

# A Bad Bargain

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Here is a way to measure how seriously President Bush was willing to compromise on the military tribunals bill: Less than an hour after an agreement was announced yesterday with three leading Republican senators, the White House was already laying a path to wiggle out of its one real concession.

About the only thing that Senators John Warner, John McCain and Lindsey Graham had to show for their defiance was Mr. Bush's agreement to drop his insistence on allowing prosecutors of suspected terrorists to introduce classified evidence kept secret from the defendant. The White House agreed to abide by the rules of courts-martial, which bar secret evidence. (Although the administration's supporters continually claim this means giving classified information to terrorists, the rules actually provide for reviewing, editing and summarizing classified material. Evidence that cannot be safely declassified cannot be introduced.)

This is a critical point. As Senator Graham keeps noting, the United States would never stand for any other country's convicting an American citizen with undisclosed, secret evidence. So it seemed like a significant concession — until Stephen Hadley, the national security adviser, briefed reporters yesterday evening. He said that while the White House wants to honor this deal, the chairman of the House Armed Services Committee, Duncan Hunter, still wants to permit secret evidence and should certainly have his say. To accept this spin requires believing that Mr. Hunter, who railroaded Mr. Bush's original bill through his committee, is going to take any action not blessed by the White House.

On other issues, the three rebel senators achieved only modest improvements on the White House's original positions. They wanted to bar evidence obtained through coercion. Now, they have agreed to allow it if a judge finds it reliable (which coerced evidence hardly can be) and relevant to guilt or innocence. The way coercion is measured in the bill, even those protections would not apply to the prisoners at Guantánamo Bay.

The deal does next to nothing to stop the president from reinterpreting the Geneva Conventions. While the White House agreed to a list of "grave breaches" of the conventions that could be prosecuted as war crimes, it stipulated that the president could decide on his own what actions might be a lesser breach of the Geneva Conventions and what interrogation techniques he considered permissible. It's not clear how much the public will ultimately learn about those decisions. They will be contained in an executive order that is supposed to be made public, but Mr. Hadley reiterated that specific interrogation techniques will remain secret.

Even before the compromises began to emerge, the overall bill prepared by the three senators had fatal flaws. It allows the president to declare any foreigner, anywhere, an "illegal enemy combatant" using a dangerously broad definition, and detain him without any trial. It not only fails to deal with the fact that many of the Guantánamo detainees are not terrorists and will never be charged, but it also chokes off any judicial review.

The Democrats have largely stood silent and allowed the trio of Republicans to do the lifting. It's time for them to either try to fix this bill or delay it until after the election. The American people expect their leaders to clean up this mess without endangering U.S. troops, eviscerating American standards of justice, or further harming the nation's severely damaged reputation.

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