



## McCain channeling Dick Cheney

**NAT HENTOFF | Posted: Wednesday, March 31, 2010 5:00 am**

Last Dec. 18, a *New York Times* editorial grimly prophesied that President Obama, "like George W. Bush, will decree that the entire planet is a battlefield and anyone arrested anywhere on terrorism charges may be tried in military tribunals." Obama hasn't quite gone that far, but he has seriously proposed permanent detention for terrorism suspects who can't be tried because alleged evidence against them has been obtained by torture.

However, on March 4, Sens. John McCain and Joseph Lieberman introduced a bill that is a startling assault on the U.S. rule of law. Its title: "Enemy Belligerent Interrogation, Detention and Prosecution Act of 2010." This radical bipartisan law, if enacted, would require that anyone anywhere in the world, including American citizens, suspected of involvement in terrorism -- including "material support" (otherwise undefined) -- can be imprisoned by the military on the authority of the president as commander in chief. Sound familiar?

Those to be held, according to McCain and Lieberman, will be designated as "unprivileged enemy belligerents," the current Obama name for what Bush and Cheney called "unlawful enemy combatants."

I have read the entire McCain-Lieberman bill, and their dragnet of "detainees" is so wide that it includes not only suspected members of al-Qaida but also individuals of "potential intelligence value" and other categories "as the president considers appropriate."

How long can these shadowy threats to our safety be imprisoned?

A section of the bill, "Detention Without Trial of Unprivileged Enemy Belligerent," declares that these suspects "may be detained without criminal charges and without trial for the duration of hostilities (as long as there is terrorism?) against the United States or its coalition partners."

Says Lieberman (alnetnet.org, March 19): "I know that will be -- may be -- a long time, but that's the nature of this war."

Imprisoned indefinitely without charges, trial or any civilian judicial review? Would this still be America?

In *Boumediene v. Bush* (2008), the Supreme Court, authorizing the habeas corpus rights of what Bush then called enemy combatants at Guantanamo, sternly reminded the Bush-Cheney administration:

"The laws and Constitution are designed to survive, and remain in force, in extraordinary times."

Lieberman and McCain dissent!

In introducing his legislation, which revises our laws and the Constitution, McCain did try to slip in a gloss of respect for the Constitution in this bill by adding pietistically and vaguely that "we must establish a system for long-term detention of terrorists who are too dangerous to release, but who cannot be tried in civilian court."

How about repealing due process?

Imagine if this de-legitimizing of civilian courts in extraordinary times had been proposed during the 1787 Constitutional Convention. Even the determinedly cool George Washington, presiding over the debates, would have more than raised his voice.

As of this writing, there has been minimal continued press attention to this attempt to suspend the Constitution by McCain and Lieberman, and hardly any alarm in Congress. I have tried to obtain reactions from the offices of civil libertarians Sens. Patrick Leahy and Russ Feingold without success so far. Nor has there been any concern by Attorney General Eric Holder, or by his boss, the former teacher of constitutional law at the University of Chicago.

On March 8, on the Law Professor Blogs Network (lawprofessors.typepad.com), there was a post by R. Decker that McCain and Lieberman -- who, after all were on major party presidential and vice-presidential tickets -- should answer as long-respected prominent Americans:

"Is there a clause buried somewhere in the 'Enemy Belligerent Interrogation, Detention and Prosecution Act of 2010' stating: "Place the Bill of Rights in the shredder as it is no longer needed' (a 'quaint but no longer useful notion')? Or are we at the point now in our history where even the concept of a Bill of Rights is considered 'immaterial' and/or 'irrelevant'?"

I would ask the same question of Sen. Lindsey Graham, who did not join John McCain and Joseph Lieberman in this bolstering of national security. He is said to have thought they went too far. But as the ACLU commented on March 23:

"Senator Lindsey Graham has presented legislation to the White House regarding future handling of terrorism suspects, according to a report in the Washington Post today. Senior White House officials reportedly have begun circulating a summary of the draft legislation to some members of Congress. Graham has reportedly outlined new procedures for habeas corpus claims and a new indefinite detention authority."

Says Laura W. Murphy, Director of the ACLU Washington Legislative Office: "If Senator Graham's legislation is introduced, Congress must...not cement into law policies that rival the worst of the Bush administration's legacy. Even during years immediately following 9/11, Congress never took the unprecedented step of passing an indefinite detention statute."

But if the McCain-Lieberman and Graham legislation did pass Congress, would President Obama sign both into law? I would bet the farm that he would. And then, how many Americans would care?

I expressed concern to a congressional staffer I've known for years. "Don't worry," he said. "These panicky proposals aren't going anywhere." But 9/11 created the fearful Patriot Act, I reminded him. How much ammunition does the Bill of Rights still have if We the People find it immaterial?

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