U.S. Supreme Court upholds lawless 'Thornburgh Doctrine'

by Molly Kronberg

On Feb. 28, the U.S. Supreme Court tossed out all the protections the Constitution gives against unreasonable search and seizure—if that search and seizure happens to occur on foreign soil, conducted by U.S. agents who are seeking evidence against foreigners. That endorsement of the so-called "Thornburgh Doctrine"—namely, that the United States has the right to investigate and seize (the proper word is kidnap) foreign nationals on foreign soil if it can claim that those foreigners broke U.S. law—marks a terrifying step in the destruction of the Constitution, and the transformation of this country into a police state, and a danger to its allies and neighbors.

Named after U.S. Attorney General Richard Thornburgh, whose Justice Department represents already the core of what political prisoner Lyndon LaRouche has identified as "administrative fascism" in the government of the United States (see *EIR* March 2, 1990), the "Thornburgh Doctrine" was applied in December, when the United States invaded the small country of Panama, and killed many thousands of noncombatants and civilians there, in order to snatch Gen. Manuel Noriega and bring him to this country for trial.

Just before the invasion, CIA chief William Webster had told the American press that in fact, the United States should also legalize the practice of assassination of recalcitrant foreign leaders.

With the help of this Supreme Court, the administrative fascists in Washington are making of the United States an outlaw nation, reminiscent of Great Britain in the first part of the 19th century, when this country fought the War of 1812 to block Britain from seizing ("impressing") American seamen on the high seas to force them to serve the British Navy. The Americans said at the time that the British practice was piracy—and it still is, when the United States claims the right to do something similar today.

Immediately at issue in the Supreme Court's majority opinion, which was signed by Chief Justice William Rehnquist, was a ruling by the U.S. Court of Appeals in California that U.S. drug agents needed a warrant before they could search the home, in Mexico, of a reputed drug dealer who was alleged to have been linked to the 1985 murder of U.S. Drug Enforcement Administration agent Enrique Camarena. The Supreme Court overturned the Appeals Court, by finding that U.S. agents do not need warrants before they go to foreign nations to seize evidence.

Over the border? Break the law

According to Rehnquist's opinion, "The Fourth Amendment's drafting history shows that its purpose was to protect the people of the United States against arbitrary action by their own government, and not to restrain the federal government's actions against aliens outside U.S. territory." Apparently, legality doesn't enter in to what the American government does to aliens.

"Nor," Rehnquist wrote, "is there any indication that the Amendment was understood . . . to apply to United States activities in foreign territory or in international waters."

The Supreme Court argued, absurdly, that foreigners wanted in the United States on criminal charges do not enjoy the same constitutional protections as do Americans, until those foreigners land on U.S. soil—having been kidnaped and brought here. "Any restrictions on searches and seizures incident to American action abroad must be imposed by the political branches through diplomatic understanding, treaty or legislation," Rehnquist wrote. The opinion asserted that Fourth Amendment restrictions would hamper not only U.S. law enforcement, but also other foreign operations by U.S.

armed forces that result in searches and seizures of evidence—as in Panama, where invading U.S. forces seized evidence for use at Noriega's trial.

The opinion drew a dissent from Justice William Brennan. "When we tell the world that we expect all people, wherever they may be, to abide by our laws, we cannot in the same breath tell the world that our law enforcement officers need not do the same," he wrote.

Too, Noriega's American lawyers reacted strongly: "The decision is very distressing," said Sam Burstyn, a member of the defense team. "The U.S. Supreme Court has taken another step in eroding the protection from U.S. agents overseas. It is a part of a trend away from Fourth Amendment rights. . . . The U.S. Supreme Court is sending a signal to the entire judicial system that it doesn't matter how evidence is obtained overseas." Burstyn added that this immeasurably helps Noriega's prosecutors, who now have virtually no worries about introduction of evidence, no matter how it was gotten, nor what its provenance.

International outrage

The international reaction was as swift, and as sharp. On March 1, the *Guardian* of London worried about "The prospect of U.S. agents roaming uninvited" through Ibero-American countries like Peru, Colombia, and Bolivia, "arresting citizens, seizing their property, and removing them to the U.S." Reporter Simon Tisdall, writing from Washington, added that that prospect "is not likely to please governments already nervous about U.S. extra-territorial activities. . . . It was unclear yesterday how the British government, or the Metropolitan Police, might react to an armed FBI raid on a London bank suspected of drug money laundering."

Certainly, in Ibero-American countries, many of whose leaders are still outraged at the utter disregard for the sovereignty of a small and independent country which the Panama invasion showed, the Supreme Court ruling is a powerful provocation.

The Mexican government is already angered at the insinuations and smears that have appeared in the American press, implying Mexican coverup of supposed links between Mexican police officials and the 1985 murder of Camarena. In Colombia, where President Virgilio Barco has led a determined war on the drug cartels, there is already tremendous anxiety, and anger, over an attempt earlier this year by the United States to blockade Colombia's coastal waters, and to violate her sovereignty and territorial integrity, on the pretext of seizing drug shipments and drug traffickers.

That this Supreme Court should have delivered such an ominous and dangerous opinion, is entirely in character for a high court which last June ruled that capital punishment for minors and the retarded is perfectly constitutional, and in no way constitutes cruel and unusual punishment.

This same Supreme Court not long ago permitted (by refusing to hear the relevant case), the application of the federal RICO (Racketeering Influenced Criminal Organizations) laws to anti-abortion protesters. Now, such protesters may find themselves sued under civil RICO, or charged under criminal RICO, as part of a racketeering conspiracy.

On Feb. 27, the Supreme Court handed down another troubling opinion, when it ruled that prisons may administer to inmates who are judged to be mentally ill, anti-psychotic drugs against their will. Previously, a judicial hearing was required before a prison could treat a prisoner with anti-psychotic drugs against his or her will.

Justice John Paul Stevens dissented, asserting that the due process guarantees of the Constitution require a judicial hearing before medication. He argued that "The liberty of citizens to resist the administration of mind-altering drugs arises from our nation's most basic values. Serving institutional convenience eviscerates the inmate's substantive liberty interest in the integrity of his body and mind." At first reading, the majority opinion seems to raise the spectre of a kind of "psychiatric" imprisonment without due process which has become familiar as the practice of the Soviet Union.

Absurd, but not funny

A recent article in the *San Francisco Chronicle,* by columnist Charles Burress, drew out the vicious absurdities the Thornburgh Doctrine leads to. Burress imagined a situation in which President Bush was imprisoned in Nicaragua, First Lady Barbara Bush was kidnaped by an invading Iranian army for failing to wear the veil—and thereby breaking Iranian law; Daniel Ortega was in jail in Beijing for "being a bleeding-heart running puppy" in allowing elections in Nicaragua; and the Vatican had seized Secretary of State James Baker for lying about secret diplomatic missions to China.

It sounds funny—and Burress's column was. But in fact, the Thornburgh Doctrine is anything but. It is a carte blanche to the Justice Department and the judiciary to conduct judicial terror abroad as well as at home. When LaRouche warned of "administrative fascism," he was speaking from personal experience. The 15-year federal prison sentence he is now serving, like the shorter sentences of his six co-defendants from their fall 1988 "railroad" trial in Alexandria, Virginia, is the result of precisely such lawlessness on the part of the Justice Department and federal courts.

On Feb. 20, LaRouche learned that the federal Appeals Court in the Fourth Circuit (Virginia) had denied his motion for a rehearing *en banc* of his appeal. At the time, LaRouche said: "Now we shall see whether the Supreme Court remedies this or not. We shall see, thus, whether there is any justice in principle left in the United States. We shall have to wait and find out."

The Feb. 28 "Thornburgh Doctrine" ruling seems to imply that—as so many observers already sense—the notions of justice and constitutional government are alien ones to the Rehnquist Court.