

The End of America: Letter of Warning to a Young Patriot

by NAOMI WOLF

— INTRODUCTION —

TEN STEPS

*America was opened after the feudal mischief was spent. We began well. No inquisitions, here,
no kings, no nobles...*

Ralph Waldo Emerson

Dear Chris:

I am writing because we have an emergency. Here are U.S. news headlines from a two-week period in the late summer of 2006:

July 22: “CIA WORKER SAYS MESSAGE ON TORTURE GOT HER FIRED.” Christine Axsmith, a computer security expert working for the CIA, said she had been fired for posting a message on a blog site on a top-secret computer network. Axsmith criticized waterboarding: “Waterboarding is torture, and torture is wrong.” Ms. Axsmith lost her job as well as her top-secret clearance, which she had held since 1993. She fears her career in intelligence is over.¹

July 28: “DRAFT BILL WAIVES DUE PROCESS FOR ENEMY COMBATANTS.” The Bush administration has been working in secret on a draft bill “detailing procedures [for] bringing to trial those it captures in the war on terrorism, including some stark diversions from regular trial procedures. . . . Speedy trials are not required. . . . Hearsay information is admissible . . . the [military] lawyer can close the proceedings [and] can also order ‘exclusion of the defendant’ and his civilian counsel.” Those defined as “enemy combatants” and “persons who have engaged in unlawful belligerence” can be held in prison until “the cessation of hostilities,” no matter when that may be or what jail sentence they may get.²

July 29: “THE COURT UNDER SIEGE.” In June 2006, the Supreme Court ruled that denying prisoners at Guantánamo judicial safeguards violated the Geneva Conventions and U.S. law. The Supreme Court also insisted that a prisoner be allowed to be present at his own trial. In response, the White House prepared a bill that “simply revokes that right.” The New York Times editorial page warned, “It is especially frightening to see the administration use the debates over the prisoners at Guantánamo Bay and domestic spying to mount a new offensive against the courts.”³

July 31: “A SLIP OF THE PEN.” U.S. lawyers issued a statement expressing alarm at the way the president was overusing “signing statements.” They argued that this was an exertion of

executive power that undermined the Constitution. Said the head of the American Bar Association, “The threat to our Republic posed by presidential signing statements is both imminent and real unless immediate corrective action is taken.”⁴

August 2: “BLOGGER JAILED AFTER DEFYING COURT ORDERS.” A freelance blogger, Josh Wolf, 24, was jailed after he refused to turn over to investigators a video he had taken of a protest in San Francisco. Jane Kirtley, a professor of media ethics and law at the University of Minnesota, said that, although the jailing of American journalists was becoming more frequent, Mr. Wolf was the first American blogger she knew of to be imprisoned by federal authorities.⁵

August 2: “GOVERNMENT WINS ACCESS TO REPORTER PHONE RECORDS.” “A federal prosecutor may inspect the telephone records of two New York Times reporters in an effort to identify their confidential sources” according to The New York Times. A dissenting judge speculated that in the future, reporters would have to meet their sources illicitly, like drug dealers meeting contacts “in darkened doorways.”⁶

August 3: “STRONG-ARMING THE VOTE.” In Alabama, a federal judge took away powers over the election process from a Democratic official, Secretary of State Worley, and handed them over to a Republican governor: “[P]arty politics certainly appears to have been a driving force,” argued the Times. “The Justice Department’s request to shift Ms. Worley’s powers to Governor Riley is extraordinary.” When Worley sought redress in a court overseen by a federal judge aligned with the Bush administration, she wasn’t allowed her chosen lawyer. It was “a one-sided proceeding that felt a lot like a kangaroo court” cautioned the newspaper. She lost.⁷

Why am I writing this warning to you right now, in 2007? After all, we have had a

congressional election giving control of the House and the Senate to Democrats. The new leaders are at work. Surely, Americans who have been worried about erosions of civil liberties, and the destruction of our system of checks and balances, can relax now: See, the system corrects itself. It is tempting to believe that the basic machinery of democracy still works fine and that any emergency threatening it has passed—or, worst case, can be corrected in the upcoming presidential election.

But the dangers are not gone; they are regrouping. In some ways they are rapidly gaining force. The big picture reveals that ten classic pressures—pressures that have been used in various times and places in the past to close down pluralistic societies—were set in motion by the Bush administration to close down our own open society. These pressures have never been put in place before in this way in this nation.

A breather is unearned; we can't simply relax now. The laws that drive these pressures are still on the books. The people who have a vested interest in a less open society may be in a moment of formal political regrouping; but their funds are just as massive as before, their strategic thinking unchanged, and their strategy now is to regroup so that next time their majority will be permanent.⁸

All of us—Republicans, Democrats, Independents, American citizens—have little time to repeal the laws and roll back the forces that can bring about the end of the American system we have inherited from the Founders—a system that has protected our freedom for over 200 years.

I have written this warning because our country—the democracy our young patriots expect to inherit—is in the process of being altered forever. History has a great deal to teach us about what is happening right now—what has happened since 2001 and what could well unfold after the 2008 election. But fewer and fewer of us have read much about the history of the mid-

twentieth century—or about the ways the Founders set up our freedoms to save us from the kinds of tyranny they knew could emerge in the future. High school students, college students, recent graduates, activists from all walks of life have a sense that something overwhelming has been going on. But they have lacked a primer to brief them on these themes and put the pieces together, so it is hard for them to know how urgent the situation is, let alone what they need to do.

Americans expect to have freedom around us just as we expect to have air to breathe, so we have only limited understanding of the furnaces of repression that the Founders knew intimately. Few of us spend much time thinking about how the system they put in place protects our liberties. We spend even less time, considering how dictators in the past have broken down democracies or quelled pro-democracy uprisings. We take our American liberty for granted the way we take our natural resources for granted, seeing both, rather casually, as being magically self-replenishing. We have not noticed how vulnerable either resource is until very late in the game, when systems start to falter. We have been slow to learn that liberty, like nature, demands a relationship with us for it to continue to sustain us.

Most of us have only a faint understanding of how societies open up or close down, become supportive of freedom or ruled by fear, because this is not the kind of history that we feel, or that our educational system believes, is important for us to know. Another reason for our vagueness about how liberty lives or dies is that we have tended lately to subcontract out the tasks of the patriot: to let the professionals—lawyers, scholars, activists, politicians—worry about understanding the Constitution and protecting our rights. We think that “they” should manage our rights, the way we hire a professional to do our taxes; “they” should run the government, create policy, worry about whether democracy is up and running. We’re busy.

But the Founders did not mean for powerful men and women far away from the citizens—for people with their own agendas or for a class of professionals—to perform the patriots’ tasks or to protect freedom. They meant for us to do it: you, me, the American who delivers your mail, the one who teaches your kids.

I am one of the citizens who needed to relearn these lessons. Though I studied civics, our system of government was taught to me, as it was to you, as a fairly boring explication of a three-part civil bureaucracy, not as the mechanism of a thrilling, radical, and totally unprecedented experiment in human self-determination. My teachers explained that our three-part system was set up with “checks and balances,” so that no one branch of government could seize too much power. Not so exciting: this sounded like “checks and balances” in a bureaucratic turf war. Our teachers failed to explain to us that the power that the Founders restrained in each branch of government is not abstract: it is the power to strip you and me of personal liberty.

So I needed to go back and read, more deeply than I had the first time around, histories of how patriots gave us our America out of the crucible of tyrants, as well as histories of how dictators came to power in the last century. I had to reread the stories of the making and the unmaking of freedom. The more I read these histories, the more disturbed I became.

I give you the lessons we can learn from them in this pamphlet form because of the crisis we face.

Like every American, I watched the events of September 11, 2001, with horror. Then, like many, I watched the reactions of the administration in power at first with concern, then with anxiety, and then, occasionally, with shock. I started feeling that there was something familiar about how events, at times, were unfolding.

Because of the *déjà vu* I was starting to feel when I read the newspaper every day, I

began to take a second look at how leaders in the past had cracked down on societies over which they had gained control; I looked with special attention at what had happened when a leader brought about a shift from a pluralistic, democratic society to a dictatorship.

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HISTORICAL ECHOES

I began to think of these examples as “historical echoes”—not proof that someone influential in the administration had studied the details of mid-twentieth-century fascism and totalitarianism, but certainly suggestive.

What was it about the image of a mob of young men dressed in identical shirts, shouting at poll workers outside of a voting center in Florida during the 2000 recount, that looked familiar?⁹ What resonated about the reports that Bush supporters in the South were holding organized public events to burn CDs by the Dixie Chicks?¹⁰ (CDs are actually quite hard to burn and produce toxic fumes.) What seemed so familiar about an organized ideological group shaming an academic for saying something unpopular—and then pressuring the state government to get the university president to fire that professor?¹¹ What was so recognizable about reports that FBI agents were stopping peace activists at airports?¹² Why did the notion of being “greeted as liberators”¹³ feel so familiar and phrases such as “hiding in spider-holes”¹⁴ sound so familiar?

These events may seem to have historical echoes because they actually are mirrored in history.

No one can deny the skill of fascists at forming public opinion. I can’t prove that anyone

in the Bush administration studied Joseph Goebbels. I am not trying to. All I am doing is noting echoes.

As you read you may notice other parallels—usually in the details of events. The Bush administration created a policy post-9/11 about liquids and air travel. Increased security restrictions led to airport security guards forcing some passengers to ingest liquids: A Long Island mother, for instance, was forced to drink from three bottles filled with her own breast milk prior to boarding a plane at JFK.¹⁵ Other adult passengers have been forced to drink baby formula. In Benito Mussolini’s era, one intimidation tactic was to force citizens to drink emetics and other liquids.¹⁶ German SS men picked this up: They forced Wilhelm Sollmann, a Social Democrat leader, for instance, to drink castor oil and urine.¹⁷ Of course baby formula is not an emetic. But a state agent—some agents are armed—forcing a citizen to ingest a liquid is a new scene in America.

In 2002 the Bush administration created and named the “Department of Homeland Security.” White House spokespeople started to refer to the United States, unprecedentedly, as “the homeland.”¹⁸ American presidents have before now referred to the United States as “the nation” or “the republic,” and to the nation’s internal policies as “domestic.”

By 1930 Nazi propagandists referred to Germany not as “the nation” or “the republic”—which it was—but rather as “the Heimat”—“the homeland.” Homeland is a word that memoirist Ernestine Bradley, who grew up in Nazi Germany, describes as saturated with nationalist power: “Heimat is a German word which has no satisfactory equivalent in other languages. It denotes the region where one has been born and remains rooted. . . . Longing to be in the Heimat causes the incurable disease of Heimweh.”¹⁹ Deputy Fuhrer Rudolf Hess, introducing Hitler at a Nuremberg rally, said, “Thanks to your leadership, Germany will be attainable as the

Homeland—Homeland for all Germans in the world.”²⁰ A Department of Domestic Security is simply a bureaucracy, capable of mistakes; a department protecting our “homeland” has a different authority.

In 2001 the USA PATRIOT Act let the federal government compel doctors to give up confidential medical records without a warrant demonstrating probable cause. Your previously private interaction with your doctor is now subject to state scrutiny.²¹ (Nazi law in the 1930s required German doctors to disclose citizens’ previously private medical records to the state.)

In 2005 Newsweek reported that Guantánamo prisoners had seen the Koran being flushed down toilets. Under pressure from the White House, the magazine ran a correction: It had not interviewed direct witnesses to the practice.²² But human rights organizations did confirm accounts of similar abuses of the Koran.²³ (In 1938, the Gestapo forced Jews to scrub out the toilets with their sacred phylacteries, the tfillin.)²⁴

Amnesty International reports that U.S. interrogators torment prisoners in Iraq by playing heavy metal at top volume into their cells night and day.²⁵ (In 1938, the Gestapo tormented imprisoned Austrian premier Kurt von Schuschnigg by keeping the radio on at top volume, night and day.)²⁶

An Iraqi human rights group complained that, in 2004, U.S. forces seized the innocent wives of suspected insurgents and held the women hostage to pressure their husbands to turn themselves in.²⁷ (In Joseph Stalin’s Russia, secret police took hostage the innocent wives of dissidents accused of “treason,” to pressure their husbands to turn themselves in.)²⁸

When the United States invaded Iraq, Vice President Dick Cheney promised that we would be “greeted as liberators.” (When the German army occupied the Rhineland, Nazi propaganda asserted that the troops would be welcomed as liberators.)

President Bush argued that the prisoners in Guantánamo Bay could be treated harshly because they were not covered by the Geneva Conventions. (Nazis asserted that the troops invading Russia should treat the enemy especially brutally, because they were not covered by the Hague Conventions.)²⁹

After 9/11, then–National Security Advisor Condoleezza Rice and Vice President Cheney coined a new phrase: America was now on a “war footing.”³⁰ Superficially, it was a stirring word choice. But if you thought about it, it was also kind of an odd word choice, because America was not actually at war. What is a “war footing”? (Nazi leaders explained, after the Reichstag fire, that Germany, which was not actually at war, was from then on a permanent “kriegsfusz”—literally, a “war footing.”)

The Bush White House “embedded” reporters with U.S. military units in Iraq. Uncritical coverage of the war expanded considerably. (National Socialist propaganda officials embedded reporters and camera crews with their own armed forces: Filmmaker Leni Riefenstahl was embedded with Nazi troops in Poland,³¹ U.S. correspondent William Shirer drove with German units into occupied France.³²)

The Bush administration unloads coffins of dead American soldiers from planes at night and has forbidden photographers to take pictures of the coffins.³³ (National Socialists unloaded the coffins of the German war dead at night.)

The White House announced, beginning in 2002, that there were terrorist “sleeper cells” scattered throughout the nation. A “sleeper cell,” press reports explained, was a group of terrorists that had merged into ordinary American life, waiting, perhaps for years, for the signal to rise up and cause mayhem.

A wave of reporting asserted that the FBI had located a sleeper cell in Lodi, California.

After an informant had been paid hundreds of thousands of dollars to spy on Muslims, the FBI detained a Muslim father, Umer Hayat, and his son, Hamid Hayat.³⁴ The two men explained that they had confirmed an imaginary sleeper cell to end a terrifying series of interrogations.³⁵

Another much-publicized sleeper cell identified four Muslim men in Detroit. Attorney General John Ashcroft claimed that the men had had advance knowledge of 9/11;³⁶ federal authorities charged that they were part of a “sleeper cell plotting attacks against Americans overseas,” as news reports put it.³⁷ The Justice Department heralded the arrests as one of its biggest hits in the War on Terror.

The phrase *sleeper cell* entered deeply into the American unconscious, even becoming the plot of a 2005 TV movie. But in 2006, Richard Convertino, the prosecutor of the Detroit case, was indicted on charges of trying to present false evidence at the trial and concealing other evidence, in his attempt to back up the government’s theory about the men. All charges were dropped against the men, and the Justice Department quietly repudiated its own case.³⁸ But you probably didn’t hear about that, and the creepy sleeper-cell narrative stayed in the atmosphere to trouble your dreams.

Sleeper cell was a term most Americans had never heard before. It is a phrase from Stalin’s Russia, where propagandists said that imaginary cells, consisting of agents of “international capitalism”—that is, us—had been sent by the U.S. government to infiltrate Soviet society. These secret agents would pose as good Soviet comrades, living quietly among their neighbors but just awaiting the day when, at a signal, they would all rise up to commit mayhem.³⁹

When the 2006 terrorist plot against U.S-bound planes was uncovered in London, an FBI official gave a much-quoted sound bite: “If this plot had actually occurred, the world would have

stood still.”⁴⁰ FBI guys don’t usually speak in cadences of dark poetry. (Of his plans in 1940, Hitler said, “The world will hold its breath.”⁴¹)

These echoes are worth noticing—but are not ultimately that important. What is important are the structural echoes you will see: the way dictators take over democracies or crush prodemocracy uprisings by invoking emergency decrees to close down civil liberties, creating military tribunals, and criminalizing dissent.

Those echoes are important.

So I read about Mussolini’s Italy in the 1920s; Stalin’s Russia and Hitler’s Germany in the 1930s; I read about East Germany in the 1950s and Czechoslovakia in the 1960s and Chile in 1973, as well as about other Latin American dictatorships; I read about Communist China in the late 1980s and early 1990s.

The countries I looked at were very different, of course, and the violent dictators had a broad range of ideologies. Stalin imposed totalitarianism over a communist state, itself built upon the ruins of a toppled monarchy. Mussolini and Hitler both came to power legally in the context of fragile parliamentary democracies. East Germany and Czechoslovakia were communist systems, and China still is; and General Augusto Pinochet closed down Chile’s young democracy in a classic Latin American military coup d’état.

Violent dictators across the political spectrum all do the same key things. Control is control. In spite of this range of ideological differences, profound similarities in tactics leap off the pages. Each of these leaders used, and other violent dictators around the globe continue to borrow, the same moves to close down open societies or crush dissent.

There are ten steps that are taken in order to close down a democracy or crush a prodemocratic movement, whether by capitalists, communists, or right-wing fascists. These ten

steps, together, are more than the sum of their parts. Once all ten have been put in place, each magnifies the power of the others and of the whole.

Impossible as it may seem, we are seeing each of these ten steps taking hold in the United States today.

But America is different! I can hear you saying.

There is no guarantee that America is different if Americans fail to take up the patriot’s task.

At times in our own history our commitment to freedom has faltered. The Alien and Sedition Act of 1798 made it a crime for Americans to speak critically—to “bring into contempt or disrepute”—of then-President John Adams and other U.S. leaders. But Thomas Jefferson pardoned those convicted under these laws when he took office.

During the Civil War, President Lincoln suspended habeas corpus, effectively declaring martial law in several states: Close to 38,000 Americans were imprisoned by military authorities during the war, many for simply expressing their views. But when the war ended in 1865, the Supreme Court ruled that it had been unconstitutional for military tribunals to try civilians.

In 1918, labor leader Eugene Debs was arrested for giving a speech about the First Amendment; he got a ten-year jail sentence. Raids swept up hundreds of other activists.⁴² But after World War I ended, the hysteria subsided.

During World War II, the Justice Department rounded up 110,000 innocent Japanese Americans and imprisoned them in camps. When the war was over, these innocent Americans were released as well.

Anticommunist anxiety led the nation to tolerate the McCarthy hearings; but the pendulum swung back, and Senator Joe McCarthy himself was condemned by his colleagues.

I am describing the movement of “the pendulum”—as in the American cliché, “The pendulum always swings back.” We are so familiar with, and so reliant upon, the pendulum. That is why you are so sure that “America is different.” But the pendulum’s working depends on unrestricted motion. In America, up until now, the basic checks and balances established by the Founders have functioned so well that the pendulum has always managed to swing back. Its very success has made us lazy. We trust it too much, without looking at what a pendulum requires in order to function: the stable framework that allows movement; space in which to move; that is, liberty.

The pendulum cannot work now as it has before. There are now two major differences between these past examples of the pendulum’s motion and the situation we face today.

First, as Bruce Fein of the American Freedom Agenda and writer Joe Conason have both noted, previous wars and emergencies have had endpoints. But President Bush has defined the current conflict with global terrorism as being open ended. This is a permanent alteration of the constitutional landscape.

The other difference between these examples and today is that when prior dark times unfolded in America, we forbade torture, and the rule of law was intact. Legal torture, as you will see, acting in concert with the erosion of the rule of law, changes what is possible.

So, because I was looking at something unprecedented in our nation’s history, I had to read the histories of many forms of state repression, including the most extreme.

I had to include Nazi Germany in my scrutiny of repressive governments. Many people are understandably emotionally overwhelmed when the term “Nazism” or the name “Hitler” is introduced into debate. As someone who lost relatives on both sides of my family in the Holocaust, I know this feeling. I also know that there is a kind of intellectual etiquette, an

unwritten rule, that Nazism and Hitler should be treated as stand-alone categories.

But I believe this etiquette is actually keeping us from learning what we have to learn right now. I believe we honor the memory of the victims of Nazism with our willingness to face the lessons that history—even the most nightmarish history—can offer us about how to defend freedom.

In looking at other violent dictatorships, including Germany’s, I am not comparing the United States in 2007 to Nazi Germany or Bush to Hitler. The two nations and leaders inhabit different worlds. There will not be a coup in America like Mussolini’s March on Rome or a dramatic massacre like Hitler’s Night of the Long Knives. But certain threads are emerging that have connections to the past. I am calling your attention to important lessons from history about how fragile civil liberties are and how quickly freedom can be lost. I ask you to quiet your understandable aversion long enough to walk with me through the material I have to show you.

The ten steps to dictatorship are basic.

In September 2006, military leaders staged a coup in Thailand, which had been a noisy democracy. In a matter of days, the coup leaders ticked through many of the ten steps, as if they had a shopping list. In a sense they did.

They deployed armed guards in residential neighborhoods, sent lawmakers home, shut down the free press, took over the state-run television, threatened critics with arrest, put new limits on travel, restricted protest, and discontinued the parliamentary rule of law. Thailand was a police state within a matter of days.⁴³

We are seeing each of the basic ten steps being put into place here in the United States today—more quietly, more gradually, and sometimes more elegantly; but each is underway.

My sense of alarm comes from the clear lessons from history that, once certain checks

and balances are destroyed, and once certain institutions have been intimidated, the pressures that can turn an open society into a closed one turn into direct assaults; at that point events tend to occur very rapidly, and a point comes at which there is no easy turning back to the way it used to be.

The fascist shift does not progress like a diagonal line rising steadily across a chart. Rather, it progresses in a buildup of many acts assaulting democracy simultaneously, which then form a critical mass—what writer Malcolm Gladwell would call a “tipping point.” The pressure from this set of assaults suddenly pushes the nation into a new and degraded reality. The turning points can be mapped as vertical lines—the point at which prisoners lost the right to habeas corpus, for instance, is one—which then plateau into the nation’s new normal. The nation acclimates; then this process begins again at that greater level of suppression.

What got to be really scary in my reading was how predictable events become, once you are familiar with the blueprint. By the beginning of August 2006, for instance, it seemed like a good bet that the Bush administration would soon move on from the detainee bill that it had been secretly preparing to seek Congressional authorization for creating a prison beyond the rule of law where torture could take place. This was accomplished by October 2006. In September 2006, I thought that it was likely that some of the first prisoners to be tried in Guantánamo by the new military commission system would be white and English speaking. Indeed, that happened by April 2007. It also seemed probable that White House spokespeople would begin to use terms such as treason, espionage, subversion, and aiding the enemy to describe criticism, press scrutiny, dissent, and even simple departure from alignment with White House goals. From the blueprint, I thought it was unsurprising when the administration started to criminalize speech in new ways. This began to happen in earnest by May 2007.

When the U.S. attorney scandal came to light in March 2007 and there was still little information, because I had been reading a biography of Goebbels I remarked to a friend, “I bet the attorneys were in swing states.” By the next week, it had been confirmed that most of them were in fact in swing states. All this supposition was not rocket science; it was simply that each of these is a classic move in the playbook of a fascist shift.

Everything changed in America in September 2006, when Congress passed the Military Commissions Act.⁴⁴ This law created a new legal reality that heralds the end of America if we do not take action. Yet most Americans still do not understand what happened to them when that law passed.

This law gives the president—any president—the authority to establish a separate justice system for trying alien unlawful enemy combatants. It defines both “torture” and “materially support[ing] hostilities” broadly. The MCA justice system lacks the basic protections afforded defendants in our domestic system of laws, in our military justice system, or in the system of laws used to try war criminals—Nazi leaders got better civil liberty protection than alien enemy combatants, as did perpetrators of genocide like Slobodan Milosovic. And persons accused by the president (or his designees) of being alien unlawful enemy combatants are forbidden from invoking the Geneva Conventions, a treaty that represents the basic protections of justice common to all civilized nations. The United States has signed the Geneva Conventions and agreed to abide by them, and this repudiation is a radical departure from our traditions. Under the MCA, the government can use “coerced” interrogation to obtain evidence. Finally, and perhaps most damagingly, the MCA denies unlawful alien enemy combatants the right to challenge the legitimacy of their confinement or treatment. So, while the MCA provides all sorts of rules that the military is supposed to follow, it will be difficult, if not impossible, to hold anyone

accountable for breaking those rules.

But this is not all. The president and his lawyers now claim the authority to designate any American citizen he chooses as being an “enemy combatant”; and to define both “torture” and “material support” broadly. They claim the authority to give anyone in the executive branch the power to knock on your door, seize you on the street, or grab you as you are changing planes at Newark or Atlanta airports; blindfold you and put earphones on you; take you to a cell in a navy prison; keep you in complete isolation for months or even years; delay your trial again and again; and make it hard for you to communicate with your lawyer. The president claims the authority to direct agents to threaten you in interrogations and allow into your trial things you confessed to while you were being mistreated.

The president claims the authority to do any of those things to any American citizen now on his say-so alone. Let me repeat this: The president asserts that he can do this to you even if you have never committed a crime of any kind; “enemy combatant” is a status offense. Meaning that if the president says you are one, then you are.

Human rights groups raised the alarm early on about what this law might mean to the many innocent foreign detainees who had been swept up in the machinery of Afghan prisons and sent to Guantánamo. Some congressional leaders have warned us about what this law might do to our own soldiers, if they are taken as POWs. But most ordinary citizens did not understand what Congress had done—not to anonymous, possibly scary, brown people on a faraway island, but to them. Most Americans still do not understand.

Last September, concerned about the legal arguments being put forward by the Department of Justice, I called a friend who is a professor of constitutional law.

“Does the administration assert that the president can define anyone he wants to as an

‘enemy combatant’? Including U.S. citizens?” I asked.

“Yes,” he replied.

“And does it argue that courts must defer to the government’s assertions that someone should be held as an enemy combatant, even when it presents no direct evidence?”

“Yes,” he replied.

“So doesn’t that mean they are saying that now any of us for any reason he decides can be seized off the street and imprisoned in isolation for months and interrogated?”

“Yes,” he said.

“So why isn’t anyone saying that?”

“Some people are. But a lot of people probably think it would just sound crazy,” he replied.⁴⁵

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NOTES

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NAOMI WOLF

AUTHOR SPOTLIGHT

Naomi Wolf was born in San Francisco in 1962. She was an undergraduate at Yale University and did her graduate work at New College, Oxford University as a Rhodes Scholar.

Her essays have appeared in various publications including: *The New Republic*, *The Wall Street Journal*, *Glamour*, *Ms.*, *Esquire*, *The Washington Post*, and *The New York Times*. She also speaks widely to groups across the country.

The Beauty Myth, her first book, was an international bestseller. She followed that with *Fire With Fire: The New Female Power and How It Will Change The 21st Century*, published by Random House in 1993, and *Promiscuities: The Secret Struggle for Womanhood*, published in 1997. *Misconceptions*, released in 2001, is a powerful and passionate critique of pregnancy and birth in America.

In fall 2002, Harper Collins published a 10th anniversary commemorative edition of *The Beauty Myth*. Ms. Wolf's latest book, released in May of 2005, is *The Treehouse: Eccentric Wisdom from my Father on How to Live, Love and See*.

Naomi Wolf is co-founder of The Woodhull Institute for Ethical Leadership, an organization devoted to training young women in ethical leadership for the 21st century. The

institute teaches professional development in the arts and media, politics and law, business and entrepreneurship as well as ethical decision making.

She lives with her family in New York City.

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