

Showdown looms over Thornburgh Doctrine

by Leo Scanlon

The Bush administration has put the Congress on notice that it intends to stonewall an ongoing investigation into the origins of the Bush administration policy of kidnaping foreigners who are indicted in U.S. courts. The action could subject Attorney General Richard Thornburgh to contempt of Congress charges as early as September, when the legislature comes back in session. The controversy goes to the heart of the "Thornburgh Doctrine," which asserts that sovereign states have no legitimacy in the face of U.S. criminal laws. The Bush administration has based its "war on drugs" and its war on Panama on this outlaw philosophy, which is overdue for examination.

The showdown between the Congress and the Department of Justice (DoJ) erupted into a public brawl on July 19, when Attorney General Thornburgh and 21 of his top deputies boycotted the House Judiciary Committee hearing which had been scheduled to review the department's \$10 billion budget request for the coming year. New York Republican Hamilton Fish told the committee that he had advised the Attorney General to take the unprecedented step because the hearing was going to turn into a political "circus."

Committee chairman Jack Brooks (D-Tex.) had thrown down the gauntlet by announcing that the hearings would call Thornburgh to account for a variety of arrogant and illegal actions taken by the Department in recent years. In his opening statement he said, "The empty chair, the unanswered request, the delayed response are becoming the symbols of an increasingly remote and self-centered Justice Department bent on expanding the accepted boundaries of Executive Branch power and prerogatives. This disturbing view of government has served as the department's rationale for denying access to the committee of documents under a vaguely worded notion of 'executive privilege'; unilaterally declaring acts of Congress unconstitutional without adjudication by the courts; and by arrogating unto itself the discretion to ignore congressional inquiries short of compulsory process."

Brooks and his fellow Democrats are initiating a confrontation with the administration, for as Brooks observed, "It appears that the only function that Congress plays in this scheme of government is to appropriate funds for the operation of government. If that, indeed, is how the Justice Depart-

ment views our constitutional form of government, then it may well be time to get their attention by using that process decisively." In addition to the potential charges against Thornburgh, the House has yet to agree to any version of the Senate's Crime Bill, and can hold that, as well as the DoJ budget, hostage to this dispute.

Subpoenas rejected in Inslaw case

There are other issues which have come to a head between the committee and the DoJ, especially involving the case of the Inslaw computer software company. Thornburgh has been subpoenaed to produce 490 documents held by the Justice Department and denied to Congress. The DoJ has refused, claiming a novel interpretation of the attorney-client privilege to shield inter-department communications in the matter. This interpretation views a congressional oversight committee investigatory request as if it were a criminal investigation, treating the committee as if it were a grand jury, and categorizing Congress as an adversary institution.

Justice Department officials claim that they complied with a second subpoena from Representative Brooks for documents in the case. However, sources close to the probe say that the DoJ has admitted privately that many of the most critical documents were missing from the delivery. According to one senior Justice official, there was a break-in at department headquarters in June, in which files were removed and computer disks relating to Inslaw were copied. Supposedly, at the end of July, copies of some of these "pilfered" memos appeared at the offices of the House and Senate Judiciary committees and at the DoJ—with an anonymous cover letter saying that the documents were removed and secured in order to prevent their destruction.

The kidnaping policy

The committee has demanded, and been refused, documents prepared by the Office of Legal Counsel which formed the basis of the President's Executive Directive that the FBI had authority to kidnap or detain persons overseas without the permission or knowledge of the host government.

The administration is claiming that a release of the documents which define the controversial policy would threaten the prosecution of Manuel Noriega and others who were arrested under its authority, because the documents contain a discussion of the strengths and weaknesses of the government's case.

There are similar issues involving communications within the Executive Branch, with Thornburgh claiming "executive privilege" in each case as the basis of his refusal to release documents. Democrats point out that the DoJ has no power to assert the claim, which is the legal privilege of the "client" in the proceeding. If the President wishes to claim executive privilege, his attorney, C. Boyden Gray, must assert it for him. The DoJ's "client" is the U.S. government, which includes Congress.