

# Surrendering More American Rights

More than a decade after the 9/11 attacks even after Osama bin Laden's death and U.S. intelligence assessments that al-Qaeda is collapsing Congress keeps on chipping away at U.S. constitutional rights in the name of fighting terrorism, and President Obama is ready to go along, writes Lawrence Davidson.

By Lawrence Davidson

The U.S. Congress ended the year by assaulting the Constitution in the form of the 2012 National Defense Appropriations Act (NDAA), which passed both the House and the Senate by large margins despite having an attached provision (the "Homeland Battlefield Bill") that allows the United States military to take into custody and hold indefinitely without trial, any American citizen designated a "terrorist suspect."

As if to make sure that everyone knew just what they were voting for, Sen. Lindsey Graham, R-South Carolina, who supports the legislation, said on the Senate floor, "the statement of authority to detain, does apply to American citizens and it designates the world as a battlefield, including the homeland."

That means U.S. citizens designated terrorist suspects are stripped of their protections under the Constitution. They simply fall into a judicial black hole. Ironically, Congress did this to the country on the 220<sup>th</sup> anniversary of the Bill of Rights.

At first it seemed that President Obama was prepared to veto the bill to prevent this attack on citizen rights. But this proved to be untrue. What Obama was really interested in was language that prevents the military from interfering with the work of the FBI in cases of suspected terrorism. Actually, this should add to our worries because the FBI has a disturbing record of manufacturing terrorists out of poor and disgruntled U.S. citizens.

Given the numerous scams and entrapment scenarios the Bureau runs, we will probably see a macabre two-step dance where the FBI makes the terrorists and the military takes them away, never to be seen again outside of Guantanamo Bay, Washington's version of Devil's Island.

Here are some reactions to the Homeland Battlefield Bill:

1. Tom Malinowski of Human Rights Watch: "It's something so radical that it would have been considered crazy had it been pushed by the Bush administration. It establishes precisely the kind of system that the United States has consistently urged other countries to drop."

2. Senator Rand Paul, R-Kentucky: "Really, what security does this indefinite detention of Americans give us? The first and flawed premise, both here and in the badly named Patriot Act, is that our pre-9/11 police powers were insufficient to stop terrorism. This is simply not borne out by the facts."

In addition Paul points out that the present definition of a terrorist in U.S. law is broad to the point of meaninglessness. "There are laws on the books that characterize who might be a terrorist: someone missing fingers on their hands. ... Someone who has guns, someone who has ammunition that is weatherproofed, someone who has more than seven days of food in their house can be considered a potential terrorist."

3. Professor Jonathan Turley, legal scholar: "How did we come to this place? Well, it took the joint efforts of both parties and a country that has been lured into a dangerous passivity by years of war rhetoric."

The odd thing about President Obama's willingness to sign this bill and, as Human Rights Watch notes, "go down in history as the president who enshrined indefinite detention without trial in U.S. law," is that the FBI, the CIA, the Director of National Intelligence, the Attorney General, and the Secretary of Defense, among others, all oppose it.

The military in particular appears to have no wish to destroy a 200-year tradition of non-interference in domestic affairs. In fact, according to Heather Hubert, the executive director of The National Security Network, a non-profit organization focusing on national security, "you can't find any national security experts in favor of these provisions."

Yet the President, faced with a large bipartisan Congressional majority anxious to prove to the American people that it would "give up essential liberty to purchase a little temporary safety," demanded an assurance of a cooperative legal arrangement between the military and the FBI and then jumped on the bandwagon. One can only assume that nothing in the Homeland Battlefield Bill goes against Barack Obama's principles whatever they may be.

Yet, before we are overrun by doom and gloom, it is best to put this situation in historical context. Throughout U.S. history there have been episodes when the Constitution was disregarded and citizens' rights trampled on. For instance:

- a) As early as 1798 with the Alien and Sedition Acts.
- b) In 1830 when President Andrew Jackson ignored the Supreme Court and illegally evicted the Cherokee of Georgia.
- c) When the otherwise revered Abraham Lincoln started to ignore due process and arrest and hold people thought to be a danger to the Union cause during the

Civil War.

d) Woodrow Wilson, otherwise seen as making the “world safe for democracy,” instituted the questionable Espionage Act of 1917 and Sedition Act of 1918.

e) Followed by President Warren G. Harding’s mostly illegal deportations during the Red Scare of the early 1920s.

f) Then, of course, there was the illegal incarceration of Japanese Americans during World War II

g) And, in the 1950s under Harry Truman and Dwight Eisenhower, the U.S. went through a second Red Scare entailing blacklists, loyalty oaths and the McCarthy hearings.

There are a number of lessons we can draw from these episodes:

*First* – The party leaders and administrations that initiated these illegal policies have been both “conservative” and “liberal.” Many considered Andrew Jackson, Woodrow Wilson and Abraham Lincoln to be quite progressive for their time. The Federalists of 1798 and the McCarthyite Republicans of the 1950s were seen by many of their contemporaries as opportunistic reactionaries.

*Second* – Most of the historical attacks on Constitutional protections were situation specific. That is, they were responses to particular conditions such as war and amorphous fears of foreign threats. These conditions allowed for the draconian actions of the government. However, when the crisis (real or imagined) ended, policy swung back toward a more centrist political orientation and rights were restored.

One might argue that this is what is happening now, that we are in one of these crises modes, and the government is reacting in character by trashing Constitutional rights. I think that this could be a reasonable interpretation, but for one troubling aspect of the present situation that we will get to at the conclusion of this essay.

*Third* – The “average” citizen is comfortable with (and indeed sometimes enthusiastic about) the unconstitutional behavior of the government. Thus, as Jonathan Turley put it, “While the Framers [of the Constitution] would have likely expected citizens [to be] in the streets defending their freedoms, this measure [the Homeland Battlefield Bill] was greeted with a shrug and a yawn by most citizens and reporters.”

Why would this be so? Keep in mind that the average citizen does not often use his or her rights and sometimes is unaware of what they are. The majority is also normally under the influence of the government and its allied media. To wit, Turley’s “years of war rhetoric.” Even when the claims of these influential sources are exaggerated and distorted, the majority has no way to know this.

The population is in need of fact-checkers, a role once but no longer played by the press. Today's fact-checkers are a stand-alone vocal minority who contest the exaggerated claims of the government and media, and the abuse of power that often goes along with them.

Yet the majority is uncomfortable with fact-checkers and their negative revelations, particularly when they appear outside of traditional contexts (like the press). It is easy for the government to isolate the naysayers and persuade people that the critics are part of the problem, allied with the enemy, and in need of suppression.

Therefore, it is fact-checkers who are in great need of the protection of the Bill of Rights. The truth is that in many places, including the U.S., it is dangerous to tell the truth. Just look at the cases of Bradley Manning and Julian Assange.

Unfortunately, there may be something historically different about the present crisis. It is potentially endless. Terrorism is the poor man's form of revenge to prevailing economic, political and military domination (direct or by proxy) that is global and ongoing. Anyone with a little technical skill and a lot of determination can exact this kind of revenge.

And, as long as that happens there will be opportunistic and/or paranoid domestic elements that will use such incidents to isolate, harass and persecute critics of government war-on-terror policies.

If this prognosis is accurate, the only thing that can be expected to end this struggle is a revolutionary change in relations between the West, and particularly the United States, and the non-Western world, particularly the Middle East. No one should be holding his or her breath as far as this prospect goes. As it stands now, the best one can hope for are pauses in this struggle.

This is a depressing prospect, but it does not relieve anyone interested in the maintenance of political and civil rights from carrying on a determined resistance to their erosion. It is only by vigorously defending and using such rights as free speech that we can hope to sustain the space necessary for critical voices.

Think of such rights as muscles. If you don't want them to atrophy, you have to use them. So, if you want to keep your rights, get out there and use them.

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# Ignoring Complaints, Except on Muslims

In the old days, companies responded to complaints with the saying “the customer is always right.” Not so much anymore, except it seems when a right-wing group gets angry that a TV show presents Muslims as real people, as Michael Winship notes.

By Michael Winship

In the spirit of the season, I’d like to file a complaint about complaints. Corporate America just doesn’t handle them the way they used to. As in, at all.

I grew up in retail. My father owned a drugstore in upstate New York and was as old fashioned as the next guy when it came to the rules of doing business. As in, Rule #1: the customer is always right. Rule #2: see Rule #1.

Unless, of course, he caught a customer shoplifting, in which case all rules and rights were suspended, including habeas corpus. Make an attempt to sneak out of his establishment with a bottle of moisturizer or a pair of sunglasses and prepare for the thunder of God’s own drums.

I never heard him yell at his own kids the way he yelled at any young, incipient Artful Dodger who tried to skip the joint with a purloined Snickers bar tucked under his shirt.

As I got older, some of my classmates who sought the five-finger discount came to me directly, hoping I’d grab for them what they feared to take themselves. I trace the evolution of the Sixties counterculture through their requests. When we were high school freshman, they wanted prophylactics and cough syrup. By the time we reached senior year, it was blank prescription pads and several hundred empty gelatin capsules, to be filled with who knows what homemade hallucinogen.

In those days, before the notion of Black Friday spread across the land and early rising consumers clamored for the privilege of getting stomped upon and pepper-sprayed, my father’s busiest time at the store wasn’t the day after Thanksgiving but the day after Christmas, when holiday items were steeply discounted and customers arrived to exchange gifts received or complain about faulty products.

Each complaint was handled with aplomb, cash returned or merchandise traded, no questions asked.

So having been raised to honor the sanctity of the complaint, when I reached my majority, I took my own complaining very seriously, drafting letters of such savage wit, spellbinding rhetoric and logic that any commercial enterprise in receipt thereof was compelled to immediately see the error of its ways and yield. Or so I imagined.

I always copied my missives to the Better Business Bureau and once in the matter of a defective watch battery from Macy's received from a woman who worked at the bureau the epistolary equivalent of a standing ovation.

Several years later, when my then-wife was having problems with a furniture store coming through with the proper door for a new credenza, I drafted a complaint letter in her name and copied the BBB. A note came back from the same woman, announcing and I am not making this up that it was the best one she'd read since that guy with the bad watch battery.

Okay, maybe she simply noticed that the return address was the same, but in that moment it felt like I had won the Academy Award for Outstanding Achievement in Whining, Original or Adapted.

Now, however, complaints go largely unanswered. I blame this, at least in part, on the Internet. Websites for stores or other businesses more often than not have a place where you can register a grievance but they disappear into cyberspace like those microwave transmissions of "Leave It to Beaver" now racing past Alpha Centauri, never to be heard from again unless alien civilizations have a twisted sense of humor and a desire for revenge.

In the last few months, I've dutifully typed onto my screen various grievances to various companies, including a hotel where, if the sheets were indeed changed daily it was from bed to bed, and a drugstore chain, the branch of which in my neighborhood more and more resembles a Matthew Brady photo of the day after Gettysburg if you replaced the bodies strewn on the ground with toothpaste cartons, containers of painkiller and shredded circulars.

Not one has been answered, which makes it all the more frustrating that when a store the hardware behemoth Lowe's Home Improvement proves the exception and finally *does* respond to a complaint, it's not for anything legitimate but in reaction to a right-wing fringe organization's hysteria over a cable reality show that depicts Muslims as normal people instead of terrorists.

Lowe's pulled its commercials from the TLC series *All American Muslim* (as did some other companies), reportedly caving to pressure from the Florida Family Association (FFA), a group which apparently consists of a single paid employee its president and a mailing list of an alleged 35,000 members. (Lowe's now says

the FFA did not force its decision; it was “negative chatter about the show appearing on social networks.”)

What’s more, I noticed the other day that Mark Ryan, who retired last year from his job as chief executive of the drugstore chain to which I complained CVS Caremark was one of the ten most highly paid bosses in America. That’s according to the corporate governance group GMI Ratings.

*The New York Times* reports, “In his last year at CVS he received total compensation of \$29.2 million and an additional \$50.4 million from stock awards and options.” He’s now an operating partner with Advent International, a private equity firm specializing in corporate buyouts. Which is interesting because during the time he was CEO at CVS, its stock price dropped by more than half.

Therefore, as my Christmas gift to the One Percent, here’s a suggestion to Ryan and all you other “job creators.” Take back some of those millions in executive compensation and invest them in real customer service. Generate work hire people to take care of the people who buy your products and sincerely, productively respond to their concerns and problems, just like the good old days.

Admittedly, I did find one other exception, which is why I have to get over to Starbuck’s. The other evening, I was griping because they ran out of the stuff they put in their holiday eggnog lattes. They gave me a coupon for a free drink. Say what you will about the caffeine empire they know how to handle a complaint.

So in the words of *The Simpsons*’ Krusty the Klown, ““Have a Merry Christmas, Happy Hanukah, Kwazy Kwanzaa, a tip-top Tet, and a solemn, dignified Ramadan.” And speaking of complaints, I just know I’ll be hearing about this.

**Michael Winship, senior writing fellow at Demos, is senior writer for the new public television series “Moyers & Company,” premiering in January. Go to [www.billmoyers.com](http://www.billmoyers.com)**

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## On Havel/Kim, Where’s the Objectivity?

The Western news media reacted to the deaths of two international figures, Czech Vaclav Havel and North Korean Kim Jong-il, by presenting comic-book cut-outs of the two men, following simplistic story lines that missed the more nuanced reality, writes Danny Schechter.

By Danny Schechter

The world has said goodbye to two leaders who were worlds apart. One was a widely celebrated anti-communist, the other a widely despised communist. However, the lives and thoughts of both the Czech Republic's Vaclav Havel and North Korea's Kim Jong-il were given short-shrift.

Havel, the playwright-turned-politician who parlayed human rights activism into becoming Czechoslovakia's post-Communist president, was a leader for the pro-democracy Charter 77 Movement, not just a Red-hating politician on a power trip. Yet, the press praised him more for what he opposed than what he believed. The people who loved him adored him for both.

One report: "Thousands of silent mourners have accompanied the body of Vaclav Havel through central Prague as the Czech Republic began three days of national mourning for the icon of the Velvet Revolution. About 10,000 mourners mostly in black, some carrying Czech or Slovak flags, joined a solemn procession taking the former president's coffin from a church through narrow cobbled streets to Prague Castle, the seat of Czech presidents, on Wednesday."

Havel was an intellectual, a non-violent revolutionary who also presided over the break-up of his country into two: the Czech Republic and Slovakia. When his era ended, amidst deep economic problems, his country opted to turn right abandoning his humanistic sensibility by embracing American-style aggressive capitalism.

Vaclav Klaus, Havel's rigid "free market"-promoting adversary, was often hyper-critical of Havel when he was alive, but is now more charitable following Havel's death, saying:

"Vaclav Havel's life mirrors a large section of the 20th century: the war, the seizing of power by the communists, the thaw of the 1960s, the fall of communism, the building of the new democracy, the partition of the nation and its integration into European and global bodies."

On Friday, there will be a procession of Western leaders showboating at his funeral including Bill and Hillary Clinton and leaders from Europe and Eastern Europe. Since his ascendancy to power, the Czech market was opened wide to western investment and military sales.

Havel had closer relations with American cultural figures including Frank Zappa and poet Alan Ginsberg than the neo-cons in Washington. Still, not every Czech was enamored with Havel either, for other reasons, as expressed by "Smoker X" on the Hyperspace website:

"If he knew what was gonna come, he would never do it. The things he promised he would do for Czechoslovakia never happened. I lived under the dictatorship as



you call it in Czechoslovakia and I say that people were much happier then. The system was pro-people; this system we live now is against people and pro a few rich bastards.

“Socialism was not perfect but capitalism is pure evil.

“The things you say about Havel are things you heard from tv or newspaper. He did not liberate people in Czechoslovakia, he put them in prison. I would go back to socialism tomorrow if it was possible. you have no idea how good it was to live free, free from stress, hunger. always helped when needed, always guaranteed with work and free health care and education and good education.”

David Warren refutes media cliches about Havel in The Ottawa Citizen:

“Reading and re-reading Havel, since his death, I am struck by his acute grasp of the emptiness and capitulation of that Enlightenment. Soviet Communism embodied it in perhaps its most extreme form, but as Havel realized, western ‘capitalism’ and ‘libertarianism’ are also premised on Enlightenment tenets: that man constructs meaning for himself, and is answerable to himself, only; that what cannot be precisely defined, quantified, and legislated is ‘irrational,’ and ‘irrelevant’ to public life.”

Havel was embraced by the West only as a Cold War anti-communist symbol. The nuances of his philosophy and social critique were ignored. This is not a view you see reported in the Western media.

### **North Korea’s Leader**

A world away, there were millions in tears to mourn the passing of North Korea’s Kim Jong-il. Few Western leaders have expressed condolences even though South Korea and Japan had the compassion to do so.

The Chicago Tribune reports, “North Korea claimed Kim’s death generated a series of spectacular natural phenomena, creating a mysterious glow atop a revered mountain, cracking a sheet of ice on a lake with a loud roar and inspiring a crane to circle a statue of the nation’s founder before perching in a tree and drooping its head in sorrow.”

If he was revered at home with these exaggerated powers, he was just as demonized one-dimensionally abroad. In death as in life, he was presented only as the two-bit dictator of “the Hermit Kingdom” who wore elevator shoes and had a big collection of western movies. How many times have you heard that! That’s about all we heard endlessly. Insult after insult.

Despite the constant characterizations of him as bizarre and a maniac, State

Department officials who accompanied former Secretary of State Madeline Albright on a visit there told the New York Times how impressed they were with his strategic thinking and how well informed he was.

The West saw him, through the lens of our media, only as the embodiment of a hateful communism, stereotyping him as an enemy to be feared, as someone who likely would have been overthrown years ago if he did not have a few nuclear bombs.

Like Havel, his views were simplified, but in another direction. He was pictured as the evil villain in a James Bond movie ironically, he had collected them all and his country was the poster child of George W. Bush's overhyped "Axis of Evil." In the end, Bush did not prevail in his attack on Kim.

In a news world of black and whites, Kim was long blamed for every problem in the country. Yes, the people there are poor, suffer from famine and underdevelopment. They do need help, but refuse it at the expense of their independence and ideology.

But have we already forgotten the many decades when South Korea had a U.S.-backed dictator who had collaborated with the Japanese war machine? He was hated by "his" people who protested for years against him, even as the Pentagon backed him and Western investors profited from the economy.

The oxymoron of Western "intelligence" was caught napping when Kim died. Fears of his son the "Grand Successor" launching a war turned out to be bogus, too. Remember the breathless reports about the U.S. and South Korean militaries "on alert?" However, the transition there went smoothly, and within a few days, we learned that his power will be shared with the country's bureaucratic military establishment. Kim #3 is on a tight leash.

That proved once again how little our media knows about the country and its history of defeating Japanese invaders and frustrating (with Chinese help) an American "police action" under the umbrella of the UN. In our official Cold War narrative, the Korean conflict was blamed solely on a North Korean invasion on June 25, 1950. In those years, the legendary journalist I.F. Stone refuted Washington's fabricated Korea War propaganda.

Since then, historians like the University of Chicago's Bruce Cumings have shown how the North Koreans were provoked and the conflict's causes were complex. The North Koreans are said to have lost a million people in that war, but the country survived.

The people there may not have the "rights" we think we do, but they certainly seem to support their government and system even as human rights abuses are

legion and dissidents expose Pyongyang's policies.

So, there is more, much more, to the stories of both Kim and Havel, two men with opposing political orientations, but whose views and roles have been simplified and distorted for myth-making political purposes in our "objective" media.

**Filmmaker and News Dissector Danny Schechter writes the [NewsDissector.com](http://NewsDissector.com) blog. His latest book, *Occupy*, collects his dissections of Occupy Wall Street. For more information and to comment, write [dissector@mediachannel.org](mailto:dissector@mediachannel.org)**

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As it turned out, my appeals to the well-to-do and to public-interest foundations fell mostly on deaf ears. Many found creative arguments for justifying why our operation wasn't worth supporting: the media problem was just too big, other priorities were more important, the mainstream (or "liberal") media could do the job.

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For donations of \$60 or more, you can get a DVD of the 1991 PBS "Frontline" documentary "The Election Held Hostage," which I co-wrote. It explores Republican skullduggery with Iran prior to the pivotal 1980 election.

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As always, thanks for your support.

Robert Parry, Editor

Robert Parry broke many of the Iran-Contra stories in the 1980s for the Associated Press and Newsweek. He founded Consortiumnews.com in 1995 as the Internet's first investigative magazine. He saw it as a way to combine modern technology and old-fashioned journalism to counter the increasing triviality of the mainstream U.S. news media.

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