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To: Killeacle (E-mail)
Subject: Kangaroo Courts: Boyle v Gonzales

Kangaroo Courts: Boyle v Gonzales

Dear Friends:

Attached is a better version of my legal analysis of what Bush and his Federalist Society Lawyers such as Gonzales are doing on these military kangaroo courts. According to Gonzales in today's *New York Times*:

"The order covers only foreign enemy war criminals; it does not cover United States citizens or even enemy soldiers abiding by the laws of war. Under the order, the president will refer to military commissions only noncitizens who are members or active supporters of Al Qaeda or other international terrorist organizations targeting the United States."

In other words, aliens here in the United States can still be subjected to these kangaroo courts. He concedes that point later on: "Under the order, anyone arrested, detained or tried *in the United States* by a military commission . . ." [emphasis added] I stand by the basic analysis set forth in this interview which I gave about ten days ago.

As for his defense of military tribunals. Gonzales deceptively failed and refused to point out that these kangaroo courts will not be conducted as court-martials in accordance with the Uniform Code of Military Justice (UCMJ), which does afford some semblance of due process of law to Members of United Armed Forces. But even in the case of court-martials conducted under the UCMJ, undue and illegal command influence in the prosecutions is unavoidable in politically charged cases such as these. And in regard to these kangaroo courts, (1) they are not even court-martials under the UCMJ; and (2) the President himself decides who is going to be subjected to these kangaroo court proceedings. Basically, such designation would constitute an unconstitutional "Bill of Attainder."

During the past decade, I have argued in three formal court-martial proceedings for Members of US Armed Forces who have been persecuted for acts of conscience: Two in the Army; one in the Marines. I have also advised on other court-martial proceedings and CO discharges. All *pro bono publico*.

In the persecution of Captain/Doctor Yolanda Huet-Vaughan for refusing to go to Saudi Arabia in 1990 as a matter of principle and conscience, if the Base Commander at Fort Leonard Wood could have had her shot, he would have. Even under the UCMJ her prosecution was overridden by command influence. It was a kangaroo court proceeding from beginning to end, a railroad job. The only reason she was not charged with desertion in wartime -- a capital offense -- was that the Army Lawyers concluded that Congress had not formally declared war in January of 1991, which is the case for the current situation -- a point Gonzales deceptively fails and refuses to deal with. She was convicted of desertion and sent to Leavenworth, where she was kept in Medium Security. We got her out after eight months. Her conviction was later overturned by the Army Review Board for a gross violation of due process of law, though this decision was overturned by the Court of Military Appeals. I am sure that if her only appeal would have been to Bush Jr., he would have had

her shot. Fortunately, right now she is providing community medical services to poor Blacks and AIDs patients in Kansas City. No thanks to the Base Commander, the JAG Corp Lawyers and the Military "Judge" and the Military "Jury".

As for the other two formal court-martials that I have argued in under the UCMJ, I would not go so far as to state that they were kangaroo court proceedings. But they did prove the old adage that military justice is to justice as military music is to music. We kept our clients out of Leavenworth. But that was no thanks to the Base Commanders and the JAG Corp Lawyers -- all subject to the command of the Base Commanders, as were the Military Judges.

I am certain that Bush and Gonzales will provide the same type of "swift and certain justice" they have given to all those people down in Texas whom they have executed over the years: Unless we stop them!

Francis A. Boyle
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The published source to the following exists at:
http://www.americanfreepress.net/11_25_01/In_Name_of_Security__Thousands/in_name_of_security__thousands.html

In Name of Security, Thousands Denied Constitutional Rights

**The federal government wants Americans to believe
that the Constitution only applies when it says so.**

Exclusive to *American Free Press*

By Christopher Bollyn

The actions taken by President George W. Bush and Attorney General John Ashcroft in secretly detaining untold numbers of individuals and calling for secret military tribunals to handle captured Taliban and Al Qaeda prisoners have been condemned as "a constitutional *coup d'etat*" which may lead to a "police state," according to experts on constitutional and international law.

While most if not all the detainees "look Arab" now, experts warn, tomorrow's detainees could be blond, blue-eyed-or you.

"What we've seen, since Sept. 11, if you add up every thing that Ashcroft, Bush and their coterie of federalist society lawyers have done here, is a *coup d'etat* against the United States Constitution," said Francis A. Boyle, professor of international law at the University of Illinois. "When you add in the Ashcroft police state bill that was passed by Congress . . . that's really what we're seeing now.

"Since Sept. 11, we have seen one blow against the Constitution after another," Boyle said. "Recently, we've had Ashcroft saying that he had, unilaterally, instituted monitoring of attorney-client communications without even informing anyone -- he just went ahead and did it, despite the Fourth Amendment ban on unreasonable searches and seizures without warrant and the Sixth Amendment right to representation by counsel."

The criminal investigation into the attacks, the largest in U.S. history, has netted about 1,200 detainees. But the Justice Department has failed to build a case against a single prime U.S. suspect in the terrorist attacks.

BAD EVIDENCE

Nine weeks after the Sept. 11 terrorist attacks, federal authorities said on Nov. 15 that they had found no evidence indicating that any of the roughly 1,200 people detained in the United States played a role in the suicide hijacking plot.

However, numerous legal protections, based on constitutional and international treaties, appear to have been ignored or violated in the case of the 1,200 detainees.

"We are becoming a banana republic here in the United States, with 'disappeared' people, which was the phenomenon that we all saw down in Latin American dictatorships in the 1970s and 1980s, with the support, by the way, of the United States Government," Boyle said.

"We don't know where they are or the conditions under which they are being held. We have no idea whether they have access to attorneys. We do know one of them died, under highly suspicious circumstances, while in custody. There have been reports that he was tortured to death," he said.

The Constitution protects aliens in the United States, according to Boyle. "Clearly aliens here are entitled to the protections of the due process clause of the Fifth Amendment, as well as to the Article III (Section 2, Clause 3) basic constitutional rights in criminal cases, including indictment, trial before a federal district judge or jury, [rights relating to] venue and things of that nature," Boyle said.

"I'm surprised there hasn't been more of an outcry," said Robert B. Reich, secretary of labor under President Bill Clinton, about the long-term detentions and the administration's plans to monitor conversations between lawyers and terrorism suspects in federal custody. "The president is, by emergency decree, getting rid of rights that we assumed that anyone within our borders legally would have. We can find ourselves in a police state step-by-step without realizing that we have made these compromises along the way."

The foreign detainees are also protected by international law under treaties, including the International Covenant on Civil and Political Rights and the Vienna Convention on Consular Relations (VCCR).

The International Covenant on Civil and Political Rights, to which the United States government is a party, affords basic due process protections to everyone here in the United States, irrespective of their citizenship, according to Boyle.

The VCCR of 1963 calls for notification "without delay" of consular officials when one of their nationals has been arrested or "detained in any other manner."

Although Egypt, Pakistan, Syria, and Saudi Arabia are party to the VCCR along with the

United States, the Justice Department told AFP that it is using an abbreviated list of nations, the Mandatory Notification Countries, which includes only one Middle Eastern nation, Kuwait.

Spokesmen from the Justice and State Departments could not confirm to AFP that the United States was abiding by the terms of the VCCR and notifying the consulates of the detainees. However, Kareem Shora, legal adviser at the American Arab Anti-Discrimination Committee, said that it had received at least 10 complaints that this was not the case.

The Justice Department is planning to "round up" and question some 5,000 men, mostly from Middle Eastern countries, who entered the U.S. legally within the past two years. "When will the FBI, the CIA and the National Security Agency start to turn these powers, that they have under the Ashcroft police state bill, against American citizens?" Boyle asks. "Clearly, that will be the next step."

BAD PRECEDENT

Concerning the executive order calling for military tribunals to try alleged al Qaeda members, or even former al Qaeda members, in Afghanistan, Boyle says there is an "even more serious problem."

"The third and fourth Geneva Conventions, of 1949, clearly apply to our conflict now with Afghanistan," Boyle says. "These alleged al Qaeda members would be protected either by the third Geneva Convention, if they are fighters incorporated into the army there in Afghanistan, or by the fourth Geneva Convention, if they are deemed to be civilians. Both conventions have very extensive procedural protections on trials that must be adhered to."

Although a trial can be held, there are extensive rules and protections and basic requirements of due process of law, set forth in these treaties that must be applied. Failures to apply these treaties would constitute war crimes, according to Boyle.

The executive order calling for secret military tribunals is extremely dangerous because it invites reprisals by the Taliban, Boyle says. "What it is basically saying to the Taliban government and to al Qaeda is, 'We are not going to give you the protections of either the third or fourth Geneva Conventions' guarantees on trials.' What that means is that they could engage in reprisals against captured members of the United States Armed Forces.

"It opens up our own armed forces to be denied prisoner-of-war treatment," he said. "So, what we're doing here is exposing them to a similar type of treatment, which would be a summary trial, in secret, subject to the death penalty."

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