

Covert Action

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Q U A R T E R L Y

The aftershock of the Oklahoma City bombing sent Congress scurrying to trade off civil liberties for an illusion of public safety. A good ten weeks before that terrible attack, however—with a barely noticed pen stroke — President Bill Clinton virtually killed off the Fourth Amendment when he approved a law to expand the already extraordinary powers of the “strangest creation in the history of the federal judiciary.”



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To Protect and Serve

The government is waging war, not against some foreign foe and not primarily against gun-owning "patriots," but against its own "dangerous classes"—the poor, immigrants, ethnic minorities, youth, and dissidents. A government arsenal of legislative and legal "reforms"—attacking welfare, affirmative action, access to health care, and civil liberties—is laying waste an already devastated population. At the same time, Congress is entertaining proposals such as tort law revisions and environmental rollbacks. These "reforms" are designed to make life even easier for a class of people who—if the protection of civil rights and the promotion of a just society were the goals of the criminal justice system—would be categorized as criminals.

As it is, the very definition of criminal activity reflects a bias so ingrained it passes almost unnoticed. A poor kid who peddles a few grams of crack faces years behind bars while a corporate officer who authorizes spending millions in advertising to entice teenagers to smoke gets rich. A man who climbs a tower and fires an automatic weapon into a crowd is charged with murder if someone dies; an executive who does a risk assessment and knowingly markets a fatally defective product faces, maybe, a civil suit against his corporation.

There is a growing awareness that justice in this country is unjust, and that the agencies that enforce it are often repressive. The left has been making this point for a long time. It denounced earlier bombings—one which killed seven black children in a church in Birmingham, and the dozens that have terrorized abortion clinics. Progressives have decried official murder when the FBI shot Black Panthers Fred Hampton and Mark Clark in their beds in Chicago, and when the death penalty, now a well-oiled assembly line, selectively targets the poor and the non-white.

Recently, loud denunciations of law enforcement abuses are heard from a right wing so self-pitying it can see no victims beyond itself. Still, the protests of such odious types as the militias and the NRA must not be swept away with the rubble from the federal building in Oklahoma City. The stakes are too high and the number of people affected too great to cede ground because the lunatic fringe has moved in next door.

A year and a half ago, the NRA, the ACLU, and the National Association of Criminal Defense Lawyers unsuccessfully requested a broad hearing on abusive federal policing. Outlandish as this alliance is, it reflects the breadth of public outrage. And after the Oklahoma bombing brought the message home, some Congressmembers agreed to an inquiry.

It is probable that any such hearing would be chaired by "Hang 'em High" Orrin Hatch—a man who

describes the U.S. as "the freest country in the world." It would be held by Congressmembers—largely self-serving millionaires, on-the-take from special interests—who are pompous, cynical, or dimwitted enough to claim they represent the common good. Likely, it would concentrate on the pet causes of the right—the role of the FBI and ATF in the siege of the Branch Davidians at Waco and the assault on Christian Identity adherent Randy Weaver at Ruby Ridge, Idaho. While the hateful politics of Weaver and the apocalyptic cultism of David Koresh deserve no sympathy, these groups were victims of provocative and murderous behavior by the FBI-ATF. And it is even possible that hearings will condemn official actions in these two standoffs. Then, the mass media can chant once again that the system works.

But what hearings are unlikely to expose or document is a pattern of abuse rooted in the structure of the system itself. The enforcement and investigative apparatus of the state—from the CIA to the FBI, from the inner city precinct to the rural sheriff's office—is protected from real accountability. The pattern of misconduct is extensive. For the last decade, the FBI has investigated only one-third of the approximately 8,000 "excessive force" complaints reported every year. And of these, on average only 35 cops per year have been convicted of brutality. At the same time, DEA agents have virtual *carte blanche* to terrorize, while the Border Patrol rampages against undocumented border-crossers.

After the Rodney King beating, an L.A. shopkeeper said "The baddest gang in town wears blue and carries badges." He was making the same mistake as the militia members. Bad or not, the police, FBI/ATF agents, and other law enforcement and investigative agencies are servants. Their master, is not, as many naively believe, the public. Like those people writing increasingly repressive legislation and "reforms" in the back rooms of Congress, the cops and feds serve and protect the power, property, and privilege of corporate and state elites.

That is nothing new in this country. The civil and human rights of the people have been at odds with the property rights of the "landed gentry" for over two centuries. And in this defining struggle, the FBI, police, *et al.* are merely the enforcers for those who write the laws to make their activities legal and hire the guns to keep the dangerous classes at bay. o

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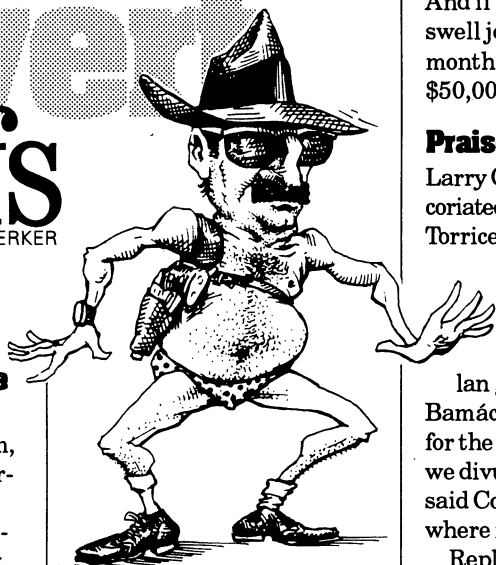
What Planet Do These Men Live On?

In a debate on welfare reform, *The Bell Curve* author Charles Murray told the Senate Finance Committee that reform calls for a "necessarily brutal calculation" to find the "least net suffering." Perhaps, he was about to suggest a sliding scale of misery, ranking hunger, no day or health care, lousy jobs, etc. But no, he was mercifully vague, if not merciful. It was left to Sen. Carol Moseley-Braun (D-Ill.) to question the effect of Murray's "brutal calculation" on the 9 million children totally dependent on government assistance. "Do we just have Calcutta, have kids begging on the corner?" she asked.

Sen. Daniel Moynihan (D-N.Y.) was appalled—not at Murray, but at Moseley-Braun. "The last time I saw Calcutta, there were no children begging in the streets, the social structure of the country was still very intact." What's matter Senator, curtains in your hotel room didn't open?

Barebrained and Pregnant with Idiocy

God love them southern politicians. In a debate on a proposal to stop state abortion funds for poor women, N.C. state Rep. Henry Aldrich (R) implied that rape and incest victims are sexually promiscuous. Then, he added, by way of explanation, that women don't get pregnant when raped because "The facts



show that people who are raped—who are truly raped, the juices don't flow, the bodily functions don't work and they don't get pregnant."

Cleaning Up on Murder

Guatemala recently hired the D.C.-based P.R. firm, Thompson and Co. to wash the encrusted blood from their country's image. At \$420,000 for six months, company head Robert Thompson got off to an interesting start. To the probable horror of the letter's recipient, he wrote Guatemalan Gen. Mario René Enríquez promising to see to it that "your government's story and the truth are fully exposed."

In the possible belief that even a rotting corpse can gain spin if piled on a big enough stack of cash, he assured the Guatemalans that the U.S. government and media "appreciate your current record on human rights and your commitment to continued improvement in that area."

Thompson has much experience lying about Central America. He was a special assistant to Ronald Reagan for legislative affairs. Another account executive, Arthur Davis, was Reagan/Bush era ambassador to

Paraguay and Panama. And if the firm does a really swell job, there are six-month renewal options at \$50,000 a month.

Praise Where Due

Larry Combest (R-Texas) excoriated his fellow rep., Robert Torricelli (D-N.J.), for disclosing information on the murder of Jennifer Harbury's husband, Guatemalan guerrilla Efraín Bamáca. "It's very difficult for the agency to respect us if we divulge information," said Combest, "regardless of where it comes from."

Replied Torricelli: "I'm not going to earn their trust," he said of the CIA. Their testimony "is not a gift to Congress. ... What matters is not the bond we have with the CIA, it's the bond we have with the American people."

As for the CIA's routine explanation for not reporting to the public or Congress — "to protect sources and methods" — activist Worth Cooley-Prost put it nicely at a May press conference. She called the excuse "bankrupt. In this case, the source [paid CIA agent and School of the Americas grad, Alpiroz] is an assassin and the method was murder."

Dealing for Death

In negotiations over the anti-terrorist legislation, Judiciary Committee chair Orrin Hatch (R-Utah) suggested a deal under which Republicans would not act on plans to seek repeal of the ban on assault weapons, in exchange for Democrats approving curbs on appeals for death row prisoners.

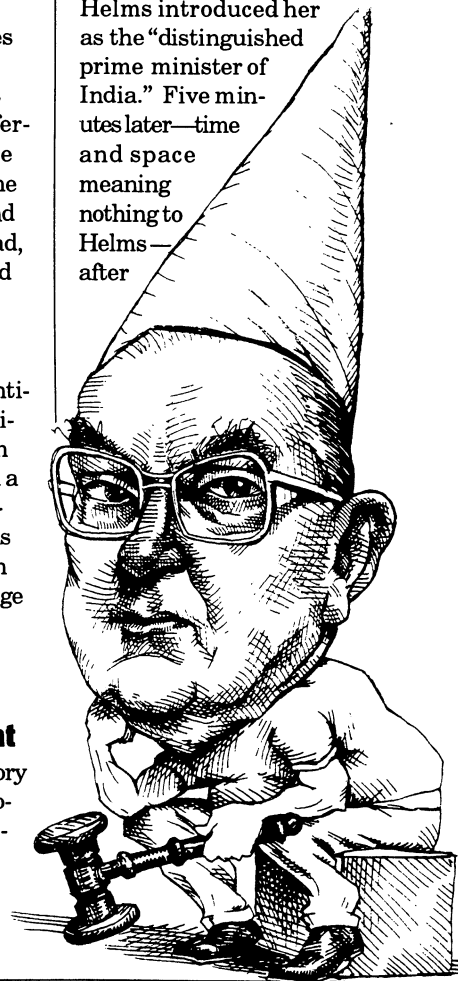
Mentally Incontinent

Jesse Helms has a long history of being dumber than styrofoam: "If they would stop doing what they're doing," intoned the gay bashing senator, "there would not

be one single more case of AIDS in the U.S." That was the old Jesse. Now, with the chair of the Foreign Relations Committee to warm his brain on, he makes conversation with a coffee cup seem like lunch at the Algonquin. And there are not enough P.R. pooperscoopers in Washington to clean up the messes the mentally incontinent dodderer leaves behind.

First, he made a speech denouncing North Korean President Kim Jong Il and read the name Kim Jong the Second. Scurrying to cover their boss' gaff, his handlers carefully wrote out the name of the dear leader "Kim Jong III" so that even an idiot could get it right. It was not their fault, then, when the next day Helms loudly excoriated Kim Jong the Third.

Then, when Prime Minister Benazir Bhutto of Pakistan came on a state visit, Helms introduced her as the "distinguished prime minister of India." Five minutes later—time and space meaning nothing to Helms—after



Helms told a colleague about the "delightful hour and a half conversation" he had just completed with her — chatting about India.

Media Nonsense

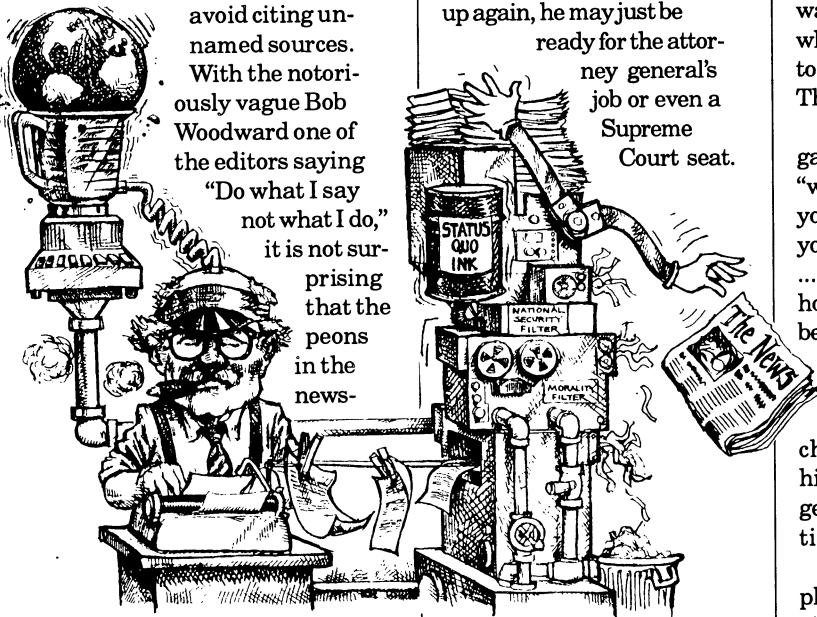
Official directives from the *Washington Post* instruct reporters to try to

avoid citing unnamed sources.

With the notoriously vague Bob Woodward one of the editors saying

"Do what I say not what I do,"

it is not surprising that the peons in the news-



room sometimes resort to this problematic technique. It is essential, they argue, in getting important people to reveal vital information. An example? The Mar. 19 *Post* reported on the two Americans held in Iraq for illegally entering the country: "The official, speaking on terms of anonymity, had no comment on whether the Iraqis had made any response."

Potts Shots

What do you do with the man in charge of a raid in which the FBI dealt with a stand-off by shooting and killing an unarmed woman holding a 10-month old baby in her arms (the Idaho raid on white supremacist Randy Weaver). A bureaucratic slap on the wrist sufficed. Undeterred, the same FBI official led the debacle at Waco, Texas, where FBI/ATF bungling resulted in the deaths of 80 Branch Davidians. The DoJ and FBI took this opportunity

to present an official response to these examples of repressive, incompetent, overbearing law enforcement: They appointed the man who supervised both catastrophes, Larry Potts, as second-in-command at the FBI and head of the Oklahoma City bombing investigation. If he manages to screw up again, he may just be

ready for the attorney general's job or even a Supreme Court seat.

Say it Isn't So

Speaking strongly against making the CIA director a Cabinet level job, was none other than former CIA-head Robert Gates who watched his predecessor William Casey "issue after issue sit in meetings and present intelligence in terms of policy he wanted pursued."

Testosterone: Most Dangerous Drug of All

The Drug Enforcement Administration runs a nationwide program to train police. A recent lawsuit filed by three women police officers claiming to speak for a group of at least 75 others, revealed some of the curriculum. The suit charges that five DEA agents sexually harassed participants in over 100 sessions in the Midwest. They called the women, "babes," "hon," "little girl," "bitches," black cops were called "brown sugar," Janet Reno was la-

beled a "bitch" and a "fucking dyke," and agents described Hillary Clinton and the attorney general as "getting together and doing each other." The course interspersed instructional slides with pornography. A woman cop brought to the lecture stage for a demonstration was turned sideways before the audience while the instructor referred to her breasts "jiggling." That was the mild stuff.

The DEA instructors began classes by promising "when you men get home, you are going to fuck like you've never fucked before. ... Get your kids out of the house because it's going to be a fucking brutal assault."

As a woman cop lay on the floor during a training exercise, the suit charges, a trainer grabbed his crotch and announced to general laughter, "I'm getting a hard-on."

The DEA boys also displayed a pathological confusion between sexuality and violence. Detonating explosive, said one instructor, "will give you a chubby," and complained he gets "horny" unless he gets to kill regularly. Trainers bragged of shooting a suspect 16 times and of making sure the suspect weighed ten pounds more after being shot. They described what a human head looks like after it's hit with a rifle round.

Nor was this macho display, idle boasting. One of the high-ranking DEA agents named in the suit, Francis White, associate special agent in charge of the Chicago office, earned a reputation as a cowboy during

a stint in Miami. In July 1980, he fired nine of the 32 rounds pumped into a suspect, who though armed, had not fired a shot, reported *Legal Times*.

Plaintiffs' attorney Sarah Siskind said "training which glorifies aggressive sex and violence, and combines these two attitudes, is intimidating, humiliating, and violates that trust [necessary to officers' safety]."

According to a statement issued by her lawyer, Denise Markham, a five-year veteran of the Madison, Wisc. police force, was so intimidated by the week-long training session that she slept with a loaded gun and barricaded her barracks door with a refrigerator.

While police officials backed up the womens' complaints, the DEA put some of the accused trainers on administrative leave (with full pay) and transferred others. As for the female cops' critical evaluations of the DEA sessions, according to the suit, the DEA simply destroyed them. •

— Terry Allen



Gulf War Syndrome Covered Up

Chemical and Biological Agents Exposed

by Dennis Bernstein



The Pentagon denies that U.S. soldiers were exposed to chemical and biological warfare agents during the Gulf War, but its own records contradict the official line.

The lives of veterans and their families hang in the balance.

Spec. 1st Class Dean Lundholm, of the National Guard's 649th Military Police Company, was assigned to guard duty at the Hafar Al Batin POW camp near the Iraq-Kuwait border. He was in the shower when the Scud landed. Amid the wail of activated chemical warfare alarms, he dashed naked, holding his breath, through the open air to where his protective gear was stored. Soon after, he fell into a three-day coma. Now he is diagnosed as having Gulf War Syndrome.¹

Lundholm came home to a blaze of post-war hyperpatriotism and technophilia, as the allied powers gloated over—among many other things—their

astoundingly low casualty figures. The number tossed around at the time was indeed minuscule: about 150 dead for the allies, contrasted against as many as 100,000 Iraqi corpses.

Yet now, four years after war's end, the euphoria seems premature. Tens of thousands of Gulf War personnel have come down with one or more of a number of disabling and life-threatening medical conditions collectively known as Gulf War Syndrome (GWS). The syndrome's cause is unclear, but veterans and researchers have focused on the elements of a toxic chemical soup in the war zone that includes insecticides, pesticides, various preventive medicines given experimentally to GIs, and smoke from the burning oilfields of Iraq and Kuwait. There is also reliable evidence that one of its causes is exposure to low levels of chemical and biological war-

fare (CBW) agents during the war. According to a variety of sources, including just declassified Marine Corps battlefield *Command Chronologies* and *After Action Reports*, widespread exposure to CBW agents occurred when U.S.-led forces bombed Iraqi chemical facilities, and during direct attacks by the Iraqis. And while numerous sources, including military documents, link GWS to those exposures, the U.S. defense establishment doesn't want to talk about it. Its policy of denial is making it substantially harder for Gulf War veterans to receive diagnoses that include all the probable toxins and their possible synergistic effects.

The Official Line

Despite mounting evidence, Pentagon denials continue. In sworn testimony before Congress in March, Dr. Stephen

Dennis Bernstein is an associate editor with Pacific News Service, co-producer of "Flashpoints" newsmagazine on Berkeley's KPFA-FM, and National Affairs writer for the *San Francisco Bay Guardian*.
Photo: Gulf War soldiers suited up against CBW attack.
1. Interview series, Aug. 1994-Jan. 1995.

Joseph, Assistant Secretary of Defense for Health Affairs, stuck to the Department of Defense (DoD) position. "There is no persuasive evidence of such exposures [to CBW agents]," he said, "even after much scrutiny."² Joseph's comments echo those made last year by Defense Secretary William Perry and Joint Chiefs of Staff Chairman John Shalikashvili that "there is no information, classified or unclassified, that indicated chemical or biological weapons were used in the Persian Gulf."³

More recently, former Dep. Sec. of Defense (and now newly confirmed Dir. of Central Intelligence) John Deutch, the DoD's point man on the Gulf War Syndrome, restated the government's line: "[W]ith the help of an independent panel, [I] examined those instances where there are allegations of use or presence [of CBW agents], and it is my judgment at the present time that there has been no use or presence, but that judgment is amenable to change if further information comes up."⁴

"To my mind, there is no more serious crime than an official military cover-up of facts that could prevent more effective diagnosis and treatment of sick U.S. veterans."

—former Sen. Don Riegle

During the confirmation hearings, Sen. Bob Kerrey (D-Neb.) grilled Deutch on comments he made on *60 Minutes* that "no widespread use" had been detected, seemingly suggesting that some use had occurred.⁵ But Deutch quickly closed that door, accusing *60 Minutes* of misleading the public with editing tricks. "I attach no particular signifi-

cance to use of that word [widespread use]. 'No use' would be equally accurate from my point of view."

Kerrey again queried Deutch. "And you have no evidence at this point that there was any kind of use or presence of CBW during that 42-day period?"

"That's correct," Deutch said.⁶

The CIA, Deutch's new fiefdom, climbed on board the day before Deutch's hearing began, announcing that "nothing has yet surfaced that leads CIA to disagree with the Department of Defense conclusion that chemical weapons were not used during the Gulf War."⁷

But former Senator Don Riegle (D-Mich.), whose Senate Banking Committee held extensive hearings and issued two reports on GWS,⁸ said the denials don't wash. According to Riegle, British and U.S. troops made at least 21 positive tests for the agents, and he accused the U.S. military of a cover-up:

These Department of Defense explanations are inconsistent with the facts as related by the soldiers who were present, and with official government documents prepared by those who were present and with experts who have examined the facts. ... To my mind, there is no more serious crime than an official military cover-up of facts that could prevent more effective diagnosis and treatment of sick U.S. veterans.⁹

Evidence of CBW Exposure

Riegle is not alone. Evidence of CBW exposure during the war is abundant and mounting. In response to a Freedom of Information Act (FOIA) request by the Gulf War Veterans of Georgia, in January the Pentagon released 11 pages of previously classified Nuclear, Biological, and Chemical Incident (NBC) logs prepared by aides to Gen. Norman



DEPT. OF DEFENSE/HELENE C. STIKKEL

Ex-Deputy Secretary of Defense, now CIA head, John Deutch was point man for Pentagon denials of chemical warfare exposures.

Schwarzkopf, commander of coalition forces during the war. The NBC log excerpts, which cover only seven days of the war, document dozens of chemical incidents. They also reveal chemical injuries to U.S. GIs, discoveries of Iraqi chemical munitions dumps, fallout from allied bombing of Iraqi chemical supply dumps, and chemical attacks on Saudi Arabia.

"I think this is a very powerful piece of evidence," said ex-Sen. Riegle, about the released logs. "Why did they hide it from us? Did it now get out in a purposeful way or did it get out by accident?... They [the Pentagon] did not respond honestly and truthfully to my requests. It's obvious the mistakes made during the war were serious. It's obviously too damaging to too many people's reputations here," Riegle said.¹⁰

The Riegle committee itself developed strong evidence that exposures took place. James J. Tuite, III, chief investigator for the committee's two-year study of GWS and U.S.-Iraqi trade policies, says:

The veterans we interviewed talked about alarms sounding continuously during war, and in fact some units had complained about the alarms sounding so much that they received instructions to take the batteries out or to disable them.

10. Thomas Williams, "Pentagon Accused of Withholding Evidence of Gulf War Chemical Use," *Hartford Courant*, Feb. 20, 1995, p. A14.

2. House Veterans' Affairs Subcommittee on Hospitals and Health Care, hearing, Mar. 8, 1995.

3. Joint statement, May 25, 1994.

4. Confirmation hearings for DCI, Senate Select Committee on Intelligence, Apr. 26, 1995. The panel Deutch referred to was headed by Dr. Joshua Lederberg, a long-time consultant to the U.S. government on science-related national security issues. Lederberg reported no finding of CBW exposures, and seemed more concerned that soldiers fighting in "exotic places" will be subject to "a preoccupation with residual health effects." *Report of the Defense Science Board Task Force on Persian Gulf War Health Effects*, June 1994.

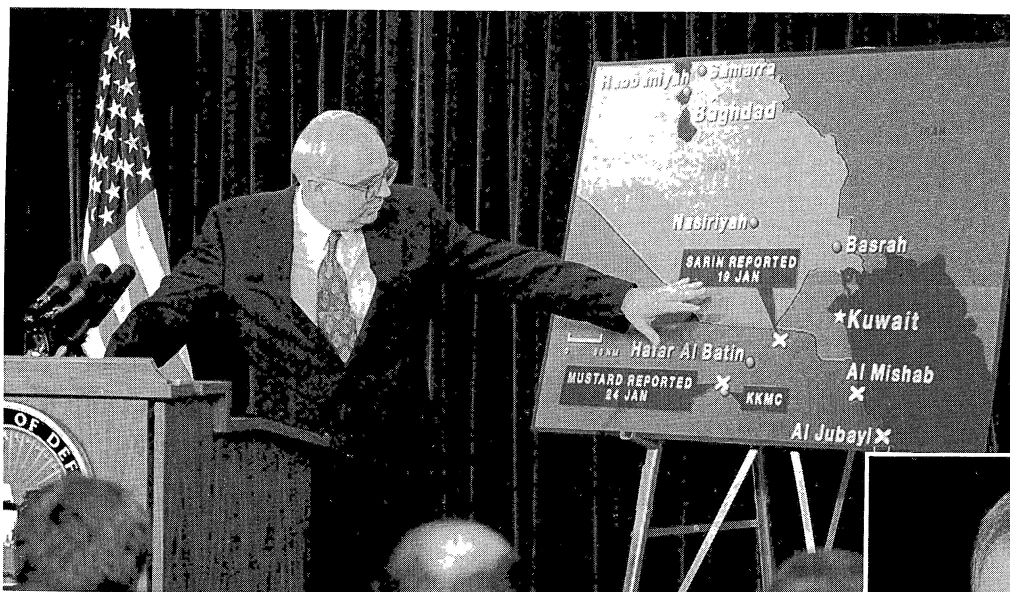
5. CBS News, *60 Minutes*, Mar. 12, 1995.

6. Oddly, this testimony contradicts what he told Los Alamos National Laboratory staffers in a May 1994 speech. He said the U.S. had "no biological detection capability deployed with any forces anywhere." John Deutch, address, Conference on Counterproliferation, May 6, 1994. He has not explained how repeated Pentagon denials of the presence of CBW agents can be believed if DoD lacked the ability to test for some of them.

7. Robert Burns, "CIA Reviewing Data on Possible Chemical Weapon Link to Illnesses," *Associated Press*, Apr. 25, 1995.

8. U.S. Senate, Committee on Banking, Housing and Urban Affairs, "U.S. Chemical and Biological Warfare-Related Dual Use Exports to Iraq and Their Possible Impact on the Health Consequences of the Persian Gulf War," May 25, 1994; and its "Committee Staff Report (No. 3)," Oct. 7, 1994. Hereafter referred to as the *Riegle Report* and the *Riegle Staff Report*.

9. Written statement accompanying release of *Riegle Staff Report*, *op. cit.*, Oct. 7, 1994.



The Pentagon now contradicts earlier confirmations made by former Defense Secretary Les Aspin (l.) that the presence of CBW agents had been documented. Maj. Gen. Ronald R. Blanck (below), commander of Walter Reed Army Medical Center, however, has issued a report maintaining that "Clearly, chemical warfare agents were detected and confirmed" during the war.



PHOTOS: DEPT. OF DEFENSE

After a while, units stopped going to MOPP [protective dress] when these alarms would go off because they were being told that it was because of traces of nerve agent in the air but not enough to hurt you; we have since learned that the amount of nerve agent that is capable of hurting someone is one one-thousandth of the amount required to set off that alarm over an extended period. In other words, had they been exposed to very low levels over the period of the war, there was a possibility that they could suffer serious injury. What we are seeing is probably the result of not taking those alarms seriously.¹¹

Tuite says testing carried out in the field was sophisticated and highly reliable. "Many chemical specialists have come forward, reporting that they detected chemical agents and that their detections were backed up by a number of techniques," said Tuite. "Not only were the ionization alarms sounding, but they used chemical reaction devices which confirmed the presence of agents, and mass spectrometry devices that also confirmed the presence of agents."¹² In fact, Czech, French, British, and U.S. commanders publicly reported those detections.¹³

Recently released Marine Corps battlefield reports confirm scores of CBW incidents during the ground war. One report notes that on February 24, 1991,

the "513th Military Intelligence Brigade U.S. Army confirms the use of anthrax at King Khalid Military City. Method of delivery unknown."¹⁴ Another entry, a February 25 After Action Report from the 1st Marine Division says, "Fox vehicles detected and identified Lewicite [chemical nerve] agent," which could have resulted from an Iraqi attack or "been exploded by our own artillery fire, thus causing secondary explosions."¹⁵

Army documents validate the exposure claims. In an internal memo, Army Maj. Gen. Ronald R. Blanck, commander of Walter Reed Army Medical Center, strongly supported contentions that CBW agents were present in the Gulf: "Conclusions: Clearly, chemical warfare agents were detected and confirmed" during the war. "It cannot be ruled out that [CBW agents] could have contributed to the illness in susceptible individuals."¹⁶

Reports from VA doctors also contradict the Pentagon line. Charles Jackson, M.D., Environmental Physician at the VA hospital in Tuskegee, Alabama, described one patient with classic GWS symptoms and noted that "[h]e was a member of Construction Battalion 24 which was stationed at Al Jubayl in the Gulf. We have given him the diagnosis of [GWS] and Chemical-Biological war-

fare exposure. He had none of these symptoms prior to the Gulf."¹⁷

A Gift from the Enemy

Numerous reports from the field also cite the presence of CBW agents. In August 1991, Capt. Michael F. Johnson of the 54th Chemical Troop of the 11th Armored Cavalry Regiment was briefed at the U.S. embassy in Kuwait and ordered to lead a mission "to confirm the presence of a suspect liquid chemical agent" that had been discovered on August 5 by British Royal engineers "while clearing unexploded ordnance left [by the Iraqis]" at a girls' school in south-eastern Kuwait during a hasty retreat.

Johnson later reported that tests on the suspect chemical "detected and identified highly concentrated H-Agent," an extremely toxic and volatile mustard gas agent. "Coalition soldiers

11. Interview series, Mar.-May 1995; for the nerve agent figures, see *Riegle Report*, *op. cit.*, pp. 89-93.

12. *Riegle Report*, *op. cit.*, pp. 89-93.

13. *Ibid.*

14. U.S. Marine Corps, *SECRET/NOFORN [No Foreign Dissemination]—Command Chronology for Period 1 Jan. to 28 Feb. 1991, to the Commandant of the Marine Corps (IHD)*, Apr. 5, 1991.

15. *Ibid.*

16. "Memorandum for the Surgeon General," Jan. 18, 1994.

17. Memorandum to Department of Veterans' Affairs Claims Office, Oct. 27, 1993.

What Causes GWS?

The standard definition of GWS includes the phrase "of unknown etiology," but several agents, acting alone or in concert, are widely suspected:¹

- Insecticides and insect repellents. U.S. and allied troops had their tents and uniforms saturated with insecticides and were issued insect repellents.
- Shots and pills intended to protect against chemical and biological warfare agents.
- Airborne oil contaminants. Oil well fires ignited by allied bombings and retreating Iraqi troops released tons of smoke and pollutants into the atmosphere.
- Radiation. Some shells fired by M1A1 Abrams tanks and A-10 Thunderbolt fighter bombs used depleted uranium.
- Chemical and biological warfare (CBW) agents, whether from Iraqi attacks or fallout from coalition attacks on Iraqi CBW facilities, were widely detected.

While the search for explanations has shifted to the interactions of these agents, the synergistic effects of this potential "toxic cocktail" remain little understood. But two recently completed studies, one at Duke University and the other by the VA, shed some light. In both, lab animals exposed to the same set of anti-nerve gas pills, insecticides, and pest repellents routinely issued to U.S. troops in the Gulf displayed "textbook symptoms" of Gulf War Syndrome.²

According to Dr. Mohamed Abou-Donia of the Duke study, the animals exposed to individual chemicals showed no adverse reactions, but all the combinations of chemicals produced symptoms of nerve damage. "When using them together, it is really bad news. I am confident we have more than a hypothesis," said Dr. Abou-Donia.³

Still, the results are only preliminary, and some scientists remain skeptical. "Chemicals do interact, and there are cases where the toxicity of two chemicals is far greater than when given separately," said Ernest Hodson, head of the toxicology department at North Carolina State University. "So it's credible, but that's a long way from proof."⁴

Neither do the studies examine possible CBW agents. The Pentagon denies that any such exposures occurred, and does not fund CBW studies.⁵ But new research by a respected California AIDS researcher may unlock that mystery. Microbiologist Howard Urnovitz of privately-owned, Berkeley-based Calypse Biomedical, Inc., has just completed a preliminary study on 40 sick Gulf vets that tracked a substance known as HERVS — human endogenous retrovirus — that is activated when exposed to chemical and biological toxins.⁶

According to Urnovitz, 85 percent of Gulf veterans who participated in his study tested positive for the retrovirus, which can trigger many GWS symptoms. "We know that certain exposure triggers them; the evidence is there," the re-



Navy Reserve nursing supervisor Capt. Julia Dyckman ran into trouble when she tried to report CBW injuries. Now, she too is sick.

searcher said. He cautions, however, that the results are based on a small sample and that a much larger study is necessary.⁷ Urnovitz's research has not been replicated and his findings remain preliminary.

Without the required informed consent, the army issued one of the anti-nerve gas drugs, pyridostigmine bromide, to over 696,000 U.S. troops, approximately two-thirds of whom took the pills. Ironically, it "probably would not have worked to protect soldiers against biological and chemical weapons."⁸ Worse, the soldiers were not warned about possible side effects when they were ordered to take the drugs.⁹

Whatever the cause or causes of GWS turn out to be, it is clear that U.S. and coalition soldiers were guinea pigs for a government rushing to war. "There is no question that the U.S. troops were not adequately protected when they were sent into the Persian Gulf," said Senator Jay Rockefeller (D-W.Va.), who headed the Veterans Committee investigation, "and the investigational drugs that were meant to help them could have harmed them instead. These kinds of abuses must stop, whether they involve radiation exposure, exposure to toxic chemical and biological weapons, or the careless use of investigational drugs and vaccines."¹⁰ ●

1. Tod Ensign, "Gulf War Syndrome: Guinea Pigs and Disposable GIs," *CovertAction*, n. 43 (Winter 1992-93), pp. 19-23.

2. Martin Walker, "Pentagon Tests Point to Cause of Gulf War Illness," *Guardian* (London), April 13, 1995, p. 24.

3. *Ibid.*

4. Associated Press, "Chemicals Meant to Aid Troops Are Suspected in War Ailment," *New York Times*, April 10, 1995, p. B11.

5. Walker, *op. cit.*

6. "Gulf Vets Claim Chemical Exposure," *Associated Press*, March 12, 1995.

7. *Ibid.*

8. U.S. Senate, Committee on Veterans' Affairs, "Is Military Research Hazardous to Veterans' Health? Lessons Spanning Half a Century," Dec. 1994, pp. 19-34.

9. *Ibid.*, pp. 22-23.

10. Written statement accompanying release of *ibid.*, Dec. 8, 1994.

Still Not Official

After years of refusing to admit even that many Gulf War vets were coming down sick, the U.S. government was forced by an act of Congress to begin to recognize the problem. Even though the Pentagon has refused to come up with a diagnosis, the Persian Gulf War Veterans Benefit Act of 1994 authorized the Veterans Administration "to compensate any Persian Gulf Veteran suffering from a chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses" stemming from war-related service.¹

While VA doctors working around the country have diagnosed veterans with "Persian Gulf Syndrome," it is a diagnosis that does not officially exist. The closest thing to an official diagnosis, from a Pentagon task force headed by Dr. Joshua Lederberg, was that "a number of cases in many respects resemble the 'Chronic Fatigue Syndrome.'" In other words, too much stress and overwork may have made a few people sick, but "further research" is needed.²

Nevertheless, in January 1995 the VA circulated a list of medical conditions that appear common among the Gulf veterans. They include abnormal weight loss, cardiovascular symptoms, gastrointestinal signs and symptoms, headache, joint pain, menstrual disorders, muscle pain, neurological signs or symptoms, neuropsychological signs or symptoms, and sleep disorders.³

The ailment is by no means limited to U.S. veterans. Civilian workers assigned to the region, military personnel from other coalition countries, and health officials in the Gulf all report illnesses fitting the GWS.⁴ In all likelihood, it is the civilian populations of the Gulf, particularly Iraq, that have been hardest hit. Chemical weapons do not distinguish between combatants and noncombatants.

Suffer the Children

One of the most anguishing aspects of GWS is the possibility of birth defects in the children of its victims. Leading researcher Dr. Betty Mekdeci reports birth defects and related problems in children conceived by Gulf vets after the war.⁵

A survey of more than 1,200 sick male Gulf veterans, conducted by the Senate Banking Committee last year, found that 65 percent of their children conceived after the war are ill with birth-related problems that may have been passed on by the vets.⁶ Dr. Mekdeci says the number of cases of a rare birth defect known as Goldenhar Syndrome in children of vets is "extraordinary." Goldenhar, which is triggered by toxins found both in fertilizers used in this country and in the kind of CBW agents and inoculations the vets may have been exposed to in the Gulf, is extremely rare, typically found in only one in 25,000 births.⁷



MARK LUDWIG/IMPACT VISUALS

The few studies done on GWS in the region hit by the war indicate that the civilian population was affected. Here, children in Kerbal, Iraq.

Mekdeci said doctors have identified 8 cases of Goldenhar in the sick children of the approximately 120 vets surveyed. "And these are not just children with malformed jaws and ears," she said. "These are children with missing parts including eyes and ears, and very severe expressions of the syndrome." While she believes it is too early to tell exactly what causes GWS and whether it is causing the defects, vets and their families "have symptoms of having been exposed to an immunotoxic agent, be it radiation, chemicals, or what have you."

Mekdeci adds that "basically the same things that can cause this pattern of illness can also cause reproductive problems, and we've seen this in many different situations." She cautions that her research is only in the preliminary stages, but adds, "We are seeing some unusual clustering; and we are finding some very intriguing and actually some extraordinary patterns."⁸ ●

1. "Compensation for Undiagnosed Illnesses of Persian Gulf Veterans," Department of Veterans Affairs circular 21-95-2, Feb. 1, 1995.

2. *Report of the Defense Science Board Task Force on Persian Gulf War Health Effects*, June 1994.

3. VA circular, *op. cit.*

4. Interview with Dr. Saleh Al-harbi, immunologist with Kuwaiti Ministry of Public Health, Sept. 1994.

5. Interview with Dr. Betty Mekdeci, director of the Center for Birth Defect Children, Orlando, Florida, May 1995.

6. Cited in Laura Flanders, "A Lingering Sickness," *The Nation*, Jan. 23, 1995, p. 96.

7. Interview, *op. cit.*

8. *Ibid.*

(continued from p. 8)

did experience exposure to Iraqi chemical agents," he concluded.¹⁸

British troops also reported CBW attacks. Corp. Richard Turnbull, an 18-year vet, built NBC shelters, and instructed

British troops in the use of chemical monitoring and protective clothing.

Corp. Turnbull had been based in Dhahran, Saudi Arabia, during the Gulf War, and was present on January 20, 1991, during an Iraqi Scud missile attack. "Within seconds of the warhead landing, every chemical-agent monitor-

ing device in the area was blasting the alarm," he said. "We were put into the highest alert for twenty minutes," he added, "and then we were told it was a false alarm caused by the fuel from aircraft taking off."¹⁹

18. Cited in *Riegle Staff Report*, *op. cit.*, Appendix B-3.

19. Interview, Sept. 1994.

Turnbull himself carried out two residual vapor detection tests for CBW agents shortly after the Scud hit "and both were positive." Turnbull, who has since suffered from what the British call "Desert Fever," believes his test results were correct. "We were always told that there was a 99.999 percent possibility of a chemical attack. We were expecting it. That was in our intelligence briefing. 'Inevitable' was the word used. And now they deny it," said Turnbull.²⁰

Iraqi documents captured by U.S. and British forces bolster the information in NBC logs and the on-the-scene accounts, as do reliable reports by U.S., British, and Czech chemical weapons specialists deployed in Iraq and Kuwait after the war. They found chemical munitions, including bulk agents, behind Iraqi lines, including 28 chemical warfare heads subsequently destroyed by the U.N.²¹

The captured documents contain orders to use chemical weapons. British intercepts of Iraqi communications during the war also revealed that the Iraqis were planning to use the weapons when the ground war began.²² Captured Iraqi prisoners of war told the British "substantial supplies of chemical weapons" were deployed and used in the Gulf War.²³

Blowback

Because of overwhelming allied ground and air superiority, Iraqi attacks were limited and sporadic. Even after all the reports of exposure to CBW agents after Scud landings are tallied, they fail to account for other exposures, many of which came as a direct result of allied bombings of Iraqi chemical and biological production and storage sites.

According to Riegler, his two-year study identified 18 chemical, 12 biological, and four nuclear facilities in Iraq bombed by the U.S.-led allied forces.²⁴ Debris from the bombings was dispersed into upper atmospheric currents, as shown in U.S. satellite photos, as well as in videotape obtained by Congress.²⁵

This airborne dispersal came down on the heads of allied personnel in Saudi Arabia, Kuwait, and Iraq. Official documents show weather patterns

over Iraq that carried chemical fallout to coalition troop positions. So do U.N. assessments of damage done to well-stocked Iraqi chemical storage facilities.²⁶

Reports from the recently released NBC logs, written following allied bombings of Iraqi chemical supply dumps, support this position. One entry reads: "Lt. Col. [Vicki] Merriman called. Report from Army Central Command forward. Czechoslovakian recon report detected GA/GB (mustard gases). And that hazard is flowing down from factory storage bombed in Iraq. Predictably, this has become/is going to become a problem."²⁷

Sandia, Los Alamos, and Livermore National Laboratories were consulted or prepared reports on the danger of chemical fallout from the bombings. Former Soviet CBW expert Ivan Yevstafyev warned that "strikes on chemical and biological weapons facilities in Iraq's territory could rebound on us and cause damage to the population of our country."²⁸ Gen. Raymond Germanos, a spokesperson for the French Ministry of Defense, confirmed in February 1991 the presence of chemical fallout from allied bombings, "probably neurotoxins...a little bit everywhere."²⁹ And in July 1993, the Czech Defense Ministry said it was able "to irrefutably confirm traces of chemical warfare agents," including the deadly nerve agents sarin and Yperite.³⁰

We Don't Want to Hear It

The cover-up is being compounded by a growing body of evidence that the military has harassed and mistreated Gulf veterans for reporting ill-effects from CBW exposures. Navy Reserve Capt. Julia Dyckman of Harrisburg, Pennsylvania, a 27-year veteran with service in Vietnam, Panama and the Gulf, was a nursing supervisor in a 500-bed field hospital in Riyadh, Saudi Arabia, where she oversaw thousands of GI patients. "We treated people, but none of them for chemical illnesses," said Dyckman, "because we were told there were no chemicals. So if somebody came in with

[conditions] like what I had, open sores, which I think was from a blister agent, we didn't treat them for that." Dyckman said she was told the blisters and festering open sores were from desert sand.³¹

Dyckman ran into problems with the Navy when she was asked to serve on a REDCOM 4 (Readiness Command) committee to welcome back the returning veterans. "When I started interviewing people, they were complaining of the same illnesses that were plaguing me, so I started documenting the complaints," she said. When she started reporting back to REDCOM's Capt. Brian Silk, he filed "negative and harassing reports," and removed her from the REDCOM payroll.³²

Members of National Guard units may have been discharged for complaining about illnesses. A Guard memo reviewing medical records for its Gulf veterans concluded that the VA had "inadequately address[ed] vague and undiagnosed illnesses resulting from exposure to environmental hazards" and that "several hundred National Guard soldiers, ordered to Desert Storm/Shield Active Duty, incurred medical conditions in the line of duty and were erroneously released from that duty."³³

On occasion, supposed DoD concern about vets turned into browbeating. Lt. Col. Vicki Merriman, an aide to the Deputy Assistant Secretary of Defense for Chemical and Biological Matters, and who appears in the NBC logs reporting on CBW alerts, contacted veterans after they appeared before the Riegler committee. Among them was former U.S. Army Sgt. Randall L. Vallee. Vallee served as an advance scout and has been afflicted by a half-dozen serious medical conditions which began following Scud attacks that set off chemical monitors. Merriman called him after he testified about what he believed to be his exposure to CBW agents.

"She asked me about my health and my family," said Vallee. "But after some small talk...the Colonel's attitude turned from one of being concerned about my well-being to an interrogator trying to talk me out of my own experiences." Vallee added that Merriman claimed there was "absolutely no way that any soldiers in the Gulf were ex-

20. *Ibid.*

21. U.N. reports cited in *Riegler Report*, pp. 48-49.

22. John Fullerton, "Britain's Phantom Army Helped Defeat Iraq," *Reuters*, Mar. 2, 1991; Jesse Birnbaum, "The Prisoners," *Time*, Mar. 4, 1991, p. 37.

23. *Riegler Report*, *op. cit.*, pp. 18-21.

24. Letter to Veterans Affairs Sec. Jesse Brown, Feb. 9, 1994.

25. *Riegler Report*, *op. cit.*, pp. 87-88.

26. *Ibid.*

27. *Desert Storm Nuclear, Chemical, and Biological Incident Log*, Mar. 18, 1991, declassified and released Jan. 18, 1995.

28. Stephan Handelman, "Kremlin Growing Frustrated With Outsider," *Toronto Star*, Feb. 10, 1991.

29. "Chemical Fallout Detected in Iraq," *Xinhua General Overseas News Service*, Feb. 4, 1991.

30. Quoted in *Riegler Report*, *op. cit.*, p. 88.

31. Interview, May 16, 1995.

32. *Ibid.*

33. "Action Memorandum For Acting Chief, National Guard Bureau, Office of the Inspector General," June 30, 1994.

posed to anything," Vallee quotes Merri-man as saying, "the only ones whining about problems are American troops; why aren't any of our allies?"³⁴

In fact, they are, and they are getting the same treatment. Wendy Morris co-directs the Gloucester, England-based Trauma After Care Trust (TACT), a private organization that assists sick British Gulf veterans. Morris said TACT has been contacted by hundreds of British veterans who claim to be afflicted with war-related medical conditions.

"We can assume it's only the tip of the iceberg," said Morris. "Until recently, they've been very reticent about coming forward, because they're worried about their careers, postings, pensions, and what have you, but there are gradually more coming out of the woodwork because they are so sick and needy."

The British soldiers have received unsympathetic responses from their superiors. "They're called weak and wimps, told they haven't got any guts, no moral fiber, that sort of thing. They tell them it's all psychological," Morris added. "The latest development is that anybody who has got these problems, which 'had nothing to do with the Gulf,' of course, must be seen by a military specialist for tests. Now, a lot of men and women have gone for these tests, but nothing has come out of it. They've had blood tests, urine tests, the usual sorts of testing, but no treatment."³⁵

Missing Records

Part of the problem in determining the causes and scope of GWS is a lack of records, and it is occurring throughout the armed forces. Some records may have been lost or destroyed through incompetence or negligence, but the military is deliberately suppressing important information as well.

In response to the Gulf War Veterans of Georgia FOIA request, Lt. Gen. Richard I. Neal, Deputy Commander of the U.S. Central Command, cited national security in refusing to release NBC logs. "Portions of this [NBC] log contain material which is properly classified pursuant to an executive order in the interest of national defense. Accordingly, your request is denied in part."³⁶

Two months later, the military admitted destroying some NBC logs. In reply to the same FOIA request, Anthony Ste-



BILL GASPER/IMPACT VISUALS

In addition to the toxic effects of oil fires, Iraq has complained to the U.N. that depleted uranium-tainted tanks and ammunition have caused "baffling pathological conditions" similar to those implicated in GWS.

pleton, a civilian aide to Forces Command commander Gen. Dennis Reimer, revealed that the Army's "1st Cavalry Division...NBC logs [were] destroyed," and that NBC logs from the Army Central Command, the 3rd Army, and other units may have been destroyed as well.³⁷

The Marine Corps is also implicated. Two marines stationed at Camp Pendleton, near San Diego, former Cpl. Patrick Weissenfluh and Sgt. Todd See, reported seeing hundreds of records from the Gulf War being destroyed. "They had a trash can that they were dumping...the medical records in and burning them," said See.³⁸ Such incidents may reflect Marine Corps concerns about future claims related to GWS. One Marine Corps internal document says:

Several sources have suggested that the documentation of exposure to smoke within the geographical boundaries of Kuwait should be placed in members' health records. Placing such information could wrongly imply possible health problems in the future, while all the information to date suggests no health hazard exists. Unless there are current health complaints, there is no reason to make health record entries.³⁹

And in response to the FOIA request from the Gulf War Veterans of New England that resulted in the recent partial release of Marine Corps battlefield reports, the Marines noted: "We have determined that portions of the information are exempt from release...Other documents have been withheld in their entirety."⁴⁰

The Navy has also been accused of mishandling Gulf War medical records. Navy personnel say that in November 1991, the Navy removed records from the medical files of sailors with GWS. Sailors claim these records prove they were exposed to CBW agents in the Gulf.⁴¹

Navy Captain Julia Dyckman tells a similar tale. "We kept statistical records and data that we sent to the Navy Research Center in San Diego, but they said they never received them," she said. "We sent medical encounter sheets on the 10,000 we saw over the period we were in Saudi Arabia, and they claim it never arrived. Convenient, isn't it?"⁴²

Dyckman now suffers from a variety of disabling medical conditions and has tried without success to get her own records from the Navy to assist her in seeking treatment.

Dean Lundholm, the soldier exposed running from the shower and now dis-

(continued on p. 55)

34. Interview, Aug. 1994.

35. Interview series, Aug.-Oct. 1994.

36. Letter to Gulf War Veterans of Georgia, Jan. 27, 1995.

37. Letter to Gulf War Veterans of Georgia, Mar. 13, 1995.

38. Norm Brewer, "Reports Military Destroying Gulf War Records on Increase," Gannett News Service, Apr. 7, 1994.

39. U.S. Marine Corps order from Central Command's Arlington Annex Message Center to ALMAR, Aug. 1991.

40. Letter from Maj. S.D. Preda, Marine Command Adjutant, May 9, 1995.

41. Soraya Nelson, Vago Muradian, and Didget Fuentes, "Why Are We Sick?," *Army Times*, Apr. 25, 1994, p. 12.

42. Interview, May 16, 1995.

The Militia-Military Connection

by Tod Ensign



Timothy McVeigh, top center, with his platoon, Fort Benning, Georgia, 1988.

After Timothy McVeigh was arrested in connection with the bombing of the federal building in Oklahoma City, a flock of reporters swooped down on anyone who had ever known him. One of McVeigh's high school classmates described him as "a quiet friendly teenager. I was thinking," she said after hearing of his arrest, "what happened to him between then and now? It must have been a lot." The next sentence in the April 22 Washington Post story began: "He joined the military after high school. ..."

While the military did not teach McVeigh to bomb, it did teach him to kill. The 1981 film *Soldier Girls* follows inductees through basic training and makes the point that the Army's hardest job is not to get these

raw recruits to risk death, but to break down a visceral reluctance to kill people they don't know and don't hate.

That job is harder in some cases than in others. But whether the training brings out an inherent animal viciousness just below every human skin or destroys some benevolent instinct is beside the point. The result is a society in which millions of people have been taught to cross a line.

While most people emerge from the military as decent citizens, they bear the mark, some lightly, some deeply, of having been indoctrinated by a highly efficient military machine in the belief that killing is a valid, even glorious, way to settle disputes and scores. They also learn the skills to do it efficiently. This article explores the tangible connections between the military and the militias. — ed.

Tod Ensign is director of Citizen Soldier, GI and veterans rights organization based in New York City.

Links between the Army and the militias became the focus of much unwanted attention when it was discovered that the two men charged with the federal office building bombing in Oklahoma City, Timothy McVeigh and Terry L. Nichols, had trained and served together for about a year with the First Infantry Division in 1988-89. McVeigh's service included combat duty as a gunner in a Bradley Fighting Vehicle in the Gulf, for which he was awarded a Bronze Star.

Army officials at Ft. Riley, Kansas, where McVeigh and Nichols were stationed, were quick to disassociate the military from the bombing. "It's got nothing to do with the Army. No one [there] taught that young man to blow up federal buildings or day care centers," fumed Maj. Don Sensing, Army Criminal Investigation Command's public affairs officer.¹

According to the *Washington Post*, the 500-member Kansas Militia claims to have recruited a number of members from the Ft. Riley area.² The degree of involvement by reservists or active-duty GIs in the burgeoning militia movement is unknown at present. There is evidence that militia members or sympathizers have legally and illegally obtained weapons and explosives from military facilities and learned how to use them courtesy of the taxpayers. Stolen explosives and weapons, according to testimony of a Los Angeles police detective at a 1993 hearing of the Senate Governmental Affairs Committee, were allowing extremist groups to become better armed than law enforcement agents. At the same hearing, a Michigan National Guardsman admitted that for five years he had been stealing small arms parts and selling them to an Illinois gun dealer whose customers included David Koresh's Branch Davidian religious sect near Waco, Texas.³ In early 1987, five Ku Klux Klan members were charged by a federal grand jury in Raleigh, N.C., with conspiring to steal U.S. military weapons, explosives and rockets to equip a white supremacist paramilitary unit. In 1988, an associate of former Green Beret Lt. Col. and current Idaho-based militia leader James

(Bo) Gritz, pleaded guilty to shipping 200 military plastic explosives by commercial airline for use in the Nevada desert to train Afghan rebels.⁴ In July 1994, members of the Blue Ridge Hunt Club, a militia in Virginia, were charged with plotting to plunder a National Guard armory for weapons and ammunition.

For five years, Sen. John Glenn (D-Ohio) has been investigating the widespread theft of military equipment and weapons from various U.S. installations. He commented that while the military has improved control over sensitive weapons and supplies, "you can't guarantee that TNT or blasting caps are immune from theft."⁵ Glenn's office

Militia members have legally and illegally obtained weapons and explosives from military facilities and learned to use them courtesy of the taxpayers.

released a General Accounting Office report on corrective actions taken by the Army to cure "inventory and physical security weaknesses." It also noted that in July 1994, the Army's Criminal Investigation Command began an on-going vulnerability assessment for small arms, ammunition, and explosives.⁶

In addition to those obtained through theft, many weapons obtained by militias were bought openly from the military. Since 1993, 3.7 million pounds of outdated explosives have been sold by the Defense Department to citizens and companies with government licenses. A Pentagon official admitted that no checks are made to ensure that the lethal items are used for legal purposes.⁷

Training

One crossover point for the militias and the military is a nationwide network of

gun clubs. After the bombing, Michigan Militia leader Mark Koernke bragged to ABC-TV's *Primetime Live* that his group enjoyed unrestricted access to Camp Grayling for target practice.⁸ A week later, some members of the Michigan Militia, which claims 10,000 members spread out over three-quarters of the state's counties, were evicted.⁹ They had been using the rifle range at the training base under the guise of the Competitive Sportsmen, a military-sanctioned gun club.

The Competitive Sportsmen is one of 1,945 registered gun clubs allowed to use target ranges at military bases without charge, as part of the Army's Civilian Marksmanship Program (CMP). This gun lovers' bonanza was established after the Spanish American War because military leaders like Teddy Roosevelt were disturbed by the poor marksmanship skills of their soldiers. In 1989, about 165,000 people (with 41 percent under 21 years old) participated in various aspects of the program.¹⁰ An Army spokesperson for CMP described it as "an innocent recreational affair that promotes civic virtue and aids safe training for young people."¹¹

Even though the Pentagon has admitted that the \$2.5 million a year civilian marksman program has "no military purpose," it has been preserved thanks in part to strong backing by the National Rifle Association. For the last three years, Rep. Carolyn Maloney (D-N.Y.) has fought to scrap the program as "useless and wasteful." After the Oklahoma City bombing, she called on Defense Secretary William J. Perry to conduct an immediate investigation of any "links between this program and militia groups and individual extremists," and provide a complete list of registered gun clubs, and locations of the military bases on which they practice. According to Maloney's legislative aide, Mark Stephenson, the DoD sent a list of gun clubs, did not "find evidence" of links, and did not provide a list of bases. "Although the base commanders would prefer that the knowledge not become public," said Stephenson, "by statute,

1. Pete Bowles, "Army TNT?" *New York Newsday*, Apr. 27, 1995, p. A5.

2. Thomas Heath, "Possible Jump-Off Point for Bombing," *Washington Post*, Apr. 30, 1995, p. A22.

3. In the mid-1980s, congressional investigators reported that military explosives had been used in 445 U.S. bombings from 1976 to 1985.

4. Josh Meyer and Paul Feldman, "Move to Curb Explosives Taking on a New Urgency," *Los Angeles Times*, May 6, 1995.

5. Bowles, *op. cit.*, p. 32.

6. Donna Heivilin, GAO testimony, "Gun Violence: Do Stolen Parts Play a Role?" Committee on Governmental Affairs, Senate, Nov. 18, 1993.

7. *Ibid.*

8. ABC News, *Primetime Live*, Sam Donaldson, interviewer, Apr. 25, 1995.

9. Guy Gugliotta and Sue Sherman, "Militia Members Ejected from Shooting Range," *Washington Post*, May 5, 1995.

10. GAO Report, *Evaluation of Army's Civilian Marksmanship Program*, T-NSIAD-90-20, Mar. 8, 1990, concluded that the CMP, "serves no valid military purpose."

11. Colum Lynch, "U.S. Rifery Program May Aid Militias," *Boston Globe*, Apr. 29, 1995, p. 1.



JEROME FRIAR/IMPACT VISUALS

Ku Klux Klan member with a semiautomatic weapon stands guard at Klan/Nazi rally, rural N.C.

target ranges are open to all people 'capable of bearing arms.'¹²

In addition to free use of the ranges, CMP distributes 40 million rounds of free ammunition and sells 6,000 surplus M-1 rifles at cut-rate prices each year.¹³

After the wave of criticism threatening program funding, Rep. Paul Gilmore (D-Ohio) introduced language that would make the program financially self-sustaining but still under DoD aegis. Presumably, Stephenson speculated, the NRA would pick up most of the tab.¹⁴

Extremist on Active-Duty?

The attention brought to the use of military bases and equipment by civilian militia was not the only effect of the Oklahoma bombing on the military. The Pentagon is also worried that the military provides not only material aid, but also organizational comfort to some of

the worst elements in the militias. Similar and sometimes linked strains of organized white supremacy are found in both government-sponsored and civilian military formations.¹⁵ A few days after the April 19th bombing, Perry reissued a 1969 Defense Department Directive to all service branches. It provides, in part, that: "Military personnel must reject participation in organizations that espouse supremacist causes ... or advocate the use of force or violence." Commanders are empowered to deal with such activity with a range of responses from court-martial to involuntary discharge.¹⁶

While this directive was originally aimed at anti-Vietnam War soldiers and sailors and "coffee house" organizers, in recent years it has been primarily directed at GIs who support para-Nazi and white supremacist causes. There is a long

history of such associations.

In 1976, a Ku Klux Klan chapter was uncovered among Marines serving at Camp Pendleton, California. A cross was burned near the base and at least two black Marines on base were attacked by whites wearing Klan insignia. Marine Cpl. Daniel Bailey, Jr., who identified himself by his Klan rank, Exalted Cyclops, told reporters that a hundred Marines belonged to the branch. The Marine Corps had suppressed any information about the Klan's activities until a group of black Marines attacked a white gathering in the (mistaken) belief that it was a Klan meeting. During their courts-martial, the black Marines testified that their commanders had tolerated the flaunting of Klan regalia, had allowed the distribution of racist literature, and had ignored attacks on black Marines by Ku Klux Klan mem-

bers.¹⁷ While most of those convicted received some jail time and other-than-honorable discharges, white Marines suspected of Klan sympathies were simply shipped out to other duty stations.¹⁸

Further light was shed on organized racist groups within the military in 1985 when it was discovered that the White Patriot Party of North Carolina was successfully recruiting Marines and soldiers. According to the *New York Times*, a number of the neo-Nazi sympathizers within the military were identified after they sold Claymore mines,

The military has always attracted more than its fair share of right-wing extremists and white supremacists.

rockets, grenades, and small arms to undercover agents in a "sting" operation. Three of the service members were dishonorably discharged.¹⁹

Ideal Recruiting Grounds

The road between the militias and the military is a two-way street with the National Guard and Reserve as a convenient way station. The tragic events in Oklahoma City have heightened the concern of all National Guard and Reserve commanders that militia members may be infiltrating their ranks in order to gain skills and equipment. The militias are also looking to those official "weekend warriors" with military skills and right-wing views as natural targets for recruiting.

Clearly, the Army is not ignorant of the possibilities. In Michigan, home of the largest militia, the Army National Guard's adjunct general warned members that they are not allowed to belong to racist or extremist organizations. But some Guard units are more solicitous of their local militias. After an incident involving an Idaho National Guard helicopter overflying a Montana militia group, Idaho officials agreed to notify their Montana counterparts in advance of any future flights.²⁰

17. Everett Holles, "Marines in Klan Openly Abused Blacks at Pendleton....," *New York Times*, Jan. 9, 1977, p. 34.

18. Dennis Williams & William Cook, "The Marines: Mistaken Identity," *Newsweek*, Dec. 13, 1976, p. 35.

19. Peter Applebome, "Increasingly, Extremism Heavily Armed," *New York Times*, Apr. 30, 1995.

20. One of the conspiracy theories widely bandied about in the Patriot/militia movement is that the U.S. is about

12. Interview, May 18, 1995.

13. Press Release, Office of U.S. Rep. Carolyn Maloney, Washington, D.C., April 28, 1995.

14. Interview, May 18, 1995.

15. For detailed background on the militias, their ideology and roots, see Daniel Jonas, "The Rise of the Militias: Angry White Guys with Guns," *CAQ*, Spring 1995, pp. 20-25.

16. William Matthews, "DOD Extremist Groups Still Off Limits," *Army Times*, May 8, 1995, p. 18.

It is impossible to tell exactly how many Guard members and reservists also belong to locally-organized militias. The situation at Ft. Drum, home of the 10th Mountain Division in upstate New York, illustrates the difficulty of trying to keep militia members away from military training and combat weapons, even if there is a will to make such a separation. Each year, 35,000-40,000 National Guard members and reservists from all over the Northeast train there for varying periods.²¹ It would be impossible to monitor individual trainees to determine which ones were planning to apply their instruction in support of their home town militia.

Col. Robert R. Waters (Ret.) is a career Green Beret who now edits a special operations journal called *Behind the Lines*. He told *Army Times* that he believes the militia movement is gaining momentum. He also raises a disturbing scenario: "Obviously, they're going to seek [specialized] training from those who can provide it."²²

to be taken over by a one-world government spearheaded by a U.N. helicopter fleet.

21. Interview with R. D. Murphy, Public Affairs Office, Ft. Drum, N.Y., May 9, 1995.

22. Nef Hudson, William Matthews & Katherine Peters, "Are the Militias Too Close for Comfort?" *Army Times*, May 8, 1995.



Members of the paramilitary White Patriot Party of North Carolina prepare for a rally.

The militia phenomenon arises out of a toxic stew of legitimate anger, scapegoating, and paranoia. Its links to the military, and the support of the taxpayers are more than an irony for a group which openly despises the government. But the militias and the military have much in common aside from their obvious predilection for weaponry and the violent resolution of conflict. Like the militias, the U.S. military has always

attracted more than its fair share of right-wing extremists and white supremacists. Its rigid structure and rules probably appeal to those whose personalities tend toward authoritarianism. Without understanding these common bonds, as well as the physical links, civil society will never be able to understand, much less root out, "irrational" acts of violence like Oklahoma are calculated declarations of adventurous war. ●

(Books, continued from p. 58)

crawled out from under his rock a few years ago. Now, with these two books, the counterattack is in full swing. And Limbaugh has made himself an easy target.

He would be just another loud-mouthed moron unworthy of our exertions, except for the fact that he shapes and then amplifies and distorts the festering discontents of a large portion of U.S. society. That makes him pernicious. Molly Ivins, in her introduction, makes the point sharply as she quotes one dittohead: "You know, Rush is right: Racism is dead in this country. I don't know what the niggers have to gripe about now."

In *The Way Things Aren't*, the folks at media watchdog Fairness and Accuracy in Reporting (FAIR) slay the Lyin' King with his own words. Steven Rendell and his crew have compiled more than a

hundred outrageously false and foolish Limbaugh "facts" and documented both their errancy and the real story.

The Way Things Aren't is a damning and hilarious rebuttal of Limbaugh's passing acquaintance with truth.

Charles Kelly's *The Great Limbaugh Con* is a more idiosyncratic critique. Kelly, a professor of industrial communications with, as he says, "very conservative views on most non-economic issues," takes Limbaugh to task as the leading propagandist of "a historically malignant philosophy."

Kelly describes it as the belief that "those who make their livings by taking advantage of our least educated and hardest working citizens should control our country and reap most of its benefits." For Kelly, Limbaugh is the leading cheerleader for this piratical capitalism.

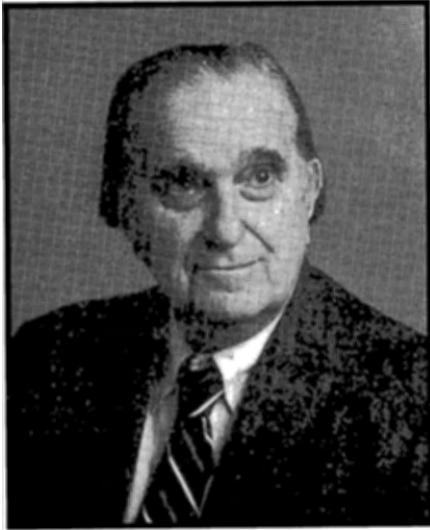
It is in this context that Kelly zeroes in on Limbaugh's "big lies." In fact, Kelly devotes the last third of his book to a detailed analysis of economic development in Spartanburg, South Carolina, and the South in general. He uses this area as a symbol for the idealized America of Limbaugh's fantasy and describes Spartanburg as "a Limbaugh dream come true" and "one of conservative America's premier economic success stories." In other words, as Kelly says, the rich got richer and everyone else got the shaft.

Kelly thoroughly exposes the pseudo-populist Limbaugh as the apologist for rapine and plunder he really is. For your Reagan Democrat, working-class uncle who listens to Rush's gospel, this may be the place to start. ●

— Phillip Smith

Frank Donner: An Appreciation

by Chip Berlet



Frank Donner (1911-1993) identified communism as the right wing's primary scapegoat during this century, and researched how rightwing paramilitary groups were encouraged by intelligence agencies and local police red squads to fight alleged collectivist subversion. With the collapse of the Soviet Union, the proto-fascist militia movement has transformed the dysfunctional scapegoat of the "red menace conspiracy" into the "one world government, new world order conspiracy." The government itself has become the new subversive collectivist enemy and a target for a heinous act of right-wing terror in Oklahoma City.

In response, the countersubversion empire is trying to rise phoenix-like from the ashes of the Cold War by asking that its investigative talons be unsheathed to fight a paranoid right-wing movement it helped create. The many lawsuits against political spying advised by Donner found scant evidence that widespread infiltration and bugging stopped acts of violence, but much evidence that the protectors of privilege use these repressive tools to undermine demands for social change. The weapons we give the FBI today to fight the right will inevitably be aimed at progressives. It is a shame that Donner is not around to comment on these tragic ironies.

By the time Donner died in 1993, the central thesis of his investigations into government abuses of its law enforcement powers had moved from the obscure to the self-evident. At the core of his life's work was a key contention: The unstated and primary goal of surveillance and political intelligence gathering by state agencies and their countersubversive allies is not amassing evidence of illegal activity for criminal prosecutions, but punishing critics of the *status quo* in order to undermine movements for social change.

Donner presented his ideas not just in legal briefs, but in scholarly settings and the popular press.¹ His evidence came not only from digging in archives — helped by paralegal "file ferrets" who passed on anything interesting to him — but also from working in the trenches. He began in the late 1940s as a civil liberties attorney. When the Cold War intensified in the 1950s, he represented targets of Red Menace witch hunts, defending people charged with sedition under the Smith Act, counseling those dragged before congressional committees, and writing appeals for defiant witnesses slapped with contempt citations. These experiences "illuminated in a new perspective the underpinnings of repression in our political culture. ... [S]urveillance, people watching, and similar activities unrelated to law enforcement," Donner warned, "constituted a serious and largely ignored threat to political freedom."²

In 1971, Donner became director of the American Civil Liberties Union Project on Political Surveillance. Consider the times. That year, at the height of the Vietnam War, a still-secret group, the Citizens' Commission to Investigate the FBI, had raided the FBI office in Media, Pa. The raiders sent copies of the files they stole to progressive, mainstream and campus journalists. The documents proved what progressive activists had long contended: Civil rights, student rights, and antiwar activists were victims of FBI surveillance and harassment.

Chip Berlet, an analyst of Cambridge, Mass.-based Political Research Associates, worked as paralegal investigator and file ferret on lawsuits involving government intelligence abuse, including several years on an ACLU-sponsored/Donner-advised lawsuit against the Chicago Police Red Squad, FBI, CIA, and military intelligence.

1. One of his early pieces was a 1954 article in *The Nation* analyzing the role of the government informer.
2. Frank Donner, *The Age of Surveillance: The Aims & Methods of America's Political Intelligence System* (New York: Alfred Knopf, 1980), p. xvii.

The Media, Pa., raid sparked mass media interest, congressional hearings, and lawsuits. In each arena, Donner acted as adviser and expert. He argued that COINTELPRO (Counter-Intelligence Program) was not a series of isolated instances of abuse, but rather, was part of an institutionalized system using surveillance as "a mode of governance" and political control.³

In two major books,⁴ Donner added weight to his contention that:

Intelligence in the United States serves as an instrument for resolving a major contradiction in the American political system: how to protect the status quo while maintaining the forms of liberal political democracy. ... [I]ntelligence institutions have in the past acquired strength and invulnerability because of their links to two powerful constituencies: a nativist, anti-radical political culture, and an ideological anti-communism, identified with Congress and the executive branch respectively.⁵

The nativist, anti-radical culture reflects that:

The American obsession with subversive conspiracies of all kinds is deeply rooted in our history. Especially in times of stress, exaggerated febrile explanations of unwelcome reality come to the surface of American life and attract support. These recurrent countersubversive movements illuminate a striking contrast between our claims to superiority, indeed our mission as a redeemer nation to bring a new world order, and the extraordinary fragility of our confidence in our institutions. This contrast has led some observers to conclude that we are, subconsciously, quite insecure about the value and permanence of our society. More specifically, that American mobility detaches individuals from traditional sources of strength and identity — family, class, private associations — and leaves only economic status as a measure of worth. A resultant isolation and insecurity force a quest for selfhood in the national

state, anxiety about imperiled heritage, and an aggression against those who reject or question it.⁶

This mentality was fed by periodic bouts of state repression that transcended the specificity of anticommunism, but in which anticommunism played a central and exaggerated role. It was this institutionalized culture of countersubversion that most concerned Donner. He worried that

An independent organ of state administration operating to monitor, punish, and frustrate extra-judicially the political activities of a country's nationals is the classic embodiment of a political police force and, indeed, a benchmark of a police state. Certainly we are far from a police state; but it would be a semantic quibble to deny that the FBI is a political police force with a counter-revolutionary mission typical of such units in nondemocratic societies.⁷

The Politics of Deferred Reckoning

"The selection of targets for surveillance, operations such as informer infiltration and wiretapping, and file storage practices reflect what may be called the politics of deferred reckoning." The intelligence community *anticipated* threats by relying on "ideology, not behavior, theory not practice." It

In the genesis of witch hunts, subversive begat extremist which begat terrorist.

treated activities which might be aimed — some time in the future — at undermining the government, as subversive, "regardless of how legitimate these activities might currently be or how tenuous the link between present intentions and ultimate action."⁸ This view justified the constant surveillance and dossier-compiling: It would be needed when the subversives' evil plan surfaced.

While the institutionalized procedures remained remarkably constant — merely made more efficient with the advent and advances of computer technology — while the language used to de-

scribe the menace evolved. In the genesis of witch hunts, subversive begat extremist which begat terrorist.⁹

Central to rationalizing surveillance and disruption was fear of revolutionary violence. Donner explained that "appeals relating to collectivism and statism have little power to stir mass response. But the charge of violence, however mythic it has become, is the rock on which the intelligence church is built. It accommodates repression to democratic norms that exclude violent methods." During the Cold War, violence from the left was quickly attributed to communists, while violent right-wing groups such as the Ku Klux Klan were seldom targets of widespread surveillance or political repression. Not seen as part of a global revolutionary movement, they were monitored, as Donner put it, "primarily for crime prevention purposes."¹⁰ This double standard made "a special contribution to conservative politics," since social change movements of the left could be smeared as agents and fellow travelers of the violent revolutionary global red menace, while activists of the right could escape blame for the criminal excesses of a few reactionary and fascist zealots.

Fear of the Other

A key tool used to justify the anti-democratic activities of the intelligence establishment was propaganda designed to create fear of a menace by an alien outsider. The timeless myth of the enemy "other" assuages ethnocentrist hungers with servings of fresh scapegoats. As Donner noted: "In a period of social and economic change during which traditional institutions are under the greatest strain, the need for the myth is especially strong as a means of transferring blame, an outlet for the despair [people] face when normal channels of protest and change are closed."¹¹

Fear of foreign-inspired communism (at least for the moment) has been retired as the alien subversive "other," but it has stand-ins: Islamic fundamentalists, environmental activists, even the mythical "PC" police. These scapegoats are constructed to defend the status quo and preserve the perquisites of power

3. Donner, "Theory and Practice of American Political Intelligence," *New York Review of Books*, Apr. 22, 1971.

4. *Age...*, *op. cit.*; and *Protectors of Privilege: Red Squads and Political Repression in Urban America* (Berkeley: University of California, 1991).

5. Donner, *Age*, *op. cit.*, pp. xix, 3.

6. *Ibid.*, p. 3.

7. *Ibid.*

8. *Ibid.*, p. 4.

9. *Ibid.*, pp. 4, 5.

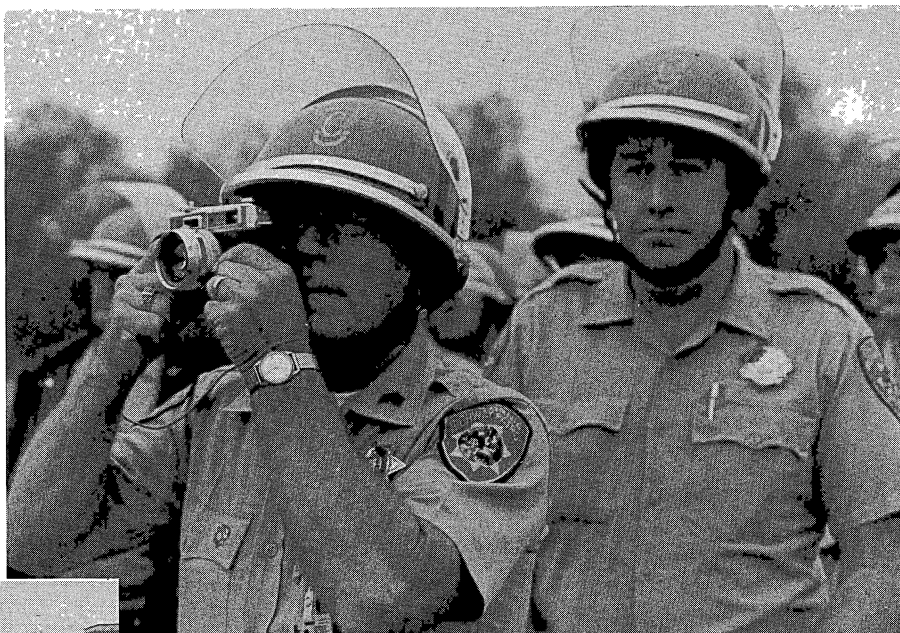
10. Donner noted the addition "extremist" to the countersubversive arsenal of demonizing language, and discussed how the Reagan administration and the New Right marginalized dissident groups as "terrorist." (*Ibid.*, pp. xv, 5, 455-60.)

11. *Ibid.*, p. 17.

as interpreted by the self-appointed guardians of wealth and wisdom who equate their commerce with our culture. Stoking fear of "others" is "a means of discounting domestic unrest," said Donner. "It also enables intelligence to justify its efforts as defensive, a necessary and temperate response to enemies gnawing away at the nation's entrails."¹²

Countersubversion

While Donner did not predict the end of the Cold War, he did foresee that in the future, intelligence operations would be needed "to replenish the supply of subversives from the ranks of dissidents." There was "too much at stake for conservative power holders to abandon a countersubversive response to change



SEAN SPRAGUE/IMPACT VISUALS

Cops photographing demonstrators at anti-nuclear power rally, Lawrence Livermore Laboratory, Calif., 1982. Demonstrators against U.S. policy in El Salvador, often viewed as subversive (l.).



RICK REINHARD

movements." As long as the culture of surveillance was institutionalized as a mode of governance, intelligence operations would serve not only to blunt protests against foreign policy decisions, but also to "discredit the predictable movements of protest against the threat of war, nuclear weaponry, environmental contamination, and economic injustice."¹³

Donner called the process by which dissidents are made into outlaws "subversification." Both individuals and groups are targeted. "The focus on ring-leaders, outside agitators, foreign agents, hidden conspirators, and master manipulators — *cherchez la personne!* — personalizes unrest and thus detaches it from social and economic causes. Under this view the people are a contented lot, not given to making trouble until an 'agitator' stirs them up. As soon as he or she is exposed or neutralized, all will be well again."¹⁴

this Kafka-meets-Orwell world, lack of evidence of conspiracy becomes proof that one exists; "a cover-up was part of the conspiracy and...the absence of proof demonstrates its effectiveness."¹⁵ The recent work of journalist Steven Emerson and the interviews with former FBI hardliner Oliver "Buck" Revell are examples of this process.¹⁶

Ironically, there is handful of conspiracist anti-repression personalities whose status rests on their ability to reel off hundreds of names of evil government agents or right-wing activists. By creating a mirror image of the countersubversion culture they are fighting, they fall into a Byzantine web of intrigue that obscures the social and economic conditions which actually shape history. Donner avoided this parody of analysis and still produced what Robert Sherrill of *The Nation* called "The only book I know of that straightforwardly — without the slightest hyperbole but

without drawing back from the only conclusion possible — portrays Hoover and the F.B.I. as the fascistic machine that they were."¹⁷

Donner knew that the larger social system was not fascism, but he also recognized that the authoritarian impulse of the institutionalized surveillance and dossier-collecting apparatus pulls the country in that direction. He saw in the Watergate scandal evidence of a "covert vigilante state" where those who challenged presidential policies became targets, just as in a police state. He applauded "the public airing of official misconduct — the train of admissions, defensive pleas, resignations exposés, and court trials," but concluded that these revelations "cannot alter the hard reality that our democratic commitment is threatened by a vigilante political culture deeply rooted in our past."¹⁸ ●

17. Emerson makes unsubstantiated allegations of widespread conspiracies in the Arab-American communities and brushes aside his lack of documented evidence by implying it only proves how clever and sinister the Arab/Muslim menace really is. This is a prejudiced and arabophobic twist on the old antisemitic canard of the crafty manipulative Jew. Revell, an ex-FBI associate director for operations who once networked right-wing *agents provocateurs* for the FBI, now poses as a counterterrorism expert who uses the lack of evidence that widespread terror networks emerge from the center of social movements as the very reason the FBI needs more powers to infiltrate and wiretap the core of such movements. In fact, terror cells emerge from the periphery of such movements and are generally resistant to intelligence operations.

18. Age, *op. cit.*, back cover.

12. *Ibid.*, p. 11.

13. *Ibid.*, p. 19.

14. *Ibid.*, p. xv.

15. *Ibid.*, p. 14.

16. *Ibid.*, p. xv.

Professional Arab-Bashing

A stable of government officials, media, and "terrorism experts" filled the gap between the Apr. 19 Oklahoma City bombing and the Apr. 21 arrest of Timothy McVeigh with an explosive fertilizer of its own: insinuation, fear, and racism.

by Terry Allen



TOM MCKITTERICK/IMPACT VISUALS

Headlining an April 21 article, "Public Assumption Initially Centered on Foreigners," The Washington Post, began, "The rage at first was often *Us against Them*. The bombing in Oklahoma City seemed to be a clear and awful case, many people said, of American innocence bloodied by foreign evil." The story was attempting not only to blame Arabs, but to shift responsibility for that unseemly assumption to the public.

But the question is: Did the public jump to that conclusion or was it pushed? A selection of quotes from the mainstream media suggests a more than gentle shove.

The Media Spin a Noose

☛ "U.S. government sources told CBS News that [the bombing] has Middle East terrorism written all over it." (Connie Chung)

Terry Allen is editor of *CovertAction Quarterly*.
Photo: Middle Eastern immigrants in Brooklyn store.

☛ "The FBI has been aware of the activity of Islamic student groups meeting recently in Oklahoma City, Dallas and Kansas City.... Hamas and another militant group, Islamic Jihad, were among the speakers at an Islamic conference held in the Oklahoma Convention Center in 1992." (Washington Post) and, "Steven Emerson says: 'Oklahoma City, I can tell you, is probably considered as one of the largest centers of Islamic radical activity outside the Middle East.'" (CBS Evening News)

☛ "Some Middle Eastern groups have held meetings there [Oklahoma City], and the city is home to at least three mosques." (New York Times)

☛ "Based on the type of previous car bomb attacks in the Middle East, New York and Argentina, this Oklahoma attack has some of the earmarks of hits by extremist factions of Muslim fundamentalists." (Tampa Tribune) It bore "some of the earmarks of Middle East terrorism." (Dayton Daily News)

☛ Under a headline "Who Could Do this to Our Children?" the *Daily Mirror* (London) noted that no group had claimed responsibility but that "Middle East fanatics often deny attacks they carry out."

Official Wisdom

☛ "The FBI has approached the Department of Defense about including Pentagon Arabic speakers in the investigative team. 'This is an indication they have some leads they want to follow up,' a Pentagon official said." (Baltimore Sun)

☛ "Authorities put out an all-points bulletin for three men seen riding in a brown pickup truck near the area of the blast. Two of them were described as bearded and of 'Middle Eastern' appearance." (Kansas City Star) The *Washington Times* put it less delicately: "And last night FBI agents were hunting three Arabs in a brown Chevrolet pick-up."

☛ James Fox, former head of the New York FBI office, asked if it surprised him that the bombing was carried out while the trial of the World Trade Center bombing suspects was under way: "We thought that we would hear from the religious zealots in the future, that they would be a thorn in our side for years to come." (CBS Special Report)

☛ "Oklahoma City ... is one of 38 American cities that serve as a recruiting and fund-raising center for Islamic radicals who have urged attacks on Israel, moderate Arab states and Western countries that support Israel, according to *Jihad in America*, a PBS special by reporter Steven Emerson," wrote the *Baltimore Sun*. The *Sun* then quoted from a meeting Emerson taped for the PBS show: "There is no turning back for the stone, the pistol, the Uzi and the cannon ...and you can expect Allah's ultimate victory."



New York Post cartoonist Sean Delonas: "I stand by the [Apr. 21] cartoon, but I feel bad about it."

Pols, Experts, Talk Show Hosts, and Unnamed Sources

✠ Vincent Cannistraro, ex-CIA counterterrorism director: "Right now it looks professional, and it's got the marks of a Middle Eastern group." (*Washington Times*)

✠ An unnamed "counterterrorism official": "[T]he car bomb is the weapon of choice for Middle East terrorist groups such as the pro-Iranian Hezbollah." An [unnamed] Israeli government official "said the bombing looked like a Middle Eastern-style terrorist attack except that groups that conduct such operations usually claim credit, as occurred in 1992 after the Argentina bombing." (*Washington Times*)

✠ Mark Colon, a bomb expert at the Institute of Security and Intelligence: "There were no warnings at all, which is along the lines of radical Islamic groups. ... Car bombs are typical of the Hamas faction, which took out the World Trade Center." (*Daily Mail*, London)

✠ Bard O'Neill, a terrorism expert at the National War College: "This has the earmarks of the Islamic militant organizations. ... Paradoxically, as you make progress on Arab-Israeli peace issues, it seems like terrorism and casualties go up. All of which was absolutely predictable." (*Kansas City Star*)

✠ Oliver "Buck" Revell, former FBI assistant director in charge of operations and a counterterrorism expert: "I think what we've got is a *bona fide* terrorist attack. I think it's most likely a Middle East terrorist. I think the *modus operandi* is similar." (*Dayton Daily News*)

✠ Former CIA director James Woolsey: "This is the true globalization of the terrorist threat."

✠ Radio talk host Cal Thomas said the bombing demonstrated that "illegal immigrants are a threat to our democracy."

✠ *New York Newsday* columnist Jeff Kamen said the attack proves the need for surveillance of such "threatening people" as foreign diplomats, Iranian students, and other "foreign nationals living [here]. ... This is war, and must be fought that way, or we lose." He

recommended that such military special forces as Delta Force and the Navy SEALs should be empowered to "shoot them now, before they get us."

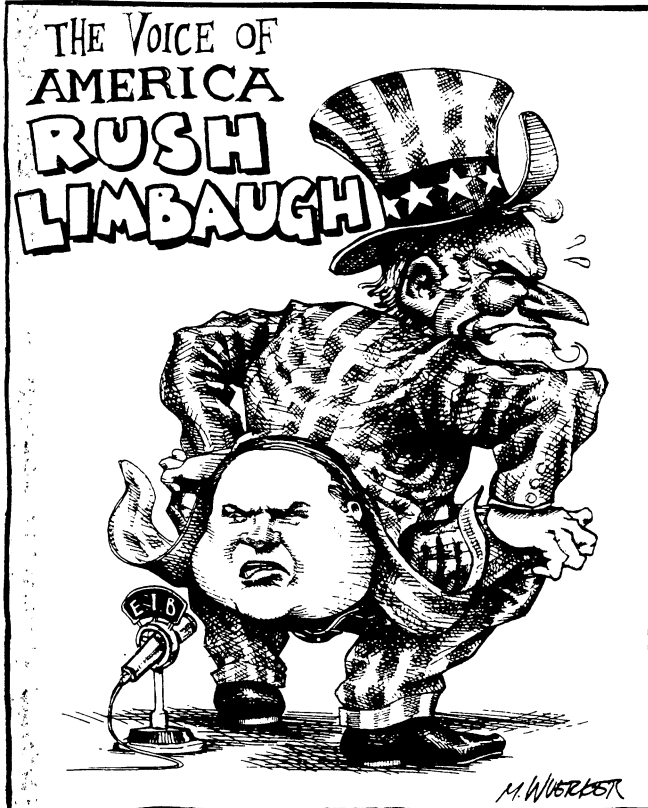
✠ "Terrorism expert" Steven Emerson instantly blamed Muslims because "the bomb was meant to kill as many people as possible," which he deemed "a Middle Eastern trait." Oklahoma City's Muslim community contains "many engineering students. ... As the activities of Muslim radicals expand in the U.S., future attacks seem inevitable." (*Daily Telegraph*, London) Asked if he agreed with Clinton's admonition not to jump to conclusions without evidence, Emerson answered, "So the fact is, if one were to condemn all Muslims, I think the president would be entirely right. No one is doing that. This is not any attempt to scapegoat Muslims. This is an attempt to basically look at those who perpetrated this attack, and those include terrorists. They happen to be Islamic extremists." (*Crossfire*, CNN)

✠ Marvin Cetron, author of a Pentagon-financed study on future terrorism, said he believes the bombing will eventually turn out to be linked to the trial of Sheikh Abdel-Rahman. "It sounds very much like the things done by Hezbollah and Hamas." (*Washington Times*)

✠ Even after McVeigh was indicted, *New York Times* columnist A.M. Rosenthal erroneously asserted, "most other attacks against Americans came from the Middle East."

Real Terrorism Hits Home

A recent opinion poll found that Muslims were the most disliked community in America. The scapegoating that followed the bombing had tangible and dangerous effects: Incidents reported to the Council on American-Islamic Relations included: 133 hate calls; 1 stalking; 2 false arrests; 1 police harassment; 50 verbal intimidations, threats; 15 bomb threats; 13 death threats; 1 suspected arson; 7 beatings and physical assaults; 4 shootings. Total: 227 incidents. ●



✠ Rush Limbaugh, right-wing radio talk show host, called for retribution. "You dogs, you cannot hide! And when you are found it will be the worst day you can possibly imagine ... if it turns out this is a Middle Eastern act, then we have to hit Qaddafi, we've got to hit him, folks, and if we trace it to a particular nation, what about hitting the nation anyway even if we don't know who exactly did it?"

HIROSHIMA

Needless Slaughter, Useful Terror

by William Blum

For months, even years, Japan was desperately trying to surrender. With full knowledge that the war could be ended on its terms, without a land invasion, the U.S. dropped two atomic bombs. Rather than the last act of World War II, this attack was the opening shot of the Cold War.



Does winning World War II and the Cold War mean never having to say you're sorry? The Germans apologized to the Jews and the Poles. The Japanese apologized to the Chinese and the Koreans, and to the United States for failing to break off diplomatic relations before attacking Pearl Harbor. The Russians apologized to the Poles for atrocities committed against civilians, and to the Japanese for abuse of prisoners. The Soviet Communist Party even apologized for foreign policy errors that "heightened tension with the West."¹

Is there any reason for the U.S. to apologize to Japan for atomizing Hiroshima and Nagasaki?

Those on opposing sides of this question are lining up in battle formation for the 50th anniversary of the dropping of the atom bombs on August 6 and 9. During last year's raw-meat controversy surrounding the Smithsonian Institution's Enola Gay exhibit, U.S. veterans went ballistic. They condemned the emphasis on the ghastly deaths caused by the bomb and the lingering aftereffects of radiation, and took offense at the portrayal of Japanese civilians as blameless victims. An Air Force group said vets were "feeling nuked."²

In Japan, too, the anniversary has rekindled controversy. The mayors of the two Japanese cities in question

William Blum is author of *Killing Hope: U.S. Military and CIA Interventions Since World War II* (Monroe, Maine: Common Courage Press, 1995).

1. *Los Angeles Times*, June 26, 1988, p. 8.

2. Greg Mitchell, "A War Anniversary Hard to Celebrate," *Los Angeles Times*, Aug. 3, 1994.

spoke out about a wide "perception gap" between the two countries.³ Nagasaki Mayor Hitoshi Motoshima, surmounting a cultural distaste for offending, called the bombings "one of the two great crimes against humanity in the 20th Century, along with the Holocaust."⁴

Defenders of the U.S. action counter that the bomb actually saved lives: It ended the war sooner and obviated the need for a land invasion. Estimates of the hypothetical body count, however, which ranged from 20,000 to 1.2 million, owe more to political agendas than to objective projections.⁵

But in any event, defining the issue as a choice between the A-bomb and a land invasion is an irrelevant and wholly false dichotomy. By 1945, Japan's entire military and industrial machine was grinding to a halt as the resources needed to wage war were all but eradicated. The navy and air force had been destroyed ship by ship, plane by plane, with no possibility of replacement. When, in the spring of 1945, the island nation's lifeline to oil was severed, the war was over except for the fighting. By June, Gen. Curtis LeMay, in charge of the air attacks, was complaining that after months of terrible firebombing, there was nothing left of Japanese cities for his bombers but "garbage can targets." By July, U.S. planes could fly over Japan without resistance and bomb as much and as long as they pleased. Japan could no longer defend itself.⁶

Rejected Overtures

After the war, the world learned what U.S. leaders had known by early 1945: Japan was militarily defeated long before Hiroshima; it had been trying for months, if not for years, to surrender; and the U.S. had consistently rebuffed these overtures. A May 5 cable, intercepted and decoded by the U.S., dis-

3. Teresa Watanabe, "Japanese Mayors Call A-Bomb a Crime," *Los Angeles Times*, Mar. 16, 1995, p. 1.

4. *Ibid.*

5. In June and July 1945, Joint Chiefs of Staff committees predicted that between 20,000 and 46,000 Americans would die in the one or two invasions for which they had drawn contingency plans. While still in office, President Truman usually placed the number at about a quarter of a million, but by 1955 had doubled it to half a million. Winston Churchill said the attacks had spared well over 1.2 million Allies. (Barton Bernstein, "The Myth of Lives Saved by A-Bombs," *Los Angeles Times*, July 28, 1985, IV, p. 1; Barton Bernstein, "Stimson, Conant, and Their Allies Explain the Decision to Use the Atomic Bomb," *Diplomatic History*, Winter 1993, p. 48.)

6. Stewart Udall, *The Myths of August* (New York: Pantheon Books, 1994), pp. 73, 75; Martin S. Quigley, *Peace Without Hiroshima* (Lanham, MD: Madison Books, 1991), pp. 105-6; Charles L. Mee, Jr., *Meeting at Potsdam* (New York: M. Evans, 1975), p. 76.



U.S. AIR FORCE

The bomb dropped on Hiroshima, above, and the one released 3 days later on Nagasaki killed hundreds of thousands of civilians, injured many more, and left a legacy of permanent genetic damage.

pelled any possible doubt that the Japanese were eager to sue for peace. Sent to Berlin by the German ambassador in Tokyo, after he talked to a ranking Japanese naval officer, it read: "Since the situation is clearly recognized to be hopeless, large sections of the Japanese armed forces would not regard with disfavor an American request for capitulation even if the terms were hard."⁷

As far as is known, Washington did nothing to pursue this opening. Later that month, Secretary of War Henry L. Stimson almost capriciously dismissed three separate high-level recommendations from within the administration to activate peace negotiations. The proposals advocated signaling Japan that the U.S. was willing to consider the all-important retention of the emperor system; i.e., the U.S. would not insist upon "unconditional surrender."⁸

Stimson, like other high U.S. officials, did not really care in principle whether or not the emperor was retained. The term "unconditional surrender" was always a propaganda measure; wars are always ended with some kind of conditions. To some extent the insistence was a domestic consideration — not wanting

to appear to "appease" the Japanese. More important, however, it reflected a desire that the Japanese not surrender before the bomb could be used. One of the few people who had been aware of the Manhattan Project from the beginning, Stimson had come to think of it as *his* bomb, "my secret," as he called it in his diary.⁹ On June 6, he told President Truman he was "fearful" that before the A-bombs were ready to be delivered, the Air Force would have Japan so "bombed out" that the new weapon "would not have a fair background to show its strength."¹⁰ In his later memoirs, Stimson admitted that "no effort was made, and none was seriously considered, to achieve surrender merely in order not to have to use the bomb."¹¹

And that effort could have been minimal. In July, before the leaders of the U.S., Great Britain, and the Soviet Union met at Potsdam, the Japanese government sent several radio messages to its ambassador, Naotake Sato, in Moscow, asking him to request Soviet help

9. *Ibid.*, p. 73. Vice President Truman was never informed about the bomb. After Roosevelt's death, when he assumed office, it was Secretary of State James R. Byrnes who briefed him on the project. (Henry L. Stimson and McGeorge Bundy, *On Active Service in Peace and War* [New York: Harper, 1947]). Bundy is recognized as the principal author of these Stimson memoirs.

10. Udall, *op. cit.*, p. 76.

11. Stimson, *op. cit.*, p. 629.

7. Tim Weiner, "U.S. Spied on Its World War II Allies," *New York Times*, Aug. 11, 1993, p. 9.

8. Udall, *op. cit.*, pp. 73-79.



Stalin, Truman, and Churchill meet at Potsdam to carve up the post-war world. Nagasaki bomb victims (r.).

in mediating a peace settlement. "His Majesty is extremely anxious to terminate the war as soon as possible ...," said one communication. "Should, however, the United States and Great Britain insist on unconditional surrender, Japan would be forced to fight to the bitter end."¹²

On July 25, while the Potsdam meeting was taking place, Japan instructed Sato to keep meeting with Russian Foreign Minister Molotov to impress the Russians "with the sincerity of our desire to end the war [and] have them understand that we are trying to end hostilities by asking for very reasonable terms in order to secure and maintain our national existence and honor" (a reference to retention of the emperor).¹³

Having broken the Japanese code years earlier, Washington did not have to wait to be informed by the Soviets of these peace overtures; it knew immediately, and did nothing. Indeed, the National Archives in Washington contains U.S. government documents reporting similarly ill-fated Japanese peace overtures as far back as 1943.¹⁴

Thus, it was with full knowledge that Japan was frantically trying to end the war, that President Truman and his hard-line secretary of state, James Byrnes, included the term "unconditional surrender" in the July 26 Potsdam Declara-

tion. This "final warning" and expression of surrender terms to Japan was in any case a charade. The day before it was issued, Harry Truman had already approved the order to release a 15 kiloton atomic bomb over the city of Hiroshima.¹⁵

Political Bombshell

Many U.S. military officials were less than enthusiastic about the demand for unconditional surrender or use of the atomic bomb. At the time of Potsdam, Gen. Hap Arnold asserted that conventional bombing could end the war. Adm. Ernest King believed a naval blockade alone would starve the Japanese into submission. Gen. Douglas MacArthur, convinced that retaining the emperor was vital to an orderly transition to peace, was appalled at the demand for unconditional surrender. Adm. William Leahy concurred. Refusal to keep the emperor "would result only in making the Japanese desperate and thereby increase our casualty lists," he argued, adding that a nearly defeated Japan might stop fighting if unconditional surrender were dropped as a demand. At a loss for a military explanation for use of the bomb, Leahy believed that the decision "was clearly a political one," reached perhaps "because of the vast sums that had been spent on the project."¹⁶ Finally, we have Gen. Dwight Eisenhower's ac-

count of a conversation with Stimson in which he told the secretary of war that:

Japan was already defeated and that dropping the bomb was completely unnecessary. ... I thought our country should avoid shocking world opinion by the use of a weapon whose employment was, I thought, no longer mandatory as a measure to save American lives. It was my belief that Japan was, at that very moment, seeking some way to surrender with a minimum loss of "face." The secretary was deeply perturbed



by my attitude, almost angrily refuting the reasons I gave for my quick conclusions.¹⁷

Bomb-Slinging Diplomats

If, as appears to be the case, U.S. policy in 1945 was based on neither the pursuit of the earliest possible peace nor the desire to avoid a land invasion, we must look elsewhere to explain the dropping of the A-bombs.

It has been asserted that dropping of the atomic bombs was not so much the last military act of the Second World War as the first act of the Cold War. Although Japan was targeted, the weapons were aimed straight to the red heart of the USSR. For three-quarters of a cen-

12. Mee, *op. cit.*, p. 23.

13. *Ibid.*, pp. 235-36. See also: Hearings Before the Committee on Armed Services and the Committee on Foreign Relations (U.S. Senate), June 25, 1951, p. 3113, for reference to another peace overture message.

14. Stanley Meisler, "Unburied Treasures Lure Researchers to National Archives," *Los Angeles Times*, Jan. 9, 1995, p. 5.

15. Mee, *op. cit.*, p. 239.

16. *Ibid.*, pp. 75, 78-79; and William Manchester, *Ameri-*

can Caesar: Douglas MacArthur 1880-1964 (Boston: Little Brown, 1978), p. 437.

17. Dwight Eisenhower, *The White House Years: Mandate for Change, 1953-1956* (New York: Doubleday, 1963), pp. 312-13.

tury, the determining element of U.S. foreign policy, virtually its *sine qua non*, has been "the communist factor." World War II and a battlefield alliance with the USSR did not bring about an ideological change in the anti-communists who owned and ran America. It merely provided a partial breather in a struggle that had begun with the U.S. invasion of the Soviet Union in 1918.¹⁸ It is hardly surprising then, that 25 years later, as the Soviets were sustaining the highest casualties of any nation in WW II, the U.S. systematically kept them in the dark about the A-bomb project — while sharing information with the British.

According to Manhattan Project scientist Leo Szilard, Secretary of State Byrnes had said that the bomb's biggest benefit was not its effect on Japan but its power to "make Russia more manageable in Europe."¹⁹

The U.S. was planning ahead. A Venezuelan diplomat reported to his government after a May 1945 meeting that Assistant Secretary of State Nelson Rockefeller "communicated to us the anxiety of the United States Government about the Russian attitude." U.S. officials, he said, were "beginning to speak of Communism as they once spoke of Nazism and are invoking continental solidarity and hemispheric defense against it."²⁰

Churchill, who had known about the weapon before Truman, applauded and understood its use: "Here then was a

speedy end to the Second World War," he said about the bomb, and added, thinking of Russian advances into Europe, "and perhaps to much else besides. ... We now had something in our hands which would redress the balance with the Russians."²¹

"The Americans had not only used a doomsday machine; they had used it when, as Stalin knew, it was not militarily necessary. It was this last chilling fact that doubtless made the greatest impression on the Russians."

Referring to the immediate aftermath of Nagasaki, Stimson wrote:

In the State Department there developed a tendency to think of the bomb as a diplomatic weapon. Outraged by constant evidence of Russian perfidy, some of the men in charge of foreign policy were eager to carry the bomb for a while as their ace-in-the-hole. ... American statesmen were eager for their country to browbeat the Russians with the bomb held rather ostentatiously on our hip.²²

This policy, which came to be known as "atomic diplomacy" did not, of course, spring forth full-grown on the day after Nagasaki.

"The psychological effect on Stalin [of the bombs] was twofold," noted historian Charles L. Mee, Jr. "The Americans had not only used a doomsday machine; they had used it when, as Stalin knew, it was not militarily necessary. It was this last chilling fact that doubtless made the greatest impression on the Russians."²³

Killing Nagasaki

After the Enola Gay released its cargo on Hiroshima, common sense — common decency wouldn't apply here — would have dictated a pause long enough to allow Japanese officials to travel to the city, confirm the extent of the destruction, and respond before the U.S. dropped a second bomb.

At 11 o'clock in the morning of August 9, Prime Minister Kintaro Suzuki addressed the Japanese Cabinet: "Under the present circumstances I have concluded that our only alternative is to accept the Potsdam Proclamation and terminate the war."

Moments later, the second bomb fell on Nagasaki.²⁴ Some hundreds of thousands of Japanese civilians died in the two attacks; many more suffered terrible injury and permanent genetic damage.

After the war, His Majesty the Emperor still sat on his throne, and the gentlemen who ran the United States had absolutely no problem with this. They never had. ●

18. In an attempt to, as Churchill said, "strangle at its birth" the infant Bolshevik state, the U.S. launched tens of thousands of troops and sustained 5,000 casualties.

19. Mee, *op. cit.*, p. 22.

20. The 1945 National Security Agency document containing this report was declassified in 1993 after a three-year-long FOIA process by investigator Sanho Tree.

21. Mee, *op. cit.*, pp. 89 and 206; the first is from Churchill's diary; in the second, Churchill's aide is paraphrasing him.

22. Bernstein, *Diplomatic History*, *op. cit.*, pp. 66-8. This citation, actually written by Bundy for *On Active Service*, was deleted from that book because of pressure from State Department official George F. Kennan.

23. Mee, *op. cit.*, p. 239.

24. *Ibid.*, pp. 288-89.



GIVE MY REGARDS TO BASRA:

The Embargo on Iraq: Mixing Oil, Politics, and Hunger

by Phyllis Bennis



RICK DROZIMPA VISUALS

In early April, the United Nations Security Council announced its latest — and by now routine — refusal to consider lifting oil sanctions against Iraq. It wasn't much of an item, simply one more notch on the U.S. sanctions belt. The U.N.'s special observer charged that Iraq failed to meet the ever-changing requirements for ending

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Photo: Mother caring for child in Baghdad. Because of the embargo, thousands of children die of malnutrition and treatable disease.

the prohibition on its oil sales; this time he couldn't account for all of the non-toxic material that could be used in production of biological weapons.¹

By the middle of the month, it appeared that some on the Security Council were feeling the heat generated by a growing global unease over the several million Iraqi children growing up without adequate food or medical care — victims of the harsh measures designed

1. *Report of the Secretary General on the Status of the Implementation of the Special Commission's Plan for the Ongoing Monitoring and Verification of Iraq's Compliance with Relevant Parts of Section C of Security Council Resolution 687* (1991), Apr. 9, 1995.

by U.S. policymakers to bring Baghdad to its knees. Even the apparently escalating Iraqi efforts to smuggle some small amounts of oil onto the international black market — at half-price markdowns, it should be noted — have brought little relief. Out-of-control inflation means that most Iraqis must rely only on the minimal food provided in government rations. The Rome-based World Food Program (WFP) estimates that the amounts of food available constitute barely one-third of nutritional requirements. UNICEF reported a nine percent rise in infant malnutrition; the latest ration reduction,

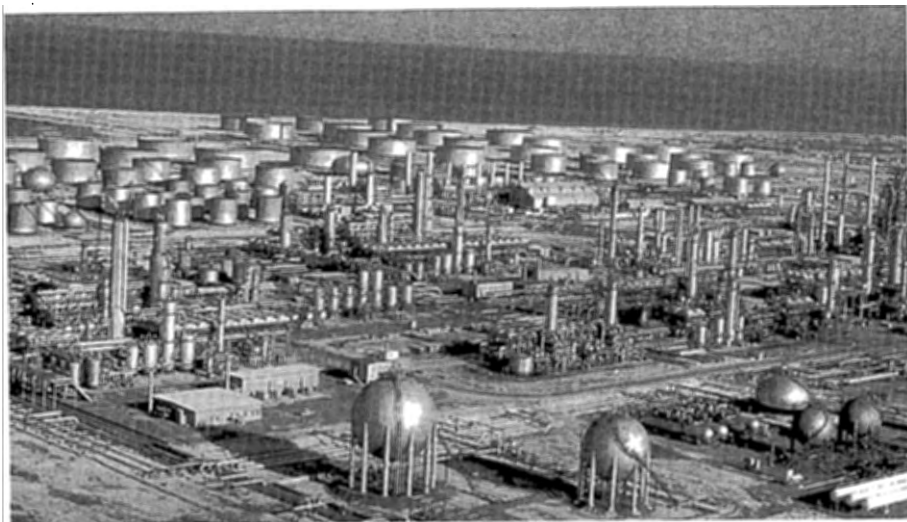
according to the WFP, "constitutes a risk for the health of 2.25 million children and 230,000 pregnant women or those breast-feeding."²

Even before the WFP report, with conditions reaching crisis proportions, the U.N. had put forward a new version of an earlier offer that would have allowed Iraq to sell a limited amount of oil. Payment would go to the U.N., which would dole out the income: Thirty percent of the \$1.6 billion total would go into a U.N.-mandated reparations fund to be distributed to all parties (but mainly Kuwait) claiming Gulf War damages; another chunk to Iraq's Kurdish population living largely autonomously under U.S.-British protection. Baghdad, under strict U.N. monitoring, would be allowed to spend about another third — \$500 million every 90 days — on humanitarian supplies.³

Iraq refused, claiming that the terms violated its sovereignty. It was right, of course, but what's so new about that? Ever since Saddam Hussein's defeated government was forced to accept the punishing terms of Security Council end-the-war Resolutions 687 and 688, post-Desert Storm Iraq has faced little but humiliation and violation from the international community. Hussein appeared to hope that rejection of the incremental easing might force the Security Council to lift all the sanctions. The Council, on the other hand, wanted to make sure that the Iraqi government rather than the U.N. sanctions would take the blame for drastically falling living standards. Concern for the country's long-suffering population did not top either party's agenda.

There wasn't even the kind of short-lived media flurry that accompanied the October 1994 mini-skirmish between Iraq and the U.S., when Baghdad sent several thousand troops south toward the demilitarized zone along the Kuwaiti border. It was an elaborate piece of Iraqi theater. Its target audience was the U.N. Security Council, which was about to consider, for the first time seriously, conditions under which oil sanctions against Iraq might be lifted. What the troop movement was, was a clumsy and misguided diplomatic gesture. What it was, was a message sent in the language of military bom-

2. Youssef Ibrahim, "Iraq Is Near Economic Ruin, But Hussein Appears Secure," *New York Times*, Oct. 25, 1994.
3. Barbara Crossette, "Iraqis Denounce U.N. Oil Proposal," *New York Times*, Apr. 16, 1995.



Saudi refinery. The country has 25 percent of the world's oil reserves.

bast because military rulers speak no other. What it wasn't, was a serious effort to invade Kuwait. And it is unlikely anyone in the Pentagon seriously believed Kuwait's oil-bloated emirs were actually endangered. After all, however inept its diplomacy, Baghdad is not militarily foolhardy. Especially in his seriously weakened state, Hussein would not risk his few crack troops by

The Saudis sink fortunes into propping up U.S. industry while the U.S. leads in manipulating the international oil market to Saudi advantage. Caught in the middle are the Iraqi people.

sending them across the Kuwaiti border without a shred of air support. (The U.S.-imposed no-fly zone there was and still is rigorously enforced).

In any case, Hussein's move had precisely the opposite impact that he hoped for. It provided a golden opportunity for the Clinton administration to raise its popularity rating, to divert the Security Council's agenda, and to reestablish U.S. dominance over France and Russia, which were then threatening to play havoc with an issue far more serious to the U.S. than Baghdad's military posturing. Since the Gulf War, Wash-

ington's overall Gulf regional policy has been consolidated around the imperatives of "dual containment" — keeping both the potential regional "rogue" powers weakened and under U.S. control.⁴ Washington is no longer content with Iran and Iraq fighting each other, and even less willing to allow other powers a role in the region. (Part of the basis for U.S. opposition to Russian-Iranian nuclear collaboration may well be rooted in an effort to keep Moscow out of the U.S.'s Gulf turf.)

If the U.S. has its way, Saddam Hussein's government — and the Iraqi people — will face crippling sanctions as long as the Ba'athist leader remains in power. Last October 16, Warren Christopher admitted as much. Asked whether the U.S. refusal to lift sanctions was in fact aimed at getting rid of the Iraqi president, the secretary of state answered that "we want compliance with all the U.N. resolutions. And I don't believe he can do that and stay in office."⁵

And even getting rid of Saddam Hussein may not be enough. The U.S. policy of ensuring that Iraq stays economically crippled and politically besieged is driven not by personal or political antagonism toward Hussein, but rather by the same petro-interests that undergirded the Gulf War in the first place. Keeping Iraq from exporting oil not only undercuts Hussein, it bolsters the U.S. position as self-proclaimed protector of the industrialized world's access to that precious resource. And

4. Anthony Lake (Clinton administration National Security Adviser), "The Reach of Democracy," *New York Times*, Sept. 8, 1994.

5. MacNeil-Lehrer NewsHour, PBS, Oct. 16, 1994.

perhaps more important, it protects the U.S. relationship with Saudi Arabia — a key economic and political ally. If Iraq were allowed to resume oil exports, analysts expect it would soon be producing three million barrels a day and within a decade, perhaps as many as 6 million.⁶ Oil prices would soon drop.

By itself, lower prices would not be such a bad thing for the U.S. and its oil-guzzling Northern allies. But such a decrease would seriously damage the already depressed Saudi economy (a relative depression, to be sure, based on the oil-inflated standards of Saudi financial privilege). And Washington is determined to defend the kingdom's economy, largely to safeguard the North's unfettered access to the Saudis' 25 percent of known world oil reserves. All indications are that the U.S. is prepared to wait for an increase in world economic growth to spur demand for oil sufficient to offset such Gulf losses before allowing Iraq to return to oil sales.

Greasing U.S.-Saudi Relations

That may take a while. Even Saudi Arabia, despite its great good luck in having a small population sitting on an enormous ocean of oil, is facing serious financial problems. Its current foreign debt is estimated at \$70 billion.⁷ In the decade between 1982 and 1992, even with hundreds of billions of dollars in oil sales, its trade deficit reached \$131.5 billion.⁸ Although princely profligacy was already rampant, the largest single factor was Desert Storm, which tacked on an additional \$55 billion.

Saudi society, still-cosseted but no longer so luxuriously pampered, is beginning to feel a pinch of belt-tightening unknown since the discovery of oil catapulted the kingdom to global economic power. Recently, Riyadh has almost doubled the price of gasoline to about \$.60 per gallon, imposed small fees for some formerly free domestic telephone calls, and hiked airline ticket prices by

6. Fareed Mohamedi and Roger Diwan, "The Saudis, the French and the Embargo," *Middle East Report*, Mar.-Apr. 1995.

7. *Associated Press*, Feb. 18, 1995.

8. Leslie and Andrew Cockburn, "Royal Mess," *The New Yorker*, Nov. 28, 1994.



Since the Gulf War and the U.S.-backed embargo, the Iraqi economy, formerly one of the most vigorous in the region, hovers on the verge of collapse.

20 percent. By Northern standards these moves are trivial. The Saudi monarchy, its several thousand princes, and most of the country's citizens (unlike the numerous non-citizen workers in

Getting rid of Saddam Hussein may not be enough. The U.S. policy of ensuring that Iraq stays economically crippled and politically besieged is driven not by personal or political antagonism, but rather by the same petro-interests that undergirded the Gulf War.

Saudi Arabia who often face oppressive working conditions, low wages, and few rights), remain relatively cushioned. But the speed with which economic problems have escalated has worried Western banking and oil interests concerned with maintaining secure access to Saudi oil — which means, among other things, ensuring political and so-

cial stability in the kingdom.⁹ Four billion dollars in newly-imposed "austerity income cuts," and a 1995 domestic budget down six percent below the already-cut 1994 spending plan did nothing to reassure the international community.¹⁰

And beyond the overarching concern with protecting access to precious oil reserves, Saudi economic stability represents a crucial bulwark of broader U.S. financial concerns: The kingdom purchases great quantities of U.S. goods and services. In 1994, King Fahd agreed to buy \$6 billion worth of Boeing and McDonnell-Douglas planes to rebuild the Saudi airlines, and \$4 billion in communication services from AT&T. The political message was captured in President Clinton's February 1994 announcement that the contracts are "a gold-medal win for America's businesses and workers."¹¹

9. Concern over Saudi stability is increasing. Opponents include fundamentalists demanding a return to Islamic basics, unemployed youth hit by the recession, *Qasimis* angered by an end to agricultural subsidies, government officials tired of bureaucratic inefficiency and "personally aggrieved at hitting the glass ceiling beyond which only the well-connected are promoted, and ambitious Western-educated intellectuals like Dr. Mohammed Mas'ari, a leader in the country's main opposition group." Varied as they are, they are united by complaints against: "ruling family corruption, opposition to US influence in the kingdom since the Kuwait war, the growing gap between the rich and the average man, and the suppression of free speech." (Leslie Plommer, "Royal Family Vulnerable to Islamists," *The Guardian* [London], Nov. 28, 1994.)

10. *Associated Press*, op. cit.

11. Cockburns, op. cit.



Gold market in Kuwait, just before the Iraqi invasion. Despite massive reconstruction costs, Kuwaiti citizens still enjoy access to luxury goods.

dle East policy than does any high-profile softening of Israeli-Saudi hostility.

Moving the Goal Posts, Keeping the Goals

Under the mutually understood terms of the Saudi-U.S. backscratching arrangement, the Saudis sink fortunes into propping up U.S. industry while the U.S. leads in manipulating the international oil market to Saudi advantage. Caught in the middle are the Iraqi people. Any humanitarian concerns for their suffering expressed at the U.N. were drowned out by U.S. euphoria over the fortuitous timing of Saddam Hussein's military maneuvers last year. The Iraqi troops' journey south began just as the Council was preparing to discuss the report of Rolf Ekeus, head of the U.N.'s Special Commission overseeing the destruction of Iraq's weapons of mass destruction. The October 7th report asserted that the complex U.N.-mandated monitoring system designed to ensure future Iraqi compliance "is now provisionally operational." Ekeus' evidence essentially challenged the CIA's claim that Iraq was still maintaining weapons of mass destruction, especially biological, chemical and ballistic weapons, and was working on nuclear weapons. Despite Baghdad's bombastic rhetoric, noted Ekeus, "if Iraq extends ... the same level of cooperation that it has to date ... there can be cause for optimism."¹⁵

Indeed, if the October Iraqi troop maneuvers had not provided the U.S. with such an easy pretext for its defend-the-Saudis, keep-the-sanctions-on campaign, it is uncertain whether Washington could have delayed a Council debate on lifting the oil sanctions. According to Article 22 of Resolution 687, imposed in April 1991 as part of terms for ending the Gulf War, when Iraq "has completed all actions contemplated," the U.N. oil sanctions "shall have no further force or effect." Those "actions" were six specific requirements: the destruction of chemical, biological and ballistic weapons systems;

... could not afford to build the planes at the slower rate. The gap could only be filled after Israel agreed to order 20 F-15s for itself. 'If the Saudis had cancelled their F-15 program, Israel probably would not have bought any,' a Pentagon officer told us. 'Basically, that's the only thing keeping the F-15 line open.'¹⁴

Tel Aviv looks forward to the long-term normalization of relations with Saudi Arabia. In the meantime, it has a healthy respect for the kingdom's success at keeping the Gulf stable, rich, and pro-Western. That, plus good relations with the Pentagon, made cooperation on F-15s all the more attractive.

For anyone concerned with the overall escalation of the Middle East arms race, this almost casual U.S.-orchestrated covering-for-each-other by ostensible "enemies," ordering competing squadrons of identical war planes speaks far more eloquently of the cynicism of U.S. Mid-

Protecting "Our Best Customer"

Most important, however, is the arms trade. In 1993 alone, 64.2 percent of all U.S. arms export agreements with developing countries were with Saudi Arabia.¹² According to Leslie and Andrew Cockburn,

...since 1990, the kingdom has signed up for 30 billion dollars worth of arms, including M1 tanks, F-15 fighters, TOW missiles, Stinger missiles, Patriot missiles, Apache helicopters, and armored fighting vehicles. Every day, the Pentagon's Defense Security Assistance Agency disburses an average of ten million dollars — some days as much as 50 million — to contractors at work on the Saudi shopping list. A spokesperson for the agency put it this way: "Saudi Arabia is our best customer."¹³

(We won't deal with the interesting question of why, given the stockpiles of the Pentagon's most advanced weapons sitting in Saudi warehouses, Riyadh feels so compelled to ask for U.S. intervention when facing Iraqi bravado. ...)

And this being the Middle East, of course, further complications ensue. While the Saudi thirst for U.S. weapons

12. Richard F. Grimmett, *Conventional Arms Transfers to the Third World, 1986-93*, Congressional Research Service, 94-612F, July 29, 1994, p. 6.

13. Cockburns, *op. cit.*

14. *Ibid.*

15. *Report of the Secretary Gen. ... op. cit.*, Oct. 7, 1994.

acceptance of a U.N. special commission to monitor their destruction; agreement not to produce or use such weapons; reaffirmation of Iraq's obligations under the Nuclear Non-Proliferation Treaty; agreement not to acquire or develop nuclear weapons or material; and the creation of a U.N. International Atomic Energy Agency plan to monitor and verify Iraqi compliance with the anti-nuclear provisions.

But whenever Iraq met a U.N. condition, the U.S. either added others that were not part of the U.N. requirements, or ignored evidence of Iraqi compliance. Ekeus' October report, for example, asserted that the weapons no longer existed (the U.N. had certified as early as 1992 that some, such as ballistic systems, had already been destroyed). With a quick parry, U.S. Ambassador to the U.N. Madeleine Albright insisted sanctions be maintained because Hussein was squandering money building a new palace.¹⁶

A few months later, in January, although some past procurement information was still missing, Ekeus certified that monitoring was well under way. Washington, however, opposed lifting sanctions again; Albright complained this time that Iraq hadn't yet returned or paid for all of the Kuwaiti weapons it had captured.¹⁷

Clinton administration officials continue to assert that the U.S.-defined "requirements" somehow reflect actual U.N. positions.¹⁸ These claims tend to go unchallenged by journalists, U.N. officials, and even other members of the Security Council. In fact, demands for Iraqi recognition of Kuwait's border, return of Kuwaiti property, and information regarding Kuwaiti nationals missing in the war, are found in completely sepa-

rate parts of the ten-page resolution, and are not among the listed prerequisites for lifting oil sanctions. (Even Iraq's most recent diplomatic moves to answer Washington's demands — recognizing Kuwait's sovereignty and accepting the long-disputed border — were spurned by the U.S. as insufficient.



King Abdulaziz Ibn Saud with President Roosevelt.



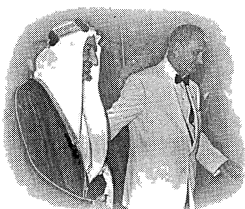
King Faisal, then Foreign Minister, with President Truman.



King Saud with President Eisenhower.



King Saud with President Kennedy.



King Faisal with President Johnson.



King Faisal with President Nixon.



King Fahd, then Crown Prince, with President Ford.



King Khalid with President Carter.



King Fahd with President Reagan.



King Fahd with President Bush.



King Fahd with President Clinton.

Ironically, they were never even required by 687.)¹⁹ Similarly, concerns over human rights abuses, however legitimate, were never included in Resolution 687, but are raised in separate, subsequent resolutions that also have nothing to do with the oil sanctions.

19. Interview, with U.N.-based diplomats; and Barbara Crossette, "Iraqis to Accept Kuwait's Borders," *New York Times*, Nov. 10, 1994.

International Concern

Washington's success in using Iraq's troop movements to delay the Council's mandated discussion on sanctions-lifting may not last forever. Divisions among the Council's permanent members were patched over with a broad acceptance of the U.S. insistence that troop movements, not sanctions, were the only issue. But unlike the U.S., many U.N. members have interests not served by keeping Iraqi oil off the market. France and Russia, for example — largely locked out of the lucrative Saudi contracts — do not share all the U.S. concerns for protecting the kingdom's oil income.

The high-visibility Russian diplomatic initiative in late October, sending Foreign Minister Andrei Kosyrev to Baghdad, led to Iraqi acceptance of a key U.S. demand: recognition of Kuwait's U.N.-mandated borders. In return, Russia promised Iraq it would place the sanctions issue back on the Council's agenda.²⁰ But Washington succeeded in separating the two issues, allowing only a brief mention of diplomatic efforts in the final resolution condemning the troop movements, and making no commitments or even references to

the sanctions.

Other Council resistance, particularly from France and Brazil, focused on the U.S. demand for a military exclusion zone in southern Iraq, as well as the proposed British requirement that Baghdad notify the secretary-general two weeks before any troop movements. Paris and Brasilia raised concerns over the dangerous precedent set by the U.N. undermining Iraq's already-weakened sovereignty. Other countries, including New Zealand, China, Spain, and Pakistan, opposed the exclusion zone and notification requirements as unworkable.²¹ Whatever economic or other national interests may motivate the

20. Interview with U.N. diplomats, Oct. 1994; and Barbara Crossette, "Russia and Iraq Work Out Plans to Ease Gulf Tensions," *New York Times*, Oct. 13, 1994.

21. Interview with a U.N. ambassador, Oct. 12, 1994.

16. Interview with U.N.-based diplomats, Nov. 1994.

17. *Ibid.*, Jan. 1995.

18. The phenomenon reflects similar success stories in the past few years, in which Washington has managed to convince not only the U.S. people but much of the diplomatic world that, for example, the "no-fly-zones" established in northern and southern Iraq are U.N. operations. In fact, neither is mandated in any U.N. resolution, and both zones are patrolled by the U.S. and its Gulf War allies without U.N. oversight.

notification requirements as unworkable.²¹ Whatever economic or other national interests may motivate the expressed concerns of Council members (especially France and Russia, both of which have billion-dollar interests in Iraq), it is clear that the U.S.-imposed "consensus" that characterized much of Gulf War decision-making in the Council remains somewhat shaky.

In October, when it counted, however, the U.S. was able to get its way. After Washington and London backed down from the specific demands for a military no-go zone, the U.S.-orchestrated resolution condemning Iraq's troop movements passed unanimously. A month later, on November 14, within two hours of the arrival in New York of Iraqi Deputy Foreign Minister Tariq Aziz, the Council voted to continue the oil sanctions without modification. The vote followed a closed-door Council briefing by U.S. Ambassador Madeleine Albright who used spy satellite photographs to show Iraq's alleged building of lavish palaces while the population lacks basic food and medicine.²²

Loud U.S. justification for continuing the embargo is in stark contrast to Washington's permanent silence on the issue of the billions of dollars in Saudi oil revenues siphoned off for the private pleasure of Saudi royalty.

22. Interview, U.N. diplomatic source; and Richard Lyons, "UN Decides to Keep Economic Sanctions on Iraq," *New York Times*, Nov. 14, 1994.



RICK DROZIMPA VISUALS

In Baghdad, a young girl receives blood.

Whatever the truth of those claims, their assertion by the U.S. to justify continuing the embargo provides a stark contrast to Washington's permanent silence on the issue of the billions of dollars in Saudi oil revenues siphoned off for the private pleasure of the Saudi king and princes. (King Fahd's personal wealth exceeds \$12 billion, and includes a dozen palaces in Europe and in the kingdom, a \$60 million yacht, and a private Boeing 747.)²³

For now, the last word on sanctions remains Warren Christopher's: that considering lifting them, regardless of Iraq's compliance with the U.N.'s requirements, is "dangerously misguided."²⁴

With post-Cold War demands on the U.N. to serve as mediator or negotiating agent in far-flung conflicts, the world organization's legitimacy is on the line. By accepting the U.S. position last October, the Council essentially agreed to Washington's demand that sanctions simply be kept off the agenda. No matter what Iraq's government may do, the

23. *Associated Press*, op. cit.

24. *MacNeil-Lehrer NewsHour*, PBS, op. cit.

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decision says, U.N. sanctions are to remain in place. The decision jeopardizes the credibility of the Council and the U.N. overall, as it allows the specific legal requirements of the organization's own resolutions to be shoved aside at the political whim of its most powerful member-state. ●

El Buki's Tale

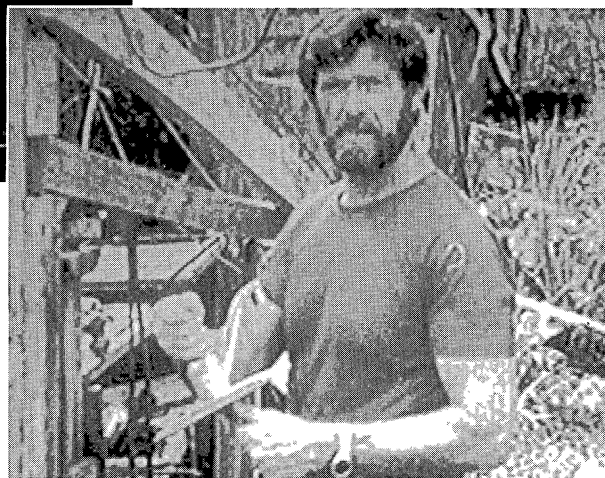
The Murder of Michael DeVine



RICK REINHARD/IMPACT VISUALS

As scandal grows over CIA involvement in Guatemala, a soldier jailed for killing a U.S. citizen once again tries to tell a story that no one wants to hear.

by Mike Leffert



UNIVISION

Jennifer Harbury and Carol DeVine testify in Congress. A CIA-paid agent is implicated in their husbands' murders. Michael DeVine in Guatemala (r.).

This spring, the murderous habits of the Guatemalan military hit the front pages, thanks primarily to Jennifer Harbury, who doggedly demanded to know the fate of her guerrilla husband, Efraín Bamáca Velásquez, and to Rep. Robert Torricelli (D-N.J.), who finally told her. Now the world knows that Bamáca is dead, and that one of the Guatemalan officers involved in his murder had been a paid agent of the CIA. Col. Julio Roberto Alpírez had received some \$44,000 in "severance pay" from the agency in 1990, after he was implicated in another murder, that of U.S. citizen Michael DeVine.¹

Five Guatemalan enlisted men sit in Pavoncito prison in the capital, serving 30-year sentences for that crime (the only officer convicted "escaped" the day after he was jailed). But Alpírez and the other

intellectual authors of DeVine's death remain free, garbed in the Guatemalan military's impenetrable cloak of impunity.

Nearly two years ago, the jailed soldiers decided to talk. They held a prison press conference and told how superior officers had ordered them to kill DeVine. But within days, the prisoners recanted and the story withered, as did the credibility of their leading advocate and interlocutor, "El Buki." Now, El Buki is back, again conveying the words of the imprisoned soldiers, and shedding new light on both the DeVine case and the fissures it has created in the Guatemalan officer corps.

The truth was never closer in the DeVine case than in October 1993. While all five soldiers had agreed to the exposé, Oliverio Orellana Valdez, Joaquín Alfaro Avelar, and Daniel Rodríguez shunned the media glare. Electing to sit behind the makeshift

conference table for the press conference were the two lowest ranking soldiers, Francisco Salbal Santay, Tiburcio Hernández — and El Buki.

El Buki and the Soldiers

He was not always El Buki. Jorge Guillermo Lemus Alvarado is the 44-year-old son of a former Guatemalan economy minister who, according to Lemus, was murdered by military intelligence. While his father was a member of the Guatemalan U.N. delegation, Lemus attended the Marvell Academy for Boys in Rye, New York. In 1972, he graduated from Columbia University.

He had nothing to do with the killing of DeVine, but had everything to do with

Mike Leffert is an independent journalist living and working in Guatemala.

1. R. Jeffrey Smith, "U.S. Agencies at Odds Over Response to American's Slaying in Guatemala," *Washington Post*, Apr. 5, 1995, p. A24. DeVine lived and worked in Guatemala until he was murdered on June 7, 1990. Along with his wife Carol, he owned and operated a guest ranch and restaurant in Poptun, Petén.

the subsequent disclosures. He was dubbed "El Buki" as part of a largely successful campaign to discredit him in the local press.² Lemus was an appealing target. Never realizing the promise of his privilege, he was a junkie and a drug dealer, which explained his presence in the prison that day. He was a cellmate of the killers, and producer of the show that was about to unfold.

Upon being recaptured three years after escaping from another prison, Lemus was thrown into Pavoncito prison's Sector 3, the sector reserved for "ex-government people" like the murderers of DeVine. Self-described as socially conscious and progressive — he claims he got into drug dealing as a way of funding a political movement — he was immediately struck by the lot of his cellmates. Here they were, sitting out 30-year sentences, while the real *culpables*, high-ranking military officers, went free. El Buki began to tell them about how justice worked in the U.S., how they could "plea bargain" to get a lighter sentence.

"And that's the way I convinced them that they should come out and tell the story. They were all the time complaining that they were not getting help, and I kept saying 'You're not getting helped by your superiors and there's no reason why you should stand up for them.'"³

No One is Listening

Over succeeding months, as confidences grew, the killers told Lemus their stories. At one point he suggested that they begin to do formal recorded interviews, and they agreed. Then, at Lemus' suggestion, they wrote to the State Department and U.S. Embassy. But, says Lemus, the embassy did not want to hear it. Especially uninterested was Seymour DeWitt, the embassy's chief of security. DeWitt dismissed messengers relaying Lemus' and the prisoners' letters to the embassy.

"I knew DeWitt from before," says Lemus. "I'd been going to the embassy since 1988, which is the reason that I think they killed my father. I went in the beginning of 1988 and spoke to Mr. Larry Holyfield from the DEA, and I told him Gen. [Marco Antonio] Pozuelos, who was head of the air force in Guate-

mala, was deep into drug dealing ..."

But, Lemus says, Holyfield told him he was crazy, that neither G-2 (military intelligence) nor the air force was involved in the drug trade. Events since then have vindicated Lemus. And Holyfield's predecessors certainly would have disagreed with his assessment.⁴

Thwarted at the embassy, Lemus then wrote to Secretary of State Warren Christopher.⁵ "I was telling him that I was a cellmate with the DeVine people, and that they wanted to tell their story and that nobody was listening to us, and I thought that Mr. DeWitt had some personal interest in the case. I didn't get any answer. He's such an important man, I doubt that he ever read that handwritten letter."

Unsuccessful with the gringos and under pressure from the anxious soldiers, Lemus kept trying to get someone to pay attention. "So we started writing to the Interamerican Human Rights Commission of the OAS [in July 1993], saying that the guys wanted to make a deal and give information." Dr. Oswaldo Kreimer and David J. Padilla of the commission eventually did come to Pa-

"I wrote to Warren Christopher saying nobody was listening to us. ... I didn't get any answer."

— Jorge Lemus

4. But only in 1994, after he retired, the U.S. finally accused Gen. Pozuelos of involvement in drug trafficking and revoked his visa. Celerino Castillo, who served in the DEA office in Guatemala City through 1985, graphically detailed the drug corruption of both G-2 and the air force. *Powderburns: Cocaine, Contras, and the Drug War* (Buffalo: Mosaic Press, 1994).

5. Letter, May 11, 1993. Lemus has copies of the letter and receipts from the carrier that delivered it.



Jorge Lemus, "El Buki," in Pavoncito prison, Dec. 1993, where he shared a cell with soldiers convicted of killing Michael DeVine.

voncito and interview the soldiers. "They listened to us for a half an hour and then they left and said they were going to get in touch but they never did."

An Exposé Aborted

By that October, the prisoners were ready to go public. "I had convinced all of them. ... they are very important, because one of them stayed 12 years in the intelligence (G-2), and the other one 17 years." But equally important was their story, and the Guatemala City press corps gathered at the prison to hear them detail how they had killed DeVine on the orders of their superiors.

After the press conference, Guatemalan military and U.S. embassy officials visited the soldiers.⁶ The next day, the soldiers held another press conference and recanted. They claimed that Lemus had tricked them with a fabricated tale. The local press, expressing outrage but perhaps with some relief, dropped out of the story. In separate in-

6. "Lemus Alvarado, el EMP los amenazaron," *la Republica*, Oct. 14, 1993. Reporters verified the visits in interviews with prison guards and a U.S. prisoner who identified U.S. embassy personnel. They also noted a vehicle with military license plate A30 parked outside during those visits.

2. The name refers to a popular Mexican musical group, *Los Bukis*; the bearded, long-haired Lemus bears a resemblance to its members.

3. Interview, May 11, 1995. All quotes from Lemus come from this interview.

interviews with three foreign journalists, a different story emerged. Oliverio Orellana said that the group was still in the military, and he, as their commander, had ordered them not to speak to anyone.⁷

But Salbal Santay said that the recantation was itself a lie, that he still wanted to talk but he needed a strong guarantee of protection. The reporters alerted the International Human Rights Law Group in Washington, hoping that action could turn up the heat. Although two attorneys from the committee came and talked with the soldiers, the protection never came, and Santay held his tongue.

American University law professor Rick Wilson was one of the attorneys. He says the soldiers "had obviously been talked to by people from the military" and that in interviews with the soldiers, "they all just stonewalled us; they took their marching orders from the sergeant." Wilson says Sgt. Orellana told them the story was a sham and totally untrue. "But I didn't believe the sergeant for a minute."⁸

Wilson added that the lawyers had gone to the embassy, but ran into another stone wall there. According to Wilson, the embassy response was, "We can't help these guys because that's intervening in Guatemala's sovereignty."⁹

And El Buki? "I've interviewed a hell of a lot of defendants, and he was pretty credible," says Wilson. He had "enough corroboration to keep the pressure up." Salbal Santay, Wilson adds, "was not too well educated, he had no politics. He was a poor *indio*; their whole lives were about following orders and surviving."¹⁰

Fast Forward

Now, Salbal has once again broken his silence in the belief that the Torricelli revelations will protect him, and Lemus has recorded an even more extensive interview with him. From this interview, and from notes and tapes in his possession, Lemus updates the story to include events that have come to light recently in the revelations of CIA involvement in these and other covert intelligence operations in Guatemala.

Asked recently about Col. Alpírez' involvement in the DeVine killing, Lemus

says, "Yes, definitely, we mentioned him since 1993. When they told me this story they knew it involved Alpírez, because Alpírez was the person that received them in the Kaibil school."¹¹ I asked Salbal especially about this because [Alpírez' lawyers] claim to have a tape that proves that Alpírez had nothing to do with it."

Lemus adds that he gave recordings of Salbal's statements to at least two



Col. Julio Roberto Alpírez, paid at least \$44,000 by the CIA, gave a go-ahead to DeVine's killers.

U.S. embassy officials, second secretary Benjamin García, who bills himself as "human rights officer," and Consul General Charles Keil, in February 1994. He notes that Keil had visited the prison in December 1993 and offered assistance, provided that Lemus gave them the taped statements. Although Lemus handed over copies, no assistance was forthcoming.

After Lemus got out of prison in February 1994, he maintained contact with his former cellmates. Salbal Santay again expressed a willingness to talk. "I got a new recording where Salbal told

me if everything was done really quietly, he was still willing to help. He told me about Alpírez, about Mario Roberto García Catalán ... because they killed many people under different commanders."

And Salbal explained what the soldiers were told about why DeVine was slated for death. "The reason that they know is that there was a Galil rifle stolen from the garrison from the 23rd Zone [Santa Elena]. ... I don't know if that's the real reason why DeVine was killed, but that's the reason that these people know."

According to Lemus, once the rifle was stolen, soldiers first detained Tiburcio Hernández, one of the soldiers now jailed. "He remained 15 days under torture; they were asking him where the weapon was, and then this Pacheco guy got captured, and he admitted that he had taken it. ... he was tortured personally by Capt. Hugo Contreras."

Under torture, Pacheco said he had given the rifle to his cousin, who in turn was picked up and tortured, until he told his tormentors he had sold the weapon to Michael DeVine.

As an aside, Lemus adds that "Salbal was a specialist in torture, a specialist in electrical torture." As for Pacheco, he died after being left in a van without food or water for several days.

Lemus' casual reference to torture reflects Guatemalan reality. Under effective military control since a CIA-backed coup in 1954, the country has a well-deserved, well-documented reputation as one of the worst human rights violators in the hemisphere. Some 150,000 Guatemalans have been killed since the 1960s, the vast majority at the hands of the military.¹²

Lemus also says that Salbal admits burying Pacheco's body, and it was not the first one. Pacheco's corpse can be found "in a place where [Salbal] says he's deposited 29 more corpses. That's one of the corpses we're asking the Public Ministry to exhume."¹³

Naming Names: The Officers

Lemus says that once DeVine's name came up, the affair got the attention of ranking officers, both at the Santa Elena base and in the *Estado Mayor*

7. The journalists were this writer, independent journalist Trish O'Kane, and George Rodríguez of Interpress Service. They retain tapes of the interviews.

8. Interview, May 16, 1995.

9. *Ibid.*

10. *Ibid.*

11. Alpírez commanded the Kaibil base near Poptun, where DeVine ran his guesthouse. DeVine's killers, based at the garrison in Santa Elena some miles distant, stayed at the Poptun base the night before he was to be killed. The Kaibiles are elite counterinsurgency units of the Guatemalan army.

12. See, for example, Oficina de Derechos Humanos del Arzobispado de Guatemala, *Informe Anual 1994* (Guatemala City, 1995).

13. The request to the ministry was made April 7, 1995. Lemus says he has repeatedly contacted the ministry, and asked embassy official Benjamin García to help expedite the search, with no results so far.

(Joint Chiefs of Staff). The information naming DeVine was passed to the base's acting commander, Col. García Catalán, and to the acting S-2 officer, Capt. Hugo Contreras.¹⁴ (Contreras and García were replacements for vacationing base commander Col. Portillo Gómez and base intelligence head Maj. Paíz Bolanos, says Lemus. Still, he adds, "all of these guys knew about this. They were all there when the investigation was going on.")

García Catalán and Contreras "sent the results [of the inquiry naming DeVine] to the *Dirección de Inteligencia* here in Guatemala City and the *Estado Mayor*. After several days, the order came that DeVine was to be taken care of. The order came all the way from Guatemala City."

It still remains unclear why a single stolen rifle would warrant a murder, especially of a U.S. national. The *real* reason for DeVine's death remains a mystery. Observers have speculated that he had uncovered some sort of military illegality — drug trafficking, illicit lumber harvesting, an auto-theft ring — but provide no evidence for any of these theories.

At any rate, on June 5 or 6, the operation against DeVine swung into gear, says Lemus: "Once the order was received, Contreras came down and gave the order to Joaquín Alfaro, and Oliverio Orellana. And they formed the group who were to do it. They got orders to take DeVine, interrogate him, and execute him."

Col. Alpírez now appears on the scene. Lemus says he specifically asked Salbal about Alpírez's role in this stage of the murder plot. Lemus tells how, with their tortured informer bundled in the bed of their pickup, the soldiers

DeVine looked around and said, "You are from the G-2," and those were his last words because Oliverio just hit him from behind with a hooked machete.

— Jorge Lemus

14. S-2 is the military intelligence branch; G-2 its operational unit. Contreras is the officer convicted in the killing who "escaped" from prison.



Despite fears for his safety, Francisco Salbal Santay, convicted in DeVine's murder, corroborates Lemus' story.

"...arrived in the Kaibil school ... and they went directly to report to Alpírez. Alpírez was waiting for them personally ... and called the military Zone 23 and said that they were there."

DeVine's Murder

The day of DeVine's killing, a hitch developed, says Lemus. After investigating DeVine's routine and movements, the squad "realized they could not kidnap him without people noticing, because he would never come out at night and they thought there were always people that could see them, so they told that to their commanding officer." And, he adds, "the other important thing is that they told Alpírez that it was too obvious, and Alpírez said that they were right and that he didn't want the [Kaibil] school to get in problems. So then they called the Zone again, and in the Zone they said 'go ahead with the mission.'"

When asked who gave the order to go ahead, Lemus fingered the Santa Elena base's acting commander, Mario Roberto García Catalán.

And DeVine's final moments, as told by Lemus:

So when they took DeVine, they took him 30 meters off the road, and there they took the informer out and they put them face to face. They grabbed DeVine right where the road comes into the *finca* [farm]. ... they said they put a *capucha* [hood]

on DeVine, because DeVine immediately said no, DeVine did not accept that he had bought the rifle. So when they took the *capucha* off he said to the guy, "Why do you lie?" And then he looked around and he said, "you are from the G-2," and those were his last words because Oliverio just hit him from behind with a hooked machete.

He was nearly decapitated.

After murdering the innkeeper, "they took his Swiss army knife and his watch and they left there." The death squad drove back to the Santa Elena garrison without returning to the Kaibil base at Poptun, although they did make one stop on the way. "So eight kilometers before the Zone 23, just before San Benito, they stopped and took the informer out and executed him also, and buried him right there; they had pick and shovels."

When the soldiers arrived at Santa Elena, "they went directly to the commanding officer, which was Mario Roberto García Catalán. Not to Contreras. And they all walked up to him and said, 'mission done' and Oliverio went over and handed him the watch and the Swiss knife," says Lemus.

Finally, Lemus relates a pair of ironies. According to the soldiers, he says, García Catalán was upset. Apparently, the *Estado Mayor* had reconsidered and countermanded the order to kill DeVine.

And the missing rifle, the ostensible reason for killing DeVine? "Now as far as Salbal says, one month after all this crime happened, he himself participated in another operation where they captured another person with the weapon that was missing and supposedly Michael DeVine had bought."

So ends El Buki's tale, but the reverberations from the DeVine murder continue to roil the Guatemalan military, and now, Washington, too. This new account involves the highest levels in Guatemala City, not just Alþrés and Catalán. It also gives Alþrés ammunition against the *yanquis*. He can now claim that he disagreed with and resisted the order to kill DeVine.

Doubting El Buki

Lemus' credibility is still shaky. According to some foreign reporters in Guatemala City, the most compelling evidence against him is that he is still alive. They reason that if he were what he says he is, the army would long since have disposed of him.¹⁵

"He's working for the *Estado Mayor*," posits one reporter, suggesting that Lemus is helping to purge the military of reactionaries in a gold-braided faction fight. "He's back dealing drugs," says another, pointing out that he has no visible means of support. Lemus doesn't try to explain his longevity. He says he is trying to start a career as a journalist, and did in fact have a deal worked out with *Prensa Libre*, the largest national daily. But after only one column appeared under his byline, the deal was canceled.

Lemus does have documentation, in the form of cassettes and video tapes made with the prisoners, receipts for delivery of the letters he sent, copies of correspondence, etc. Some of what he has revealed over the years, not discussed in this interview, has enhanced his credibility. The links between high-ranking officers and a variety of crimes have been established, although because of a long tradition of military impunity, there have been no convictions. Alþrés, for instance, was earlier acquitted in the Efraín Bamáca case in a court-martial marred by prosecutorial dereliction.¹⁶

15. The counterargument is that the military is content to leave Lemus alone precisely because his credibility is in doubt. Ironically, to kill him would lend him credibility.
16. "Alþrés libre de proceso por la muerte de Bamáca," *Siglo Veintiuno*, May 3, 1995.

Francisco Salbal Santay, the prisoner whom Lemus befriended and recorded, should be the best judge of whether Lemus accurately portrayed his statements. CAQ visited Salbal after the interview with Lemus to check facts and found a few discrepancies.¹⁷ Salbal now says that it was Daniel Rodríguez, not Oliverio Orellana, who delivered the deathblow. He also says that Col. Catalán was initially happy that the mission was accomplished, and only

"My argument is that when a person who is a source of the intelligence community of the U.S. is involved in the murder of a U.S. citizen, he has lost the right to that protection." —Rep. Robert Torricelli

later, by phone, did Joaquín Alfaro find out that Catalán was furious about the counterorder.

In all other respects, however, Salbal corroborates Lemus. And he says that what got him talking again were the CIA stories from Washington. He thought that the Torricelli revelations would cause sufficient problems for the army that he could survive talking, and that nailing the "intellectual authors" of the crime could end in a reduction of sentence for him.

But Salbal doesn't feel safe yet. After a CNN interview was aired, he was moved, at his request, out of Pavoncito to another prison in Guatemala City.

The View from Guatemala

The Guatemalan government, predictably enough, argues that the renewed interest in the DeVine case is a Washington story. President Ramiro de León Carpio articulates the Guatemalan view. The most serious problem, he says, "can be found in Washington, where a federal agency is charged with committing crimes in Guatemala. This is very scandalous for the domestic policies of that country."¹⁸

17. All statements below attributed to Salbal Santay are from the interview, May 15, 1995.

18. "Presidente de León sugiere que Alþrés trae pleito

In another feint, Guatemala still insists that it has not received information from the U.S. government that it needs to investigate this case. Torricelli is pushing for its release. He notes the U.S. policy of not revealing secret sources, but adds, "My argument is that when a person who is a source of the intelligence community of the United States is involved in the murder of a U.S. citizen, he has lost the right to that protection. Therefore, Secretary of State Warren Christopher has been asked to make the Alþrés files public and send them to the Guatemalan government."¹⁹

The State Department has yet to that information.

Unintended Consequences

It appears that Salbal's hopes for sharpening conflict within the army are unfounded. The opposite seems to have occurred. Dr. Hector Rosada, chief of the government negotiating team in peace talks with Guatemalan rebels, argues that after the Torricelli revelations, the army has closed ranks. Rather than widening rifts among military factions, there have been pledges of solidarity in favor of a "unified defense" (*defensa gremial*).²⁰

Until the CIA affair, the army had turned inward as it prepared for its postwar role. Dominant "modernist" factions, led by Defense Minister Gen. Mario René Enríquez, look to a future in which the institution retains its pre-eminence through a shift from pure militarism to economic control. The modernists tirelessly promote the army's business interests, including the Corps of Engineers program of infrastructure development. Trained by the U.S. military through its *Fuertes Caminos* program, the army has built more roads, bridges, and public buildings than the government.²¹ It also envisions converting the Civil Defense Patrols (PACs) to "Peace and Development Committees." The half million citizens organized in these PACs countrywide give the army a broad political base.

Military hardliners, however, are from the old school. They believe that what worked in the past — mass mur-

contra Torricelli," *Prensa Libre*, Mar. 30, 1995.

19. Sylvia Gereda Valenzuela, "El congresista democrática habla por primer vez con la prensa Guatemalteca sobre su denuncias contra Col. Julio Roberto Alþrés, y contra la CIA," *Siglo Veintiuno*, May 12, 1995.

20. Comments to foreign reporters, Apr. 1995.

21. *Ibid.*

der, disappearances, torture, and coups when necessary — is still the way to go. While hardline and modernist factions are distinguishable by their attitudes toward the future, other military interests cross factional lines. The “Military Mafia,” with its interest in maintaining illicit opportunities for officers to get rich, transcends the hardliner-modernist dichotomy. So does the military-wide stake in avoiding human rights and war crimes prosecutions.²²

It is here that the military draws the line. While factional struggles continue, the *defensa gremial* defines a set of common interests. Torricelli’s revelations could cause fissures that weaken but probably will not break that cohesion. In late March, tensions rose to a dangerous level when the U.S. embassy, in a letter to President de León Carpio, listed 30 officials linked to drug trafficking and demanded their resignations. Hardliners reacted angrily and coup rumors floated through the capital.²³ Security around the president, the presidential Chief of Staff Col. Otto Perez Molina, and Defense Minister Enríquez has been increased.

For all the noise generated by the Torricelli revelations, little has changed in Guatemala. The Carpio government shows little interest in challenging the generals, and the military is circling the wagons.

22. Journalist Matthew Creelman developed this typology. Unpublished manuscripts in author’s possession.
23. *Inforpress Centroamericana*, Mar. 23, 1995.



Pres. Ramiro de León Carpio (seated) with a cluster of officers. The Guatemalan military is among the world’s worst human rights violators.

But this conflict must be seen in the light of protecting military prerogatives and impunity. Salbal Santay can take no comfort here, and neither can those who hope the Torricelli revelations will lead the military to reform.

Another unintended casualty may be a key program tolerated, if not favored, by the modernists. This plan would replace G-2’s role in non-military intelligence matters with a civilian “secretariat of intelligence,” and bring intelligence gathering closer to democratic norms.

The creation of this secretariat gives an example of how the military’s delicate balance works. Washington Office on Latin America associate Rachel Garst notes that the plan’s only contribution toward civilian control of the military is that the proposed new civilian secretariat will coordinate the activities of other state intelligence offices. In theory, then, the National Security Council and the secretariat will supervise G-2’s activities.²⁴

24. Rachel Garst, “Military Intelligence and Human

But Garst points out that the civilian nature of the secretariat is illusory. One of its two top officials must be a military officer, and it will presumably employ both military and civilian analysts.²⁵

Thus, the military would still retain control of intelligence gathering and its methodology, and preserve its power even within a “democratized” framework. Even under the new, “democratized” system, how the balance between institutionalists and hardliners is faring at any given moment could be the final determinant of whether the G-2 could field another DeVine operation.

For all the noise generated by the Torricelli revelations, little has changed in Guatemala. Salbal Santay remains in prison, El Buki is still ignored, the government shows little interest in challenging the generals, and the military is circling the wagons. ●

Rights in Guatemala: The *Archivo* and the Case for Intelligence Reform,” WOLA Policy Brief, Mar. 30, 1994.
25. *Ibid.*

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Bhopal: Courting Disaster



AMITAVA KUMAR/IMPACT VISUALS

by Rob Hager

Agent Orange, Bhopal, Chernobyl, Dalkon Shield, and Exxon Valdez: early entries in the expanding dossier on corporate power and technology run amok. Ten years after the world's worst industrial disaster, the courts have adapted to better protect the polluters.

For Bhopal residents, December 2-3, 1984, was a long night in hell. Roused from sleep with burning eyes and lungs, half its 800,000 residents stumbled through the streets in futile flight from the heavier-than-air gases blanketing the poorer part of this central Indian city. Methyl isocyanate (MIC) blowing out the stacks of the pesticide plant — and probably other toxic gases caused by chemical reactions — eventually spread over 15 square miles.

As many as 10,000 people died suddenly or lingering deaths. About 200,000 survivors continue to suffer physical and

neurological effects of exposure to the gases: pain; fatigue; depression; various pulmonary, reproductive and digestive problems; loss of breath, appetite, and memory; immune deficiencies; eye damage; and, of course, shortened life-span.¹

Sixty-Five-Year Spin Cycle

At the time of the disaster, Union Carbide Corporation (UCC) — which owned 51 percent of the subsidiary operating the Bhopal plant — was the 35th largest industrial company in the U.S., with production in 38 countries and sales in 100 countries. Born of the mergers and acquisitions that characterized the emergence of the U.S. chemical industry dur-

ing the First World War, UCC promoted a consumer-friendly face with products like Glad Bags, Eveready batteries, Simoniz wax and Prestone antifreeze. Behind this facade, its core business was extracting profits from dangerous and polluting industries.

Long before Bhopal, UCC had built up considerable experience in damage and spin control. In the 1930s, its West Virginia subsidiary got away with the U.S.'s worst industrial disaster after recklessly exposing hundreds of workers to silica dust. In other lesser known accidents, the corporation honed its talent for minimizing the political and legal consequences of its unsafe operations.²

Rob Hager is a Washington, D.C., public interest lawyer who argued the *Bhopal* and *Ivy* (Agent Orange) cases. This article is based on testimony to the 1994 Permanent People's Tribunal on Industrial Hazards and Human Rights. Photo: Protesting UCC outside India's Supreme Court.

1. Rosalie Bertell, et al., *Interim Report of the International Medical Commission on Bhopal*, Toronto, Dec. 1994.

2. M. Cherniak, *The Hawk's Nest Incident: America's*

In 1943, UCC was rewarded with membership in the elite Manhattan Project, helping to make the bombs dropped on Hiroshima and Nagasaki. By the early 1950s, UCC had become NATO's nuclear gatekeeper, transforming natural uranium into highly hazardous material that contaminated the environment and workers at its two enormous enrichment plants. UCC's Oak Ridge, Tenn., and Paducah, Ky., employees and neighbors are still counting their dead. The radiation messes UCC left behind at these Department of Energy facilities will have to be cleaned up at taxpayers' expense. Throughout these years, UCC scientists at Oak Ridge National Laboratory helped create the pseudoscience of risk analysis that has justified the nuclear industry's sloppy production practices, and has all but immunized it from legal liability to its victims.³

By the tenth anniversary of Bhopal, UCC had much to celebrate. It had converted the world's worst industrial disaster into one of history's largest mass injustices. By manipulating the political and legal systems of two countries, it had also placed itself above the law and handsomely enriched its shareholders.

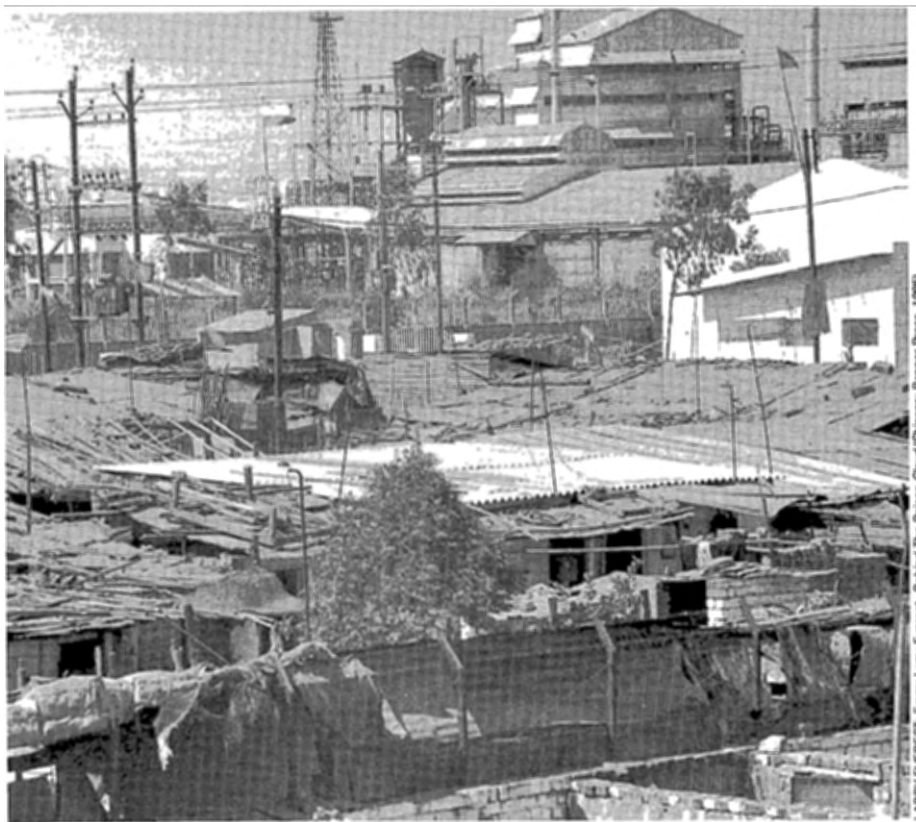
An Accident Waiting to Happen Is No Accident

The company's responsibility for the disaster is beyond question. For more than two years, a lone crusading Bhopal reporter, Rajkumar Keswani, had predicted a massive disaster and agitated for corrective action. In fact, UCC had bungled both technical and fiscal planning. The facility was seriously flawed because of its ill-designed safety systems, its placement in the heart of the city, and its on-site storage (against the express advice of one of UCC's Indian managers) of explosive quantities of the highly reactive and toxic MIC.

When UCC discovered it had overestimated demand for its high-priced pesticides, it began cost-cutting. By 1984, with the plant at less than one quarter capacity and losing \$4 million a year,

Worst Industrial Disaster (New Haven: Yale Univ. Press, 1986). The victims were mainly recent African-American migrants from the South. Public Citizen, *The Union Carbide Record*, Washington, D.C., Sept. 11, 1985) compiles a list of UCC's pre-Bhopal pollution incidents.

3. Briefs in *Harding v. UCC*, Claim No. 958359 (Ky. 1994) describe the risk theories UCC used to deny radiation injury. Wing, *et al.*, *Mortality Among Workers at Oak Ridge National Laboratory*, *JAMA*, v. 265, 1991, pp. 1397-1402, suggests how faulty these theories are by finding that "no-risk" exposure to radiation (5 rem) was associated with excess cancers at UCC's Oak Ridge lab.



Union Carbide sited its plant in the middle of the poorest part of the city.

UCC was trying to sell it off to Indonesian buyers. Meanwhile, site managers scrimped further on staff training and shut down, or failed to maintain backup safety systems such as the flare tower, sprinkler system, pressure and temperature gauges, and the tank cooling system.

The 1984 disaster was neither the plant management's first warning of serious flaws nor its first evasion of re-

Behind Union Carbide's facade, its core business was extracting profits from dangerous, polluting industries.

sponsibility. For example, after a 1981 gas release that killed one worker and injured others, UCC ignored worker protests and stonewalled. This reaction presaged UCC's 1984 spin control strategy: After its reckless conduct caused that disaster, the company concocted a sabotage story it would never prove. It claimed that a worker intentionally let water into connecting lines to the storage tanks, setting off the explosive reaction

with MIC. Even if it had been true, the excuse was irrelevant — UCC would still have been negligent in designing and maintaining a plant that could be sabotaged so easily with such disastrous effect. After workers and the media challenged this story, UCC managers abandoned it in court. But whatever the trigger, the corporation was liable for the clearly foreseeable consequences of its negligence.

The Longest Wait

Since not even high-priced spin doctors and legal teams hired to deal with the disaster could dispute that the gas release caused widespread death and illness, the company turned its attention to limiting its financial liability. A conservative estimate of the actual damages, by U.S. standards, is \$35 billion, excluding richly-deserved punitive damages. And even if a U.S. jury had discounted this amount to reflect lower Indian standards of living, the award would still predictably have exceeded UCC's 1984 \$5 billion book value.

The Indian government's September 1986 complaint for the victims, filed in the Bhopal District Court, asked for only \$3 billion compensation, plus punitive damages. In 1989, against the ex-

press opposition of the victims, the Rajiv Gandhi administration accepted \$470 million to settle all present and potential future claims. Only four years before, the same administration had labeled a similar deal negotiated by U.S. lawyers a "sellout."⁴ The Indian government's deal was like discharging a debt by paying one year's interest on the money owed about 10 years late. It amounted to about \$2,000 per victim.

Legal Strategies for Impunity

UCC had gotten off easy, but not because it trusted to luck. The three legal strategies UCC developed after Bhopal to avoid potentially enormous liability have set a standard for legal evasion by corporations around the world.⁵

1. Collusive class action settlement

A linchpin of UCC's strategy to settle claims for mass injuries cheaply required enlisting the cooperation of a lawyer who would nominally represent injured plaintiffs but be willing to violate the normal ethical prohibitions against settling claims, or bundling them together into a group settlement, without the consent of the clients. This strategy had been invented only months before the Bhopal disaster by U.S. District Judge Jack Weinstein in a suit brought by U.S. veterans exposed to the Agent Orange herbicide in Vietnam.⁶

Judge John Keenan, who was hand-picked to hear the Bhopal case, appointed the Plaintiff's Management Committee to represent the victims. A main qualification of Stanley Chesley, one of three lawyers Keenan chose, was that he had just arranged the cheap *Agent Orange* class action settlement — despite overwhelming opposition from the affected Vietnam veterans. It was not a surprise when Chesley tried to

similarly sell out the Bhopal victims.⁷ He was stopped by the strong opposition of India and public interest *amici* lawyers. UCC would later recycle this strategy in India.

2. The bankruptcy defense

Not relying solely on collusion with the victims' lawyers, immediately after the disaster, UCC began a financial restructuring that ran down its equity from over \$5 billion in 1984 to substantially less than \$1 billion little more than a year later. UCC also refinanced much of its debt into secured debt; indeed it paid a half billion dollar premium — more than the settlement amount — merely for the right to prepay its debt holders.

This \$8 billion divestment to lenders and shareholders, constituting about 80 percent of UCC's equity and 96 percent of its debt,⁸ was masterminded by a consortium of investors headed by Morgan Guaranty. Ostensibly, the action was incidental to UCC's defense against a failed takeover attempt by GAF Corp., a company one-twentieth the size of UCC. The intended, or perhaps merely happy, consequence was to provide UCC with a bankruptcy defense against any substantial liability in the event its other

No UCC shareholder who trusted in Wall Street's ability to cut its losses lost a dime from the Bhopal affair.

7. Thomas M. Burton, "How Stanley Chesley Settles Things Quickly in Mass Injury Suits: Class Action Attorney Earns Big Fees in Settlements Some Say Are Premature - Heart Valves to Agent Orange," *Wall Street Journal*, June 26, 1992, p. 1. Benton Musslewhite, another attorney who signed the Agent Orange settlement agreement, also figured in Bhopal litigation. After suspension from his State Bar, see *State Bar of Texas v. Musslewhite* (Nos. 86-44452 and 87-24402; Harris Cty., 270th Jud. Dist. 1989), *aff'd*, (No. B14-89-00041; 14th Court of Appeals 1990), he continued to hamper efforts in *Ivy, supra* n. 6, to release Vietnam vets from the cheap class settlement he made. While purporting to assist them, he similarly damaged the efforts of Bhopal victims to ever obtain relief in U.S. courts. See *Bano Bi v. Union Carbide Chemicals and Plastics Co.*, 984 F.2d 582 (1993) (filed in a manner to assure transfer to Judge Keenan, it resulted in foreclosing future Bhopal claims); *Ramesh Chand Soni v. UCC*, No. B-121,140 (Jefferson Cty., Tex. 1989). (Musslewhite's untimely notice of appeal of *forum non conveniens* dismissal foreclosed the opportunity for Bhopal victims to benefit from Texas law (*Dow Chemical Co. v. Alfaro*, 786 S.W. 2d 674 (Tex. 1990)).

8. UCC 1987 Annual Report, pp. 17, 28-29.

strategies should fail.⁹ Thus camouflaged, the massive transfers of equity by UCC back to its shareholders, and of unsecured debt to its lenders, could not be easily attacked as fraudulently designed to avoid Bhopal liabilities.

A side effect of UCC's divestment was a marked increase in the value of its shares, as Wall Street broke up the sluggish oligopolistic firm and sold off its assets. Virtually all UCC investors profited by the liberation of capital from an uncompetitive management. This maneuver provided Warren Anderson, UCC chief during Bhopal, and other top managers with a complete defense against the pending derivative suit by shareholders against them personally for negligently causing the Bhopal disaster, and hence, the initial steep decline in share values.

Within about a year, the price of UCC shares exceeded anything they had brought prior to the Bhopal disaster. On July 30, 1986, UCC also gave its shareholders \$30 a share from the sale of its consumer products division, plus a few more dollars later in the year. This extraordinary dividend equaled the lowest price that UCC's shares reached after Bhopal.

No UCC shareholder at the time of the disaster who trusted in Wall Street's ability to cut its losses lost a dime from the Bhopal affair. Indeed, a good case can be made that nearly all shareholders profited as a direct result of the disaster. Today, UCC's per share value is three times its pre-Bhopal value.¹⁰ In 1988-89 — when the settlement was paid — UCC enjoyed the two most profitable years in its history. A May 1995 bankruptcy filing by Dow Corning to avoid financial responsibility for claims made over silicone breast implants may have drawn on UCC's successful legal strategy.

9. UCC directors claimed that its "divestiture program was initiated by management well before GAF's takeover bid." *Wall Street Journal*, letter, Jan. 16, 1986. While the Morgan consortium backed UCC, only Michael Milken of Drexel Burnham backed GAF. *The New York Times* noted that UCC seemed too big for GAF to swallow (Dec. 12, 1985) but *Barron's*, Aug. 26, 1985, p. 12, speculated that "any big company ... might well be deterred by fears that, with its increased resources standing behind Carbide, the Bhopal victims would be tempted to hold out for even larger payments." Pres. Samuel Heyman denied he was trying to take over UCC, and GAF walked away with \$200 million in profits. GAF was convicted of — and Milken's associate Boyd Jefferies pleaded guilty to — manipulating UCC stock during this "takeover" attempt.

10. Stocks in UCC and Prairair, which was spun off from UCC in 1992, sold for about \$30 and \$20 respectively at the end of 1994, after a 3-for-1 stock split and \$33 special dividend in 1986. This \$180-190 current *pro forma* value compares with UCC's \$50-60 share price in the years before the disaster.

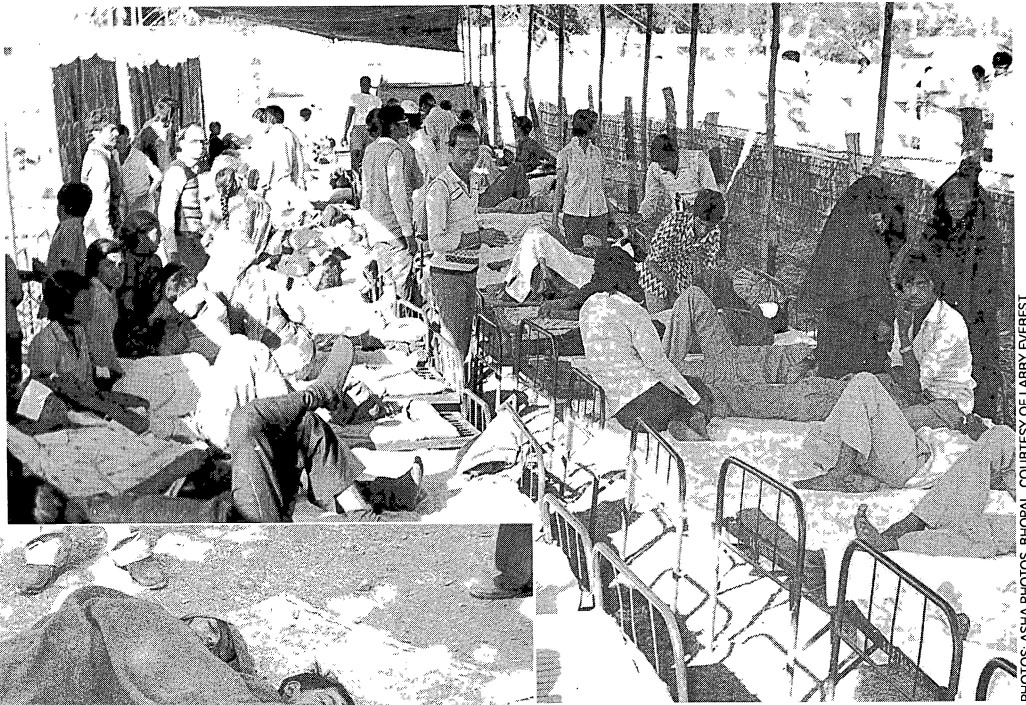
4. See Barry Meier, "Lawyers for Victims of Bhopal Gas Leak Fight One Another," *Wall Street Journal*, May 1, 1986.

5. The hand of UCC's legal strategists may also be detected in its opposition to administering sodium thiosulfate, a treatment that could have acted as an antidote but also would have facilitated courtroom proof of MIC exposure. For a general discussion of the legal issues see "Bhopal: Taking Carbide to Court," *Business India*, Mar. 25, 1985.

6. *Agent Orange Product Liability Litigation*, 597 F.Supp. 740 (E.D.N.Y. 1984). See also *Ivy v. Diamond Shamrock Chemicals Co.*, 781 F. Supp. 902 (E.D.N.Y. 1991), *cert. denied*, 114 S.Ct. 1125 (1994) (rejecting attack on collusive settlement of future claims). See A. Namika, "Agent Orange..." *CAQ*, Winter 1992-93, pp. 26-28. The veterans' settlement was comparable to the Bhopal victims': nothing for the overwhelming majority, and an average of less than \$5,000 for death and total disability of about 50,000 veterans and family members, paid over ten years.

3. Avoiding an inconvenient rule of law

The *forum non conveniens* doctrine was UCC's third strategy. Under this legal doctrine, U.S. courts may dismiss cases brought by foreign plaintiffs on grounds that it would be "inconvenient" for a U.S. defendant to be sued at home in a case with sufficient foreign elements to make a foreign forum more "suitable." The concept of "convenience" has become rich in irony in recent years as federal courts have erected this doctrine, most notably in the



The toll of injured and dead reached hundreds of thousands; the settlement averaged \$2,000 per casualty.

Bhopal case, to protect U.S. multinationals against the "inconvenience" of liability to their overseas victims.

Forum non conveniens dismissal had been considered unconstitutional until 1929 when the Supreme Court adopted the view presented in an article by a Wall Street lawyer with an agenda, arguing that the "privileges and immunities" clause of the U.S. Constitution did not require a court to hear a case by non-residents.¹¹ In 1947, a narrowly divided Supreme Court created the doctrine sought by the article.¹² Congress immediately repealed the new ruling for domestic application, but the doctrine did not die. A few decades later, a divided Supreme Court revived the doctrine for application solely to non-resident and foreign plaintiffs.¹³ The Bhopal case soon marked the doctrine's latest transfor-

mation into a powerful barricade protecting U.S. multinationals from the consequence of causing injury abroad. The new rule permits arbitrary dismissals by federal district judges of claims by people injured abroad by U.S. corporations. This likely violation of international law was disguised behind legalistic rationalizations. One scholar's characterization of the *forum* doctrine well describes the Bhopal case: "[The] prevailing judicial attitude is that the injuries done by American businesses to foreign nationals abroad are not America's problem."¹⁴

Believing it would have a better chance to make a deal in India, UCC moved for a *forum non conveniens* dismissal from the U.S. The government of India at first strongly opposed the motion, going so far as to impugn the ability of its own judiciary to handle the Bhopal case.¹⁵ But then the political context changed. (See p. 42.) After Prime

Minister Rajiv Gandhi visited the U.S. twice in 1985, and the U.S. lifted its arms embargo against India, the government abandoned its opposition to Judge Keenan's May 12, 1986, *forum non conveniens* decision. On appeal, India supported dismissal of the Bhopal case from the U.S. courts.

The Dirty Supreme Court

The focus of the Bhopal case shifted to India after the federal Court of Appeals affirmed Keenan's dismissal on January 14, 1987. New Delhi showed that it had been attentive during its sojourn in the U.S. courts when it turned around and arranged roughly the same "sell-out" class settlement as the American lawyers had negotiated, plus interest. The legal power Parliament gave the Gandhi administration to protect Bhopal victims from corrupt American lawyers was thus used to achieve the selfsame ends it was supposed to prevent.

The administration floated its settlement balloon in late 1987 after the U.S. Supreme Court refused to hear the appeal. That deal was sent back to the drawing boards in the face of massive street protests and an international outcry. The deal lay dormant until the Indian Supreme Court revived it in a February 14, 1989 hearing—a true Valentine to UCC. The Supreme Court's tactics

11. Blair, "The Doctrine of Forum Non Conveniens in Anglo-American Law," 29 *Columbia Law Review* 1 (1929). Blair advanced the self-serving proposition that a *forum non conveniens* doctrine already existed in English and U.S. common law.

12. *Gulf Oil Co. v. Gilbert*, 330 U.S. 501 (1947) (5-4). Like Blair, the *Gilbert* opinion invented a pedigree for the doctrine by misrepresenting previous rulings.

13. *Piper v. Reyno*, 454 U.S. 235 (1981) (4-3 decision).

14. David Robertson, "Forum Non Conveniens in America and England: A Rather Fantastic Fiction," 103 *Law Quarterly* pp. 398, 400, 426 (1987). Scholars have been critical of the doctrine. See, e.g. Stein, "Forum Non Conveniens and the Redundancy of Court-Access Doctrine," 133 *Univ. of Pennsylvania Law Review*, 781, at 785 (1985).

15. Affidavit of Prof. Mark Galantar, 1985.



PAUL WEINBERG/AF-PhotoImpact Visuals

The Pragmatic Thaw

The Rajiv Gandhi administration's change of heart — accepting dismissal of the Bhopal litigation from the U.S. — followed the prime minister's trips to the U.S. in June and October 1985 and the ensuing concessions by the Reagan administration. Going into 1984, India-U.S. relations were poor by almost any barometer. In accordance with its "my enemy's enemy" policy toward Pakistan, India had remained friendly with the Soviet Union and its client government in Kabul during the Afghan War. Pakistan had been a U.S. Cold War ally since at least the establishment of a major intelligence facility in Peshawar in the 1950s. In the 1980s, Pakistan was instrumental to the Afghan *mujahadeen*, for whom the CIA received the largest appropriations of any covert war since Vietnam.¹

Although the height of the Afghan War was an unlikely time to alienate Pakistan by resuming U.S. arms sales to India, nevertheless, in May 1985, shortly after the Bhopal disaster, the two countries signed a Memorandum of Understanding concerning transfers of controlled, militarily sensitive, technology. The same month, the Pentagon began high-level contacts with India that, according to a former State Department intelligence officer, "signalled an important shift in U.S. arms policy toward India: Washington was

agreeing in principle, after a break of two decades, to cooperate with India's growing defense industry."² On October 1, 1986, it was reported that India had received licenses to import U.S. jet engines and high-tech military equipment, thereby effectively lifting the arms embargo that had been in place since September 8, 1965.

Although there is no hard evidence linking the sudden thaw in India-U.S. relations to UCC's generous treatment in the Bhopal case, the coincidence is worthy of note.³ ●

1. See Charles Cogan, "Partners in Time: The CIA and Afghanistan," *World Policy Journal*, 1993, pp. 73, 77 (more than \$2 billion). The delivery of this aid was controlled by Pakistan's Interservice Intelligence Directorate (ISI), a CIA client agency "which essentially ran the Afghan War." (*Ibid.*, pp. 78-79.)

2. Dennis Kux, *India and the United States: Estranged Democracies* (Washington, D.C.: National Defense Univ. Press, 1992), p. 402. Later that year, DoD approved in principle the sale of advanced jet engines.

3. The hypothesis that the Reagan administration's counterintuitive and unexplained change in policy toward a Soviet ally was influenced by corporate ties finds support in the following considerations: 1) UCC was an important and longstanding member of the U.S. national security community; 2) UCC's D.C. lobbyist, Ronald Wishart, was in charge of its Bhopal task force, although there was no obvious Washington connection to the issue; 3) appropriate compensation for Bhopal by UCC would have financially dwarfed all U.S.AID and investment relationships between the two countries; 4) the State Dept. became an early UCC advocate; 5) a rookie Reagan-appointed judge (an undistinguished state prosecutor who lacked any relevant experience and then was placed on the FISACourt [see p. 46]), was designated to hear the case and let UCC avoid facing a US jury; and 6) the Bofors and other such scandals contributed to Rajiv Gandhi's 1989 election defeat.

insulated the Gandhi administration from appearing responsible for the unpopular sell-out to a foreign transnational.

The court employed highly unorthodox procedures to do this. Bhopal's District Judge Deo had made a farsighted award of interim compensation to mitigate the ongoing injuries from gas exposure pending trial, and relieve pressure to accept a cheap settlement. On appeal, the Supreme Court effectively converted this award into a cheap, permanent and total settlement of all claims without providing a satisfactory explanation for doing so, or consulting the victims. A group of victims took brooms to the Supreme Court and attempted to sweep the dirt off its steps.

The Court delayed acting on motions to reconsider the settlement until after the 1989 elections. When Rajiv's Congress (I) regime fell, hopes were rekindled by the new government under V.P. Singh. Singh's electoral victory was built on a reputation of integrity. He had resigned from Rajiv's government in protest against alleged kickbacks from a Swedish arms dealer, Bofors. His new government renounced Rajiv Gandhi's Bhopal settlement and, on February 23, 1990, while motions opposing the Supreme Court deal were still pending, filed an affidavit in support of the victims.¹⁶ Prime Minister Singh stated: "We believe that there can be no deal over human corpses," and then approved government subsidies for the victims that were joyously welcomed in Bhopal.

But Singh's Attorney General Soli Sorabji continued to rely on the pre-

The U.S.'s grisly anniversary present to Bhopal is the Republican's "Contract with America" tort reform, which would effectively abolish punitive damages for big corporations.

(continued on p. 56)

16. For an excellent discussion, see Rob Jenkins, "Bhopal Five Years After: The Case Against Union Carbide Enters A Crucial Phase," *In These Times*, July 18, 1990, pp. 12-13; and Bhopal Justice Campaign, Berkeley, Calif., *Bhopal: Public Interest Legal Briefs*, 1991, for filings in the Supreme Court of India in opposition to the settlement.

The Secret FISA Court: Rubber Stamping on Rights

by Philip Colangelo



"There is nothing more inherently at odds with traditional concepts of justice than a secret court with broad police powers. Few Americans are aware of the court and far fewer still have ever been inside its sealed chamber." — Jonathan Turley¹

The aftershock of the Oklahoma City bombing sent Congress scurrying to trade off civil liberties for an illusion of public safety. A good ten weeks before that terrible attack, however — with a barely noticed penstroke — President Bill Clinton virtually killed off the Fourth Amendment when he approved a law to expand the already extraordinary powers of the "strangest creation in the history of the federal judiciary."²

Since its founding in 1978, a secret court created by the Foreign Intelli-

gence Surveillance Act (FISA rhymes with "ice"-a) has received 7,539 applications to authorize electronic surveillance within the U.S. In the name of national security, the court has approved all but one of these requests from the Justice Department on behalf of the Federal Bureau of Investigation and the National Security Agency.³ Each of these decisions was reached in secret, with no published orders, opinions, or public record. The people, organizations, or embassies spied on were not notified of either the hearing or the surveillance itself. The American Civil Liberties Union was not able to unearth

a single instance in which the target of a FISA wiretap was allowed to review the initial application. Nor would the targets be offered any opportunity to see transcripts of the conversations taped by the government and explain their side of the story.

"Without access to such materials," said Kate Martin of the ACLU, "targets of FISA searches are denied any meaningful opportunity to contest the basis for the execution of the FISA search."⁴

Open-ended Surveillance

When Clinton signed Executive Order 12949 on February 9, the frightening

Philip Colangelo is a freelance journalist in New York.
1. Turley, "Black-Bag Justice," *Legal Times*, Nov. 21, 1994, p. 28.
2. James Bamford, *The Puzzle Palace: A Report on America's Most Secret Agency* (Boston: Houghton Mifflin, 1982), p. 368.

3. Annual Reports to Congress Pursuant to 50 USC 1807, 1979-1993.

4. Kate Martin, testimony, House Permanent Select Committee on Intelligence, June 14, 1994, pp. 15-16.

mandate of the FISA, court was greatly expanded: It now has legal authority to approve black-bag operations — to authorize Department of Justice (DoJ) requests to conduct physical as well as electronic searches, without obtaining a warrant in open court, without notifying the subject, without providing an inventory of items seized. The targets need not be under suspicion of committing a crime, but may be investigated when “probable cause” results solely from their associations or status: for example, belonging to, or aiding and abetting organizations deemed to pose a threat to U.S. national security. Furthermore, despite a lowered standard for applying the Fourth Amendment against unreasonable search and seizure than is

necessary in other U.S. courts,⁵ under the 1995 expansion, evidence gathered by the FISA court may now be used in criminal trials. Previously, evidence was collected and stockpiled solely for intelligence purposes.

Legalizing the Ames Search

Granting new powers to the FISA court was accomplished quietly and treated as a non-event in the national media. The lack of reporting was somehow fitting, though, following as it did the silent “debate” last year when Congress rubberstamped the annual Intelligence Authorization Act.⁶

Some legal minds found the whole exercise positively refreshing.

“The fact that this was done with a minimum of fuss and posturing on both

sides, and without having to have a debate that tries to roll up the corners of classified information is very impressive,” cheered former NSA General Counsel Stewart Baker.⁷

Reportedly, the Clinton administration had not always been enthusiastic about expanding the court’s powers. Like its predecessors, it operated under the assumption that the executive already had “inherent authority” to exempt itself from Fourth Amendment constraints and could order warrantless searches to protect national security. Nonetheless, the government avoided allowing this “inherent authority” to be tested in the courts.⁸

Then along came Aldrich Ames. The spy case proved a convenient vehicle on which to hitch expansion of state

5. The Fourth Amendment assures “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures....” It guarantees that warrants will not be issued unless there is “probable cause” and that the warrant must describe the “persons or things to be seized.”

6. In addition to the FISA court provisions, the bill also gives the government authority to search financial records of employees with access to classified information who fall under suspicion. Also addressed are exceptions to public availability of certain Department of Defense maps, CIA pensions and retirement benefits, and other personal matters.

7. Benjamin Wittes, “Surveillance Court Gets New Powers: Aldrich Ames’ Legal Legacy,” *Legal Times*, Nov. 7, 1994.

8. “Inherent authority” as applied to na-

“The government could attempt and fail to secure a search warrant under traditional constitutional arguments, then go to the FISA court and convert the case artificially into a national security investigation and secure approval for the very same search.”

— Jonathan Turley

power. It also offered a glimpse at the state-of-the-art domestic counterintelligence techniques that might well be turned on an activist group near you.

Following months of electronic and physical surveillance — which included a break-in of Ames’ car and searches through his office and family trash — FBI agents were finally turned loose in the early morning hours of October 9, 1993. “They didn’t ‘pick’ locks like in the movies; they made their own keys. Among other agents in the FBI, the consensus was unanimous: The tech agents were geniuses.”⁹

“Thanks to a warrant authorized by Attorney General Janet Reno,” a team of agents from the “sprawling” National Security Division “had permission to enter the Ames home” in Arlington, Va.¹⁰

There was only one minor problem.

“The attorney general of the United States does not have the authority to order a warrantless physical search of a citizen’s home,” argued Professor Jonathan Turley of George Washington University National Law Center. “The Aldrich Ames search in my view was obviously and egregiously unconstitutional.”¹¹

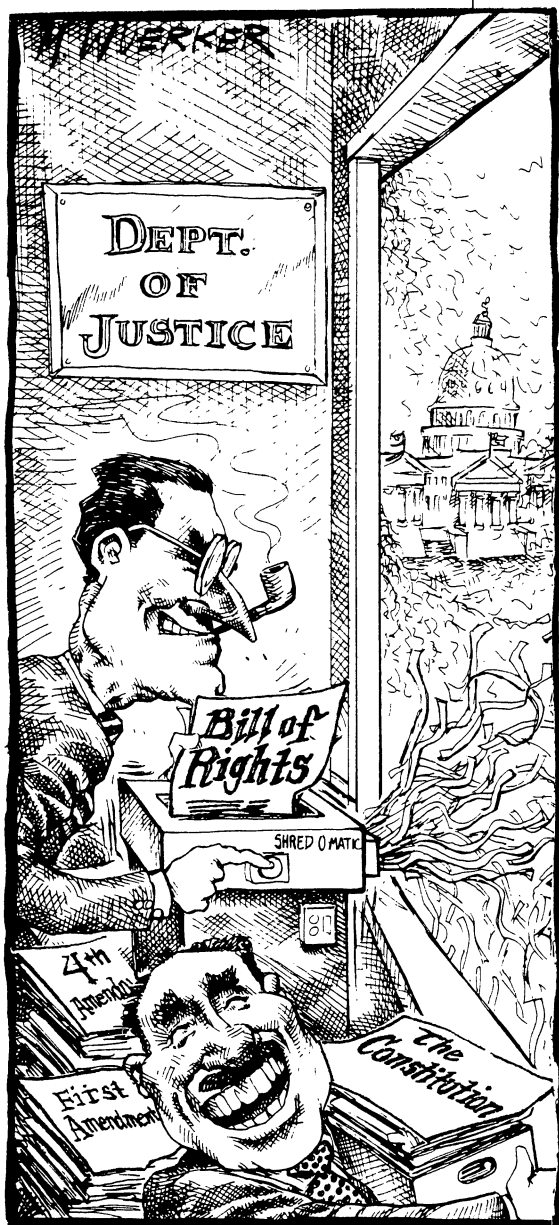
Other civil liberties lawyers agree with this evaluation, and the Justice Department itself was concerned enough

tional security policy is probably on shaky constitutional grounds since it has never been supported by Supreme Court decision. The doctrine itself, Bamford pointed out, assumes that this unstated presidential power emanates from the heavens. (Bamford, *op. cit.*, p. 367.)

9. Brian Duffy, “The Cold War’s last spy,” *U.S. News & World Report*, Mar. 6, 1995. See also Walter Pincus, “FBI Opens Internal Review of Agents’ Handling of Ames Spy Case,” *Washington Post*, Jan. 29, 1995, p. A12.

10. *Ibid.*

11. Interview, Mar. 14, 1995.



about the question to refer to this problem when it negotiated a deal with Ames in order to avoid trial. While Ames was sentenced to life in prison, his wife Rosario received five years.

"We didn't get to the point of litigation, I regret to say," said Ames' lawyer Plato Cacheris. "The problem was that Ames very much wanted to see that his wife was treated a little more softly than he was being treated."¹²

Now eager to put a stamp of judicial impartiality on the hazy executive branch doctrine of "inherent authority," the Justice Department immediately got behind the bill to expand the FISA court's power. Soon after Ames pleaded guilty last year to spying, administration officials began arguing that adherence to traditional Fourth Amendment protections for American citizens would "unduly frustrate" counterintelligence efforts against spies operating in the U.S.¹³ "Physical searches to gather foreign intelligence depend on secrecy," argued Deputy Attorney General Jamie Gorelick. "If the existence of these searches were known to the foreign power targets, they would alter their activities to render the information useless."¹⁴ Gorelick went on to explain that "A [traditional] search can only be made when there's probable cause" to believe a crime is involved, whereas "a national-security

"A [traditional] search can only be made when there's probable cause [whereas] ... a national security search can be made at a substantially earlier stage. We often don't know what we're looking for when we go in."

— Jamie Gorelick

12. Interview, Mar. 13, 1995.

13. In testimony before Congress, an ACLU attorney offered an alternative method of preventing a repeat of the Ames debacle. She argued that the problem could be solved by requiring financial exposure by everyone granted security clearance. On April 11, months after securing additional powers for FISA, the Clinton administration approved this incursion into privacy as well. (R. Jeffrey Smith, "New Secrecy Rules May Cost Workers Rights to Privacy...", *Washington Post*, Apr. 11, 1995.)

14. John Dillin, "Congress Quietly Debates Merits of Warrantless 'Spy' Searches," *Christian Science Monitor*,

rity search can be made at a substantially earlier stage. We often don't know what we're looking for when we go in," she observed.¹⁵

The Price of Secrecy

The possibility of FISA-sanctioned fishing expeditions was only one of the potential abuses that alarmed legal scholars and people concerned with civil liberties. "It's absolutely ripe for abuse," said New York City defense lawyer Ron Kuby. "There are hundreds of solidarity groups that American citizens work with, and all of those groups could be targets under FISA."¹⁶ These groups and individuals, engaged in legitimate dissent and solidarity work with the victims of U.S. foreign policy around the world, fear that their First and Fourth Amendment rights will be eroded.

Others worry that under cover of secrecy, the court would exceed even its own broad legal mandate. "Clearly the FISA court was strengthened to allow the government to conduct searches they would not be allowed to conduct under the traditional constitutional provisions," said Turley. "That means the government could attempt and fail to secure a search warrant under traditional constitutional arguments, then go to the FISA court and convert the case artificially into a national security investigation and secure approval for the very same search."¹⁷

In the post-Oklahoma bombing atmosphere, the temptation to broadly interpret national security to include homegrown terrorism is likely to increase. Defenders of the FISA court point out that there are lengthy provisions written into the original legislation to "minimize" the impact of FISA-authorized surveillance on innocent Americans.¹⁸ Of

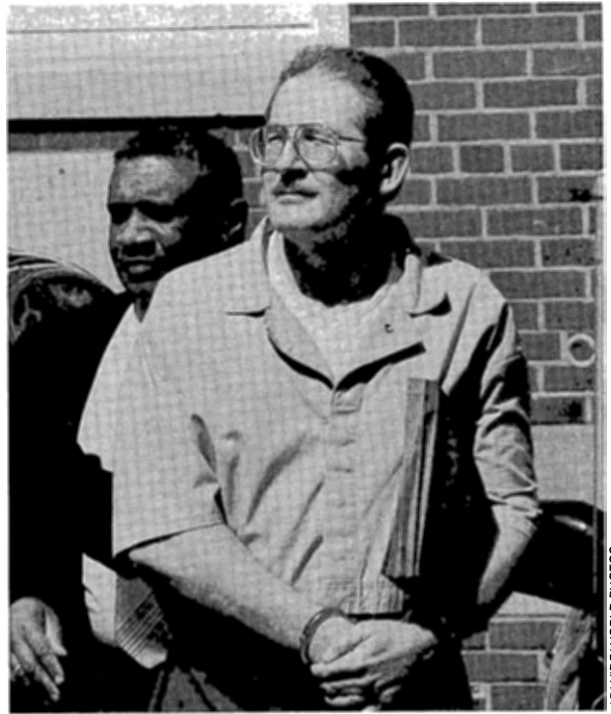
Aug. 31, 1994, p. 2.

15. Wittes, *op. cit.*

16. Interview, Mar. 16, 1995.

17. Interview, Mar. 14, 1995.

18. See Helene E. Schwartz, "Oversight of the Minimization Compliance Under Foreign Intelligence Surveillance



AP/WIDE WORLD PHOTOS

The dubious legality of the search of Aldrich Ames' home led the DoJ to seek expansion of the FISA court mandate to include physical searches.

course, since no information about the actions of the court is permitted to escape the sealed FISA chambers, the public is expected to accept on blind faith that the minimization procedures are functioning properly and the various law enforcement and intelligence agencies are not overstepping their bounds. But given an extensive and well-documented pattern of past government abuses, Turley's warning of future abuses seems safe. Even when warrantless searches were unambiguously illegal, the government conducted thousands of them and violated the civil rights not only of possible spies, but of people engaged in constitutionally protected dissent. "Secret searches of Americans' homes and papers in the name of national security were one of the worst civil liberties abuses of the Cold War," noted the ACLU's Martin. "Instead of approving them, the Congress should outlaw them."¹⁹

Even if the court and law enforcement agencies did not overstep their powers,

Act: How the Watchdogs Are Doing Their Jobs," *Rutgers Law Journal*, v. 12, n. 3, Spring 1981.

19. Martin, *op. cit.* The long list of domestic abuses perpetrated on Americans by domestic spies includes the FBI's vast COINTELPRO of the '60s and '70s, as well as the targeting of activists from the sanctuary movement, the Committee in Solidarity with the People of El Salvador, and many connected with pro-Palestinian causes.

Sequestered Judges

One kicked victims of the Bhopal disaster back to where they came from. Another presided over the first trial of church workers charged with offering refuge to Central Americans fleeing their U.S.-backed death-squad governments. Still another, the presiding judge, in fact, once ruled that Richard Nixon's White House tapes were not subject to release under the Freedom of Information Act.

While several of the judges who currently serve on the Foreign Intelligence Surveillance Court have on occasion shown concern for individual liberties in their public courtrooms, they have also demonstrated a useful willingness to serve state power when the financial or political costs are likely to start running too high.

Like most of her colleagues, Washington, D.C., federal judge Joyce Hens Green (1988-95), who presided over the first tier of the FISA court from 1990 until this May, doesn't publicly acknowledge service on the spy court.¹ In the view of Jonathan Turley, law professor at George Washington University, Green's presence lent the court an air of legitimacy it doesn't otherwise deserve.²

With her departure in May 1995, the credibility she imparted may have left with her. Her replacement as presiding judge is Washington, D.C., federal judge Royce C. Lamberth (1995-2002). Two years ago, he sided with Richard Nixon. In this 1993 case, Lamberth blocked the release of four hours of the Watergate tapes, saying the National Archives would have to abide by Nixon's wishes and release 4,000 hours of tapes at once or not release anything at all.

Outside official government circles, it's difficult to find many glowing reviews of Earl H. Carroll (term: 1993-99), a district judge from Arizona. He presided over the 1985-86 trial of 11 Arizona church workers who were indicted for helping Central Americans find refuge from the political turmoil in their homelands. In the course of the trial, Carroll ruled that defense lawyers could not introduce details of the violence in Central America into evidence; he also excluded any discussion of international law.

"Carroll had essentially bought the U.S. government argument that this was a simple alien-smuggling case, a cut-and-dried matter of whether the immigration laws had been violated," noted one close observer of the proceedings.³ Although Carroll called the infiltration of the church "unacceptable, but not outrageous," he refused to rule that it was a violation of the due process clause of the Fifth Amendment.⁴

In addition to his spy court duties, media darling John F. Keenan (1994-2001) is also district judge from the Southern District of New York. When victims of the Bhopal toxic gas leak tried to seek damages in U.S. courts in 1986, Keenan ruled — to the relief of Union Carbide — that the case should be transferred to India. (See p. 38.)

In October 1993, one month after James C. Cacheris joined the court, it authorized a wiretap on CIA agent

Aldrich Ames. Sixteen months later, James' brother Plato Cacheris was appointed to represent Ames after his arrest for spying for the Soviets and the Russians.⁵ Plato Cacheris says he is inclined to think his brother was not involved in the surveillance authorization. "I don't think he did, [but] I don't discuss any of my cases with my brother, nor does he with me. I would have a chance, yes. We're brothers and we're close, but we deliberately do not discuss these things."⁶ FISA court judge James Cacheris did not return phone calls seeking comment.

Before his appointment to the secret court, James Cacheris, chief judge from the Eastern District of Virginia, had at least one brush with a FISA-authorized wiretap. He demonstrated a keen sensitivity to the needs of the nation's spies. In 1988, shortly after Libya's turn as official U.S. demon-of-the-month, he cited three men for contempt for refusing to testify before a federal grand jury investigating the Peoples' Committee for Libyan Students. Vernon Bellecourt, Bill Means, and Bob Brown were picked up after they telephoned the FISA-approved wiretap targets of a grand jury fishing expedition.

Charles Schwartz, Jr. (1992-98), senior judge from the Eastern District of Louisiana, was active in that state's Republican politics before being appointed to the federal bench in 1976. Three years ago, over the objections of the state's historically black schools, Schwartz ruled that Louisiana must merge its university systems to eliminate segregation. The decision was later reversed.

Ralph G. Thompson (1992-98), a federal judge from the Western District of Oklahoma, is one of only two judges to admit publicly to service on the FISA court.

Wendell A. Miles (1989-96), senior judge from the Western District of Michigan, is the only other judge to admit being on the FISA court.

FISA Court of Review

Paul H. Roney (1994-2001) is senior judge in the Eleventh Circuit in St. Petersburg, Fla. In 1985, he upheld a lower court's decision to dismiss a *habeas corpus* petition filed by a black prisoner in Georgia, who argued that the state imposed the death penalty in a racially discriminatory fashion. Even valid statistics, Roney ruled, are "insufficient to demonstrate discriminatory intent."⁷

Bobby R. Baldock (1992-98) is a circuit judge in the Tenth Circuit in Roswell, New Mexico.

Robert W. Warren (1989-95), is senior judge in the Eastern District of Wisconsin. •

1. Based on questions put to judges by reporters from the *Almanac of the Federal Judiciary* (Washington, D.C.: Aspen Law & Business, 1995) as well as an interview with one of the guidebook's writers (Mar. 29, 1995). The judges are loath to share their experiences on the court, with only two returning phone calls. One of Judge Green's law clerks, Michael Francese, relayed a list of questions to Green. Standing on her policy "not to talk to reporters about the FISA court," said Francese, she did however confirm that none of the judges receives extra pay for FISA duty. (Interview, Mar. 31, 1995.)

2. Interview, Mar. 14, 1995.

3. Ann Crittenden, *Sanctuary: A Story of American Conscience and Law in Collision* (New York: Weidenfeld & Nicholson, 1988), p. 233.

4. *Ibid.*, p. 230.

5. Leslie G. Wiser, "Affidavit in Support of Warrants for Arrest and Search Seizure Warrants," Feb. 1994, pp. 8-10; and Bill Miller, "Court Appoints 2 Prominent Criminal Lawyers to Defend Spy Suspects," *Washington Post*, Feb. 26, 1994, p. A11.

6. Interview, Apr. 18, 1995.

7. *McCleskey v. Kemp*, 84-8176, 753 F. 2d 877, Jan. 29, 1985.

legal scholars assert that warrantless searches are unconstitutional, no matter what the context or motivation. The court's defenders, on the other hand, argue that the end justifies the means. Gorelick recently conceded that the government could not gather as much evidence under the traditional standard of the Fourth Amendment. By this logic, notes Kate Martin, "It is also true that torture allows the government to get information it would not otherwise get."²⁰

"We've never met since I've been on it ... I also had some correspondence with my brethren on the court ... and said, 'What are we supposed to do?' and, 'When is something going to happen?' ... It's an empty title as far as I am concerned at this point."

— Robert Warren, 1989 appointee to the FISA Court of Review

While refusing to be specific, FBI Director Louis Freeh argues that national security is so important that it constitutes a special category. He testified before Congress that,

Because any discussion of the importance of FISA-based electronic surveillance would involve highly sensitive matters and highly classified information, suffice it to say that information derived from FISA electronic surveillance is critical to the president of the United States, the National Security Council, the intelligence community, the Department of Defense, and the State Department.²¹

The Supreme Court, however, has never endorsed the concept of a "national security exception" for physical searches. In 1972, it ruled that the

Fourth Amendment prohibits warrantless surveillance of domestic targets. The Court specifically warned that the "danger to political dissent is acute where the Government attempts under so vague a concept as the power to protect 'domestic security.'"²²

But given the secrecy surrounding the FISA court, even finding a test case to challenge incursion on Fourth Amendment rights may be difficult. Most people surveilled under the authority of the court remain blissfully ignorant that a search has taken place.

Case in Point

Among the handful of FISA-tainted investigations that have become public is the prosecution of Khader Hamide and Michel Shehadeh of the so-called "Los Angeles Eight" for their membership in the Popular Front for the Liberation of Palestine.

"In that case," Martin said, "permanent residents whom the government sought to deport based on their First Amendment activities were informed that they had been subject to FISA surveillance. The government then secured a completely *ex parte* ruling that the surveillance was legal in a proceeding in which the [U.S.] residents were not even allowed to participate. That ruling then foreclosed forever any adversary hearing on the legality of the surveillance."²³

In another case, people not themselves targets of a FISA-authorized telephone tap were hauled into court for having the misfortune of calling somebody who was under electronic surveillance. In 1988, after activists Vernon Bellecourt, Bill Means, and Bob Brown phoned a member of the Peoples' Committee for Libyan Students, they were ordered to testify before a grand jury investigating the group.

22. *United States v. U.S. District Court*, 407 U.S. 297.

23. Martin, *op. cit.*, p. 16n. For more on the case against Hamide and Shehadeh, see Phyllis Bennis, "The Trial of the L.A.-8," *CovertAction*, (Spring 1994). In a significant victory for other members of the "Los Angeles Eight" in a case that may have originated in the FISA court, U.S. District Judge Stephen V. Wilson ruled the federal government could not use secret evidence to deport Aiad Barakat and Naim Sharif (Henry Weinstein, "Judge Says Due Process Denied by Government's Use of Secret Evidence," *Los Angeles Times*, Jan. 25, 1995, p. B3).



BEVERLY REZNECK

Royce C. Lamberth, newly-appointed head of the FISA court.

When the three men refused to cooperate and testify even with immunity, they were slapped with a citation for contempt. James Cacheris was one of the federal judges who issued that citation in support of the FISA warrant. Five years later, he was appointed to the secret court.²⁴

Seven Men and A Rubber Stamp

Although its powers have been enhanced to include physical searches, the FISA court retains the same low profile structure that it had in 1978. On the first tier are seven federal judges, appointed to staggered seven-year terms by the chief justice of the Supreme Court.²⁵ Each judge takes a turn reviewing applications submitted by the attorney general. He or she sits in a sealed, vault-like chamber on the top floor of the Justice Department headquarters, where the door is always locked and guarded and the room is regularly inspected for bugs.²⁵

24. "In Regarding Grand Jury Proceedings," *856 Federal Court Reporter*, 2nd Series, pp. 685-90.

25. Larry Tell, "The Cloak-and-Dagger Court," *National Law Journal*, Aug. 10, 1981, p. 63; and Leslie Maitland, "A Closed Court's One Issue Caseload," *New York Times*, Oct. 14, 1982, p. B16.

20. Wittes, *op. cit.*

21. Louis J. Freeh, Director, Federal Bureau of Investigation, testimony, Senate-House Joint Judiciary/Technology, Law, Civil and Constitutional Rights, Mar. 18, 1994.

The Media Court Silence

The Ames case provided the national press with an ideal opening to evaluate the performance of the FISA court over the past 17 years. Few took advantage of the opportunity.

The New York Times, for example, didn't even trouble to mention the FISA court by its proper name, referring instead to "a special Federal Intelligence court" in an article incorrectly stating that the October 9, 1993 search warrant was authorized by FISA judges.¹ (The court at that point was only authorized to approve electronic surveillance.)

Fifteen years earlier, the paper's editors had hailed the original FISA bill as "tailored to the task of safeguarding privacy." With an impressive lack of foresight, the editors noted that "Some critics say the courts would merely rubber stamp most executive requests. But even the most permissive judge would find it difficult to approve some of the worst excesses in recent years."²

The Washington Post considered the FISA statute a measured response to unchecked executive power and assured its readers that the law "would put a stop to abuses"

revealed by the Church Committee investigations of domestic spying operations by putting "an impartial arbitrator — in the person of a judge — between every citizen's privacy and the desire of the government to penetrate it."³

For his part, Sen. Edward Kennedy (D-Mass.), chair of a Senate conference that crafted the original FISA legislation, said at the time "that there would be more than 100 'targets' a year to be presented to the special court, based on the experience of the past year or two."⁴

With an actual average of over 500 requests a year, Kennedy's vague prediction proved correct, but wildly conservative. In fact, the only one of the 7,539 applications turned down was a request for a physical search — a power now included under FISA's mandate. Those numbers compare favorably with what the FBI was willing to admit during the official 17-year life of COINTELPRO.⁵ ●

1. David Johnston, "Tailed Cars and Tapped Telephones: How U.S. Drew Net on Spy Suspects," *New York Times*, Feb. 24, 1994, p. B9. Without drawing attention to it, Johnston corrected the error 11 months later, noting the search was "authorized by the Attorney General," David Johnston, "How the FBI Finally Caught Aldrich Ames," *New York Times*, Jan. 27, 1995, p. A18.

2. "Controlling the Wiretapping," *New York Times*, editorial, Aug. 3, 1978, p. A20.

3. "National Security Wiretaps," *Washington Post*, editorial, Sept. 6, 1978, p. A14.

4. George Lardner Jr., "Carter Signs Bill Limiting Foreign Intelligence Surveillance," *Washington Post*, Oct. 26, 1978, p. A2.

5. Ward Churchill and Jim Vander Wall, *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Dissent in the United States* (Boston: South End Press, 1990), pp. 303-04.

In the unlikely event that the first tier rejects an application, the Department of Justice can appeal to the FISA Court of Review.²⁶ Should this three-member panel of judges also deny the request, it could then be heard by the Supreme Court. Those last two progressions up the judicial hierarchy have proved strictly unnecessary, however. Federal Judge Robert W. Warren from Wisconsin, senior panelist on the second tier FISA Court of Review, joked that he has not exactly been overwhelmed by the workload since his appointment in 1989.

"We've never met since I've been on it," said Warren. "I was sent a designation by the Chief Justice, and I asked a

couple of people what in the world the court did because I had not even heard of it before I got that designation. I also had some correspondence with my brethren on the court and we've talked to each other and said, 'What are we supposed to do?' and, 'When is something going to happen?' Nothing ever has happened. It's an empty title as far as I am concerned at this point."²⁶

Based on the remarkable record of servility the first-string spy court has achieved on surveillance requests — 15 years with only one rejection, and that one on technical grounds — new requests for physical searches are unlikely to cut into the Review Court's happy schedule.

The Noose Tightens

This recent strengthening of the FISA court fits comfortably in the pattern established in the late 1970s after the massive FBI crime spree against political activists. When the illegalities were documented by the Senate's Church Committee — instead of stepping in and stopping political policing activities by DoJ and intelligence agencies — Congress took exactly the opposite approach. It waved a flag over a pattern

26. Interview, Mar. 31, 1995.

FISA "Legal" Electronic Eavesdrop Scorecard²⁷

YEAR	REQUESTED	DENIED
1979	199	0
1980	319	1*
1981	431	0
1982	473	0
1983	549	0
1984	635	0
1985	587	0
1986	573	0
1987	512	0
1988	534	0
1989	546	0
1990	595	0
1991	593	0
1992	484	0
1993	509	0
TOTAL	7,539	1*

Congress waved a flag over a pattern of government activities that had been criminal, draped it in authoritative language, and magically made it all legal.



Admitted FBI Illegalities, COINTELPRO Era²⁸

YEAR	TAPS	BUGS
1956-59	n/a	n/a
1960	114	74
1961	140	85
1962	198	100
1963	244	83
1964	260	106
1965	233	67
1966	174	10
1967	113	0
1968	82	9
1969	123	14
1970	102	19
1971	101	16
1972	108	32
1973	123	40
1974	190	42
TOTAL	2,303	697

During COINTELPRO — an official campaign by the government to neutralize what it saw as “dangerous” dissent — the Black Panther Party (BPP) became a particular target of systematic infiltration, instigation to violence, psychological operations, and murder by the FBI. Above, police line up BPP members after raiding their Philadelphia headquarters and making them strip on the sidewalk for a “weapons check.” Also subjected to COINTELPRO abuses were the anti-Vietnam War and women’s movements.

government activities that had been criminal, draped it in authoritative language, and magically made it all legal. Since that time, through a series of laws and executive orders, policy-makers have further chipped away at freedoms previously presumed to be sacred.²⁹

With the FISA court now able to authorize physical searches as well as electronic surveillance — simply by citing national security concerns — the elite legal circle is nearly complete. “The act is a triumph for our constitutional system of checks and balances,”

27. Source: Annual Reports to Congress Pursuant to 50 USC.1807, 1979-1993, obtained by the American Federation of Scientists through FOIA requests. According to Bamford, the lone rejection wasn’t in fact an application for surveillance, but rather was prompted by Justice Department requests for permission to break into “nonresidential premises under the direction and control of a foreign power.” (Bamford, *op. cit.*, pp. 370-71.)

28. Churchill and Vander Wall, *op. cit.*, p. 333.

29. *Ibid.*, p. 304. A partial list includes the Intelligence Identities Protection Act of 1982 which made it a crime to publish the identities of U.S. spies (this act explicitly targeted *CovertAction*), and Reagan’s Executive Order 12356, which clamped new restrictions on the Freedom of Information Act.

former Indiana Sen. Birch Bayh explained in the twilight of the Cold War. “It establishes that the authority to conduct foreign intelligence surveillance in this country will be shared by all three branches of government.”³⁰

In the aftermath of the Oklahoma City bombing, Democrats and Republicans are competing to come up with more ingenious ways to erode civil liberties. Congress will likely pass a beefed up Omnibus Counterterrorism Act which will (see pp. 50-52) create secret FISA-like courts in which non-citizens can be investigated and deported without access to evidence or recourse to appeal. Given the current political atmosphere, the Clinton administration’s past support for expanding the FISA court’s authority, as well as a long, sorry history of abuse, the elite legal posse will no longer need to strain very hard to pull the noose — right around the Bill of Rights. ●

30. Lardner, *op. cit.*



ROBERT FOX/IMPACT VISUALS

The Counterterrorist Threat

The 1995 Omnibus Counterterrorism Act

Aimed at a “foreign menace,” this bill threatens to strip legal immigrants of rights, curtail the freedoms of citizens, and turn international solidarity into a “terrorist activity.”

by David Cole

In recent months, the Clinton administration has unleashed an offensive ostensibly directed against terrorism, but its real targets are the political freedoms of everyone in the U.S., citizens and aliens alike. In the name of counterterrorism, the administration has issued an executive order and introduced legislation that threaten to throw innocent citizens in jail and innocent immigrants out of the country, simply for their nonviolent political associations. The Republicans responded in kind with an even more Draconian bill. Like the anticommunist measures of the McCarthy era, the government’s response

to terrorism is more dangerous than the threat it purports to save us from.

First, in late January, the president issued Executive Order 12947, which barred all financial transactions with a dozen Middle East groups officially designated as terrorist organizations, and forbade U.S. citizens from providing them with even humanitarian support. The order, widely reported as merely freezing the assets of these groups, actually went much further—it authorized the Secretary of State to add an unlimited number of other organizations to the blacklist without review.¹

A month later, with bipartisan support in Congress, the administration introduced the Omnibus Counterterrorism

Act of 1995. The bill prohibits a wide range of activities protected by the First Amendment, resurrects “guilt by association,” and hands the president sweeping new powers to target unpopular groups and people. For non-citizens, it creates an unprecedented “alien terrorist removal procedure” that permits their deportation based on evidence they never see.

The government already has the power to jail any citizen and deport any alien who engages in terrorism. Intentional violence directed against people or property is already uniformly illegal under state criminal laws. Where such crimes include conspiracies or acts that cross state borders or are directed at federal targets, they are also punishable in federal court. Material support

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Photo: Visiting the Statue of Liberty, 1992.

1. Executive Order 12947, Jan. 24, 1995.

for such acts is also prohibited by state laws, and last year's crime bill made it a distinct crime under federal law.²

These laws are fully adequate to address the threat of terrorism in the United States. The recent bombings of the federal building in Oklahoma City and the World Trade Center in New York are unquestionably illegal under current law; indeed, the Attorney General has already stated that she will seek the death penalty for the Oklahoma City bombing, and the World Trade Center bombers are serving multiple life sentences.

Humanitarian Aid as Terrorism

The provisions of the Omnibus Counterterrorism Act extend far beyond such acts. The bill would criminalize any support to an organization that the president designates as "terrorist," including fund-raising for the *lawful* activities of any such group. It authorizes the president to name as "terrorist" any foreign organization that engages in unlawful violent activity, if he finds that the group's activities "threaten the national security, foreign policy, or economy of the United States."³ Violations of the fund-raising provisions would be punishable by up to 10 years in prison and fines of \$50,000, or twice the amount of the violation, whichever is greater.

There are several constitutional problems with this proposal. Allowing the president *carte blanche* to designate groups as off-limits, without any meaningful judicial review, raises serious due process concerns. How could a court question the president's assertion that a group's activities threaten U.S. foreign policy? Such authority is bound to be applied selectively, and to be guided by political criteria. The Nicaraguan Contras, for example, certainly qualified as a terrorist organization under definitions the U.S. has used, but they were never labeled as such. Under the new law, with no effective constraint on the president's ability to proscribe unpopular groups, the risk of selective enforcement would only worsen.

And most troubling of all, the ban on support of a blacklisted group's lawful activities clashes with the First Amendment. The Supreme Court has consistently interpreted the First Amendment's right of association as protecting the right of people in the U.S. to support

the lawful activities of groups that engage in both lawful and unlawful acts. This bill throws that principle to the winds, and operates on guilt by association, pure and simple.

Perhaps mindful of constitutional appearances, the bill provides an exception to the fund-raising ban, but it is illusory. Would-be supporters of "terrorist" groups theoretically could obtain a license from the secretary of the treasury if they first prove that their support will be used only for lawful activities.⁴ But they must also agree to open both their books and the "terrorist" organization to the secretary of the treasury.⁵



If the bill had been law when Nelson Mandela addressed labor unions in Chicago, anyone who gave money to help the tour or humanitarian projects in South Africa could have been labeled a terrorist.

Had this law been in effect five years ago, it would have been a crime to give money to the African National Congress during Nelson Mandela's U.S. speaking tours, unless the ANC, routinely labeled terrorist by the U.S., opened its books to the treasury secretary. Likewise, had this bill been in effect in the 1980s, people who wanted to donate medical supplies to the Salvadoran FMLN could not have legally done so unless the guerrillas agreed to reveal their finances to the U.S. government.

Immigrants Beware

Immigrants fare even worse than citizens under the Clinton bill. The bill would

make deportable the tens of thousands of non-citizens who send humanitarian aid back home to organizations that have engaged in armed resistance.

Under current law, the government must prove that the person it seeks to deport or exclude has actually participated in or provided material support for terrorist acts. Just last year, administration officials testified against a bill that would have expanded the law by making membership in Hamas grounds for exclusion as a "terrorist." They argued that because Hamas engages in "widespread social welfare programs" as well as violent acts, to presume that a

Hamas member was a terrorist was to indulge in guilt by association.⁶

Yet the Counterterrorism Act would do just that for countless groups. If the bill passes, the government will need to prove only that a non-citizen has afforded "material support to any individual, organization, or government which the actor knows or reasonably should know has committed or plans to commit terrorism activity."⁷ Read literally, sending medicine to Hamas clinics on

recipient organizations are liable for a \$50,000 fine, or twice the amount of money that would have been documented, whichever is larger. Section 2339B(i).

6. Written Testimony of Mary A. Ryan, Assistant Secretary for Consular Affairs, Department of State, before the Subcommittee on International Law, Immigration and Refugees of the House Judiciary Comm., Feb. 23, 1994. See also Written Testimony of Chris Sale, Immigration and Naturalization Service, *ibid*.

7. Section 202(a)(B)(iii).

2. 8 U.S.C. Section 2339A.

3. Section 301(c)(1).

4. Section 2339B(e)(3).

5. Section 2339B(e)(4). Persons who obtain a license but fail to make available their books or the books of the re-

the West Bank would become a deportable offense, as would sending money to the governments of Israel or the U.S., for all three have certainly engaged in "terrorism activity" as defined by the bill.⁸

And the law would broaden the ambit of "terrorist organization" to include "any organization engaged, or which has a significant subgroup which engages, in terrorism activity, *regardless of any legitimate activities conducted by the organization or its subgroups.*" (Emphasis added.)⁹

Under this language, sending medical supplies to a hospital run by the PLO, fingerpaints to a school run by Kurdish independence organizations, or political contributions to the IRA's Sinn Fein would be deportable offenses — even though the U.S. is itself providing aid to the PLO and has permitted Sinn Fein to open an office here.

Star Chamber for Alien "Terrorists"

Worse still, the bill authorizes the government to use secret evidence to deport aliens accused of supporting terrorist groups, which under the provisions noted above would include sending bandages to Hamas. Deportation hearings would come to resemble the Star Chamber, a long-rejected English procedure with evidence considered in secret without disclosure to the defendants. The bill provides for a special court of five U.S. district judges, named by Chief Justice William Rehnquist, who would preside over these hearings.¹⁰

Due process — which protects everyone in the U.S., regardless of legal status — forbids the use of secret evidence. The adversarial system is built on that premise. The courts have long and consistently held that secret evidence deprives the accused of a meaningful opportunity to offer a defense. There are no exceptions — not for serial killers or rapists, not even for the World Trade Center bombers. Yet the administration proposes to deny that most basic legal right — the right to confront the evidence used against them — to non-citizens accused of nothing more than giving humanitarian aid to an organization that has engaged in a single act of violence.

When the Immigration and Naturalization Service last sought to use se-

cret evidence to expel a permanent resident alien, the D.C. Circuit Court likened his predicament to that of Joseph K. in Kafka's *The Trial*, finding that "[i]t is difficult to imagine how even someone innocent of all wrongdoing could meet such a burden [of rebutting undisclosed evidence that he is associated with a terrorist group]."¹¹

Under this bill, all the government needs to do to impose such a burden is to show that the immigrant is deportable as a "terrorist," and that open deportation procedures would "pose a risk to the national security of the U.S."¹² The administration would be able to invoke these proceedings any time its case involved classified information, because it could claim that disclosing those secrets would pose just such a risk. If the government failed to convince the court, it could immediately appeal without the immigrant's participation; immigrants, however, could not appeal.¹³

The government need not even provide summaries of its classified information if it showed that either the immigrant's continued presence or providing the summary itself would threaten national security or "death or serious bodily injury to any person."¹⁴

The bill resurrects "guilt by association," and hands the president sweeping new powers.

All the government would have to do is say an informant is involved, that a summary would disclose his or her identity, and that the safety of the informant would then be endangered.

As if these measures were not sufficient, illegally obtained evidence, including illicit electronic surveillance, would also be allowed in these proceedings.¹⁵ Ordinarily, evidence obtained in violation of the electronic surveillance law is thrown out,¹⁶ but this bill would specifically exempt all "terrorism" deportation proceedings.¹⁷

The bill also provides for immediate detention without bail for non-citizens

accused under the terrorism provisions. Only permanent residents — not those here on student, labor, or tourist visas — would even get a bail hearing, and even they would face secret evidence procedures if classified information was involved. In a reversal of the presumption of innocence, instead of the government having to prove that there are grounds for detention, the accused would have to prove otherwise.¹⁸

If all else fails, the bill creates yet another means for deporting undesirable. It would permit the executive branch to deport immigrants through an unreviewable two-step procedure. First, the president would designate a group as "terrorist." Then, either the secretary of state or the attorney general could designate any immigrant a "representative" of such an organization through a finding that is "not subject to review by any court."¹⁹ Senators Dole and Hatch have now offered their own anti-terrorism measure, which would add gutting *habeas corpus* for all prisoners and making people excludable merely for advocating terrorism.

Expedient Politics, Bad Law

Like most politicians, Clinton, Dole, and Hatch understand that nothing fortifies support better than a common enemy. For 50 years, the communists served well in that role, but they are no longer worthy opponents. Clinton has latched onto the specter of terrorism. But precisely because the label is so powerful, it invites overreaction. Just as the communist threat led to blacklisting, imprisonment, and deportation of countless innocent persons for lawful political activities during the Cold War, so the terrorist threat is likely to bring unprecedented restrictions on political freedoms.

Counterterrorism makes expedient politics but bad law. This bill is tough not on terrorism, but on the constitutional rights of citizens and aliens alike. The Clinton administration and Congress should heed the Supreme Court's warning more than 25 years ago as it invalidated a McCarthy-era law: "It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties — the freedom of association — which makes the defense of the nation worthwhile."²⁰ ●

8. "Terrorism activity" is defined to include any use of a weapon with intent to endanger person or property, other than for personal gain. Section 202 (a)(8)(ii).

9. Section 202(a)(B)(iv).

10. Section 502.

11. *Rafieedie v. INS*, 880 F.2d 506, 516 (D.C. Cir. 1989).

12. Section 502(a).

13. Section 502(d)(1).

14. Section 502(e)(2).

15. Section 501(b).

16. 18 U.S.C. §3504.

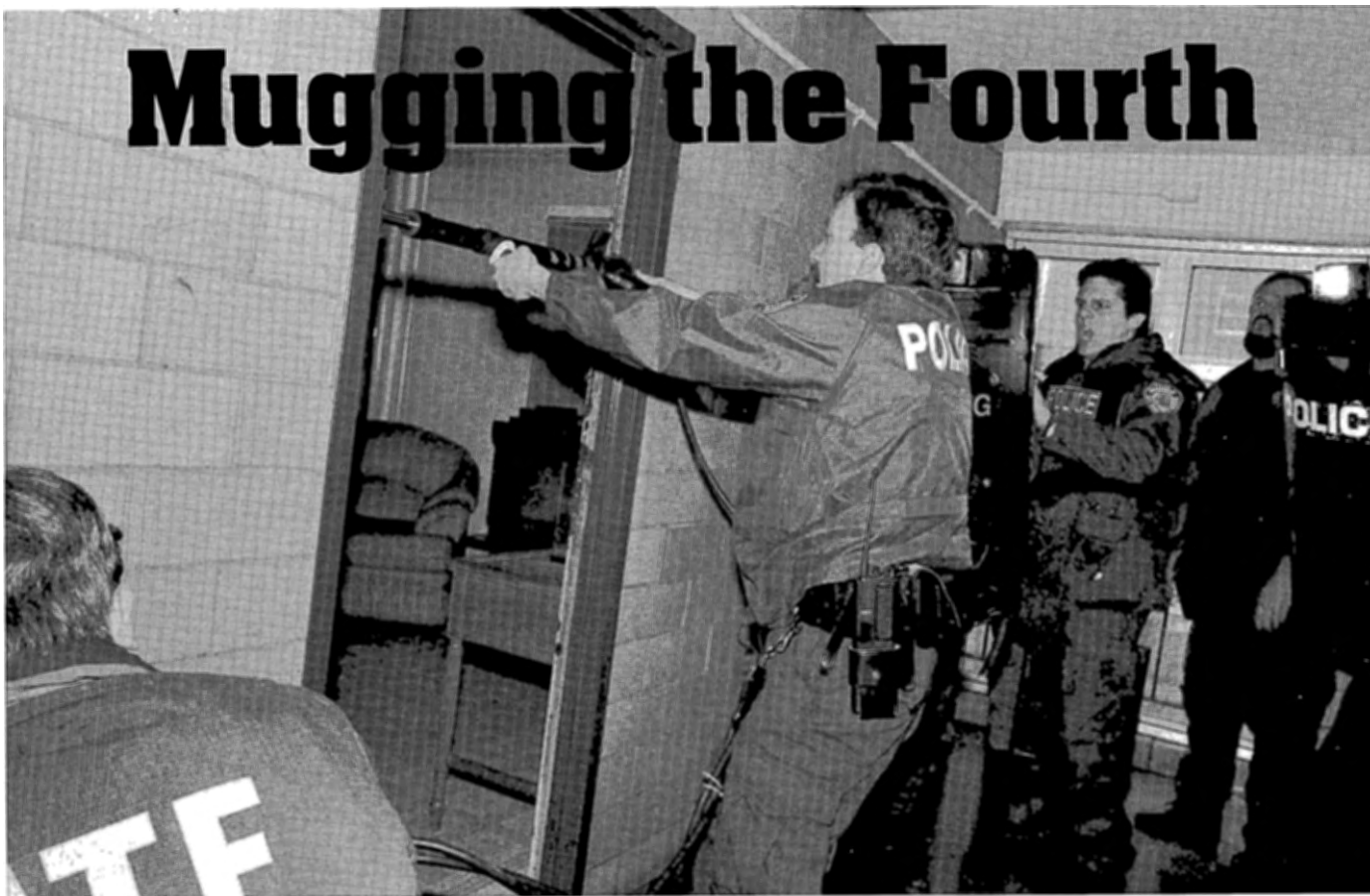
17. Section 501(b).

18. Section 502(b).

19. Section 502(a).

20. *United States v. Robel*, 389 U.S. 258 (1967).

Mugging the Fourth



FRANCISCO L. CONDE/IMPACT VISUALS

by William M. Kunstler and Phillip Smith

In February, the House passed legislation gravely weakening constitutional protections against illegal searches and seizures by federal law enforcement agents. A similar measure is now before the Senate. President Clinton has given no indication he will veto such legislation if it reaches his desk.

Attitudes have shifted dramatically from 1761, when attorney James Otis, Jr. represented 63 Boston merchants in an unsuccessful challenge to the Crown's Writs of Assistance, the open-ended royal search warrants. Otis argued that because the Writs remained effective indefinitely and could be freely transferred from officer to officer, they "place[d] the liberty of every man in the hands of every petty officer."¹

John Adams, as a young lawyer, observed that trial and said that Otis "was

a flame of fire! Every man of a crowded audience appeared to me to go away, as I did, ready to take arms against Writs of Assistance ... then and there the Child Independence was born."²

That was the backdrop for the Fourth Amendment to the Constitution. It is worth quoting:

[T]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the places to be searched, and the persons or things to be seized.

We Don't Need No Stinking Warrant

In recent years, however, the Supreme Court has had little problem in placing

"the liberty of every man in the hands of every petty officer." Warrants are no longer required when police claim evidence is in plain sight, is about to be destroyed, or they are in "hot pursuit." And for the last decade, the courts have recognized a "good faith" loophole, holding that even if a warrant is improperly issued — *i.e.*, it is later determined there was no probable cause — prosecutors may still use the evidence in court.³

Now, as part of the Republican "Contract With America," an effort to virtually destroy the amendment is at hand. In one of the most direct attacks, the House and Senate are trying to eliminate the exclusionary rule, the amendment's long-standing judicial enforcement mechanism, which gives teeth to the Fourth Amendment by excluding from criminal proceedings any evidence seized in an illegal search and seizure.

House Resolution 666 extends the "good faith" exception even to *warrantless* searches. Under the bill, if police

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Photo: A joint taskforce of federal agents and police operate a no-knock search warrant looking for drugs. Amsterdam Housing Project, N.Y.C., 1993.

1. Quoted in Alexander Eisemann, "Addressing the Pre-

text Problem: The Role of Subjective Police Motivation in Establishing Fourth Amendment Violations," *Boston University Law Review*, 63 (1983), pp. 223, 229.

2. *Ibid.*, pp. 229, 254.

3. *United States v. Leon*, 468 U.S. 897 (1984), and *Massachusetts v. Sheppard*, 466 U.S. 981 (1984).

thought they could have obtained a warrant, the search is justified and the evidence is admissible — even if turns out they were wrong.

Senate Bill S. 3 is even worse. Not only does it completely throw out the exclusionary rule, it also severely restricts civil remedies for illegal searches. Victims would have to sue the federal government, and damages would be limited to actual physical personal injury and property damage.

Under the Senate bill, if the FBI or DEA kicks down your door in the middle of the night without a warrant, handcuffs you in your underwear with a gun at your head, shoves your grandmother around, ransacks your home, and finds nothing — tough luck.

And even if you are injured or your property damaged, your ability to collect damages is severely restricted. There are no damages for emotional distress, and punitive damages could not exceed \$10,000. Given the federal government's deep pockets, such a remedy is a bad joke.

These bills augur a heightening of the state's repressive powers. From here, we are only a short step away from resuscitating George III's Writs of Assistance and bringing the circle full round.

Attack on Exclusionary Rule

Law and order zealots have long chafed against any fetters on police powers. The exclusionary rule in particular has been a prime target because, its opponents argue, it allows guilty people to go free. H.R. 666 sponsor Rep. Bill McCollum (R-Fla.) repeated that claim during debate in the House, arguing that "The technicalities are killing a lot of our police officers' efforts and prosecutors' efforts to get convictions."⁴

The facts don't back him up. Study after study shows that only a minuscule number of cases — mostly for drugs — are thrown out because illegally obtained evidence cannot be used.⁵

Opponents also argue that only the guilty benefit from the exclusionary rule. Not so. Its fundamental purpose is to prevent police misconduct. The exclusionary rule encourages police to pay scrupulous attention to constitutional requirements. And it helps keep them honest. In plain English, it stops the

cops from busting down your door whenever they feel like it.

With the "good faith" exception, police will have a powerful incentive to make searches based on hunches, personal enmity, racial prejudice, or political disfavor. If they find evidence of criminality, they can create after-the-fact justifications with no risk of contradiction. Unlike the warrant process, where police must first convince a magistrate that probable cause exists, with warrantless searches police do not have to offer prior justification to anyone. They will quickly become adept at tailoring "objectively reasonable belief" to later satisfy a judge.

The exclusionary rule stops the cops from busting down your door whenever they feel like it.

The legislative history of H.R. 666 also illuminates a disturbing double standard. Representatives offered four amendments, three of which would have held specific federal agencies — Bureau of Alcohol, Tobacco, and Firearms (ATF), Immigration and Naturalization Service (INS), and Internal Revenue Service (IRS) — to the older, tighter rules. The amendments for ATF and IRS passed, while that for INS failed. If you are a gun dealer or white-collar tax cheat, the feds still better have a warrant, but not if you're suspected of being an illegal immigrant.

The fate of the other amendment to H.R. 666 carries the saddest commentary of all. Rep. Mel Watt (D-N.C.) offered an alternate that would have replaced H.R. 666 with the original language of the Fourth Amendment. It failed, with 303 representatives voting against a pillar of the Constitution.

Fear and Loathing

Neither are the congressional crusaders content merely with sabotaging the Fourth. Other parts of the Contract's original "Take Back the Streets Act" would deny death row prisoners federal *habeas corpus* writs unless their petitions were filed within six months of exhausting all state remedies. Since facts that might reverse their convictions are often not discovered until after this six month period, many capital inmates will be executed without being afforded

an appropriate federal forum. Moreover, states will be given federal funds to prosecute death penalty cases while juries in those cases will be instructed to recommend death sentences.

The bills also prescribe harsh mandatory minimum sentences for those convicted of drug crimes involving possession of a gun. A first conviction calls for a 10-year sentence, a second 20 years, and a third life imprisonment, the famous "three strikes, you're out" measure. Local government would receive \$10 billion in block grants over five years to fund law enforcement programs, and a like amount for prison construction and operation. At the same time, the right of prisoners to bring lawsuits seeking to improve their conditions of confinement would be severely restricted.

These provisions are the result of an insidious combination of a frightened citizenry and pandering politicians. The electorate is understandably concerned over what has been loosely termed "crime in the streets." Hardly a day passes without some horrendous news story about the infliction of serious injury or death upon innocent victims whose only crime is being in the wrong place at the wrong time.

In addition, the specter of domestic terrorism, characterized by the 1993 bombing of New York City's World Trade Center and that of the Oklahoma City federal building in April, has added immeasurably to the national fear quotient.

The knee-jerk response is always the same — more and rougher prisons, draconian sentences, extensions of capital punishment, and the curtailment of constitutional rights. Politicians who are "tough on crime" are favored by the voters, and show their appreciation by opting for anti-crime measures that would put the Marquis de Sade to shame. As we drift toward an Orwellian future in which the state, in the words of the late Justice Tom Clark, will be freely permitted to invade every citizen's "indefeasible right of personal security, personal liberty, and private property,"⁶ we will be sacrificing more than two hundred years of salutary constitutional law. We will have forgotten Benjamin Franklin's sage observation that "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."⁷ ●

6. *Mapp v. Ohio*, 367 U.S. 643 (1961).

7. Cited in *Historical Review of Pennsylvania*, 1759.

4. *Congressional Record*, p. H1335, Feb. 7, 1995.

5. See, for example, Peter F. Nardulli, "The Societal Costs of the Exclusionary Rule: An Empirical Assessment," *American Bar Foundation Research Journal* (Summer 1983). Nardulli found that felony conviction rates would rise less than 0.5% if the exclusionary rule were eliminated.

(GWS, continued from p. 12)

abled with GWS, lives with his sister Erika, his primary caregiver. Erika Lundholm says the VA told her "that all the medical records from Dean's hospital stay in the Gulf are missing. We have repeatedly requested those records and have yet to receive them."⁴³

Riegle committee chief investigator Tuite confirms that there is a pattern of missing files and "misplaced" medical and service records. "We've received widespread reporting on that issue," he said, "and when we questioned the DoD on that issue, they just say that their record-keeping process isn't very organized and that they just can't find the records. But the fact of the matter is that medical files are maintained on all personnel, and those files go with the personnel as they travel from place to place, so I find it highly unusual that the records are missing."⁴⁴

Why Deny It?

At first glance, it seems counterintuitive for the U.S. to downplay CBW exposure, especially if it can be blamed on Saddam Hussein. Yet there are good reasons for the U.S. government to stonewall. To admit that CBW exposures occurred means the government must address some uncomfortable issues, such as the military's inability to protect U.S. forces from CBW agents. But with U.S. troops possibly facing lingering contaminants as they carry out training exercises in the region, silence could be deadly.

Equally embarrassing for the U.S. is the history of government and corporate cooperation with Iraq in the 1980s. With the active support of two presidents and many U.S. officials, U.S. and Western European companies sold the technology to Iraq that may now be making tens of thousands of soldiers and civilians ill.

In 1987, then Vice President George Bush met with Iraqi Ambassador Nizar Hamdoo and assured him that Iraq could continue to purchase sensitive dual use technology from the U.S.⁴⁵ Senior Bush administration officials continued this policy, despite opposition from within the administration and Congress, and despite clear evidence the Iraqis were actively working on the development of nuclear and chemical weapons.

43. Interview series, Aug. 1994-May 1995.

44. Interview series, Mar.-May 1995.

45. Gary Milhollin, "Building Saddam's Bomb," *New*

In the five years leading up to the Gulf War, the Commerce Department licensed more than \$1.5 billion of strategically sensitive U.S. exports to Iraq, from companies such as Hewlett-Packard, Honeywell, Rockwell, and Tektronix.⁴⁶ Many of these dual use exports were delivered directly to chemical and nuclear plants in Iraq.⁴⁷ The Riegle committee found that some of the materials the Iraqis had in their storage dumps, and which they used to create their CBW capability, came from U.S. corporations.

By the time of the invasion of Kuwait, the Pentagon knew Iraq had developed CBW weapons and that its biological warfare program was the most advanced in the Arab world. Large-scale production of these agents began in 1989 at four facilities near Baghdad, and Iraq had developed delivery systems, including aerial bombs, artillery, rockets, and surface-to-surface missiles.⁴⁸

A more prosaic contribution to the cover-up probably resides in the military bureaucracy's eternal instinct to cover itself in the face of any problem or scandal.

In an attempt to get at the source of their medical problems, and as a way to sidestep prohibitions against suing the government for injuries resulting from exposure to CBW weapons, veterans filed a billion-dollar class action lawsuit against the companies—including Bechtel, M.W. Kellogg, Dresser Industries, and Interchem Inc.—that peddled these deadly technologies to Iraq.⁴⁹ The suit, filed last November in federal court in Galveston, Texas, could break new ground, holding companies liable in cases in which third parties use their products to cause bodily harm or death.

Vic Silvester of Odessa, Texas, is a plaintiff in the suit. His 24-year-old son James was deployed near Scud missile attack sites, and he now suffers a variety of disabling medical conditions including nerve damage, rashes, severe headaches, and chronic fatigue.

"He can't sleep. He goes to the store and can't remember what to get," Silvester says of his son. "And he gets no

York Times, Mar. 8, 1992.

46. *Ibid.*

47. Andrew Blum, "Vets Sue Arms Merchants," *National Law Journal*, Nov. 14, 1994; John Ritter, "Case Could Open Doors on Liability," *USA Today*, Nov. 22, 1994.

48. Milhollin, *op. cit.*

49. Blum, *op. cit.*

50. Interview, Dec. 1994.

disability. The companies that made the chemical-biologicals should pay."⁵⁰

While it is at least theoretically possible to hold corporations accountable, the government and the military are legally immune from financial liability. But the potential political liabilities are enormous. Admitting that the U.S. role in arming Iraq eventually resulted in U.S. veterans suffering the torments of exposure to debilitating toxins is a prospect the Pentagon is so far unwilling to face.

Unanswered Questions

John Deutch's continuing denials of CBW exposure in the face of now considerable evidence to the contrary ring hollow. They also raise concerns that his promises, so well-received on Capitol Hill, to make the CIA accountable are similarly suspect.

"Based on what we know today," said Riegle committee investigator Tuite, "DoD withheld information from the Congress, and Deutch has said he was the responsible person there. There are laws that make it illegal to withhold information from Congress. And if the DoD has done it on this issue," he continued, "I don't believe we can afford to have the CIA feeling as though they can withhold information from Congress. Congress has a constitutional responsibility to make sure that the laws are being followed."⁵¹

Gulf War veterans groups remain frustrated. They accuse Deutch of being "actively engaged in a cover-up of the presence and exposure of chemical and biological warfare agents."⁵²

"What we have is the man who's the number two person at the Department of Defense intentionally or by mismanagement covering up documents or lying about them on television," said Paul Sullivan, president of Gulf War Veterans of Georgia, the group that obtained the NBC logs. "What we want to know is this: What is Mr. Deutch hiding? How much more is there in terms of documents that the DoD is not releasing? What effect does this have on our vulnerability to chemicals? What does this say about the expendability of veterans' lives?"⁵³ ●

51. Interview, Mar. 15, 1995.

52. Statement of the National Unity Conference of Gulf War Veterans, Families, and Civilian Participants, Irving, Texas, Mar. 10-12, 1995.

53. Interview, Mar. 5, 1995.

vious administration's operatives and failed to take further effective action against UCC. He seemed primarily interested in restoring the mostly symbolic option of criminally prosecuting a few sacrificial lambs from UCC's Indian management team, rather than obtaining a fair recovery for the Bhopal victims.

The Supreme Court again delayed its decision. The Singh government fell in November 1990 with a vote of no confidence during violent nationwide clashes over religious and caste issues. After Congress (I) was securely back in power, the Court on October 3, 1991, reaffirmed the deal made by Rajiv Gandhi, amid rumors of alleged payoffs to the judges. To dampen outrage, at least outside of Bhopal, the court removed provisions in the settlement that gave UCC's corporate managers immunity from criminal prosecution.

The settlement had negligible impact on Union Carbide's financial health, but it was a shot in the arm for corporate America. It sent a signal to U.S. multinational companies that even when they caused catastrophic accidents like Bhopal, they could avoid financial responsibility.

Fortunes at Stake

UCC's counterintuitive sacrifice of its home court advantage by obtaining a *forum* dismissal of the Bhopal claims served several purposes. First, in 1984 (before the 1994 rejection of the Vietnam veterans' challenge to the Agent Orange settlement), U.S. law might have placed ethical and due process constraints preventing lawyers and judges from making settlements against the interest and express opposition of tort victims, especially for unknown future injuries.¹⁷ Second, the recent \$5 billion class action punitive damages award in the Exxon Valdez case is an example of what might have happened to UCC had it not escaped a U.S. jury.¹⁸

Perhaps the only practical means for obtaining full relief for damages as massive as occurred in Bhopal is to bring the punitive damages claim to trial at an early date, separate from the massive and

slow-moving proofs necessary to recover compensatory damages for each injured individual. The Indian government had also requested in India "punitive damages in an amount sufficient to deter the defendant Union Carbide and other multinational corporations from willful, malicious and wanton disregard of the rights and safety of the citizens of India."¹⁹

The strong criminal case by Indian authorities against CEO Warren Anderson and other UCC managers suggests that this element of the Bhopal case could have been successfully pursued in India or the U.S. But any punitive damages assessed against UCC by the Bhopal District Court would have been subject to the "penal law doctrine," that "the court of no country executes the penal laws of another."²⁰ Therefore, only a U.S. award of punitive damages could likely be enforced against any of UCC's substantial U.S. assets.

The settlement had negligible impact on UCC's financial health, but was a shot in the arm for corporate America.

It is impossible to know if the U.S. courts would in fact have acted any more justly than did the Supreme Court of India, and allowed the Bhopal case to be tried had it not been dismissed on *forum* grounds. The disingenuous quality of Judge Keenan's *forum* opinion, and his appointment of Stanley Chesley as class counsel, suggests the contrary.²¹ But if early trial of a punitive damages claim is the most practical means for trying a mass tort case against a U.S. corporation whose conduct has bordered on the criminal, then, for all practical purposes, Judge Keenan's dismissal doomed the Bhopal victims to an inadequate recovery.

19. Sept. 5, 1986, Complaint in *Union of India v. Union Carbide* (Dist. Court, Bhopal, Civ. 1986), p. 19.

20. *The Antelope*, 23 U.S. (10 Wheat.) 66, 123 (1825). Restatement (Second) Conflict of Laws §120.

21. Judge Keenan's decision could be charitably described as legally weak, inconsistent, and patronizing. See *In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in December 1984*, 634 F.Supp. 842 (S.D.N.Y. 1986), *aff'd*, 809 F.2d 195 (2d Cir. 1986), *cert. denied*, 108 S.Ct. 199 (1987). These decisions were fully critiqued in the *Brief Amicus Curiae* of the National Council of Churches, filed in the U.S. Supreme Court, June 24, 1987, and reprinted in *BJC*, p. 16.

Happy Newt Year

The prospects for victims of corporate crimes and negligence to gain some justice looks increasingly dim. Under NAFTA and the World Trade Organization, individual governments will have less power to regulate or prohibit hazardous technologies. As the probability of accident and injury grows, so too does the desire by corporations to develop strategies to dodge responsibility. The courts are an indispensable tool, not only for mandating just compensation for victims of neglect and accidents, but for defending society in general against health, genetic, and environmental degradation. When lax regulation leaves protection to market mechanisms, legal actions to compensate for the resulting injuries become a key deterrent to greed and technology running amok. Allowing UCC "to escape justice altogether by hiding its assets behind an international boundary," noted a consortium of labor unions, sets poor policy for "a shrinking world of international business, where borders do not stop the flow of money nor the ownership of industries."²²

In the Bhopal case, as in other mass injury cases, the U.S. courts prostrated themselves to corporate interests without significant reaction from the U.S. public, national environmental groups, or the press. In the tenth year of the Bhopal disaster, while the injured still lack the medical and social services they need, it is essential to change a judiciary and legal order complicit in harboring the world's worst industrial mass killer.

Instead, the U.S.'s grisly anniversary present to Bhopal is the Republican's "Contract with America" tort reform proposal which would effectively abolish punitive damages for big corporations, and make tort litigation more difficult for most people. If enacted, these proposals will extend the Bhopal quality of injustice and quality of life to all Americans by further weakening the most effective deterrent to corporate crimes against humanity and the environment. ●

22. *Amicus* brief of Texas labor unions supporting the Bhopal victims' right of access to Texas state court. Annual foreign investment in India has increased over 20 times since Bhopal as a result of privatization policies designed to benefit Indian and global elites. (World Bank, *India Country Brief*, Apr. 1995, p. 6.

17. U.S. courts now countenance settlements just as corrupt as the Bhopal deal. On Feb. 22, 1994, the U.S. Supreme Court turned down requests by all 50 state attorneys general and by all the major veterans' organizations, as *amicus*, that the veterans' challenge to the Agent Orange settlement be heard.

18. *In re Exxon Valdez*, No. A89-0095-CV, (D. Alaska) Oct. 5, 1994.

Off the Shelf:

CAQ'S BOOKS OF INTEREST

Live from Death Row

by *Mumia Abu-Jamal*

(ADDISON-WESLEY, 1995, FOOTNOTES, 215 PP, \$14.95 HB).

In the face of rising criticism of U.S. law enforcement, politicians from both parties trot out self-serving bromides claiming "America is the freest society in the history of the planet." The million plus people behind bars in this country would probably disagree. Mumia Abu-Jamal, in this recent published collection of his prison writings, does so with passion and eloquence.

Abu-Jamal has spent the last 13 years in some of the worst hellholes in the U.S. gulag, under a death sentence for a shootout that left him gravely wounded and one Philadelphia policeman dead. He has steadfastly maintained his innocence. In a trial conducted in a supercharged political atmosphere and rife with bias from both the bench and the prosecution, the radical black journalist was, more than anything, convicted of being a radical black journalist.

Now, his time may be drawing near. All his appeals so far have failed. Pennsylvania recently carried out its first execution in 33 years, and newly-elected Republican Gov. Thomas Ridge, a law and order hardliner, has signed 11 death warrants since taking office. So far, presumably because of intense public pressure, Mumia's is not among them, but that could change at any moment.

Abu-Jamal does not write about the specifics of his case; his concerns run deeper and wider. In two- and three-page pieces, he describes in vivid detail life in the land of the living dead. It is a good thing the vignettes are short, for after each one, readers need time to pause, take a deep breath, and let their blood pressure subside.

What Abu-Jamal describes is a hell on earth: "America is revealing a visage

stark with harshness. Nowhere is that face more contorted than in the dark netherworld of prisons, where humans are transformed into nonpersons, numbered beings crammed into boxes of unlife, where the very soul is under destructive onslaught."

Abu-Jamal's points are made all the more powerful by the directness, simplicity, and carefully modulated outrage of his prose. His language is a weapon to rip open the cloak of silence that protects a national scandal: Official lawlessness and routine brutality within cruelly euphemized "correctional facilities" — exacerbated by rampant racism, within both the prisons themselves and the criminal justice system that keeps them filled to overflowing.

Mumia Abu-Jamal's is a powerful voice for justice, and thus a dangerous one. Despite evidence that calls out for a new trial, the governor has signed a death warrant that will shut him up forever. It is a further irony that only days after the execution date was set, South Africa outlawed the death penalty.

50 Greatest Conspiracies of All Time: History's Biggest Mysteries, Coverups, and Cabals

by *Jonathan Vankin and John Whalen*

(CITADEL PRESS, 1995, BIBLIOGRAPHIES, INDEX, 393 PP, \$14.95 PB).

Kooks

by *Donna Kossy*

FERAL HOUSE, 1994, PHOTOS, BIBLIOGRAPHY, 251 PP, \$16.95 PB).

Conspiracy! The very word sends delicious shivers up the backs of pale archival scribblers, militiamen scanning the skies for black helicopters, and indeed, some readers of this magazine. But there are conspiracies and then there are conspiracies. That the CIA *conspired* to knock off Fidel Castro, for example, is incontrovertible under standard definitions of the word: "to agree together, especially secretly, to do something wrong, evil, or illegal." That a hidden cabal runs the world — whether from

Governor Signs Mumia's Death Warrant

■ ACTION ALERT ■

On June 1, Governor Ridge signed a death warrant for Mumia Abu-Jamal and ordered an August 17, 1995 execution date. The governor acted even though it was public knowledge that Mumia's legal team, headed by Leonard Weinglass, was planning to file Mumia's Post-Conviction Review Appeal (PCRA) on June 5. The appeal, along with a motion for a stay of execution, was filed in the Philadelphia Court of Common Pleas as planned.

Trial Judge Albert Sabo has the right to hear Mumia's appeal. Known to members of Philadelphia's defense bar as a "prosecutor in robes," he has sentenced more people to death (31) than any other judge in the country—all but two are non-white. Mumia's attorneys will file a Motion for the Recusal of Sabo.

Unusual among Philadelphia judges, Sabo consistently hears his own PCRA's. It is inappropriate and absurd to allow him to be the judge of his own biases. We need to put pressure on the Philadelphia court to keep Sabo off the case.

■ Time Is Running Out ■

Demand Sabo's removal from the case.

Call/fax/write today to:

Judge Legrome Davis (chair of the PCRA Committee)
One East Penn Square, Philadelphia, PA 19107
215/686-9534; 215/686-2865 (fax)

For more information contact:

Equal Justice USA/Quixote Center
P.O. Box 5206
Hyattsville, MD 20782
301/699-0042, 301/864-2182 (fax)
email: quixote@igc.apc.org

Bilderberg, Berne, or the Bohemian Grove — is another thing. And that satanic Nazi UFOs from inside the hollow earth are buzzing across the world's skies ... well, you have to wonder just how long these folks have been sniffing solvents.

Jonathan Vankin and John Whalen present a veritable confusion of conspiracies, from the mundane to the mind-boggling. One type outlined — U.S. government misdeeds — is well-known to *CAQ* readers; in fact, Vankin and Whalen cite this magazine in their chapter on Nazi spymaster Reinhard Gehlen, as well as in the chapter on questions surrounding the assassination of Martin Luther King, Jr. Happily, *CAQ* is not mentioned in other categories, which include such gems of fevered speculation as Apollo scam (the astronauts never really made it to the moon), the Manson family as CIA agents sent to destroy the counterculture, and the LaRouchites' perennial favorite, the Queen of England as the center of the global drug trade.

Much of what passes for political discourse in this country contains elements of various conspiracy theories. The line between a skeptic's awareness of the skulduggery afoot in the world and the true believer's conviction that he has found the key to the plot to rule the world is crossed all too frequently,

all across the political spectrum. Whether it is "constitutionalists" worried about the invading U.N. troops of the New World Order or progressives who argue that drugs or AIDS are simply sinister plots to destroy unwanted communities, what Richard Hofstadter identified as "the paranoid style" is alive and well. This is what Vankin and Whalen are talking about when they define conspiracy theory as "Fact mixed with conjecture, blended with error, and expressed with certitude." Even as pure entertainment, the book is a joy. Vankin and Whalen do an excellent job of presenting their favorite conspiracies. They go to original sources and allow the conspiratologists to present their cases in their own words. Vankin and Whalen provide a running commentary, interpret the more impenetrable prose, illuminate subtleties, and gently puncture theories that begin to bloat and swell, which occurs with predictable regularity. And they do so with a disarmingly light touch, combining equal amounts of skepticism and sympathy.

If *50 Greatest Conspiracies* charts the far shores of U.S. political culture, *Kooks* is completely off the map. Self-described Crackpotologist Kossy has compiled a set of lunatic ravings, some of which are so bizarre they can be fairly described as primary documents of psy-

chopathology disguised as political theory. There is Jew-hating so twisted and elemental that the reader doubts any sane mind could have produced it; there are alien plots to control the human race; there are numerous messiahs; and anti-gravity machines kept secret by the government.

Kossy lays it all out with a loving touch. It is obvious that although she is no kook herself, she sees the essential humanity of her subjects — in all their dementia. For those seeking a guided tour of the far fringes, Kossy is a fine guide.

The Way Things Aren't: Rush Limbaugh's Reign of Error

by Steven Rendell, Jim Naureckas, and Jeff Cohen

(NEW PRESS, 1995, INDEX, PHOTOS, 128 PP, \$6.95 PB).

The Great Limbaugh Con: And Other Right-Wing Assaults on Common Sense

by Charles M. Kelly

(FITHIAN PRESS, 1994, ENDNOTES, 216 PP, \$14.95 PB).

Rush Limbaugh, leading demagogue of the world of talk radio, has infuriated progressives ever since he first

(continued on p. 16)

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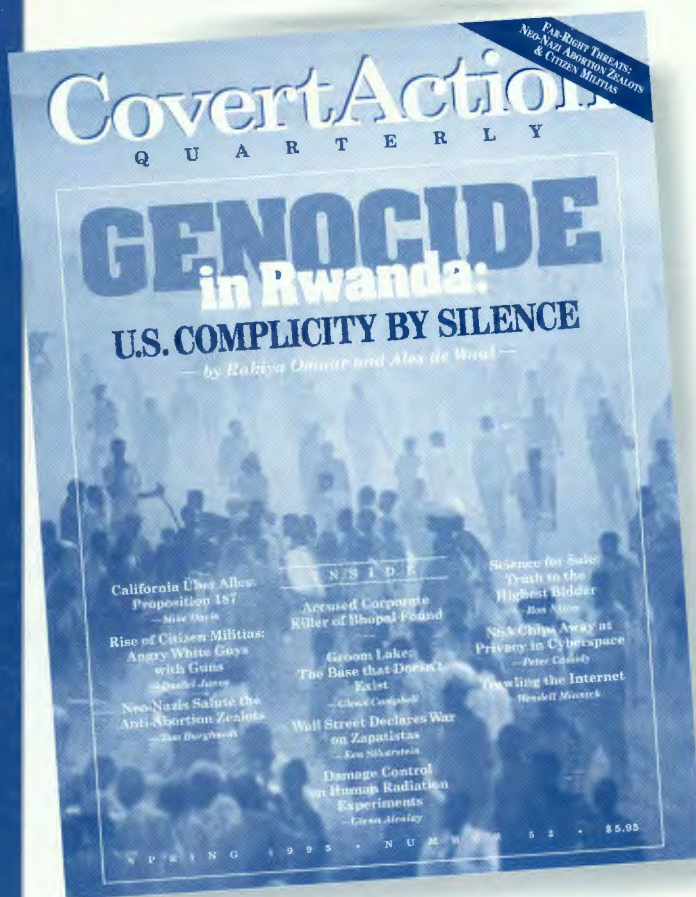
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