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## Opinion

EDITORIAL

# Guilty Until Confirmed Guilty

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When President Bush rammed the bill on military commissions through Congress, the Republicans crowed about creating a process that would be tough on terrorists but preserve essential principles of justice. “America can be proud,” said Senator Lindsey Graham, one of the bill’s architects.

Unfortunately, Mr. Graham was wrong. One of the many problems with the new law is that it will only make it harder than it already is to separate the real terrorists from the far larger group of inmates at Guantánamo Bay who were bit players in the Taliban or innocent bystanders. Mr. Graham and other supporters of this dreadful legislation seem to have forgotten that American justice does not merely deliver swift punishment to the guilty. It also protects the innocent.

Mr. Bush ignored that fact after 9/11, when he tried to put the prisoners of the war on terror beyond the reach of American law and the Geneva Conventions. For starters, he dispensed with one of the vital provisions of the conventions: that prisoners must be screened by a “competent tribunal” if there is any doubt about who they are and what role they played in hostilities. As a result, hundreds of men captured in Afghanistan and other countries were sent to Guantánamo Bay and other prisons, including the network of illegal C.I.A. detention camps, without any attempt to determine whether they were any sort of combatant, legal or illegal.

The Bush administration showed not the slightest interest in fixing this problem until the Supreme Court said in *Hamdi v. Rumsfeld* that the president cannot simply lock up anyone — even a foreign citizen — without giving him a real chance to challenge his detention before a “neutral decision maker.”

In response, Mr. Bush created Combatant Status Review Tribunals, which gave the most

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cursory possible reviews of the Gitmo detainees. These reviews took place years after the prisoners were captured. They permitted the use of hearsay evidence, evidence obtained through coercion and even torture, and evidence that was kept secret from the prisoner. The normal burden of proof was reversed: the tribunals presumed prisoners were justifiably detained and the prisoners had the burden of disproving government evidence — presuming they knew what it was in the first place.

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The new law leaves this mockery of justice stronger. The Military Commissions Act of 2006 makes it virtually impossible to contest a status tribunal's decision. It prohibits claims of habeas corpus — the ancient right of prisoners in just societies to have their detentions reviewed — or any case based directly or indirectly on the Geneva Conventions. Even if an appeal got to the single appeals court now authorized to hear it, the administration would very likely argue that it cannot be heard without jeopardizing secrets, as it has done repeatedly.


The new law dangerously expands the definition of illegal enemy combatant and allows Mr. Bush — and the secretary of defense — to give to anyone they choose the authority to designate a prisoner as an illegal combatant. It also allows Mr. Bush to go on squirreling prisoners away at secret C.I.A. camps where none of the rules apply.

Mr. Bush wants Americans to trust him to apply these powers only to truly dangerous men. Even if our system were based on that sort of personal power and not the rule of law, it would be hard to trust the judgment of a president and an administration whose records are so bad. The United States has yet to acknowledge that it kidnapped an innocent Canadian citizen and sent him to be abused in a Syrian prison. In another case, a German citizen has accused the United States of grabbing him off the streets of Macedonia, drugging him and sending him to Afghanistan, where he was brutally treated. Then there is the Ethiopian living in London who said he was grabbed by American agents and brutalized by Moroccan torturers until he confessed to plotting with Jose Padilla to set off a “dirty bomb.” Mr. Padilla was never charged with the crime. The Ethiopian remains at Guantánamo Bay.

Republicans who support the new law like to point out that it only covers foreigners. But Americans have never believed that human rights are just for Americans. Our nation is outraged when an authoritarian government jails an American, or one of its own citizens, on trumped-up charges and brings him or her before a phony court. Surely that is not the model we want to follow in our nation's prisons.

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