

## DISCUSSION

ARYEH NEIER, MODERATOR: To lead off the question and comment period, I'd like to ask a question of Professor Barton. As I understand it, you were saying that the experience of Three Mile Island suggests that the confusion and unwillingness to take responsibility is a kind of protection of civil liberties, and I grant that that kind of situation can sometimes protect civil liberties. However, I question whether we would have the same consequences in a terrorist incident which caused no more damage than was actually inflicted by the accident at Three Mile Island. I would define terrorism as violence or the threat of violence designed to cause alarm that is disproportionate to the actual physical harm that is caused. I would think that, even if there were no great physical harm as a result of attempted or actual terrorism, the consequences in terms of alarm might produce a level of intrusion on civil liberties that goes far beyond what was produced by the accident at Three Mile Island. I would like your comment on that.

JOHN BARTON: Just taking the Three Mile Island analogy, had the thing exploded and caused harm, then the same governor of Pennsylvania, who looks in retrospect like he was right in not declaring for any evacuation and not declaring an emergency, might have turned out wrong. But it looked very, very different in retrospect and one has to ask, in terms of effects, who turned out right? Should the problem recur, everybody, including the governor of the new state where this new problem is going to occur, is going to be influenced by these past events. Now that's only part of the answer.

ARYEH NEIER: But suppose there's no absolute harm to Three Mile Island. If there was any harm, it is disputed, and we don't know what harm took place. Suppose there was some villain of the peace and this villain was trying to hold someone hostage or in other ways to inflict terror. Do you really think that the governor would respond the same way in which the governor responded at Three Mile Island? Do you really think that the federal government would respond as they responded at Three Mile Island? After all, there are accidents in which people are killed in automobiles all the time. But if there's a terrorist incident and the same amount of harm is inflicted, the level of response is wholly out of proportion to the level of response to an accidental killing. That is why I question the notion that in a terrorist incident there might be merely the sort of benign confusion that you described at Three Mile Island.

JOHN BARTON: Now I understand your point. To answer you, first, I think it's clear that whatever kind of incident occurs, there is not going to be a well-coordinated, so to speak, conspiratorial reaction by the government authorities. Now, the critical question is: How will the confusion affect the outcome of the incident? Will it look in retrospect as if that confusion saved

us or hurt us? And will it look in retrospect as if any of the authorities operated wisely or operated well? Answers to these questions will determine whether or not the citizenry afterwards is willing to turn over substantial new authority to the government.

DAVID KAIRYS: It seems to me that the very chaos and the considerations you described under the label of federalism sounded more like local politics. The governor was worried about not being re-elected. And it seems to me that the arguments go the other way in the terrorist situation. In order to get elected, the government has got to act swiftly against the villain. And it will certainly not let the villain walk away. So it seems to me that the very consideration that you're saying created somewhat of a protection at Three Mile Island would cut the other way if it were a terrorist situation.

JOHN BARTON: I guess the best answer is to consider the terrorist events that we have had. Typically, they end up hurting the government authorities unless the government authorities use decisive force successfully. Israel is good at that. The British commandos did it pretty well. Otherwise the incident will end up substantially hurting the government.