

A Betrayal of the Founders

Exclusive: Though voicing “serious reservations” about encroachments on civil liberties in a military authorization bill, President Obama signed the law anyway to avoid a nasty veto fight with Congress. But ex-CIA analyst Ray McGovern says courage, not timidity, is what’s needed at such moments.

By Ray McGovern

President Barack Obama desecrated the Constitution that he and I swore to defend when he signed the National Defense Authorization Act of 2012, which includes language violating the Bill of Rights and other constitutionally protected liberties.

The NDAA affirms that the president has the authority to use the Armed Forces to detain any person “who was part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners.”

Under the law, the president also may lock up anyone who commits a “belligerent act” against the U.S. or its coalition allies “without trial, until the end of the hostilities.” The law embraces the notion that the U.S. military can be used even domestically to arrest an American citizen or anyone else who falls under such suspicion and it is “suspicion” because a trial can be avoided indefinitely.

Yes, I know that the Obama administration’s allies got some wording put in to say that “nothing in this section is intended to limit or expand the authority of the President or the scope of the [2001] Authorization for Use of Military Force,” nor shall the NDAA “be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.”

And there were some waivers stuck in to give the president discretion over whether to send someone into the gulag of the Military Commissions system possibly for the rest of a detainee’s life, given the indefinite nature of what was formerly called the “war on terror” and what the Pentagon has dubbed the Long War.

It’s true as well that after signing the NDAA on New Year’s Eve, President Obama engaged in some handwringing. He expressed “serious reservations” about some of the law’s provisions and declared, “I want to clarify that my Administration

will not authorize the indefinite military detention without trial of American citizens." He added that he would interpret the law "in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law."

But those who hoped that Barack Obama, the onetime constitutional law professor, would begin rolling back the aggressive assault on civil liberties that President George W. Bush began after the 9/11 attacks must be sorely disappointed.

Those existing laws including the original post-9/11 use-of-military-force authorization and the Military Commissions Act passed in 2006 and modified in 2009 opened the door for presidents to declare anyone of their choice, American citizen or non-citizen alike, an "enemy combatant" and to subject the person to military prison or even assassination.

Just think of U.S. citizens Jose Padilla (who was tossed into the Navy Brig in Charleston, South Carolina, for years) and Anwar al-Awlaki (who was murdered in a drone attack in Yemen in 2011). So, it's not especially reassuring that President Obama insists that the new law doesn't dramatically worsen the decade-long erosion of constitutional rights.

Sweeping Provisions

The American Civil Liberties Union also disputed Obama's claim that the NDAA was essentially business as usual. "The statute contains a sweeping worldwide indefinite detention provision," the ACLU said, without "temporal or geographic limitations, and can be used by this and future presidents to militarily detain people captured far from any battlefield."

In other words, the ACLU is noting that since the United States relies on the principle of "laws, not men," the assurance of any individual president that he won't exploit an abusive legal power doesn't mean that the next president won't. The right thing to do in such a case is to veto legislation that contains that kind of unconstitutional provision, not simply sign it, promise not to use it, and express "serious reservations."

Sure, if President Obama had exercised his veto, he would have been criticized in some corners as "soft on terror" and he would have undercut his political message about the need for bipartisanship amid the dysfunction of Washington. But compromising on the Constitution isn't like adding a road project to secure some congressman's vote.

Fifty years ago, when I was commissioned a 2nd lieutenant in the U.S. Army, I took an oath to support and defend the Constitution of the United States against

all enemies foreign and domestic. I knew that the oath carried no expiration date. Back then, I could not conceive of the possibility that one day this would pose a problem. I felt that we Americans were pretty much all on the same team. But how will I honor my oath in today's circumstances?

The winter is getting cold and I am getting old. Still. Do I have enough integrity; do I have enough genuine love for my country to be a "winter soldier" and do what I can to stop this steady encroachment on liberties that many other soldiers fought so valiantly to establish and protect?

It is a challenge not wholly different from the cold reality faced 235 winters ago by George Washington's army. The British had forced the army's retreat from New York just months after the signing of the Declaration of Independence on July 4, 1776. Not only was the American cause at low ebb, but Gen. Washington faced the annual crisis caused by the expiration of the Continental Army's period of enlistment. Some kind of success was desperately needed.

So Washington decided to cross the Delaware River at Christmas, surprise the defenders of Trenton, and seize it. Washington feared that what seemed like a desperate attack plan was unlikely to buck up troop morale, so he had his officers read to the troops an essay fresh from the pen of Thomas Paine, himself a soldier in Washington's army.

Paine's first words became the watchword of the attack on Trenton and are said to have inspired much of the uncommon bravery displayed that night and for the next five years: "These are the times that try men's souls: The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands it now, deserves the love and thanks of man and woman. Tyranny, like hell, is not easily conquered."

Blood on the Snow

The Delaware River was already running high with flowing ice on Christmas Day, when at 11 p.m. a heavy snow and sleet storm broke. Washington's force did not reach the east bank until around 3 a.m. His soldiers then marched to Trenton, the ones without shoes leaving traces of blood on the snow. Though they reached Trenton hours later than Washington had planned, his troops still surprised and overwhelmed a garrison of Hessian mercenaries on the day after Christmas.

Capt. Alexander Hamilton commanded an artillery section. Capt. William Washington, second cousin to the commanding general, and Lt. James Monroe (yes, that James Monroe) were wounded, the only American officer casualties. Two American soldiers were killed; and two others froze to death. The Hessian defenders suffered 20 killed and around 100 wounded, with 1,000 captured.

Not a major battle, you may be thinking. But remember, the effect of the Battle of Trenton was out of all proportion to the numbers involved and the casualties. The success at Trenton galvanized the American effort across the colonies and reversed the psychological dominance enjoyed by the British in the preceding months.

So why all this history? Because, remember, actions often have a larger impact, a greater significance, than numbers can impart. Bravery and ideas can touch the heart and focus the mind. They can inspire.

Perhaps you will sense the same hope I do in recognizing that this kind of thing can, and does, happen. And can happen again. What are required are integrity, courage, and imagination. Americans still can revive the spirit around the Battle of Trenton and start to turn the tide against a new tyranny.

We may have to leave some "blood on the snow," so to speak, but perhaps we owe that to the soldiers who had no shoes 235 Christmases ago. We are Washington's foot soldiers now, facing the resurgent face of tyranny. But there are already enough of us to defend our Constitution from all enemies, foreign and domestic.

Traitorous Law

Lawyers and historians may argue over whether the National Defense Authorization Act of 2012 is the deepest wound ever inflicted on the U.S. Constitution or just another debilitating cut. They may note that the United States has lost its way before from the Alien and Sedition Acts to Cointelpro.

But the NDAA strikes me as the most serious affront to American rights in my already pretty long lifetime. That, and the lifetime of my eight grandchildren, constitutes my horizon. Yet, why do so few of my neighbors understand the assault on the Bill of Rights that President Obama advanced with his signature?

Is it the old story of the frog that lets itself get slowly boiled to death because the water temperature is raised only gradually? Or is it that the law was signed on New Year's Eve when most Americans were distracted? Or perhaps because the following day, the journalists of the Fawning Corporate Media had convenient hangovers, excusing them for ignoring this latest dark turn in our nation's history.

Just as former CIA Director George Tenet protested to Scott Pelley on *60 Minutes* five times in five consecutive sentences, "We do not torture!" Obama may now declare, "We don't violate the Constitution!"

But where are our journalists now, this week in January 2012? Why aren't they investigating how this travesty occurred and how curious it is that this steady

encroachment on American rights continues even as U.S. intelligence agencies say al-Qaeda is on the verge of defeat with only a couple of “high-value targets” left from its core operation?

Shouldn't this be the moment when the United States begins winding down this decade-long anti-constitutional state of siege rather than giving it new life and even expanding its reach? Is there a message here about the future, especially given the new neoconservative propaganda initiative associating al-Qaeda with Iran?

Secret Covenants

Behind closed doors, the law's chief co-conspirators Sens. Carl Levin, D-Michigan; John McCain, R-Arizona; Lindsey Graham, R-South Carolina; and Joe Lieberman, I-Connecticut injected into the NDAA ambiguous language that could be applied by this president or the next to Americans who resist endless war against “associated forces” somehow linked to al-Qaeda or the Taliban.

All four of these co-conspirators are prominent supporters of harsher and harsher sanctions against Iran, actions that have put in place the dry kindling that awaits some spark to touch off a new conflagration in the Middle East.

Now that neocon operatives have “associated” al-Qaeda with Iran does that mean protesting a new war with Iran constitutes the kind of “support” that could prompt a long vacation at Guantanamo Bay? That may be too big a stretch, but it does seem odd that we're having this debate after al-Qaeda has been reduced to a sliver of its past self and as the Obama administration seeks negotiations with the Taliban.

The media play, or lack thereof, is another back-story here. Painfully clear is the success enjoyed thus far by those determined to use artificially whipped up fear of “terrorism” in the same way Sen. Joe McCarthy used the dread of “communism” to deprive Americans of their constitutional rights.

Let it not be forgot that our Founders, one of whom (George Mason of Virginia, author of the Bill of Rights) grew up a stone's throw from where I live, had the courage to declare how importantly urgent was the enterprise upon which they, and the foot soldiers of George Washington's army, were embarked toward freedom.

In 1776, at a time when it seemed far more likely than not that they would hang at the end a rope, they formally declared their support for a common effort to defeat tyranny. They declared: *“We mutually pledge to each other our Lives, our Fortunes and our sacred Honor.”*

And we are the beneficiaries of their decision to risk all to ensure the

blessings of liberty to us and our posterity. Are we, 235 years later, unable to recognize what is at stake? Do we lack the courage to act in the tradition of the Founders when government becomes destructive of these ends?

I came across the following on my bookshelf. It's nice. Anyone know what it's from? It reads: *We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.*

—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,

—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

THAT is how strongly our predecessor patriots from Virginia, Massachusetts and points south, north, and in between felt about all this. Many of them knew first-hand the evils of unchecked tyranny. THAT is why courageous foot soldiers were willing to mark the snow with blood from their feet as they marched on Trenton.

The Bill of Rights?

It is generally known that my former neighbor, George Mason, worked side-by-side with James Madison in crafting the Constitution. What is less known is that, when the draft was finished, Mason shocked Madison by refusing to sign the Constitution in 1787. His reason? He demanded that it contain a Bill of Rights.

Madison and other Founders pledged and honored their pledge to incorporate a Bill of Rights as the first Ten Amendments to the Constitution. They did so by riding through the towns and villages of the young country, making the case for a Bill of Rights, which was approved by Congress and ratified in 1791.

Can you visualize that in your mind's eye? How many of us can envisage riding horseback far and wide to persuade Carolinians and Vermonters alike that their liberty could not be assured without those Ten Amendments to the Constitution?

What about us? Can we not get up from our armchairs and do what we can to insist that those liberties be protected? How have we reached such a pass? Have we grown so inured to the repetition from our leaders, including both George W. Bush and Barack Obama, that keeping us "safe" is their first priority, that we have forgotten that the Founders risked everything for liberty, not for "safety"?

Madison already knew far too well what could pose the greatest danger to the Constitution. He recognized the inevitable effects on our liberties of "continual warfare" of the kind we have been waging for more than a decade now:

"A standing military force, with an overgrown Executive will not long be safe companions to liberty. The means of defense against foreign danger, have been always the instruments of tyranny at home."

"Of all the enemies to public liberty war is, perhaps, the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies; from these proceed debts and taxes; and armies, and debts, and taxes are the known instruments for bringing the many under the domination of the few." [Or put in today's parlance, the 99 percent under the boot of the one percent.]

"The same malignant aspect in republicanism may be traced in the inequality of fortunes, and the opportunities of fraud, growing out of a state of war, and in the degeneracy of manners and of morals, engendered by both. No nation could preserve its freedom in the midst of continual warfare."

Speaking Out

While horses and sailing ships of the 18th Century are slower than today's newspaper delivery trucks and electronic news outlets, those riders and ship captains who delivered Thomas Paine's pamphlets up and down the colonies encountered a much less distracted, much more engaged and eager readership.

There was no competition from faux-news on TV, or in what pass for newspapers these days. There was not even any football. And for the Founders and their families, freedom and politics were not spectator sports. They knew all too well how tyranny could be ushered in not only from overseas but also from behind closed doors.

Who has exposed Congress's latest poaching on our liberties and President Obama's hand-wringing decision to compromise those liberties? In fact some have,

but you won't find them on U.S. network TV or even on most American cable channels.

You either have to know your way around the Internet, or purchase the kind of service that will permit you to see foreign-sponsored channels like PressTV, Aljazeera, and RT. Even Secretary of State Hillary Clinton has admitted that by watching Aljazeera and RT when she travels abroad, she has gotten used to better news coverage than she gets in Washington.

I have been keeping track: CNN domestic has been punctual in interviewing me every three and a half years. I have flunked out of Fox News altogether, although there have been a few rare occasions when a local Fox station invites me on to comment on a fast-breaking event. And forget the rest of the FCM.

So when someone from, say, PressTV, which is run by Iran, asks to interview me on a subject I know something about, I normally say yes if a convenient time can be arranged. On Monday, PressTV invited me to join two others (Dave Lindorff in Philadelphia and Don DeBar in New York) in a panel discussion of the implications of the President's signing of the NDAA.

I haven't a clue how many Americans might have been able to watch such a program on their TVs. But it is usually possible to access such programs on the Web, where many more may have already seen it, or can see it now. The interview touched on many things that I would have welcomed a chance to say on CNN.

It will be necessary to keep informed as we face down this resurgence of tyranny. Sunshine patriots will deceive themselves into thinking they can do that, while staying malnourished by the Fawning Corporate Media. You readers know better, right?

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