

## Moving Toward a Police State (or Have We Arrived?)

Secret military tribunals, mass arrests and disappearances, wiretapping & torture

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The late Michel Ratner, passed away in 2016. As an attorney, he was powerful voice on civil rights as well as an analyst of “war on terrorism” and US foreign policy.

With foresight, Ratner formulated Moving Toward a Police State (or Have We Arrived?) shortly after 9/11 in November 2001. What has been the historical evolution since the launching of the US Patriot Act by President Bush shortly after the 9/11 attacks:

“The USA Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism), aimed at both aliens and citizens. The legislation met more opposition than one might expect in these difficult times. Sixteen years later, “Have we Arrived?””

Flash forward to 2018, the anti-war movement is defunct. Where is the opposition to the US Police State, which is tacitly supported by media propaganda and a carefully controlled protest movement largely funded by Wall Street?

Today my thoughts are with Michael Ratner.

Michel Chossudovsky, Global Research, December 2017

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*I live a few blocks from the World Trade Center. In New York, we are still mourning the loss of so many after the attacks on our city. We want to arrest and punish the terrorists, eliminate the terrorist network and prevent future attacks. But the government’s declared war on terrorism, and many of the anti-terrorism measures, include a curtailment of freedom and constitutional rights that have many of us very worried.*

I wrote the above paragraph and much of the article that follows toward the end of October. At that time, the repressive machinery then being put into effect was already terrifying. Since that time the situation has gotten unimaginably worse; rights that we thought embedded in the constitution and protected by international law are in serious jeopardy or have already been eliminated. It is no exaggeration to say we are moving toward a police state. In this atmosphere, we should take nothing for granted. We will not be protected, nor will the courts, the congress, or the many liberals who are gleefully jumping on the bandwagon of repression guarantee our rights. We have no choice but to make our voices be heard; it is time to stand and be counted on the side of justice and against the antediluvian forces that have much of our country in a stranglehold.

The domestic consequences of the war on terrorism include massive arrests and interrogation of immigrants, the possible use of torture to obtain information, the creation of a special new cabinet office of Homeland Security and the passage of legislation granting intelligence and law enforcement agencies much broader powers to intrude into the private lives of Americans. Recent new initiatives — the wiretapping of attorney-client conversations and military commissions to try suspected terrorists — undermine core constitutional protections and are reminiscent of inquisitorial practices.

Although it is not discussed in this article, the war on terrorism also means pervasive government and media censorship of information, the silencing of dissent, and widespread ethnic and religious profiling of Muslims, Arabs and Asian people. It means creating a climate of fear where one suspects one's neighbors and people are afraid to speak out.

The claimed necessity for this war at home is problematic. The legislation and other governmental actions are premised on the belief that the intelligence agencies failed to stop the September 11th attack because they lacked the spying capability to find and arrest the conspirators. Yet, neither the government nor the agencies have demonstrated that this is the reason.

This war at home gives Americans a false sense of security, allowing us to believe that tighter borders, vastly empowered intelligence agencies, and increased surveillance will stop terrorism. The United States is not yet a police state. However, even a police state could not stop terrorists intent on doing us harm. In addition, the fantasy of Fortress America keeps us from examining the root causes of terrorism, and the consequences of decades of American foreign policy in the Middle East, Afghanistan and elsewhere. Unless some of the grievances against the United States are studied and addressed, terrorism will continue.

#### Military Commissions: The Peruvian Option

On November 13, President Bush signed an executive order establishing military commissions or tribunals to try suspected terrorists. Under this order non-citizens, whether from the United States or elsewhere, accused of aiding international terrorism, at the discretion of the President, can be tried before one of these commissions. These are not court-martials, which provide far more protections. The divergence from constitutional protections the executive order allows are breathtaking. Attorney General Ashcroft has explicitly stated that terrorists do not deserve constitutional protections. These are "courts" of conviction and not of justice.

The Secretary of Defense will appoint the judges, most likely military officers, who will decide both questions of law and fact. Unlike federal judges who are appointed for life, these officers will have little independence and every reason to decide in favor of the prosecution. Normal rules of evidence, which provide some assurance of reliability, will not apply. Hearsay and even evidence obtained from torture will apparently be admissible. This is particularly frightening in light of the intimations from U.S. officials that torture of suspects may be an option. Rules of evidence help insure the innocent are spared, but also that law enforcement authorities adhere to what we thought were evolving standards of a civilized society.

Unanimity among the judges is not required even to impose the death penalty. Suspects will not have free choice of attorneys. The only appeal from a conviction will be to the President

or the Secretary of Defense. Incredibly, the entire process, including execution, can be conducted in secret and the trials can be held anywhere the Secretary of Defense decides. A trial might occur on an aircraft carrier and the body of the executed “buried” at sea. The President is literally getting away with murder.

Surprisingly, a number of prestigious law professors (e.g. Lawrence Tribe and Ruth Wedgwood) have accepted and even argued in favor of these tribunals. The primary claim is that it might be necessary to disclose classified information in order to obtain convictions. This is a pretext. There are procedures for handling classified information in federal courts as was done in the trial of those convicted in the 1993 bombing of the World Trade Center. It certainly does not provide a reason for sending suspects into a “justice” system akin to that which the US condemned in Peru. The 1993 trials also demonstrate that these trials can be held in federal courts.

Trials before military commissions will not be trusted in either the Muslim world or elsewhere. Nor should they. They will be viewed as what they are — “kangaroo courts.” How much better to demonstrate to the world that the guilty have been apprehended and fairly convicted. A better solution would be for the US to go to the U.N. and have the UN establish a special court for the trials. Judges from different legal systems including that of the US, Muslim and civil law countries could constitute such a court.

#### Wiretapping Attorney-Client Communications

At the heart of the effective assistance of counsel is the right of a criminal defendant to a lawyer with whom he or she can communicate candidly and freely without fear that the government is overhearing confidential communications. This right is fundamental to the adversary system of justice in the United States. When the government overhears these conversations, a defendant’s right to a defense is compromised.



Attorney General John Ashcroft

Now, with the stroke of pen, Attorney General Ashcroft, has eliminated the attorney-client privilege and will wiretap privileged communications when he thinks there is “reasonable suspicion to believe” that an “inmate may use communications with attorneys or their agents to further facilitate act of violence or terrorism.” He says that approximately one hundred such suspects and their attorneys may be subject to the order. He claims the legal authority to do so without court order; in other words without the approval and finding by a neutral magistrate that attorney-client communications are facilitating criminal conduct.

This is utter lawlessness by our country's top law enforcement officer and is flatly unconstitutional. This wiretapping of attorney-client communications has already begun.

## The New Legal Regime

The government has established a tripartite plan in its efforts to eradicate terrorism in the United States. President Bush has created a new cabinet-level Homeland Security Office; the Federal Bureau of Investigation is investigating thousands of individuals and groups and making hundreds of arrests; and Congress is enacting new laws that will grant the FBI and other intelligence agencies vast new powers to wiretap and spy on people in the United States.

## The Office of Homeland Security

On September 20th President Bush announced the creation of the Homeland Security Office, charged with gathering intelligence, coordinating anti-terrorism efforts and taking precautions to prevent and respond to terrorism. It is not yet known how this office will function, but it will most likely try to centralize the powers of the intelligence and law enforcement agencies — a difficult, if not impossible, job — among some 40 bickering agencies. Those concerned with its establishment are worried that it will become a super spy agency and, as its very name implies, that the military will play a role in domestic law enforcement.

## FBI Investigations and Arrests

The FBI has always done more than chase criminals; like the Central Intelligence Agency it has long considered itself the protector of US ideology. Those who have opposed government policies — whether civil rights workers, anti-Vietnam war protesters, opponents of the covert Reagan-era wars or cultural dissidents — have repeatedly been surveyed and had their activities disrupted by the FBI.

In the immediate aftermath of the September 11 attack, Attorney General John Ashcroft focused on non-citizens, whether permanent residents, students, temporary workers or tourists. Normally, an alien can only be held for 48 hours prior to the filing of charges. Ashcroft's new regulation allowed arrested aliens to be held without any charges for a "reasonable time," presumably months or longer. (See below for new legislation regarding detention of immigrants.)

The FBI began massive detentions and investigations of individuals suspected of terrorist connections, almost all of them non-citizens of Middle Eastern descent; over 1,100 have been arrested. Many were held for days without access to lawyers or knowledge of the charges against them; many are still in detention. Few, if any, have been proven to have a connection with the September 11 attacks and remain in jail despite having been cleared. In some cases, people were arrested merely for being from a country like Pakistan and having expired student visas. Stories of mistreatment of such detainees are not uncommon.

Apparently, some of those arrested are not willing to talk to the FBI, although they have been offered shorter jail sentences, jobs, money and new identities. Astonishingly, the FBI and the Department of Justice are discussing methods to force them to talk, which include "using drugs or pressure tactics such as those employed by the Israeli interrogators." The accurate term to describe these tactics is torture. Our government wants to torture people

to make them talk. There is resistance to this even from law enforcement officials. One former FBI Chief of Counter-Terrorism, said in an October New York Newsday article, "Torture goes against every grain in my body. Chances are you are going to get the wrong person and risk damage or killing them."

As torture is illegal in the United States and under international law, US officials risk lawsuits by such practices. For this reason, they have suggested having another country do their dirty work; they want to extradite the suspects to allied countries where security services threaten family members and use torture. It would be difficult to imagine a more ominous signal of the repressive period we are facing. The FBI is also currently investigating groups it claims are linked to terrorism — among them pacifist groups such as the US chapter of Women in Black, which holds vigils to protest violence in Israel and the Palestinian Territories. The FBI has threatened to force members of Women in Black to either talk about their group or go to jail. As one of the group's members said, "If the FBI cannot or will not distinguish between groups who collude in hatred and terrorism, and peace activists who struggle in the full light of day against all forms of terrorism we are in serious trouble."

Unfortunately, the FBI does not make that distinction. We are facing not only the roundup of thousands on flimsy suspicions, but also an all-out investigation of dissent in the United States.

### The New Anti-Terrorist Legislation

Congress has passed and President Bush has signed sweeping new anti-terrorist legislation, the USA Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism), aimed at both aliens and citizens. The legislation met more opposition than one might expect in these difficult times. A National Coalition to Protect Political Freedom of over 120 groups ranging from the right to the left opposed the worst aspects of the proposed new law. They succeeded in making minor modifications, but the most troubling provisions remain, and are described below:

#### Rights of Aliens

Prior to the legislation, anti-terrorist laws passed in the wake of the 1996 bombing of the federal building in Oklahoma had already given the government wide powers to arrest, detain and deport aliens based upon secret evidence — evidence that neither the alien nor his attorney could view or refute. The current proposed legislation makes it even worse for aliens.

First, the law would permit "mandatory detention" of aliens certified by the attorney general as "suspected terrorists." These could include aliens involved in barroom brawls or those who have provided only humanitarian assistance to organizations disfavored by the United States. Once certified in this way, an alien could be imprisoned indefinitely with no real opportunity for court challenge. Until now, such "preventive detention" was believed to be flatly unconstitutional.

Second, current law permits deportation of aliens who support terrorist activity; the proposed law would make aliens deportable for almost any association with a "terrorist organization." Although this change seems to have a certain surface plausibility, it represents a dangerous erosion of Americans' constitutionally protected rights of association. "Terrorist organization" is a broad and open-ended term that could include

liberation groups such as the Irish Republican Army, the African National Congress, or civic groups that have ever engaged in any violent activity, such as Greenpeace. An alien who gives only medical or humanitarian aid to similar groups, or simply supports their political message in a material way could be jailed indefinitely.

#### More Powers to the FBI and CIA

A key element in the new law is the wide expansion of wiretapping. In the United States wiretapping is permitted, but generally only when there is probable cause to believe a crime has been committed and a judge signs a special wiretapping order that contains limited time periods, the numbers of the telephones wiretapped and the type of conversations that can be overheard.

In 1978, an exception was made to these strict requirements, permitting wiretapping to be carried out to gather intelligence information about foreign governments and foreign terrorist organizations. A secret court, the Foreign Intelligence Surveillance Court, was established that could approve such wiretaps without requiring the government to show evidence of criminal conduct. In doing so the constitutional protections necessary when investigating crimes could be bypassed. The secret court is little more than a rubber stamp for wiretapping requests by the spy agencies. It has authorized over 13,000 wiretaps in its 22-year existence, approximately a thousand last year, and has apparently never denied a request.

Under the new law, the same secret court will have the power to authorize wiretaps and secret searches of homes in criminal cases — not just to gather foreign intelligence. The FBI will be able to wiretap individuals and organizations without meeting the stringent requirements of the Constitution. The law will authorize the secret court to permit roving wiretaps of any phones, computers or cell phones that might possibly be used by a suspect. Widespread reading of e-mail will be allowed, even before the recipient opens it. Thousands of conversations will be listened to or read that have nothing to do with the suspect or any crime.

The new legislation is filled with many other expansions of investigative and prosecutorial power, including wider use of undercover agents to infiltrate organizations, longer jail sentences and lifetime supervision for some who have served their sentences, more crimes that can receive the death penalty and longer statutes of limitations for prosecuting crimes. Another provision of the new bill makes it a crime for a person to fail to notify the FBI if he or she has “reasonable grounds to believe” that someone is about to commit a terrorist offense. The language of this provision is so vague that anyone, however innocent, with any connection to anyone suspected of being a terrorist can be prosecuted. We will all need to become spies to protect ourselves and the subjects of our spying, at least for now, will be those from the Mid East.

#### The New Crime of Domestic Terrorism

The act creates a number of new crimes. One of the most threatening to dissent and those who oppose government policies is the crime of “domestic terrorism.” It is loosely defined as acts that are dangerous to human life, violate criminal law and “appear to be intended” to intimidate or coerce a civilian population” or “influence the policy of a government by intimidation or coercion.” Under this definition, a protest demonstration that blocked a street and prevented an ambulance from getting by could be deemed domestic terrorism.

Likewise, the demonstrations in Seattle against the WTO could fit within the definition. This was an unnecessary addition to the criminal code; there are already plenty of laws making such civil disobedience criminal without labeling such time honored protest as terrorist and imposing severe prison sentences.

Overall, the new legislation represents one of the most sweeping assaults on liberties in the last 50 years. It is unlikely to make us more secure; it is certain to make us less free.

It is common for governments to reach for draconian law enforcement solutions in times of war or national crisis. It has happened often in the United States and elsewhere. We should learn from historical example: times of hysteria, of war, and of instability are not the times to rush to enact new laws that curtail our freedoms and grant more authority to the government and its intelligence and law enforcement agencies.

The US government has conceptualized the war against terrorism as a permanent war, a war without boundaries. Terrorism is frightening to all of us, but it's equally chilling to think that in the name of antiterrorism our government is willing to suspend constitutional freedoms permanently as well.

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