

Overview of St. Louis Resolution to Protect Civil Liberties

Assisting with Investigations without Reasonable Suspicion of Criminal Activity

The most significant change in the way federal authorities conduct investigations came not from the new powers granted by USA PATRIOT, but from a directive issued by Attorney General Ashcroft in May 2002 that changed FBI guidelines.

The AG Order actually repealed guidelines that were put in place in the mid-1970s as a response to revelations that from the 1950s through the 1970s, the FBI had engaged in illegal surveillance and wiretapping. Most of these illegal investigations were aimed at civil rights and anti-war leaders.

Proponents of lifting the old guidelines claim the FBI should have the authority to send agents into churches, synagogues, mosques or other places where groups meet “just in case” someone in the group might be planning some nefarious activity. This was the same basis upon which the FBI sent agents into churches and other organizations during the civil rights movement.

The reality is, this change in policy was unnecessary. The FBI has never been prohibited from entering public places to conduct an investigation. They were, however, required to have a reasonable basis for doing so before entering.

The old guidelines also regulated when law enforcement could start compiling information on individuals. These guidelines required the existence of a reasonable suspicion of criminal activity before intelligence could be gathered on a particular individual or group. The new guidelines make no such requirement, opening the door to the kind of fishing expeditions that were used to intimidate leaders of the civil rights and anti-movements.

Impact of the Resolution – Section 3 of the resolution asks the Board of Police Commissioners to require a showing of reasonable suspicion of criminal activity be made before city police officers can assist with or open an investigation of any individual or group. There is nothing in this resolution, nor can there be, that prohibits federal law enforcement from conducting an investigation under the new FBI guidelines within the city limits.

No Sneak and Peek Warrants

Section 213 of the USA PATRIOT Act provides the first statutory authorization for sneak and peek search warrants under which government agents may execute a warrant and conduct a physical search of premises and computers without providing notice to the subject. While only Congress can repeal this federal authority, the Board of Police Commissioners can prohibit local law enforcement agents from using this objectionable technique and prohibit local participation in federal searches in which this technique is deployed. Section 3(d) of the resolution places such limits on local authorities.

Participating in the Enforcement of Immigration Laws

“Our officers will not, and let me stress this because it is very important, our officers will not stop, detain, or arrest anybody solely based on their immigration status. Period.” - Austin (TX) Police Department, Assistant Chief Rudy Landeros

Enlightened police chiefs have long recognized the hazards of local police departments enforcing federal immigration laws. Undocumented immigrants are less likely to report crimes they witness and crimes against themselves if they fear that reporting will result in their removal from the United States.

Section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorized the Attorney General to enter into agreements with local police agencies to enforce immigration laws, but nothing in federal law mandates a local department to do so. More recently, the Department of Justice’s Office of Legal Counsel rendered an unpublished opinion asserting that local police may enforce civil immigration requirements even in the absence of such an agreement, but again they may (and should) choose not to do so.

This subtle policy change has been widely criticized by local police officials. In a letter dated April 10, 2003, the California Police Chiefs Association noted that local officials work hand in hand with INS on security and transportation during INS raids, but local officers do not make arrests on civil immigration violations. The letter went on to say that “state and local police departments have developed and implemented policies that have kept them from directly becoming involved in routine immigration enforcement issues.”

Impact of the Resolution – basically keeps the status quo. Local law enforcement officers will still assist INS with the apprehension of known immigration law violators, but they will not begin stopping, detaining or arresting anyone *based predominantly on their country of origin*.

- <http://www.nytimes.com/2002/04/04/national/04IMMI.html>
- http://www.immigrationforum.org/currentissues/articles/041002_calpo.htm
- A compilation of law enforcement statements on this matter are available at: http://www.immigrationforum.org/currentissues/articles/052002_quotes.htm .

Profiling Based on Race, Ethnicity, Citizenship, etc

In 2000, the Missouri General Assembly passed a law prohibiting the practice of racial profiling. This portion of the resolution simply reinforces this prohibition. In addition, it adds a prohibition of profiling based upon religion and political values.

Impact of the Resolution – sends a clear message to officers that stops and detentions should be based upon behavior, not general characteristics of an individual.

Denying Any City Service on the Basis of Citizenship

This provision sends a clear message to non-citizens that they will be treated

fairly and equally by city employees.

The Bottom Line

The question that each city governing body around the country must answer is how it wants its resources to be used. Does it want city officers asking people who look or sound “foreign” for their immigration papers? Does it want city officers participating in investigations of people who are not suspected of engaging in criminal activity? Does it want city officers compiling information on people without a reasonable suspicion that they are engaged in criminal wrongdoing?

Nothing in this resolution prohibits federal authorities from engaging in investigations under the rules set forth by federal policymakers. This resolution simply reflects the decision by local policymakers as to how local resources should be used, and asks the Missouri Congressional Delegation to work toward towards revising and in some instance repealing sections of the PATRIOT Act that violate fundamental rights.