

The impact of terrorism enforcement on individual rights

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The Impact of Terrorism Enforcement on Individual Rights Christine Gontarz

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During times of high crime, terrorism, war, and national crisis, citizens are willing to trade due process for a restriction of individual rights. At the heart of our individual rights are the first ten Amendments of the United States Constitution, the Bill of Rights. Although all the Amendments of the Bill of Rights were written to be of equal importance, to many Americans the most treasured is the First Amendment. " Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. " - The First Amendment to the U. S. Constitution Simply stated, the First Amendment guarantees us the freedom of religion, speech, press, assembly, and petition. By examining the history of the United States, there have been times when incidents of crime, terrorism, terrorism threats, war, and national crisis have affected the rights of the people of the United States. There have been actions and reactions to those threats by the

government. Restrictions were placed on citizens by limiting their rights; specifically the First, Fourth, and Fourteenth Amendments. Initially, the people of the United States understood the reasoning behind these limitations; however, as time went by, many felt the need to speak out about the injustices caused by the government and the restrictions of the freedoms of the people. Although the additional amendments in the Bill of Rights are of equal importance, it is the purpose of this paper to define examples of how the government has violated a the basic rights of the First Amendment during a presence or threat of terrorism in the United States. Terrorism and the First Amendment Freedom, as Thomas Jefferson wrote in the Declaration of Independence, " We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. " - The Declaration of Independence is a God-given right provided to United States citizens. By declaring its independence from Great Britain and signing the Declaration of Independence, the Congress of the original thirteen colonies took its first steps to ensure its freedom from King George and British rule. Their goal, self-government and equal rights for the people (Fallon 14). It is because of British tyrannical rule that the United States Constitution was written. The United States Constitution outlined the rights of the government of the thirteen original colonies, but it was not until the Federalists and Anti-Federalists resolved their differences and adopted the Bill of Rights in 1791 that the people of the United States had the rights and freedoms they so desired to build this country. More than two hundred years later, on September 11, 2001, the United States was targeted by terrorists.

This day is marked by atrocities beyond imagination. It is also on this day that many people of this generation say that the individual rights that our forefathers worked to provide have been changed forever. The attacks of September 11th have caused the freedoms outlined in the Bill of Rights to be restricted by the enforcement of government rules and regulations; First Amendment rights limiting the freedom of speech, Fourth Amendment rights of illegal search and seizure, and Fourteenth Amendment rights of due process come to mind (although others feel that the Fifth and Sixth Amendments have also been affected). There are specific examples in United States history where the effects of terrorism enforcement have impinged individual rights. In order to relate the impact of government actions on individual rights for the sake of national security, in the name of terrorism, terrorism must be defined. According to the FBI, there is no one definition that is universally accepted by everyone (Office of Public Affairs iv). Their definition of terrorism from the Code of Federal Regulations can be defined as: " the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives" (28 C. F. R. Section 0. 85). By observing a chronological history of the United States there is evidence of terrorism since the beginning of written history. References in the Bible refer to the cleansing of entire groups of people by eliminating the city of Jericho [(Joshua 6. 1-27)]. There are examples of terrorism during Greek and Roman times when the first known terror organization, the Zealots of Judea, formed campaigns and carried out assassinations of Roman occupation forces and Jews whom they felt

collaborated with the Romans. [(Early History of Terrorism)] Although earlier instances of terrorism impacted the rights of individuals, it was not until the adoption of the Bill of Rights that there was recourse that could be taken by the people. It was then that citizens of the United States could declare that their individual rights were violated. Early History The Alien and Sedition Acts of 1798 From 1789 through 1799, during the French Revolution, the United States was forced to declare a policy of neutrality to avoid becoming involved in European conflicts and being dragged into another war. Because of an impending fear of war with France and a fear that " criticism of the government was destined to topple the Constitution, " (Willis 5) the Federalist-dominated Congress of President John Adams enacted the Alien and Sedition Acts of 1798 (Office of the Historian). Consisting of four acts, they introduced laws intended to suppress political opposition from Anti-Federalists. By enacting these laws, Adams was working to shield the United States from the French enemy and to protect the United States from opposition groups of Anti-Federalists. The four laws consisted of the Naturalization Act which raised the residency period of aliens from five to fourteen years, the Alien Act of 1798 which enabled the president to deport any alien (even during peacetime) if they were considered " dangerous to the safety of the US. " The Alien Enemies Act of 1798 enabled wartime arrest, imprisonment, or deportation of any alien for simply being from an enemy country. The last act, The Sedition Act made it a crime to " oppose any measure or measures of the government of the US. " It also prohibited " writing, printing, uttering, or publishing any false, scandalous, and malicious writing or writings against the government of the US. It is evident that

Sedition Act was the most controversial and most seriously punishable of the acts. Committing an offense against the Sedition Act was punishable by fines up to the \$5, 000 and up to five years in prison and a second offenses were charged with a \$2, 000 fine and up to two years in jail. Most of those punished under the Sedition Act were journalists and politicians who aligned themselves with the Anti-Federalist party or the Jeffersonian Republicans (Willis 7). The grandson of Benjamin Franklin, Benjamin Bache who was the founder and editor of the Philadelphia General Advertiser, was the first to be charged under the Sedition Act because of his Anti-Federalist descent against John Adams and the Federalist party. Habeas Corpus Act of 1863 The presidency of Abraham Lincoln can best be described as a presidency of wartime. Just twelve hours after the president was elected, Major Robert Anderson sent Lincoln a dispatch requesting reinforcements of twenty thousand men to secure Fort Sumter from Confederate attack [(Dirck 20)]. It was Lincoln who set the tone for wartime presidents and he took full advantage of this power. During the height of the Civil War, Lincoln ordered a writ suspending Habeas Corpus. Lincoln's primary focus by ordering the writ was to quell political opposition from pro-Confederate sympathizers. He justified his decision by stating " Even in such a case, would not the official oath be broken, if the government should be overthrown, when it was believed that disregarding the single law, would tend to preserve it? " [(Dirck 25)] referring to [(Lincoln)]. Lincoln believed that public safety was the cornerstone behind his decision. With public safety in mind, Lincoln authorized Winfield Scott to arrest anyone in " an insurrection against the laws of the United States. " [(Dirck 25)] referring to [(Symonds)] World

War I History Espionage and Sedition Acts of 1917 and 1918 Once again the United States and its people were preoccupied with war. In April 1917, the United States declared war on Germany and fears of espionage, anarchist activities, and the threat of terrorism loomed over the heads of the United States government. By establishing the Espionage and Sedition Acts of 1917 and 1918, the government prohibited the public from openly demonstrating or passing forth any information deemed to be detrimental to the military or the government during a time of war. Woodrow Wilson even gave the postmaster rights to restrict distribution of mail and documents that could be construed as harmful to the military of the United States . These offenses could be punishable by death. Because of the fear of harm to the nation and its citizens, the House and Senate almost passed the bill without any debate whatsoever even though the bill trampled on the freedom of speech and freedom of the press [(Willis 14)]. Schenck v. US - Led by Oliver Wendell Holmes, this would be the first case in which the Supreme Court handed down a ruling that constituted when the United States government could limit speech. Charles Schenck, the general secretary of the Socialist party in Philadelphia was arrested for the distribution of political propaganda. These leaflets, which referenced the clause of the Thirteenth Amendment forbidding involuntary servitude, were directed at men who were drafted upon the passage of the Selective Service Act. Schenck encouraged draftees to " Assert Your Rights, " and that the people needed to stand up to the government for entering the war. The government claimed that these flyers contained " false" statements that could ultimately interfere with the effort to win the war. It was during this case that Oliver Wendell Holmes coined his

most memorable rationale for the decision of the Supreme Court to be upheld in the Schenck case, noting that: " The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. " Debs v. US Eugene Debs, a founder of the Socialist Party in 1901 and a strong opponent to the " Great War, " was no stranger to speaking his mind and being imprisoned because of his actions. Debs was sentenced to jail for his role as leader of a nationwide boycott of involving the Pullman Palace Car Company in 1894. After serving a two-year prison sentence, Debs held a Sunday afternoon picnic in Canton, Ohio. During his speech, Debs, phrasing his words carefully for fear of being prosecuted by the government for his " right to free expression, " encouraged the crowd to " turn their backs on the Republican and Democratic Party" and " fight for a cause [(Debs)]. " Debs was arrested for violating the Espionage Act and was accused of tampering with the recruiting services of the United States. He served a ten-year sentence for his speech. World War II History Alien Registration (Smith) Act of 1940 Representative Howard W. Smith introduced the Alien Registration Act of 1940. This act required aliens to register with the government of the United States within four months of their arrival in the United States. Although the prior acts were made during times of war, the Alien Registration Act was an act proposed and adopted during peacetime [(Willis 26-27)]. The main objective of the act was to thwart any attempt by the American Communist Party to weaken the government of the United States. This act made it illegal to interfere with the loyalty of military

personnel, to teach to violently overthrow the United States government, or to conspire to commit or to commit prohibited acts. The act also stated that the government could confiscate materials using the search warrant provision and that punishment of these offenses could result in a conviction of up to ten years in prison and a ten thousand dollar fine. In 1948, Harry Truman invoked this act to contain Soviet supporters and had eleven leaders of the Communist Party U. S. A. indicted for violations of the Smith Act. During the prosecution of the case of *Dennis v. United States*, the government used the works of Karl Marx to prove that the eleven men violated the Alien Registration Act stating that they privately planned to overthrow the government of the United States. Japanese-American Internment - Executive Order 9066 of 1942 Eleven weeks after the Japanese attack on Pearl Harbor, Executive Order 9066 was signed by Franklin Roosevelt. "Relocation Centers" were set up across the United States. Approximately 110, 000 Japanese-Americans were confined to no more than an American version of Hitler's concentration camps. Japanese-Americans serving in the military were categorized as enemy aliens and discharged from the armed forces of the United States. Minoru Yasui was the first citizen to bring a case before the government during the time of the Internment. Yasui was denied active duty service by the United States military. Yasui purposely violated curfew orders in order to be arrested. His case, although initially based on a curfew law was brought to court and a unanimous conviction was handed down to Yasui claiming that his "racial attachments" to his Japanese roots posed a danger of espionage to the American people [(Baker and Stack 66-68)]. The History of Today Antiterrorism and Effective

Death Penalty Act of 1996 In the wake of the Oklahoma City bombing, the nation was traumatized by such a deplorable act of domestic terrorism. An overwhelming public fear guided the reactions of United States and the government set limitations of individual rights to protect its people. One week after the Oklahoma City bombing, President Clinton and members of Congress swiftly approved the Antiterrorism and Effective Death Penalty of 1996 (AEDPA). First Amendment rights were again affected. By allowing the Secretary of State to selectively define its meaning of " material support" to foreign organizations, citizens were " guilty by association" based on the purpose of their monetary contributions (Brown et al. 17-20) . The belief was that monetary and logistical contributions to an organization showed support for that organization. This was enough ammunition for the government to hold citizens in violation of the AEDPA. In a case brought against the Attorney General by the Humanitarian Law Project (HLP), the HLP challenged the ruling that their humanitarianism, peacekeeping training, and support of the Kurdistan Workers' Party (PKK) was in violation of the constitutionality of the material support statute. The PKK was determined to be a " terrorist organization. " By supporting a terrorist organization, the HLP could have faced extensive prison sentences if they had continued to support their mission by providing monetary and logistical contributions even though the contributions were to support peaceful acts. Eventually the HLP ceased in their support of the PKK. U. S. A PATRIOT Act - 2001 With the attack of the World Trade Center and Pentagon and the takeover of Flight 93, the scope of terrorism in the United States had changed since even the bombings in Oklahoma City. Once thought to be a crisis of foreign countries, the United

States was now faced with a new brand of terrorist attacks unlike ever before. As a result, acts aimed at preventing further attacks and protecting the security of society were invoked. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), was adopted in October 2001 to assist the government in gaining information on future terror attacks. Many feel that since the adoption of the PATRIOT Act, First Amendment rights have been violated in an unprecedented way. Not only does the government have the ability to limit the size and nature of demonstrations, conduct racial profiling, but they also may limit the information which can be publicized to the citizens of the United States claiming " national security interests. " The National Archives and Records Administration states that " the number of classification actions by the Executive Branch rose 14 percent in 2002 over 2001 - and declassification activity fell to its lowest level in seven years. " [(Posner 220)] Since September 11, Arab, Muslim, and South Asian populations of the United States have been profiled based on skin color and other physical characteristics. The government has the ability to " stop, interrogate and detain individuals without criminal charge ... on the basis of their national origin, ethnicity and religion. [(American Civil Liberties Union 1)]. By looking at the people who were rounded up just after September 11, it is evident that racial profiling based on religion and ethnicity had taken place by the Department of Justice; a clear violation of the First Amendment. In a more recent incident in The Washington Post on October 2008, Maryland State Police revealed that as a result of surveillance operations, the names of fifty-three nonviolent activists had been placed into an unknown federal

database used for the purpose of tracking terrorist suspects. The judgment by the Maryland State Police to include the activists' names in the terrorist database was met with disapproval and was criticized by senators noting that the " law enforcement officials were oblivious to their violation of the activists' rights of free expression and association. " [(Rein, Lisa A1)]

Conclusion Through historical records, it is evident the intent of the government in times of war is to protect its citizens and prevent aggression on the homeland. The punishment and imprisonment of citizens for First Amendment violations are based on situations when governing bodies of the United States felt threatened by acts of anarchy, Communism, terrorism, or war. In most instances, the government has been proactive by halting contrary opinions from opposing parties or seeking peacetime acts as a precautionary measure. At other times, they have been reactive by enacting laws after terrorist attacks . In either case, they have adopted rules and laws based upon the fear of the people and the prevention of potential attacks. Their fears have limited free speech, free assembly, free press, and have punished those for freedom of religion. Historically, as time went by and threats declined, the people of the United States became more conscious of the limitations the government had set forth. In the referenced laws and actions of this paper, court cases brought to the Supreme Court challenging the constitutionality of First Amendment limitations have been paramount in the repeal or retraction of these acts. The decisions in these cases prove that there is a need for a balance between individual freedoms and protection of the people. Whether the retraction to the acts was swift or sluggish, the government of the United States did take note of the limitations to the

liberties of the people and they amended legislations regulating individual rights. It is with great hope that this will continue for the sake of the preservation of the First Amendment. Works Cited American Civil Liberties Union. SANCTIONED BIAS: Racial Profiling Since 9/11. New York: American Civil Liberties Union, 2004. Baker, Thomas E. and Jr., John F. Stack. At War with Civil Rights & Civil Liberties. Lanham: Rowman & Littlefield Publishers, Inc., 2006. Brown, Cynthia and al. et. Lost Liberties Ashcroft and the Assault on Personal Freedom. New York: The New Press, 2003. Debs, Eugene V. "Ohio Anti-War Speech." The Canton 1918.