

City of Berkeley

Polly Churchill Armstrong

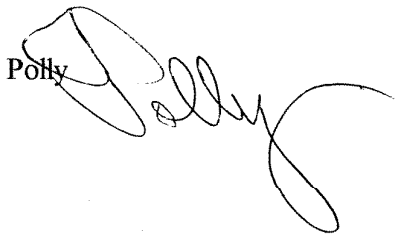
Councilmember, District 8

September 10, 2002

To the Council,

I found this opinion piece in this morning's Chronicle to be a good presentation of my feelings about the Patriot Act. I urge you to read it and think about whether there is a more thoughtful, less knee jerk, response that could be made by our Council to the action item on tomorrow night's agenda.

Polly



Insufficient information

SUPPOSE the government told you it had good reason to believe that someone on your block had plans to poison the Bay Area's water supply.

Would you object to being questioned, followed or even detained?

The answer is probably a function of how much you trust your government. To the extent you believed competent law enforcement agents were acting on credible information in order to save thousands of innocent residents, you'd be hard pressed to complain. If you regarded the agents as imperfect — let alone overzealous buffoons, reacting to a far-fetched tip — you might scream bloody murder.

And therein lies the divide between



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those who think the Department of Justice is behaving responsibly since Sept. 11, and those who believe it is acting out an Orwellian nightmare.

There is little in the USA Patriot Act or any of the other tools used by prosecutors since Sept. 11 that — in the hands of reasonable people — is grossly objectionable.

Expanded wiretapping powers, the ability to read e-mails, eavesdropping on lawyer-client conversations, and even

open-ended detentions of suspected terrorists, are not inherently evil. The danger comes when the tools are used by people who exaggerate the threats, have insufficient regard for the freedom others, or rely on unreasonable biases and prejudices. Put another way, it simply doesn't matter what powers are given to law enforcement officials so long as they are used with perfect restraint.

The problem, of course, is that humans are not perfect. And so it is reasonable to question whether the Justice Department is using its authority judiciously. It is a matter that has provoked strong-minded rhetoric on both sides.

Those who most fear the enemy and have the greatest faith in Attorney General John Ashcroft tend to view the new security measures as mild, commonsense protections against the risks of unbridled freedom. Those who question the motives of law enforcement, the values of Attorney General John Ashcroft, or fear

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that future generations of prosecutors might forgo restraint, see the very same measures as egregious assaults on liberty.

How is the nation to judge which of these visions is most accurate?

One way is to quantify the use of the new powers. Is the ability to track a suspected criminal's Internet activity something that has been used only a few times, and only against well-documented terrorists? Or have the visits of millions of Americans to Yahoo! and eBay been under the watchful eye of the FBI? Has the detention of hundreds of immigrants from Arab countries prevented another Sept. 11-scale attack, or has it turned out to be a small-scale version of the WWII internment of Japanese Americans?

So far, the Justice Department has not provided the tools to make that judgment. The names of the detainees, the amount of wiretaps, the extent of Internet surveillance, and so on, are secret.

"I cannot quantify the relative value of

each tool," said Assistant Attorney General Viet Dinh, when asked. "The problem is that we are in an ongoing investigation."

To Justice Department officials, it is simply a matter of keeping information out of the hands of the enemy. To their critics — many well-versed in past FBI excess — it is a deliberate attempt to avoid oversight, and escape responsibility for their actions. For the general public, it's a matter of not being able to make an informed judgment.

Most Americans are willing to give up some freedom in the name of security. But in the debate over whether too much liberty has been lost since Sept. 11, there is no way right now for Americans to know.

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