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The "Militia Panic" of 2009

By: [Gene Healy](#)

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It didn't take long for liberals to politicize the recent murders of an abortion doctor and a Holocaust Museum guard.

The day after the museum shooting, Markos Moulitsas of "Daily Kos" fame praised April's controversial Department of Homeland Security report on "Rightwing Extremism" (the one that urged law enforcement to watch out for potential terrorists lurking among pro-lifers and federalism enthusiasts).

In Sunday's New York Times, Frank Rich deemed the DHS report "prescient," and warned that "homicide-saturated vituperation" from conservative talk radio might lead to more violence.

The liberal overreaction to the crimes of two despicable "lone nuts" demonstrates that the Left is just as susceptible to terrorism panics as the Right. But maybe liberals are right that there's a "teachable moment" for conservatives here, even if it isn't the lesson Rich and Kos intend.

It's worth thinking about how much worse off we'd be in the midst of a burgeoning "militia panic," had the Bush administration's radical view of executive power become the law of the land.

After 9/11, George Bush and Dick Cheney argued that the president could do what he deemed necessary to fight terrorism, and any laws to the contrary could be nullified by his Magic Scepter of Inherent Authority. Most conservatives backed the president, insisting that civil liberties at home wouldn't suffer if we allowed him unlimited power in foreign affairs.

But the Bush team always maintained that those powers could be used on the home front as well. In congressional testimony in 2006, then-attorney general Alberto Gonzales suggested that the president had inherent authority not only to wiretap international calls without a warrant, but also to listen in on Americans' domestic communications.

In the Jose Padilla case, President Bush insisted he could legally seize American citizens on American soil and imprison them without charges for as long as he pleased. Newsweek reported in 2004 that Dick Cheney wanted that power used against any and all domestic terror suspects.

Conservative defenders of so-called "enhanced interrogation" are rarely able to identify the "ticking time

bomb" scenarios they insist make torture necessary. But last week, Scott Roeder, Dr. Tillman's murderer, told reporters that "similar events" were being planned even now. Might a little waterboarding loosen his tongue?

Does that sound alarmist? If so, consider that in an ongoing lawsuit against Bush Justice Department official John Yoo, U.S. citizen Jose Padilla claims that, while held incommunicado in a military brig, interrogators subjected him to stress positions, forced hypothermia, and mind-altering drugs. Padilla may well be lying, but the logic of the "torture memos" recognized no legal barrier to using such tactics on Americans.

True enough, mainstream conservatives have nothing in common with the likes of Roeder or James Von Brunn, the decrepit anti-semitic who stormed the Holocaust Museum. But it's the height of naiveté to suppose that a government empowered to use any means necessary to fight potential domestic terrorists would limit itself to targeting genuine threats. An executive branch with the powers the Right championed during the Bush years could have done enormous damage to civil liberties on the home front.

President Obama seems disinclined to demagogue the recent tragedies. But the previous Democratic president wasn't as scrupulous. After the 1995 Oklahoma City bombing - carried out by right-wing extremist Timothy McVeigh - Bill Clinton began using the phrase "war on terrorism" and demanding new powers.

Clinton suggested that "loud and angry voices" in conservative talk radio had inspired the attack, and he pushed an anti-terror bill that according to analyst David Kopel, defined "almost every violent and property crime" as terrorism," authorizing the military to "render assistance against 'terrorism' whenever requested."

Ironically enough, the power-hungry Clinton met opposition from civil liberties-minded Republicans, who stripped new wiretapping authority from the final bill.

In recent years, the Right has demonized the ACLU for opposing new federal powers to fight terrorism, but that organization's "card carrying members" have been among the staunchest opponents of an anti-conservative witch hunt.


"Soon we'll all be radicals," the ACLU's Mike German remarked contemptuously upon reviewing the DHS memo and other "threat reports that focus on ideology instead of criminal activity."

German, one suspects, feels little political affinity for the folks the DHS memo targeted, but sees the necessity of defending constitutional principle nonetheless. Conservatives could profit from his example.

Examiner columnist Gene Healy is a vice president at the Cato Institute and the author of "The Cult of the Presidency."

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