

Supreme Court and Justice Dept. federalize police brutality

by Leo F. Scanlon

On March 6, President George Bush told the nation: "Tonight I call on Congress to move forward aggressively on our domestic front. Let's begin with two initiatives we should be able to agree on quickly: transportation and crime. If our forces could win the ground war in 100 hours, then surely the Congress can pass this legislation in 100 days." Desert Storm made this possible, he said, since the war had "transformed a nation at home."

Within hours of these remarks, a group of Los Angeles policemen was videotaped administering a fierce beating to an apparently helpless citizen—with all the spirit, gusto, and martial force the President had so earnestly called for. Los Angeles Police Chief Daryl Gates made the connection between the mind-set of his officers and the President's exhortations when he said, "I'm kind of proud of the fact that most of the people who disliked George Bush and disliked what we were doing in the Middle East and giving him hell, they're the same people who are attacking me."

With that statement, Chief Gates shoved his department deep into the snares of a long-standing federal effort to subordinate local law enforcement to the political direction of the FBI and the Department of Justice. Attorney General Richard Thornburgh immediately rushed to establish a federal task force to prosecute the Los Angeles police. Bush (who shamelessly condemned millions of Iraqi children to death from starvation and disease) pronounced himself "sickened" by the incident. A blue-ribbon commission has been formed to investigate, and every police department in the country has been put under the federal microscope.

Meanwhile, the Supreme Court carried out an equally brutal attack on the Constitution itself, with a decision which legitimized the use of coerced confessions in criminal trials. If the Bush administration has its way, this decision will usher in an era in which the courtrooms will be as barbaric as the streets.

Setting the stage for police brutality

The LAPD is only one of a number of local police departments which are due to be put under FBI stewardship as the Bush team uses its "War on Crime" to conduct "conspiracy"

investigations and sting operations against local politicians. The current hue and cry is motivated by the need to control such local networks—and nothing else. Indeed, it is the Los Angeles City Council, the American Civil Liberties Union (ACLU), and the FBI itself which must be held responsible for encouraging acts of gratuitous violence by the police.

It is a sad fact of American life today, that the beating administered to Rodney King is a commonplace on urban streets. Underpaid, undertrained, and outnumbered police are facing a growing subculture of drug-induced violence. Especially unnerving are the psychotic outbursts characteristic of the crack and PCP addict—outbursts which can easily require 10 to 15 burly men to restrain even the smallest adult. Cash-strapped police departments have been encouraged to substitute brute force for skilled manpower in such situations, and have found extensive training in "pain compliance" techniques, plus funding for paramilitary SWAT units, liberally provided by the federal government. The result is often a mix of police tactics which aren't suited to the treatment of rabid animals, much less human beings.

Bush's Department of Justice has aggravated the problem by monopolizing tax revenues otherwise intended for local law enforcement agencies. Rep. Robert Wise (D-W. Va.) has accused the Bureau of Justice Administration of misappropriating over \$43 million in such funds, spending them on programs designed by the DoJ. James Gurule, the Office of Justice Programs official who oversees the scam, told Congressman Wise that this is exactly what the law calls for. "The BJA is only required by this law to fund programs directly benefiting the state and locals," he said. And of course, what most benefits state and locals in his view, are FBI-directed sting operations, white collar forfeitures, and other political shenanigans which have little impact on street crime.

The FBI has further contributed to declining standards for law enforcement by revising its rules governing the use of deadly force. At one time considered the standard for conservative rules on the firing of a weapon, the FBI this year issued guidelines which permit agents to fire at suspects fleeing a crime scene, and permit the Wild West practice of

firing “warning shots.”

But the loudest voice calling for gratuitous brutality of the type alleged to have been committed by the LAPD, is the Los Angeles City Council itself, which has a very different definition of brutality when it comes to political groups which are not under FBI protection. Exactly two years ago, the LAPD carried out a plan drawn up by the city council, which directed the police to beat and torture passive protesters from the Operation Rescue movement, during a sit-in in front of an abortion clinic. The gruesome scenes of officers with name tags and badges removed administering “pain compliance” (torture) techniques, beating old women, and brutalizing a 70-year-old Catholic bishop, were videotaped as well—but they didn’t make national headlines, and the Justice Department has never prosecuted.

The beatings were the result of a five-month campaign mandating the police to act in this manner, a campaign led by Councilmen Zev Yaroslavsky and Michael Woo, and Mayor Tom Bradley—the very people who are now demanding the head of their martinet, Mr. Gates. Councilman Woo actually found the original arrest plans presented by Gates to be too civil, and expressed “some confusion and concern on what will happen” at the protest, then warned “we will be working with police so that we are all prepared and are all ready on March 22.” The LAPD got the message, and proceeded to break arms and smash faces, while Woo and Yaroslavsky stalked watchfully in the background.

In the intervening two years, the Bush administration has delivered that message again and again. Twenty thousand troops were sent into Panama, killing thousands of civilians and destroying a nation for the alleged purpose of arresting “drug pusher” Noriega. Chairman of the Joint Chiefs of Staff Gen. Colin Powell called the most ferocious bombing campaign in human history “a party,” and said the murder of hundreds of thousands of innocent civilians was needed to stop “the criminal” Saddam Hussein. That’s the message the LAPD got loud and clear.

Yet, even after toadying for the Bush administration, Daryl Gates finds himself facing more plagues than Pharaoh. A blue ribbon commission headed up by Carter administration official Warren Christopher and Harvard criminologist James Q. Wilson has been formed to reorganize the LAPD, targeting the civil service structure which insulates the police chief from political pressures. Already, Gates has been humiliated by being forced into an unprecedented leave of absence by the scandal.

Supreme Court’s ‘civic inquisition’

The real policy shift which underlies the “about-face” by the Department of Justice on the police brutality issue was illuminated by a Supreme Court ruling handed down on March 26. The bitterly divided court presented a decision in the case of *Arizona v. Fulminante* which established, for the first time American law, the principle that a coerced

confession is legitimate evidence in a criminal trial.

The case involved a murder conviction secured on the basis of a confession made by the defendant to a fellow prisoner who was an FBI informant. The Arizona Supreme Court ruled that the confession was coerced, and the trial thus invalid, since the defendant had been threatened by prisoners, and the informant had offered “protection” in return for the confession. The Supreme Court majority affirmed this judgment, but then opened a Pandora’s box by asserting that the confession could have been subjected to a “harmless error” test, to determine whether the verdict would have been the same with or without the illegally obtained confession. The harmless error concept has been used with increasing frequency since about 1967, to whittle away at the Warren Court protections against overzealous prosecutorial techniques.

Justice Byron White delivered a dissent, taking the unusual and demonstrative step of delivering his remarks from the bench, and pointed to the unbroken line of cases which have established that “the use of coerced confessions, ‘whether true or false,’ is forbidden ‘because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system’ ” and which also support “ ‘the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.’ ”

The message that is being sent to prosecutors by the Court’s action is, “Get it right next time.” This was underlined by Justice Anthony Kennedy, who agreed with Justice William Rehnquist, that the confession should not have been considered coerced, even if it was improperly introduced. This is remarkable in light of the fact that the informant, Anthony Sarivola, is identified by the Court as a corrupted former police officer, who may have cooked up the entire story, and certainly was involved in creating the threats used to pressure Fulminante. The Court says that “his overzealous approach to gathering information for which he would be paid by authorities was revealed by his admission that he had fabricated a tape recording in connection with an earlier, unrelated FBI investigation.” It is no surprise to learn that “his eagerness to get in and stay in the Federal Witness Protection Program provided a motive for giving detailed information to authorities.”

The administration’s campaign against the LAPD is designed to further this rotten approach to law. It is another step toward a federal police force where the patrolman is replaced by the prosecutor. The administration promises the citizen a spectacle of vengeance, retribution, and even televised executions, but it eliminates the deterrence of the uniform on the street. It makes the slimy informant the king of the courtroom—and that is what a police state is all about.