John Ashcroft, Maligned Again
by David Tell
08/04/2003, Volume 008, Issue 45


It was a scoop of sorts: The report in question, prepared by the office of Justice Department inspector general Glenn A. Fine, hadn't yet been released. It had, however, been delivered to the department's congressional overseers, one of whom, ranking House Judiciary Committee Democrat John Conyers of Michigan, arranged for a copy to be "made available" to Times correspondent Philip Shenon. Conyers also provided Shenon with a written statement helpfully highlighting the document's significance: "This report shows that we have only begun to scratch the surface with respect to the Justice Department's disregard of constitutional rights and civil liberties." And Shenon repaid Conyers's courtesy with a 1,200-word piece more or less explicitly concluding that, yup, that's what the IG report does, all right.

Thus, the Times story's lead: "A report by internal investigators at the Justice Department has identified dozens of recent cases in which department employees have been accused of serious civil rights and civil liberties violations involving enforcement of the sweeping federal antiterrorism law known as the USA Patriot Act." And, later, the scene-setting back-story: "The report is the second in recent weeks from the inspector general to focus on the way the Justice Department is carrying out the broad new surveillance and detention powers it gained under the Patriot Act"--the first report's findings having generated "widespread, bipartisan criticism" of the Bush administration.

And, later still, at the very end, Shenon's account of the fresh, purportedly damning details in Report Number Two: The IG's office appears to have been "overwhelmed by accusations of abuse, many filed by Muslim or Arab inmates in federal detention centers"--1,073 such accusations during the six months ending June 15, to be precise. Each of them "suggesting a Patriot Act-related abuse of civil rights or civil liberties." And 34 of them raising what the IG's report called "credible Patriot Act violations on their face."

Is 34 a frightening lot? The Times gave its readers no means to judge this obvious question, apparently believing it self-evident that the answer was "yes." And similarly automatic thinking characterized most of the catch-up coverage published by competing major papers the following day; with a few notable exceptions, even the best of these stories generally tracked the Times version. This, even though these better stories, many of them, were sprinkled through with quotations and information hinting--correctly--that the New York Times's original report was dead wrong: crippled by a fundamental factual error and, therefore, thoroughly misleading.

For example: Three-quarters of the way down Toni Locy's USA Today dispatch ("Report Outlines Rights Violations in Sept. 11 Act"), we learned that . . . well, actually, "The report does not cite any examples of alleged abuse of the powers provided by the Patriot Act." Moreover, three-quarters of the way down Susan Schmidt's Washington Post story, the best of the bunch, we saw quoted the inspector general's principal deputy, a man named Paul Martin, explaining that the report wasn't really "about" the Patriot Act at all. "This
report is not an assessment of the Patriot Act as a piece of legislation," Martin said. And "[i]t doesn't examine the department's use of Patriot Act authorities," either.

What the report does do, instead, is comply with a provision of the Patriot Act, Section 1001, requiring the inspector general to make semi-annual submissions to Congress concerning his receipt and review of "complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice." Notice: that's all alleged civil rights abuses, not just those that might arise as a consequence of the Patriot Act or in connection with the war on terrorism.

Indeed, the inspector general's office has since made clear that only a "tiny fraction" of the complaints at issue in his latest report have even the remotest connection to the exercise of law enforcement powers granted by the Patriot Act. And none of this tiny fraction is among the 34 allegations the report deems "credible...on their face." In other words: The only thing "Patriot Act-related" about the vast majority of the complaints discussed in the IG's report is the fact that it's the Patriot Act which obliges him to discuss them in the first place.

Just the same, the overall numbers involved are interesting. And they do suggest something meaningful about the Ashcroft Justice Department's reputation for "disregard of constitutional and civil rights"--something an innocent New York Times subscriber would never expect.

Whether or not it's fair to say that the IG's office has been "overwhelmed" by the resulting workload, it's certainly the case that civil rights protests lodged against Justice employees are sharply on the rise. During the previous six-month reporting period, June through December 2002, Glenn A. Fine and his staff received 783 complaints "in which the complainant makes any mention of a civil rights or civil liberties violation, even if the allegation is not within the [inspector general's] or the [department's] jurisdiction, or the allegation appears unsupported on its face." Those 1,073 total complaints the IG has more recently tabulated, then, represent a 37 percent upward spike.

And yet the absolute number of complaints judged "credible on their face" has remained almost perfectly flat: 34 this time, 33 the time before. The other 1,039 are either misdirected, involving gripes against people who don't work at the Justice Department; or not stuff properly considered a "civil rights" issue ("e-mails from individuals asking about the status of immigration paperwork they had submitted to the INS," for instance); or altogether "unrelated," as the IG report gently puts it ("individuals who claim they are under 24-hour surveillance by the CIA" and "non-detained individuals who claim they are being tortured by the government"--that kind of thing).

Bottom line: People are more and more likely to accuse the Justice Department of doing them wrong--which only stands to reason, since the New York Times and its hundreds of imitators have spent the past two years telling them that John Ashcroft is raping the Constitution. But it's less and less likely that those accusations are "credible."

And "credible" is not the same thing as "true," incidentally. A fair bit of last week's IG report was devoted to the disposition of "credible" allegations first identified in earlier reports. Most remain unsubstantiated. And all the worst of them--like the American-Arab Anti-Discrimination Committee's claim that an INS detainee in Texas was forced to eat pork, beaten, "had six teeth extracted against his will," and was then denied medical treatment--turned out to be false.

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