

Military tribunals, monitoring of lawyers: Bush announces new police-state measures

Kate Randall

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In the space of little more than a week, the Bush administration has issued a series of executive orders that amount to the most far-reaching assault on democratic rights in modern legal history. The directives violate protections laid down in the US Constitution and upheld by judicial precedent over many decades.

On Tuesday, Bush issued an executive order allowing for the use of special military courts to try suspected terrorists. This followed by days the announcement that Attorney General John Ashcroft had authorized the monitoring of conversations between lawyers and clients in federal custody, including people who have been detained but not charged with any crime.

Other recent executive orders include the following:

- A directive empowering the attorney general to authorize the indefinite detention of some non-citizens, a rule that could affect “hundreds of individuals,” according to the Justice Department.

- An order to the Federal Bureau of Investigation to carry out “voluntary” interviews of more than 5,000 mostly Middle Eastern men, ages 18 to 33, who are living in the US, ostensibly to gather information concerning future terrorist attacks.

- A new policy on visa applications affecting men, ages 16 to 45, from 25 Middle Eastern and African countries. All such applicants will face intense scrutiny and long delays in the processing of their requests. Their names will be checked against databases maintained by the FBI.

- The suspension of running tallies by the Justice Department of the number of people rounded up by law enforcement agencies in the anti-terror dragnet. The last figure released by federal authorities was 1,187.

These sweeping changes have been enacted by executive proclamation, over the heads of the people, with no discussion or vote in Congress. Coming on top of the far-reaching provisions of the “anti-terrorism” bill passed last month by Congress, they are major steps toward establishing the institutional and legal framework for police-state rule in America.

Seizing on the events of September 11 as a pretext, the Bush administration has instituted measures that would have been politically unthinkable prior to the terror attacks. They are components of a reactionary agenda long-sought by the most right-wing sections of the political establishment.

The military tribunals authorized by Bush would be the envy of any totalitarian state. According to Bush’s order, they can be employed against suspects who are non-citizens, with the proceedings being held in the US, abroad or even at sea. Trials conducted by these tribunals will be held in secret. The military prosecutors will not be required to reveal any information about the proceedings to the public. The

tribunals can render sentences up to and including life imprisonment or execution.

The president will designate who is to be tried by these tribunals. According to the November 15 *New York Times*, the Pentagon is already preparing for the possible transfer to military custody of immigrants currently detained by federal authorities.

The accused will have no recourse to appeal, and will be barred from seeking remedy from any US state or federal court, any foreign court or any international tribunal, such as the World Court at The Hague. This means that, on George W. Bush’s directive, a suspect could be arrested, tried in a foreign country in a secret trial, and summarily executed.

A unanimous verdict is not required to convict. Defendants can be convicted and sentenced by a two-thirds majority of the military officers presiding, who will be selected by the secretary of defense. The qualifications of these officers are not specified by the presidential order, and their identities could be concealed from the public. The effect would be similar to the use of hooded army officers in Latin American military courts, as in the recent trial in Peru of American Lori Berenson, a left-wing journalist.

The tribunals will not be required to prove guilt beyond a reasonable doubt and will not be obligated to follow established rules of evidence. This license for frame-up violates the most elementary principles of legal justice and discards procedures that are required not only in civilian courts, but also in existing military courts.

According to Eugene R. Fidell, president of the National Institute of Military Justice, “The accused in such a court would have dramatically fewer rights than a person would in a court-martial.”

In comparison to the process laid down in Bush’s executive order, the 1999 trial of Kurdish Workers Party (PKK) leader Abdullah Ocalan by a Turkish military court—condemned around the world as a judicial frame-up—looks like a model of due process. In the Ocalan trial, representatives of the media and international observers were permitted, and the defendant was able to appeal his death sentence to a Turkish appeals court.

Bush’s military tribunals and all of his other “anti-terror” measures violate one of the most basic democratic principles of US law: the presumption that the accused is innocent until proven guilty. Now defendants can be stripped of their right to due process by virtue of presidential fiat. If the president names a non-citizen as a terrorist suspect, he can be turned over to the military for summary conviction and execution.

Defending Bush’s order, Vice President Dick Cheney said terrorism suspects “don’t deserve the same guarantees and safeguards that would be used for an American citizen going through the normal

judicial process,” and that a military tribunal “guarantees that we’ll have the kind of treatment of these individuals that we believe they deserve.”

While the executive order specifically refers to Osama bin Laden’s Al Qaeda network, these kangaroo courts could be used against any non-citizens alleged to be involved with terrorism. It should be kept in mind that Bush—who wields absolute power in deciding who is to be prosecuted by these tribunals—demonstrated his instincts for fair play and compassion by presiding over 152 executions during his five-year term as governor of Texas.

The official justifications provided by the Bush administration for establishing these military star chambers do not hold water. The major claim is that civilian trials of terrorists would compromise US intelligence. This assertion, however, is belied by the existence of provisions allowing federal courts to keep sensitive information sealed from the public record.

What the government is really concerned about is concealing from the American people the truth about its operations. The holding of swift, secret trials would allow the authorities to continue to keep the public in the dark.

In particular, military tribunals would serve two purposes:

First, the government would be able to prosecute and convict those, such as bin Laden, who it alleges are guilty of terrorist crimes, without having to prove its charges. Various government spokesmen have acknowledged since September 11 that they do not have sufficient evidence to convict bin Laden in a court of law. By bringing terrorist suspects before secret military tribunals, where the outcome is guaranteed and the defendant has no legal rights, the government would be able to claim it “proved” its allegations without fear of public scrutiny or independent review.

Such a legal farce has obvious political advantages, since the Bush administration’s justification for going to war against Afghanistan hinges on the claim that bin Laden and Al Qaeda are responsible for the September 11 attacks, and the Taliban regime is guilty of sponsoring and protecting them. A public trial which revealed that the government had no serious evidence to back up the claim that bin Laden and Al Qaeda organized the hijack-bombings would have serious political consequences, both in the US and abroad.

Second, a closed military process would negate the possibility of information emerging that might undermine the government’s version of the September 11 disaster. A host of unanswered questions remain about the strange and murky circumstances that allowed men identified as Islamic terrorists to organize and execute a complex plot to attack key centers of American economic and military power, supposedly without any advance knowledge on the part of American police and intelligence agencies.

A normal trial might expose facts suggesting that US authorities were not as oblivious to the terrorist conspiracy as they claim, or even the existence of prior contacts between some of the perpetrators and American intelligence operatives. In one way or another, a normal trial would be certain to bring forward politically damaging information about the greatest security breach in US domestic history.

The authorization of secret military tribunals clearly flies in the face of the Bill of Rights of the US Constitution, which applies to “persons,” not just citizens. Under current legal standards, anyone in the US—citizens and non-citizens alike—can file a writ of habeas corpus, asking for a judge to take up his or her case.

Inevitably, Bush’s authorization of military tribunals will be challenged in the courts and end up before the Supreme Court. It is

likely, however, that a majority on the high court will back the measure.

Comments made in the aftermath of the terror attacks by Associate Justice Sandra Day O’Connor—generally considered a “swing vote” on the Court—indicate that behind-the-scenes discussions have been going on about sanctioning “military justice.” In a speech on September 30, O’Connor said the terror attacks “will cause us to reexamine some of our laws pertaining to criminal surveillance, wiretapping, immigration and so on.”

She continued, “It is possible, if not likely, that we will rely more on international rules of war than on our cherished constitutional standards for criminal prosecutions in responding to threats to our national security.”

Predictably, the fascist-minded editorialists of the *Wall Street Journal* defend the tribunals “as a matter of common sense, as a way to shield an essential part of the war effort from the excesses of the modern US criminal justice system.” The *Journal*, which reflects the views of major sections of the corporate elite, adds in a November 16 editorial: “Do we really want to give people bent on destroying the US the right to throw out evidence based on the exclusionary rule?”

However, Bush’s barrage of executive orders has provoked unease and concern within parts of the political establishment and sections of the press. In a column in the November 15 *New York Times*, entitled “Seizing Dictatorial Power,” long-time Republican operative William Safire writes that “a president of the United States has just assumed what amounts to dictatorial power ... with the replacement of the American rule of law with military kangaroo courts.” “On what legal meat does this our Caesar feed?” he asks.

A November 16 editorial in the *Times*, headlined “A Travesty of Justice,” comments, “With the flick of a pen, in this case, Mr. Bush has essentially discarded the rulebook of American justice painstakingly assembled over the course of more than two centuries.”

That the *Times*, which has disgraced itself in the recent period by praising Bush’s “statesmanship” and political “maturity,” should feel obliged to make such a pointed comment, testifies to the vast scope and extreme character of the Bush administration’s assault on democratic rights.

Some senators from both parties have called for hearings on the setting up of military tribunals, the monitoring of lawyer-client discussions and other measures enacted by the Bush administration without congressional input. However, working people can place no confidence in the liberal media or the Democrats to wage a struggle against the assault on democratic rights. They have consistently adapted themselves to the drive by the most reactionary layers of the ruling elite to curtail basic rights.

While the current rash of anti-democratic measures largely targets non-citizens, mainly of Middle-Eastern descent, they constitute a fundamental attack on the basic rights of the entire population. These attacks will be extended to American citizens, especially those who oppose the government’s policies, sooner rather than later.



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