

President Bush Must Fire Ashcroft

by Edward Spannaus

For the sake of the nation, and for the survival of his own Presidency, President Bush should dismiss Attorney General John Ashcroft at once. Under the guise of the “war on terrorism,” Ashcroft has led a drive to systematically tear up the U.S. Constitution, in a manner that would have been unthinkable only a year or two ago. Moreover, by diverting massive law-enforcement resources into alleged counter-terrorism measures, Ashcroft is seriously undermining the nation’s first line of defense against actual terrorism: effective local law enforcement.

And now, after more than a year of unprecedented dragnets of Arabs and Muslims, combined with secret detentions, trials and expulsions, Ashcroft’s Justice Department has secretly drafted a sequel to the post-9/11 “USA Patriot Act” which would give the Federal government draconian new fascist police-state powers.

LaRouche’s Warning About Ashcroft

While some may be surprised by how far Ashcroft has gone in such a short time to eliminate long-standing Constitutional protections, others, who remember Lyndon LaRouche’s warnings in early 2001, are stunned by the accuracy of what LaRouche had forecast. In testimony opposing Ashcroft’s confirmation as Attorney General, submitted to the Senate Judiciary Committee, LaRouche warned that, under crisis conditions, Ashcroft would be used to force through dictatorial measures comparable to the 1933 Nazi emergency laws in Germany—the *Notverordnungen* (see *EIR*, Jan. 19, 2001). LaRouche foresaw that it was not simply Ashcroft’s role in the Justice Department that would be at issue, but his role as a leading member of the crisis-management team in the Administration as a whole.

(We have seen this broader role, for example, in the interplay between Ashcroft’s Justice Department and Donald Rumsfeld’s Pentagon: in the use of military detentions to remove defendants from the civilian justice system, in the proposals for military tribunals, and the creation of a “Northern Command” which has ominous implications for the traditional dividing line between the military and domestic law enforcement.)

‘Patriot II’

The draft new anti-terrorism bill is truly breathtaking in its sweeping elimination of Constitutional and due-process

protections afforded to American citizens and to lawful immigrants. It would permit the Justice Department to investigate, detain, and punish suspected terrorists in secret, without court supervision. It would allow for investigations and extraditions at the request of foreign governments, and would bar a U.S. court from considering the nature of the requesting country’s judicial system, or whether the requesting government is persecuting a person for his political opinions.

And don’t think that the bill’s provisions would only apply to alleged terrorists. Its definitions are so sweeping, that political protests which turn violent—even through the actions of *agent provocateurs*—could be labelled as “terrorist” actions. Likewise, innocent contributions to a non-profit organization could be defined as “material support” for terrorism.

The Center for Public Integrity in Washington obtained a leaked copy of the draft legislation, which was written in the Justice Department’s Office of Legal Policy and entitled the “Domestic Security Enhancement Act of 2003.” In recent months, senior members of the Senate Judiciary Committee had asked the Justice Department if it were drafting a “Patriot II” bill, and the Justice Department lied, denying that any such legislation was being planned.

A number of observers believe that Ashcroft’s intention was to wait for the launching of war with Iraq, or a major terrorist incident, to unveil it. This would be similar to the manner in which the first Patriot Act came about: after the Sept. 11 attacks, the Justice Department hastily dusted off many police-state proposals which its officials and their think-tank counterparts had been advocating for years, but had been unable to get through Congress.

Surveillance and Investigation

The “Patriot II” bill would make it much easier for the government to carry out electronic surveillance and secret “terrorist” investigations. It loosens the present requirements for “national security wiretaps” under the Foreign Intelligence Surveillance Act (FISA) in a number of ways:

- Under current law, the “wartime exception” to FISA allows the Attorney General to authorize wiretaps or break-ins without court authorization for a 15-day period following a Declaration of War by the Congress. This is changed, so that the same 15-day exception can be used after a Congressional authorization of the use of force, or a Presidential declaration of emergency caused by an attack on the United States. (Both of those conditions were met in the days after Sept. 11, 2001.)

- Because a FISA wiretap does not require evidence that a crime has been committed, it is therefore necessary, in order for the government to obtain a surveillance or break-in order, that the target be shown to be an agent of a “foreign power” or organization. This requirement is totally watered down in the new bill: the definition of “foreign power” can include

unaffiliated individuals who are not acting on behalf of a foreign government or international organization.

- Individuals can be subject to FISA surveillance if they are suspected of gathering information for a foreign power; the existing requirement that the activities potentially violate federal law, is eliminated.

- Purely domestic activity could be the subject of secret “national security” surveillance and investigation. A new category of domestic security or domestic intelligence gathering is created, which allows secret surveillance. Besides “terrorist” activities, “conspiratorial activities threatening the national security interest” can be the subject of secret FISA surveillance—this is so incredibly broad that political activity could be easily placed into this category by an overzealous Justice Department official.

- The standards for “pen registers” (obtaining a record of phone numbers called by an individual, and records of Internet e-mail addresses used or web-sites visited by an individual) are enormously loosened, so that the target need not have any connection to terrorism. All that is necessary is that it be used “to obtain foreign intelligence information.”

Due Process and Secrecy

The “Patriot II” bill would wipe out some traditional due-process guarantees, invade personal privacy and further throw a blanket of secrecy over legal proceedings.

- The use of secret arrests and detentions, and the exemption of records of arrests and detentions from public disclosure, will be expanded. After the Sept. 11 attacks, between 1,000 and 2,000 people were secretly arrested and detained—no one knows how many—although only a few were ultimately charged with any terrorism-related offense. These victims of Ashcroft’s police-state measures, have been called America’s “disappeared.”

- There is written into the new law a “presumption” for pre-trial detention of suspects, meaning that the law presumes that suspects should be detained indefinitely before trial; and therefore the burden shifts to the accused to demonstrate why he shouldn’t be detained—which is mighty difficult when you are locked up and may not have access to a lawyer.

- In cases involving classified information, the use of *ex parte* and *in camera* proceedings in which prosecutors can submit information to the court is allowed whenever a prosecutor requests it. Thus, an accused person or his lawyer is unable to challenge the government’s information, because it is given to the judge in a closed, back-room proceeding.

- The use of so-called “Administrative Subpoenas” and “national security letters,” allowing the government to obtain financial and other types of records without a court order, will be expanded, and disclosure of such a non-court subpoena is prohibited.

- Presently, a person receiving a grand jury subpoena and

testifying before a grand jury is permitted to publicly discuss the fact that he has been subpoenaed and what happened in the grand jury. The new bill would gag such witnesses, and prohibit them from responding to false information or smears leaked to the press by prosecutors—a common occurrence.

- Private credit reports would be easier for the government to obtain, and could be gotten secretly and without an individual’s consent.

- The new law will wipe out a number of court orders limiting spying and surveillance of political activity, which were the result of lawsuits arising out of unconstitutional, “Cointelpro”-type police and FBI programs in the 1960s and ’70s.

Deportations and Extraditions

The new law gives the Justice Department the power to collaborate with corrupt foreign governments, and to by-pass the courts and the Congress in crucial respects:

- For the first time, U.S. law enforcement agencies could obtain search warrants simply at the request of a foreign government; under present law, the U.S. government can only do this, if the U.S. has entered into a treaty explicitly authorizing such assistance.

- Likewise, the draft bill would also make it much easier for the United States to extradite individuals at the request of a foreign government.

Currently, U.S. law only permits extradition when there is a treaty with the requesting country, and only for offenses specified in the treaty. Under the new law, a judge hearing an extradition case would be expressly barred from considering “the nature of the judicial system of the requesting foreign government,” or “whether the foreign government is seeking extradition of a person for the purpose of prosecuting or punishing the person because of race, nationality, creed or political opinions of that person.”

- Summary deportations, even of lawful immigrants, without any due process whatsoever, are permitted on vague “national security grounds,” which can include activity deemed a danger to the “economic interests of the United States.” And the Attorney General can order the deportation of a person anywhere—even to a ungoverned, lawless area.

- In one of the most frightening provisions in a very frightening bill, an American citizen could be stripped of his citizenship and expatriated, if the Justice Department “infers” from his conduct that he is giving material support to an organization designated as terrorist by the government—even though the person believed he was supporting legitimate activity.

The fact that Attorney General Ashcroft would produce such a fascist piece of legislation, in hopes of ramming it through Congress at the first opportune moment, is conclusive evidence as to his unfitness to hold his office. Ashcroft must go!