

In Case I Disappear

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I have been told a thousand times at least, in the years I have spent reporting on the astonishing and repugnant abuses, lies and failures of the Bush administration, to watch my back. "Be careful," people always tell me. "These people are capable of anything. Stay off small planes, make sure you aren't being followed." A running joke between my mother and me is that she has a "safe room" set up for me in her cabin in the woods, in the event I have to flee because of something I wrote or said.

I always laughed and shook my head whenever I heard this stuff. Extreme paranoia wrapped in the tinfoil of conspiracy, I thought. This is still America, and these Bush fools will soon pass into history, I thought. I am a citizen, and the First Amendment hasn't yet been red-lined, I thought.

Matters are different now.

It seems, perhaps, that the people who warned me were not so paranoid. It seems, perhaps, that I was not paranoid enough. Legislation passed by the Republican House and Senate, legislation now marching up to the Republican White House for signature, has shattered a number of bedrock legal protections for suspects, prisoners, and pretty much anyone else George W. Bush deems to be an enemy.

So much of this legislation is wretched on the surface. Habeas corpus has been suspended for detainees suspected of terrorism or of aiding terrorism, so the Magna Carta-era rule that a person can face his accusers is now gone. Once a suspect has been thrown into prison, he does not have the right to a trial by his peers. Suspects cannot even stand in representation of themselves, another ancient protection, but must accept a military lawyer as their defender.

Illegally-obtained evidence can be used against suspects, whether that illegal evidence was gathered abroad or right here at home. To my way of thinking, this pretty much eradicates our security in persons, houses, papers, and effects, as stated in the Fourth Amendment, against illegal searches and seizures.

Speaking of collecting evidence, the torture of suspects and detainees has been broadly protected by this new legislation. While it tries to delineate what is and is not acceptable treatment of detainees, in the end, it gives George W. Bush the final word on what constitutes torture. US officials who use cruel, inhumane or degrading treatment to extract information from detainees are now shielded from prosecution.

It was two Supreme Court decisions, *Hamdi v. Rumsfeld* and *Hamdan v. Rumsfeld*, that compelled the creation of this legislation. The *Hamdi* decision held that a prisoner has the right of habeas corpus, and can challenge his detention before an impartial judge. The *Hamdan* decision held that the military commissions set up to try detainees violated both the Uniform Code of Military Justice and the Geneva Conventions.

In short, the Supreme Court wiped out virtually every legal argument the Bush administration put forth to defend its extraordinary and dangerous behavior. The passage of this legislation came after a scramble by Republicans to paper over the torture and murder of a number of detainees. As columnist Molly Ivins wrote on Wednesday, "Of the over 700 prisoners sent to Gitmo, only 10 have ever been formally charged with anything. Among other things, this bill is a CYA for torture of the innocent that has already taken place."

It seems almost certain that, at some point, the Supreme Court will hear a case to challenge the legality of this legislation, but even this is questionable. If a detainee is not allowed access to a fair trial or to the evidence against him, how can he bring a legal challenge to a court? The legislation, in anticipation of court challenges like *Hamdi* and *Hamdan*, even includes severe restrictions on judicial review over the legislation itself.

The Republicans in Congress have managed, at the behest of Mr. Bush, to draft a bill that all but erases the judicial branch of the government. Time will tell whether this aspect, along with all the others, will withstand legal challenges. If such a challenge comes, it will take time, and meanwhile there is this bill. All of the above is deplorable on its face, indefensible in a nation that prides itself on Constitutional rights, protections and the rule of law.

Underneath all this, however, is where the paranoia sets in.

Underneath all this is the definition of "enemy combatant" that has been established by this legislation. An "enemy combatant" is now no longer just someone captured "during an armed conflict" against our forces. Thanks to this legislation, George W. Bush is now able to designate as an "enemy combatant" anyone who has "purposefully and materially supported hostilities against the United States."

Consider that language a moment. "Purposefully and materially supported hostilities against the United States" is in the eye of the beholder, and this administration has proven itself to be astonishingly impatient with criticism of any kind. The broad powers given to Bush by this legislation allow him to capture, indefinitely detain, and refuse a hearing to any American citizen who speaks out against Iraq or any other part of the so-called "War on Terror."

If you write a letter to the editor attacking Bush, you could be deemed as purposefully and materially supporting hostilities against the United States. If you organize or join a public demonstration against Iraq, or against the administration, the same designation could befall you. One dark-comedy aspect of the legislation is that senators or House members who publicly disagree with Bush, criticize him, or organize investigations into his dealings could be placed under the same designation. In effect, Congress just gave Bush the power to lock them up.

By writing this essay, I could be deemed an "enemy combatant." It's that simple, and very soon, it will be the law. I always laughed when people told me to be careful. I'm not laughing anymore.

In case I disappear, remember this. America is an idea, a dream, and that is all. We have borders and armies and citizens and commerce and industry, but all this merely makes us like every other nation on this Earth. What separates us is the idea, the simple idea, that life, liberty and the pursuit of happiness are our organizing principles. We can think as we please, speak as we please, write as we please, worship as

we please, go where we please. We are protected from the kinds of tyranny that inspired our creation as a nation in the first place.

That was the idea. That was the dream. It may all be over now, but once upon a time, it existed. No good idea ever truly dies. The dream was here, and so was I, and so were you.