

Savaging the Law in the Padilla case

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"The world must construe according to its wits; the court must construe according to the law." Sir Thomas More "A Man for All Seasons" by Robert Bolt

Jose Padilla was arrested in June of 2002 at Chicago's O' Hare Airport and taken into custody. The Attorney General John Ashcroft made a dramatic appearance on national TV to announce the arrest, claiming that Padilla was a terrorist and was plotting to detonate a "dirty bomb" within the country. The fanfare surrounding the incident was intended to divert attention from the testimony of FBI special agent, Colleen Rowley, whose damning account of government negligence in the 9-11 investigation threatened to dominate the news. It was later discovered that Padilla had been imprisoned three weeks earlier, but the announcement was delayed by the Justice Dept in a cynical ploy to grab the headlines.

The government has never produced a shred of evidence that Padilla is guilty of any of the crimes for which he has been accused. Instead, the administration has used its unchecked power to indefinitely detain Padilla while refusing to charge him with a crime.

The Padilla case has never been about Jose Padilla, domestic terrorism, or any of the other spurious claims made by the government. It is, in fact, about enhancing presidential power, so the executive is no longer required to comply with the law. Padilla pits the language of right-wing think tanks, "enemy combatant", against habeas corpus, the cornerstone of the American justice system. So far, the made-up language of the Bush team has prevailed.

The moniker, enemy combatant, signifies the end of the rule of law. It means that the president can arbitrarily strip American citizens' of their inalienable rights and deprive them of any method for challenging their detention. It sweeps away long-honored provisions of due process, equal justice, and the presumption of innocence.

Enemy combatant is the language of tyranny. It bestows of the president the absolute power of a monarch to ignore the law and lock up American citizens according to his own whims.

This explains why the Bush administration has persistently refused to file charges against Padilla. They realize that the overturning of habeas corpus creates a de facto dictatorship in the United States. And, as Bush said in 2002, "There's nothing wrong with a dictatorship, as long as I am the dictator".

So, why has Bush backed away from "indefinite detention by presidential fiat" and agreed to file charges against Padilla?

Does this mean that the administration's 3 and a half year struggle for absolute power is

over?

The Bush administration faced a Monday deadline to file a brief before the Supreme Court in an appeal by Padilla. Somehow they found out in advance that the court would not support their attack on habeas.

How?

This suggests that members of the Supreme Court may have colluded with the administration and advised them to modify their case against Padilla. How else would one explain the sudden change of heart by an administration that has worked unwaveringly for years for one objective alone; the revoking of habeas corpus?

An independent investigation would probably show that either Roberts or, more likely, Scalia signaled that they would not be willing to rescind the constitution at this time.

How ironic, that the most celebrated conservative on the court may have actually saved personal liberty in America.

The Bush administration has now filed formal charges against Padilla.

In yesterday's announcement, Attorney General Alberto Gonzales completely reversed the government's original claims about Padilla, now saying that he was part of a "North American support cell" organized to send "money, physical assets and new recruits" overseas to engage in acts of terrorism and that he had traveled abroad himself to become a "violent jihadist". (New York Times)

That's quite a switch from a "dirty bomber".

So, what can we expect now?

Padilla will have to begin the entire process from square one. The administration, which has neither witnesses nor proof, will play a cat-and-mouse game of claiming to have evidence which it cannot show the court for national security reasons. Deviating from that strategy would probably produce a swift acquittal for Padilla, which will never happen, since it would show that Bush intentionally locked away an innocent man for purely political reasons.

Padilla is just a pawn in a much bigger game of ever-increasing presidential power. His case will drag on for years to save the administration any further embarrassment.

By avoiding a confrontation with the Supreme Court, Bush has managed to safeguard his greatest weapon for savaging liberty in America; the enemy combatant label. That will go back into the imperial tool-chest where it can be used as a branding-iron against dissidents, troublesome critics, or political enemies. For now, however, they will have to patiently await the appointment of Samuel Alito before they can pound the last nail into the Bill of Rights.

Set Padilla Free

Padilla should be released immediately even if he is guilty. His unjust imprisonment is more damaging to our security than any danger he may pose to society.

The rule of law protects us all from the abuses of the state, and the state has always been

the traditional enemy of individual freedom. This case is no different. The law has been cynically manipulated by those who are sworn to defend it; purposely warped to increase the power of the president and bend it to his will. That is the real crime here.

The law is the only thing that stands between us and the cruelty of men who would torture and kill to achieve their political ambitions. That isn't speculation or hyperbole; it's simply a matter of fact.

In "A Man for all Seasons" Sir Thomas More articulates the importance of the law as our only refuge from the recklessness of would-be tyrants.

Sir Thomas More: "And when the last law was down, and the Devil turned 'round on you, where would you hide, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of the law, for my own safety's sake!"

Where will we hide after Bush has cut down all the laws?

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