DOJ Inspector General Blasts Ashcroft on 9/11

by Edward Spannaus

On June 2, the Inspector General of the U.S. Department of Justice issued a scathing report, criticizing the Department's detentions of many hundreds of immigrants after the Sept. 11 attacks—but Attorney General John Ashcroft has reacted totally unapologetically, as if he could care less.

Two weeks later, Ashcroft's police-state methods and attitude received a boost from two Republican-appointed Appeals Court judges, who on June 17 upheld the Justice Department's refusal to release any information about those arrested and held in secret after 9/11—even though none of them was ever charged with any terrorist offenses.

The Inspector General Report

The Inspector General (IG) Report examined the detentions of 762 people on immigration charges following Sept. 11. It presents only a partial picture—since thousands more have been detained on other pretexts—but it is nonetheless a devastating picture. None of the 762 was charged with any terrorist crime, although this was the reason for the roundup. They were held an average of 80 days—some much longer—on the flimsiest of pretexts. Many were held in extremely harsh conditions, those reserved for the most dangerous and violent of prisoners: locked down 23 hours a day; bright lights shining in their cells 24 hours a day; and physical and verbal abuse.

The IG Report sharply criticizes the FBI and the Immmigration and Naturalization Service (INS) for failing to make any distinction between those detainees for whom there was some suspicion of connection with terrorism and the 9/11 attacks, and those who were just coincidentally picked up. Anyone picked up while an agent was engaged in the 9/11 investigation (known as PENTTBOM—Pentagon and Twin Towers Bombing); e.g., for being at the same location as someone for whom the agents were looking, was treated as a 9/11 (PENTTBOM) detainee.

The IG Report states that, in New York, "the FBI and INS made little attempt to distinguish between aliens arrested as subjects of a PENTTBOM lead and those encountered coincidentally." The report also says that "we critize the indiscriminate manner in which the labels of 'high interest,' 'of interest,' or 'of undetermined interest' were applied to many aliens who had no connection to terrorism."

The rule was: guilty until proven innocent. Ashcroft's policy was that no one in any of the three "of interest" categories could be released, or deported, until he had been "cleared" by the FBI and CIA—which was a slow, cumbersome, bureaucratic process. This was the product of Ashcroft's declared shift from a law-enforcement, prosecutorial approach, to what he calls a "preventive" and "disruptive" approach, supposedly designed to prevent future terrorist attacks.

The "hold until cleared" policy was never put in writing, but according to the IG Report, it "was clearly communicated to INS and FBI officials in the field, who understood and applied the policy." Interviews conducted by the IG showed that this policy came from Attorney General Ashcroft himself, if not from someone even higher in the Administration. Ashcroft himself denied to the IG that he could hold someone "forever" without basing it on some offense, but he said he had no reluctance to do anything "legally permissible" to detain someone who had violated the law—although the basis on which they were held, often had no relationship to what was being investigated.

Policy Failure

The Ashcroft policy has properly been judged an abject failure. Prof. David Cole of Georgetown University, reviewing the IG Report in the June 8 *Washington Post,* wrote: "The targetting of Arabs and Muslims has been a total failure, and it has so alienated the target communities that we have almost certainly lost opportunities for gathering information that might help us find real terrorists."

One of the most outspoken experts in this regard has been Vincent Cannistraro, former head of counter-terrorism for the CIA. Addressing a conference of the American Muslim Council in Washington on June 8, Cannistraro cited Ashcroft's widespread detentions of Arab and Muslim immigrants since 9/11, without providing them any due process, or access to lawyers or family, and he asked: "What has that meant in terms of preventing terrorism?"

"This has resulted in no net benefit to the United States, it has resulted in no deterrence to any acts of terrorism," Cannistraro declared. Noting how the FBI has gone into mosques, schools, etc., Cannistraro called this "a worthless, feel-good measure that alienates communities in the United States that law enforcement is totally dependent on, for assistance in preventing terrorism."

Cannistraro added that there is a backlash beginning within the Department of Justice, the FBI, and some other agencies, in which law-enforcement officers are beginning to understand that "they can't do this job by themselves, unless they have cooperation, and the only way to get cooperation, is to treat people differently."

The Justice Department, at least at the top, was unmoved by the IG's criticisms. "We make no apologies for finding every legal way possible to protect the American public from terrorist acts," the Department said in a statement issued after the release of the Inspector General's report. Ashcroft displayed the same attitude in his June 5 testimony before the

U.S. Attorney General Ashcroft offered "no apologies" for a post-9/11 detentions policy blasted by his own department's Inspector General as denying Constitutional rights, and called a failure by law and anti-terrorism experts. He wants greater emergency powers from Congress.

House Judiciary Committee, not only stubbornly defending his indiscriminate round-ups and detentions, but demanding that Congress give him still more powers.

Ashcroft's demands for more Nazi-style emergency powers were interspersed with lurid statements quoting from terrorists about killing Americans, and his reading names of victims of various terrorist attacks as if he were participating in a solemn memorial service.

Although many members of the House Judiciary Committee, Democrats and Republicans alike, are highly skeptical of the Patriot Act—the anti-terrorism law passed hurriedly by Congress in the wake of the 2001 terrorist attacks—Ashcroft told them that he wants more surveillance powers, more draconian sentences, 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—which constitutes a severe perversion of the American justice system. 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.

Washington Post columnist Richard Cohen, going after Ashcroft for his refusal to admit that there was anything wrong with the Justice Department's post-9/11 practices, wrote: "A cavalier attitude toward civil liberties, an inability to concede mistakes, a refusal to see imperfections in the criminal justice system, a zealously irrational belief in the death penalty—and pretty soon you can read between the lines of that Justice Department report. The Attorney General is far more dangerous than any of the immigrants he wrongly detained."

Eviscerating FOIA for 'National Security'

By a 2-1 decision in mid-June, the U.S. Court of Appeals for the D.C. Circuit upheld the Justice Department's refusal to release names and other information concerning the more than 700 people arrested and detained for immigration violations, as part of the post-9/11 sweep.

The opinion was written by Judge David Sentelle, who became notorious in the mid-1990s as the head of the panel of judges that fired the first Whitewater independent counsel, Robert Fiske, and replaced him with Kenneth Starr, who was already active in "Get Clinton" circles at the time of his appointment.

Sentelle accepted whole-hog, the Justice Department's argument that the 9/11 attacks were so heinous, that the courts should not second-guess anything that the Justice Department does once it invokes the mantra of "national security."

A sharp dissent by Judge David Tatel, the three-judge panel's sole Democratic appointee, charged that the majority went way overboard, by accepting the government's "vague, ill-defined decision to withhold information . . . [and] engaging in its own speculation to fill in gaps" in the government's case, thus almost eliminating altogether the role of the courts in Freedom of Information Act (FOIA) cases that involve national security. Tatel wrote that "the court's uncritical deference" to the government's vague arguments, "eviscerates both the FOIA and the principles of openness in government that FOIA embodies."

In reviewing the original purpose of the FOIA, Tatel ironically quoted from a 1966 Congressional statement by one "Representative Rumsfeld," who argued that FOIA was intended to give the public "access to information about how Government is exercising its trust," at a time when "Government is becoming involved in more and more aspects of every citizen's personal and business life."