

US chief justice signals support for White House assault on constitutional rights

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William Rehnquist, chief justice of the United States, on June 15 gave a speech before a gathering of federal judges in which he condoned the suppression of democratic rights in wartime.

Rehnquist told a national judicial conference in Virginia, “One is reminded of the latin maxim, *inter arma silent leges*. In times of war, the laws are silent.”

The Supreme Court justice said he was offering “only a historical perspective,” but his choice of topic and what he had to say about it were obviously intended to bolster the Bush administration’s attack on constitutional guarantees of free speech, assembly, privacy and due process, which is being carried out under the cover of the government’s “war on terrorism.”

Rehnquist’s speech elaborated on themes developed in his 1998 book *All Laws But One: Civil Liberties in Wartime*. The title refers to President Abraham Lincoln’s 1861 speech to Congress justifying his suspension of habeas corpus, a legal procedure for a person in custody to obtain court review of the detention. Rehnquist’s seizing on this historical precedent to justify the current attacks on civil rights turns history upside down.

Article 1, Section 9 of the US Constitution provides that “the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” After the Confederate states seceded and commenced an armed insurrection with an attack on Fort Sumter, Lincoln suspended the writ along the Philadelphia-Washington railroad line in response the efforts by Baltimore public officials to bomb the railroad so that federal troops could not arrive to defend the US capital.

The federal judiciary was replete with judges sympathetic to the slave owners, including Chief

Justice Roger Taney, infamous for his majority opinion in *Dred Scott v. Sanford*, which upheld the right of owners to travel throughout the United States with their slaves, and denied that persons of “Negro” descent could be citizens of the United States with standing to bring suit for their own freedom. The effect of the Dred Scott ruling was to overturn all Congressional actions limiting the extension of slavery into the territories, and, arguably, to legitimize the institution in the “free states” as well.

After the Confederacy’s attack on the North, Taney interfered with Lincoln’s efforts to suppress the rebellion by issuing a habeas corpus writ ordering the release of a Maryland official arrested for openly supporting the Confederacy’s war effort. Lincoln ignored Taney’s writ, rhetorically asking Congress why “all laws” were rendered ineffective by virtue of the rebellion “but one,” i.e., habeas corpus.

Lincoln’s action was dictated by the exigencies of a war waged for the defense of the Union and the preservation of democracy against the slave-owning planter class in the South—an entirely progressive cause that led to the liberation of millions of slaves and an unprecedented extension of democratic rights in the United States. Rehnquist, on the other hand, will go down in history as the chief justice who presided over the Supreme Court responsible for rolling back the gains of the post-World War II civil rights struggles and associated legislation and court decisions recognizing and expanding basic rights.

In his speech, Rehnquist also reviewed the Supreme Court’s upholding of President Woodrow Wilson’s use of sedition laws to incarcerate opponents of World War I, including the Socialist leader Eugene Debs, its approval of Franklin Delano Roosevelt’s secret military tribunals for Nazi saboteurs in 1942, the use of

military tribunals to try civilians in Hawaii for crimes unrelated to war, an action later deemed unconstitutional by the Court in 1946, and the Court's noxious approval in 1943 of the internment in California concentration camps of persons of Japanese ancestry.

"These cases suggest that, while the laws are surely not silent in time of war, courts interpret them differently than in time of peace," Rehnquist told the assembled judges. In the guise of an academic lecture, his speech signaled that his Court would similarly support a drastic curtailment of democratic rights, including the detention, interrogation and incarceration of people without charges being brought against them and in violation of normal court procedures. His remarks could only have the effect of intimidating those judges more inclined to uphold constitutional liberties.

By making such a speech while many important cases are working their way through the federal judiciary and are ultimately headed for his court, Rehnquist violated American Bar Association Code of Judicial Conduct Canon 4, which prohibits judges from "extra-judicial activities" that "cast reasonable doubt on the judge's capacity to act impartially as a judge."

Rehnquist's remarks echoed a speech made by Associate Justice Sandra Day O'Connor in New York last September, where she declared that because of the September 11 attacks, "We're likely to experience more restrictions on our personal freedom than has ever been the case in our country." ["US Supreme Court Justice O'Connor says 'personal freedom' will be curbed"] O'Connor's speech was the first time a justice of the Supreme Court has ever gone public with an open-ended assertion that individual rights should be curtailed in the name of national security.

Prisoners whose cases might be affected by Rehnquist's remarks include the purported "dirty bomb" suspect, Jose Padilla, a US citizen whom the government is holding incommunicado in military detention, and Yasser Esam Hamdi, another US citizen who was born in Louisiana to Saudi parents. On July 12 the right-wing Fourth Circuit Court of Appeals reversed a lower court order that the government was obliged to allow Hamdi to consult a lawyer.

The Supreme Court itself is already acting in accord with Rehnquist's remarks. In its first decision

involving a post-September 11 "anti-terrorist" action, the high court granted an emergency request by Attorney General Ashcroft to stay a lower court injunction against the Immigration and Naturalization Service's post-September 11 policy of closing all hearings it deemed to be related to "terrorism." The injunction, issued by a New Jersey federal judge and allowed to stand by the Third Circuit Court of Appeals, provided that the government had to allow media access to immigration proceedings unless it first demonstrated that national security justified closing a specific hearing.

True to form, Rehnquist's June 15 speech received almost no coverage in the mainstream media and evoked no protest or criticism from Democrats or civil liberties organizations, again demonstrating the prostration of the so-called liberal establishment to the unprecedented assault on democratic rights.



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