

Justice Department, FBI misconduct coming under increased attack

by Edward Spannaus

Is a long-overdue housecleaning in the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) about to take place? It may be too early to say, but misconduct by federal prosecutors and law enforcement officials is coming under increased scrutiny, and there are signs that some people in Washington—as well as a group of federal judges around the country—want to clean up the mess left over from the Reagan-Bush years.

The leading indicators of a movement in this direction are the following:

- Federal judges continue to issue rulings castigating the DOJ for prosecutorial misconduct and abuse of power. The latest is the dismissal of the felony indictment against Sen. David Durenberger (R-Minn.) on grounds that prosecutors violated the Constitution and misled the court. This followed by only a few weeks the scathing attack on DOJ conduct issued in the case of John Demjanjuk, wrongly accused of being Nazi concentration camp butcher Ivan “the Terrible” Marchenko, where a federal appeals court ruled that Justice Department lawyers suppressed evidence, committed “fraud on the court,” and were overly eager to please outside pressure groups such as the Anti-Defamation League (ADL) of B’nai B’rith.

- The FBI and the U.S. Marshals Service, both components of the Justice Department, are under investigation for their roles in an August 1992 shootout in a remote area of Idaho. The investigation reaches to the top level of both agencies, and could result in high-level shakeups and disciplinary actions.

Judges revolt

There is a rising mood of anger and frustration among many federal judges around the country, primarily on two scores:

- 1) Congress’s increasing creation of mandatory minimum sentencing laws, under which judges lose the ability to exercise any discretion in punishing offenders, and are unable to tailor sentences to the circumstances of a particular defendant. Many judges are refusing to try drug cases altogether, believing that the mandatory sentencing laws are unjust and counterproductive.

- 2) Supreme Court rulings which have stripped trial judges

of their ability to control misconduct by federal prosecutors. Some Capitol Hill sources maintain that federal judges are issuing increasingly harsh rulings in cases of prosecutorial misconduct because of their frustration over recent years’ Supreme Court rulings, which severely restrict their ability to fashion remedies to redress wrongdoing by prosecutors and law enforcement officials.

Last January, the *Washington Post* ran a prominent six-part series of articles on prosecutorial misconduct, which was widely regarded as setting the agenda for reforming the DOJ after 12 years of Republican rule which had built the federal law-enforcement system into a powerful police-state machinery with few if any constraints. The series opened by noting that the Justice Department budget had gone from \$2.3 billion in 1981, to \$9.3 billion in 1993, and that the number of Justice Department lawyers had doubled over that 12-year period.

At the same time, the *Post* noted, Justice Department policies and Supreme Court rulings gave prosecutors much more power, and made it more difficult to hold prosecutors accountable for improper or illegal tactics. “These tactics,” said the *Post*, “include manipulation of grand juries, failure to disclose evidence favorable to a suspect or defendant, government intrusion into the relationship between defense attorneys and clients, intimidation of witnesses, and blitzkrieg indictments or threats of indictments designed to force capitulation without the need for a trial.”

Steps have recently been taken to implement two of the reforms advocated in the *Washington Post* series. The DOJ recently changed its policy of seeking multi-district indictments of targets—a tactic used principally against pornographers, but also used in other cases such as those involving Lyndon LaRouche and his associates. Steps also may be under way to merge the DOJ’s encrusted internal watchdog, the Office of Professional Responsibility, with the Department’s Inspector General’s office.

Recent rulings

On Dec. 6, U.S. District Judge Warren Urbom in Minnesota dismissed a felony indictment against Senator Durenberger, while blasting two members of the Justice Department’s Public Integrity Section for gross misconduct.

Durenberger had been indicted last April on two felony charges, stemming from a 1989 probe by the Senate Select Committee on Ethics which charged that he had falsified his expense accounts.

Judge Urbom found that Justice Department prosecutors had improperly presented sections of the Senate Select Committee on Ethics report to the Durenberger grand jury in violation of the "speech and debate" clause of the Constitution, which protects members of Congress from inquiry by other branches of government.

Furthermore, Judge Urbom found that two attorneys from the DOJ's Public Integrity Section had misled the court, when they flatly denied that passages from the Select Committee on Ethics report had been presented to the grand jury. The fact that the DOJ's lawyers had used ethics committee proceedings only surfaced after Judge Urbom ordered a full *in camera* inspection of the grand jury proceedings, which unearthed the ethics committee documents. Only at that point did Justice Department prosecutors concede the point.

The *Washington Post* commented: "Urbom's criticism of the Justice Department's conduct is the latest in a series of judicial findings that have threatened major, high-profile prosecutions and raised questions about the Department's ability to police the conduct of its lawyers."

This followed the Nov. 17 ruling by the U.S. Court of Appeals for the Sixth Circuit in the John Demjanjuk case, which blasted the Justice Department's Office of Special Investigations (OSI) for withholding evidence and defrauding the court (see *EIR*, Dec. 3, 1993, p. 64).

Moreover, during the summer, three separate federal judges in Chicago overturned guilty verdicts in cases of the notorious El Rukn street gang, finding that a federal prosecutor had failed to disclose evidence that could have discredited his two star witnesses. Federal Judge Marvin E. Aspen said that his ruling was "the most painful decision" he had ever rendered, and that it was a "tragedy" that convictions of some of Chicago's "most hardened and anti-social criminals" had to be overturned. Aspen said that the prosecutor, in his zeal to obtain convictions, "was willing to abandon fundamental notions of due process of law."

It is not only liberals who are calling for cleaning up the DOJ. Syndicated columnist Paul Craig Roberts wrote recently that the DOJ itself should be a prime candidate for application of the newly revived independent prosecutor statute. "Evidence is piling up that prosecutorial misconduct and abuse of power are routine at the Justice Department," Roberts wrote. "Only after a thorough cleansing will the Justice Department again be worthy of its name."

The Randy Weaver case

Misconduct by FBI officials and U.S. Marshals is the focus of an ongoing DOJ investigation into the shootout between FBI agents and Randall Weaver which took place in Idaho in August 1992. The hitherto secret DOJ investigation

of the Weaver case was first reported in the Nov. 25 *New York Times*, and then subsequently by other services. The *Times* said that Justice Department investigators have told FBI officials and agents, and also federal prosecutors, that "they could face civil or criminal charges, including obstruction of justice and violations of civil rights law."

Those being investigated include top officials of the FBI's Hostage Rescue Team (HRT), as well as FBI Criminal Investigative Division head Larry Potts. The *Times* also reported that investigators have, or soon will have questioned former Marshals Service head Henry Hudson, former Attorney General William Barr, former FBI Director William Sessions, and FBI Deputy Director Floyd Clarke. Potts, Clarke, and HRT leader Richard Rogers were all key witnesses defending the FBI at the House Judiciary Committee's hearings on Waco last April.

The probe concerning the Weaver case centers on the actions of the FBI's Hostage Rescue Team and its commander, Richard Rogers—who reportedly has refused to cooperate with the investigation. After receiving a briefing from the Marshals Service—a briefing which some FBI officials regard as "flawed"—Rogers and Potts made the decision to change the Hostage Team's rules of engagement, giving FBI agents the green light to kill any armed adult male in the area, whether or not he posed any immediate threat. It was in carrying out this policy that an FBI sniper shot and killed Randy Weaver's wife. Earlier, Marshals had killed Weaver's 14-year-old son.

FBI agents say they were given a briefing by the U.S. Marshals which portrayed Weaver as a Rambo-type who wanted to kill as many federal agents as he could. But later, according to some FBI officials, they came to regard Weaver as "a hapless malcontent" who had withdrawn from mainstream society rather than confront it. "Despite his belligerent talk," wrote the *New York Times*, "there is no evidence that he initiated any illegal conduct even after his wife and son had been killed."

Top Hooverite is out

Floyd Clarke, the number-two official in the FBI, is already on his way out of the Bureau, and will retire in January. The *New York Times* reported that Clarke will become a "vice president for corporate integrity" at a New York financial firm led by corporate raider Ronald O. Perelman.

Clarke is regarded as the top-ranking official of the "neo-Hooverite" triumvirate in the Bureau which includes, besides Clarke, Oliver "Buck" Revell and John Otto. Former FBI Director Sessions and his wife Alice both accused Clarke of leading the "cabal" which sought, and got, Sessions's ouster earlier this year. Clarke is also said to have been close to Bush's attorney general, William Barr. Barr had told Bush that Clarke should become FBI director if Bush won the 1992 elections. Earlier press coverage described Clarke as the FBI's "pipeline" to the Justice Department.