

Flying While Muslim
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August 17, 2006

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The partisan posturing began within hours of reports the British had arrested 20-odd suspects in connection with an alleged terrorist conspiracy to blow up passenger airplanes. Arrests were made in the U.K, not the U.S. The plot was hatched in the U.K. and Pakistan.

But it was U.S. politicians who first mounted their soapboxes. "Move to question your opponent's commitment to the defeat of terror," crowed National Republican Party Congressional Committee Chairman Tom Reynolds. Following this rush to judgment was a campaign to expand government powers. Both Homeland Security Secretary Michael Chertoff and Attorney General Alberto Gonzales floated proposals to study new British anti-terrorism laws. Now the question is: Will the Bush administration and its allies in Congress be able to introduce its borrowed "Cool Britannia" finery in time for the November 2006 polls?

Set aside for a moment the hazards of enlarging executive power when public fear is at fever pitch and partisan politics at its zenith. Are the proposed powers really new or really needed? The short answer is no.

The federal government already, in fact, exercises many of the powers the British have—and uses them deeply unwisely, in ways that don't build the nation's security. The government is seeking non-solutions to non-problems. The problem has never been power—it's whether there are methods of holding government accountable for using its power in an accurate, fair and proportionate way.

From 2000 onward, the United Kingdom enacted four significant counterterrorism laws. Like the USA PATRIOT Act, each package contained a complex of interconnecting provisions. Chertoff picked out two areas for examination: the British police's ability to detain suspects for up to 28 days under a new Terrorism Act, which came into force on April 13, 2006, and the British police's broader surveillance powers. Reliable pro-administration hawks David Rivkin and Lee Casey added profiling to the wish-list. They contend that "British attitudes toward ethnic

and religious profiling appear to be far more pragmatic.” Which is a polite way of saying “let’s treat people differently based on race or religion.”

Chertoff et al. offer no evidence that warrantless surveillance, preventative detention or improved intelligence/police coordination had any role in detecting the liquid bombing conspiracy. Like the USA PATRIOT Act, these powers are a wish-list untethered to practical needs—or practical problems.

Consider first how the British plot was intercepted, and whether the administration borrowings would help in such detection. Electronic surveillance appears not to have been decisive for the arrests—and nothing suggests such surveillance could not be carried out in accord with existing federal statutes. As Juliette Kayyem explained in *The Washington Post*, the real breakthrough came via an informant.

The alleged liquid-bomb conspiracy is a signal that human intelligence of this ilk will become increasingly important. Technology for planning and carrying out terrorist attacks is becoming more available. The chilling simplicity of the plot and the practical inability of security personnel to seal public spaces against such attack should warn us that high-tech surveillance of money and technology transfer will be less important in the future. Indeed, Bin Laden did not create an organization as much as he fashioned an ideology that could be disseminated and operationalized by Internet and word-of-mouth. His ideas can then be acted on independently in Bali, Istanbul, London or Casablanca. Sheer force simply doesn’t work against this strategy.

What will matter increasingly in counterterrorism strategies is human intelligence and governments’ ability to work with minority communities to identify and cultivate sources and intelligence from the ground up. None of the Chertoff et al. wish-list helps on this count. Nothing in the proposed new powers would necessarily thwart a similar liquid bomb plot in the future.

Instead, Rivkin and Casey rush to the most facile and dangerous solution of institutionalizing racial prejudice—even though it has long been clear that al-Qaida is vigorously recruiting people who do not fit ethnic stereotypes, and succeeding. Increased profiling will simply accelerate this trend. In their rush to justify the unwise and reckless policies already used by the Bush administration, they endorse measures that would alienate the communities from which not only terrorist recruits come, but also a vital resource for combating terrorists. Their proposals would dry up the most important sources of recruits for intelligence services. In the name of building executive power to discriminate, they would make us all less safe.

The British authorities know all this—and try hard not to make the mistake that Casey and Rivkin advocate, in the face of heated public pressure. The Brits cultivate human intelligence both through wise investment by the intelligence agencies and also via smart public policy. One of the most important post-9/11 initiatives begun by the British MI5—the security service responsible for protection against

espionage and terrorism—is to aggressively recruit Arabic and Asian language speakers. By contrast, inquiries last year by the Center for the Study of Sexual Minorities in the Military revealed that the Department of Defense had fired 20 Arabic and six Farsi speakers pursuant to its “don’t ask, don’t tell” policy. Better dead than gay, appears to be Secretary of Defense Donald Rumsfeld’s *modus operandi*.

Further, the British government is trying—albeit inconsistently—to reduce the number of extremists. The July 2005 bombings in London prompted a wave of new police efforts to build bridges to Muslim communities. Two weeks after the July attacks, Prime Minister Tony Blair convened a summit meeting with British Muslim leaders to find ways to strengthen communities against radicalism. Seven working groups were established to develop comprehensive economic and political strategies. British police also developed coordinated plans for responding to hate crimes against South Asian communities in the aftermath of a terror attack. To be sure, these policies were only partially successful—but that doesn’t mean they haven’t played an important role in reducing the number of plots.

The preventative detention power that Chertoff put on the table, finally, is no stranger to U.S. law. In the U.K., the 2006 Terrorism Act allows preventative detention without charge for 28 days. Since 9/11, the Department of Justice has used a 1984 law enacted to secure testimony from witnesses who might otherwise flee. This “material witness” statute is deployed to secure *de facto* indefinite detention of terrorist suspects. A study conducted by Human Rights Watch and the ACLU found that federal courts have not rejected a single request for a post-9/11 “material witness” warrant. Out of 70 such arrestees, 42 were released without charge. Seven were charged on counts of “material support” (an amorphous, ambiguous crime that reaches much seemingly innocuous conduct). Twenty were charged with non-terror offenses. Two were designated “enemy combatants”—never to be charged or tried (one, Jose Padilla, to be released just as the U.S. Supreme Court looked set to decide his case).

Locking up material witnesses makes good news copy for politicians. Recruiting Arabic and Urdu-speaking FBI agents doesn’t. Guess which really makes us safer. What’s needed now—and what has been needed since 9/11—are measures to ensure intelligence powers are used in a responsible, accountable fashion, that abuses are stopped, and that mistakes aren’t covered up or ignored. This is the national security agenda that would make the nation safe and keep it proud. Whether it’s the agenda touted by the Bush administration this fall is unlikely.