Profiling In an Age of Terrorism

By Carl F. Horowitz

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Good evening. I'd like to thank the Robert A. Taft Club for giving me the opportunity to speak on an incendiary subject: ethnic and religious profiling as an anti-terrorism strategy. Some people, on the Right as well as the Left, believe that examining movement into and within the U.S. by Muslims, especially Arab Muslims, is irreconcilable with preserving basic civil liberties. With all due respect, I happen to reject that view. There is no reason to believe that a policy of vetting individuals who belong to the ethno-religious entity responsible for most of the terrorism against this country harms law-abiding citizens. Toward that end, I offer a defense of ethnic and religious profiling, and one of its primary tools, the USA Patriot Act.

I briefly digress with this act of disclosure: I am a Northern paleoconservative with libertarian leanings. Note here the word "Northern." I hold no brief against things Southern nor advocate severing the bonds of local community. That said, Northern paleoconservatives properly view America as greater than the sum of its parts, and as such see the defense of our nation as requiring a national response. It's a fraternity whose prominent names include Peter Brimelow, Steve Sailer, Nicholas Stix, Lou Dobbs, Tom Clancy, Mark Krikorian, Ted Nugent, Rep. Tom Tancredo, and yes, the late Sen. Robert Taft.

What defines the Northern paleoconservative sensibility in a contemporary context is the conviction that mass immigration, legal and (as a consequence) illegal, is fraying our sovereignty and hence our prospects for survival as a distinct people. The hundreds of thousands, if not millions of illegal immigrants marching in city streets across the nation over the past several weeks to demand recognition of nonexistent "rights" made this painfully obvious even to those who had been ignoring the warning signs. We view mass immigration, especially from cultures with large and growing populations palpably hostile toward the American experience, as a mortal threat to our national identity and security.

Profiling: Workable And Necessary

National identity and security now more than ever go together. The terror attacks against the World Trade Center and the Pentagon were the result of decades of erosion of our national identity and national security. They were the result of a comfortable self-delusion that all ethnic, national and religious groups want to be, and are equally capable of being, Americanized. It's as if entry into this country is an act of de facto patriotism. The reality, of course, is that many people come to this country with every intention of conquering us, or at any rate, flouting our laws. More invaders than immigrants, such people live in a state of infantile wish-fulfillment that equates mass murder and religious obligation. And they have a rather nasty tendency to be Muslims, especially from the Middle East.

Now unlike certain misguided "patriots," I regard as poisonous the psychology of Battered American Syndrome. This is the famous we-got-what-was-coming-to-us argument. The 9/11 terror attacks, we are told incessantly, constituted "blowback," just deserts for our gratuitous meddling

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in the Middle East. This is anti-Americanism, whether it comes from the Right or the Left. It certainly is inadequate to the task of understanding the nature of our terrorist enemies.

It is true that most Muslims living in this country, not to mention those who plan to come, are not terrorists by any stretch. But a good many are the kind who would who give terrorists aid, comfort and applause. And as we all know now, it only takes a few dozen terrorists to inflict nationwide mayhem. Back when our immigration policy really functioned—that is to say, prior to the 1965 amendments to the Immigration and Naturalization Act—*virtually none of these people, even the sympathizers, would have gotten into the U.S.*

There is nothing intrinsically wrong with profiling. Some people, quite simply, pose greater security risks than others.

That leads to a governing principle. To stand an old expression on its head, the best offense is a good defense. About 175 years ago Carl von Clausewitz put it this way:

> Defense is simply the stronger form of war, the one that makes the enemy's defeat more certain...We maintain unequivocably that the form of warfare we call defense not only offers greater probability of victory than attack, but that its victories can attain the same proportions and results.

In today's context, on a practical level, that means that the movement, conversations and other behavior of Muslims, whether native-born or foreign-born, need to be scrutinized, monitored and analyzed—in a word, profiled. In all likelihood, they are not radical anti-Americans. Yet on the other hand, they just might be. And unlike mere dissenters, these people are at war with us. *That* is the underlying reality of the cliche, "the post-9/11 environment." It is a statistical fact: A young Muslim man is tens of thousands of times more likely than anyone else in the world to commit an act of terrorism. He *should* be profiled.

Consider the following scenario: I am an airport security inspector. A young Middle Eastern man or women walks up to my checkpoint. Would I be inclined to ask (or have another person ask) this passenger some extra questions about his background and beliefs before I let him through? You bet I would. Equally to the point, I'm *not* going to give extra attention to persons who don't look Middle Eastern or display outward signs of Islamic belief. To ask extra questions of each and every passenger, on a practical basis, would be a logistical disaster. Taking such inconvenience to its extreme, almost nobody would choose to fly.

There is nothing intrinsically wrong with profiling. Some people, quite simply, pose greater security risks than others. Membership in a particular ethnic or religious group is a valid marker for assuming and judging unobserved behavioral traits in another person, especially when we have no other information to go on at that moment in time. To insist otherwise is to not live in the real world.

Can profiling produce results? Purer-than-thou libertarians insist the U.S. government is incapable of defending us from terrorists. I say baloney. When federal law enforcement is allowed to do what local cops long have been able to do—monitor, question and detain criminal suspects based on observable physical traits—they can catch terrorists planning their misdeeds. And they *have* caught them, despite pressure from supervisors to look the other way. I offer a pair of instructive examples.

In August 2001, a month before the 9/11 attacks, a certain Muhammad al-Qahtani, a Saudi, was turned away from this country while attempting to enter the U.S. at Orlando International Airport. Customs officer Jose Melendez-Perez understood the real requirements of his job rather than the bureaucratically-mandated requirements. Though he'd been warned by his superiors against racial profiling of Arabs, he responded, "I don't care. This guy's a bad guy. I can see it in his eyes." Officer

Melendez-Perez was right. There *was* something in this guy's eyes.

As al-Qahtani was being led off, he turned around and announced, "I'll be back." He kept his word, though under unplanned circumstances. Qahtani was identified as the would-be 20th hijacker. In the recent trial of Zacarias Moussaoui, it had come out that 9/11 mastermind Khalid Shaikh Muhammad had pointed to al-Qahtani as the hijacker who would "complete the group." His assignment: United Flight 93, the one that crashed in rural Pennsylvania, now the subject of a splendid new movie, a suicide hijacking mission whose intended target, based on all available evidence, was either the White House or the U.S. Capitol. The three other planes each had five hijackers; Flight 93 had only four. That fact might have been why the latter's passengers were able to overpower the terrorists. Our armed forces in Afghanistan, by the way, managed to track Qahtani down. He's now reportedly a resident of Guantanamo Bay prison.

Former Transportation Secretary Norman Mineta forbid his employees to "profile" when screening passengers at U.S. airports. Mineta considers elderly white grandmothers and young Muslim men as equally potential security threats.

Here is a second example. On December 14, 1999, Ahmed Ressam, an Algerian national, was stopped by U.S. Customs agents as he tried to drive into Port Angeles, Washington from Canada via a ferry boat. The inspecting agent had no prior information to suggest he was a terrorist. It was just a hunch. Well, it turned out to be a good one.

Ressam seemed nervous. Officers referred him for an additional inspection. He was asked to produce an extra ID. Ressam gave the agent a Price Costco membership card bearing the same false name as his passport. As the agent began the initial pat-down, Ressam panicked, ran away, and was caught. Agents then inspected his car, an "insensitive" act that may have saved hundreds of lives weeks later. Ressam, who had entered Canada illegally back in 1994 using a bogus passport and a story about "persecution" back in Algeria, proved to be no ordinary suspect. His car trunk contained large amounts of explosives, plus a viscous liquid and four timing devices concealed in black boxes. Later, in 2000, authorities in Montreal discovered the truth: Ressam had intended to level a large portion of Los Angeles International Airport on or about New Year's Day. Yes, that's the "Millenium Bomber" we're talking about.

What's common to both cases, and others like them, is that law enforcement officers had to rely on guesswork to make a collar in order to protect the nation. All cops, even the best, find themselves in emergency situations where they must make an educated guess. And given the law of averages, sometimes their guesses will be wrong. Yet the federal government's zero-tolerance response to any potential onsite profiling reveals an ignorance of, and contempt for, the nature of police work. Remember, the two cases I just described were happy accidents, not products of any official profiling policy. Had such a policy been in place, September 11, 2001 in all likelihood would have been just another sunny day on the East Coast.

Yet the Bush administration has learned little. Federal officials, if anything, appear more frightened of offending the sensibilities of Islamic and Arab "civil-rights" groups than going the extra mile to track down and arrest the most dangerous criminals in the world. On June 17, 2003, acting on

the stern advice of President Bush, the Department of Justice ordered a total ban on racial and ethnic profiling at dozens of federal agencies. The DOJ guidelines directly affected around 120,000 law enforcement officers at the FBI, the DEA, the Department of Homeland Security, ATF, the Coast Guard and elsewhere.

Norman Mineta, President Bush's Secretary of Transportation [note: Mineta announced his resignation on June 23, 2006, effective July 7 of this year] has been particularly reprehensible. Very publicly, he has declared that his department would forbid at all U.S. airports any profiling that takes into account race, religion or nationality. Appearing on CBS's "60 Minutes," Mineta told correspondent Steve Kroft that he saw no reason to treat an elderly white woman and a young Muslim man any differently. This view also prevails at other federal agencies. Assistant Attorney General for Civil Rights Ralph Boyd has stated, "Religious or ethnic or racial stereotyping is simply not good policing. We want to make sure it doesn't happen, even once." Let me guess: Mr. Boyd has never been a cop, even once.

The Bush administration model of law enforcement practically invites acts of terrorism. I, for one, prefer the Clint Eastwood/Samuel L. Jackson model. So would anyone in the vicinity of LAX on January 1, 2000.

The Patriot Act Reconsidered

The case for profiling, put simply, is far stronger than the case against it. Whether the USA Patriot Act is an appropriate vehicle for profiling is a separate issue. Let us go into a bit of detail. This legislation, officially known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, does not formally authorize profiling persons on ethnic, racial or religious grounds. Yet given its overwhelming passage in the House and the Senate in October 2001, only weeks after the 9/11 atrocities, the context was the danger posed by this country's current and future Islamic population. By giving law enforcement extra tools of surveillance, infiltration and arrest, and by breaking down the traditional information-sharing firewall between enforcement and intelligence agencies, the Patriot Act was meant to root out Muslim terrorists *before* they attack. Congress, after a lengthy and contentious debate, reauthorized the act in March 2006.

The law is needed, quite simply, because the enemy gives us no choice. Their mode of operation, to use military strategist William Lind's term, is "fourth-generation warfare." In this form of combat, subterfuge is everything. The Islamic terrorist radicals are masters of deception as well as destruction. Consider that:

- They don't have a national capital and, with the exception of the Chechen thugs, are in no sense nationalists.
- They don't have tanks, uniforms, infantry or battle formations.
- They don't seek summit meetings or peace talks, since they don't want to be found.
- They frequently change their laptop computers and cell phones to minimize detection of messages they send to each other.
- They use fake IDs, not exactly impossible to come by these days.
- They heavily recruit inside mosques, which our government apparently deems off-limits for infiltration.

These people live, breathe and think war 24 hours a day. And as long as they are outnumbered and outgunned, at least here in the U.S., they will plan terrorist acts with the utmost of guile. That is why we must use every available tool of infiltration, including the roving wiretaps authorized by the Patriot Act. Without those wiretaps, it would be far more difficult, absent random luck, to gather evidence of a pending attack.

But hasn't the Act severely diminished our civil liberties? Critics who make this point, from Alexander Cockburn (Left) to James Bovard (Right), typically denounce the law in terms of what

it *would* do or *might* do. You'll notice, interestingly, that their broadsides aren't in the past tense—as in "has done." That's because there's no hard evidence—even anecdotal, much less systematic—that our liberties have been violated. A couple years ago Sen. Dianne Feinstein (D-CA) responded to a request by the ACLU to monitor the use of the Patriot Act. Her response: "We've scrubbed the area, and I have no reported abuses."

This finding should not come as a surprise. The law was written to set a very high bar of proof for a judge to issue a search warrant, wiretap authorization, or some other surveillance tool. It also authorized the creation of a civil liberties board, overseen by Congress, to ensure compliance with existing laws that protect innocent citizens. Here's what the law *has done*. It has brought terrorism-related charges against at least 400 people, many of whom are in this country illegally; more than half those charges have led to convictions. It has broken up confirmed terror cells in New York, Oregon, Virginia and Florida. Through its information-sharing features, for example, it has led to the arrest of a Kashmir-born Islamic fundamentalist (and naturalized U.S. citizen) from Columbus, Ohio, Iyman Faris, who had been supplying al-Qaeda with information on how to blow up New York City's Brooklyn Bridge.

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Terrorists continue to strike—very recently in Israel and Egypt, and last summer in London, murdering dozens of innocent people. But they haven't done anything in America since the 9/11 attacks and the anthrax letter attacks (also likely the work of Islamic extremists) in their immediate wake. It strains the imagination to suggest the Patriot Act has had nothing to do with the lack of attacks on our soil since 2001. If the Committee on American Islamic Relations, the ACLU and convicted lawyer Lynne Stewart are enraged over the law's "insensitivity" toward Muslims, that should be of no concern to anyone with patriotic instincts.

Conclusion: The Necessity Of Scrutiny

To sum up, there are two separate issues at hand: First, should profiling be used to prevent terrorism? Second, should the USA Patriot Act serve as a means of prevention? The answer in both cases is "yes." As for the first consideration, there are inherent legal and political risks in profiling. No matter how good the information, every cop runs the risk of questioning, frisking or arresting the wrong person. As for the second, while the Patriot Act may require amending, that's a far cry from repeal.

The Patriot Act has shown it is capable of protecting us from Islamic terrorists, without violating basic liberties. It is mild stuff, really. Unlike during World War II, for example, we don't have rationing, rent control, endless war bond appeals, film and newspaper censorship, draft registration, and other intrusive demands by the State for collective sacrifice. This is all to the good. But until Muslims the world over cease in any way to take part in, or endorse, the mass murder of Americans, I shall willingly put up with the Patriot Act's rather negligible excesses.

The long-range goal of America—and the rest of the West—should be defusing Islamic aggression. Since this isn't about to happen anytime soon, we should focus on self-defense. The necessity of deploying troops in the Middle East, and risking more of our men coming home in body bags, is open to debate. The necessity of scrutinizing people who share ethnic and religious traits of our avowed enemies should not be.

In the end, America is our country to defend. And this Northern paleoconservative is willing to defend it. Thank you very much. ■