

Ashcroft defends Bush's war against the Constitution

Tells Senate hearing that critics "aid terrorists"

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Amid growing disquiet over the Bush administration's attacks on democratic rights following the September 11 attacks, Attorney General John Ashcroft appeared before the Senate Judiciary Committee on December 6. The hearing was called to discuss recent measures such as President Bush's authorization of secret military tribunals to try alleged terrorist suspects. Displaying equal measures of arrogance and evasion, Ashcroft swept aside concerns for basic constitutional protections and charged that his critics "aid terrorists" and "give ammunition to America's enemies."

Also on the agenda were executive orders allowing the Justice Department to listen in on discussions between detainees and their lawyers, Ashcroft's refusal to release information on those rounded up in the nationwide government dragnet, the order to bring in more than 5,000 Middle Eastern men for questioning in connection with the anti-terror probe, and Ashcroft's blocking the FBI from using the federal firearms database for information relating to purchases of weapons by suspected terrorists.

In his prepared remarks, Ashcroft attacked virtually every provision of the Bill of Rights except the Second Amendment's reference to the "right to bear arms." Ashcroft claimed, "We are at war with an enemy that abuses individual rights as it abuses jet airliners. It abuses those rights to make weapons of them with which to kill Americans." He thereby left no doubt that the Bush administration is intent on using the "war on terrorism" as a political cover for the wholesale destruction of personal liberties.

Holding up an alleged "al Qaeda training manual," Ashcroft claimed that "terrorists are told how to use America's freedom as a weapon against us. They are instructed to use the benefits of a free press ... to stalk and kill their victims." The document itself dates from 1989 or earlier, as it refers in the present tense to the Soviet Union's occupation of Afghanistan. The passage in question simply advises "brothers" to follow the mass media for information regarding the identities, locations and policies of local political leaders. The transparent purpose of Ashcroft's hyperbolic remarks is to set the stage for abridgment of the First Amendment's guarantee of freedom of speech.

Even more sinister was Ashcroft's defense of Section 1(c)(4) of the November 13 presidential order, which allows military commissions to close proceedings to the public. In response to questioning by Democratic Senator Ted Kennedy, Ashcroft confirmed that the Bush administration would hold the military tribunals in secret "when it's in the national interest to close them."

Later on, he elaborated: "Are we supposed to read them the

Miranda rights, hire a flamboyant defense lawyer, bring them back to the United States to create a new cable network of Osama TV or what have you, provide a worldwide platform from which propaganda can be developed?"

The *Miranda* rights referred to by the attorney general derive from the Fifth Amendment's provision that "no person shall be ... compelled in any criminal case to be a witness against himself." The right to an attorney is secured by the Sixth Amendment's guarantee that all accused "have the Assistance of Counsel for his defence."

More fundamental, however, is the Sixth Amendment's provision that in all criminal prosecutions the accused shall enjoy the right to a "public trial." The Supreme Court has had occasion to discuss the history and significance of this basic legal right so flippantly dismissed by Ashcroft.

In a 1948 ruling the high court wrote: "The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the letter *de cachet*. All of these institutions obviously symbolized a menace to liberty.... Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution." *In re Oliver*, 333 U.S. 257, 266 -70 (1948).

According to Ashcroft, any critic pointing to the anti-democratic character of the administration's measures is guilty of abetting terrorism and whipping up divisions within the population. The man who has authorized the roundup of more than a thousand Middle Eastern men—and has asked five thousand others to present themselves to be "voluntarily" interviewed by the government—accused critics of his policies of the following:

"To those who pit Americans against immigrants and citizens against non-citizens, to those who scare peace-loving people with phantoms of lost liberty, my message is this: your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies, and pause to America's friends. They encourage people of goodwill to remain silent in the face of evil."

Ashcroft defended the proposal for military tribunals by saying they would follow the same kinds of guidelines as those at the World Court at The Hague. He neglected to mention, however, that Bush's proposal specifically forbids defendants the right to appeal to any US state or federal court, any foreign court or any international tribunal,

such as the World Court. Preventing someone charged with a crime—one carrying the death penalty—from obtaining judicial review is a flagrant violation of the right to the writ of *habeas corpus* guaranteed by Article 1, section 9 of the Constitution.

The attorney general stonewalled in response to timid comments by Democratic members of the Senate Judiciary Committee about the need for consultation with Congress and the possibility that his actions threaten civil liberties. He addressed none of the questions related to the constitutionality of the administration's actions. Instead, Ashcroft asserted that Bush had no obligation to consult Congress because "the Constitution vests the president with the extraordinary and sole authority, as commander-in-chief, to lead our nation in times of war."

Setting aside the fact that Congress has not declared war, with this statement Ashcroft outlined a theory that as commander-in-chief in wartime the president assumes the power of a dictator over the American people, and that the Constitution is the basis for this dictatorship. But the founding document gives the president no such authority.

According to the Constitution, as commander-in-chief, the president has ultimate authority over members of the military who have been called into service, not over the civilian population at large. Article II, section 2 states: "The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." No authority is granted to the president to assume dictatorial powers over the American people—in war or at any other time.

Ashcroft's claim that the president has the "sole authority ... to lead our nation in times of war" also constitutes a fundamental repudiation of the "separation of powers" that underlies the entire Constitutional framework, clearly defining the independent authority of the Congress and the judiciary, whether in war or peace.

Congress, of course, has been a willing participant in the ongoing assault on democratic rights. Last October, it rubberstamped the Bush administration's so-called "anti-terrorism" bill, the USA Patriot Act of 2001. The bill is 342 pages long and changes some 15 different statutes, stripping immigrants of free speech rights, increasing Internet surveillance, allowing "sneak and peak" warrants (the subject never learns about the search), authorizing "roving" wiretaps (eliminating the requirement of warrants for specific phones), and removing restrictions on CIA spying in the United States. Many of these provisions are not restricted in any way to "terrorists," but apply across the board to expand federal police powers at the expense of personal privacy.

The Patriot Act passed with overwhelming bipartisan support, despite the fact that most Congressmen did not have a chance to read the bill before it was passed into law. Representative Ron Paul of Texas, one of three Republicans to oppose the legislation, confirmed that the bill was not even printed before the vote. He said that "maybe a handful of staffers actually read it" before voting on it. The one senator to vote against the bill, Russell D. Feingold (D-WI), complained of "relentless" pressure from the Bush administration to push through the legislation "without deliberation or debate."

At last Thursday's hearing, Democratic members of the Senate committee went out of their way to ingratiate themselves with the attorney general. They put on a miserable, groveling performance, each repeating their general support for the "war on terrorism," but suggesting that the Bush administration needed to be careful not to discredit itself in the eyes of the American public and the international community.

Most specific questions from the committee were evaded by Ashcroft, or answered with non sequiturs. When Senator Kennedy asked "how the administration will work with the Congress to protect the constitutional ideals," Ashcroft repeated the mantra: "The president's order requires that there be full and fair trial proceedings."

Ashcroft ignored questions from Committee Chairman Patrick Leahy (D-VT) about provisions under the military tribunals for judicial review. But according to Bush's order the issue is clear: the only avenue available to a defendant is a direct appeal to the president who has ordered the proceedings.

Ashcroft did finally concede, after repeated questioning from Senator John Edwards (D-NC), that the military courts could sentence to death and execute a defendant by a vote of two judges to one.

John Ashcroft's conduct before the Senate Judiciary Committee is an indication of the quasi-dictatorial nature of the present regime in Washington, and a sign of just how far to the right the political and media establishment in the US have shifted. Even a decade ago such a performance on Capitol Hill would not have passed muster. Within a few days of Ashcroft's appearance, however, any critical comments in the press on the event had faded, and the media was charging full-steam-ahead with its Afghanistan war coverage.

Democrats on the committee made no attempt to dispute the Republicans' contention that the Bush administration's anti-democratic measures—and the war effort—enjoy wide popular support. Senator Mitch McConnell (R-KY) said, "Mr. Attorney General, I want to congratulate you. I think you have won the public discussion on military tribunals."

Indeed, the entire political establishment buys into this reasoning, bolstered by the media with endless opinion polls using carefully crafted questions to show overwhelming public support for Bush's measures. But this support is limited and tenuous, and opposition is sure to grow when the full implications of the administration's assault on civil liberties come into clearer focus.



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