'Anti-fraud' clique asks vendetta powers

by Leo F. Scanlon

In testimony to the Senate Judiciary Committee on July 12, June Gibbs Brown, the Inspector General of the Department of Defense, called on Congress to provide sweeping, unconstitutional powers to the "anti-fraud" units of the police agencies of the federal government. The proposals, if agreed to, would represent a milestone in the destruction of the due process provisions of the U.S. Constitution, and would give politically appointed federal bureaucrats a limitless power to use the criminal justice system for conducting political vendettas.

The Judiciary Committee of the Senate is considering a bill which has passed the House of Representatives as H.R. 3911, the "Major Fraud Act of 1988," which amends chapter 47 of title 18 of the U.S. Code. Most of the currently existing "anti-fraud" statutes are encompassed under title 18, and this bill proposes that "whoever knowingly executes or attempts to execute any scheme or artifice 1) to defraud the United States; or 2) to obtain money or property from the United States by means of false or fraudulent pretenses, representations, or promises" shall be liable for criminal penalties.

It may well be asked why such specific legislative language must be added at this late date to the criminal code—there are numerous devices by which the government may satisfy itself in any case involving shoddy or incompetent workmanship in any contract—and if that were the purpose of the legislation, it would be simply redundant. The very interesting testimony of Ms. Brown, by identifying the inadequacies of this bill, illuminates the true function of this species of legislation.

In her testimony, Ms. Brown gets right to the heart of the matter, and says, "We are . . . concerned that the Bill should not require proof of a specific intent to defraud in order to obtain a conviction. Currently, most fraud cases are prosecuted under the False Statements Act (18 U.S.C. 1001) and the False Claims Act (18 U.S.C. 286,287). The majority of courts have held that these statutes penalize the provision of false, fictitious, or fraudulent claims and statements. If the Indictment only alleges that false or fictitious, and not fraudulent, information was knowingly submitted to the government, then the government is not required to show a specific intent to defraud. Specific intent is often impossible to provide. The House Report on this bill contemplates that 'knowing' include deliberate ignorance or 'willfull blindness' of the facts which form the basis of the fraud. We concur and would further include the concept of 'reckless disregard.' Thus, the Bill should clearly state that specific intent need not be proven in order to establish liability under the Act. . . . Such an interpretation from the U.S. Senate would be consistent with the amendments which were passed by Congress last year which clarified that specific intent need not be proven in order to establish liability under the Civil False Claims Act, and the Program Fraud Civil Remedies Act."

Totalitarian concept

An absolutely totalitarian concept is at the core of Ms. Brown's remarks: that an individual may be found guilty of committing criminal fraud even if he had no intention whatsoever of deceiving or defrauding the government—and that the crime is not located in the specific action or actions of an individual, but is defined by the government's interpretation of the consequences of the action, whether or not those consequences could have been known to the individual!

This Orwellian logic is not peculiar to Brown, but is pervasive throughout the bureaucracy of the Inspectors General (IG) offices of the executive branch. These offices were created by the "Inspectors General Act of 1978" and were given the job of eliminating "waste and fraud" from the federal government. "Waste" and "fraud" are broad and vague terms which ultimately are determined by the changing political whims of the congressional budget process. It is in the interest of bureaucrats like June Brown to seek the broadest—ultimately political—mandate they can get. The Congress, especially the pro-Moscow propagandists like Sen. Charles Grassley (R-Iowa), have been more than happy to oblige.

With the Defense Authorization Act of 1970, Congress imposed, and has successively lowered, ceilings on the amount of R&D investment that can be made by a defense contractor, and has popularized the use of "anti-fraud" statutes to prosecute any attempt to circumvent this insane procedure. In fact, the Institute for Policy Studies, which coordinates its anti-defense campaigns with the Embassy of the U.S.S.R., has gone so far as to claim that all advanced R&D applications, or "black" programs, are fraudulent. Ms. Brown is demanding the legal language which will allow her to make that accusation stick.

Caspar Weinberger recognized the dangers in this type of scheme, and fought for an alternative, Defense Department-controlled office which would stick to the legitimate job of streamlining and cleaning up the weapons purchasing process without resorting to the wild show trials which have become standard. Nonetheless, by 1983, the DoD was saddled with an IG office, which pressured the service investigative agencies to meet a quota of suspension and disbarment actions over and above any other priority. Intelligence professionals point to this misorientation as the prime cause for the series of counterintelligence fiascos which have plagued the military in recent years.