



#### A NEW ERA OF DISCRIMINATION?

Why African Americans Should Be Alarmed About the Ashcroft Terrorism Laws

Published September 2003

#### THE AMERICAN CIVIL LIBERTIES UNION

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#### A NEW ERA OF DISCRIMINATION?

Why African Americans Should Be Alarmed About the Ashcroft Terrorism Laws

# AN OPEN LETTER FROM LAURA W. MURPHY, DIRECTOR, ACLU WASHINGTON LEGISLATIVE OFFICE



On the evening of September 11, 2001, President George W. Bush spoke to the American public and promised a nation reeling from the day's terrorist attacks that our country's beacon for freedom and opportunity would continue to shine. In the months and years following that statement, however, the actions taken by the Bush

Administration and, in particular, by Attorney General John Ashcroft have threatened our freedom and done little to advance our security.

In the weeks, months and years since the attack, the American Civil Liberties Union has worked hard to limit the damage done to our precious freedoms by the Bush administration. Our work has been done in coalition with groups from across the country, groups that represent diverse communities and those from all points of the political spectrum.

But now we must do even more. As the first woman and first African American to lead the ACLU's Washington Legislative Office, I passionately believe that the African American community and its leadership will be crucial in our ongoing struggle to turn back the excesses of the Bush administration's response to the tragic terrorist attacks of September 11, 2001. I also believe that our community will be crucial in keeping the Congress and Bush administration accountable for its deeds.

It is of the utmost importance that African-American leaders oppose the Administration's continuing disregard for the rule of law and impress upon our community the potentially disastrous implications of a government that refuses to abide by the Constitution and the Bill of Rights –two documents that protect the rights and liberties of African Americans and other vulnerable minorities in the United States. I invite you to read through this report that

highlights why we think it is crucial for our community to get involved and to work with the ACLU. Help us rollback the attack on our civil rights and liberties by speaking and writing to your elected officials, by supporting local government resolutions denouncing provisions of the USA PATRIOT Act, by voting for candidates who will safeguard our rights and by staying informed.

The threat to our liberty is great. The government has used the terrorist attacks to gain permanent new powers that go far beyond fighting and protecting us from terrorism, powers that allow it to invade the privacy of U.S. citizens who are not accused of breaking any laws, routinely deny due process of law and use overbroad powers in routine criminal investigations.

Key groups that we have worked closely with include the Congressional Black Caucus, the NAACP, the Leadership Conference on Civil Rights, the Rainbow-Push Coalition and the National Action Network, among many others.

The ACLU has prepared this special report because we think outreach to the African American community is critical. Some of these new laws now allow the sorry history of federal and local police abuse and racial discrimination to repeat itself.

Who among us is not aware of how the federal government, through the FBI and CIA, illegally undermined and spied upon the civil rights and black power movements in the 1950s, '60s and '70s? Most of us remember or have read about these bad old days. But how many of us know that the laws

>MARTIN LUTHER KING



that were put into place to stop these practices have now been repealed or are under attack by the government?

Unfortunately, as the fight against terrorism continues to grow both domestically and overseas, so do government measures that adversely impact the strength of our civil rights and civil liberties protections.

Both congressional and administrative actions have been premised on the faulty reasoning that freedom need suffer in the interest of safety and national security. Such a premise has special significance given the African-American experience in the United States; just such arguments were made to justify laws and policies that suppressed African-American rights and political power.

Is it right to lock up someone from the Sudan, Pakistan or Iran just because of his or her national origin? Isn't that the same as stopping a black person on the highways because of his skin color? We think so. Is it right to send FBI spies into churches, synagogues and mosques and make a report on who says what? Is it right for the FBI to search your home without presenting you with a warrant?

How are any of our rights safe if the President can unilaterally declare that certain U.S. citizens are enemy combatants and put them in jail indefinitely without knowing the charges against them, barring them from speaking to an attorney and denying the right to bail in all but the most extreme cases? The President essentially is saying that the courts and the Congress have no place in many of the decisions he makes.

These are rights we presume are basic. Yet Congress and the administration have lifted the safeguards that require federal and local law enforcement to respect our rights. They have systematically taken them away, ushering in a new era of discrimination and denial of privacy and due process all in the name of fighting terrorism.

Before 9/11 Congress was on the verge of passing a law banning racial

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profiling. During the presidential debates, candidate George W. Bush said that he was against racial profiling. During his Senate confirmation hearings John Ashcroft promised to do something about the problem of racial profiling. He did. He made it worse.

In the weeks and months after the attacks, the Department of Justice launched a campaign of investigative directives guided by discriminatory and unrealistic assumptions about race, ethnicity, religion and national origin that essentially sanctioned profiling as a law enforcement tactic.

The clearest indication of just where this country stands on racial profiling came earlier this year when the Bush administration released a series of "guidelines" around racial profiling, which, while claiming to ban the practice, include several loopholes and exceptions that render them all but useless.

The ACLU strongly believes that we can fight terrorism without making permanent ineffective changes in our laws that violate our core rights. We strongly believe that we must not give up the fight to end racial profiling. Guilt by association is just plain un-American. America can be both safe and free.

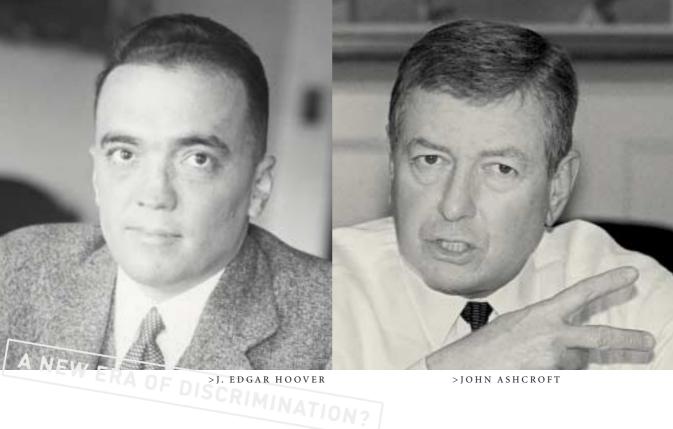
Sincerely,

LAURA W. MURPHY

Director, Washington Legislative Office

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September 2003



### I. AFTER SEPTEMBER 11: ARE CONSTITUTIONAL FREEDOMS THE COST OF SAFETY?

Terrorism and civil liberties abuses—two of the worst enemies of freedom—have tormented African Americans throughout much of the country's history. Now, African Americans are under attack again—not just by potential acts of terror, but also by a government intent on stripping people of their hard-won rights.

Whether it has been enduring slavery, withstanding the horrible night rides of the Ku Klux Klan or overcoming the worst tactics of local police and the Federal Bureau of Investigation, the struggle for African-American freedom has been filled with battles against terror and abusive power in the long journey to become safe and free.

Given such a unique history in this country, African Americans understand as much as, if not more than, anyone the necessity of visible and vigorous protections against terror and the need to limit police power to protect the civil rights and civil liberties of the innocent. Overreaching police power has, after all, brought its own brand of terror against African Americans during some of our nation's most shameful periods.

That is why many African-American leaders and others shudder at the roughshod way that U.S. Attorney General John Ashcroft has run the U.S. Justice Department. The Attorney General is trampling on constitutional rights of racial and religious minorities in the name of fighting terrorism, and his raw use of power threatens everyone in America, especially African Americans.

In fact, the notorious J. Edgar Hoover would be proud of how John Ashcroft is undoing the fundamental protections put in place after the excesses of Hoover's

FBI led to disgraceful spying against the Rev. Dr. Martin Luther King Jr. and wholesale efforts to discredit and undo his pioneering work against segregation.

That's why leading voices in the African-American community, such as U.S. Rep. Elijah E. Cummings, now chairman of the Congressional Black Caucus, voted in October 2001 against giving Ashcroft's Justice Department new sweeping authorities, expressing concern that new government investigative powers "would be so broad as to imperil civil liberties." He specifically mentioned that one serious consequence was the government's expanded and largely unsupervised authority to target people unconnected to criminal offenses for surveillance.

Julian Bond, Chairman of the National Association for the Advancement of Colored People, cautioned that Congress has a duty to ensure "that civil rights and civil liberties are not sacrificed in the fever of war." The NAACP Board of Directors already had approved a resolution aimed at protecting civil liberties, urging lawmakers and the administration "to be mindful of the need to protect and strengthen the civil rights and civil liberties of all Americans." Bond accused the FBI of racial profiling and "spying on law-abiding citizens."

And Wade Henderson, Executive Director of the Leadership Conference on Civil Rights, warned: "History has shown us that, in past times of national calamity, civil rights and civil liberties fall victim to the crisis just as surely as the human victims whose loss we all grieve. We must not compound this tragedy by infringing on the rights of Americans or persons guaranteed protections under the Constitution." 5

These African-American leaders understand perhaps better than most that immoral actions cannot be justified because they are adopted amid the frenzy of a crisis, which is why the internment of people of Japanese descent during World War II remains an abominable stain on American history.

The darkest stain ever on American society has been the plague of slavery. The institutional racism that followed shows that freedom compromised by unconstitutional measures is not freedom at all. It's an enemy of a free society.

The Attorney General is trampling on constitutional rights of racial and religious minorities in the name of fighting terrorism, and his raw use of power threatens everyone in America.

<sup>&</sup>quot;House Passes Counter-Terror Powers," by Karen Hosler, The (Baltimore) Sun, October 25, 2001.

<sup>2</sup> Julian Bond statement, National Association for the Advancement of Colored People press release, Sept. 6, 2002.

<sup>3</sup> NAACP press release, October 2001.

<sup>4 &</sup>quot;Far Right Hindering Rights," by Janita Poe, Atlanta Journal-Constitution, June 8, 2002.

<sup>5 &</sup>quot;Healing the Nation: Chapter IV; Civil Rights Issues in the Wake of Sept. 11," Arab American Institute Reports, October 31, 2002.

#### II. LEGISLATING IN HASTE AND FEAR

Acting under immense pressure at a hectic time, Congress hastily passed the USA PATRIOT Act only 45 days after the tragic terrorist attacks of September 11; both chambers approved the comprehensive measure with scant study and limited debate. Many legislators were unable to reach their offices to review the 159-page legislation. The measure came amid one of the most troubled and frenetic periods in our nation's history – weeks after the terrorist attacks and in the middle of the anthrax scare, when a Senate office building, a major postal facility in Washington and the U.S. Supreme Court were closed as teams covered in chemical protective suits searched for spores of the deadly chemical. Amid all this came legislation that its sponsors cleverly named to make opposition seem almost treasonous. Most legislators had not read—let alone digested—the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) and its dangerous provisions that threaten our constitutional protections. 6

#### AMONG OTHER THINGS, THE USA PATRIOT ACT:

- Allows law enforcement to conduct secret "sneak and peek" searches of your home. Investigators can enter your home or office, take pictures and seize items without informing you for a long time, if ever, that a warrant was issued.
- Gives law enforcement broad access to any types of records—educational, medical, financial, sales, library, etc.—without probable cause of a crime.
   It also prohibits the holders of this information, like librarians, from disclosing that they have produced such records, under the threat of jail time.
- Permits the government to monitor Internet traffic and e-mail communications on any Internet service provider without probable cause by obtaining detailed "routing" information like a web address. While this provision is aimed at lawbreakers, it sweeps broadly because e-mails and Internet traffic information of innocent individuals cannot be separated from the activity of targeted individuals.<sup>7</sup>
- Allows the government to seize the assets of an individual or organization
  without prior notice or hearing if the government says that they have engaged
  in or are planning an act of "domestic terrorism." Under this law the
  government could effectively bankrupt an organization with which it disagrees.
- Allows the government to collect information on U.S. citizens and share that information with the CIA and other law enforcement officials without proper judicial oversight.
- Changes the nature of warrants for wiretaps by requiring judges to approve a wiretap without knowing who is to be tapped or where it is to be placed.

<sup>6 &</sup>quot;The USA Patriot Act and Government Actions that Threaten Our Civil Liberties." www.aclu.org/safeandfree.

<sup>7</sup> Ibid.



> ALI AND MALCOLM X: Muslim Leaders: World heavyweight champion Mohammed Ali is interviewed in front of the United Nations with his brother, Rudolph Valentino Clay, Black Muslim leader Malcolm X, and Nigerian ambassador to the UN S.O. Adebo (left to right).

#### III. 'FAULTY AND IRRESPONSIBLE PIECE OF LEGISLATION'

Congresswoman Maxine Waters of California, a distinguished member of the House Judiciary Committee, called the bill "a faulty and irresponsible piece of legislation that undermines our civil liberties and disregards the Constitution of the United States of America."

Civil rights activist Al Sharpton, another Democratic candidate for president, asserted that Ashcroft is trying to undermine citizens' rights. "Just like Martin Luther King had to deal with J. Edgar Hoover, we've got to deal with John Ashcroft," he said six months after the PATRIOT Act was passed. "What Hoover did covert is what Ashcroft is doing overt. . . . He can detain you without charging you. They had to sneak and wiretap Dr. King. They're making it legal to wiretap us. And we must resist."

<sup>&</sup>lt;sup>8</sup> "The War on Terror: Anti-Terror Bill OK'd," by Elaine S. Povich, *Newsday*, October 13, 2002.

<sup>9 &</sup>quot;Sharpton Rips Profiling at King Ceremony," By Jill Young Miller, *Atlanta Journal-Constitution*, April 11, 2002.



> MAXINE WATERS

III. 'FAULTY AND IRRESPONSIBLE PIECE OF LEGISLATION'...[continued]

Sharpton pointed out that the initial racial profiling of Arabs and Muslims would be only the start. "If they do it to one, they'll do it to all," he said.

Indeed, those perceived to be Arabs, South Asians or Muslims were profiled immediately after 9/11, singled out at airports and often detained at government offices across the country without constitutional protections such as the right to counsel.

Imagine how easily African-American Muslims could fall under Ashcroft's x-ray in the next round—if that's not happening already. For that matter, imagine how easily African Americans in general could be next on his list.

Muslims are not a fringe group that can be summarily dismissed. Islam is the second-largest religion in the United States and the fastest-growing religion in North America and the world. African Americans make up one-quarter of the country's Muslim population, according to the American Muslim Council. About 2.5 million African Americans—including followers of both W. Deen Muhammad and Louis Farrakhan—belong to the Islamic faith. Like followers of other faiths, all but a handful of Muslims are law-abiding citizens. Tainting Arabs, Muslims or any other group with the stain of terrorism is not just wrong, but it also undermines law enforcement's mission to stop crime – and not profile because of race, color or creed.

It certainly would be ridiculous to suspect every white American as a potential terrorist based on the acts of Timothy McVeigh or the Ku Klux Klan. But in our history, that kind of profiling hasn't happened to whites and isn't likely to. Only people of color face such characterization. That alone is a denial of equal protection and the kind of behavior strictly prohibited by the Constitution.

#### IV. HISTORY AS A GOOD TEACHER

People of color have struggled since America's birth to be treated just like every other American under the law, which is why many anti-terror laws and policies are particularly troubling. The hastily passed USA PATRIOT Act and other government actions against civil liberties are ominously reminiscent of trying times for African Americans.

The government has too easily twisted and contorted laws into what is expedient for it at the time, with not so much as a second thought to the long-term effects. Just look at the black experience in America and it isn't at all hard to find ways the government has manipulated the law and the system to serve its particular needs.

It started with slavery, or what early colonists euphemistically called "indentured servitude." Slaves were initially brought to the Americas against their will to "serve" for a pre-determined amount of time. Realizing that replacing African "indentured servants" who had earned their freedom was costly, colonists changed the laws and began a system of "perpetual servitude."

The practice of changing the law to whatever was convenient continued; even after the 14th and 15th Amendments guaranteed the right to vote, many states manipulated the system with grandfather clauses, literacy tests and sheer intimidation to keep blacks from exercising their right to vote.

The PATRIOT Act and its planned successor PATRIOT II are but the first steps that seek to strip all of us of our fundamental rights as Americans. When talk of stripping people of citizenship happens in America, every American, but particularly African Americans, should get nervous. Nervous about an administration that continues its relentless pursuit of more unchecked and undemocratic powers. Nervous about a Congress that has, in many respects, turned a blind eye and refused to assert its oversight authority over the Justice Department. And most certainly, nervous about an Attorney General who has adopted a new policy of treating everyone as suspects.

This legislation gives the administration carte blanche to collect information on all of us; the new philosophy seems to be that we are all suspects until we prove otherwise. Right now, the Attorney General appears to have Muslims, Arabs and South Asians in his crosshairs; round up the Muslims, and who will be next?

Unfortunately, this nation's history of wrestling with the notion of "liberty and justice for all" applying to *all* is well documented and it certainly isn't a part of the distant past. And, if left unchecked, it will continue to be a part of America today. History can be a cruel teacher, but what would be most cruel is to not learn from the mistakes of the past. Were not slavery, Jim Crow, segregation and the internment of the Japanese enough to teach us that the government can and will manipulate the system—and all too often at the expense of African Americans?

To the contrary, African Americans survived the horror of slavery only to be shackled by the era of Jim Crow, segregation, Hoover's FBI and night rides by the Ku Klux Klan; endured that to face racial profiling and redlining. Many, if not all, of these abuses were sanctioned by the government for what was determined at the time to be logical reasoning. Congress took its time in correcting the failures of the government in the past, we certainly cannot afford to allow it to take its time again when so many of our core American principles of liberty and freedom are at stake.

We must not allow a repeat of that history, but sweeping federal authority—unleashed in the name of national security—raises many frightening possibilities.

#### V. THEY PUT A WIRE ON THE CIVIL RIGHTS MOVEMENT

Civil rights and civil liberties have come a long way since J. Edgar Hoover's FBI aimed its notorious, malicious and sleazy surveillance campaign at lawabiding African-American leaders. Hoover's FBI wiretapped conversations Martin Luther King Jr. held at his home, Southern Christian Leadership Conference offices and at hotels from 1962 until the civil rights leader's death in 1968.<sup>10</sup>

Many Americans had thought the FBI would use wiretapping, hidden microphones and other surveillance to guard against violent criminal threats —certainly not to eavesdrop on the nation's leading disciple of nonviolence. But under the premise of fighting communism and, supposedly, racial violence, the agency secretly collected reams of the most personal information, although its targets were not accused of crimes.

The FBI conducted a number of secret campaigns and infiltrations against African-American organizations from 1956 through 1971 through its COINTELPRO operation that secretly spied on Americans considered political dissidents. COINTELPRO invaded the lives of Hoover's enemies and their associates without yielding any legitimate criminal intelligence information.

<sup>10</sup> Martin Luther King, Jr.: The FBI File, by Michael Friedly and David Gallen, Carroll & Graf Publishers, Inc., New York, 1993.



> JESSE JACKSON

#### VI. 'WE'RE IN A TREMENDOUS STATE OF DANGER'

Civil rights and civil liberties organizations like the National Association for the Advancement of Colored People and the American Civil Liberties Union dramatically improved equal constitutional protections for African Americans in the 20th century – from 1954's Brown v. Board of Education to the Civil Rights Act of 1964 to the Voting Rights Act of 1965. And in recent years, people of color had finally started to win battles against widespread racial profiling by police – at least until the months before September 11, 2001.

Although the albatross of racial profiling shifted from African Americans to Arabs and Arab Americans after 9/11, history has taught black Americans that the Constitution stands as the strongest bulwark against abuses, and potential abuses, of government power.

So when the immediate post 9/11 anxieties eased, African Americans had good reason to be alarmed by provisions of the PATRIOT Act, the Homeland Security Act and other new federal policies that threaten civil rights and civil liberties. "We're in a tremendous state of danger. An extreme right wing has seized the reins of power," the Rev. Jesse Jackson said during a panel discussion at the State of the Black World Conference, which took place a month after the USA PATRIOT Act was adopted.

<sup>11 &</sup>quot;Anti-Terrorism Laws Criticized," Associated Press, November 30, 2001.

After the emotions settled, it was clear that the new laws brought a disturbing array of new invasive federal police authority, including Ashcroft's quietly empowering himself to order the monitoring of prisoners' conversations with lawyers.<sup>12</sup>

The Justice Department now has sweeping authority to wiretap phones, read private emails and gain access to highly personal medical, financial, mental health and student records. FBI agents can launch criminal investigations against American citizens without probable cause, if they say it is for "intelligence purposes." Jesse Jackson said that with measures like these, the United States has entered an era where telephone taps, eavesdropping and an inability to talk to a lawyer privately are now legal. Sharpton added that the anti-terrorism bill would be used "to justify locking us up, and those that speak up will be attacked as terrorists."

## We're in a tremendous state of danger.

### An extreme right wing has seized the reins of power.

With these inherently secretive policies, it is impossible to know how far and wide these investigations are spreading. Those under investigation don't even know they're being investigated, and if they find out they are forbidden under law from discussing the government's actions with anyone.

The Washington Post reported that the ACLU has determined that Attorney General Ashcroft "has issued scores of 'national security letters' that require businesses to turn over electronic records about finances, telephone calls, e-mail and other personal information."<sup>13</sup>

Supreme Court Justice Stephen Breyer recently acknowledged the country's past civil liberties "mistakes," including the internment of Japanese during World War II, and recognized the need to honor the Constitution: "We know that terrorism is a problem. We also know that we live in a country that wants to protect basic civil liberties." <sup>14</sup>

<sup>12 &</sup>quot;Attorney General Has Seized the Reins," by Karen Branch-Brioso, St. Louis Post Dispatch, May 19, 2002.

<sup>13 &</sup>quot;U.S. Steps up Secret Surveillance," by Dan Eggen and Robert O'Harrow Jr., *The Washington Post*, March 24, 2003.

<sup>14 &</sup>quot;High Court Prepares for Terror Cases," Associated Press story, The Washington Post, April 5, 2003.

#### VII. 'JUSTICE DEPARTMENT OUT OF CONTROL'

The Justice Department's insatiable appetite for its new powers were so extreme that even former U.S. Rep. Dick Armey of Texas, a staunch conservative, complained: "I told the president I thought his Justice Department was out of control." 15

Although the Justice Department has indeed gone too far, the White House wants the ability to delve further into private lives and deny constitutional protections. The Bush administration's hopes for the so-called PATRIOT Act II, or the Domestic Security Enhancement Act of 2003, would cut even more deeply into constitutional protections. Also floating around are such insidious ideas as a national ID card and other methods to mark people with—worse than numbers—levels of security.

But it's not only the opposition by Dick Armey or complaints by conservative former Georgia Congressman Bob Barr or others not familiar with the black experience in America that will help derail these proposals to further restrict freedom in America. The strongest case against such laws and policies can come from African Americans whose centuries of experiences have brought acute awareness of the threat of terror and civil liberties violations that can smother basic American rights that the Constitution so firmly guarantees.

Now is the time for the African-American community to join together with groups from across the political spectrum to vehemently protect any further victimizing of our rights and to tell our elected leaders to oppose these measures.

# VIII. GHOST OF J. EDGAR HOOVER HAUNTS THE 21<sup>51</sup> CENTURY

John Ashcroft became U.S. Attorney General after losing his re-election bid in the Senate, a campaign that featured opposition by African Americans and other organizations for extremist positions, including his key role in distorting the record of an African-American Supreme Court judge to deny his confirmation to the federal bench. The experience showed the African-American community Ashcroft's willingness and ability to disregard the truth recklessly to carry out his mission, which, in that case, was justifiably criticized as racially motivated. The Senate confirmed Ashcroft to the cabinet-level post after a bitter battle, during which he promised to protect civil liberties, including ending racial profiling. Yet, just months after winning confirmation, an unrepentant Ashcroft materially breached those promises in an air of self-righteous zeal. Stopping, questioning, investigating and detaining people based on race were wrong before September 11, and it's still wrong.

<sup>15 &</sup>quot;Armey: Justice 'Out of Control,'" USA Today, October 17, 2002.

Racial profiling is prejudice in its most basic form. The police practice makes suspects of minorities to a far greater degree than whites, and it shows that law enforcement officers have remained race-conscious as they perform their jobs despite the civil rights gains of the 20th century. Thus, African Americans continue to be stopped more than whites for drug searches, although statistics show little disparity between the races in drug use. Arabs are suspected as terrorists despite the fact that the second-most destructive act of domestic terror in the United States was committed by a white man.

And as the African-American community knows all too well, when law enforcement officers conclude that certain skin colors or other arbitrary characteristics are more likely to indicate criminal activity—at the expense of good police work—actual criminal activity among groups who do not share these characteristics goes unchallenged.<sup>16</sup>

The doors could swing wide open for another Timothy McVeigh while federal authorities use their expanded power to target racial and religious minorities for secret investigation, detention and denial of other basic rights and liberties. These new powers are breathtaking.

As long as FBI agents claim their secret investigations are "for the purpose of obtaining foreign intelligence," they can operate along the looser "foreign intelligence standard of probable cause" instead of the criminal standard to probe into the lives of their targets. They can secretly investigate targets for 72 hours, using "sneak and peek searches" of homes and listening devices before obtaining permission even from the Foreign Intelligence Surveillance Court, which is cloaked in secrecy and therefore does not provide the checks and balances of a traditional judicial branch tribunal.<sup>17</sup>

Hoover's secret investigations never did more than harass, embarrass and undermine the rights of his targets—during the McCarthy and civil rights eras. His spy campaigns didn't make the country any safer; they made the FBI more dangerous.

It's happening again with Ashcroft. He has approved more than 170 "emergency domestic spying warrants"—triple the number in the previous 23 years combined. His dreadful background on civil rights issues, his backpedaling on racial profiling and his obvious thirst for power is reminiscent of J. Edgar Hoover. Congress admitted Hoover's mistakes when it did away with secret investigations in the early 1970s. Yet acting in fear and haste after 9/11, our elected and appointed leaders are creating an even more powerful national security system that threatens our freedom even more than Hoover's FBI ever did.

<sup>16 &</sup>quot;White Man's Pass: The Heightened Danger of Racial Profiling in the Post 9/11 World," Laura W. Murphy, Director of the ACLU Washington National Office.

<sup>17</sup> In Re All Matters Submitted to the Foreign Intelligence Surveillance Court, May 17, 2002. The FISC, which was established by the Foreign Intelligence Surveillance Act, authorizes FBI agents to "conduct, simultaneously, telephone, microphone, cell phone, email and computer surveillance of the U.S. person target's home, workplace and vehicles." These investigations are secret, can be conducted from 90 days to a year – or more – at a time and targets cannot obtain discovery if information is turned over for criminal prosecution if the attorney general files an affidavit saying disclosure would harm national security.

#### IX CONCLUSION: NO MORE 'MISTAKES'

The September 11 attacks shattered 3,000 lives and brought new challenges to our society. Our leaders are without a doubt charged with the duty of protecting our safety. But at the federal level, they each took an oath to protect and preserve the Constitution and the rights it protects. They therefore are also responsible for not letting the terrorists change the fundamental principles that have steadily led this forward on pledge to be the land of the free and the home of equal protections under the law for all. African Americans have for centuries demanded justice, equal rights, civil liberties and the same freedoms guaranteed to everyone else. That is why black Americans cannot remain silent as efforts are made to undermine those rights through laws and policies enacted under the guise of fighting terror.

The United States government interned 100,000 people of Japanese descent in the name of fighting foreign espionage—that was wrong. The United States government investigated innocent Americans who committed no crimes during the McCarthy era in the name of fighting communism—also wrong. The United States government spied on Martin Luther King Jr. and other civil rights leaders because of their political dissent—wrong again.

Will we therefore be surprised when future generations find that the Bush administration and Attorney General Ashcroft were wrong again to sacrifice our civil liberty in the name of fighting terrorism? Unlikely.

But we must not wait decades for history to issue a verdict on what is happening to the country at the beginning of the 21st century. It's time, right now, to reel in the Attorney General and his fast-moving assault on the Constitution. Let us remember that J. Edgar Hoover couldn't rightfully bypass the Constitution and neither can John Ashcroft.

The PATRIOT Act is law, but Congress should now review some of its most dangerous provisions, which violate protections against searches and seizures and the right to counsel, and restore civil liberties in America.

Americans of good conscience, including African Americans, should voice their opposition to this disturbing direction that Ashcroft's Justice Department has taken. Congress should reassess, in a calmer atmosphere, a comprehensive and far-reaching measure it hastily passed at a time when lawmakers were told by the Attorney General that any delay in prompt passage of his proposals would leave them responsible for any further bloodshed and that even discussing the bill thoroughly would smack of anti-patriotism. The air is clearer now. Congress should take a fresh new look at the PATRIOT Act and other expanded powers and give them proper attention and discourse.

The federal government might need to make our lives less convenient to guard against terror with measures such as longer waits at airport security, but it certainly can protect people without making them less free.

But laws already enacted and those being considered would turn the clock back, stripping African Americans of hard-won rights at the same time the Bush administration wants to expand rights for citizens of Iraq.

This country cannot lose the war for liberty and freedom in America while winning freedom elsewhere.

African Americans certainly know that. They are, indeed, living proof.

NEW ERA OF DISCRIMINATION?

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