

Beware of 'Credible Intelligence'

By Ray McGovern

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Last Wednesday, May 27, it was Attorney General John Ashcroft—joined Friday by me-too Homeland Security Secretary Tom Ridge—claiming that “credible intelligence from multiple sources indicates that al-Qaeda plans to attempt an attack on the United States” between now and the November election.

If “credible intelligence” sounds to you like protesting too much, there is ample reason to be skeptical. Overshadowing Ashcroft’s dramatic warning that al-Qaeda planned to “hit the United States hard” was the headline-grabbing, specific claim that “an al-Qaeda spokesman announced that 90% of the arrangements for an attack on the United States were complete.”

Had Ashcroft thought to check this out with the CIA— or even NBC—he would have learned that the “al-Qaeda spokesman” was actually “Abu Hafs al-Masri Brigades”—a fact later conceded with some embarrassment by the FBI. According to a senior U.S. intelligence official, this “group” may consist of no more than one person with a fax machine. The “Brigades” have nonetheless claimed responsibility for the power blackout in the Northeast last year, a power outage in London, and the March 11 train bombings in Madrid. NBC news analyst Roger Cressey, a former deputy to counterterrorism chief Richard Clarke, notes, “The only thing they haven’t claimed credit for recently is the cicada invasion of Washington.”

What’s Going On?

“Intelligence” is being conjured up once again to serve the political purposes of the Bush Administration. Merely recall the litany of spurious claims against Iraq, all said to have been based on “solid sources,” that Secretary of State Colin Powell dwelled on in his UN speech of Feb. 5, 2003.

But what purposes are served in the current political context? Fanning further fear of terror is the only remaining ploy to boost the President’s sinking poll numbers. The struggle against terrorism is the issue on which George W. Bush still gets relatively good marks. Small wonder that he used “terror/



In a Jan 25, 2002 memorandum, Alberto Gonzales, President Bush’ chief legal counsel, wrote prophetically: “A determination that the Geneva Convention does not apply to al-Qaeda and the Taliban could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat, and could introduce an element of uncertainty in the status of adversaries.” Here Gonzales stands behind as Bush squints at his teleprompter.

terrorist/terrorism” no less than 19 times in his speech at the Army War College on May 24. But is that all that is afoot here?

I believe there may be considerably more. With only five months before the election, the President’s men are getting desperate. Iraq is going from bad to worse and the prospect of substantial improvement before November is virtually nil. Worse still, revelations of the past few weeks strongly suggest that the President, Ashcroft, Defense Secretary Donald Rumsfeld, et al. have deeply personal incentives to make four more years for Bush a sure thing.

The Nettle of the Geneva Conventions

Put yourself in their position. Addressing whether or not Washington should honor the Geneva Conventions on Prisoners of War, the President’s chief legal counsel, Alberto Gonzales, warned him in a memorandum of January 25, 2002 that U.S. law—the War Crimes Act of 1996 (18 U.S.C. 2441)—prohibits “war crimes” defined to include any grave breach of the Geneva Conventions on Prisoners of War. Gonzales made it clear that this prohibition applies to U.S. officials and noted that punishments for violations of Section 2441 include

the death penalty.

Gonzales advised the President that, in the opinion of Ashcroft's Justice Department, the Geneva Conventions do not apply to al-Qaeda and that the President had the authority to determine that they also do not apply to the Taliban. (This would not be the first time that forces branded "terrorists" were declared exempt from the Geneva Conventions. In World War II, when armed, uniformed Allied troops landed behind German lines, Hitler ordered them to be executed for "terrorist activities," as Professor Frederick Sweet noted in a recent article in *Intervention* magazine.)

Gonzales described Ashcroft's opinion as "definitive," but added that the State Department had expressed "a different view." Buried in the legalese is thinly disguised nervousness that others, too, might have a different view. Under the "positives," Gonzales notes:

It is difficult to predict the motives of prosecutors and independent counsels who may in the future decide to pursue unwarranted charges based on Section 2441. Your determination would create a reasonable basis in law that Section 2441 does not apply, which would provide a solid defense to any future prosecution.

The President's lawyer concluded that a determination by President Bush that the Geneva Conventions do not apply to the Taliban "substantially reduces the threat of domestic criminal prosecution under the War Crimes Act (18 U.S.C. 2441)."

"A reasonable basis in law?" "Substantially reduces" the threat of prosecution? If I were President Bush I would not find these phrases altogether reassuring. And neither, one would assume, does Attorney General Ashcroft.

And if this were not worrisome enough, Gonzales adds an eerily prophetic statement in listing the "negatives:"

A determination that the Geneva Convention does not apply to al-Qaeda and the Taliban could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat, and could introduce an element of uncertainty in the status of adversaries.

Then there was Abu Ghraib.

There is nothing in the Geneva Conventions that gives anyone the right to make a unilateral decision to exempt opposing forces. And the Conventions hold the "Detaining Power"—not individual soldiers—responsible for maltreatment of detainees.

From the catbird seat of the "sole remaining superpower," however, the Bush Administration has shown considerable disdain for international law. On occasion it has stretched it well beyond the breaking point—as in claiming that the invasion of Iraq was authorized by UN Security Council Res-

olution 1441. Section 2441 of the War Crimes Act of 1996 is different. This is U.S. law, in which the strictures of the Geneva Conventions are embedded.

Nightmares

For the Bush Administration, the nightmare is losing the November election—a prospect believed to be unlikely until just recently. For many of us citizens, the nightmare is the President and his associates resorting to extra-legal measures to ensure that there is no "regime change" in Washington for four more years. Logic and human nature would suggest that possible liability to prosecution under the War Crimes Act are among the more weighty factors they take into account.

Bush Administration leaders may even look on the prospect of a terrorist event in the United States in the coming months as a possible opportunity as well as a risk. I do not suggest they would be perverse enough to allow one to happen, or—still less—to orchestrate one. But there is ample reason to believe that they would take full political advantage of a terrorist attack—**or even just the threat of one**. Ashcroft's remarks last week might be regarded as the opening salvo in a campaign to condition the country for this.

No less a figure than Gen. Tommy Franks, who led the war on Iraq, went so far as to predict publicly last November that if terrorists attacked the United States with "weapons of mass destruction," the Constitution would probably be discarded in favor of a military form of government.

But, you say, that would mean a constitutional crisis without parallel in the history of our country. Perhaps. But was there not a good warm-up in the Fall of 2002? Did we not then experience a constitutional crisis when Congress was duped into ceding to the President its constitutional power to declare war? And it was all accomplished by spreading the myth that Saddam Hussein was close to exploding a "mushroom cloud" over us—a myth based on a known forgery alleging that Iraq was acquiring uranium from Africa.

In a recent op-ed in a newspaper in Maine, Charles Cutter poses the key question for the next five months. Cutter asks:

How far would they go? With blood on their hands and God on their side, what actions would Bush & Co. consider too extreme—when the goal is to extend their control over the financial and military power of the American Presidency?

An elevated threat level justifying martial law and postponement of the election? No doubt such suggestions will seem too alarmist to those trusting that there is a moral line, somewhere, that the President and his senior advisers would not cross. I regret very much to say that their behavior over the past three years leaves me doubtful that there is such a line. If my doubts are justified, the sooner we all come to grips with this parlous situation the better.

Meanwhile, don't be taken in by "credible intelligence."