

DOJ misconduct fuels demand for hearings

by Debra Hanania Freeman

Since late February, a series of shocking revelations of a clear pattern of gross misconduct by the FBI and the Criminal Division of the Department of Justice (DOJ), seems certain to result in the long-overdue clean-out of one of the most corrupt sections of the federal government's permanent bureaucracy. On Feb. 25, FBI Director Louis Freeh disclosed that it appeared that the FBI, during the 1980s, intentionally mishandled evidence, and gave false testimony to a judicial panel that later recommended the impeachment of U.S. District Judge Alcee Hastings, now a U.S. Representative from South Florida.

Hastings had been appointed to the federal bench in 1979 by President Jimmy Carter, making him the first black U.S. federal judge in Florida since Reconstruction. Before his appointment, Hastings was a well-known civil rights attorney, with a reputation for being uncompromising on Constitutional questions. As Florida's only black federal judge, he became an outspoken critic of the Reagan administration's immigration policies, which had resulted in the detention of Haitians; for this, he angered key figures in the FBI and the federal judiciary.

In 1981, Hastings was charged with conspiring to take a \$150,000 bribe from two cocaine dealers in exchange for reducing their sentences and returning confiscated property. Even though what has now been revealed to be false testimony by the FBI was included in Hastings's criminal trial, the trial ended with a hung jury. A second jury acquitted him in 1983. Nonetheless, following a complaint that was filed by two fellow federal judges, the 11th Circuit Court of Appeals appointed a panel of judges to conduct a judicial inquiry. The inquiry, which was conducted in secret, went on for three and a half years, and raised a wave of protest from African-American leaders, who charged that the inquiry was racially

motivated, and part of a pattern of such racist assaults during the Reagan-Bush era that came to be known as "Operation Frühmenschen." The inquiry concluded by urging Congress to impeach Judge Hastings. The U.S. House of Representatives voted to impeach him in 1988.

The Tobin memorandum

So far, in each legal proceeding, FBI agent Michael Malone's false testimony, and the false evidence that had been mishandled by the FBI crime lab in Quantico, Virginia, played an important role.

But, before the Hastings case went before the U.S. Senate, an FBI crime lab examiner, William Tobin, wrote an internal memo in which he demonstrated that the evidence in question had never been properly tested. Tobin went on to cite 27 different instances of highly questionable FBI testimony against Hastings. Tobin's sharply worded memo charged that the FBI's forensic testimony "represent[ed] a glaring pattern of conversion of what should have been neutral data into incriminating circumstances, by complete reversal of establish[ed] laboratory test data, with scientifically unfounded, unqualified, and biased testimony."

Tobin wrote that the transcript of Malone's testimony provided to the judicial inquiry "reveals a pattern of complete omission of crucial conditions, caveats, premises and/or assumptions, which may be viewed as tending toward exculpatory in nature."

The fact that FBI agent Malone gave false testimony, and mishandled evidence, in his appearances before two federal juries, the panel of judges that had recommended impeachment, and the U.S. House of Representatives, is, by itself, a cause for deep concern. But, worse, after FBI supervisors covered up Tobin's critique of Malone's actions, his memo-

randum was never provided to the U.S. Senate, which, in 1989, in a very close vote, convicted Alcee Hastings, and removed him from the federal bench.

FBI Director Freeh's admission of the FBI misconduct came to light as part of a larger Justice Department investigation into "questionable conduct" in the handling of evidence at the Quantico crime lab, which services all federal prosecutions. That investigation was launched after Dr. Frederic Whitehurst, who worked in the lab, charged that the FBI routinely manipulated forensic analysis and fostered error-riddled expert testimony in court, to help federal prosecutors get convictions.

While Hastings and his attorneys are weighing whether to reopen or contest the impeachment, angry noises are coming from a number of senators, particularly those who were present in 1989, and who voted to convict Hastings. Sen. Charles Grassley (R-Iowa) was furious, charging that the FBI lied, and then covered up evidence of its misconduct in order to convict the former federal judge. "It raises questions about the integrity of the entire federal criminal justice process, especially the FBI's role. It raises the inference, in this highly visible case before the American people, that other evidence could also have been tainted," said Grassley. Similar statements were issued by Arlen Specter (R-Pa.). Although Freeh quickly announced an internal investigation, Grassley and Specter, both members of the Senate Judiciary Committee, expressed strong doubts about the FBI's ability to police itself, and demanded that the Justice Department intervene.

On March 1, Attorney General Janet Reno ordered the FBI's internal investigators to turn the investigation over to the Justice Department's Inspector General, Michael Bromwich, who is expected to deliver a report of his findings before the end of March.

'Egregious prosecutorial misconduct'

Within days of the scandal erupting around the Hastings travesty, on Feb. 28, U.S. District Judge Falcon Hawkins issued a stinging 86-page order dismissing the notorious "Operation Lost Trust" frameup cases in South Carolina, and ordering that they not be retried.

The "Operation Lost Trust" cases stemmed from a Justice Department sting operation launched against 28 state legislators and other political operatives, the majority of them African-American, in South Carolina over 1989-90. The sting revolved around proposed legislation to have pari-mutuel betting in South Carolina. The majority of the "Lost Trust" defendants were either pressured into guilty pleas or were convicted; only one was acquitted after trial. The case represented the largest single attack by George Bush's Justice Department on black elected officials and their white allies; it decimated the black leadership of the South Carolina legislature, and, although he was never directly a "Lost Trust" target, completely sabotaged the 1990 Democratic gubernatorial campaign of state Sen. Theo Walker Mitchell, the first black to

seek statewide office in over 100 years.

Hawkins's landmark decision castigates the Justice Department for knowingly using false testimony from their star witness, acting in bad faith, withholding exculpatory evidence, working to prejudice the political atmosphere for the trial, and carrying out other misconduct in their pursuit of a guilty verdict. His order states, "The court is convinced that the totality of the government's actions in these matters rises to the level of egregious prosecutorial misconduct." He names the perpetrators as ranging from the U.S. Attorney's office, to the Justice Department Office of Professional Responsibility and Public Integrity Section, to FBI Director Freeh. He particularly singles out Freeh for holding a pre-trial press conference in South Carolina, in which the FBI director declared that the defendants' claims of prosecutorial misconduct were without merit. Judge Hawkins writes that Freeh's action was intentionally prejudicial and "appalling."

Hawkins states that the court is clearly offended by the fact that the Office of Professional Responsibility failed to disclose exculpatory evidence "from the beginning of these cases until just several months ago, amount[ing] to a pattern of conduct." Further, the misconduct is not only serious, but "repetitious, flagrant, and long-standing. The withholding of such a voluminous array of discovery which the government had to know was exculpatory and relevant to the defenses of these defendants is unprecedented before this court. The court finds that these violations are too numerous and too specific to certain issues to be considered simply unintentional of the result of neglect.

"Even more offensive to the court is the continual misrepresentations made to the court that all discovery to which defendants were entitled had been turned over to them. The government had to have been aware of so much information that incriminated public figures holding powerful positions, yet it did not submit to the court for review the discovery it claimed would jeopardize ongoing investigations or that it claimed to be irrelevant. The constant assurances that 'we have given them everything,' the veracity of which the court had no reason at the time to question, rises to the level of outrageous conduct. . . .

"There is no way to avoid the conclusion that the various and repeated acts of the government were simply wrong; that the government acted in bad faith, and its misconduct is not only greatly offensive to this court, but has interfered with this court's duty to insure the proper administration of justice."

The immediate result of Judge Hawkins's order was to end the prosecutions of five Lost Trust defendants: B.J. Gordon, J.M. Long, Luther Taylor, Larry Blanding, and Paul Derrick. Moreover, the long-term consequences are likely to be far-reaching. Plans are being made to reopen all the Lost Trust cases. The judge has made it clear that he believes that, at the very least, disciplinary action is in order. But the decision has also, once again, raised allegations about other Bush-era judicial railroads.

The Mann-Chestnut independent hearings

“Operation Lost Trust” was one focal point of the “Independent Hearings to Investigate Misconduct by the U.S. Department of Justice,” facilitated by the Schiller Institute on Aug. 31-Sept. 1, 1995. Those hearings were presided over by former U.S. Rep. James Mann (D-S.C.), probably best known for his service on the House Judiciary Committee during impeachment proceedings against President Nixon, and distinguished Alabama attorney J.L. Chestnut.

The panel, which included legislators from Alabama, Mississippi, North Carolina, South Carolina, and Tennessee, and international observers from four continents, reviewed testimony and evidence of racially and/or politically motivated targeting of victims of prosecutorial misconduct in three types of cases.

The first groups of cases, which included testimony from several victims of “Operation Lost Trust,” were related to the harassment of African-American elected and public officials in the FBI’s “Operation Frühmenschen.” In addition to the Lost Trust case, the panel heard testimony on similar cases, including the 20-year Justice Department campaign against Birmingham, Alabama Mayor Richard Arrington, and the 10-year ordeal suffered by former Tennessee Rep. Harold Ford. One name which emerged during testimony on the Ford case was that of Hickman Ewing, who was not only key to a number of “Frühmenschen” prosecutions, but who is currently the chief assistant to Special Prosecutor Kenneth Starr in the Whitewater operation against President Clinton.

The second type of cases that the panel looked into was the systemically abusive misconduct of the DOJ’s “Nazi-hunting” Office of Special Investigations (OSI). Testimony was presented on the political, fraudulent targeting of former UN Secretary General and later Austrian President Dr. Kurt Waldheim. The second case concerned the conscious OSI fraud in setting up retired Cleveland auto worker John Demjanjuk for trial in Israel. At the time of the Independent Hearings, the federal Sixth Circuit Court of Appeals had already ruled, that the Justice Department had perpetrated a massive “fraud upon the court.”

Most striking to the panel was the case that former U.S. Attorney General Ramsey Clark had referred to in September 1994 as the case which, viewed in context, “represented a broader range of deliberate cunning and systematic misconduct, over a longer period of time, utilizing the power of the federal government, than any other prosecution by the U.S. government, in my time, or to my knowledge”—the politically motivated prosecution of American statesman Lyndon H. LaRouche, Jr., and his associates.

The Noriega case

At the close of the Independent Hearings, Congressman Mann read into the record a request he had received from Gen. Manuel Antonio Noriega of Panama, currently a prisoner of war in a federal prison in Miami. Noriega asked that the panel,

at some future date, also consider evidence of DOJ misconduct, and the conduct of then-President George Bush, pervading Noriega’s trial (see article, p. 61). Ironically, controversy over the actions of George Bush and his Justice Department in carrying out Noriega’s kidnapping, illegal trial, and U.S. incarceration, has become part of the growing controversy around the FBI and the DOJ, with the release of the general’s memoirs.

But, the incident which has probably guaranteed a Senate Judiciary Committee investigation and supervisory hearing in the long-standing pattern of massive corruption with the U.S. Department of Justice and its FBI, occurred when it was revealed, on March 10, that last June, during the 1996 election cycle, the FBI gave sensitive briefings to several members of Congress, and two National Security Council careerists, Edward J. Appel and Randy Beers. The briefing concerned allegations that the government of China was seeking to influence the U.S. electoral process and, through it, Washington’s policy toward Beijing, by targetting key Congressional races, and by making illegal contributions. The FBI, in an act of incredible arrogance, ordered those briefed, especially the NSC officials, not to inform their NSC superiors, or President Clinton, as to the content of the briefing! President Clinton has responded by ordering a full NSC investigation, but no one expects this episode, which brings back chilling memories of allegations that the FBI was involved in the assassination of John F. Kennedy, will stop with a mere investigation. Already, a bipartisan group in the Senate is insisting that full Judiciary Committee hearings into this incident, and other instances of questionable conduct by the FBI and DOJ as a whole, be scheduled as soon as possible.

In last week’s issue of *EIR*, Lyndon LaRouche demanded that this package be put on the agenda of the Senate Judiciary Committee. LaRouche proved why such hearings—which would take into consideration the recent revelations, the findings of the 1995 Mann-Chestnut Commission, the still-unaddressed incidents at Ruby Ridge, Idaho and Waco, Texas, and the persistence of Attorney General Reno and FBI Director Freeh, in covering up for both their predecessors and their subordinates (including such members of the “permanent bureaucracy” as John Keeney and Mark Richard, whose names come up in almost all the cited cases)—are crucial to permitting the American people to restore their faith in their government.

Such hearings, particularly a full investigation of the judicial railroad of LaRouche and his associates, would mean finally dealing with that corrupt permanent bureaucracy, the John Keeneys, the Mark Richards, and others, who have acted as a virtual “assassination bureau,” controlling the DOJ since the 1960s. And, it would respond to the growing demand that LaRouche, as is urgently required in these turbulent times, finally be exonerated. As Congressman Mann stated, at the close of the 1995 Independent Hearings, “Justice must finally be returned to the Department of Justice.”