



## The Emerging Police State

To those who pit Americans against immigrants, and citizens against non-citizens; to those who scare peace-loving people with phantoms of lost liberty; my message is this: Your tactics only aid terrorists — for they erode our national unity and diminish our resolve. They give ammunition to America’s enemies, and pause to America’s friends. They encourage people of good will to remain silent in the face of evil.

Ashcroft hastened to reassure his audience that new anti-terror initiatives “have been carefully crafted to avoid infringing on constitutional rights while saving American lives,” and that the Bush administration intends to cooperate with Congress in fighting terrorism. Two days after Ashcroft’s remarks, Mindy Tucker, the Justice Department’s communications director, attempted to placate those who took exception to Ashcroft’s comments, explaining that Ashcroft was referring only to “misstatements and the spread of misinformation,” and claiming that the controversy over Ashcroft’s statement was “part of the exact problem he was describing.”

The real issue, though, is whether critics of the Bush administration have a point. Are American liberties being jeopardized by the “War on Terrorism,” or are such claims merely a smear campaign orchestrated by partisan enemies and crackpot extremists? Based on the trend in recent events, the long-term threat of permanently curtailed liberties is very real.

Much has already been made of Bush’s proposed military tribunals, which have become something of a rallying point for political enemies of the Bush administration. The notion of secret military tribunals, even if restricted to non-U.S. citizens, is scary enough (see the article “Terror Tribunals”), especially in light of calls from the likes of Judge Robert Bork, writing in the *National Review*, to extend their jurisdiction to U.S. citizens. But the proposed tribunals are only part of a larger movement to involve the U.S. military in domestic law enforcement.

Since September 11th, Americans have gotten used to the unsettling sight of National Guard troops policing airports and the streets of Washington, D.C., and to military jets patrolling the skies above





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some of our larger cities. Most of us assume that this is a temporary, emergency response to an unexpected terrorist threat. In reality, plans to use the National Guard as a permanent means to enforce internal security have been in the works for at least several years.

### **Alarming Predictions**

Shortly after the September 11th attacks, a few reports surfaced in the national press of the work of the so-called Hart-Rudman Commission. A policy study group created in 1998, this commission was charged with creating policy recommendations designed to meet the evolving security and defense requirements of the United States over the next 25 years. The group, officially named the United States Commission on National Security/21st Century, was in part the brainchild of Newt Gingrich, the former Speaker of the House. Gingrich is a disciple of futurist Alvin Toffler, whose ideas appear to be part of the inspiration for the project and whose firm, Toffler Associates, is one of the commission's acknowledged consultants. The commission itself, chaired by former Senators Warren Rudman (R-N.H.) and Gary Hart (D-Colo.), sports an impressive roster of Washington power players. Besides Newt Gingrich they include Council on Foreign Relations president Leslie Gelb, former Indiana congressman Lee Hamilton, and former Secretary of Defense James Schlesinger.

In keeping with the futurist bent of its originator, the commission devoted much of its early work to predicting future trends. These predictions, which were compiled in a report entitled *New World Coming*, include everything from anticipated changes in geopolitics to expected technological innovations. While the document makes a number of predictions that ought to alarm those concerned with the future of American sovereignty (see sidebar "Whose World Will It Be?"), the most relevant to current events is the first item listed in the summarizing section, "Major Themes and Implications." Forecasting that "America will become increasingly vulnerable to hostile attack on our homeland, and our military superiority will not entirely protect us," the document adds the chillingly accurate prediction that "states, terrorists, and other disaffected groups will acquire weapons of mass destruction and mass disruption, and some will use them. Americans will likely die on American soil, possibly in large numbers."

Building on the predictions in *New World Coming*, the Hart-Rudman Commission issued several other reports containing recommendations for policy changes, the last of which, *Road Map for National Security*, was completed on January 31, 2001, and delivered to President George W. Bush. In *Road Map*, one of the first highlighted recommendations urges that "the National Guard be given homeland security as a primary mission, as the U.S. Constitution itself ordains. The National Guard should be reorganized, trained, and equipped to undertake that mission." Claiming, falsely, that the "[National Guard's] origins are to be found in the state militias authorized by the U.S. Constitution," the commission recommends that "the National Guard be reorganized to fulfill its historic and Constitutional mission of homeland security" by, among other things, participating in and initiating "state, local, and regional planning for responding to a WMD [Weapon of Mass Destruction] incident" and planning for "rapid inter-state support and reinforcement."

Such provisions would amount to the deployment of the National Guard as a de facto national military police, whereas current law keeps them under the control of state governors. Furthermore, National Guard troops — their part-time status notwithstanding — are trained as soldiers, not policemen. Soldiers are trained and prepared for combat, to defeat and destroy the enemy, but law enforcement officials are trained to investigate and detain suspects, paying scrupulous attention to the civil liberties of even the most hardened, vicious criminals. In spite of such clear-cut differences, and the strong



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resistance of most Americans to militarize police functions, National Guard troops have become permanent fixtures around airports and in other crucial security areas like Washington, D.C.

### **Origins of Homeland Security**

More worrisome still is the central recommendation of *Road Map* that “the President should propose, and Congress should agree, to create a National Homeland Security Agency ... with responsibility for planning, coordinating, and integrating various U.S. government activities involved in homeland security. They should use the Federal Emergency Management Agency (FEMA) as a key building block in this effort.” The document, which was written long before September 11th, went on to suggest that the president “propose to Congress the transfer of Customs Service, the Border Patrol, and Coast Guard to the National Homeland Security Agency” to create a “stronger and more effective system.” This Homeland Security Agency would oversee state and local as well as federal law enforcement and crisis response agencies. This would include “setting training and equipment standards, providing resource grants, and encouraging intelligence and information sharing among state emergency management officials, local first responders, the Defense Department, and the FBI,” and “pulling together private sector activities, including those of the medical community, on recovery, consequence management, and planning for continuity of services.” Such proposals, if implemented, would concentrate in the Executive Branch vast new powers to federalize state and local police activities. The contemplated “setting of standards” and “providing of resource grants,” in particular, would further erode the autonomy of independent local law enforcement.

Congress, meanwhile, would be excluded from the process except as a rubber-stamp consultant. *Road Map* recommends that Congress “refurbish the legal foundation for homeland security in response to the new threat environment,” which includes the threat of “biological and terrorist attacks [and] cyber attacks on critical systems.”

Washington insiders have been contemplating for years the creation of a federal agency charged with homeland defense. In January 1999, when most of the nation was distracted by the Clinton impeachment scandal, President Clinton created a minor stir by proposing a number of new measures to fight the growing threat of terrorism on American soil. Stating that a major terrorist attack was “highly likely” on American soil within the next few years, Clinton set forth a 10-point plan to meet the threat, which included creating a “Homelands Defense Command.” Because of Clinton’s political vulnerability, and because the proposal took the form of a permanent military command stationed on U.S. soil, the idea was eventually scrapped under pressure from those worried about using the military to patrol the American homeland.

What a difference a few years and a new administration make! In addition to the military — in the form of the National Guard — now policing America, we also have NATO planes patrolling American airspace. And despite the concerns over President Clinton’s Homelands Defense Command, we now have President Bush’s new Office of Homeland Security, with the power to direct 46 different federal agencies in the name of fighting terrorism.

Both Bush’s Office of Homeland Security, established by executive order on October 8th, and Clinton’s Homelands Defense Command, appear to be derived from the Hart-Rudman Commission’s original recommendation for a “National Homeland Security Agency.” That idea, which presumably predated the official publication of *Road Map*, may well have been mooted as early as 1998, when the commission held its first business meeting. All three Homeland Security schemes envision a permanent military presence to police the American homeland; all three are a response to the threat of a major terrorist



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attack; and all three propose a massive concentration of new powers in the executive branch to coordinate and direct both federal and state-based agencies responsible for internal security.

### **A National Strategy**

The Bush executive order of October 8th charges the Office of Homeland Security to oversee anything remotely connected to security within the United States, from the agricultural industry and information systems to telecommunications and energy production. Former Pennsylvania Governor Tom Ridge, put in charge of the Office of Homeland Security, told participants in a conference on homeland defense and security on November 27th that the mission of the office is “to create a comprehensive national strategy for homeland defense, to secure the United States from terrorist threat or attacks.” Ridge continued:

[P]lease notice that I said it was to be a national strategy — not a federal strategy. The national strategy that the president envisions will involve all levels of government, federal, state and local. It will tap the creative genius and resources of both the public and the private sectors.... Our national strategy will focus all the instruments of national power at our disposal. Where we find cracks in the system, we will work to repair them. Where we find strengths in the system, we will work to enhance them.

In other words, the Office of Homeland Security exists to nationalize all government functions — local, state, and federal — related to internal security and concentrate them in the executive branch. Alexander Hamilton warned that:

An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them would be altogether dependent on the general will. But as the plan of the [constitutional] convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, *exclusively* delegated to the United States.

Mr. Ridge also made the astonishing claim that “before September 11th, many in our country never thought of [firefighters, police, and medical professionals] as first responders. Nobody really ever thought of these individuals as the first line of a homeland defense.”

In truth, the federal system assumes and even requires that citizens and local law-enforcement and government, not the federal government, be the first lines of domestic defense. Most of us living outside the Beltway are far more familiar with local police and fire officials than with the FBI and FEMA. But Ridge insisted that just as “we wouldn’t send soldiers into harm’s way without proper equipment and training, ... it’s clear that we owe the same commitment to our first responders in this country as well. Our first responders need standardized training.” There you have it: Despite the heroics displayed by New York City police and firefighters on September 11th, which contrasted sharply with the panicked dithering of the feds, Mr. Ridge believes they require standardized training by Big Brother in Washington to ensure that they perform according to national, military-like standards.

Invoking the overarching priority of fighting terrorism, Ridge asserted the office’s prerogative to override congressional assignments of power to federal agencies:

A lot of ... agencies and a lot of ... departments had a mission that had been assigned by Congress.... [T]he Coast Guard that had a traditional function, has to deploy some new assets in a different way; the Drug Enforcement Agency really was primarily focused on drug interdiction....





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But ... we need to ... provide more resources to these agencies who now have a new function, and the function is combating terrorism.

### **Keeping Track of You**

In response to a question about “national identity schemes,” including “biometrics” and “smart tokens,” Ridge waxed effusive:

One of the more interesting ideas I received, it was generated from a conversation I had with the airline industry, happened to involve the voluntary deployment of biometric cards. Now, I know there are some people that favor face recognition technology. I happen to believe that whatever the technology that can be applied with the greatest impact immediately..., we will deploy the best first; and as [technology] changes, let's change our system. Let's try to be as flexible and as quick to respond in government, as agencies and organizations and companies and individuals are outside of government.... I like a voluntary card.... I think it'll work. And it's not just ... at an airport. We have entered into some really wonderful discussions with our friends in Canada and not only involving aviation security, but cross-border commerce.... And again, there are multiple suggestions on the kind of technology that you can use.... If you are preregistered, precertified, [people who live in Canada and work in the United States, and vice versa, may get a] card or [a] chip in [their car] window.... Not that I think technology will solve all our problems, but I do think technology helps us to narrow the risk profile.

While Mr. Ridge was careful to emphasize the “voluntary” nature of airline IDs, it is not hard to imagine a “voluntary” program evolving into one that, for practical purposes, is involuntary. For example, Americans might be required to have such IDs if they wish to travel by air. And Ridge clearly envisions a federal government role in the process.

National IDs in some form, using high-tech biometric standards, is an idea making the rounds in Washington, and not just in Tom Ridge's office. Larry Ellison, head of Oracle Corp., has strongly advocated national ID cards since September 11th. Not surprisingly, he has also volunteered the services of his software company in providing the cards, encoded with a scannable digitized thumbprint and photograph, for every legal resident of the United States. And while the White House has ruled out, for the time being, creating a system of national identity cards, there is now widespread support for the idea, if public opinion polls are to be believed.

### **But Wait, There's More**

Besides national IDs, military police, and the further erosion of federalism in the name of homeland security, other matters of concern include talk of authorizing torture for interrogating suspected terrorists (see “Talking of Torture” in the December 3rd, 2001 issue of TNA, page 5), new government authority to eavesdrop on conversations between attorneys and clients, and a new Customs Service bill working its way through Congress that will allow Customs agents and post office officials to open and inspect mail without a warrant or even probable cause.

Moreover, the Bush administration is already pressing for new powers, complaining that existing legislation, including the USA Patriot Act, does not go far enough. According to a *Washington Post* report, “the Bush administration is asking Congress for a second major expansion of federal surveillance powers that legal experts say would radically change laws that have long protected the rights of Americans.... A CIA proposal seeks legal authority to gather telephone and Internet records from domestic communication companies.... The Justice Department asked Congress to remove the key



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legal restriction on obtaining wiretaps under the [Foreign Intelligence Surveillance Act]. The law permits extensive use of listening devices in espionage and international terrorism cases so long as the target is connected to a foreign power or international terrorist group.... By removing the requirement of a foreign connection, the administration proposal would make it far easier to mount surveillance on people who have no known connection to actors overseas.”

No one should assume that new surveillance powers — whether wielded by the FBI, CIA, or other federal agency — will be confined to turbaned foreigners with unpronounceable names. The Justice Department warned recently that the federal government might begin monitoring domestic political or religious groups suspected of engaging in terrorism, and the temptation to abuse such powers will multiply greatly with each new terrorist attack on American soil.

The greatest long-term dangers posed on the home front by the War on Terrorism are its potential duration and the handy rationale it provides for concentrating power in the executive branch of the federal government. No one can dispute that government, at some level, must have powers of surveillance, arrest, and seizure of evidence. The problem is that these powers, properly the province of state and local government in most instances, are being arrogated by the executive branch in Washington. Moreover, many of the internal systemic checks against their abuse, such as powers of judicial oversight, are being eliminated. And while these changes in the distribution of power certainly haven't turned our country into a gulag archipelago — yet — the possibility of a never-ending military conflict stretching across many changes in elected leadership greatly increases the risk of more severe abuses down the road.

During the panel discussion following John Ashcroft's harsh words to the Senate Judiciary Committee regarding those who allegedly fabricate concerns over lost liberties, the attorney general tried to mollify his audience with a joking reference to a political cartoon:

There's this kid sitting on Santa's knee and Santa says, "I know when you've been sleeping, I know when you've been awake, I know when you've been bad or good." And the kid looks up and says, "Who are you, John Ashcroft?"

To her credit, Senator Maria Cantwell (D.-Wash.) shot back: "I'm not sure everybody in America is laughing at that one."

The time for vigilance is now, not after a decades-long War on Terrorism has irrevocably transformed our free republic for the worse. As the intense emotions associated with the events of September 11th subside, Americans must take a hard and sober look at where our government is taking us.

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