



Post-9/11 tradeoff: Security vs. civil liberties

By DAVID CRARY, AP National Writer – 1 day ago

NEW YORK (AP) — In the early months after the 9/11 terror attacks, America's visceral reaction was to gird for a relentless, whatever-it-takes quest to punish those responsible and prevent any recurrences.

To a striking extent, those goals have been achieved. Yet over the years, Americans have also learned about trade-offs, about decisions and practices that placed national security on a higher plane than civil liberties and, in the view of some, above the rule of law.

It's by no means the first time in U.S. history that security concerns spawned tactics that, when brought to light, troubled Americans. But the past decade has been notable, even in historical context, for the scope and durability of boundary-pushing practices.

Abroad, there were secret prisons and renditions of terror suspects, the use of waterboarding and other interrogation techniques that critics denounced as torture, and the egregious abuse of detainees by U.S. military personnel at Iraq's Abu Ghraib prison and elsewhere.

At home, there has been widespread warrantless wiretapping authorized by the National Security Agency and the issuance of more than 200,000 national security letters ordering an array of Americans — including business owners and librarians — to turn over confidential records.

Now, in the very city that suffered most on 9/11, new information has emerged about the New York Police Department's intelligence operations — ramped up after the attacks in ways that critics say amount to racial and ethnic profiling, though the department denies that charge.

Since August, an Associated Press investigation has revealed a vast NYPD intelligence-collecting effort targeting the city's Muslims. Police have conducted surveillance of entire Muslim neighborhoods, monitoring where people eat, pray and get their hair cut. Dozens of mosques and Muslim student groups were infiltrated. The CIA helped develop some of the programs.

The FBI also has intelligence-gathering operations that target Muslim and other ethnic communities. Both the bureau and the NYPD defend the programs as conforming to guidelines on profiling, while critics brand the tactics as unconstitutional and ineffective.

"Targeting entire communities for investigation based on erroneous stereotypes produces flawed intelligence," says Michael German, a former FBI agent who's now senior policy counsel for the American Civil Liberties Union. "Law enforcement programs based on evidence and facts are effective, and a system of bias and mass suspicion is not."

The FBI, which in 2003 was authorized to conduct racial and ethnic profiling in national security investigations, says its community assessments are legal and vital. "Certain terrorist and criminal groups are comprised of persons primarily from a particular ethnic or geographic community, which must be taken into account when trying to determine if there are threats to the United States," the bureau said in response to ACLU criticism.

But some feel the perpetual safety-vs.-civil-liberties balancing act has been knocked askew since 9/11. In a recent assessment of national security response to the terror attacks, the ACLU faulted policies it said had undermined the Constitution.

"We lost our way when, instead of addressing the challenge of terrorism consistent with our values, our government chose the path of torture and targeted killing ... of warrantless government spying and the entrenchment of a national surveillance state," its report said. "That is not who we are, or who we want to be."

To be sure, Americans have been spied on before by their law enforcement and security agencies, usually in periods of national anxiety.

During the Red Scare of 1919-20, Attorney General A. Mitchell Palmer responded to labor unrest and bombings — including an attack on his own house — by overseeing mass roundups of thousands of suspected anarchists and communists, hundreds of whom were deported. In the aftermath of the raids, he was assailed by eminent legal experts for allowing raids without warrants and for denying detainees legal representation.

In the 1950s, the FBI under the leadership of J. Edgar Hoover abetted Sen. Joe McCarthy and other zealous anti-communists with various domestic spying tactics, including opening of mail and unauthorized wiretaps. The bureau also kept civil rights leaders under surveillance during the late '50s and 1960s, again claiming in some cases that unproven communist ties represented a security threat.

Many of these covert FBI activities took place under the aegis of its covert Counter Intelligence Program, known as COINTELPRO. Its targets included the Nation of Islam, Students for a Democratic Society and various groups opposed to the Vietnam War.

A Senate committee headed by Frank Church, D-Idaho, investigated COINTELPRO in 1975-76 and denounced it as a "sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association."

To civil libertarians, the upsurge of post-9/11 intelligence-gathering is distinctive from these previous endeavors in some key respects. To a large extent, it has the imprimatur of

Congress, in the form of the Patriot Act and other legislation, and it makes use of astounding technical advances that have vastly broadened surveillance capabilities.

"What we've seen is an unprecedented perfect storm of a sense of national vulnerability, coupled with technological developments that have made specter of 1984 look kind of hokey," said Donna Lieberman, executive director of the New York Civil Liberties Union. "We don't know what the lasting effect will be ... We don't know how permanent the 'new normal' is."

Nationally, civil liberties advocates have taken numerous legal steps, including lawsuits, to challenge some of the federal surveillance practices or find out more about their scope. In New York, some elected officials are calling for federal and state investigations of the NYPD spying on Muslim neighborhoods.

Yet top politicians — including President Barack Obama and New York Mayor Michael Bloomberg — are generally reluctant to criticize homeland security operations.

"I believe we should do what we have to do to keep us safe. And we have to be consistent with the Constitution and with people's rights," Bloomberg said ahead of the 10th anniversary commemorations of 9/11.

"We live in a dangerous world," he added, "and we have to be very proactive in making sure that we prevent terrorism."

Many Americans seem to agree. According to a poll in September by The Associated Press-NORC Center for Public Affairs Research, two-thirds of Americans say it's fitting to sacrifice some privacy and freedoms in the fight against terrorism.

The bottom line, say those who support the post-9/11 tactics, is the government's success in thwarting new terrorist attacks on U.S. soil. James Jay Carafano, a security expert with the conservative Heritage Foundation, credits aggressive surveillance for helping uncover roughly 40 terror plots since 2001.

"Do we live with more surveillance than we used to? You could make a case for that," he said. "But it's very difficult to make a serious case we've migrated to a state where civil liberties have been impinged because of the war on terror."

Peter Chase tries to make precisely that case. Longtime director of the public library in Plainville, Conn., he was one of four Connecticut librarians who sued the federal government after they received a national security letter demanding some library patrons' computer records without a court order.

More than 200,000 of those FBI directives, which place their recipients under gag orders, have been issued since 2003. Chase and his colleagues are among a tiny handful who have fought back in court and gained the right to speak out about their case.

"When people come in to public libraries, they expect that what they're going to borrow is confidential," said Chase, 61. "Letting others know what they're reading is like spying on the voting booth, it's like spying on what they are thinking."

Tim Lynch, head of the libertarian-leaning Cato Institute's Project on Criminal Justice and an expert on civil liberties, says most Americans are unaware of the extent to which basic liberties are being undermined by new, security-motivated legal precedents.

"The average person only comes face-to-face with some of these policies at the airport," he said. "They feel, 'Oh, it hasn't been that bad.'"

"But those of us trained in the law are alarmed," Lynch said. "Lawmakers are too willing to pass laws that would give more power to the FBI and the executive branch."

Such a law, critics say, was the sweeping Patriot Act, which was swiftly drafted after the Sept. 11, 2001, attacks and signed into law on Oct. 26th of that year. Among its provisions, it allows government agents to conduct broad searches for records in national security investigations without court warrants.

The only Senate vote against the act was cast by Wisconsin Democrat Russ Feingold, who lost his seat in 2010. This fall, in the forward to a report by a Muslim-American legal advocacy group, Feingold blasted the Patriot Act as "a blatant power-grab that gave unprecedented, unchecked power to the government to arrest, detain and spy on our nation's citizens."

A few current senators have called for the act to be reined in, but Congress this year reauthorized some of its most controversial provisions — such as roving wiretaps to monitor multiple communication devices. A Senate committee also rejected an effort by Sens. Ron Wyden, D-Oregon, and Mark Udall, D-Colo., to obtain more information from top security officials about what they describe as secret interpretations of domestic surveillance law.

Some of the post-9/11 intelligence operations potentially affect almost all Americans, such as so-called data-mining systems capable of sifting through vast quantities of personal records.

"Fusion centers" have been set up in every state since 9/11 for the purpose of sharing tips, crime reports and other information among federal, state and local law enforcement agencies. In some cases, the military and private companies have participated.

The centers' purpose is to spot potentially dangerous individuals or patterns that might otherwise have been overlooked, and thus avoid a repeat of missed opportunities before the 9/11 attacks. However, civil liberties advocates have voiced fears that the centers could be used to spy on Americans who have no link to suspected terrorism, and some missteps have been documented.

In 2009, Missouri's fusion center asserted that some supporters of GOP Rep. Ron Paul of Texas posed a security threat. In Tennessee, the ACLU affiliate sent a letter to public schools warning them not to celebrate Christmas as a religious holiday; the state fusion center put the communication on a map of "terrorism events and other suspicious activity."

Overall, however, it is the Muslim-American community that considers itself the prime target of heightened surveillance efforts.

The concerns are summarized in an impassioned report titled "Losing Liberty," released last month by Muslim Advocates, a San Francisco-based legal advocacy group.

"The Patriot Act opened the floodgates to a plethora of discriminatory and invasive laws, policies, and practices in the name of national security of which Muslims and those perceived to be Muslim have borne the brunt," says the report. "It is difficult to find a Muslim today who has not been contacted by law enforcement or affected by these policies."

The executive director of Muslim Advocates, Farhana Khera, hopes Congress will hold hearings on a bill recently introduced by Sen. Ben Cardin, D-Md., that would prohibit racial, ethnic and religious profiling at the federal and state level.

"Much of what the FBI has been doing has been shrouded in secrecy, and the American people have a right to know how these unprecedented powers are being used," Khera said. "We have something pretty special in our country and its founding principles, and we need to return to them."

Targets of the NYPD surveillance range from obscure Moroccan immigrants in hard-scrabble New York neighborhoods to Reda Shata, a New York-area imam. Shata eagerly cooperated with the police and FBI, invited officers to his mosque for breakfast, even dined with Mayor Bloomberg — yet according to NYPD files examined by the AP, he was under police surveillance at the time.

"You were loving people very much, and then all of a sudden you get shocked," Shata said last month after learning he was monitored. "It's a bitter feeling."

The NYPD has defended its surveillance efforts as vital to the city's security, while insisting its actions are lawful and respectful.

"The value we place on privacy rights and other constitutional protections is part of what motivates the work of counterterrorism," Police Commissioner Raymond Kelly told city councilors recently. "It would be counterproductive in the extreme if we violated those freedoms in the course of our work to defend New York."

Among the prominent Muslims affected by intensified post-9/11 security is Jawad Khaki, who for 20 years was a globe-trotting executive with Microsoft Corp. before leaving in 2009 to found a nonprofit community group.

Starting in 2007, Khaki says he was subjected to intensive airport interrogations and searches each time he returned to the U.S. from abroad, including inspections of data on his smartphone. One customs agent advised him to cut back on his travels if he didn't like the hassles, he says.

Against the advice of his attorney, Khaki decided to go public with his dismay.

"It's not just about my individual rights — it's about everybody's rights," said Khaki, a native of Tanzania who moved to the U.S. in 1985 and lives in the Seattle suburb of Sammamish.

"I chose to become an American citizen," he said. "One of my patriotic duties is to uphold the constitution, and the constitution is about justice and liberty for all."