escape.

The failed Times Square bomber, Faisal Shahzad, was apprehended trying to flee the country and is now in prison because of the watch list and its nondisclosure policy.

Moreover, if the intelligence about someone's possible terrorist ties falls short of the courtroom standard of "beyond reasonable doubt," it may still be appropriate for the person to be asked additional questions before entering the United States. Likewise, there is a vast difference between a prison sentence from a criminal conviction versus additional scrutiny at airports or denial of boarding an aircraft.

The watch list is the result of an exhaustive, multilayered and intelligence-driven process involving numerous government agencies that work together to ensure it is accurate and complete.

While homegrown terrorism is still a threat, American citizens represent less than 2 percent of the overall list, and fewer than 500 of them are on the no-fly list.

We are charged with safeguarding the American public while protecting civil liberties. The terrorist watch list is essential to both of these fundamental missions.

TIMOTHY J. HEALY

Director, Terrorist Screening Center, F.B.I.

Washington, Oct. 5, 2011

I agree with much of what Mr. Shapiro wrote, but one thing troubles me. He and many others who have condemned the killing of Anwar al-Awlaki, an American-born operative of Al Qaeda in Yemen, base their argument, at least in part, on their insistence that the killing took place "far from any battlefield." I wonder what that means in this environment at this time in history.

Certainly most of us would agree that the days of well-defined battlefields from past wars such as the Civil War, World War I and World War II are unlikely to be seen again. So regardless of whether our conflict with Al Qaeda is a war or is more accurately defined some other way, where is the battlefield?

To put it another way, does Mr. Shapiro believe it's ever permissible to kill an American in a foreign country when that American is a traitor who has taken a leadership role in an organization whose aim is to cause harm to the United States and to kill Americans, both military and civilian?

MATTHEW PETTIGREW

Narberth, Pa., Oct. 5, 2011

Most Americans, who view our nation as a leader in human rights and democracy, do not realize that we are vilified by the international humanitarian community as a country that is ambivalent about the use of torture.

Metin Basoglu, a Turkish psychiatrist, has found that psychological manipulations (threats of rape and death, threats to family, sham executions) are as deeply damaging as physical torture. And the science makes clear that waterboarding, which subjects a person to the feeling of asphyxiation, is

without doubt torture. The Bush administration acknowledged using waterboarding on suspects.

We need an independent or Congressional investigation to examine how the trauma of 9/11 has affected our decisions to search for safety and security through the use of barbarous methods. Our nation can begin to restore our honor in the world only by acknowledging our mistakes and looking unflinchingly at this shameful moment in our history.

JAMES HALPERN

New Paltz, N.Y., Oct. 5, 2011

The writer is a professor of psychology and director of the Institute for Disaster Mental Health at the State University of New York at New Paltz.

Having been a member and supporter of the A.C.L.U. for over 50 years, I offer a demurral to a couple of points made by Mr. Shapiro.

He observes that the United States hasn't experienced the equivalent of the Japanese-American internment (nicely understated term) in the years since 9/11. The federal government and most states have become more sophisticated in their crackdowns since World War II, which explains the narrower but nonetheless painful arrests and long confinements of thousands of innocent Muslims in the immediate aftermath of the 9/11 attacks.

Mr. Shapiro also mentions the federal government's withdrawal of the Total Information Awareness program in the face of broad criticism, not least from the A.C.L.U. There is a phenomenon known as "mission creep" in government and military parlance. It's taking place now as the government spreads its tentacles into the private lives of American citizens, whether suspects or not.

We see this in the enlistment by the F.B.I., for example, of state and local law enforcement agencies in obtaining information on the activities of the citizenry. Someone voices emphatic and entirely constitutional dissent on a Facebook page or in a Twitter message — even in a private e-mail — and, bingo!, he or she is on the government's watch list.

If this isn't a look into the approaching face of a full-blown, antidemocratic police state, then I can't see what else it could be.

DON BAY

Ostersund, Sweden, Oct. 5, 2011

United States government officials who sanctioned torture in Guantánamo and at secret "black sites" after 9/11 must be held accountable. Imagine American outrage and revulsion if our service men and women were tortured under the guise that any pain short of the equivalent to the pain accompanying organ failure was permissible, as outlined in the infamous memos by the Justice

Department lawyer John Yoo. In another hideous perversion, doctors, including psychiatrists, monitored American torture.

Former President George W. Bush and former Vice President Dick Cheney claim they have no regrets about sanctioning waterboarding. If they are so proud of it, if their “enhanced interrogation” was within the bounds of international law and human decency, why were torture tapes destroyed?

Shame on our own government and world leaders for giving the Bush administration a pass.

BARBARA SCHRATWIESER
Studio City, Calif., Oct. 4, 2011

America’s response to 9/11 is not only about the human rights of those affected by antiterrorist measures, but also about the human rights of the great many individuals protected by these measures. To balance these competing rights, steps taken in this battle must be carefully chosen and calibrated to the risks involved. A one-size-fits-all approach is inadequate.

Watch lists are an example of an area in which flexibility is needed. An Oct. 2 Times [editorial](#) noted critically that “even a not-guilty verdict may not always be enough to get someone off the list,” as if this fact were surprising or counterintuitive.

In fact, there should not be a single standard for criminal trials and watch lists. It is eminently reasonable that the standard of proof that society requires to keep an eye on an individual and potentially inconvenience him (in the name of public safety) should be considerably lower than the standard required to convict him and take away his freedom.

YACOV BALSAM
Woodmere, N.Y., Oct. 4, 2011

The Writer Responds

Mr. Gottlieb describes the government’s “aggressive counterterrorism measures” since 9/11 as “prudent and measured.” Significantly, however, his list of those measures omits any reference to torture.

He also does not explain why he regards the Bush administration’s program of warrantless surveillance as a “measured” response to 9/11 when its end run around the courts clearly violated a law designed to restrain the intelligence agencies. And, by suggesting that the government’s actions must have been “prudent” because we have so far avoided another 9/11, he assumes a cause and effect that is hotly debated.

Most fundamentally, the notion that the end justifies the means is incompatible with the rule of

law and has no limiting principle. Human rights abuses are almost always justified as a temporary expedient prompted by a security crisis. We do not accept that explanation from others and we should not parrot it ourselves.

Mr. Healy asserts that watch lists serve a valuable purpose. Yes, but only if we're watching the people who actually pose a threat. When individuals are stopped at the airport or prevented from boarding a plane without good reason, they shouldn't have to rely on the government's good graces to get off its list of suspected terrorists. This is not an issue of advance notice, but fundamental fairness.

In response to Mr. Pettigrew, American citizenship is not a free pass to launch attacks on the United States. However, unless we are facing a truly imminent threat, the government does not have a free pass to kill American citizens without charges or trial anywhere in the world. It is difficult to reconcile that principle with published reports that individuals can remain on a targeted kill list for months at a time. At a minimum, we cannot have a serious debate about this critical issue unless the government is more forthcoming in defining the limits of its claimed authority.

STEVEN R. SHAPIRO

New York, Oct. 6, 2011