Ashcroft Eroding U.S. Constitutional Rights

The testimony of EIR *to the House Judiciary Committee Oversight Hearing on the Revisions to the Attorney General's Investigative Guidelines, June 27, 2002. The testimony was given by Dr. Debra H. Freeman, as a national spokesperson for Lyndon H. LaRouche, Jr.,* EIR *Founder and Contributing Editor.*

Under the guise of freeing FBI agents from "bureaucratic" restrictions and structures which "had hindered them from doing their jobs effectively," Attorney General John Ashcroft announced, on May 30, a sweeping revision of the Attorney General's Guidelines governing FBI investigations. Those Guidelines were originally drafted in the mid-1970s, following revelations of widespread abuses by U.S. law enforcement agencies, and by civilian and military intelligence agencies, of the Constitutional rights of American citizens.

Step-by-step—be it the revision of the Guidelines, the policy of dragnets, detentions, and secret hearings for foreign nationals, or the transfer of a U.S. citizen to military custody to circumvent the civilian courts—such actions constitute a fundamental erosion of the civil and Constitutional rights of American citizens, as well as the destruction of principles of justice and fairness with respect to foreign nationals who are present in the United States.

These measures represent a "crossing of the Rubicon," toward a police-state dictatorship, and further, in a number of instances, toward the elimination of the constitutional and legal distinction between the military and law enforcement, which is enshrined in the doctrine of *posse comitatus.* Whether one takes a legion, or one soldier, across the Rubicon, or whether one just drifts across the Rubicon occasionally, one has breached the barrier. More important than the degree is the precedent thus set, which opens the way to yet-undetermined amounts of intrusion under this policy. The idea that there can be justice without law, or law without justice, is intolerable to the entire American tradition. It is a subversion of everything on which this nation is built.

Constitution Valid in War and Peace

The fundamental fallacy of the actions taken by Attorney General Ashcroft, and other officials under his direction, is the idea that somehow, the Federal Constitution, and the rights and privileges granted thereunder, must yield during times of crisis or war. Our Constitution—born in the crucible of a conflict on American soil . . . —was clearly designed for times of war as well as peace, and the notion that the laws must bend, that constitutional protections must be reduced, and that justice must be suspended, in times of conflict or crisis, is alien to the letter and spirit of our fundamental law.

To those who argue that this is a "new kind of war," which requires new kinds of legal and military strategies—largely of the "preventive" nature—we suggest that perhaps we shouldn't be waging this "new kind of war." "Preventive" action—whether of the sort envisioned against so-called "rogue nations," or that which is supposed to define the new mission of the FBI, to prevent and disrupt, rather than to prosecute crimes—tends toward the practice of shooting first, and asking questions later. The authorization of FBI infiltration of organizations, and of the surveillance and monitoring (and disruption) of individuals and organizations without any evidence that a crime is being planned or prepared, is of this character.

Where is the standard of truth? Can anyone be labelled a terrorist, or a potential terrorist, to be investigated and subject to FBI disruption, without any evidence or proof? Can anyone—even a U.S. citizen—be labelled an "enemy combatant" and then detained indefinitely without charges and without access to a lawyer, or access to the courts? . . .

If the authorities have substantial evidence that an individual is in the process of planning or committing a crime, then it is clearly appropriate to take steps to prevent the commission of that crime. But there must be a reasonable standard of evidence, not simply a hunch or a suspicion—particularly one based heavily on ethnicity, religion, or national origin.

Regarding the secret detentions of foreign nationals, it is critical to remember that we demand that foreign countries treat U.S. citizens with respect, and protect their rights according to certain standards of justice. Other countries have a right to expect the same from the United States. The United States has, and properly does, protest vigorously if a U.S. citizen is detained abroad and held incommunicado, without access to legal counsel and U.S. diplomatic representatives—yet has detained hundreds of foreign nationals under those conditions. Nations have mutual obligations with respect to the treatment of each other's nationals; if we start breaching that, we turn the whole planet into a lawless jungle.

Overall, the character of many of the actions taken, and practices adopted, since Sept. 11, is that of ill-conceived measures which are the product of the heightened passions of the time, rather than reason. In the face of an hysterical reaction to what is presented as a threat of international terrorism, an ill-considered, irrational impulse has taken over, and has replaced the function of reason in the administration of justice. Among the great objects of our Federal Constitution—as embodied in its Preamble—are to "establish Justice, ensure domestic Tranquility, provide for the common defense," and to "promote the General Welfare." The idea that somehow that great document is not equal to the challenges of the pres-

ent day, is an abomination which has no place in our government. It is under conditions of crisis, that it is most important to respect the principles of our Constitution—not to scrap them, as some are inclined to do under the fears and passions of the moment.

Warner Again Says, Revise 'Posse Comitatus'

by Carl Osgood

Even though the military is distancing itself from the Department of Justice's drive to "drag the military across the Rubicon," or, in this case, the Potomac, Sen. John Warner (R-Va.), the ranking member on the Senate Armed Services Committee, again raised the issue—as he had, last October—of revising the 1878 Posse Comitatus Act, the statute that outlaws use of the military in executing the laws of the United States. Warner's latest call came on June 20, during the confirmation hearing for Gen. Ralph Eberhart, the current commander of U.S. Space Command and NORAD, to head the soon-to-be-established U.S. Northern Command. The Northern Command (Northcom), set to go into effect on Oct. 1, will have as part of its responsibilities the provision of military assistance to civilian authorities at the direction of the President.

Before he took up the *posse comitatus* issue, however, Warner raised another equally ominous proposition. He demanded to know from Eberhart, whether he had any intention of setting up an organic intelligence-gathering capability within Northcom. In Warner's view, because Northcom would have to respond to a terrorist threat that emanated from an individual within the United States, he asked Eberhart if he was "going to have some of your own people who could maybe go into court and file a writ to obtain . . . eavesdropping or whatever you think might be necessary," as opposed to depending on the FBI or other agencies for the intelligence it needs. The question raised the specter of domestic spying by the military.

Eberhart replied that he was considering, instead, a more "classical" military intelligence organization that would depend on information sharing, no matter the source of that information. He noted that currently, in the case of the Space Command and NORAD, he has liaison with both the Central Intelligence Agency and the National Security Agency. "In this new command," he said, "we'll have additional liaison that will make sure we get the threat information, that we get the intelligence information we need to conduct that mission."

On the *posse comitatus* doctrine, Warner said that "it was a good doctrine for those years in which here at home we were safely protected by our oceans and our neighbors. No longer does that exist." He admitted that there are already exceptions to the Posse Comitatus law that allow the military to be deployed in "unexpected contingencies," but added that the issue "needs to be clarified" before a major incident involving weapons of mass destruction occurs on U.S. soil. He expressed concern that, in the case of such an event, the local military commander might be constrained from bringing his assets to bear on the situation, including in a law enforcement role, because of that lack of clarity. He told Eberhart, "If you think that has to be modified, I would hope you'd come back on your own to this committee and so state." Warner promised that the next time Eberhart appears before the committee, that will be his first question.

During the hearing, Eberhart did not address the *posse comitatus* issue. However, in written answers to questions submitted to him prior to the hearing, Eberhart told the committee that Northcom's "mission of military support to civil authorities does not require any changes in the law. While the Command may provide military forces under Title 10 [of the U.S. Code] to assist civilian agencies, these forces will not be directly involved in civilian law enforcement, unless authorized by law to engage in law enforcement activities."

Sen. John Warner (here announcing his re-election campaign in Alexandria, Virginia) has continued to call for the overriding of the nation's Posse Comitatus Law, in order to allow the new U.S. Northern Command to carry out "law enforcement" in the United States.