

How Two Federal Judges Invoked “Secrecy” to Block Access to Bush Torture Data

By [Sherwood Ross](#)

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Two Federal judges have deliberately invoked secrecy statutes to conceal the Federal government’s illegal use of torture, a prominent legal authority says.

Named are judges Terence Boyle of the U.S. District Court of Eastern North Carolina, and T.S. Ellis III of the U.S. District Court of Eastern District of Virginia, both nominees of President Ronald Reagan.

According to Lawrence Velvel, dean of the Massachusetts School of Law at Andover, Judge Boyle refused to allow CIA contractor David Passaro access to government memos that could be construed to show he was acting under orders when he tortured a prisoner to death. And Judge Ellis threw out a case brought by Khaled El-Masri, a German citizen illegally arrested and tortured by the CIA.

Judge Ellis “used the states secret doctrine to shield a once secret, now revealed criminal governmental enterprise—torture is a criminal violation of both international and domestic law,” Velvel said.

The state secrets doctrine was created by the Supreme Court in 1953 in a case in which, it is now known, the government lied to the Court “but which nonetheless continues to be used by reactionary judges for the purpose of letting the government get away with torture if not murder,” Velvel said.

Judge Ellis said that if El-Masri’s claims were true he “has suffered injuries as a result of our country’s mistake and deserves a remedy” from the Executive or the Congress. To this Velvel commented, the judge knows “the chance El-Masri will be given a remedy by one of those branches approaches nil.” The judge did not rule on the facts of El-Masri’s charges.

As for the Passaro case, Velvel said while Passaro is “a savage,” he did have a possible defense, “one that Judge Boyle made sure he could not successfully raise.”

Passaro’s lawyers invoked “the public authority defense,” claiming he was acting in accordance with the desires of the CIA and Executive Branch. His lawyers sought to subpoena and examine executive branch officials such as CIA Director George Tenet and others “whose names the judge kept secret,” Velvel said.

“There is no doubt he(Passaro) is right about what the Executive wanted and authorized,” Velvel writes in his book, “An Enemy of The People”(Doukathsan Press), “no doubt at all.” But Boyle “would not allow Passaro to get the memos

or subpoena the officials...Boyle plainly didn't want the truth about our highest officials to come out in his courtroom...so he rejected Passaro's attempts to get the evidence... It was a deliberate judicial cover-up by a conservative or reactionary Reagan appointee."

In still another controversial ruling, Judge Ellis decided not to dismiss a government prosecution for receiving and passing on classified information against two officials of The American Israel Public Affairs Committee, known as AIPAC.

Ellis gave the government "great scope to argue that leaks must be punished whenever it (the government) says they are dangerous or harmful, whenever it (the government) says "legitimate national security interests' are involved," Velvel said.

"This broad language is a vast loophole allowing the government to prevent the public from obtaining information it desperately needs in order to know the evil that government is doing," Velvel said.

Velvel cofounded the Massachusetts School of Law in 1988, purposefully dedicated to providing a quality, affordable education to minorities, immigrants, and students from low-income households that could otherwise not afford to obtain a legal degree.

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