

OP-ED COLUMNIST

## Travesty of Justice

By Paul Krugman

No question: John Ashcroft is the worst attorney general in history. For this column, let's just focus on Mr. Ashcroft's role in the fight against terror. Before 9/11 he was aggressively uninterested in the terrorist threat. He didn't even mention counterterrorism in a May 2001 memo outlining strategic priorities for the Justice Department. When the 9/11 commission asked him why, he responded by blaming the Clinton administration, with a personal attack on one of the commission members thrown in for good measure.

We can't tell directly whether Mr. Ashcroft's post-9/11 policies are protecting the United States from terrorist attacks. But a number of pieces of evidence suggest otherwise.

First, there's the absence of any major successful prosecutions. The one set of convictions that seemed fairly significant—that of the “Detroit 3”—appears to be collapsing over accusations of prosecutorial misconduct. (The lead prosecutor has filed a whistleblower suit against Mr. Ashcroft, accusing him of botching the case. The Justice Department, in turn, has opened investigations against the prosecutor. Payback? I report; you decide.)

Then there is the lack of any major captures. Somewhere, the anthrax terrorist is laughing. But the Justice Department, you'll be happy to know, is trying to determine whether it can file bioterrorism charges against a Buffalo art professor whose work includes harmless bacteria in petri dishes.

Perhaps most telling is the way Mr. Ashcroft responds to criticism of his performance. His first move is always to withhold the evidence. Then he tries to change the subject by making a dramatic announcement of a terrorist threat.

For an example of how Mr. Ashcroft shuts down public examination, consider the case of Sibel Edmonds, a former F.B.I. translator who says that the agency's language division is riddled with incompetence and corruption, and that the bureau missed critical terrorist warnings. In 2002 she gave closed-door Congressional testimony; Senator Charles Grassley described her as “very credible . . . because people within the F.B.I. have corroborated a lot of her story.”

But the Justice Department has invoked the rarely used “state secrets privilege” to prevent Ms. Edmonds from providing evidence. And last month the department retroactively classified two-year-old testimony by F.B.I. officials, which was presumably what Mr. Grassley referred to.

For an example of changing the subject, consider the origins of the Jose Padilla case. There was no publicity when Mr. Padilla was arrested in May 2002. But on June 6, 2002, Coleen Rowley gave devastating Congressional testimony about failures at the F.B.I. (which reports to Mr. Ashcroft) before 9/11. Four days later, Mr. Ashcroft held a dramatic press conference and announced that Mr. Padilla was involved in a terrifying plot. Instead of featuring Ms. Rowley, news magazine covers ended up featuring the “dirty bomber” who Mr. Ashcroft said was plotting to kill thousands with deadly radiation.

Since then Mr. Padilla has been held as an “enemy combatant” with no legal rights. But Newsweek reports that “administration officials now concede that the principal claim they have been making about Padilla ever since his detention—that he was dispatched to the United States for the specific purpose of setting off a radiological ‘dirty bomb’—has turned out to be wrong and most likely can never be used in court.”

But most important is the memo. Last week Mr. Ashcroft, apparently in contempt of Congress, refused to release a memo on torture his department prepared for the White

House almost two years ago. Fortunately, his stonewalling didn't work: The Washington Post has acquired a copy of the memo and put it on its Web site.

Much of the memo is concerned with defining torture down: if the pain inflicted on a prisoner is less than the pain that accompanies "serious physical injury, such as organ failure," it's not torture. Anyway, the memo declares that the federal law against torture doesn't apply to interrogations of enemy combatants "pursuant to [the president's] commander-in-chief authority." In other words, the president is above the law.

The memo came out late Sunday. Mr. Ashcroft called a press conference yesterday—to announce an indictment against a man accused of plotting to blow up a shopping mall in Ohio. The timing was, I'm sure, purely coincidental.