Roundups, Detention, and Other Phantoms of Lost Liberty

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IN AN ALABAMA DISTRICT COURT a few years ago, the Department of Justice made an argument familiar to those who have read immigration cases: it asked the court to keep its hands off. The department argued for what I call "double deference." First, the court should defer to the executive and legislative branches as a matter of course in immigration matters; and second, the court should defer to the jail where the plaintiff was being incarcerated since prison administrators need wide latitude in operating their lock-ups. These were standard arguments, but they were a little surprising this time since the case concerned the state's authority to force-feed an immigration prisoner who was conducting a hunger strike to protest his detention. The prisoner argued that he had a First Amendment right to protest this way. But, able to constrain him inside a contracted, rural jail far from legal help, as well as deep inside the hands-off immigration laws, the state won.[1]

In an ominous indication of long-term plans that Justice — and now Homeland Security — may have in store for immigration detainees, the government's lead attorney in the case wrote in the Office of Immigration Litigation newsletter, "an alien's status in this country may also dictate the degree of constitutional protections he or she may be afforded. . . . Perhaps some of these same constitutional principles can be applied to aliens challenging their treatment while in INS detention."

Defending what we call "civil liberties" has been critically important since 9/11, but it has the disadvantage of being defensive; the government's domestic responses to 9/11 did not come out of nowhere.* I will sketch a few connections here among wide-ranging but related policies in which the U.S. government lies about immigration detention; continues to deport legal immigrants for minor crimes; justifies the use of torture in the current wars; and imprisons Mariel Cubans who have completed their criminal sentences.

The Liberal Media

IMMIGRATION PRISONERS ARE "administrative detainees." They are not serving sentences. I began with the example of double deference — to the executive's discretion in enforcing immigration law and to the prisons and jails where immigrant detainees are so often held at profit to the local community which is paid by the federal government for its bedspace – because this black hole was created long before 9/11, and because an understanding of it is therefore crucial to a full appreciation of the treatment of immigration prisoners since the attacks on the U.S.

Anyone hoping to understand the post-9/11 roundups and secret detentions of noncitizens in the United States should bear in mind two additional, salient facts. First, not a single one of the 1200 persons detained "in connection w/ the investigation," as the common phrase has it, was ever charged here with any connection to the 9/11 attacks. Second, on September 10, 2001, the Immigration and Naturalization Service was already holding more than 20,000 detainees.

When it comes to the topic of immigration detention and deportation, the liberal media fail to recognize that the targeting and scapegoating of noncitizens is not a *ping* in the engine; those are the pistons, powering the machine, and they're supposed to sound like that. Secret detentions and mistreatment of prisoners were not merely overreactions in a time of crisis. The immigration detention system has been in place since the Reagan administration, though it has grown

significantly since then. From the beginning, the policymakers and custodians have been authorizing "excessive force" against nonviolent prisoners and keeping them from their attorneys. Yet *Washington Post* columnist Richard Cohen, while sympathetic to victims of the post-9/11 roundups, thinks the Department of Justice was "establishing a detention system virtually from scratch" ("Ashcroft's Attitude Problem," 6/10/03). Seemingly oblivious to attorneys' and human rights groups' allegations, Barbara Crossette of the *New York Times* inaccurately and unequivocally reported: "No mainstream critic of the Bush administration's antiterrorism policies suggests that Americans are physically abusing detainees." ("In the Secret-Detentions Club," 8/11/02). The *New Yorker*'s Jeffrey Toobin had weighed in with this analysis: "the detention of a thousand or so people in the initial dragnet after September 11th has produced few stories of true government abuses" ("Ashcroft's Ascent," 4/15/02). The department's own Office of the Inspector General (OIG) would note, "Soon after these detentions began, the media began to report allegations of mistreatment of the detainees." The Patriot Act's Section 2001 requires the OIG to investigate allegations of civil rights violations; the OIG, under Clinton appointee Glenn Fine, has issued detailed reports, most extensively on mistreatment at Brooklyn's Metropolitan Detention Center (a federal prison).[2]

These were welcome reports: Now Congress should hold hearings on the entire immigration detention regime and ask the OIG to investigate abuse allegations which human rights groups, individual attorneys, journalists, and prisoners have been documenting for about two decades now.

THE AMERICAN WIFE of an Egyptian charged with immigration violations told the *New York Times*'s William Glaberson, "They don't know how painful this is. They're destroying families" (9/29/01). But they did know, and there was a reason. One priority, as Attorney General Ashcroft said repeatedly, was the prevention of future attacks. Another, about which he was less explicit, was to make it look as if the law enforcement agencies that had made serious errors were now on top of things. What thousands of detainees and their families experienced as destruction was the strategy of "disruption" articulated by the Attorney General: "Aggressive detention of lawbreakers and material witnesses is vital to preventing disrupting, or delaying new attacks," he said in one of many such statements.[3]

Confronted with the critical law enforcement objective of preventing attacks, the department reverted to the long-established rhetorical tactic of blurring the distinction between alien, criminal, and terrorist. In his "explanation" of who was being detained and why, Ashcroft repeatedly implied that all post-9/11 detainees were terrorist suspects. Rather than "live in a dream world," he told a Senate committee, we must "fight back." How? We must "identify, disrupt and dismantle terrorist networks." No one would argue with that. Again the Ashcroft described the administration's tactics as a "deliberate campaign of arrest and detention to remove suspected terrorists who violate the law from our streets." Among these were several hundred detained on "immigration violations." But were these "suspected terrorists"? Getting answers was nearly impossible because blurring the distinction was the whole point. It is in this duplicitous context that the attorney general's own contemptible fear-mongering will survive:

> We need honest, reasoned debate and not fear- mongering. To those who pit Americans against immigrants, and citizens against noncitizens; to those who scare peace-loving people with phantoms of lost liberty, my message is this: your tactics only aid terrorists, for they erode our nationality unity and diminish our resolve.[4]

"No raids, no roundups, none of that," INS Assistant Commissioner for Investigations Joseph Greene told the press. It is true that there were no World War II-style roundups and relocations of American citizens whose ancestry was suspect. But the extensive infrastructure for detention was in place. In addition to the often-cited 1200 post-9/11 detainees, a year and a half after the attacks the

INS had detained another 1100 persons in connection with its Absconder Apprehension Initiative, and more than 2700 through its special registration program.[5] Both programs targeted Arab, Muslim, and South Asian foreign nationals. Given government secrecy on these matters, we may never have a full accounting; even the often cited figure of twelve hundred detainees is based on Department of Justice information, but Justice explicitly stopped releasing numbers in November 2001, less than two months after the attacks. (In an elegant illustration of the reflexive nature of this PR secrecy, a Bureau of Immigration and Customs Enforcement spokesperson told me that numbers on "absconder" detentions could not be released — and a BICE director of operations reported those numbers in a public statement to Congress.)

Fox News commentator Michelle Malkin complained: "even after September 11, the mainstream media . . . run[s] scores of cookie cutter sob stories about illegal aliens 'unjustly' detained instead of focusing on the still rising costs to society of an immigration system run amuck." She writes that "the speedy detention and deportation of some twelve hundred aliens suspected of terrorist ties gave the illusion of competence in . . . immigration enforcement."[6] Malkin is in agreement with many critics of the INS when she criticizes the response to 9/11 as at least partially a cover for incompetence. But her own critique of the "sob stories" depends on the Attorney General's calculated disinformation: "Each action taken by the Department of Justice . . . is carefully drawn to target a narrow class of individuals — terrorists. Our legal powers are targeted at terrorists. Our investigation is focused on terrorists. Our prevention strategy targets the terrorist threat."

Even those more sympathetic to "illegals" than the Fox commentator might reasonably assume that the twelve hundred detainees were "suspected of terrorist ties." FBI agent Coleen Rowley appeared in the spotlight after 9/11 for her public criticism of the FBI's intelligence methods. Less attention was paid to this paragraph in Rowley's letter to the director:

> The vast majority of the one thousand plus persons 'detained' in the wake of 9-11 did not turn out to be terrorists. They were mostly illegal aliens. We have every right, of course, to deport those identified as illegal aliens during the course of any investigation. *But after 9-11, Headquarters encouraged more and more detentions for what seemed to be essentially PR purposes. Field offices were required to report daily the number of detentions in order to supply grist for statements on our progress in fighting terrorism.* The balance between individuals' civil liberties and the need for effective investigation is hard to maintain even during so-called normal times, let alone times of increase terrorist threat or war. It is, admittedly, a difficult balancing act. But from what I have observed, particular vigilance may be required to head off undo pressure (including subtle encouragement) to detain or 'round up' suspects particularly those of Arabic origin [emphasis added].

Whatever might have had to do with security was subordinated to "a deeper and more troubling agenda," wrote two former INS general counsels. The nation's top law enforcement officer more or less admitted this himself. He told the International Association of Chiefs of Police: "The critics . . . would have us return to a reticent law enforcement culture of inhibition which existed prior to September 11, 2001."[7]

Culture of Secrecy

INS SECRECY AND DISINFORMATION did not begin on September 12. Dallas attorney Karen Pennington worked in California in the 1980s, when Salvadoran asylum-seekers were regularly moved from one jail to another to "hide them from their attorneys." The practice has varied but never stopped. "Post-

September 11," observes Pennington, "was the first time that they kept them in the same area and just refused to tell you even who they had." Before 9/11, a paralegal with the ACLU Immigrants Rights Project in New York would call area jails for detainee names, and that practice also came to a dead end. As legal representatives discovered that their clients' names were removed from court dockets, detainees were denied access to phones.

And as the Attorney General's subordinate interrogators were telling detainees that they would get out faster without attorneys, Ashcroft himself assured Congress that all detainees had the right to counsel. As detainees were denied access to telephones, Assistant Attorney General Michael Chertoff assured Congress they could call lawyers as well as their families. According to reporter Steven Brill, the Department of Justice strategy of denying detainees access to phone and attorneys was explicit among Ashcroft and his top aides, and Chertoff was in charge of it.[8] Chertoff has since been appointed to the Third Circuit Court of Appeals. In a common pattern, as they were told of allegations about the denial of access to counsel, INS public affairs spokesperson Russell Bergeron said, "If such an allegation exists, we would like to hear about it." In the usual pattern, Ashcroft said, "I would be happy to hear from individuals if there are any alleged abuses of individuals, because that is not the way we do business" — this in response to a *Los Angeles Times* report of precisely such allegations.[9]

In 1970 an *Iowa Law Review* note described the INS's "insistence on maintaining a system of secret law" and its "pervasive attitude of non-disclosure."[10] Subsequent years brought some positive changes. These continued into the Clinton era, when Attorney General Janet Reno urged a "presumption of disclosure" in responses to Freedom of Information Act (FOIA) requests. One month after the terrorist attacks on the United States, in the words of the Lawyers Committee for Human Rights, Ashcroft "effectively reversed" these openings. He advised FOIA office employees that, with few exceptions, when they make decisions "to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions." The administration went even further when the department staff "secretly drafted" the Domestic Security Enhancement Act of 2003 — aka Patriot II — which would "mak[e] it easier for the government to hide whom it is holding and why, and prevent the public from ever obtaining embarrassing information about government overreaching."[11] The *Iowa Law Review*'s observations more than three decades earlier could not be more timely: "Whether secrecy is preferred solely to protect the agency's activities from public scrutiny or because it allows a governmental policy of bias against aliens to be implemented behind the public's back is unclear. What is clear is that the attitude exists in the INS and breeds unchecked, low visibility discretion."

Climate and the Law

THE CULTURE OF LAWLESS law enforcement is surely in debt to the libertine Ashcroft, but that culture was not so inhibited as the man who covered a statue's breasts would have us believe. In 1996 Bill Clinton signed legislation that escalated and codified the domestic scapegoating of noncitizens. Among other pernicious consequences, minor crimes committed years before could now be exploited to trigger deportation proceedings against longtime legal residents. Almost ten years later, these laws have yet to receive the attention — much less the reform — they demand. The nationwide *Fix '96* campaign headed by the grassroots Citizens and Immigrants for Equal Justice (CIEJ) and others disappeared after 9/11.

We return for a moment to deference, where we began. In *INS v. St. Cyr* (April 2001), the government argued that the executive had authority to apply the 1996 anti-immigrant laws retroactively — in order to deport legal immigrants who had pled guilty to crimes which would only later make them subject to deportation — and that Congress had intended to limit judicial review of such retroactivity. Deputy Solicitor General Edwin S. Kneedler asked the Supreme Court to grant

the executive "extraordinary deference" since this was an immigration matter. It is absurd, really, that banishing a taxpayer who has lived here legally for decades, who has served in the U.S. military, whose spouse and children were born here, who, like other good Americans, speaks only English — all typical of victims of the 1996 laws — absurd that this is legally considered an "immigration matter" simply because the taxpayer is not a citizen. *Fix '96* should be revived, and our ideas of citizenship must be revised.

In *St. Cyr* the deputy solicitor general claimed that Congress intended to allow retroactive application of the law and to limit judicial review of it. He told the court that this should not be surprising "given the climate in which Congress acted." In other words, we should look to the rhetoric and hysteria which precipitated the new laws — passed by Congress to mark the anniversary of the Oklahoma City bombing by an American citizen — for guidance in interpreting and applying those laws.

Be on the lookout for continuity. In April 2004 in the Supreme Court arguments about the Guantànamo detentions, Solicitor General Theodore Olson similarly appealed to hysteria in order to justify lawlessness. His opening statement began: "The United States is at war." Justice John Paul Stevens interrupted right away with a question. What if there were no war? Wouldn't the government be making the same argument about the legality of the detentions? Recall that the question before the court was whether the United States has jurisdiction over the Guantànamo Naval Base; if it doesn't, then the prisoners there have no access to U.S. courts. So isn't the war irrelevant? Olson conceded the point but couldn't let it go: "It is not irrelevant because it is in this context that that question is raised. . . . It doesn't depend on it" — i.e., his argument doesn't depend on the war — "but it's even more forceful and more compelling" because of it. As in the case for retroactivity a few years before, the solicitor general's point was that the government's arguments should be evaluated not so much on their soundness as on their deafening context. There is no arguing with a mob.

Justice Stephen Breyer acknowledged the ongoing war and said he wanted to help the executive resolve the issue without too much court interference. Yet, he continued, "I'm still honestly most worried about the fact that there would be a large category of unchecked and uncheckable actions dealing with the detention of individuals that are being held in a place where America has power to do everything."

Meanwhile, the *New Yorker*'s legal analyst missed the point on Guantànamo just as he had on the domestic roundups. "Of course," wrote Toobin, "the reason that the military sends detainees to Guantànamo is its absolute security" ("Inside the Wire," 2/9/04). That's a rather surprising "of course," considering that just two paragraphs earlier Toobin quotes the solicitor general's own argument that the United States base in Cuba "is not, and is not remotely like, an American territory." In other words, the U.S. has detained people at its Cuban base — the Haitians and Cubans whom Toobin mentions, as well as Chinese refugees picked up at sea — in the attempt to keep them beyond the realm of any enforceable law. Even the administration practically admits that, yet somehow Toobin cannot.

In the *St. Cyr* case, Justice Ruth Bader Ginsburg addressed the deputy solicitor general: "There's a lot of discretion in Federal agencies, but there's also a concept of abuse of discretion, and you seem to be saying no, there isn't. . . . The discretion is there but it's kind of a lawless discretion. Is that what you're telling us?"

The deputy replied: "The fact that it's not judicially reviewable doesn't make it lawless."

In the *Rumsfeld v. Padilla* arguments about the executive's authority to detain a U.S. citizen

indefinitely, Justice Ginsburg asked Deputy Solicitor General Paul Clement a related question: "If the law is what the executive says it is, whatever is 'necessary and appropriate' in the executive judgment" — here she was alluding to the post-9/11 congressional authorization for the president to use "necessary and appropriate force" — "what is it that would be a check against torture?" Ginsburg tried two or three times to get an answer. Clement was evasive, but he answered that there is no check on torture if the president or his subordinates want to use it: "The fact that executive discretion in a war situation can be abused is not a good and sufficient reason for judicial micromanagement and overseeing of that authority." The deputy said "the military ought to have the option of proceeding with" its captives in such a way that it "can get actionable intelligence to prevent future terrorist attacks."

In *Hamdi v. Rumsfeld* Clement again referred to the necessity of "interrogation without counsel" when the citizen being interrogated might be of "paramount intelligence value." This time Justice Stevens asked whether anything in the law limits interrogation methods. And this time Clement blew a smoke screen by mentioning treaties against torture which he quickly had to concede are not binding. Then he reassuringly told the court that "the last thing you want to do is torture somebody" since that would affect the "reliability" of information obtained.

The questions about torture grew out of the question of limits: In fighting this potentially indefinite war, are there any limits on what the executive can do to U.S. citizens? Jennifer Martinez, attorney for José Padilla, said: "The government asks in this case for basically limitless power. . . . Never before in the nation's history has the court granted the president a blank check to do whatever it wants to American citizens."

But there is a group of noncitizens to whom the executive does have a blank check to do whatever it wants. They are right here at home — and they are at home here, too — and they have nothing whatsoever to do with any allegation of terrorism.

Mainland Guantànamo

THE DEPARTMENT OF HOMELAND Security's Bureau of Immigration & Customs Enforcement is authorized to detain people for the purpose of ensuring their presence at immigration proceedings or to deport them (the INS was dissolved in early 2003). But what happens when a person cannot be deported because her "home" country will not take her? This circumstance has led to the long-term incarceration of thousands of people — again, "detained" but not serving criminal sentences — from countries including Cambodia, Vietnam, Libya, Iraq, and Cuba, among others. In 2001 the Supreme Court ruled in *Zadvydas v. Davis* that when an immigration detainee's removal or deportation cannot be carried out within a "reasonably foreseeable" period, defined by the court as six months in most cases, the immigration service generally cannot continue to hold that person. But, exploiting an esoteric doctrine in immigration law, the U.S. government claims that more than 1000 current detainees (and countless future ones) are not covered by the *Zadvydas* decision. The largest single group affected by this policy are the so-called Mariel Cubans. Government figures put the number of detained Mariel Cubans at about 750.

Allowed to depart the island in 1980 from the port of Mariel, some 125,000 Cubans came to the United States over a six-month period. Because they were "paroled" in by U.S. authorities, they are legally considered not to have "entered" the country. They are "inadmissible aliens" and are treated by the law as if they were at the border "still seeking admission." Their due process rights are thus severely curtailed. Those who never became citizens can still be detained for "almost any reason," as one court put it.

Detention typically begins on completion of a criminal sentence for anything from murder to

shoplifting to misdemeanor drug possession — though Mariel Cubans have also been locked up for not being able to afford medical care and for no apparent reason at all. And then — since Cuba will not take them back — the United States can detain them for as long as a few bureaucrats want to. Fidel Castro could also "solve" this abuse by accepting their return. It would hardly be fair to force these people back to Cuba after they have been here for twenty-five years, ever since President Jimmy Carter welcomed them in; but many with whom I have communicated say, not surprisingly, they would rather return than face potential life imprisonment here. Both governments are content effectively to bury these men and women alive, leaving them as pawns in diplomatic maneuvering and "migration talks."

The U.S. government argues that because the prisoners receive annual custody reviews by low-level bureaucrats (with no appeals process) their detention is not "indefinite" — even if it never ends and they only discover this fact one year at a time. It doesn't matter that the reviews are often *not* given annually, nor that the decisions are notoriously arbitrary, nor that lawyers and legal representatives are regularly denied entrance to the hearings in violation of the government's own guidelines, nor that the prisoners themselves are regularly denied access to their own files. In the words of a classic Supreme Court decision: "Whatever the process authorized by Congress is, it is due process as far as an alien denied entry is concerned." As for the unpalatable notion of potentially permanent incarceration of people who came here with U.S. government permission, have been here for a quarter century, and have completed whatever criminal sentences have been imposed, the government argues that because they are given their (supposed) annual custody reviews "the passage of time is irrelevant to [their] claim."

In *Rasul v. Bush* attorney John Gibbons accurately referred to the Guantànamo Naval Base as a "lawless enclave." What should we call it when permanent administrative imprisonment within our borders is *lawful*?

The legalities may be esoteric but the human consequences are not. In 2001, at least 160 Mariel Cubans had been detained by the INS for a decade or more.[12] Teacher and activist Gloria Beckett has been corresponding with Mariel prisoners around the country. Beckett reports this small sample from the many prisoners currently held in federal penitentiaries:

> *Osvaldo Acosta Garcia*, 48, served a year for attempted robbery; he has been in immigration detention ever since (18 years).
>
> *Antonio Cuni Medina*, about 60, served two years on drug charges; he has been in immigration detention ever since (17 years).
>
> *Carlos Chavez Naranjo*, 57, served five years for assault; he has been in immigration detention ever since (15 years).
>
> *Digno Dimon Sainz*, 42, served 11 months on drug charges; he has been in immigration detention ever since (9 years).
>
> *Amaury Dominguez Cruz*, 45, served four years for possession of a stolen vehicle; he has been in immigration detention ever since (19 years).
>
> *Alberto Rodriguez Hernandez*, 57, served two years after being convicted (falsely, Beckett believes) of stealing two bicycles; he has been in immigration detention ever since (8 years).
>
> *Jorge Hernand Garcia Battle*, 41, served two years for a probation violation; he has been

in immigration detention ever since (8 years).

Jesse Hernandez Cedeno, 45, served four years on drug charges; he has been in immigration detention ever since (15 years).

Pablo Antonio Iturralde-Hernandez, 48, was convicted of stealing $30 worth of food; he served five years in a "therapeutic community prison" in Puerto Rico; then he was brought back to the U.S. mainland where he has been in immigration detention ever since (13 years).

IT'S NOT PART OF THE popular civil liberties debate or agenda, but the imprisonment of these people is, to me, the preeminent and most long-standing domestic civil liberties issue of our time. The influential right-wing Cuban American sector has, according to various observers, always wanted to distance itself from the darker-skinned, lower-class Mariel immigrants who lived for twenty years under Castro. And the left? The left is too often literally reactionary, and in this case there has been no publicized government action to provoke a reaction. Immigration detention, with the brief exception of the post-9/11 regime, remains largely invisible, and never more so than in the case of the Mariel Cubans.

After doing time on drug charges, Julia Gomez was denied release by the INS because she had nowhere to live. Denied her antidepressant medication, she became suicidal, and after a subsequent hearing was denied release because of a suicide attempt. "The last thing they have to do is just kill us," said Gomez, "but see, they can't do that, though. It's going to be a little bit too much. But they do it mentally. . . . No way out. . . ."

Indeed, if Mariel Cuban prisoners and others are not entitled to any more "due process" than the administration claims, wrote nine of twelve Sixth Circuit Court justices in 2003, "we do not see why the United States government could not torture or summarily execute them" (*Rosales-Garcia v. Holland*). One can only hope that a majority of Supreme Court justices see with equal clarity — and urgency — when they hear the cases of *Benitez v. Mata* and *Crawford v. Suarez-Martinez* next fall.

Footnotes

1. See *In Re: Nabil Ahmed Soliman* 134F. Supp. 2d 1238, N.D. Ala.

2. Department of Justice, Office of the Inspector General, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, April 2003; a supplemental report was issued in Dec. 2003.

3. Department of Justice Transcript, "Attorney General Ashcroft Outlines Foreign Terrorist Tracking Task Force," Oct. 31, 2001.

4. "dream world": Department of Justice Transcript, "Testimony of Attorney General John Ashcroft: Senate Committee on the Judiciary," Dec. 6, 2001. "stronger and safer": Department of Justice Transcript, "Attorney General Ashcroft Announces the Appointment of the Special Master to Administer the September 11 Victim Compensation Fund," Nov. 26, 2001. "honest, reasoned debate": Attorney General Transcript, Senate Judiciary Committee, "DOJ Oversight: Preserving Our Freedoms While Defending Against Terrorism," December 6, 2001.

5. Greene quoted in Somini Sengupta and Christopher Drew, "A Nation Challenged: The Immigration Agency" *New York Times*, Nov. 12, 2001. 1139 Absconder Apprehension Initiative detentions:

Statement of Michael T. Dougherty, Director of Operations of the Bureau of Immigration and Customs Enforcement," House Judiciary Subcommittee on Immigration, Border Security and Claims, May 8, 2003. There were 2781 detentions in connection with special registration, i.e. National Security Entry-Exit Registration System (NSEERS), as of May 25, 2003, according to BICE spokesperson Nancy Cohen (author interview).

6. Malkin, *Invasion*: *How America Still Welcomes Terrorists, Criminals, and Other Foreign Menaces to Our Shores* (Wash., D.C.: Regnery Publishing, 2002), xiv, 205.

7. "a deeper and more troubling agenda": T. Alexander Aleinikoff and David Martin, "Ashcroft's Immigration Threat," *Washington Post*, Feb. 26, 2002. Prepared Remarks of Attorney General John Ashcroft, International Association of Chiefs of Police Conference, Minneapolis, October 7, 2002.

8. Brill, *After: The Rebuilding and Defending Of America in the September 12 Era* (N.Y.: Simon and Schuster, 2003). 145-49; 542-43.

9. Chertoff quoted in Human Rights Watch, *Presumption of Guilt*, 41. Bergeron quoted in Human Rights Watch, *Presumption of Guilt* (41), citing Jim Edwards, "Attorneys Face Hidden Hurdles in September 11 Detainee Cases," *New Jersey Law Journal*, Dec. 5, 2001. Ashcroft ("I would be happy to hear…") quoted in Richard A. Serrano, "Ashcroft denies wide detainee abuse," *Los Angles Times*, Oct. 17, 2001.

10. "Note: The Secret Law of the Immigration and Naturalization Service," *Iowa Law Review*, Vol. 56, 1970.

11. "presumption of disclosure": U.S. Department of Justice, "Government Adopts New Standard for Openness," Oct. 4, 1993. "effectively reversed": Lawyers Committee for Human Rights, *Year of Loss*, p. 11. "to withhold records . . . ": John Ashcroft, Attorney General, "Memorandum for Heads of All Federal Departments and Agencies," October 12, 2001. "secretly drafted . . . . mak[e] it easier . . .": Jack M. Balkin, "A Dreadful Act II," *Los Angeles Times*, February 13, 2003.

12. Dan Malone, "851 Detained for Years in INS Centers," *Dallas Morning News*, April 1, 2001.