

Using 'False Claims Act,' Carter crowd targets U.S. defense for ruin

by Our Special Correspondent

Dossier material made available to *EIR* continues to substantiate our contention that the ongoing "Ill Wind" investigation and prosecutions aimed at the defense procurement process, are the front end of a campaign, now far advanced, to restructure the U.S. defense industry. Coordination and operational planning are run through a powerful cabal of private law firms, foundations, and "public interest" organizations which could be described as the "Carter administration in exile." They are the same crowd that led the nation into the disaster known as "the Carter Malaise," and they are moving into positions of great power within the Bush administration.

The battering-ram these networks use is the Civil War-era anti-profiteering legislation known as the "False Claims Act." The law, revitalized in 1937 by Congress, allows the Treasury to recover triple damages from any contractor who can be shown to have perpetrated a "fraud" upon the government. In addition, a private citizen who initiates the investigation and legal action which leads to such a recovery is eligible for a reward equal to 15-30% of the amount recovered. A blizzard of such lawsuits has already been filed, and insiders predict that this technique will break open secret research and "black box" programs heretofore protected from congressional meddling.

By law, these investigations are conducted by the Civil Fraud unit of the Department of Justice, with the participation of the Criminal Division. Thus, the personnel appointments made by Attorney General Richard Thornburgh will play a role in the scheduled attack on the defense industry, but will not be central. Documents released by the staff of Sen. Charles Grassley (R-Ia.) show that the experience gained by the anti-defense camp in the campaign that led to Ed Meese's resignation, has produced a private apparatus which can use lawsuits to intervene on policy matters free of any "obstructionist" tendencies that might crop up in the Executive Branch.

Richard Sauber, former head of the Defense Fraud and Procurement Unit, along with John R. Bolton and other Meese appointees, have been identified as "obstructionists" who have been or will soon be eliminated by the Thornburgh team. The vicious attack on Meese released by the Justice Department in January is an indication that the knives are still out at the DoJ, and insiders report the Meese's troubles may not be over. No one expects anything but enthusiastic cooperation in this venture from the Thornburgh Justice Department.

'Private attorneys general'

It would be no exaggeration to say, that the most sophisticated expression of Soviet strategy for containing the industrial and scientific power of the United States, is not found in the byzantine maneuverings of the arms negotiators, but was spelled out in Mikhail Gorbachov's "environmental" address to the U.N. General Assembly last December. Gorbachov, and his co-thinkers in our government, equate "peace" with the surrender of national sovereignty to supranational institutions, such as the U.N.-based International Monetary Fund.

The type of tyrannical intrusion routinely conducted into national affairs by the IMF, is paralleled on a more discreet level by the activity of various private and quasi-governmental agencies which shape the enforcement of environmental law. Gorbachov's speech was an implicit call for the coordination, on major policy matters, of the activities of these institutions.

In the United States, the organizations which are at the top of the environmental-enforcement pyramid are: the **National Resources Defense Council (NRDC)**, the **Environmental Defense Fund (EDF)**, the **Environmental Law Institute (ELI)**, the **Conservation Foundation**, and the **Council on Environmental Quality (CEQ)**. These institutions are funded by private foundations, and boast boards of directors which include representation from top industrial and financial institutions and the law firms which interlink them. Federal agencies such as the Environmental Protection Agency (EPA), and the Justice Department itself, are considerably lower on the ladder than these *private* institutions, and rely on a flow of lawyers from these institutions to staff top policy positions.

The case of the Environmental Law Institute is illustrative. It dates from the earliest days of the ecology movement and includes as sponsors, the **Andrew W. Mellon Foundation**, the **Richard King Mellon Foundation**, the **Charles Stewart Mott Foundation**, the **David and Lucile Packard Foundation**, and Washington area notables including **Mrs. Russell Arundel**. Staffed liberally with veterans of the Carter-era Justice Department, the ELI acts as the central training facility for bureaucrats and lawyers involved in environmental "enforcement," whether on the level of a municipal government, or the United Nations.

One such training program offered by ELI, is called "Private Attorneys General: Citizen Enforcement of Federal Environmental Law," and teaches the use of various environmental statutes which allow private special interests to shape public policy through court intervention. The False Claims Act of 1987 opens the door for the use of this technique, perfected by the environmentalists, in the area of defense policy.

The bridge between environmentalism and defense bashing is being built by the **Project on Military Procurement**, and the Los Angeles-based **Center for Law in the Public Interest** (CLPI or "clippy" as it is known in these circles)—a spinoff of the law firm of O'Melveny and Meyers, which firm holds a seat on the board of the ELI. A partner in this firm is Warren Christopher, who was Undersecretary of State in the Carter administration.

According to a legal specialist with CLPI, the False Claims Act "created the basis for the development of private attorneys general in the defense area . . . and the motivating factor is the monetary reward. It is the monetary reward which makes everything work." CLPI reports that it has overseen, encouraged, or otherwise assisted the filing of over 125 lawsuits since the law was passed. He points out that a fraud claim can be brought against a company by a former employee anytime within 10 years of the alleged occurrence, thus making targets of the 1981-83 defense budgets and the spending associated with them. Advocates of this scheme hasten to add that any government spending program can be hit in this manner, and many undoubtedly will be. CLPI claims that in at least one case it is assured of winning recovery in the range of \$100 million, and many suits allege fraud in the millions.

The cost of defending against such suits is enormous, and when added to the cost of sustaining near-continuous federal auditing of ongoing programs, will overwhelm all but the biggest conglomerates. Meanwhile, the Justice Department has received an \$8 million special appropriation, courtesy of Senator Grassley and friends, earmarked for hiring extra attorneys in the regional U.S. Attorneys' offices to prosecute False Claims Act cases.

Insiders in the environmental law circles point out that the targets of the CLPI suits are selected based on the work of Dina Rasor and the Project on Military Procurement. Spokesmen from that outfit are reporting that they intend to move on from the budget-related "fraud" stories (such as the mythical "\$600 toilet seat" and other hoaxes concocted for the media), and begin going after the management practices of defense contractors. The focus would be on charges of time-card fraud, cross-charging (billing one program for work done on another), and other practices—which usually result from management attempts to juggle program funds which stop and go at the whim of Congress—in order to force into the open material which is considered "proprietary" by the managers and auditors of specific defense programs. They

see this as the first step toward creating scandals around the sensitive and secret "black box" funding of high-technology research programs. Once such programs are the subject of media calumny, the "fraud" claims will come rolling in.

Glasnost: from Carter to Gorbachov

The demand to halt research in advanced weapons systems is a constant refrain from Russian propaganda outlets, and it is no surprise to find "Gremlins from the Kremlin" climbing the environmentalist ladders which have been thrown up against the defense ramparts.

The key role of former officials of the Carter administration in this process is illustrated by the curriculum vitae of Nicholas C. Yost, the founder of the now-defunct Washington office of CLPI, and a board member of the ELI. Coming from a long background in administrative and environmental law in the California state government before moving into the Carter administration, Yost served as General Counsel, Council on Environmental Quality, Executive Office of the President, from 1977 until 1981, and simultaneously served as U.S. co-chairman of the U.S.-U.S.S.R. Environmental Law and Administration Project. He was also the director of the President's Task Force on Global Resources and Environment in 1980.

The continuation of this extensive exchange with the Russians is conducted through the auspices of institutions such as the ELI, which in its annual report explains that it hosted the December 1986 visit of Dr. Oleg Kolbasov, head of the Department of Legal Problems of Environmental Protection at the Institute of State and Law at the Academy of Sciences of the U.S.S.R., and Mikhail Galiatin, research associate at the Institute of State and Law, "funded from the Institute's general support base." The report goes on to brag, "Their series of seminars on Soviet environmental law, the first such series offered in the United States, was well received." But, "This visit almost did not happen. The diplomatic clearance between the two governments came so late that the appropriate federal environmental agencies did not have any funds in their budgets to cover visit costs. It was at this point that ELI stepped in and took responsibility for their living expenses and provided an apartment as well as office space and research assistance. Private sector groups such as ELI can cut through red tape."

Other seminars sponsored by ELI sport such intriguing titles as: "The Changing Face of Soviet Environmental Law," "Environmental Law and Policy in the U.S.S.R. with an American Commentary," and "Soviet Environmental Law with a United Nations Response."

In the coming campaign to put the defense industry under the gun, Henry Hudson, the U.S. Attorney handling the "Pentagate" cases, and his minions will appear in their proper place, as simple stooges for our own Nomenklatura—that army of aristocrats and lawyers so anxious to "share power" with their Russian soul-mates.