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The Patriot Act Under Scrutiny

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REFLECTIONS ON TERROR AND LIBERTY



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Law faculty and alumni
explore public policy issues

The Patriot Act under scrutiny



Ellen A. Dussourd

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Martin J. Littlefield '74

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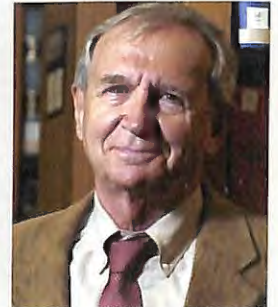
Kathleen M. Mehlretter '78

"Many of our law enforcement tools had grown out of sync and out of touch with the new technology."



David B. Filvaroff

"There has been in this Congress a significant delegation of power from the Congress to the executive."



Lee A. Albert

"During periods of insecurity the pendulum swings and infringements are made on civil liberties."

What

has been called "the eternal tension between freedom and security" – a tension increasingly in evidence in the aftermath of the events of the terror attack Sept. 11 – became the subject of a spirited panel discussion March 21 in UB's Student Union auditorium.

Moderated by UB Law School Professor David Engel, the panel also featured the University at Buffalo's point person for international students, two UB Law professors who specialize in constitutional law and civil rights, and two federal law enforcement officials.

At issue was the advisability of measures the federal government has taken to defend against further terrorist attacks, weighed against the abridgement of constitutionally guaranteed civil liberties that such measures often involve. Of particular interest was the USA Patriot Act, an omnibus anti-terror bill passed by Congress that gives law enforcement agencies sweeping new powers to detain and investigate individuals who are deemed suspicious.

“We are now operating in an environment where there is a great deal of uncertainty and a lot of concern, certainly some anxiety and even some fear.”



Ellen A. Dussourd

Director of international student and scholar services for the University

Speaking first, Ellen A. Dussourd detailed her office's role in mediating between UB's over 3,000 foreign-born visitors and law enforcement.

"We have become more than ever the defenders and protectors of international students," she said, "but we have also become quasi-enforcers of immigration regulations as they apply to international students. And we have unfortunately been give a new role as providers of information to government agencies."

During a Justice Department blitz of interviewing foreign nationals, the consequences of refusing such an interview were unclear, she said. When one international employee of the University was "invited" to an interview, she said, "we communicated to all international students and employees that this was happening, and told them which documents to bring to the interview. This is a new responsibility for us. We have always educated international students about immigration regulations and urged them to comply, but we are doing so now with much greater urgency."

Dussourd argued that the media have focused unfairly on student visas as a potential threat, noting that "fewer than 2 percent of visas issued per year are issued to international students. Only one of the hijackers was on a student visa. The others presumably were on tourist visas."

"We are now operating in an environment where there is a great deal of uncertainty and a lot of concern, certainly some anxiety and even some fear."

Martin J. Littlefield '74

Assistant U.S. attorney for the Western District of New York

Law enforcement was the priority for the next speaker, Martin J. Littlefield '74. He explained the structure of the Department of Justice, and spoke of how the terrorist attacks altered the department's mission.

"Sept. 11 changed things dramatically," Littlefield said. "I went from being a prosecutor dealing with historical events and facts to being a coordinator. My title is anti-terrorism coordinator for the Western District of New York."

"The mission changed. We had to bring together disparate law enforcement agencies in an era and an aura of national

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emergency.” The natural suspicion between separate police agencies, he said, had to be overcome in order for the anti-terror effort to succeed.

“We had no idea what was out there on Sept. 11,” Littlefield said of the urgency attached to the effort. “The mission was to bring law enforcement together, to get information as quickly as possible, and try to analyze that information in order to protect and deter, identify, prosecute, and hopefully put this country back on an even keel.

“We did not know that there were not 200 other people, or 2,000 – we still do not know – waiting to attack another building, to blow up a railroad car, to attack our infrastructure, and we sure as the devil did not know it on Sept. 12.”

David B. Filvaroff

UB Law professor

Professor David B. Filvaroff responded with an accounting of what he characterized as abridgements of civil rights, justified or not. “The attorney general has announced that he will exercise authority to authorize eavesdropping on communication between lawyers and their clients, a clear violation of a well-established privilege in this country,” Filvaroff said by way of example.

He also said of the 342-page USA Patriot Act: “A number of its provisions were powers that law enforcement authorities had sought for a long time. There is a pattern evident in a number of the proposals: a dramatic increase in executive power and a significant decrease in the authority of the federal courts to supervise, control, restrain, even review the exercise of those powers. There has been in this Congress a significant delegation of power from the Congress to the executive.”

In addition, Filvaroff said, the attorney general is authorized by the statute “to imprison – indefinitely, if need be – any non-citizen he certifies he has reasonable grounds to believe is a danger to national security. Now, we all have a vague idea of what national security means, but as used in a statute utilized to imprison people, I do not know what it means. In short, this statute allows indefinite imprisonment of a person who has never had a trial or been convicted of a crime.

“What will be the ultimate impact on civil liberties? That we cannot really know. It is going to depend how this broad authority is implemented and how the courts interpret it. In the meantime, the attorney general and the government say, trust us. Now, that is not my idea of the way we ought to function in this country, and not my idea of democracy.”

Kathleen M. Mehlretter '78

First assistant U.S. attorney for the Western District of New York

For her part, Kathleen M. Mehlretter '78 said, “I personally believe that the current system will continue to monitor and perform the checks and balances that the Founding Fathers put in the Constitution. It is a very difficult balance, and it is something that the attorney general has been struggling with since Sept. 11.”

Mehlretter said that, in part, the USA Patriot Act merely enabled law enforcers to ply their craft effectively in a changed technological environment. “Over the past 10 to 20 years, many of our law enforcement tools had grown out of sync and out of touch with the new technology,” she said. For example, “law enforcement agencies could obtain subscriber information from a phone company, but if your telephone service was provided by a cable company, there was a provision in the telecommunications act that said the cable company could not provide subscriber information. So many of the changes in the Patriot Act are just letting law enforcement move up and apply the same rules to the new technology: voice mail, pagers, the Internet.

“It made it much more practical. This is the way the world really exists.”

In the question-and-answer session that followed the panel discussion, Mehlretter revealed that her office interviewed 19 people in Western New York during the post-Sept. 11 blitz. “I do not know of anybody who refused to be interviewed,” she said. “We decided that we would not approach individuals on college campuses. We were concerned that it would look very heavy-handed if we came to a center of learning and tried to buttonhole the person.”

Lee A. Albert

UB Law professor

Professor Lee Albert gave a brief history of abridgement of rights in the United States during wartime, and added: “We are not alone. Since Sept. 11, our European allies have engaged in waves of arrests of young Middle Eastern immigrants in France, Great Britain, Germany and the Netherlands.”

He noted that the Fourth Amendment protection against unreasonable search and seizure requires a determination of probable cause: “The government must have some reason to believe something is amiss before it may seek to engage in surveillance and searching activities. Probable cause is an important threshold to invasions of personal privacy.

“But that is only true if the information is in the possession of its owner, you. The Constitution protects the subject’s own information so long as the information remains in his possession. When information, however personal, is in the hands of third parties, such as universities hold about students, the telephone companies have about you and your telephone usage, Internet service providers have about you and your e-mail and meanderings on the Internet, there are no Fourth Amendment safeguards applicable to this information whatsoever.” Nothing in the Constitution limits access.

Albert characterized the tension between civil liberties and security as cyclical: “The assault on civil liberties in our history comes and goes. During periods of insecurity, periods of heightened security and concern, the pendulum swings and infringements are made on civil liberties. But presidents change, laws change.

“One thing that does not change for a long time are judicial decisions: Like appointments to the Supreme Court, judicial rulings are with us long after the crisis that prompted the legislation or executive action has passed. They remain the law of the land after the period of assault and the period of danger are over. Such has been the unfortunate legacy from eras of fear and repression in the past, and that is my fear of cases going to court today.”