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## **Ashcroft, 9/11, and Government as Victim** **by James Bovard**

John Ashcroft resigned as attorney general last November. Unfortunately, few Americans are aware of how profoundly Ashcroft botched his job and abused his power. He continues to be revered by many conservatives, despite his role in dragging the Bill of Rights into the mud.

Nothing better illustrates both Ashcroft's arrogance and verbal manipulations than his testimony last April 13 to the federal commission on the 9/11 attacks. "The simple fact of September 11th is this: We did not know an attack was coming because for nearly a decade our government had blinded itself to its enemies," he solemnly informed the commission in his opening statement.

Yet, Ashcroft's comment is true only if stupidity is considered a form of blindness. The commissioners sought information on federal failures leading to 9/11. Ashcroft turned the session on its head, portraying the government as a victim and seeking to induce guilt far and wide about the mistreatment of G-men.

He declared,

The single greatest structural cause for the September 11th problem was the wall that segregated or separated criminal investigators and intelligence agents. Government erected this wall, government buttressed this wall, and before September 11th government was blinded by this wall.

In Ashcroft's view, the wall's guilt practically made all other government failings irrelevant. President Bush also implicitly invoked the wall to explain pre-9/11 failings:

We were kind of stovepiped, I guess is a way to describe it. There was, you know, kind of departments that at times didn't communicate — because of law, in the FBI's case.

The 1978 Foreign Intelligence Surveillance Act (FISA) authorized wiretaps, searches, and other intrusions against suspected foreign intelligence agents based on much lower standards

than normally required by the Constitution and federal courts. FISA search warrants are granted by the Foreign Intelligence Surveillance Court, a docile collection of judges who meet in a secure room in the Justice Department's headquarters.

### **The Zacarias Moussaoui case**

To prevent prosecutors from relying on FISA search warrants to carry out routine surveillance of Americans, the act restricted the cooperation of FBI agents and prosecutors. Ashcroft claimed that the wall "specifically impeded the investigation of Zacarias Moussaoui." Moussaoui had links to al-Qaeda and was acting very suspiciously when he was arrested in mid August 2001. On August 18, Minneapolis FBI agents sent a 26-page memo to FBI headquarters warning that Moussaoui was acting "with others yet unknown" in a hijack conspiracy. Three days later, Minneapolis agents notified headquarters, "If [Moussaoui] seizes an aircraft flying from Heathrow to New York City, it will have the fuel on board to reach D.C." Some of the information got passed on to the CIA, which alerted its overseas stations that Moussaoui was a "suspect airline suicide hijacker" who might be "involved in a larger plot to target airlines traveling from Europe to the United States."

FBI agents in Minneapolis could have easily gotten a regular search warrant from a federal judge — if they had not been hogtied by FBI headquarters. Ashcroft told the 9/11 commission that FBI agents "sought approval for a criminal search warrant to search his [Moussaoui's] computer. The warrant was rejected because FBI officials feared breaching the wall." Actually, FBI agents in Minneapolis asked FBI headquarters for permission to request a search warrant from a federal judge in Minnesota (which would not have involved "the wall").

FBI headquarters refused permission, instead insisting that the Minnesota agents file a FISA search request — which had to be handled by the experts at FBI headquarters. Agents at FBI headquarters incorrectly insisted that FISA required Minneapolis agents to prove that Moussaoui was linked to a foreign power before a search warrant could be issued. Because a French intelligence agency indicated Moussaoui might be linked to the Chechen resistance, FBI headquarters insisted that Minneapolis agents find evidence connecting the Chechens to a recognized terrorist organization.

The congressional Joint Intelligence Committee report on pre-9/11 failures noted that "because of this misunderstanding, Minneapolis [FBI agents] spent the better part of three weeks trying to connect the Chechen group to al Qaeda." A 9/11 commission staff report concluded,

A maximum U.S. effort to investigate Moussaoui could conceivably have unearthed his connections to the Hamburg cell [of 9/11 hijackers].... The publicity about the threat also might have disrupted the plot.

Commission Chairman Thomas Kean commented,

Everything had to go right for [the hijackers]. Had they felt that one of them had been discovered, there is evidence [their attack] would have been delayed.

Yet, in Ashcroft's view, the FBI's failures on Moussaoui are irrelevant because the agency did not have unlimited surveillance power. But the *New York Times* reported that prior to the terrorist attacks, "Ashcroft had resisted signing emergency warrants that would have allowed eavesdropping in terrorism investigations, apparently because he had only a rudimentary knowledge of how the warrant process worked," according to 9/11 commission officials.

### **A bureaucratic quagmire**

The FBI's terrorist surveillance efforts were a train wreck long before 9/11 — and not because of any wall. The 9/11 commission staff reported,

Many agents also told us that the process for getting FISA packages approved at FBI Headquarters and the Department of Justice was incredibly lengthy and inefficient. Several FBI agents added that, prior to 9/11, FISA-derived intelligence information was not fully exploited but was *collected primarily to justify continuing the surveillance....* The FBI did not have a sufficient number of translators proficient in Arabic and other languages useful in counter-terrorism investigations, resulting in a significant backlog of untranslated FISA intercepts by early 2001.

Though the FBI's budget has soared since 2001, the FISA wiretap process is still a bureaucratic quagmire. The FBI and Justice Department's procedure for approving such wiretaps "continues to be long and slow." The number of requested wiretaps is "overwhelming the ability of the system to process them" and causing "bottlenecks," according to an April 2004 report by the 9/11 commission.

Ashcroft also informed the commissioners that "another limitation government placed on our ability to connect the dots of the terrorist threat prior to September 11 ... was the lack of support for information technology at the FBI." He asserted, "The FBI's information infrastructure had been starved. And by September 11, it was collapsing from budgetary neglect."

He revealed the damning proof: "Over eight years, the bureau was denied nearly \$800 million of its information technology funding requests." He was correct that the FBI's computer system was pathetic. Agents had ancient machines that were often incapable of sending e-mail. The FBI had 42 separate databases and it was often impossible to conduct searches on more than one database at a time. Many FBI agents simply gave up trying to use office computers and relied on their children's PCs at home to do some of their work.

Ashcroft has a perverse notion of budgetary neglect. Congress gave the FBI almost \$2 billion in the eight years before 9/11 for computer-modernization projects. The FBI squandered almost all the money or simply shifted it to pay for priorities favored by FBI director Louis Freeh. Rob Nabors, a Republican staffer with the House Appropriations Committee, commented that Freeh “wanted more cops on the beat, and he was robbing from the equipment side to pay for people.” Law-enforcement officials told the *Los Angeles Times* that Freeh

allowed the FBI to raid its computer budget repeatedly, taking money intended by Congress for systems and infrastructure upgrades and using it instead to fund shortfalls in staffing and international offices. The diverted money, much of it designated for vital computer upgrades, totaled \$60 million in 2000, with millions more in other years, according to a former senior official at the Justice Department.

The FBI also suffers from an almost primitive aversion to using any form of writing as a means to store and transmit information. Bush’s counterterrorism czar, Richard Clarke, complained that the National Security Council “never received anything in writing from the FBI whatsoever.” FBI officials were “comfortable relying on their individual professional judgment regarding the terrorist threat and did not value a formal written assessment that uses a structured methodology,” the 9/11 commission reported.

The FBI failed to stop the hijackers in part because some agents seemed more afraid of defense lawyers than of terrorists. The 9/11 commission reported,

Agents investigated their individual cases with the knowledge that any case information recorded on paper and stored in case files was potentially discoverable in court.... Analysts were discouraged from producing written assessments which could be discoverable and used to attack the prosecution’s case at trial.

### **Incompetence and 9/11**

Government incompetence was a far greater cause of 9/11 than were restrictions on government surveillance. The FBI tripled the number of intelligence analysts on its payroll in the 1990s. But an internal review found that two-thirds of the analysts were unqualified “to perform analytical duties.” Despite the warning that al-Qaeda had agents in the United States and aimed to attack, the FBI had only two analysts looking at Osama bin Laden threat information. “The FBI had never completed an assessment of the overall terrorist threat to the U.S. homeland,” the 9/11 commission reported.

Ashcroft apparently had scant interest in the terrorist threat before 9/11. FBI acting chief Thomas Pickard informed the 9/11 commission staff that though he briefed Ashcroft once a week,

“after two such briefings the Attorney General told him he did not want to hear this information [on the danger of terrorist attacks] anymore.” (Ashcroft denied making this statement to Pickard.)

At the request of Condoleezza Rice, Ashcroft was briefed by the CIA on July 5 regarding the surge of information about an imminent terrorist attack. Ashcroft was not on the short list of people Bush approved to receive the August 6, 2001, President’s Daily Brief (PDB). But on the following day, Ashcroft was among those who were sent a Senior Executive Intelligence Brief. The version he received had the same headline as the PDB — “Terrorism: Bin Laden Determined to Strike in the United States.”

Commissioner Jamie Gorelick asked if he recalled seeing that brief, and Ashcroft replied, “I do not remember seeing that. I was in — I believe I was in Chicago speaking at the American Bar Association meeting, I believe, at the time. So I do not have a recollection of seeing that.” Gorelick asked whether his staff subsequently brought the memo to his attention. He replied, “These items had been briefed to me.”

Yet, a few days before the commission hearing, Ashcroft’s chief spokesman, Mark Corallo, had adamantly declared that Ashcroft “was not briefed that there was any threat to the United States.” If Ashcroft was briefed, it did not spur him to read the page-and-a-half memo. The fact that he apparently ignored an ominous warning a month before 9/11 did nothing to stifle his subsequent righteousness, even though, as attorney general, he was responsible for the FBI and its failures from late January through September 2001.

At the end of his prepared statement to the 9/11 commission, Ashcroft shifted into his chief national therapist mode: “I am aware that the issues I have raised this afternoon involve at times painful introspection for this commission and for the nation.” He sought to portray his attacks on Gorelick and on anyone who ever denied an FBI budget request as fodder for reflection — instead of simply spin to dominate news coverage and divert attention from his own failings before 9/11. Ashcroft closed by assuring the commissioners and the world, “I have spoken out today not to add to the nation’s considerable stock of pain, but to heal our wounds.” And the surest way to heal America’s wounds is to smear anyone who wants to limit government power.

*James Bovard is author of [The Bush Betrayal](#) as well as [Lost Rights](#) (1994) and [Terrorism and Tyranny: Trampling Freedom, Justice and Peace to Rid the World of Evil](#) (Palgrave-Macmillan, September 2003) and serves as a policy advisor for The Future of Freedom Foundation.*

**This article was originally published in the March 2005 edition of *Freedom Daily*.**