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COLUMNS AND OPEDS

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Gene Healy: Obama's (and Bush's) enemy combatant policy

By: **GENE HEALY**
Examiner Columnist
March 16, 2010

Ever since the failed Christmas bombing, Republicans have smelled blood in the political waters, and they've assailed President Obama for his allegedly soft-on-terror policies.

This campaign is based on phony charges, and it's a dangerous distraction from the fight for limited government.

The latest salvo is an ad impugning the patriotism of several Obama Justice Department attorneys. "Keep America Safe," an organization headed by Liz Cheney -- the thinking man's Meghan McCain -- decries DOJ's recent refusal to identify "the Al Qaeda 7," Obama officials who dared challenge Bush administration policies on terrorist suspects. "Whose values do they share?" the voiceover intones.

On Thursday, the Obama DOJ admitted that Attorney General Eric Holder should have released legal briefs he'd signed on behalf of Jose Padilla, an American al Qaeda suspect imprisoned by the Bush administration.

"We now know why Holder was stonewalling on the identities of the 'Al Qaeda 7,' " says former Bush speechwriter Marc Thiessen: "He was one of them!"

Yes, Holder should have disclosed the briefs. But to understand just how demented this attack is, you need to know something about the Padilla case. It centered on the claim that the president has the constitutional power to seize an American citizen on American soil, declare him an outlaw to the Constitution and lock him up for the duration of the war on terror -- in other words, perhaps forever.

That was the Bush DOJ's position when the president declared the Brooklyn-born Padilla an "enemy combatant" in 2002 and ordered him held in a military brig without charges. There Padilla stayed, until the administration, fearing a Supreme Court rebuke, transferred him to federal prison in early 2006.

Padilla was no innocent victim: He's a violent ex-con with ties to al Qaeda. But "the innocent have nothing to fear" is cold comfort and poor constitutional argument. Padilla got his day in court, and is now serving 17 years on terrorism-related charges.

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Whose values does Holder share? In this instance, those of conservative Justice Antonin Scalia, who wrote in a related case that "the very core of liberty secured by our Anglo-Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the Executive."

Yet according to Keep America Safe, if you defend that principle, you're a terrorist

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sympathizer. (Full disclosure: My employer, the Cato Institute, also filed an amicus brief in Padilla.)

Moreover, the premise on which this campaign is based -- that Obama's anti-terror policies are fundamentally different than Bush's -- is false. As Jack Goldsmith, former head of Bush's Office of Legal Counsel, explains, despite new "packaging," on areas ranging from enemy combatants to surveillance, "the new administration has copied most of the Bush program," even "expanded some of it."

Fellow *Examiner* Columnist James Carafano, the Heritage Foundation's homeland security expert, says it's "not even fair to call [Obama's policies] 'Bush Lite.' It's Bush."

From a civil libertarian perspective, that's nothing to celebrate. But love the Bush approach or hate it, if you're drawing a sharp distinction between his policies and Obama's, you're misinformed at best.

Our looming budget crisis is one of the biggest threats facing America today. But it's no fun to try to get re-elected by promising major cuts in middle-class entitlements. So we shouldn't be surprised to see GOP officials embrace the group's scurrilous charges.

Republicans talk a good game about reducing federal power, but when it comes time for the hard choices, they fall back on reliable symbolic gimmicks: flag-burning amendments, the Pledge of Allegiance and the like. Those who support smaller government shouldn't let them get away with it this time.

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A U.S. missionary who was released from a Haiti jail last week has returned to her home in Idaho after spending several days recuperating in Florida. [Full story](#)

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