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Who Will Watch the Watchmen? A Response to the Patriot Act

Who will watch the watchmen? Plato posed the question, but it is just as important today as it was 2,400 years ago. Power has to be kept in check, as the founders of our country knew when they designed a system of checks and balances in the United States Constitution. An agency that has the power to protect us from enemies also has the power to do us great harm. Police must be able to search for evidence if they are to catch terrorists or other criminals, but when police get access to information about us too easily they can abuse their power. It is vital to protect citizens from police intrusion. In the United States we do this by requiring the police to go to court and obtain a search warrant.

Today, the security forces want approval to seize credit card information from Internet sites without a court order; and they want permission to record what URLs you look at without a court order—giving them such information as which books you have bought. There is already no difficulty getting a court to approve a search warrant when there is credible evidence of a terrorist plot, so officials can already investigate terrorists without this power. Whenever police ask to be allowed to bypass search warrants we must be on guard.

We depend on the FBI to investigate suspected terrorists, but whom else will it investigate? Most likely it will limit any real political opposition, since the FBI has a long history of investigating dissidents purely based on their political views. Martin Luther King, Jr.'s phone was tapped; his life-long commitment to non-violence apparently was not enough reason to consider him non-threatening. More recently in the cyber world, the FBI investigated John Gilmore, founder of the Electronic Frontier Foundation, as a criminal suspect based on no evidence except his political views.

Terrorists often set up organizations to carry out their work or raise funds, and it makes sense to pursue those organizations and prohibit contributions to them. Yet, we must be very careful about how organizations are designated as "terrorist." The FBI has infiltrated and targeted many peaceful political groups. In the 1980's, while the United States supported a regime in El Salvador that killed tens of thousands of opposition activists, the FBI burglarized the office of Committee In Support of the People of El Salvador (CISPES) rather than ask

for a search warrant to investigate.

Will the FBI stick to reason in deciding what is a “terrorist group”? Not if recent experience is any guide. On May 10, 2001, for example, FBI director Louis Freeh, while testifying to Congress on the “threat of terrorism to the United States,” listed the group “Reclaim the Streets” as a terrorist threat. In truth, “Reclaim the Streets” sets up surprise street parties where people play music and dance. It is described in the book “No Logo” by Naomi Klein as one of the new forms of protest against global brand-dominated cultures. No person has ever been killed or wounded by “Reclaim the Streets.” Can the FBI not distinguish between dancing and murder?

U.S. Attorney General John Ashcroft has asked for the power to deport or imprison indefinitely any non-citizen on mere suspicion of involvement with terrorism and without even having to go before a judge. This would deny visitors and immigrants the most basic legal right, the right to a fair trial when accused of a crime. It would put the United States on a level with any brutal police state. The United Kingdom has already announced plans for similar measures, and we cannot take for granted that the United States will not follow.

Another way the watchmen can threaten our freedom is by keeping us in the dark about what the government is doing. There are good reasons to keep secrets about intelligence gathering methods. If enemies find out how their places are being observed, they can take countermeasures. However, the U.S. government also has a long tradition of keeping secrets from the American public to conceal its mistakes or its mistreatment of people and land. The 1960’s blockbuster book, *The Pentagon Papers*, showed that the Department of Defense knew that what it was telling the public about the Vietnam War was false. The public found out because a heroic whistleblower, Daniel Ellsberg, released a copy of these papers to *The New York Times*. Therefore, when we see proposals for laws to prevent leaks by punishing whistle-blowers, we should check them very carefully to make sure we won’t be giving our public servants carte blanche to thumb their noses at us. If an FBI agent asks for our cooperation, what should we do?

The FBI investigates and arrests terrorists. If the FBI were investigating a plot to hijack planes, I would want to help all I could. But the same FBI arrested Dmitry Sklyarov for allegedly developing a software program that Americans can use to escape from the shackles of Adobe e-books. No one should cooperate with an investigation of that kind of “crime.” If you don’t know whether a policeman is looking to arrest a person for murder or for smoking a joint, how can you determine what right conduct would be?

If the United States wants to obtain the full cooperation of the FBI and other police, from all Americans, it should now abolish laws that shackle and harm Americans. Congress should begin this effort to regain public confidence

in authority by repealing the prohibition of certain drugs.

Prohibition of drugs is especially destructive to our communities now because, in addition to imprisoning over two million Americans who would otherwise contribute to the strength of our country, it helps subsidize terrorism on all sides. Prohibition makes illegal drugs so profitable that various terrorist groups (including, reportedly, Bin Laden's) get substantial funding by trading in them. Thus, the self-defeating U.S. drug policy has become a vulnerability we cannot afford.

Over decades, external and internal enemies come and go. Sometimes the government protects us from danger, and sometimes it is the danger. Whenever there is a proposal to increase government surveillance power, we must not judge solely in terms of the situation of the moment, but also in terms of the whole range of situations that we have faced and will face again. We must use the government for our protection, but we must never stop protecting ourselves from it.

In the United States, we have developed a system of institutions to watch the watchmen. Judges watch them in some ways; the public watches them in other ways. For our safety, we must keep this system functioning. When the watchmen are really working for us, they can afford to let us check their work. When they ask us to stop checking, as American citizens we must say no, as is our right, obligation and duty.