

# Rushing Off a Cliff

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Here's what happens when this irresponsible Congress railroads a profoundly important bill to serve the mindless politics of a midterm election: The Bush administration uses Republicans' fear of losing their majority to push through ghastly ideas about antiterrorism that will make American troops less safe and do lasting damage to our 217-year-old nation of laws — while actually doing nothing to protect the nation from terrorists. Democrats betray their principles to avoid last-minute attack ads. Our democracy is the big loser.

Republicans say Congress must act right now to create procedures for charging and trying terrorists — because the men accused of plotting the 9/11 attacks are available for trial. That's pure propaganda. Those men could have been tried and convicted long ago, but President Bush chose not to. He held them in illegal detention, had them questioned in ways that will make real trials very hard, and invented a transparently illegal system of kangaroo courts to convict them.

It was only after the Supreme Court issued the inevitable ruling striking down Mr. Bush's shadow penal system that he adopted his tone of urgency. It serves a cynical goal: Republican strategists think they can win this fall, not by passing a good law but by forcing Democrats to vote against a bad one so they could be made to look soft on terrorism.

Last week, the White House and three Republican senators announced a terrible deal on this legislation that gave Mr. Bush most of what he wanted, including a blanket waiver for crimes Americans may have committed in the service of his antiterrorism policies. Then Vice President Dick Cheney and his willing lawmakers rewrote the rest of the measure so that it would give Mr. Bush the power to jail pretty much anyone he wants for as long as he wants without charging them, to unilaterally reinterpret the Geneva Conventions, to authorize what normal people consider torture, and to deny justice to hundreds of men captured in error.

These are some of the bill's biggest flaws:

**Enemy Combatants:** A dangerously broad definition of "illegal enemy combatant" in the bill could subject legal residents of the United States, as well as foreign citizens living in their own countries, to summary arrest and indefinite detention with no hope of appeal. The president could give the power to apply this label to anyone he wanted.

**The Geneva Conventions:** The bill would repudiate a half-century of international precedent by allowing Mr. Bush to decide on his own what abusive interrogation methods he considered permissible. And his decision could stay secret — there's no requirement that this list be published.

**Habeas Corpus:** Detainees in U.S. military prisons would lose the basic right to challenge their imprisonment. These cases do not clog the courts, nor coddle terrorists. They simply give wrongly imprisoned people a chance to prove their innocence.

**Judicial Review:** The courts would have no power to review any aspect of this new system, except verdicts by military tribunals. The bill would limit appeals and bar legal actions based on the Geneva Conventions, directly or indirectly. All Mr. Bush would have to do to lock anyone up forever is to declare him an illegal combatant and not have a trial.

**Coerced Evidence:** Coerced evidence would be permissible if a judge considered it reliable — already a contradiction in terms — and relevant. Coercion is defined in a way that exempts anything done before the passage of the 2005 Detainee Treatment Act, and anything else Mr. Bush chooses.

**Secret Evidence:** American standards of justice prohibit evidence and testimony that is kept secret from the defendant, whether the accused is a corporate executive or a mass murderer. But the bill as redrafted by Mr. Cheney seems to weaken protections against such evidence.

**Offenses:** The definition of torture is unacceptably narrow, a virtual reprise of the deeply cynical memos the administration produced after 9/11. Rape and sexual assault are defined in a retrograde way that covers only forced or coerced activity, and not other forms of nonconsensual sex. The bill would effectively eliminate the idea of rape as torture.



•There is not enough time to fix these bills, especially since the few Republicans who call themselves moderates have been whipped into line, and the Democratic leadership in the Senate seems to have misplaced its spine. If there was ever a moment for a filibuster, this was it.

We don't blame the Democrats for being frightened. The Republicans have made it clear that they'll use any opportunity to brand anyone who votes against this bill as a terrorist enabler. But Americans of the future won't remember the pragmatic arguments for caving in to the administration.

They'll know that in 2006, Congress passed a tyrannical law that will be ranked with the low points in American democracy, our generation's version of the Alien and Sedition Acts.

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