BILL OF WRONGS by Molly Ivins and Lou DuBose

INTRODUCTION

A Republic—If We Can Keep It

To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists; for they erode our national unity and diminish our resolve. They give ammunition to America’s enemies, and pause to America’s friends.
—Attorney General John Ashcroft, December 5, 2001

I set out to write this book as a cheerful and joyous tribute to all the heroes I have met over all the years, the folks who make the Bill of Rights more than just dead words on an old parchment. They make those rights into living, breathing freedom. I wanted to write this book because I believe every generation of Americans has to work to “keep it,” as Mr. Franklin said of our republic. I wanted to tell the stories of the contemporary heroes—plain, average, normal, everyday Americans—who stand up for freedom, even when it pisses off their neighbors and costs them a lot, one way or another.

This book grows out of a long-standing commitment of mine. For more than fifteen years, I have made at least one free speech a month on behalf of the Bill of Rights. I started doing the speeches because of a promise I made to a dying friend: How’s that for touching?

Actually, it was ridiculous: I promised John Henry Faulk I would take care of the First Amendment, a fairly ludicrous case of overreach. John Henry Faulk was a Texas folklorist, humorist, and the man who broke the blacklisting system in radio and television. When Johnny got blacklisted in 1956—for being a “premature anti-Fascist” (he never did like Hitler)—he did not go gently into that dark night. Instead, he promptly sued the sons of bitches. It’s a fine story—Edward R. Murrow took out a mortgage on his house to pay John Henry’s lawyer, Louis Nizer, one of the great trial attorneys of the day. The blacklisters were represented by one Roy Cohn. Murray Kempton’s hilarious account of the proceedings is worth looking up. Of course it all took years to come to trial, by which time Johnny was not only out of showbiz but totally broke. For the remaining years of his life, he made a slim living as an after-dinner speaker, telling his stories of great Texas characters, but far more important, he functioned as a friend of the First Amendment—anywhere, everywhere, all the time—funny, irreverent, and in love with Jefferson and Madison.

The only time I have ever broken what I consider my commitment to John Henry—one free speech a month someplace where it’s needed—was while writing this book. Through two rounds with breast cancer, and some subsequent heart problems, not to mention many a massive hangover, I have staggered onto a plane and arrived at Lard Lake or Fluterville, where some desperate citizens needed help. I’ve made a locally adapted variation of my basic speech, which includes some great stories and, if I do say so myself, is actually fairly funny.

I began doing this under the illusion that I was being noble and self-sacrificing—not that I would toot my own horn, but I kind of hoped others might notice what a commendable citizen I am. As so often happens when we give to others, the speech a month became not a sacrifice but a continuing source of inspiration, courage, and energy. The commitment hasn’t so much cost me time and effort as it has repaid me tenfold by letting me get to know the real heroes of freedom in this country: I have received so much more than I have ever given to this cause; I have been enriched beyond my ability to describe.
My deal with all the First Amendment groups is that I do not give my speech in New York City or San Francisco. I usually do not go anywhere there are a lot of liberals. Consequently, I have spent a lot of time in small cities and towns in Mississippi, northern Georgia, Alabama, northern Louisiana, north Florida, odd parts of the Carolinas, the Dakotas, western Michigan, Utah, Nebraska, Idaho, Montana, Kansas, and Oklahoma. I say unto you, you do not know what courage is until you have sat in the basement of a Holiday Inn in Fritters, Alabama, with seven brave souls, led by a librarian, who are fixing to form a chapter of the Ay Cee Ell You. They are always driven to this extreme by local pinheads who not only don’t get the Bill of Rights but are eager to trash it.

I have been called in through the American Library Association on some bizarre cases: say, the local Christian fundamentalists have decided talking animals are satanic, and consequently, they demand The Three Little Pigs, Goldilocks and the Three Bears, and The Wind in the Willows be removed from the town library. Town meeting to be held, can I come and explain the First Amendment?

I try to explain what the First Amendment means with good stories, because that’s what John Henry taught me to do. For that matter, Mark Twain and Jesus were both fond of the form, not that I’m putting myself anywhere near there. You’d be amazed at how much even the most sophisticated people still enjoy a good story. And you will find a lot of good stories in this book.

Reporting and telling these stories with me is my colleague Lou Dubose. We have done two books together: Shrub: The Short but Happy Political Life of George W. Bush (describing George Bush’s failed oil career and disastrous six years as governor of our state) and Bushwhacked: Life in George W. Bush’s America (for anyone who didn’t heed our warning the first time). Lou has also written books on Karl Rove, Tom DeLay, and Dick Cheney. Some people know how to amuse themselves.

I started with the First Amendment for obvious reasons—if you’re a journalist, freedom of speech and freedom of the press are matters of both personal and professional self-interest. Over the years, I have of necessity spent more and more time on the very first sixteen words of the First Amendment, which establish the most important right of all: freedom of conscience. Also known as the Establishment Clause. This includes the newly controversial concept of separation of church and state. In addition, I have found myself involved in several controversies involving the other nine of the original ten amendments that form the Bill of Rights. I meant for this to be a hopeful and a gladsome romp through some serious terrain, and I do think the book includes some right joyous tales. To all the daring, courageous, or just plain stubborn “ordinary” Americans who have ever gotten up on their hind legs and said, “Well, that’s not right, that’s not fair”: this book is still dedicated to you.

But since September 11, 2001, the story of those who stand up for American freedom has gotten darker. The extraordinary heroes are still out there, but now we find more victims of our failure to stand up for our own rights. Their stories start like Kafka’s The Trial.

“But how can I be under arrest? And how come it’s like this?” “Now you’re starting again,” said the policeman. . . . “We don’t answer questions like that.” “You will have to answer them,” said K. “Here are my identification papers, now show me yours and I certainly want to see the arrest warrant.” “Oh, my God!” said the policeman. “In a position like yours, and you think you can start giving orders, do you?”

As much as those victims kick back when their constitutional rights are trampled by their government, it keeps happening, stranger and stranger, creepier and creepier.
But of course we must not scare Americans with phantoms of lost liberty: that would be helping the terrorists. But as Pastor Martin Niemöller reminded us when Hitler started locking people up, we all can be suspects in the end: “First they came for the Communists, and I didn’t speak up because I wasn’t a Communist. Then they came for the Jews, and I didn’t speak up because I wasn’t a Jew. Then they came for the Catholics, and I didn’t speak up because I was Protestant. Then they came for me, and by that time there was no one left to speak for me.”

Most Americans still believe this secret-police, secret detention stuff applies only to foreigners, to illegals, to resident aliens—to people who are not “real citizens.” No one likes the messenger who brings the bad news, but pay attention, Americans: Your ass is on the line.

And so we have included in this book some genuinely dismaying stories. As one who prefers the funny side of our political life, I have derived considerable amusement over the years from poking fun at the eternally earnest liberals who hear the sound of jackbooted fascism around every corner. Liberals have used the F-word promiscuously, not just in such hair-raising episodes as the Saturday Night Massacre under Richard Nixon but also in completely dipshit cases.

As a Texas liberal, I have developed a positively British case of phlegm. According to medieval medicine, “phlegm” is one of the four “humours,” and it accounts for those of us who are hard to startle. If ever there was a group that knew how to survive political reverses, your Texas liberals are the past masters. I do not discombobulate easily. Experience has taught me that things are likely to get worse, so these will eventually turn out to be the Good Old Days, and think what a fool you’ll feel like later if you don’t enjoy them now.

So please, weigh into this claim my forty years of bearing with perpetually awful political news. Now, as the man said, “My hair is on fire.” I am so freaked out about what is happening to freedom in this country, if I were anyone else but me, I’d be staging a pitched, shrieking, quivering, hysterical, rolling-on-the-ground, speaking-in-tongues fit.

Fortunately for you, I have phlegm. Instead of a pitched fit, I have stories to tell, each of them about “an ordinary, certifiably normal” human bean. Too many of whom have blundered into a “phantom of lost liberty.”

This has happened before in our history—in fact, it’s a pretty predictable reaction to fear. We get so rattled by some Big Scary Thing—communism or crime or drugs or illegal aliens or terrorism—something that scares us so much, we think we can make ourselves safer by giving up some of our freedom. Now, not only does that not hold a drop of water as a logical proposition but it has consistently proved to be an illusion as a practical matter. Empirically, when you make yourself less free, you are not safer, you are just less free.

Part of the weirdness of the reaction this time to the real and horrific threat of terrorism was not the justifiable panic attack after 9/11 (“Quick, let’s give the president complete authority to do whatever he thinks is necessary”) but the fact that so much of the fear has been orchestrated. Now, you are reading someone who does not believe in conspiracy theories. It would be pleasant to attribute all our difficulties to one great villain, one source of all evil—call it Satan or liberals or fascists or right-wing nutcases or anything else. My experience and reading have convinced me luck, chance, accident, and coincidence are all major players in human history, and if there is one single overriding constant, that would be human stupidity.

Nevertheless, I find it both odd and troubling that so many Straussians are visible in this administration. Leo Strauss was a complex and often opaque European émigré professor at the University of Chicago, often identified as “the father of neconservatism.” Among his followers were Paul Wolfowitz, Ahmad Chalabi, and Zalmay Khalilzad (yep, they went to the University of Chicago). At the end of Gerald
Ford’s presidency, a group of them, including Wolfowitz, came together in something called Team B. The B-Teamers then believed the CIA, with its many suspect graduates of Ivy League universities, had underestimated the military might of the Soviet Union. If you follow these issues at all, you know that Team B, the neocon guys, who were put in place by then–CIA chief Poppy Bush to second-guess the CIA, were dead wrong. The wheels were coming off the Soviet Union at that point, without us having to do anything. But they scared Jimmy Carter into spending more than was needed on defense. And Team B’s delusional reports really worked for Reagan, who added $2 trillion to our national debt in useless military spending, utterly unnecessary at that point. This is not some controversial contention—it’s what everyone agrees actually happened. Except maybe some Republican spinmeisters. Reagan’s spending spree may have accelerated the process, but the Soviet Union was already rotting from within. So why were the Team B people ever asked back?

The followers of Leo Strauss have a detestable habit of referring dismissively to both the Declaration of Independence and the Constitution of the United States as “the parchment regime.” As nearly as I can tell from reading Strauss’s work, he rejects all the Enlightenment ideals on which this country was founded and then adds a soupçon of the Nietzschean superman myth. Damned if I know exactly where that puts his followers, but it appears to be somewhere between hypocrisy and cynicism. Whatever they are, I’m damn sure they’re not democrats.

Perhaps there is not much more to justice than the plaintive childhood wail “But that’s not fair!” Grown-ups know life is unfair, but the Constitution of the United States takes a damn good stab at trying to make it equitable under law. There is a school of thought about the Constitution that comes close to secular idolatry, as though the document were a semidivine distillation of all wisdom. I flunk out of that school: except for the first ten or so amendments, the Constitution is amazingly boring reading. But I do think that pretty much everything humankind had learned up to that point, in 1787, about how to prevent injustice, and about how to stop governments from abusing their citizens, is in that document. I further think the Foundin’ Daddies left wiggle room in there, like, here’s the basic principles, you can’t change them, but adjust or add on the details whenever you need to. For nearly two terms in office, Team Bush has been undermining what constitutional conservative scholar Bruce Fein calls the “very architecture of the Constitution.” And they’ve had a pretty good run at it.

Let’s see, we’ve already destroyed the Fourth Amendment on unreasonable search and seizure: Has that stopped terrorism cold? Does Osama bin Laden quiver in fear because we have crippled the Fifth and Sixth Amendments?

And the First? Have we defanged Islamist extremists by damaging the First Amendment? Are we any safer? Does this strike you as an effective remedy to terrorism?

Fifth Amendment protections against self-incrimination have been neutered by declaring suspects material witnesses against themselves. Yet neither Brandon Mayfield nor Osama Awadallah provided any information that made any of us any safer. Nor did Abdullah al-Kidd, the University of Idaho football star locked up to testify against someone who had overstayed his visa. To quote an unlikely source, John Dean, once attorney to Richard Nixon, “Terrorists can’t vanquish their enemies, only hurt them. . . . As horrible as terrorism can be, it must be understood in context. Compared with the policy of mutually assured destruction of the Cold War, with its inherent potential for annihilating humankind, national security experts will tell you privately that terrorism’s threat to America appears to fall somewhere between that of killer bees (which scare people but take very few lives) and drunken drivers (who frighten very few people while killing 17,000 annually).”
Permit me, if you will, to address exactly how far back in law we have moved since 9/11. Anybody remember an old potboiler called _The Count of Monte Cristo_ by Alexandre Dumas—same guy who wrote _The Three Musketeers_? The plot of this tale of revenge turns on an ancient French legal gizmo called the _lettre de cachet_, literally, a letter of hiding. The story is about a splendid and happy young man who is put away for eighteen years in a dungeon on a fortress prison isle—solely on the strength of anonymous letters of accusation. No trial, no facts, no evidence, no counterargument, just—oops, you’ve gone down the _oubliette_—the slot into the dungeon. Even by the time of the French Revolution, this clunker of a plot device was antiquated. Not even the _ancient régime_ used it much (though it had some notable victims to the end, the Marquis de Sade among them).

Yet, in the United States of America, in 2006, we are now using this very same legal device, centuries gone and utterly discredited. This is not about illegal aliens, or foreign residents, or Arab students—this applies to _citizens of the United States of America_. At any given moment, the president can—without offering any evidence, and without following any rules of procedure—declare any one of us to be a danger, “an enemy combatant,” a description for which no legal definition exits. As we write, Jose Padilla is approaching his fifth year in prison. For his first twenty-one months, he was not informed of the charges against him. The feds who had him in custody elected to ignore the habeas corpus guarantees that were in place in this country when we were British subjects. By passing President Bush’s Military Commissions Act in 2006 (before the November elections), Congress codified that very practice, tossing a thousand years of Anglo-Saxon criminal jurisprudence into the trash.

Since damn few of us were in Afghanistan helping either Osama bin Laden or the Taliban, this may not strike you as a matter of immediate personal interest. But keep in mind, anyone who mentions lost liberties is considered, by George W. Bush’s first attorney general, to be guilty of helping terrorists. And as the law is written, by the president’s signature, anyone can be deprived of _habeas corpus_ protections. There have been, under this administration, citizens of the United States of America being held in prison without access to a lawyer, without the right to confront their accusers, without the right to a trial, without even knowing the charges against them.

None of the rest of us have any idea if these people are guilty, or even what they are accused of, much less what evidence there might be against them. The whole process is closed, secret, not open to public view. This is a return to the infamous secret proceedings of the Star Chamber court, abolished in England in 1641. Freedom in this country has literally been shoved backward by centuries. Law professors will tell you nothing like this has been known in the West since before King John was forced to sign the _Magna Carta_ in 1215. Could our government possibly have taken such extreme measures against these few citizens without overwhelming evidence?

Who the hell knows?
The record does not leave a lot of room for optimism.

The late American novelist and essayist John Gardner wrote that every book needs a guiding metaphor. Here’s ours, a John Henry Faulk story I’ve told so many times that I probably own it by rule of adverse possession.

Years before his career in radio, John Henry was in law enforcement—a Texas Ranger, a captain in fact. He was seven at the time. His friend Boots Cooper, who was six, was sheriff, and the two of them used to do a lot of heavy law enforcement out behind the Faulk place in south Austin. One day Johnny’s mama asked them to go down to the henhouse and rout out the chicken snake that had been doing some damage there.
Johnny and Boots loped down to the henhouse on their trusty brooms and commenced to search for the snake. They went all through the nests on the bottom shelf of the henhouse and couldn’t find it, so the both of them stood on tippy-toes to look on the top shelf. I myself have never been nose to nose with a chicken snake, but I always took Johnny’s word for it that it will just scare the living shit out of you. Scared those boys so bad that they both tried to exit the henhouse at the same time, doing considerable damage to both themselves and the door.

Johnny’s mama was a kindly lady, but watching all this, it struck her funny. She was still laughin’ when the captain and the sheriff trailed back up to the front porch. “Boys, boys,” said Miz Faulk, “what is wrong with you? You know perfectly well a chicken snake cannot hurt you.”

That’s when Boots Cooper made his semi-immortal observation. “Yes, ma’am,” he said, “but there’s some things’ll scare you so bad, you hurt yourself.”

We’ve allowed ourselves to be scared so bad that we have hurt ourselves. The damage Bush, Cheney, Ashcroft, Gonzales, et al. have done to our Bill of Rights will not be undone unless we act to undo it. The 2006 midterm elections slowed their programmatic assault on the Bill of Rights.

It’s now left to all of us who care about this republic to stop it.

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