Reaction to terror

Gauging the aftermath and the impact of USA PATRIOT Legislation

by James G. Neal

Ed. note: *The following is based on a presentation at Columbia University School of Journalism First Amendment Breakfast in New York on December 6, 2001.*

> "Let our patriotism be reflected in the creation of confidence in one another, rather than in crusades of suspicion."
> —John F. Kennedy

It is essential that we assess the future impact on higher education of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, thankfully shortened to the USA PATRIOT Act. This legislation, in combination with other federal initiatives affecting international students and actions reducing public access to government information, threatens the balance between civil liberties and national security.

American colleges and universities continue to evaluate the policy and operational impact of these changes. The immediate timidity which characterized their response is now giving way to expanding debate, alarm, and, in some cases, protest and resistance. Did the extraordinary circumstances demand such an immediate and pervasive response. . . . Did we move prematurely?

I outline below the 12 areas where the higher education community, in my view, will experience the greatest impact, and where fundamental concerns should be raised:

1. We are concerned about the modification of the Family Educational Rights and Privacy Act (FERPA) to expand the circumstances governing nonconsensual release of student records to government officials.

2. We are concerned about the modification of the Foreign Intelligence Surveillance Act to expand the definition of business records, including tangible items that can be accessed by federal intelligence agencies.

3. We are concerned that Internet service providers, including colleges and universities, may be called upon to permit government agents, without a court order, to intercept the wire or electronic communications of persons regarded as "computer trespassers."

4. We are concerned about the provision that authorizes prosecution of a person who possesses biological agents or toxins that are not reasonably justified by such things as bona fide research.

5. We are concerned about the expansion of surveillance, wiretaps, search warrants, pen/trap orders, and subpoenas with reduced judicial checks and balances.

6. We are concerned about the expanded definition of "domestic terrorism" and its potential impact on legitimate protest activity and threatened opening of surveillance to U.S. political and religious organizations.

About the author

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7. We are concerned about the ability of U.S. courts to use intelligence obtained by foreign governments in ways that would otherwise be illegal in the United States and would limit the foreign travel and communication of faculty and students.

8. We are concerned that colleges and universities will be asked to collect and share with federal agents and law enforcement officials records, for example, of library use and Internet searching by individuals.

9. We are concerned that students from designated world areas will be subject to extraordinary surveillance and harassment, affecting the ability to recruit and retain international students at U.S. colleges and universities.

10. We are concerned that new and burdensome record-keeping and documentation requirements will be mandated at colleges and universities for international students.

11. We are concerned that government information being withdrawn from agency Web sites and removed from depository library collections will signal a reduction in the free flow of appropriate information to the public.

12. We are concerned that the expanded threat of surveillance and investigation will erode, or better, "chill," intellectual freedom, at the core of higher education values in the United States.

These 12 points illustrate some broad areas of concern in the U.S. higher education community in response to the new legislation. Government officials have pushed back and stated that these objections are not warranted and that sufficient protections have been written into the law.

American colleges and universities provide critical leadership and support for our national efforts to combat terrorism and to strengthen our defense capabilities, for example:

1. We educate and build valuable relationships with expanding numbers of international students, the future leaders from countries throughout the world, particularly Islamic regions and East Asia.

2. We are the primary source of individuals who are educated to serve in the American foreign service and intelligence agencies.

3. We carry out fundamental research on the technology and policy aspects of all aspects of security.

4. We carry out fundamental research on military weapons technology.

5. We provide training in all of the world's critical languages and cultures.

6. We are often the world's major repositories of publications and other information resources, in our academic research libraries, from strategic world regions and countries.

7. We are centers for legal research and deliberation that allow the United States to make informed decisions about new national policies and legislative strategies.

8. We are centers of debate, embodying the values that underpin our constitutional freedoms.

Socrates once wrote: "I am a citizen, not of Athens, not of Greece, but of the whole world." Our colleges and universities advance our national commitment to globalization. The USA PATRIOT Act, I fear, will enforce isolation and destructive nationalism. It may also have an impact far beyond its detailed and complex provisions. Its greatest influence may be the broader license for abuse of individual rights.

The late author Ken Kesey once commented: "You can count the seeds in the apple, but you can't count the apples in the seed." That is our fundamental challenge! ■


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