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Before and during the Iraq invasion, a number of retired Army Generals took the point in articulating criticisms of the drive for the war, and the faulty planning which put U.S. forces in jeopardy; it was widely understood that they were speaking on behalf of many active-duty officers who were constrained by military discipline from making their criticisms public.

Most prominent among these retired flag officers were Army Gen. Barry McCaffrey, and Marine Gen. Anthony Zinni. General Zinni told the *Toronto Star* on Aug. 9 that he had been subjected to being labelled a "turncoat" by some senior officers in the Pentagon, and that he lost his position as the Administration's special Middle East envoy because of his questioning of the Iraq war. But, Zinni said, he has no regrets for speaking out. "It's an obligation you have," he said, adding that "in our history, there have been too many times when generals didn't say what they thought. We all swear an oath to the Constitution. One of the things I thought I was defending was the right to dissent."

The right to dissent without being called traitors was also emphasized at "Bring Them Home Now" press conferences held on Aug. 13 and 14, in Washington, D.C., and at Fort Bragg, North Carolina, by the groups Military Families Speak Out and Veterans for Peace. Many families of soldiers were particularly incensed by President Bush's "bring em' on" taunt, which one called "words of false bravado uttered by Bush from a safe and secure location in the White House." Stan Goff, a 26-year Army Special Forces veteran said that "Bush and Rumsfeld care for soldiers, like Tyson Foods cares for chickens."

Ashcroft Demands More Gestapo Powers

by Edward Spannaus

In a June 5 appearance before the House Judiciary Committee, Attorney General John Ashcroft demanded that Congress give him still more powers—more surveillance powers, more drastic sentencing provisions, and more death penalty applications. Ashcroft made it clear that his desire for harsher sentences is not for purposes of punishment or deterrence, but as a lever for coercing "cooperation" and plea-bargaining. He complained that "existing law does not consistently encourage cooperation by providing adequate maximum penalties to punish acts of terrorism," and called for greater use of the death penalty and life imprisonment.

Ashcroft is continuing to pursue his demand for more Gestapo-type powers, and more draconian punishments, in a number of ways. He is undertaking a 10-day, 20-state tour later in August to defend the 2001 USA/PATRIOT Act, and to promote the new "VICTORY Act" (Vital Interdiction of Criminal Terrorist Organizations Act), which would give Ashcroft still further powers to go after alleged terrorists and narco-terrorists. Senator Orrin Hatch (R-Utah) is expected to introduce the bill next month, but it will face opposition from both Democrats and Republicans. The proposed bill—not yet public—reportedly includes provisions allowing the Justice Department to:

- Clamp down on *halawa* money transactions, used widely in the Arab world, and based on an honor system rather than formal banking transactions;
- Obtain financial records without a court order in terrorism investigations;
- Track wireless communications with a roving search warrant; and
- Increase sentences and fines for drug kingpins.

Second, Ashcroft has launched a major attack to "blacklist" Federal judges whom he considers to be too "soft" in sentencing. Expanding on the "Feeney Amendment," which was written largely by the Justice Department and passed by Congress in April, Ashcroft has ordered U.S. Attorneys and Federal prosecutors to report on judges who give more lenient sentences than provided in Federal sentencing guidelines, and to appeal almost all "downward departures" from the guidelines.

The Feeney Amendment, and Ashcroft's new order, have infuriated Federal judges, including even Chief Justice William Rehnquist, who regard it as an attack on the independence of the judiciary. Rehnquist has warned that the Feeney Amendment will "seriously impair the ability of courts to impose just and responsible sentences."

Draconian sentences and punishments are not only an end in themselves for Ashcroft. They also serve as a threat to be used to compel suspects—whether guilty or not—to plead guilty and cooperate with prosecutors in framing up other targets. A most egregious case of the use of such thuggish tactics, is how Ashcroft is using the threat of declaring a suspect an "enemy combatant" and throwing him into the black hole of endless military custody, to coerce defendants to plead guilty to charges which the government might not be able to prove in court.

The Case of the Lackawanna Six

The *Washington Post* reported recently how Ashcroft's Justice Department has used the threat of indefinite military imprisonment, to compel guilty pleas from six young Yemeni-Americans from Lackawanna, New York. The six were coerced into pleading guilty to terrorist crimes, with sentences of 6 to 9 years, under the threat that if they didn't, they would be designated as "enemy combatants" and shipped off to military prisons, where they would have no access to lawyers or to the courts.

The six have admitted attending an al-Qaeda training camp in Afghanistan prior to the 9/11 attacks—having been recruited to go there for ostensibly religious purposes—but

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the government could offer no evidence that they planned any terrorist acts against the United States. Defense lawyers feared that if the defense went to trial and was doing well, the government might transfer the case to the military. (This is similar to what occurred in the case of Lyndon LaRouche et al. which was being tried in Federal court in Boston in 1988; prosecutors dropped the Boston case and transferred it to the Alexandria, Virginia "rocket docket," when they realized they were losing the case after five months of trial.) "We had to worry about the defendants being whisked out of the courtroom and declared enemy combatants if the case started going well for us," said defense attorney Patrick J. Brown. "So we just ran up the white flag and folded. Most of us wish we'd never been associated with this case."

Neil Sonnet, the chairman of the American Bar Association's task force on the treatment of enemy combatants, states: "The defendants believed that if they didn't plead guilty, they'd end up in a black hole forever." A Lackawanna man who had coached most of the defendants in soccer, said, "These guys wouldn't hurt a flea, but they were fools to go [to Afghanistan] and fools not to be honest. After the Sept.11 attacks, it became a disaster. I told my nephew, 'Take a plea, because no jury is going to sympathize with you now.' "

It has also been reported that this was the reason that Ohio truck driver Iyman Faris pled guilty to having had an implausible plan to bring down the Brooklyn Bridge, because he also feared being declared an "enemy combatant" if he didn't plead guilty. It's hard to see how any jury would have taken such a wild charge seriously, that Faris was supposedly going to cut the supporting cables of the bridge and cause it to collapse—without anyone noticing!

DOJ Official Denies Use of Threats

EIR recently had the opportunity to publicly question Michael Chertoff, until recently the head of the Justice Department's Criminal Division and its point man on prosecution of terrorist cases, about this practice. During a panel discussion on military tribunals held at the American Enterprise Institute on Aug. 8, Chertoff was asked by the moderator whether the threat of using military tribunals has been useful in prosecuting terrorists in Federal courts, making it more likely that they would take a plea bargain. Chertoff denied it, saying that Federal prosecutors are "scrupulous about making it clear that the two systems (the Federal criminal courts, and military tribunals) are not linked,"

EIR, citing the case of the "Lackawanna Six," challenged Chertoff on this point. "This seems to be a good way of obtaining convictions, but is it a way of obtaining justice?"

Chertoff responded by falsely claiming that "I do not think it is correct to say—nor do I think anybody speaking for the defense ever said—that the reason the defendants pled guilty is because they feared being put in front of a military tribunal. . . . I will stand by what I said, that during the time I was at the Department of Justice, the Department did not use—and it was very clear that the possibility of a military tribunal was not to be used, in any way, shape, or form, in order to coerce someone into taking a plea."

Contrary to Chertoff's representations, defense lawyers in the Lackawanna case certainly had said that the government implicitly threatened to declare the defendants as enemy combatants; United States Attorney Michael Battle has acknowledged that the threat was there. Battle told the *Washington Post* that his office never *explicitly* threatened to invoke enemy combatant status, but that all sides knew the government held that hammer. "I don't mean to sound cavalier, but the war on terror has tilted the whole landscape," he said. "We are trying to use the full arsenal of our powers. You had a new player on the block [the Defense Department], and they had a hammer and an interest. These are learned defense counsels, and they looked at that landscape and realized that, you know, they could have a problem."

Judges and Scholars Hit Detention Policy

The government's use of the "unlawful combatant" status to hold a U.S. citizen incommunicado, without access to a lawyer, has been criticized in a total of nine *amicus curiae* briefs, from an array of judges, legal experts, and conservative and liberal organizations, filed with the Second Circuit U.S. Court of Appeals in New York. The case is that of Jose Padilla, a American citizen arrested on U.S. soil, who was first being held in the Federal court system. But at the point when the government had to respond to a challenge to his detention, he was whisked away, declared an "enemy combatant," and put into a Navy brig where he has been held for over a year. Padilla's lawyers, who have been unable to speak with him, are seeking the right to challenge his detention with a writ of *habeas corpus.*

One brief supporting Padilla's challenge was filed by a group of retired Federal appeals court judges and other former government officials, including Abner Mikva, Harold Tyler, and Philip Allan Lacovara. It states: "The precedent the executive [the Bush Administration] asks this court to set, represents one of the gravest threats to the rule of law, and to the liberty our Constitution enshrines, that the nation has ever faced."

Other briefs were filed by groups of law professors; by the American Bar Association; by right-wing groups such as the Rutherford Institute and the Cato Institute; and by left-liberal groups such as the National Lawyers Guild, the People for the American Way, and the Center for National Security Studies.

"Never in our history has the President asserted the authority to arrest and detain somebody indefinitely and without any due process," said Joseph Onek of the Constitution Project at Georgetown University. "I think there is no basis for abandoning all our constitutional values and liberties. The government is using the threat of treating somebody as an enemy combatant—that is basically throwing them in prison and throwing away the key—to try and force people to plead guilty in criminal cases."