

The Changing Face of Orange County
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**THE COSTS OF "HOMELAND SECURITY":
THE USA PATRIOT ACT, IMMIGRATION, AND CIVIL LIBERTIES**

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It's a pleasure to be here tonight and to have the opportunity to consider with you the costs of what is termed "homeland security" in the context of this series on the Changing Face of Orange County. As I'm sure you're aware, the U.S. government has recently implemented many harsh measures, aimed both at immigrants and at U.S. citizens, in the name of protecting our collective well-being and national interests. We could easily spend the time we have tonight analyzing these measures and the resulting constrictions of civil liberties in this country, for those are very real costs of this program of "homeland security."

But I think the costs are much greater than those evoked by the question, as it is most often framed, of whether we're willing to sacrifice "some liberties" for greater security. The real question, I believe, is whether we're willing to sacrifice the very rule of law for the benefit of what turns out to be a fairly small sector of the population. To understand why this might be, we have to consider not only these recent developments, but the broader history of the use of "emergency" or "national security" measures in what has become the United States. This means we've got an ambitious agenda for tonight, as you can see from the outline. We could spend weeks on each of these topics - - and I do, in the classes I teach -- but tonight I can only present a broad-brush outline which I hope will be useful to you as you create your own assessments about what's really happening in the U.S. today.

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A. The Aftermath of September 11

In the immediate aftermath of the September 11 attacks on the Pentagon and the World Trade Center, George W. Bush declared “war on terror,” a war without geographic boundaries or a specific enemy, and therefore a war of global scope and potentially indefinite duration. This has been presented to us as a war of ‘good vs. evil;’ as Bush said on September 14, 2001, “our responsibility to history is already clear: to answer these attacks and rid the world of evil.” Those who are “evil” can be identified by the fact that they hate America and threaten our national security, a term explicitly defined to include not only American lives but U.S. economic interests as well. In perhaps its most honest iteration, it is presented as a war to preserve “our way of life.”

“Good” is equated to our “core American values,” identified in *The National Security Strategy of the United States of America*, a report presented by the White House to Congress in September 2002, as “the nonnegotiable demands of human dignity” including specifically the rule of law; limits on the absolute power of the state; free speech; equal justice; and religious and ethnic tolerance. I want to emphasize that the “rule of law” doesn’t mean *more* laws or more police officers on the street. Most significantly, it doesn’t mean the use of the law enforcement apparatus simply to enforce order -- that’s fascism. It means, as the Supreme Court said in 1803, that this is a “government of laws, not of men”; that the government operates within a democratically mandated system of law, in this case embodied most obviously in the Constitution and the fundamental principles of international law.

Our job tonight is to consider whether the means utilized in this war on terror are furthering its stated goals of freedom, democracy and the rule of law or, in fact, are undermining them.

The “enemy” in this war has taken various forms -- the al Qaida network presumed responsible for the Sept. 11 attacks; the Taliban government of Afghanistan (described by Ronald Reagan as “freedom fighters” for their opposition to the Soviets, but now accused of harboring terrorists); the state of Iraq and its president Saddam Hussein; the 600-plus men and boys of more than 40 nationalities captured in Afghanistan and elsewhere and now held at Guantanamo Bay; thousands of immigrants in the U.S. who have been detained and deported; and some U.S. citizens accused but not prosecuted for collaborating with terrorists.

With respect to the outside world, the official position has been that any action is justifiable because this is a war of good vs. evil -- most notably that the U.S. is free to violate established principles of international law. Thus, on November 13, 2001 George W. Bush announced that the U.S. intended to conduct military tribunals of noncitizens it unilaterally deemed terrorists, with the power to sentence people to life imprisonment or death, and with no appeals to civilian courts. The U.S. government has denied the Guantanamo detainees the protections of the Geneva Conventions, and announced in *The National Security Strategy* its intent to engage in preemptive strikes and/or “preventive” warfare (a blatant violation of the UN Charter) when it deems it to be in the U.S. interest. The invasion of Iraq, of course, is an example of such preemptive action. Needless to say, these measures have caused great concern among both allies and “enemies” around the world.

Many “extraordinary” measures have been taken at home, as well. Immediately after September 11, the Justice Department began rounding up hundreds of noncitizen residents, most -- perhaps all -- men of Middle Eastern or South Asian origin. They were literally “disappeared”; taken without notice from their homes or workplaces, held incommunicado, moved from prison to prison, questioned without charge, not allowed to contact their families or lawyers. Plainly, these are practices we tend to associate with military dictatorships, not with democratic governments.

Initially the Justice Department proudly announced the numbers being detained, though not their names or locations, apparently believing this would make us feel more secure; when that backfired and protests arose, they stopped telling us even how many people were being held, but the total appears to have been about 2,000. Almost none of these detainees were charged with crimes, much less terrorism, but many were subsequently deported for technical violations of immigration laws.

Despite the government’s refusal to tell us what was happening, we do know a bit about the conditions of the detainees’ confinement. Rabih Haddad, a Muslim community leader from Detroit, reported being held in isolation, shackled, with lights on 24 hours per day, permitted outside his cell for only one hour per day (and then to a cage down the hall with a non-functioning exercise bicycle), and allowed only one 15-minute phone call to his family each month.

Hani Omar Hassan’s story was featured in the *New York Times Magazine* in December 2002. Apparently picked up because he had bought a plane ticket on a computer at the same Kinko’s as one of the hijackers, he was held under similar conditions, interrogated for months, and told he might never be released. Increasingly desperate, he tried to go on a hunger strike but was force fed, and finally tried to commit suicide. That was when he was released. This was not coincidental -- according to a Washington official who wished to remain anonymous, it is the government’s theory that when people reach that point of total despair, “we can be pretty sure they’re telling the truth.”

The INS (Immigration and Naturalization Service) also expedited the deportations of about 6,000 people, identified by age, gender, and country of origin, usually on the basis of secret evidence presented, if at all, in hearings closed to the public. 5,000 young men from the Middle East or South Asia were asked to come in for “voluntary” interviews with the INS and FBI; and onerous new entry/exit registration procedures were implemented for visitors from certain countries. You may remember the protests that resulted in Los Angeles when hundreds of Iranians went in voluntarily to comply with these registration requirements and were held indefinitely by the INS.

Finally, racial profiling has been reintroduced as an acceptable practice, apparently on the theory that those from predominantly Arab or Muslim countries are generically, perhaps genetically, predisposed to be terrorists.

Many of the measures implemented after September 11 targeted immigrants, but U.S. citizens have been directly affected as well. Some, such as the confiscation of tweezers and x

raying of shoes at airports seem to be relatively benign, although we have to ask whether the arbitrary exercise of police powers with no rational relationship to actual security is compatible with the preservation of freedom. Pressure has also been brought to bear on private businesses, such as phone companies and banks, to “voluntarily” turn over a wide range of information about our everyday lives, and there has been a dramatic restructuring of government, with many agencies now under the aegis of the Department of Homeland Security.

Perhaps most notable is the so-called USA PATRIOT Act. With Attorney General John Ashcroft threatening that the “blood of the victims” would be on their hands if they delayed, most of our representatives voted without even reading the final bill, which made it through the House and the Senate and was signed into law by the president, all in three days. (Again, we have to ask ourselves, is this the kind of democracy we want to be defending?) Here are a few highlights of this very complex law, which dramatically expands the government’s police and intelligence powers:

- It is much easier for government agencies to spy on the lawful, 1st Amendment- protected activities of Americans, including our political, social and religious activities.
- “Intelligence” information can now be used in criminal investigations. In other words, the protections of the 4th and 5th Amendments to the Constitution, which prohibit unreasonable searches and seizures, guarantee due process, and give us the right not to incriminate ourselves, can be bypassed.
- The usual definition of “terrorist” activity -- politically motivated violence aimed at a civilian population -- has been abandoned. Under the PATRIOT Act, any action which is aimed at influencing government policy, involves the breaking of any law, state or federal, and “endangers human life” now counts as domestic terrorism and carries a 15-year prison sentence. This could apply, for example, to an anti-globalization, or an anti-abortion, action in which protestors block an intersection or break a window. Furthermore, providing material support -- say, giving the demonstrators lunch money or a place to stay -- is also classified as domestic terrorism and subject to equally harsh penalties.

We could go through each of the bill’s 158 provisions, but instead I’d like to give you just one example of how this law is already being used. Last spring when I was speaking about this on KPFA Radio in Berkeley, a woman called in, very distraught because a SWAT team had surrounded her house, broken in, searched the house and arrested her 18-year-old son. It turned out the son had created a website on which he had allowed a 15-year-old to post a recipe for molotov cocktails, information readily available in the public domain. When I spoke with her, the son had been charged under the PATRIOT Act and faced up to 20 years in federal prison; she was in a quandary because she wanted to fight the charges, but was being pressured to get him to plead to lesser charges instead — an option that would be safer for her son, but nonetheless very serious, and would allow the government to avoid a constitutional challenge to the Act. We will undoubtedly see more of such prosecutions.

Another profoundly disturbing development is the indefinite imprisonment of U.S. citizens in

military custody, without charge, hearing, access to counsel, or any other constitutional rights, on the government's unsubstantiated assertion that they are "enemy combatants." Yaser Esam Hamdi and Jose Padilla, both U.S.-born citizens, have been held in this manner for nearly two years. They have only just recently even been allowed to talk to their lawyers, and then as a matter of military "discretion," not as a right. Hamdi, like John Walker Lindh, was captured in Afghanistan, but unlike Lindh, was not given a hearing in a civilian criminal court. The only discernable difference in their cases is that Lindh is a Euroamerican, Hamdi of Middle Eastern descent.

Padilla was detained at O'Hare Airport. While the government asserts that he had some connection to a "dirty bomb" plot, he has never been able to see the evidence against him or present his side of the story to a court. There may be other citizens similarly held -- we don't know because the government won't tell us -- but what we do know is that the government is unilaterally deciding which citizens are protected by the Constitution and which are not.

Finally, as we look at the effects of these post-September 11 measures on all of us, we have to note how a climate of fear and suspicion has been fostered, resulting in a surge of hate crimes against those perceived as "Other." Literally thousands of instances of discrimination, harassment and physical assaults have been reported against Muslims, Arab Americans, and those who may be confused with them. To give just one example, the one I find most ironic, shortly after September 11 Kimberly Lowe, a young American Indian woman in Oklahoma, was killed by some white men in a pickup truck who, as they assaulted her, were yelling "Go back to your country."

The governmental actions I've touched on, and many more, have all been taken in the name of "our security," presumably to protect both our physical safety and the freedom and democracy being threatened by terrorists. On their face, however, they don't seem to embody those "nonnegotiable demands" for freedom, equal justice, or compliance with the rule of law articulated in *The National Security Strategy*. Indeed, they seem to embody the exact opposite. By way of explanation we are told that we face a new and imminent threat, a different kind of threat requiring a different kind of response. But is the threat really so new and different? Is the response? Are these rational measures which will effectively counter a real threat? *Whose* "way of life" is being threatened and who's paying the price?

B. Parallels to the Japanese American Internment

In the first weeks after September 11, as the media began reporting on the families of the disappeared -- wives and children who came home to discover that their husbands or fathers had vanished; frantic inquiries to local police and hospitals which yielded no information; occasional phone calls from the men who reported that they were being moved from state to state, held in maximum security prisons and questioned without knowing why; many summarily deported without even seeing their homes again -- a deep uneasiness lodged itself in the pit of my stomach, and stories from my childhood came flooding back.

I remembered my father talking about coming home from junior high in Aberdeen,

Washington in December 1941 to find that his widowed mother had disappeared and FBI agents were ransacking the house; how it took his brother and sister three weeks to figure out that she was being held in the Seattle jail as a “dangerous enemy alien”; how even after much interrogation she was cleared in January, but was not released until after Easter, just in time for the family to pack what they could carry and report to the “assembly center” at the Tanforan race tracks, where they lived in converted horse stalls until they were sent on a train across the desert to the internment camp at Tule Lake in northern California, where they remained for several years.

As you may know, just last week was the national “day of remembrance” of the World War II internment of nearly 120,000 Japanese Americans; men and women, children and old people. The older generation were still Japanese citizens, but more than 70,000 of those imprisoned were U.S. citizens by birth.

It’s hard not to be struck by the parallels -- the targeting of a group solely on the ground that race or national origin somehow links them to an “enemy.” The U.S. government *knew* that Japanese Americans were not a threat to national security -- the FBI and military intelligence had long had Japanese American communities under surveillance, and had consistently reported that they posed no threat. In fact, they reported that the Japanese government was much more likely to use white spies and saboteurs because they would be much less obvious.

Nonetheless, the government had compiled lists of all political, religious, and business leaders in the community and, like my grandmother who was targeted because she ran a small import/export store, everyone on those lists was rounded up and interrogated immediately after Pearl Harbor, and either released or held following individual hearings. This is paralleled in the approximately 2,000 detentions following September 11, except that the recent detainees have typically been denied hearings. Even though this process has not yielded any terrorists, many residents who posed no threat to the national security have been deported nonetheless on the basis of technical immigration violations. Here in Orange County, taking advantage of the post-September 11 climate, many Latinos and Latinas accused of minor infractions of law were not prosecuted but instead turned over to the INS and summarily deported. In the case of the Japanese Americans, *after* this process of targeted individual screenings, *he* entire community -- every person of Japanese descent on the West Coast -- was incarcerated pursuant to Pres. Roosevelt’s Executive Order 9066 on a completely unsupported assertion of “military necessity.”

During World War II, this purported concern with security applied *only* to those racially identified as Other, *not* to German or Italian Americans. Similarly, white terrorists have not been targeted since September 11. Witness how the anthrax threat virtually disappeared from the news after a white scientist was identified as the primary suspect. Or consider the case of Timothy McVeigh, convicted of the 1995 bombing of the Murrah federal building in Oklahoma City -- until then the largest terrorist attack on American soil, resulting in the deaths of 168 men, women and children. McVeigh received an open trial with full constitutional protections, and we certainly didn’t see sweeping investigations of white supremacist groups or a mass incarceration of the racist right. Instead, the Oklahoma City bombing became part of the rationale for passing the harsh anti-immigrant provisions of the Illegal Immigration Reform and Immigrant Responsibility Act and the

Anti-Terrorism and Effective Death Penalty Act, both passed in 1996.

Just as much is now made about immigrants threatening the national security, during WWII much was made of the fact that the older generation of Japanese Americans were “enemy aliens” -- ignoring the fact that they couldn’t become citizens because there were still racial restrictions on naturalized citizenship, and the fact that two-thirds of those incarcerated *were* U.S. citizens. The “national security” card simply trumped the Constitution. All persons of Japanese descent, even babies in orphanages, were portrayed as a threat, just as Muslims and Arab Americans, long before Sept. 11 were portrayed in the media and popular culture -- consider movies like *The Siege* -- as inherently prone to be terrorists or at least sympathizers or supporters of terrorism.

The internment of Japanese Americans is now generally acknowledged to have been a mistake but -- as Supreme Court Chief Justice William Rehnquist recently put it in his book, *All the Laws But One* -- an understandable one, given that America was at war. In 1988 Congress passed the Civil Liberties Act, which attributed the internment to “racial prejudice and wartime hysteria,” and provided an official apology and the payment of \$20,000 to each surviving internee. This, of course, was merely symbolic, for it came nowhere near compensating those interned for their loss of property, much less the resultant trauma and disruption of lives. Because of this acknowledgment, until a few years ago it was generally assumed that such a thing -- the mass incarceration of U.S. citizens or residents on the basis of race or presumed political loyalty -- could never happen again.

But could it? The Supreme Court opinions which in 1943 and ’44 upheld the internment against constitutional challenge have never been overturned, and thus remain “good law.” No laws have been passed to prevent mass internments; in fact from 1950 to 1971 Title II of the National Security Act explicitly authorized the government to create internment camps. The president still has the ability to order such incarcerations and, if recent assertions of executive power such as the Order authorizing military tribunals are any indication, would not hesitate to do so.

Official acknowledgment of a wrong, even if accompanied by an apology and some kind of redress, is meaningless if there has been no structural change to prevent its recurrence. And the fact that this time it might be Arab Americans rather than Japanese Americans doesn’t make it any better. In fact, these days it appears that the Japanese American internment is increasingly being used to justify post-Sept.11 measures, the message now being that the government previously took “extraordinary” actions in times of war and, look, it all turned out OK.

Are we going to allow one massive wrong to become the excuse for more and potentially greater violations of the Constitution and fundamental human rights? If not, we have to be very clear that the internment of Japanese Americans was neither a response to actual national security concerns nor an aberration. If we look a little deeper into the treatment of Asian Americans in this country, and the historic attribution of security threats to immigrants and, more generally to those deemed Other, particularly American Indians and African Americans, we can emerge with a much more accurate understanding of what is happening today.

C. The Historic Conflation of Immigration and Security Issues

As noted, German and Italian Americans weren't interned en masse, but Japanese Americans were, although there was no evidence that they posed any threat to national security. What's the difference?

Japanese labor was introduced to the U.S. in 1888, when 60 workers were brought to Vacaville to pick fruit. The demand for Japanese agricultural labor -- concentrated in California -- increased sharply in the 1890s and immigration rose in response until the U.S. government essentially cut off the influx in 1906. As one sugar beet grower testified in a 1907 hearing, "If we do not have the Japs to do the field labor, we would be in a bad fix, because you know American labor will not go into the fields."

A source of cheap labor, the Japanese were also deemed Other -- racially inferior, unassimilable, untrustworthy -- and kept "foreign" in as many ways as was possible -- discriminated against, segregated, denied naturalized citizenship on racial grounds and then prohibited from owning land because they were "aliens ineligible to citizenship." Despite all of this, they encouraged their children, who were U.S. citizens by birth, to assimilate. As my father said, "we were Christians and boy scouts; we grew up saying the pledge of allegiance at school every day: 'with liberty and justice for all.'" Despite the structural obstacles placed in their way, the older generation soon owned small businesses and turned waste land into productive farms, often putting the land in the name of their U.S.-citizen children.

Not their inability to assimilate, but their very success at doing so generated great resentment, both from white labor, which saw them as unfair competition, and white farmers who wanted their land. Nativist groups such as the Golden Sons of the Native West, one of whose prominent members was future California governor and U.S. Supreme Court Justice Earl Warren, put constant pressure on the federal government to exclude and ultimately to intern Japanese Americans and, when they succeeded, managed to profit handsomely from the forced dispossession of Japanese property.

But this was nothing new. Japanese workers were brought to California in the late 1880s to replace the Chinese workers, who had been brought -- often involuntarily -- to work in the fields and the mines, but who were subsequently excluded, beginning in 1880, by a series of immigration laws which were also the result of white nativist pressure.

We see, of course, many parallels between the history of Asian American labor and migration and the push/pull dynamics of Mexican immigration. And the connection is very concrete. A few years ago I went for the first time to Tule Lake, to see where my family had been interned. I expected to find a few remnants of crumbling barracks in that isolated desert terrain, and instead was shocked to see rows of small, identical, newly constructed houses, surrounded by a barbed wire fence. Driving around the compound, I came eventually to a gate, where a large sign dispelled my confusion: "State of California Migrant Labor Camp."

When we look at the treatment of immigrant groups in the U.S., we see that while the motivation both to bring in and to exclude was generally economic, the rhetoric used to deny them rights and exclude them from benefits has often been couched in terms of the national security, also known as “preserving ‘our’ way of life.” This is interesting because the United States is consistently characterized as a “nation of immigrants” (a framing necessary to maintain an appearance of legitimacy, given that it is, in fact, a settler colonial state occupying someone else’s land) but, at the same time, immigrants are the first to be attacked as threatening to the social, economic, and/or racial status quo.

So, we have to recognize that the “founding fathers” were immigrants as well (illegal immigrants, one could accurately assert), but they and their descendants have assumed the mantle of the “real Americans.” And they’ve done what they could to ensure that those deemed American looked like them. In 1790 the very first Congress passed a law which limited naturalized citizenship to “free white persons” -- a racial restriction not entirely eliminated until 1952. Interpreting this phrase in 1923 to find a “high caste Hindu” ineligible to naturalization, the Supreme Court succinctly summarized who was to be an American:

The words of familiar speech, which were used by the original framers of the law, were intended to include only the type of man whom they knew as white. The immigration of the day was almost exclusively from the British Isles and Northwestern Europe, whence they and their forebears had come. When they extended the privilege of American citizenship to “any alien being a free white person” it was these immigrants — bone of their bone and flesh of their flesh — and their kind whom they must have had affirmatively in mind.

The Supreme Court made very clear in its 1858 *Dred Scott* decision that African Americans were not only *not* citizens, but not even “people” under the Constitution. Birthright citizenship only came after the Civil War, with passage of the 14th Amendment in 1868, and U.S. citizenship was unilaterally imposed on American Indians in 1924. Using economic and literacy tests, and country quotas based on the 1890 census, immigration of northwestern Europeans (one might say Aryans) was encouraged; southern and eastern European immigration discouraged; and immigration from most of the rest of the world essentially banned. From the beginning, those truly native to this land, those brought as chattel slaves, and non-Aryan immigrants became the “Other.”

Those who thus deemed themselves “real Americans” justified the dispossession of the native peoples by asserting their superior right to the continent’s land and resources (the notion of “manifest destiny”). They characterized indigenous resistance to this dispossession as threatening the “national security” and thus justifying a military policy of outright “extermination,” combined with forced removal from their homelands and incarceration in what can only be accurately called concentration camps.

Throughout U.S. history, any movement that threatens the hegemonic control of this small sector of the settler population has been labeled a threat to the national security and, where possible, “foreigners” are blamed. “Un-American” thus has both a literal and a figurative dimension. Catholic immigrants from southern and eastern Europe were untrustworthy because their primary allegiance

was to the pope. Labor organizing was the work of foreign agitators, and immigrants were to blame for the popularity of anarchist and socialist movements in the early 1900s. Thus, after President McKinley was shot in 1903 by a U.S.-born citizen with anarchist leanings, harsh new immigration laws were passed which for the first time included explicit ideological restrictions.

In turn, those who dissent politically are cast as disloyal, un-American, and under foreign influence. As early as 1798 the first Alien and Sedition Acts were passed on the Federalists' claim that the Jeffersonians were agents of France attempting to bring the French Revolution's "reign of Terror" to the United States. Those who fought for the abolition of slavery were deemed "seditious"; those who opposed the war fought to pacify the Philippines from 1898 to 1902 were accused of treason.

Socialist labor leader Eugene Debs was convicted under the Espionage Act for his outspoken opposition to World War I, noting on his way to prison that "it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make the world safe for democracy." In the 1950s and '60s civil rights and anti-war organizations were inevitably labeled "communist front" groups. According to the FBI, Martin Luther King was a communist and therefore acting on behalf of the Soviet Union; Jane Fonda was an agent of Hanoi.

More generally, *anyone* advocating virtually any kind of social or political change was deemed a threat to the national security. As the Senate Select Committee on Intelligence (also known as the Church Committee) reported in the mid-1970s, this was used as an excuse by the FBI and numerous other federal agencies to engage in thousands of "counterintelligence" operations against U.S. citizens, using means which were lawful only when employed against spies, saboteurs and other such "agents of foreign powers." Used as they were against citizens, they were not only illegal but unconstitutional; and, to quote the Church Committee, "abhorrent in a free society."

I want to give you one example from this period, because it's directly relevant to the kind of "law enforcement" powers being authorized by the USA PATRIOT Act. In 1973 the Socialist Workers Party (SWP) and its youth organization, the Young Socialist Alliance (YSA), sued the government for illegal infiltration, disruption, and harassment in violation of their constitutional rights and after 15 years of litigation won nominal damages. They established that between 1943 and 1963 the FBI had illegally engaged in 20,000 days of wiretaps, 12,000 days of listening "bugs," and 208 burglaries of homes and offices, and that between 1960 and 1976, it employed about 300 member informants and 1000 non-member informants. What's most relevant for our purposes is what the federal district judge said about this:

Presumably the principal purpose of an FBI informant in a domestic security investigation would be to gather information about planned or actual espionage, violence, terrorism or other illegal activities designed to subvert the governmental structure of the United States. In the case of the SWP, however, . . . [o]ver the course of approximately 30 years, there is no indication that any informant ever observed any violation of federal law or gave information leading to a single arrest for any federal law violation. What the informant activity yielded by way of information was thousands of reports recording peaceful, lawful activity by the SWP

and YSA.

This is just one case. What the Select Committee of the United States Senate (not some radical malcontent) concluded after looking at hundreds of such operations was that the FBI, in the name of protecting national security, was in fact “conducting a secret war against those citizens it considers threats to the established order.”

In many ways the PATRIOT Act is attempting to legitimize this war to preserve the status quo and, one might note, thereby make it easier to finance. Political protest now becomes domestic terrorism and under the proposed PATRIOT II, the government is seeking the power not only to declare such activity “un-American” but to literally strip Americans associated with certain organizations of their citizenship.

It is the conflation of those who are “not-American” which that which is “un-American” and the further conflation of “our security” with “the established order,” i.e., the status quo, that we must examine with care as we assess post-September 11 developments in this country. There are many ways to approach this issue; tonight I’m proposing that we do so by considering two questions: Whose homeland? And whose security? We’ll then wrap up by returning to our first question -- what are the costs of this kind of “homeland security”?

D. Whose Homeland? A Closer Look at Orange County and Its History

So, whose homeland is it we’re defending? The question ultimately needs to be addressed on a national scale, but we can see its parameters by looking right here at Orange County.

Tonight’s forum is part of a broader program entitled “The Changing Face of Orange County.” I assume this refers to recent demographic changes. While I’m sure these changes engender a wide range of concerns, such as the increased population density and the availability of county services, I expect that much of the concern centers on the fact that whereas in 1980 Orange County was 78% white, by 2000 it was about 51% white, 31% Latino, and 14% Asian. Because over 40% of Orange County residents speak a language other than English at home, I expect that many of the newer residents may also be recent immigrants. And I’m inferring from the fact that I was asked to talk about the costs of homeland security as part of the “Changing Face of Orange County,” that some residents have concerns about the implications of large numbers of new immigrants on security or, perhaps more accurately on “our way of life.” As I understand it, there has been strong voter support here for anti-immigrant initiatives.

I’m sure that you all know much more about Orange County and its history than I do, so I’d like to pose a few questions about this “changing face.” First, why is 1980 the benchmark I most often encounter? Is it reflective of the way it’s always been? The way Orange County envisions itself?

I’m told that the county was established in 1889 and named after its numerous orange

groves. Who was planting and nurturing those orange trees? Who was picking and loading the fruit? Chinese labor that was in the process of being excluded and replaced by Japanese labor? Mexican migrant workers? In other words, could Orange County ever have become Orange County without these outcast immigrant Others?

There's much talk these days about Mexican immigration, but is this a recent phenomenon? Wasn't California part of Mexico until it was annexed by the U.S. in 1848? Under the Treaty of Guadalupe Hidalgo, those Mexicans who wished to remain in California were guaranteed all the rights of U.S. citizenship, if they wished to accept it (though, tellingly, *not* all the rights of white Americans). Regardless of citizenship, they were also guaranteed recognition of their title to the land. But the Land Act of 1851 soon effectively nullified this promise, encouraging Anglo homesteading on Mexican land and forcing Mexican landowners to go through a difficult and costly procedure of proving their ownership, using U.S.-approved documentation in hearings conducted in English. Prior to 1860 all land in California worth more than \$10,000 was in Mexican hands; by 1870 that had been reduced by three-quarters; and by 1880 Mexicans were virtually landless in California.

Meanwhile, by 1851 all native Mexicans had been excluded from the state Senate, and by the 1880s virtually no one with a Spanish surname held public office. Arguing to the California legislature for exclusion of Mexicans from the mines, G.B. Tingley of Sacramento described Mexicans and other Latinos as follows:

Devoid of intelligence sufficient to appreciate the true principles of free government; vicious, indolent, and dishonest, to an extent rendering them obnoxious to our citizens; with habits of life low and degraded; an intellect but one degree above the ~~last~~ last of the field, and not susceptible of elevation; all these things combined to render such classes of human beings a curse to any enlightened community.

It's not surprising that soon they found themselves strangers in their own land.

But let's go back even further. Mexicans are derivative of the indigenous populations of this land and of their Spanish colonizers. Spain controlled California and the other Mexican territories until 1821, but the Spanish, too, were immigrants. Orange County's first long-term European settlement was the Mission of San Juan Capistrano, founded by Father Junipero Serra in 1776. By the time Serra died in 1784 there were nine Franciscan missions in California and, like other Spanish missions in the Americas, they were essentially forced labor concentration camps in which the Indians' fate was described by the Spanish colonizers themselves as "worse than that of slaves." It was these Indians, not their colonizers, whose sweat and blood went into the initial conversion of California — and therefore, of course, Orange County — into the "agricultural mecca" it would become.

The life expectancy of those held in the missions was only ten to twelve years at best; those who attempted to escape were restrained or hunted down. Ironically, because the old and the young were first to die, those who survived were relatively productive, generating significant profits for the Spanish. Overall, the indigenous population of what is now California was reduced by perhaps 75%

by the time the Spanish withdrew in 1821.

There were as many as eighty American Indian nations in California when the European colonizers arrived. A large-scale Anglo invasion was underway by the mid-to-late 1840s and with it came a determined campaign of extermination, most of it in the form of so-called private actions, massacres by settlers fueled first by official scalp bounties and then by bounties offered by business consortia. Dryden Laycock, a settler in Round Valley, claimed that beginning in 1856, the first year of white settlement, groups of Round Valley settlers would go out “two of three times a week” and kill “on an average, fifty or sixty Indians on a trip,” and that these raids continued for five years.

Indians were reduced to a form of insect life in the sensibilities of those engaged in this process. As professional Indian killer H.L. Hall, operating largely in Humboldt County, instructed his colleagues, they should kill native infants as well as adults because “a nit grows up to be a louse.” (Later the same imagery would be invoked by SS Reichsführer Heinrich Himmler when he compared the extermination of European Jews to “delousing.”)

The genocidal policies of the California settlers were remarkably successful. According to historian David Stannard, the native population of California dropped from 85,000 in 1852 to 35,000 just eight years later, and by 1890 this number was at less than 18,000 and dropping. The Juanenos, the people indigenous to Orange County, along with numerous other California peoples, were declared extinct by the U.S. government in 1970 -- officially “terminated” by the terms of what is known as the Pitt River Land Settlement. They are still fighting today for their existence to be officially recognized by the government.

So, Orange County was, in fact, the homeland of the Juanenos, Luisanos, Deguanos, and others of the so-called “Mission bands.” Its ‘face’ changed dramatically with the initial Spanish colonization and even more dramatically after the U.S. took possession in 1848. The Euroamerican settlers in large measure created the “way of life” their descendants are now so concerned with preserving by slaughtering the Indians, dispossessing the Mexican landowners, and exploiting Asian and Latino labor, in the process consolidating their control over enormous resources, and using the power of the state to ensure their “security” -- or more accurately, their immunization from the consequences of their actions.

This isn’t a story unique to Orange County. Instead, while the details vary from place to place, it is one which reflects all the main trajectories of the U.S. conquest and occupation of North America.

E. Whose Security? “National Security” as Pretext for Preserving the Status Quo and Further Dispossessing the Other

Which gets us to the question of just *whose* security is being preserved.

We’ve looked at the consolidation of this country in terms of its history of dispossessing the

Other. The original immigrants — the colonial settlers — in this part of the country dispossessed, actually consumed, the Juanenos in missions that were literal internment centers, physically confining native peoples and literally working them to death. And, of course, in somewhat different ways, the more than 400 indigenous nations of this continent were similarly dispossessed. The state of Mexico was literally dispossessed of half its territory and then its people consumed as migrant labor. The Chinese, Japanese, Koreans, Filipinos and other Asians were also considered disposable labor, and as we noted in discussing the Japanese American internment, dispossessed when they managed to establish an independent economic base.

All this was part of the internal consolidation of the American state. And it was followed by U.S. expansion overseas. The Kingdom of Hawai'i was overthrown in 1893 and annexed in 1898. In what was explicitly termed an imperial expansion, the Philippines, Puerto Rico, Guam, American Samoa; and the U.S. Virgin Islands were occupied at the turn of the 20th century and, in fact, all of these territories except the Philippines remain under U.S. control today.

Those now insisting on the necessity of repressive measures in the name of security are those who have visited this dispossession on others. Only Aryan settlers have managed such large-scale and complete dispossession of the Other, but somehow it is always the victims who are portrayed as the threat; the realities that underlie the current world order are rejected in a process that projects the attributes of the colonizers' history and resulting character onto the Other.

Now, we see anyone who can be associated with brown-skinned terrorists by virtue of religion or national origin being treated as potential terrorists themselves. (As we noted earlier, the same was not done when the terrorists, like McVeigh, were white.) And this new "threat" is used, in turn, to justify the invasion of Iraq, where a country of brown-skinned Others has been declared a threat to U.S. national security (a claim rejected by virtually all the rest of the world), and the U.S. is in the process of dispossessing these people of control over their land and natural resources.

Who's really benefiting from this? We are led to believe that "our way of life" as Americans depends on this exercise of U.S. global hegemony — that our economic prosperity, our SUVs and the suburban lifestyle that comes with them (perhaps that life of the "good old days" of Orange County) is in jeopardy. In fact, however, an increasingly narrow elite is benefiting from this process. We've seen, of course, how much Halliburton has profited from the war in Iraq. It's less well publicized, but they also have contracts for expanding the detention facilities at Guantanamo Bay. And construction of federal prisons for immigrant detainees is one of the most profitable industries in the U.S. today.

This is important not because a few large corporations and their stockholders are profiting greatly from the "war on terror," but because it is reflective of the more general reality that 1% of the U.S. population controls 40% of our collective wealth, and the United States, in turn, with only 5% of the world's population, consumes 25-30% of the resources of the planet.

So we have to ask, are we collectively benefiting from this war on terror, or are our fears, constantly heightened by inflammatory media coverage, being exploited to entrench the economic

and political security of that 1%? Many thoughtful scholars and analysts have pointed out that our government's actions overseas are generating *more* resentment and anger against the U.S., not less. There were no documentable ties between Iraq and al Qaida before the U.S. invasion; now there are reports of hundreds of al Qaida members crossing the border to join the Iraqi resistance. Here at home, instead of working respectfully with Muslim and Arab American communities, the federal government has engaged in surveillance of mosques, roundups of community leaders, and wholesale deportations. Can this *really* be making us safer?

F. The Real Costs of Protecting “Our Way of Life”

Which brings us back, in conclusion, to considering the real costs of preserving “our way of life.”

As I've indicated in this very brief overview, immigrants have been the focus of “national security” debates throughout U.S. history. Those who are perceived as foreign, are portrayed not just as not-American, but as “un-American,” probably disloyal, and always potential enemies. We certainly saw this with the internment of Japanese Americans, and it's still an issue for all communities of color, because of the still-deepseated belief that only white folks can be “real Americans.” During World War II, Americans of Japanese descent were transformed into the enemy overnight; immediately after that, in the context of the Cold War, the Chinese, who had been our friends during WWII, were now potential enemies. And it continues to this day. Vietnamese, Cambodian and Laotian refugees -- most of whom are here only because they were our allies in the U.S. war against Indochina during the 1960s and '70s -- are assaulted as if they were the enemy.

And when it comes to being seen as the enemy, we are fungible on the basis of race. In 1992 a Vietnamese student at the University of Miami was beaten to death by white youths who called him “Chink” and “Viet Cong.” In 1995 a Chinese American man was beaten to death in Raleigh, North Carolina, by white men who were angry because “their brothers went over to Vietnam in the war and they never came back.” In 1982 Vincent Chin, a Chinese American in Detroit, was beaten to death with a baseball bat outside a McDonald's by unemployed auto workers who accused him of being a “Jap” and taking their jobs.

We could go on and on with examples not only of anti-Asian violence but comparable acts perpetrated against all other communities of color. However, my real point here is not that such violence occurs, but that it is still sanctioned. We no longer have official scalp bounties and lynching is theoretically illegal, but racially-motivated attacks are consistently treated as “understandable.” Vincent Chin's murderers were allowed to plead guilty to manslaughter, sentenced to probation, and fined \$3,780 each.

Right here at UC-Irvine in 1996, Asian American students received an e-mail which stated, among other things:

You are responsible for ALL the crimes that occur on campus. YOU are responsible for the

campus being all drt. . . . That's why I want you and you stupid ass comrades to get the fuck out of UCI. IF you don't I will hunt all of you down and Kill your stupid asses. Do you hear me? I personally will make it my life career to find and kill every [...] one of you personally.

The perpetrator in this case was the son of a Latin American immigrant, illustrating the pervasiveness of such attitudes in this culture. He was prosecuted for hate crimes and the first trial resulted in a hung jury, the jurors having concluded that, despite his obvious guilt, they felt sorry for him. After a second trial he was convicted and given a one-year sentence with mandatory psychiatric counseling -- hardly the kind of sentence we're seeing for prosecutions under the PATRIOT Act or, for that matter, for stealing videotapes from K-Mart.

So, the "racing" of certain immigrant groups, as well as native peoples, as the "enemy" continues, as we move into an era of increasingly harsh measures taken in the name of the war on terror. As we've seen, "security" concerns have consistently been raised throughout U.S. history by one sector of immigrants who have targeted both the indigenous peoples of this continent and subsequent immigrant groups as threatening the primacy of the "real Americans."

Interestingly, in the context of these post-September 11 measures, we see immigrants framing both ends of the debate. Viet Dinh, a Vietnamese refugee who graduated from high school right here in Orange County, is the poster boy for the "American dream" -- he graduated from law school, went to work for the Justice Department, and became the primary architect of the PATRIOT Act.

At the other end of the spectrum, we see another Orange County immigrant as one of the first targets of this Act. Last June Hai Duc Le was charged with using a weapon of mass destruction after a pipe bomb exploded in his car. While there were five state felonies and misdemeanors with which he could have been charged, none carried a penalty greater than 7 years. Under the PATRIOT Act, he faces a 35-year sentence. Most lawyers would agree that while such prosecutions were not part of the stated intent of the PATRIOT Act, there is nothing in the law that prevents its use in this manner. I don't think it's an accident, however, that a precedent of this sort is being set in a case brought against a relatively powerless immigrant Other, someone unlikely to have the resources to generate a high-profile challenge to the Act's unconstitutionality.

The PATRIOT Act was thus written by an immigrant and is being field-tested on immigrants, but its reach extends to all of us. It's the most visible, but there have been dozens of similarly draconian laws passed since September 11, giving the government an arbitrary ability to lock up more Americans for longer periods of time and effectively nullifying our constitutional rights in the name of protecting freedom and democracy.

We are not safer as a result. There were plenty of laws before September 11 criminalizing terrorist activity, and those desperate enough to fly planes into building are not going to be deterred by more law. What is being deterred is our collective ability to influence the government that purports to represent us. Those who attend anti-war meetings are receiving federal grand jury

subpoenas; those who criticize government policy find themselves on “no-fly” lists; and those who organize political protests face criminal prosecution as domestic terrorists.

To allow this to happen is to sanction state repression. What is being preserved is not *our* security but the privilege, real or imagined, of one narrow sector of the settler population. What is being sacrificed are not a few liberties we never exercised anyway, but the very principles which are supposed to define the “American” way of life.

I’ve tried to illustrate why the ratcheting up of police and intelligence powers since September 11 have not made us, collectively, any more secure. They further entrench the status quo, in the process making most of us much less secure. To wrap up, I’d like to leave you with two questions concerning the costs of this kind of “homeland security.”

(1) First, is this really the kind of world we want to be preserving?

As we look around, the world’s not such a pretty place. Untold numbers of children die of malnutrition and preventable diseases every day. Millions of all ages are killed in ongoing wars, most of them waged by states against the peoples whose lands they are occupying. In this generation alone, 250 languages and their attendant cultures, knowledge, and world views will disappear, along with hundreds of plant and animal species. Vast swaths of land have been rendered uninhabitable by the relentless quest for “progress.” In many places -- like LA, maybe? -- we can’t drink the water and we can’t breathe the air.

The gap between rich and poor is increasing, both globally and in the U.S. Here at home we have the poorest public education and health care in the industrialized world. Every night hundreds of homeless peoples sleep on the streets. (Did you know the average age of a homeless person is 9?) We have the world’s second highest incarceration rate, and fully 80% of everyone in this country charged with a felony is too poor to afford a lawyer.

Currently, about 1 in every 3 black men in the United States between the ages of 18 and 25 is either in prison, has done prison time, or is destined to do so before they’re 26. That’s approximately double the prospect of a Black man of the same age group in South Africa at the height of apartheid, Latinos in the U.S. suffer comparable rates of incarceration, and, in some areas of the country, the situation of American Indians is even worse. Do we really need to be locking up *more* people?

More to the point, this *is* the status quo being protected by the draconian measures described earlier; this is *the* way of life being created by that 1%. And those who truly benefit from it are doing everything in their power to ensure that it cannot be changed.

(2) Which gets me to my second question. Regardless of the differences we may have about the kind of world we want to leave our children, and what we’re willing to do to get there, are we really willing to give up our ability to have a say in this process? Because that’s what we’re talking about – giving up the fundamental rights embodied in the constitution, indeed, the rule of law itself, and

thereby any hope we have for a voice in the government which is acting in our name. Are we really willing to relinquish this for a blind faith that those currently in charge will do the right thing?

We've talked briefly about the undermining of constitutional rights in the name of "security." Having consolidated itself internally in the ways just described, the U.S. is now projecting this same order globally and international law is similarly being undermined. In *The National Security Statement* George W. Bush informs us that there is now a "single sustainable model for national success" – the American one, of course – and he is going to maintain the United States' "unprecedented and unequalled strength and influence in the world" by ensuring that U.S. military power is so overwhelming no one would consider challenging it. International law and cooperation are to be supplanted by what he terms a "distinctly American internationalism that reflects the union of our values and our national interests." In other words, the system that has evolved in the U.S. in the manner described tonight is what the country's leaders are attempting to impose upon the entire planet.

In piecemeal fashion, some of these problems are beginning to be recognized. The LA City Council has joined hundreds of cities in rejecting the PATRIOT Act and a federal judge here in California recently held some of its provisions unconstitutional . . . But the problem can't be fixed by tinkering with the law, for it's not the specifics of the PATRIOT Act or any particular executive measure, but the abandonment of international law in favor of U.S. unilateralism, and the abandonment of constitutional principles at home that are the real problem.

Finally, I'd like to say that this isn't about liberal vs. conservative responses to recent governmental actions. It was right here in Orange County in 1996 that a judge ordered the release of Geronimo ji Jaga Pratt. Pratt was a leader of the LA chapter of the Black Panther Party. He was framed by the FBI and the LAPD for the murder of a schoolteacher in Santa Monica and spent 27 years in prison, 8 of them in solitary confinement. The FBI knew that at the time of the murder Pratt was in Oakland because the FBI was bugging the meeting he was attending. This, however, didn't stop them from using the perjured testimony of an informant to convict him – in the name of "national security."

When the appeals finally got out of LA courts and into Orange County, the judge here immediately ordered him released – not because that judge had any sympathy for the Black Panthers, but because he recognized that this was about the rule of law – and that's something real conservatives believe in. He saw, I believe, that undermining constitutional rights in the name of "our security" was the most dangerous thing we could do; the quickest way to lose both democracy and freedom.

And that's what we've all got to recognize. We're all in this together. Black, brown, red, yellow, or a member of America's rapidly eroding white middle class, liberal or conservative, citizen or immigrant, we are confronted with a clear choice. It goes to the nature of the world we truly wish to inhabit and, more importantly, we leave to coming generations. Will it ruled by a self-anointed elite, defined by its pursuit of profit, with all the racist, colonialist, genocidal and ecocidal horrors that entails? Or will it be a world governed by a system of law which the arbitrary authority of the state is

constrained by a citizenry empowered by genuinely inalienable rights? In other words, one truly reflective of freedom and democracy? The choice is ours to make; the time to make it, now.

Thank you.