Courts Blow the Whistle On Ashcroft Police-State Moves

by Edward Spannaus

Attorney General John Ashcroft—already widely seen as a threat to constitutional rights and an increasing embarrassment to the Bush Administration—has also been the subject of two dramatic rebukes recently by Federal courts. The first was an extraordinary rebuff by the secret court that approves national-security surveliance; the second was a Federal appeals court ruling which held that the Justice Department's policy of holding secret deportation hearings since Sept. 11, is unconstitutional.

While the number of voices publicly protesting Ashcroft's police-state methods is increasing weekly, there is another, equally serious, and even more explosive, matter bubbling just beneath the surface: that is Ashcroft's suppression of any investigation into the Israeli espionage scandal in the United States.

The revelations about the Israeli "art students" which first surfaced after the Sept. 11 attacks have never been thoroughly investigated—and numerous intelligence and law enforcement sources point to Ashcroft as the key nodal point of this obstruction of justice. The potential penetration of U.S. law-enforcement and intelligence facilities by the so-called "art students" is a matter of great concern to law-enforcement and intelligence officials across the country; of even greater concern, to authorities in the know, is the Israeli penetration of U.S. telecommunications, and even of the wiretapping capabilities of U.S. law enforcement agencies. This has been carried out over the past decade by a number of Israeli-owned companies, the most notable of which are Amdocs and Comverse—the latter company now also known as Verint. (See EIR, Feb. 1, 2002.)

Any mention of the Israel spy scandal in the news media, is met with a barrage of charges of "anti-Semitism"—and similar pressures are levied against those agents within U.S. law-enforcement agencies who have attempted to pursue the matter. As Lyndon LaRouche has demanded, with reports and rumors of a new "Sept. 11" terrorist atrocity circulating widely, it is critical that this Israeli spy apparatus be thoroughly investigated and dismantled.

Detention Camps Planned

As we previously reported (see *EIR,* Aug. 23), Attorney General Ashcroft and the Bush Administration are preparing to expand their policy of military detentions, which has so far been applied to two U.S. citizens who are being held incommunicado in military jails, without any charges being filed or access to lawyers. The Administration is reported to be considering creating a high-level committee which will determine who should be labelled as an "enemy combatant" and detained by the military. The implications of the expanded detention policy, are that the Administration would begin moving to re-establish the notorious detention-camp policy which was used against Japanese-Americans during World War II, and later held camps in readiness for the potential roundup of "national security risks" for three decades from the late 1940s through most of the 1970s.

Even without this "enemy combatant" designation, hundreds of Arabs and Muslims, who were rounded up in dragnets after Sept. 11, were also held incommunicado without access to family or lawyers, and many were then deported in secret hearings.

Congress has been slow to exercise its oversight powers over Ashcroft's Justice Department, but both the Senate and the House Judiciary Committees have recently accused Ashcroft of withholding information they need to evaluate how the Department is using its new powers under the USA-Patriot law passed last year. The chairman of the House Judiciary

The LaRouche movement fights Ashcroft's nomination. Lyndon LaRouche demanded, on Jan. 2, 2001, that Congress reject the nomination of John Ashcroft as U.S. Attorney General, because under crisis conditions, Ashcroft would go for police-state measures, corrupting the powers of office until "you don't have any justice left in the United States."

Committee, Rep. James Sensenbrenner (R-Wisc), has threatened to subpoena Ashcroft if information is not provided by Labor Day.

Leading members of the Senate Judiciary Committee have expressed their increasing frustration over Ashcroft's failure to provide needed information to them; this included the DOJ's stalling on providing an unclassified opinion from the national-security surveliance court (see below). The Justice Department asserted that it would only provide certain information to the Intelligence Committees, rather than to the Judiciary Committees which are charged with Justice Department oversight.

Secret Hearings Blasted

On August 26, the U.S. Court of Appeals for the Sixth Circuit in Cincinnati ruled, that the Bush Adminstration's policy of closing all immigration hearings related to Sept. 11, is unconstitutional. The Sixth Circuit's ruling upheld an earlier ruling by a Federal district judge in Detroit, who had said that the government could not block the public and the news media from such hearings. This was the first such ruling by a Federal appeals court—and it was issued with unusual speed for such a court, less than three weeks after hearing oral arguments.

"The executive branch seeks to uproot people's lives, outside the public eye, and behind a closed door. Democracies die behind closed doors," wrote Judge Damon Keith for a three-judge panel. (Notably, Judge Keith wrote the famous 1971 wiretap ruling against the Nixon Administration, when Attorney General John Mitchell was claiming the power to conduct warrantless wiretaps in national-security cases.)

The Appeals Court noted that the government seeks the power to carry out secret deportations in what the government calls "special interest" cases. "When government begins closing doors, it selectively controls information rightfully belonging to the people," the ruling stated. "Selective information is misinformation."

Courts Slam Ashcroft's DOJ

When the Justice Department finally turned over, to the Senate Judiciary Committee, the May ruling from the secret court which was created by the 1978 Foreign Intelligence Surveillance Act (FISA), it became clear why Ashcroft and his cronies were so anxious to keep it secret. The ruling, which was then made public by the Committee, was an unprecedented rebuke of the Justice Department and the FBI, from a court which has always operated in secret, and never published an opinion in nearly a quarter-century of existence.

In the ruling, written by the then-chief judge of the FISA court, Royce Lamberth, the court rejected efforts by Ashcroft's Justice Department to expand the ability of prosecutors in criminal cases, to use information obtained under national-security wiretaps. The court said that the Ashcroft measures would give prosecutors too much control over counter-intelligence investigations, which are supposed to be conducted independently from criminal cases.

The opinion reported that in September 2000, the Justice Department "came forward to confess error in some 75 FISA applications related to major terrorist attacks directed against the United States." The errors related to "misstatements and omissions of material facts." The court had held a special meeting in November 2000 to consider what it called "the troubling number of inaccurate FBI affidavits in so many FISA applications." Among the steps taken, was that one FBI agent handling major anti-terrorism cases, was banned from ever appearing before the FISA court again.

"In March of 2001," the court said, "the government reported similar misstatements in another series of FISA applications, in which there was supposedly a 'wall' between separate intelligence and criminal squads in FBI field offices to screen FISA intercepts, when in fact all of the FBI agents were on the same squad and all of the screening was done by the one superviser overseeing both investigations."

The legal principle underlying the FISA law, is that, whereas prosecutors must show "probable cause" to obtain a wiretap in a criminal case, the standard for obtaining a wiretap (or approval for a break-in) is lower in a foreign-intelligence or national security case. However, because of the lower stan-

dard, evidence obtained under national-security wiretaps is not supposed to be made available to prosecutors in criminal cases except under controlled special circumstances (a prohibition more honored in the breach, as *EIR* has been told since the time of the LaRouche Case in the 1980s).

The "USA-Patriot Act" anti-terrorism law, passed last Fall, eased the standards to obtain counter-intelligence warrants, and for information-sharing. The FISA court ruling did not directly deal with the new law, but came in response to new regulations proposed by Ashcroft in March, which the court said would have allowed the Justice Department to misuse intelligence information. The court accused the Justice Department of trying to use FISA as a shortcut—instead of using the authorized procedures for obtaining wiretap authorizations and search warrants under the criminal laws and rules of procedure—and the court charged the Justice Department with attempting "to amend the Act in ways Congress has not."

Was 'Millennium Challenge' War Game Fixed for U.S.?

by Carl Osgood

The *Army Times* dropped something of a bombshell, on Aug. 16, when it reported charges that Millennium Challenge 2002—the huge joint war-fighting experiment run by U.S. Joint Forces Command in late July and early August—had been rigged to produce a victory by the "American" forces. Retired Marine Lt. Gen. Paul Van Riper, who acted as the opposing force commander in the war game, charged that the exercise, rather than validating the concepts it was supposed to be testing, "was almost entirely scripted to ensure a win" by the Blue (American) Forces.

These large-scale exercises were supposed to be testing new military concepts of U.S. forces fighting "in the 21st Century, in the post-Westphalian era"—that is, where nation-states are no longer assumed, but terrorist and other "threats" within states, pre-emptive actions against them, etc. (see *EIR*, Aug. 23 for report and interview). This is the kind of war-fighting which Vice President Dick Cheney, Secretary of Defense Donald Rumsfeld, and many others in and out of government have, since Sept. 11, 2001, called "continual war," with Cheney even speaking on one occasion of "100 years of war."

Van Riper's charges went against all the assertions of senior military leaders before the exercise. On July 18, Gen. William Kernan, commander of Joint Forces Command, had told reporters at the Pentagon, "This is free play. The OPFOR [opposing force] has the ability to win here." Van Riper vehemently denied that that had been the case. He told the *Army Times* "Instead of free-play, two-sided games as the Joint Forces commander advertised it was going to be, it simply became a scripted exercise. They had a predetermined end, and they scripted the exercise to that end."

Recipe for 'Cakewalk'

Senior leaders at the Pentagon and at Joint Forces Command had made much of the fact that Millennium Challenge was an "experiment" rather than an exercise. An exercise, as General Kernan explained it, simply validates the readiness of forces using current doctrine, systems and procedures. "If you're truly experimenting," he said, "you're looking at what's within the realm of the possible, and you don't know until you get into it. If you already know what the after-action report's going to look like on an experiment, you've probably not got an experiment. You've just validated a known concept." Col. Phil Mixon, the Director of Concept Development and Experimentation at the Joint Experimentation Center in Suffolk, Virginia, told *EIR* on Aug. 1, "there's some things we think we're going to learn . . . but, no, we're not writing the final chapter before this is over with." Mixon added, however, that the concepts had been put through a process of workshops, seminars, smaller-scale experiments, and so forth, and that by the time of the big experiment, "we've already put them through significant rigor, that they show merit," and all that remains, is to put them through the large-scale war game, "to put stress on it, to make sure that it holds up under stresses."

General Van Riper, who retired in 1997 as head of the Marine Corps Combat Development Command, gave a completely different picture to the *Army Times.* He said "We were directed . . . to move air defenses so that the Army and Marine units could successfully land. We were simply directed to turn [the air defense systems] off or simply move them. . . . So, it was scripted to be whatever the control group wanted it to be."

Ambassador Robert Oakley, who served as the civilian leader of the opposing force in the exercise, backed up Van Riper's account. He described to the *Army Times,* how Van Riper used low-tech methods of transmitting orders, delivering weapons, and so forth, in order to outflank the technological advantages enjoyed by the Blue (U.S.) Forces.

Opposing Force Was 'Constrained'

After Van Riper's charges began circulating, slightly different descriptions of the experiment began to emerge. Vice Adm. Marty Mayer, Kernan's deputy at Joint Forces Command, told the *Army Times* reporter that having the Blue Force and the opposing force "was merely to facilitate the experiment and enable us to look at the different pieces. It was not to see who would win . . . but rather to be able to stress these different things so we can look at our abilities to react and