

Shame on Us All

From the Archive: Congress keeps expanding government powers in the “war on terror” even when President Obama doesn’t ask for them, unlike President George W. Bush who proudly signed the Military Commissions Act, a precursor to the indefinite detention in today’s National Defense Authorization Act, as described by Robert Parry in 2006.

By Robert Parry (Originally published on Oct. 18, 2006)

History should record October 17, 2006, as the reverse of July 4, 1776. From the noble American ideal of each human being possessing “unalienable rights” as declared by the Founders 230 years ago amid the ringing of bells in Philadelphia, the United States effectively rescinded that concept on a dreary fall day in Washington.

At a crimped ceremony in the East Room of the White House, President George W. Bush signed the Military Commissions Act of 2006 while sitting behind a sign reading “Protecting America.”

On the surface, the law sets standards for harsh interrogations, prosecutions and executions of supposed terrorists and other “unlawful combatants,” including al-Qaeda members who allegedly conspired to murder nearly 3,000 people on Sept. 11, 2001.

“It is a rare occasion when a President can sign a bill he knows will save American lives,” Bush said. “I have that privilege this morning.”

But the new law does much more. In effect, it creates a parallel “star chamber” system of criminal justice for anyone, including an American citizen, who is suspected of engaging in, contributing to or acting in support of violent acts directed against the U.S. government or its allies anywhere on earth.

The law strips “unlawful combatants” and their alleged fellow-travelers of the fundamental right of *habeas corpus*, meaning that they can’t challenge their imprisonment in civilian courts, at least not until after they are brought before a military tribunal, tried under special secrecy rules and then sentenced.

One of the catches, however, is that with *habeas corpus* suspended these suspects have no guarantee of a swift trial and can theoretically be jailed indefinitely at the President’s discretion. Given the endless nature of the “global war on terror,” suspects could disappear forever into the dark hole of unlimited executive authority, their fate hidden even from their families.

While incarcerated, the “unlawful combatants” and their cohorts can be subjected to coercive interrogations with their words used against them if and when they are brought to trial as long as a military judge approves.

The military tribunals also could use secret evidence to prosecute a wide range of “disloyal” American citizens as well as “anti-American” non-citizens. The procedures are similar to “star chambers,” which have been employed historically by absolute monarchs and totalitarian states.

Even after the prosecutions are completed, the President could keep details secret. While an annual report must be made to Congress about the military tribunals, the President can conceal whatever information he chooses in a classified annex.

False Confidence

When Congress was debating the military tribunal law in September 2006, some Americans were reassured to hear that the law would apply only to non-U.S. citizens, such as legal resident aliens and foreigners. Indeed, the law does specify that “illegal enemy combatants” must be aliens who allegedly have attacked U.S. targets or those of U.S. military allies.

But the law goes much further when it addresses what can happen to people alleged to have given aid and comfort to America’s enemies. According to the law’s language, even American citizens who are accused of helping terrorists can be shunted into the military tribunal system where they could languish indefinitely without constitutional protections.

“**Any person** is punishable as a principal under this chapter who commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission,” the law states.

“**Any person** subject to this chapter who, **in breach of an allegiance or duty to the United States**, knowingly and intentionally aids an enemy of the United States ... shall be punished **as a military commission may direct**.

“**Any person** subject to this chapter who **with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information** by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, **shall be punished by death or such other punishment as a military commission may direct**.

“**Any person** subject to this chapter who conspires to commit one of the more

substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, **by death or such other punishment as a military commission may direct**, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission may direct.” [Emphases added]

In other words, a wide variety of alleged crimes, including some specifically targeted at citizens with “an allegiance or duty to the United States,” would be transferred from civilian courts to military tribunals, where *habeas corpus* and other constitutional rights would not apply.

Secret Trials

Secrecy, not the principle of openness, dominates these curious trials.

Under the military tribunal law, a judge “may close to the public all or a portion of the proceedings” if he deems that the evidence must be kept secret for national security reasons. Those concerns can be conveyed to the judge through *ex parte* or one-sided communications from the prosecutor or a government representative.

The judge also can exclude the accused from the trial if there are safety concerns or if the defendant is disruptive. Plus, the judge can admit evidence obtained through coercion if he determines it “possesses sufficient probative value” and “the interests of justice would best be served by admission of the statement into evidence.”

The law permits, too, the introduction of secret evidence “while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that ... the evidence is reliable.”

During trial, the prosecutor would have the additional right to assert a “national security privilege” that could stop “the examination of any witness,” presumably by the defense if the questioning touched on any sensitive matter.

The prosecution also would retain the right to appeal any adverse ruling by the military judge to the U.S. Court of Appeals in the District of Columbia. For the defense, however, the law states that “no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions.”

Further, the law states “no person may invoke the Geneva Conventions or any protocols thereto in any *habeas corpus* or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.”

In effect, that provision amounts to a broad amnesty for all U.S. officials, including President Bush and other senior executives who may have authorized torture, murder or other violations of human rights.

Beyond that amnesty provision, the law grants President Bush the authority “to interpret the meaning and the application of the Geneva Conventions.”

[Some provisions of the 2006 law were modified in 2009 to grant additional safeguards for the accused. However, the newly approved National Defense Authorization Act of 2012 again broadens the government’s powers to detain indefinitely alleged “terrorists” and those accused of aiding them, including Americans arrested on U.S. soil.

[Sen. Lindsey Graham, R-South Carolina, a bill co-sponsor, made clear that Americans would not be spared possible detention. “The statement of authority to detain, does apply to American citizens and it designates the world as a battlefield including the homeland,” Graham said.]

In signing the Military Commissions Act of 2006, Bush remarked that “one of the terrorists believed to have planned the 9/11 attacks said he hoped the attacks would be the beginning of the end of America.” Pausing for dramatic effect, Bush added, “He didn’t get his wish.”

Or, perhaps, the terrorist did.

[For more on related topics, see Robert Parry’s *Lost History, Secrecy & Privilege* and *Neck Deep*, now available in a three-book set for the discount price of only \$29. For details, [click here.](#)]

Robert Parry broke many of the Iran-Contra stories in the 1980s for the Associated Press and Newsweek. His latest book, *Neck Deep: The Disastrous Presidency of George W. Bush*, was written with two of his sons, Sam and Nat, and can be ordered at neckdeepbook.com. His two previous books, *Secrecy & Privilege: The Rise of the Bush Dynasty from Watergate to Iraq* and *Lost History: Contras, Cocaine, the Press & ‘Project Truth’* are also available there.

Civil Liberties for Christmas?

Congress has sent to President Obama a military spending bill that expands the government's powers to fight the Long War on terrorism, including the ability to imprison alleged "terrorists" and accomplices indefinitely, even if Americans on U.S. soil, warns ex-FBI agent Coleen Rowley.

By Coleen Rowley

Sad, isn't it, that just two days before Christmas, we had to stand out in the cold and worry about getting another big lump of coal from our politicians? But unfortunately it's expected that President Barack Obama will sign the National Defense Authorization Act (NDAA) into law right after the holiday.

Since that's the same day the big post-Christmas sales/returns start, few Americans will probably be paying attention to the police state being officially ushered in.

On Dec. 23, however, we were still able to protest the despicable NDAA in front of Obama's Minnesota Campaign Headquarters. At the end of the rally led by members of "Occupy Minnesota" and the "Minnesota Committee to Stop FBI Repression," everyone taped their signs to the front window of Obama's campaign office, hoping he'd somehow get the message.

Then we made telephone calls to tell Obama's volunteer receptionists to act as his better angels and plead for him to veto the NDAA.

But a veto would be quite the Christmas miracle. Obama's expected signature will not only de-link the "war on terror" from its original justification, the 9/11 attacks of more than a decade ago, to ensure the "long war" does not end, but it will keep Guantanamo open indefinitely and turn the whole world into a battlefield, including our own backyards here in the U.S. where citizens will stand guilty until proven innocent.

What's the worst that could happen as a result of the congressional rubberstamp broadening the war and allowing indefinite military detention of American citizens as "enemy combatants"? Can it happen here? It's interesting to see what journalist Joshua Phillips learned from research for his new book, *None of Us Were Like This Before: American Soldiers and Torture*, a harrowing description of the torture of prisoners in Iraq and the deep psychological scars it left on the members of one battalion who dispensed pain to their victims.

When asked how this came about, the author says that almost all the soldiers he

interviewed cite the main reason for the various torture abuses as the climate of “permissiveness” that began when they were told they did not need to follow the Geneva Conventions anymore.

It should be recalled that Bush’s Office of Legal Counsel lawyers Robert Delahunty and John Yoo had written their memo on Jan 9, 2002, stating that the Geneva Conventions did not apply to “non-state actors”, i.e. Al Qaeda, Taliban and other “terrorist” suspects. Bush consequently signed a directive the following month, implementing this OLC memo and the word went out that gave rise to the abusive conditions at Guantanamo and other military detention sites.

The term I’ve personally used for this new culture of “permissiveness” is “the green light.” Unless you worked in the system, you might not recognize what the insidious “green light” is. I’ve tried to warn over and over that the “green light” will eventually go out and the people down the line who have gone along under its influence instead of resisting in accord with their previously ingrained sense of right and wrong are likely to pay a heavy price.

Phillips’s book documents that soldiers are now taking their own lives years after having participated in the abuse occasioned by the culture of permissiveness under Bush. Yet, instead of extinguishing the “green light,” Obama’s signing of the NDAA could well signal an even worse one being turned on than occurred with Bush’s torture memos.

Coleen Rowley, a FBI special agent for almost 24 years, was legal counsel to the FBI Field Office in Minneapolis from 1990 to 2003. She wrote a “whistleblower” memo in May 2002 and testified to the Senate Judiciary on some of the FBI’s pre 9/11 failures. She retired at the end of 2004, and now writes and speaks on ethical decision-making and balancing civil liberties with the need for effective investigation.
