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General Ashcroft's Detention Camps

Time to Call for His Resignation

by Nat Hentoff

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Jonathan Turley is a professor of constitutional and public-interest law at George Washington University Law School in D.C. He is also a defense attorney in national security cases and other matters, writes for a number of publications, and is often on television. He and I occasionally exchange leads on civil liberties stories, but I learn much more from him than he does from me.



(illustration: Nathan Fox)

For example, a Jonathan Turley column in the national edition of the August 14 *Los Angeles Times* ("Camps for Citizens: Ashcroft's Hellish Vision") begins:

"Attorney General John Ashcroft's announced desire for camps for U.S. citizens he deems to be 'enemy combatants' has moved him from merely being a political embarrassment to being a constitutional menace." Actually, ever since General Ashcroft pushed the U.S. Patriot Act through an overwhelmingly supine Congress soon after September 11, he has subverted more elements of the Bill of Rights than any attorney general in American history.

Under the Justice Department's new definition of "enemy combatant" -- which won the enthusiastic approval of the president and Defense Secretary Donald Rumsfeld -- anyone defined as an "enemy combatant," very much including American citizens, can be held indefinitely by the government, without charges, a hearing, or a lawyer. In short, incommunicado.

Two American citizens -- Yaser Esam Hamdi and Jose Padilla -- are currently locked up in military brigs as "enemy combatants." (Hamdi is in solitary in a windowless room.) As Harvard Law Professor Lawrence Tribe said on ABC's *Nightline* (August 12):

"It bothers me that the executive branch is taking the amazing position that just on the president's say-so, any American citizen can be picked up, not just in Afghanistan, but at O'Hare Airport or on the streets of any city in this country, and locked up without access to a lawyer or court just because the government says he's connected somehow with the Taliban or Al Qaeda. That's not the American way. It's not the constitutional way. . . . And no court can even figure out whether we've got the wrong guy."

In Hamdi's case, the government claims it can hold him for interrogation in a floating navy brig off Norfolk, Virginia, as long as it needs to. When Federal District Judge Robert Doumar asked the man from the Justice Department how long Hamdi is going to be locked up without charges, the government lawyer said he couldn't answer that question. The Bush administration claims the judiciary has no right to even interfere.

Now more Americans are also going to be dispossessed of every fundamental legal right in our system of justice and put into camps. Jonathan Turley reports that Justice Department aides to General Ashcroft "have indicated that a 'high-level committee' will recommend which citizens are to be stripped of their constitutional rights and sent to Ashcroft's new camps."

It should be noted that Turley, who tries hard to respect due process, even in unpalatable situations, publicly defended Ashcroft during the latter's turbulent nomination battle, which is more than I did.

Again, in his *Los Angeles Times* column, Turley tries to be fair: "Of course Ashcroft is not considering camps on the order of the internment camps used to incarcerate Japanese American citizens in World War II. But he can be credited only with thinking smaller; *we have learned from painful experience that unchecked authority, once tasted, easily becomes insatiable.*" (Emphasis added.)

Turley insists that "the proposed camp plan should trigger immediate Congressional hearings and *reconsideration of Ashcroft's fitness for important office.* Whereas Al Qaeda is a threat to the lives of our citizens, Ashcroft has become a clear and present threat to our liberties." (Emphasis added.)

On August 8, *The Wall Street Journal*, which much admires Ashcroft on its editorial pages, reported that "the Goose Creek, South Carolina, facility that houses [Jose] Padilla -- mostly empty since it was designated in January to hold foreigners captured in the U.S. and facing military tribunals -- now has a special wing that could be used to jail about 20 U.S. citizens if the government were to deem them enemy combatants, a senior administration official said." The Justice Department has told Turley that it has not denied this story. And space can be found in military installations for more "enemy combatants."

But once the camps are operating, can General Ashcroft be restrained from detaining -- not in these special camps, but in regular lockups -- any American investigated under suspicion of domestic terrorism under the new, elastic FBI guidelines for criminal investigations? From page three of these Ashcroft terrorism FBI guidelines:

"The nature of the conduct engaged in by a [terrorist] enterprise will justify an inference that the standard [for opening a criminal justice investigation] is satisfied, *even if there are no known statements by participants that advocate or indicate planning for violence or other prohibited acts.*" (Emphasis added.) That conduct can be simply "intimidating" the government, according to the USA Patriot Act.

The new Steven Spielberg-Tom Cruise movie, *Minority Report*, shows the government, some years hence, imprisoning "pre-criminals" before they engage in, or even think of,

terrorism. That may not be just fiction, folks.

Returning to General Ashcroft's plans for American enemy combatants, an August 8 *New York Times* editorial -- written before those plans were revealed -- said: "The Bush administration seems to believe, on no good legal authority, that if it calls citizens combatants in the war on terrorism, it can imprison them indefinitely and deprive them of lawyers. This defiance of the courts repudiates two centuries of constitutional law and undermines the very freedoms that President Bush says he is defending in the struggle against terrorism."

Meanwhile, as the camps are being prepared, the braying Terry McAuliffe and the pack of Democratic presidential aspirants are campaigning on corporate crime, with no reference to the constitutional crimes being committed by Bush and Ashcroft. As Supreme Court Justice Louis Brandeis prophesied: "The greatest menace to freedom is an inert people." And an inert Democratic leadership. See you in a month, if I'm not an Ashcroft camper.

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