

In memory of Rev. Martin Luther King Jr.
January, 2003

"I refuse to accept the cynical notion that nation after nation must spiral down a militaristic stairway into the hell of nuclear destruction. I believe that unarmed truth and unconditional love will have the final word in reality". Rev. Martin Luther King Jr.

Commentary
By Jake Asbin

America's Collateral Damage.

It was very naive and foolish of our country to ignore the legal rights of over 1,200 detainees, mostly of Arab or Muslim descent, who were arbitrarily rounded up since September 11 and secretly detained. Therefore, these detainees were denied the protections guaranteed to all "persons"--not just U.S. citizens-- by the Fourth, Fifth, Sixth and Eighth Amendments to our Constitution.

The terrorist attacks were so appalling that most Americans were somehow able to condone this violation of due process, thinking perhaps the U.S. government would stop there. But now this administration has turned its attention to the rest of the people, and the "lifetime lasting", as Vice-President Cheney likes to call it, war on terrorism goes from cloudy to foggy. The war on terrorism is not a real war. It was never declared by Congress even though they have collectively nodded their heads in agreement.

Our present president and his hawkish cabinet--18 of which are millionaires, including seven members who are worth more than \$10 million each!-- claim that there is nothing the government may not do to either noncitizens or citizens if the president decides it is necessary for the fight against terrorism.

Welcome to the Bush, Cheney, Rumsfeld and Ashcroft age of silencing political dissent and other civil rights shredding malfeasance and chicanery.

Our nation is currently at a time of unprecedented spying and secrecy. More than a year after the events of September 11, 2001, we are seeing the crown jewels of America--the Constitution and Bill of Rights--subverted and degraded by President-select Bush, the shadowy Vice-President Cheney, the hawkish little war secretary Rumsfeld, and Attorney Generalissimo Ashcroft. To understand this treacherous assault, we need to look back at how this all began.

We all know that five Supreme Court justices are the only people to select our president and vice-president. The war secretary was recycled from previous war-mongering administrations (Reagan and Bush Sr.). Some people are still very suspicious of the results from the 2000 election.

The Ashcroft confirmation hearing was a vicious fight for the integrity of the Justice Department. Amidst the offensive rhetoric and blow-hard posturing from both sides of the confirmation debate, there was some plainspoken articulation from Senator Richard Durbin, Democrat of Illinois.

"The Attorney General, more than any other Cabinet officer, is entrusted with protecting the civil rights of Americans" Durbin said. "We know from our history that defending those rights can often be controversial and unpopular. I find no evidence in the public career or voting record of Senator Ashcroft that he ever risked any political capital to defend the rights

of those who suffer in our society from prejudice and discrimination.” How right Senator Durbin was.

Since 9/11, our chief law enforcement officer has gone to extremely dangerous lengths to rewrite and dismantle civil liberties in our country. For all the Attorney General’s boasting about patriotism and love of country, his contemptible record clearly demonstrates that he does not respect or truly understands the fundamental tenets of our great democracy.

The initial response in this despicable tragedy began only two nights after the 9/11 attacks when the Senate swiftly and secretly voted, by voice, to approve an attachment to an appropriations bill that made it easier for the government to wiretap the computers of terrorism suspects without having to go through due process. That was the beginning of what would ultimately become the USA PATRIOT Act, a repulsive anti-terrorism law that was supposed to pacify Americans so they would return to shopping malls, air travel, Broadway plays, national monuments and sporting events.

The 342-page USA PATRIOT Act is full of appallingly-loose legal language that allows the government expansive powers to spy into the lives of ordinary Americans they deem dissenters and subversives under the guise of national security. This is the kind of law a nation gets when 78-percent of its citizens, in an NBC/*Wall Street Journal* poll, say they are willing to sacrifice rights to fight against terrorists. It’s arguably one of the most regressive acts in American history.

Senior Litigation Attorney, Nancy Chang, at the Center for Constitutional Rights, in New York City, has said “The USA PATRIOT Act undermines the Constitution.”

The definition of a terrorist in the Patriot Act is couched in too much vagueness. For example, you will be a domestic terrorist if you’re breaking the law at the same time that you’re doing something that appears “to be intended to influence the policy of government by intimidation.” Under this definition, Dr. Martin Luther King was a domestic terrorist in Birmingham because of his nonviolent, peaceful marches and protests for civil rights.

Undermining our nation’s rule of law, the Patriot Act lets the FBI and other law enforcement agencies and their agents enter your home when you’re not there, use your computer to search your files and e-mails, and place a “magic lantern” on your computer which allows them to record your every keystroke. Then they can leave without ever notifying you they were there, these types of illegal break-ins are commonly referred to as “sneak and peak” operations.

In addition, the Patriot Act gives law enforcement unbridled powers to find out what books you’re buying at stores or borrowing from libraries. And it then obstructs free speech from the bookstores and librarians--who are deeply troubled over this anti-terrorism law that allows the FBI to learn what people are reading--so they can’t tell anyone that they’ve had to hand over your name and records to law enforcement agents.

The American Civil Liberties Union, the Freedom to Read Foundation and other organizations have filed a lawsuit in U.S. District Court in Washington, D.C., to find out how many times the FBI has conducted searches of bookstore and library records across the country. Patriot Act critics say the law violates the First Amendment protection of free speech and the Fourth Amendment protection against unreasonable searches and seizures.

Christopher M. Finan, president of the American Booksellers Foundation for Free Expression, said the organization will soon launch a campaign to attempt to persuade Congress to change the law. He also said the foundation will “put information into the hands of customers of bookstores” to teach them about the dangers of the Patriot Act.

"Only by zealously guarding the rights of the most humble, the most unorthodox and the most despised among us, can freedom flourish and endure in our land." Supreme Court Justice Frank Murphy.

This insanity goes far beyond just reading material. In a recent story by *The New York Times* (December 10, 2002) it was reported that last summer the FBI, concerned about a terrorist attack involving scuba divers, "set out to identify every person who had taken diving lessons in the previous three years." According to the *Times*, hundreds of dive shops and diving organizations willingly turned over the information.

At about the same time Congress was ratifying the Patriot Act, Ashcroft issued an edict saying that prosecutors could now begin to eavesdrop on prisoner-lawyer conversations. And he rewrote Justice Department policy to allow a return to the days of J. Edgar Hoover's illegal COINTELPRO (Counter Intelligence Program) operations of the 1950's through the early 1970's.

President-select Bush himself joined in with his military tribunal order, which allows the Pentagon to seize any noncitizens anywhere in the world and try them in military courts with lower standards of evidence and with no appeals possible to any judge or court anywhere in the world. This order violates international rule of law.

The Bush administration forced this on the American people as a necessary protection against foreign terrorists and assured the citizenry that they would not be victimized or affected by it.

But then came the designation of "enemy combatants" and the incarceration of two U.S. citizens--Jose Padilla and Yassar Hamdi--in military prisons. Neither was charged with a crime as of yet, and neither was allowed counsel. Padilla, an ex-Chicago gang member, is being held under suspicion of being an Al Qaeda operative who was allegedly researching how to detonate a radioactive "dirty bomb." Hamdi was captured in Afghanistan and interrogated there by military and CIA screening teams.

Neither have been allowed to meet with an attorney or appear before a judge to contest their detentions. The Bush administration claims it can hold both of them for as long as the war on terrorism goes on. Remember, on many occasions Cheney called the war on terrorism "lifetime lasting."

Georgetown University law professor Mark Tushnet was quoted by the *Los Angeles Times* as saying "This seems to me the classic case for habeas corpus" and "They don't get to say, 'This is a bad guy, and we can do with him what we want.' "

The American Civil Liberties Union has filed suit on behalf of Padilla and Hamdi. On December 4, U.S. District Judge Michael Mukasey gave civil libertarians a respite when he ruled that Jose Padilla can have his status as an "enemy combatant" reviewed in a federal court and that he must have access to counsel in the interim.

"This ruling is crucial rejection of the Bush Administration's claim of almost unbridled power to unilaterally detain American citizens and hold them indefinitely and incommunicado," said Lucas Guttentag, director of the American Civil Liberties Union's Immigrant Rights Project, after the ruling. "The decision is a critical first step to providing a check on the government's use of the enemy combatant designation."

But not all courts see it this way. On November 18, the Foreign Intelligence Surveillance Court of Review, established in 1978 to oversee domestic spying activities,

gave the government even broader powers to spy and surveil the lives of ordinary Americans. What makes this new proclamation appalling is that the court's proceedings are to be held in secret, and its members are to be hand-picked by Chief Justice William Rehnquist, and the government is the only entity allowed to appear before it.

"The decision gives the government a green light to tear down the wall that has long existed between officials conducting surveillance on suspected foreign agents and criminal prosecutors investigating crimes," said a *New York Times* editorial from November 19. "Attorney General John Ashcroft has announced that he intends to use it to sharply increase the number of domestic wiretaps, and that he will add lawyers at the FBI and at the federal prosecutors' offices around the country to hurry the process along."

The Bush Administration has created a repugnant parallel legal system for terrorism in which suspects, according to *The Washington Post*, could be "investigated, jailed, interrogated, tried, and punished without conventional legal protections." The *Post* reports the new system includes indefinite detention for those who are designated "enemy combatants." And it also includes a radically expanded use of "material witness" warrants, wiretaps, and searches.

Senior administration officials told *The Washington Post* that this parallel system is meant to be used selectively, "but is needed because terrorism is a form of war as well as a form of crime, and must not only be punished after incidents occur, but also prevented and disrupted through the gathering of timely intelligence."

Recently, this administration, with little or no transparency, created the Total Information Awareness Network as part of the Homeland Security Act--this "super-snoop grand database" is to be headed by the disgraced former Admiral John Poindexter--which would create a dossier on every single American by the paper trail created from every single: credit or debit card transaction; prescription filled; web sites visited, and subscriptions delivered to our homes.

The Bush administration would prefer not to have any interference in its war against terrorism, even if it lasts a lifetime. This administration also wishes not to be held accountable to anyone, least of all the citizens it claims it wants to protect. Ashcroft's attitude is obvious: If the government abuses some people in this fight, so be it. It's a war, and the casualties of a few are far out-weighed by the protection of the many.

Where in the name of freedom and democracy is Osama bin Laden?

It is this belligerent attitude and growing indifference to our civil liberties that will reduce our Constitution and Bill of Rights into becoming the real casualties of everlasting war. I am somewhat ashamed that I live in a nation that throws non-violent activists and protesters in prison while simultaneously an American president nominates a war criminal as head of the 9/11 Commission.

Our commitment to the Bill of Rights and to the democratic values that define this nation has been put to the test by the events of September 11. Already, Congress and the Bush Administration have demonstrated, many times, their eagerness to sacrifice civil liberties in the hopes of gaining an added measure of security.

The task of upholding the Bill of Rights--or acquiescing in its surrender--will soon fall to the judiciary, as lawsuits testing the constitutionality of the USA PATRIOT Act wind their way through the courts.

I leave you, the reader, with one final thought. It's a 100 year-old quotation but its poignancy seems timeless, especially today:

Advocates of free speech "Shall soon be obliged to meet in cellars, or in darkened rooms with closed doors." Emma Goldman, 1902.

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